



HOUSE JUDICIARY COMMITTEE

Chairman Jim Jordan

HOW JACK SMITH AND THE BIDEN-HARRIS DEPARTMENT OF JUSTICE DISREGARDED THE SEPARATION OF POWERS TO SPY ON THEIR POLITICAL OPPOSITION

Interim Staff Report

Committee on the Judiciary

U.S. House of Representatives



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EXECUTIVE SUMMARY

The investigation conducted by Special Counsel Jack Smith of President Donald J. Trump was a partisan attack by the Biden-Harris Department of Justice (DOJ) to weaponize the rule of law against President Joe Biden’s political opponent in the 2024 presidential election. As the Committee on the Judiciary’s previous oversight has shown, Special Counsel Smith and his team were willing to do anything to get President Trump. The Special Counsel’s prosecutors tried to silence President Trump with unlawful gag orders, threatened defense attorneys, mishandled key documents, and broke protocol to release a massive trove of alleged evidence just weeks before the presidential election to sway public opinion.¹ Fortunately, the American people saw through this perversion of justice and elected President Trump overwhelmingly—giving him a mandate to stop the weaponization of justice.

New information obtained by the Committee in the 119th Congress shows that the Biden-Harris Administration’s efforts to use the DOJ as a weapon against its political opponents did not stop with President Trump. The Biden-Harris Administration, including Special Counsel Smith, ran roughshod over key constitutional protections to spy on Republican Members of the U.S. House of Representatives and Senate. During the Biden-Harris DOJ’s investigation of the 2020 election, codenamed Arctic Frost, and the subsequent Special Counsel investigation, investigators unconstitutionally subpoenaed phone records for over a dozen Republican Members of Congress and obtained gag orders to prevent the Members from knowing that the Biden-Harris Administration had obtained these records. Because the subpoenas and gag orders were obtained *ex parte*—meaning only the prosecutors presented to the grand jury and judge—the Members had no meaningful opportunity to challenge the Biden-Harris Administration’s actions.

In doing so, the Biden-Harris Administration violated the Constitution’s Speech or Debate Clause, a core provision that protects the official actions and communications of Members of Congress and immunizes them from prosecution for legislative acts.² The Speech or Debate Clause embodies the principle of separation of powers that is fundamental to the Constitution’s system of checks and balances. It ensures Congress’s independence from the Executive Branch and from administrative overreach.³ The Speech or Debate Clause protects not only legislators, but American citizens too. It guarantees that the people’s representatives in Congress may advocate effectively on their constituents’ behalf without the threat of interference or intimidation by the Executive Branch.

Between April 2022 and May 2023, the Biden-Harris DOJ seized the telephone records of at least 17 Republican Members of Congress, including Speaker of the House Kevin McCarthy, as part of the Arctic Frost investigation.⁴ Additionally, on August 9, 2022—the day after the

¹ See generally Deposition of Jack Smith, Special Counsel, U.S. Dep’t of Justice (Dec. 17, 2025).

² U.S. CONST., Art. I, § 6, cl. 1.

³ See The Federalist No. 51, at 321 (James Madison) (Clinton Rossiter ed., 1961); *U.S. v. Helstoski*, 442 U.S. at 477, 491 (1979) (“[T]he central importance of the [Speech or Debate] Clause” is “preventing intrusion by Executive and Judiciary into the legislative sphere.”).

⁴ See Grand Jury Subpoena for Chairman Jordan’s Phone Records, U.S. Dist. Court for the Dist. of Columbia (May 1, 2022), see Ex. 2; Email from Jennifer Clarke, Deputy Chief, Public Integrity Section, to Timothy Duree, Assistant Chief, Criminal Division (May 19, 2022), see Ex. 3; Grand Jury Subpoena for Rep. Fitzgerald’s Phone Records,

Biden-Harris DOJ raided President Trump’s home—FBI and DOJ Office of Inspector General agents seized Representative Scott Perry’s cell phone, on which Representative Perry possessed privileged legislative material.⁵ Testimony to the Committee reveals that prosecutors never considered the implications of seizing the cell phone from a duly elected Member of Congress or the effect it would have on preventing him performing his constitutional duties.⁶ These actions by reckless partisan Biden-Harris prosecutors violated the Speech or Debate Clause.

These prosecutorial abuses continued after Special Counsel Smith’s appointment. Indeed, the evidence shows that Special Counsel Smith and the Biden-Harris DOJ barely considered the constitutional limitations as they seized material from Members of Congress.⁷ Internal documents show that Arctic Frost investigators, and later Smith’s team, had only limited, perfunctory discussions with subject matter experts in DOJ’s Public Integrity Section (PIN) about the constitutionality of these seizures.⁸ Although PIN cautioned that the subpoenas could be unconstitutional, PIN approved them nonetheless, asserting there was little “litigation risk” because the gag orders that accompanied the subpoenas would prevent Members from ever discovering the seizures.⁹ As a result, Members of Congress were unaware of the Biden-Harris DOJ’s spying for more than two years.¹⁰

The Special Counsel’s office did not just gather telephone records—it received content of private text messages sent or received by Members as well. New evidence shows that Smith’s team received from the National Archives and Records Administration (NARA) text messages between Members of Congress and Executive Branch officials that may have included privileged content.¹¹ Although the DOJ had created a filter team to review all incoming documents and only release certain relevant, non-privileged documents to the investigative team,¹² Smith and his

U.S. Dist. Court for the Dist. of Columbia (May 31, 2022), *see* Ex. 4; Grand Jury Subpoena for Speaker McCarthy’s Phone Records, U.S. Dist. Court for the Dist. of Columbia (Jan. 23, 2023), *see* Ex. 10; Grand Jury Subpoena for Senator Lee’s Phone Records, U.S. Dist. Court for the Dist. of Columbia (Jan. 23, 2023), *see* Ex. 11; Grand Jury Subpoena for Representative Gohmert’s Phone Records, U.S. Dist. Court for the Dist. of Columbia (Jan. 23, 2023), *see* Ex. 12; Memorandum on Limited Toll Records Subpoenas for Members of Congress, Office of the Special Counsel, U.S. Dep’t of Justice (May 17, 2023), *see* Ex. 16.

⁵ FBI Form FD-302, Execution of Seizure Warrant for Representative Scott Perry’s Phone (Aug. 9, 2022), *see* Ex. 6.

⁶ *See* Transcribed Interview of Timothy Duree, former Assistant Special Counsel, U.S. Dep’t of Justice, at 63-64 (Mar. 5, 2026).

⁷ U.S. CONST., Art. I, § 6, cl. 1.

⁸ *See* Email from Jennifer Clarke, Deputy Chief, Public Integrity Section, to Timothy Duree, Assistant Chief, Criminal Division (Apr. 26, 2022), *see* Ex. 1; Email from Jennifer Clarke, Deputy Chief, Public Integrity Section, to Timothy Duree, Assistant Chief, Criminal Division (May 19, 2022), *see* Ex. 3; Emails between John Keller, Principal Deputy Chief, Public Integrity Section, and Molly Gaston, Senior Assistant Special Counsel (May 17, 2023), *see* Ex. 15.

⁹ *Id.*

¹⁰ *See, e.g.*, Press Release, S. Comm. on the Judiciary, Biden FBI Spied on Eight Republican Senators as Part of Arctic Frost Investigation, Grassley Oversight Reveals (Oct. 6, 2025); <https://www.judiciary.senate.gov/press/rep/releases/biden-fbi-spied-on-eight-republican-senators-as-part-of-arctic-frost-investigation-grassley-oversight-reveals>; Ashley Oliver, *Biden DOJ subpoenaed Jim Jordan’s phone records covering more than two years*, FOX NEWS (Nov. 20, 2025); Letter from Mr. Michael Bopp, Counsel for AT&T, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Nov. 14, 2025).

¹¹ Letter from Patrick Davis, U.S. Dep’t of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 14, 2026), *see* Ex. 18.

¹² Email from Senior Service Delivery Advisor, Deloitte, to Thomas Windom, former Senior Assistant Special Counsel, U.S. Dep’t of Justice (May 27, 2022).

team received these messages without any screening by a filter team for potential privileges. In other words, Smith's team disregarded the proper procedures, obtaining content of text messages sent or received by 44 Members of Congress that it had no right to review.

Since the 118th Congress, the Committee has been investigating the weaponization of the Biden-Harris DOJ, including Special Counsel Smith's partisan investigation into President Trump and his associates following the 2020 election.¹³ As part of this oversight, the Committee has sent 66 letters and subpoenas requesting documents and testimony to four telecommunications companies, 24 financial institutions, five executive branch agencies, and eight former DOJ prosecutors and investigators related to their involvement in the Biden-Harris DOJ's years-long investigation.¹⁴ In response, the Committee has received over 38,883 pages of documents.¹⁵ The Committee also conducted six transcribed interviews and three depositions of the federal prosecutors involved in unconstitutional spying on Members of Congress.¹⁶

Throughout the Committee's investigation, Special Counsel Smith's team has brazenly

¹³ See, e.g., Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Hon. Merrick Garland, Att'y Gen., U.S. Dep't of Justice (Aug. 29, 2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Jack Smith, Special Counsel, U.S. Dep't of Justice (Sept. 7, 2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Jeffrey Ragsdale, Counsel, Off. of Prof. Resp., U.S. Dep't of Justice (May 6, 2024); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Thomas Windom, Former Senior Assistant Special Counsel, U.S. Dep't of Justice (Apr. 7, 2025); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to J.P. Cooney, Former Deputy Special Counsel, U.S. Dep't of Justice (Apr. 7, 2025); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Jay I. Bratt, Former Counselor to the Special Counsel, U.S. Dep't of Justice (Apr. 7, 2025).

¹⁴ See, e.g., Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to J.P. Cooney, Former Deputy Special Counsel, U.S. Dep't of Justice (Apr. 7, 2025); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Jack Smith, Former Special Counsel, U.S. Dep't of Justice (Oct. 14, 2025); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Jack Smith, Former Special Counsel, U.S. Dep't of Justice (Dec. 3, 2025); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to John Stankey, Chairman and Chief Executive Officer, AT&T (Nov. 4, 2025); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Dan Schulman, Chief Executive Officer, Verizon (Nov. 4, 2025); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Srini Gopalan, Chief Executive Officer, T-Mobile USA, Inc. (Dec. 3, 2025); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Kate Johnson, Chief Executive Officer, Lumen Technologies (Dec. 3, 2025); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Timothy Duree, Former Assistant Special Counsel, U.S. Dep't of Justice (Dec. 16, 2025); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Kenneth Polite, Former Senior Assistant Att'y Gen., Crim. Div., D.C. U.S. Atty's Off. (Dec. 16, 2025); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Ray Hulsler, Former Counselor to the Special Counsel, U.S. Dep't of Justice (Dec. 16, 2025); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to James Burnett, Former Supervisory Special Agent, U.S. Dep't of Justice (Apr. 6, 2026).

¹⁵ See, e.g., Letter from Robert Fisher, SVP Fed. Gov't Relations, Verizon, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Nov. 12, 2025); Letter from Alyssa DeCunha, Counsel for T-Mobile, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Dec. 17, 2025); Letter from Michael Bopp, Counsel for AT&T, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Nov. 14, 2025).

¹⁶ Deposition of Jay Bratt, Counselor to the Special Counsel, U.S. Dep't of Justice (May 14, 2025); Deposition of Thomas Windom, Senior Assistant Special Counsel, U.S. Dep't of Justice (June 12, 2025); Deposition of J.P. Cooney, Deputy Special Counsel, U.S. Dep't of Justice (June 24, 2025); Deposition of Jack Smith, Special Counsel, U.S. Dep't of Justice (Dec. 17, 2025); Transcribed Interview of Molly Gaston, Senior Assistant Special Counsel, U.S. Dep't of Justice (Feb. 25, 2026); Transcribed Interview of Timothy Duree, Assistant Special Counsel, U.S. Dep't of Justice (Mar. 5, 2026); Transcribed Interview of Raymond Hulsler, Counselor to the Special Counsel, U.S. Dep't of Justice (Mar. 24, 2026); Transcribed Interview of J. Brian Burnett, former Senior Special Agent, U.S. Dep't of Justice Off. of Inspector Gen. (June 25, 2026).

defended its unconstitutional targeting of President Trump and Congressional Republicans. In voluntary and compelled testimony, Special Counsel Smith and his key deputies refused to take responsibility for their prosecutorial abuses. They instead projected defiance and a misplaced certainty that by undermining the rule of law to target President Trump and his political allies, they acted as virtuous defenders of justice and could do no wrong. For example:

- When asked who was to blame for the unconstitutional seizures of phone records from Members of Congress, Special Counsel Smith bizarrely testified that it was President Trump’s fault because “he chose to” call these Members.¹⁷ Instead of taking responsibility for the abuses of his office, Special Counsel Smith sought to pass the blame and accuse President Trump of wrongdoing for something—communicating with Members of Congress—that is well within the President’s official duties.
- During her transcribed interview, Senior Assistant Special Counsel Molly Gaston defended the subpoenas for Members’ phone records by asserting an absurd and artificially narrow understanding of what material is protected by the Speech or Debate Clause.¹⁸ Gaston even disputed that a Member’s deliberations on how to vote in certifying a presidential election was “obvious[ly]” an official legislative act.¹⁹
- Similarly, Assistant Special Counsel Timothy Duree testified that caselaw surrounding the Speech or Debate Clause is “underdeveloped,” but confidently maintained that toll records—the specific type of phone records sought—are not protected by the Clause.²⁰ Duree further testified, incorrectly, that no caselaw supports the idea that toll records are protected by the Speech or Debate Clause.²¹ Duree would not admit it was wrong to subpoena two-and-a-half years of Chairman Jordan’s toll records, claiming without evidence that this exceptionally long timeframe was necessary to understand and map Chairman Jordan’s communications “networks.”²²

At best, these prosecutors ignored key legislative protections enshrined in the Constitution to guarantee that Members of Congress may freely deliberate on the questions of public policy. At worst—which seems likely in context with the other abuses of Special Counsel Smith’s office—these prosecutors weaponized their law-enforcement authority to violate a key constitutional provision to gather reams of information about their Administration’s political adversaries. Either way, these abuses by the Biden-Harris DOJ and Special Counsel Smith’s team were brazen and cannot withstand scrutiny.

¹⁷ Deposition of Jack Smith, Special Counsel, U.S. Dep’t of Justice, at 102 (Dec. 17, 2025).

¹⁸ Transcribed Interview of Molly Gaston, Senior Assistant Special Counsel, U.S. Dep’t of Justice, at 36 (Feb. 25, 2026)

¹⁹ *Id.* at 64.

²⁰ Transcribed Interview of Timothy Duree, Assistant Special Counsel, U.S. Dep’t of Justice, at 99 (Mar. 5, 2026).

²¹ *Id.* at 76; *see In re Grand Jury Investigation into Possible Violations of Title 18, etc.*, 587 F.2d 589, 595 (3d Cir. 1978) (Toll records “at least as to some telephone calls, record the fact that a legislative act took place.” The court “[could] not imagine why the toll record of such a call should not be protected.”)

²² Transcribed Interview of Timothy Duree, former Assistant Special Counsel, U.S. Dep’t of Justice, at 67-69 (Mar. 5, 2026).

Contemporaneous documents and testimony to the Committee reveal a deliberate assault by the Biden-Harris DOJ on fundamental separation of powers between the Executive Branch and the Legislative Branch. Arctic Frost investigators and Jack Smith’s team paid no attention to the Constitution’s “absolute” bar on compelled disclosure of documents related to Members’ legislative acts.²³ As Special Counsel Smith admitted privately to Attorney General Merrick Garland, “members . . . likely have a valid Speech or Debate privilege immunizing them from compelled testimony.”²⁴ Yet Special Counsel Smith, with Attorney General Garland’s blessing, issued subpoenas compelling the production of Members’ protected legislative records.²⁵ Whether through arrogance or maliciousness, these partisan prosecutors were willing to violate the Constitution and break prosecutorial norms to achieve their narrow goals. Special Counsel Jack Smith, his prosecutors, and the Biden-Harris DOJ violated the Department’s most sacred warning: that “the most dangerous power of the prosecutor” is when he “picks some person whom he dislikes or desires to embarrass . . . and then looks for an offense.”²⁶

On June 2, 2026, Representative Mike Kelly (R-PA) introduced H.R. 9098, the Congressional Records Protection Act, to protect the separation of powers enshrined in the United States Constitution and end the weaponized surveillance of Members of Congress. On July 15, the Committee voted to report this bill to the House floor.²⁷ As the American people await further action on this vital legislation, the Committee will continue to conduct this oversight to inform legislative reforms to better protect the deliberative material of Members of Congress and to respect the democratic rights of American citizens in having effective and independent legislators.

²³ *United States v. Rayburn House Office Bldg., Rm. 2113*, 497 F.3d 654, 660 (D.C. Cir. 2007); *see Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 501 (1975) (“The prohibitions of the Speech or Debate Clause are absolute.”).

²⁴ Notes for Briefing of Att’y Gen. Merrick Garland (Jan. 13, 2023), *see* Ex. 9.

²⁵ *See supra* Sec. I(C).

²⁶ Robert H. Jackson, Att’y Gen., U.S. Dep’t of Justice, “The Federal Prosecutor” (Apr. 1, 1940).

²⁷ *Markup of H.R. 9098 Before the H. Comm. on the Judiciary*, 119th Cong. (2026)

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I. The Biden-Harris DOJ, including Special Counsel Jack Smith, spied on Republican Members of Congress.

As part of an investigation related to the 2020 presidential election, the Biden-Harris DOJ seized the phone records of at least 17 Members of Congress.²⁸ In May 2022, investigators in the U.S. Attorney’s Office for the District of Columbia began seeking subpoenas for Members’ phone records because these Members spoke with certain Executive Branch officials.²⁹ On August 9, 2022, the FBI and DOJ Office of Inspector General agents seized Representative Scott Perry’s cell phone, capturing a full image of the contents of his phone.³⁰ In the months following Jack Smith’s appointment as Special Counsel, Special Counsel Smith’s team proposed over a dozen additional toll record subpoenas for Republican Members of Congress, with Special Counsel Smith approving the vast majority of them.³¹ Special Counsel Smith and the Biden-Harris DOJ barely considered the Constitution as they seized these records of Congressional Republicans—and to the extent that they did, subject matter experts within DOJ warned that their subpoenas might be unconstitutional.³² However, instead of carefully considering the constitutional implications of their actions, these reckless DOJ prosecutors obtained non-disclosure orders (NDOs)—gag orders—to try to prevent the Members from ever learning that the Biden-Harris Administration had seized their records. And they did not stop there. Through the National Archives and Records Administration (NARA), Smith’s team gained unfettered access to the content of text messages between White House officials and Members of Congress—both Democrat and Republican—bypassing constitutional safeguards.

A. Before Jack Smith took over as Special Counsel, the Biden-Harris DOJ issued secret subpoenas for the toll records of at least three Members of Congress.

Beginning in May 2022, prosecutors under the leadership of U.S. Attorney for the District of Columbia Matthew Graves issued several subpoenas demanding telephone toll records for Members of Congress to identify individuals with whom they spoke around major votes in

²⁸ See Grand Jury Subpoena for Chairman Jordan’s Phone Records, U.S. Dist. Court for the Dist. of Columbia (May 1, 2022), *see* Ex. 2; Email from Jennifer Clarke, Deputy Chief, Public Integrity Section, to Timothy Duree, Assistant Chief, Criminal Division (May 19, 2022), *see* Ex. 3; Grand Jury Subpoena for Representative Fitzgerald’s Phone Records, U.S. Dist. Court for the Dist. of Columbia (May 31, 2022), *see* Ex. 4; Grand Jury Subpoena for Speaker McCarthy’s Phone Records, U.S. Dist. Court for the Dist. of Columbia (Jan. 23, 2023), *see* Ex. 10; Grand Jury Subpoena for Senator Lee’s Phone Records, U.S. Dist. Court for the Dist. of Columbia (Jan. 23, 2023), *see* Ex. 11; Grand Jury Subpoena for Representative Gohmert’s Phone Records, U.S. Dist. Court for the Dist. of Columbia (Jan. 23, 2023), *see* Ex. 12; Memorandum on Limited Toll Records Subpoenas for Members of Congress, Office of the Special Counsel, U.S. Dep’t of Justice (May 17, 2023), *see* Ex. 16.

²⁹ See Email from Jennifer Clarke, Deputy Chief, Public Integrity Section, to Timothy Duree, Assistant Chief, Criminal Division (Apr. 26, 2022), *see* Ex. 1.

³⁰ FBI Form FD-302, Execution of Seizure Warrant for Representative Scott Perry’s Phone (Aug. 9, 2022), *see* Ex. 6.

³¹ See Emails among Timothy Duree, Assistant Special Counsel, Ray Hulser, Counselor to the Special Counsel, and Thomas Windom, Senior Assistant Special Counsel (Jan. 9, 2023), *see* Ex. 8; Memorandum on Limited Toll Records Subpoenas for Members of Congress, Office of the Special Counsel, U.S. Dep’t of Justice (May 17, 2023), *see* Ex. 16.

³² U.S. CONST., Art. I, § 6, cl. 1; Email from Jennifer Clarke, Deputy Chief, Public Integrity Section, to Timothy Duree, Assistant Chief, Criminal Division (May 19, 2022), *see* Ex. 3.

Congress, including votes on the certification of the 2020 presidential election.³³ Toll records track all incoming and outgoing calls for a certain phone number, including the phone number on the other end of the conversation, call time, and call duration.³⁴ Toll records look at calls retroactively, rather than in real time.³⁵ Toll records, however, do not reflect the substance of a telephone conversation.

In late April 2022, Arctic Frost investigators reached out to the DOJ's Public Integrity Section (PIN) seeking approval to subpoena Chairman Jim Jordan's phone and email records for the period between August 2020 and January 2021, citing communications that Chairman Jordan made with a fellow Member of Congress, Representative Scott Perry.³⁶ Per DOJ policy, investigators are required to consult with PIN for "all investigations involving a Member of Congress or congressional staff member."³⁷ PIN approved the request to subpoena Chairman Jordan's phone and email records, writing that the Speech or Debate Clause "arguably" did not apply because the subpoena targeted his personal cell phone accounts, and because the subpoenas were served to a third party (e.g. the Chairman's phone carrier).³⁸ PIN concluded that because the subpoenas were to a third party, the subpoenas would not violate the Speech or Debate Clause.³⁹ PIN made this conclusion despite acknowledging controlling precedent from the U.S. Court of Appeals for the D.C. Circuit, which stated that the Speech or Debate Clause privilege includes an "absolute" right to "non-disclosure" of covered communications—meaning that law enforcement cannot lawfully obtain them.⁴⁰ In its one-paragraph email to Arctic Frost investigators, PIN noted this potential "litigation risk" but approved the subpoenas nonetheless.⁴¹ PIN directed the prosecutors to inform the Office of the Deputy Attorney General (ODAG) about the subpoenas—giving top Biden-Harris DOJ officials advanced notice of the proposed subpoenas for Chairman Jordan's records.⁴²

³³ Email from Jennifer Clarke, Deputy Chief, Public Integrity Section, to Timothy Duree, Assistant Chief, Criminal Division (May 19, 2022), *see* Ex. 3.

³⁴ *See Department of Justice Responses to Frequently Asked Questions on use of National Security Letters to Obtain Electronic Communication Transactional Records*, CTR. FOR DEMOCRACY & TECH., <https://cdt.org/wp-content/uploads/2016/09/ECTR-FAQ.pdf> (last accessed Sept. 18, 2026).

³⁵ *See* Deposition of Jack Smith, Special Counsel, U.S. Dep't of Justice, at 18 (Dec. 17, 2025).

³⁶ Email from Jennifer Clarke, Deputy Chief, Public Integrity Section, to Timothy Duree, Assistant Chief, Criminal Division (Apr. 26, 2022), *see* Ex. 1.

³⁷ Justice Manual § 9-85.110.

³⁸ Email from Jennifer Clarke, Deputy Chief, Public Integrity Section, to Timothy Duree, Assistant Chief, Criminal Division (Apr. 26, 2022), *see* Ex. 1.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

As we've previously discussed, obtaining these types of records from a third-party provider for the personal email address of a Member of Congress arguably does not violate the Speech or Debate Clause, even under an interpretation that the clause provides a privilege against disclosure, as the disclosure of the records is not compelled from the Member directly and the records are for the Member's personal email account rather than a congressional email account. That position is not without litigation risk as the D.C. Circuit does interpret the privilege as one of non-disclosure. See

United States v. Rayburn House Office Building, Room 2113, Washington, D.C. 20515, 497 F.3d 654, 662 (D.C. Cir. 2007) ("Where the Clause applies its protection is absolute.") Further, you should be sensitive to the fact that if during your investigation you determine that certain emails were made in furtherance of legitimate legislative acts, you would be barred from presenting those emails to the GJ or relying on them in an indictment or at trial. The Member would likely be entitled to assert privilege as to certain emails contained in the records to avoid their use. See, e.g., *In re Grand Jury Investigation*, 587 F.2d 589, 597 (3d Cir. 1978) ("[The Member] should be permitted to indicate by affidavit or testimony those calls which he contends are privileged.")

You should also notify ODAG via urgent report about legal process related to Jordan. Please return to PIN to consult on any further legal process related to Jim Jordan or the email account

Thanks,

Jennifer Clarke
Deputy Chief
Public Integrity Section

DOJ's Public Integrity Section raised constitutional concerns about the subpoena for Chairman Jordan's phone records, but approved it nonetheless.

On May 1, the DOJ issued a subpoena for Chairman Jordan's phone records from January 1, 2020, to April 25, 2022—every call incoming and outgoing for more than two years.⁴³ A Special Agent from the DOJ Office of the Inspector General (OIG)—an entity that should be independent of the DOJ and maintain a reporting relationship with Congress as it investigates waste, fraud, and abuse—served the subpoena to Chairman Jordan's phone carrier.⁴⁴

In his transcribed interview with the Committee, Brian Burnett, the OIG Special Agent who served Chairman Jordan's subpoena, testified that DOJ prosecutors did not inform him that he was serving a subpoena for Chairman Jordan's phone records.⁴⁵ Burnett also explained that this investigation was unusual.⁴⁶ He explained that never in his 30-year career had he received top-down instructions from an Assistant U.S. Attorney dictating all investigative steps in

⁴³ Grand Jury Subpoena for Chairman Jordan's Phone Records, U.S. Dist. Court for the Dist. of Columbia (May 1, 2022), see Ex. 2.

⁴⁴ *Id.*

⁴⁵ Transcribed Interview of J. Brian Burnett, former Senior Special Agent, U.S. Dep't of Justice Off. of Inspector Gen., at 16-17 (June 25, 2026).

⁴⁶ See *id.* at 7-11.

conducting an investigation like he did during the Arctic Frost investigation.⁴⁷ Burnett testified that, had prosecutors informed him about the true nature of the subpoena, it would have given him pause to know he was serving subpoenas for sitting Members of Congress.⁴⁸ Specifically, he testified:

Q. [W]hen did you become involved in that investigation?

A. When the case was opened, it was assigned to me. The timeframe I don't recall exactly. Maybe 2021. . . .

Q And what was your role in the investigation?

A I was the case agent.

Q. And what were your responsibilities as the case agent over the case?

A. In this case, it was a different case, unique, as far as the over 30 years of law enforcement experience I have, in that I didn't do anything necessarily proactive in the investigation. Everything was given to me from the AUSAs that were working the case. That's how the case was opened. It came from Thomas Windom and Timothy Duree—had called up to the agency that they had information on Jeffrey Clark. They provided the predicate information that was used to open the case, and then the case was opened based upon that. A normal investigation would be, I would do the investigation, become familiar with everything, you know, do grand jury subpoenas, do the normal investigative process, follow the normal investigative steps. But, in this case, those steps were given to us by the prosecution team. So, basically, I would serve subpoenas upon request, receive the emails of Jeffrey Clark, and we went through those emails—those types of things.

Q. At any other point at your tenure at OIG, did this occur, where prosecutors were the ones that were dictating the investigation?

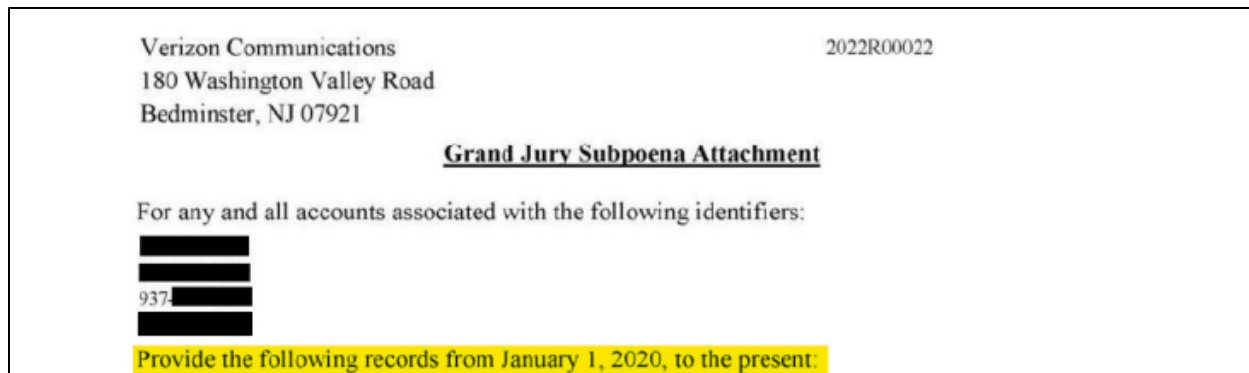
A. Not in my entire 30 years of law enforcement.⁴⁹

⁴⁷ *Id.*

⁴⁸ *Id.* at 17-18.

⁴⁹ *Id.* at 7-8.

The scope of the subpoena was far more expansive than the initial request that PIN approved. Two-and-a-half years of telephone records, including records almost a year in advance of the 2020 election, undermines any legitimate assertion that the Biden-Harris DOJ's subpoena was a targeted attempt to investigate matters surrounding the 2020 presidential election.



Subpoena for Chairman Jordan's phone records, for the period of January 1, 2020 to April 25, 2022.

At the time that the DOJ issued the subpoena, Chairman Jordan was the top Republican Member of the Judiciary Committee, the House committee with responsibility for conducting oversight of the DOJ. Detailed knowledge of his contacts with fellow legislators, other elected and Administration officials, and others could have been immensely useful to the Biden-Harris DOJ. There is no record that the Biden-Harris DOJ took any effort to restrict access to Chairman Jordan's records or to secure against improper use of this information by the Biden-Harris Administration.

In his transcribed interview with the Committee, Timothy Duree, the Biden-Harris DOJ prosecutor responsible for seizing Chairman Jordan's records, struggled to defend the scope and necessity for the subpoena. He admitted that the subpoena's 27-month-long timeframe could have been a "mistake."⁵⁰ Duree also claimed that the purpose of an expansive subpoena would have been to identify Chairman Jordan's "networks" and communication patterns over an extended duration of time.⁵¹ He could not justify, however, exactly why the Biden-Harris DOJ would need to identify "networks" of communications among senior Republican members of Congress, instead asserting without evidence that it was a "standard" investigative step. Duree testified:

- Q. So what did you need August, September, October phone records for?
- A. I'll tell you. What we knew—so toll records are one way to build out—one tool you can use to build out an investigation and understand the people communicating with each other and timeframe of relevance. All toll records tell me is that

⁵⁰ Transcribed Interview of Timothy Duree, former Assistant Special Counsel, U.S. Dep't of Justice, at 68 (Mar. 5, 2026).

⁵¹ *Id.* at 69-70.

some certain number communicated with some other certain number, right. But . . . they are useful to establish contact between people so that you can understand who the individuals who appear to be part of your investigation were talking with. You can understand their networks. You can understand who might otherwise be involved. You can often exclude people who are not involved. So I'm coming to a more comprehensive answer for you but, basically, that is why you need toll records. Something that you have to be careful of, particularly in a case like Mr. [Jeffrey] Clark's, where we're investigating really a 2-week period more than anything else for the DOJ scheme, is that all you get is a relatively tidy snapshot of the communication patterns of a person. And so you want to extend the scope of the subpoena long enough so that you can see if the communications that were occurring within that time period are abnormal or are exactly consistent with what that person always otherwise does. . . . Those things can help you identify the nature of the relationship, the frequency and duration of the communications. And, as I said, understanding better whether the frequency with which people talk over a slightly longer term can help you both include and exclude people from the scope of your investigation. So that's why we need a longer period, to contextualize and better understand if the frequency of the calls in this period was abnormal or not.

- Q. But it becomes a problem when some of the . . . toll records you're seeking are the President's political adversaries, in terms of Speaker McCarthy and Chairman Jordan. . . . Like, developing a pattern of who . . . soon-to-be Speaker McCarthy and Chairman Jordan . . . of who their network is and how frequently they call, I mean, that is a real big problem. . . . So how does the Justice Department justify collecting all of this data and information about the President's political adversaries?

- A. I will tell you what we did and why we did it. We subpoenaed . . . a 937 number that I know pertains to Congressman Jordan. We subpoenaed that number because that number was in contact with other individuals who were within the scope of our investigation. And we were trying to develop evidence of that investigation to include . . . building out an understanding of the people involved, potentially, in the effort to overturn the election and to elevate Jeff Clark within

DOJ. So we sought those records just to build out the network, and that is a completely normal, standard step in any criminal investigation.⁵²

As noted above, PIN also directed Duree to notify ODAG via “urgent report” about the proposed subpoena, meaning that the most senior leadership at the Biden-Harris DOJ was aware of, and presumably blessed, the subpoena.⁵³ When asked during his transcribed interview about notifying ODAG, Duree said he did not have a specific recollection of the interaction.⁵⁴ He stated, “If [PIN] told us to notify ODAG, then I feel confident that . . . someone on my team, I or someone else, would have notified ODAG.”⁵⁵

The DOJ also applied for and received a non-disclosure order (NDO) for the subpoena, putting a gag order on Chairman Jordan’s phone carrier and ensuring that he was left unaware that the DOJ—the agency of which he is charged to oversee—had seized his phone records. When applying for the NDO, prosecutors did not inform the federal magistrate judge that they sought phone records for a Member of Congress or that potential Speech or Debate issues would arise from the subpoena and gag order.⁵⁶ Duree claimed in his transcribed interview that he followed applicable DOJ policy in seeking the gag order, but he could not provide a substantive defense for his actions.⁵⁷ In response to these abuses, the DOJ has changed its policy. Prosecutors are now required to tell the judge if the subject of a similar subpoena is a Member of Congress.⁵⁸

In late May 2022, the DOJ subpoenaed toll records for Representative Chip Roy for October 2020 through January 2021.⁵⁹ Roy, too, is a member of the Judiciary Committee who the DOJ chose to target because of his communications with Representative Scott Perry, a colleague in the House of Representatives.⁶⁰ Once again, PIN directed Duree to notify ODAG.⁶¹ At the same time, on May 31, 2022, the DOJ subpoenaed toll records for Representative Scott Fitzgerald, another member of the Judiciary Committee, for October 2020 through January 2021.⁶² Fitzgerald was sworn in as Member of Congress on January 3, 2021; however, he previously served as a state senator in Wisconsin—one of the states whose election results were the subject of dispute in the 2020 election. Although Representative Fitzgerald was only on the job for two days before the House’s vote to certify the 2020 presidential election, the DOJ’s abusive subpoena demanded months of call records for Representative Fitzgerald.

⁵² *Id.* at 69-71.

⁵³ Email from Jennifer Clarke, Deputy Chief, Public Integrity Section, to Timothy Duree, Assistant Chief, Criminal Division (Apr. 26, 2022), *see* Ex. 1.

⁵⁴ Transcribed Interview of Timothy Duree, former Assistant Special Counsel, U.S. Dep’t of Justice, at 78-79 (Mar. 5, 2026).

⁵⁵ *Id.*

⁵⁶ *Id.* at 72.

⁵⁷ *Id.*

⁵⁸ Justice Manual 9-13.700, Item 2 (last updated September 2024).

⁵⁹ Email from Jennifer Clarke, Deputy Chief, Public Integrity Section, to Timothy Duree, Assistant Chief, Criminal Division (May 19, 2022), *see* Ex. 3.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Grand Jury Subpoena for Representative Fitzgerald’s Phone Records, U.S. Dist. Court for the Dist. of Columbia (May 31, 2022), *see* Ex. 4.

B. In late summer 2022, the Biden-Harris DOJ seized a sitting Member of Congress’s phone and captured a full copy of the phone’s contents without ever exploring less-intrusive alternatives.

After seizing toll records from Republican Members of Congress—colleagues who were in contact with Representative Scott Perry—in August 2022, the DOJ went a step further and effectuated a seizure of Representative Perry’s phone while he was on personal time with his family.⁶³ At this point, according to prosecutor Timothy Duree, the Biden-Harris DOJ viewed Representative Perry as a “subject-light” in its investigation simply because of his communications with Executive Branch officials and about votes on the House floor.⁶⁴ The DOJ investigated Representative Perry because of his contact with the then-Acting Assistant Attorney General for the Civil Division Jeffrey Clark and President Trump’s chief of staff Mark Meadows about the possibility of President Trump appointing Clark as the Acting Attorney General in late December 2020—a constitutional prerogative of the President.⁶⁵

Prior to seizing the phone, FBI agents physically surveilled Representative Perry for a week in an effort to “determine daily patterns, identify associates, [and] identify workplace location,” according to DOJ records associated with the surveillance.⁶⁶ This spying was entirely unnecessary. By this point in its investigation, according to Thomas Windom’s testimony, the Biden-Harris DOJ knew who Representative Perry’s “associates” were—the DOJ had already subpoenaed for many of their toll records—and his workplace locations—the United States Capitol and his district offices—were obvious.⁶⁷

⁶³ See Darah Gregorian & Kyle Stewart, *Rep. Scott Perry, a top Trump ally, says FBI agents seized his cellphone*, NBC NEWS (Aug. 9, 2022).

⁶⁴ Transcribed Interview of Timothy Duree, former Assistant Special Counsel, U.S. Dep’t of Justice, at 27 (Mar. 5, 2026).

⁶⁵ Tierney Sneed and Katelyn Polantz, *Jeffrey Clark told DC Bar that DOJ search of his home linked to false statements, conspiracy, obstruction investigation*, CNN (Sept. 14, 2022).

⁶⁶ FBI Physical Surveillance Request on Representative Scott Perry (July 20, 2022), *see* Ex. 5.

⁶⁷ *See* Transcribed Interview of Timothy Duree, former Assistant Special Counsel, U.S. Dep’t of Justice, at 30 (Mar. 5, 2026).

Surveillance	Start: 07/21/2022	End: 07/28/2022
Number of Shifts: 12		
Survey Type: Fixed Address, Raid/Arrest Prep		
Subjects Surveilled:		
Scott Perry		
Objectives: Determine Daily Patterns, Identify Associates, Identify		
UNCLASSIFIED//FOUO		
FBI-HJC119-SP-000001		
UNCLASSIFIED//FOUO		
Title: (U) SSG request.		
Re: 56D-WF- [REDACTED], 07/20/2022		
Workplace Location, Obtain Photos of Residence/Vehicle		

The FBI physically surveilled Representative Perry for a week before seizing his phone.

Thomas Windom, then an Assistant U.S. Attorney for the District of Columbia, testified to the Committee that U.S. Attorney for the District of Columbia Matthew Graves approved of the seizure and subsequent search of Representative Perry's phone.⁶⁸ On the morning of August 9, 2022, while Representative Perry was with his family on a personal trip, a team of Biden-Harris DOJ officials—five FBI agents, a DOJ OIG agent, and a senior digital investigative analyst—executed the search warrant to seize Representative Perry's cell phone.⁶⁹ Representative Perry honored the search warrant and cooperated with the agents, providing them with his cell phone and giving them the passcode to access the phone. Law enforcement seized the phone—depriving Representative Perry of the device he used for official legislative business—to make a “copy” of it for federal investigators.⁷⁰

Evidence suggests that the Biden-Harris DOJ did not properly consider the serious constitutional implications of seizing Representative Perry's phone. Windom testified that the Biden-Harris DOJ did not consider whether seizing Representative Perry's phone might interfere

⁶⁸ Transcribed Interview of Thomas Windom, Senior Assistant Special Counsel, Dep't of Justice, at 77 (June 12, 2025).

⁶⁹ FBI Form FD-302, Execution of Seizure Warrant for Representative Scott Perry's Phone (Aug. 9, 2022), *see* Ex. 6.

⁷⁰ Transcribed Interview of Thomas Windom, Senior Assistant Special Counsel, Dep't of Justice, at 76 (June 12, 2025).

with his congressional duties.⁷¹ According to DOJ documents about the seizure, Representative Perry all but told the Biden-Harris DOJ agents that he would be unable to communicate with his staff and constituents without his phone.⁷² In fact, when speaking to them about how to return his phone, Representative Perry noted that, “agents could coordinate with his chief of staff . . . to return the subject phone. PERRY did not know [his Chief of Staff’s] phone number but said it was stored in the contacts of his phone.”⁷³ In his deposition, Windom also refused to explain why investigators did not first ask Representative Perry to turn over his phone voluntarily, “declin[ing]” to respond.⁷⁴ Prosecutor Timothy Duree testified he did not “remember having any conversations” about asking Representative Perry to voluntarily turn over the materials prior to executing the search warrant because he alleged that “it would be extremely abnormal” for an alleged subject of an investigation.⁷⁵ Duree testified:

Q. [W]hat conversations can you tell us about that took place regarding seeking consent to obtain his cell phone prior to obtaining a warrant?

A. Seeking consent from whom?

Q. From Mr. Perry or Mr. Perry’s attorneys to search the cell phone.

A. . . . I don’t remember doing that. It would be extremely abnormal in any criminal case for—for me to seek consent to just have someone hand their phone over when we believe there is probable cause of a crime and they were a subject of the case and all that. So I don’t—I don’t remember having any conversations like that, and I don’t think that I would have.⁷⁶

This rationale, however, rings hollow in light of the Biden-Harris DOJ’s refusal to seek the voluntary cooperation of other Members who were not subjects of the investigation, instead proceeding directly to search warrants or subpoenas.

Following the seizure of his phone, Representative Perry moved to assert privilege over the materials in the phone covered by the Constitution’s Speech or Debate Clause.⁷⁷ The U.S.

⁷¹ *Id.* at 84-85.

⁷² FBI Form FD-302, Execution of Seizure Warrant for Representative Scott Perry’s Phone (Aug. 9, 2022), *see* Ex. 6.

⁷³ *Id.*

⁷⁴ *See* Deposition of Thomas Windom, Senior Assistant Special Counsel, Dep’t of Justice, at 15 (Sept. 30, 2025), *see also* Transcribed Interview of Thomas Windom, Senior Assistant Special Counsel, Dep’t of Justice, at 76 (June 12, 2025).

⁷⁵ Transcribed Interview of Timothy Duree, former Assistant Special Counsel, U.S. Dep’t of Justice, at 33 (Mar. 5, 2026).

⁷⁶ *Id.* at 32-33.

⁷⁷ *See infra* section II(D) for further discussion of the litigation surrounding the contents of Representative Perry’s cell phone.

Court of Appeals for the District of Columbia Circuit found that some of the contents of Representative Perry’s phone were entitled to Speech or Debate protection, holding that Members’ discussions about “the 2020 election certification vote [were] . . . quintessential legislative acts.”⁷⁸ The aggressive investigative steps taken by the Biden-Harris DOJ against Representative Perry for conducting his official duties were an assault on the separation of powers and devoid of any meritorious justification. It was a clearcut attempt to intimidate a Republican Member of Congress by ambushing him with a swarm of federal officers while he was away with his family—without ever seeking his voluntary cooperation or approaching Representative Perry at his office.

C. Even after the abusive Arctic Frost subpoenas, Special Counsel Jack Smith approved at least ten additional toll record subpoenas for Members of Congress.

On November 18, 2022, just three days after President Trump announced his candidacy for president in 2024, Attorney General Merrick Garland appointed former Obama Administration prosecutor Jack Smith as special counsel to oversee the DOJ’s investigations into President Trump.⁷⁹ Attorney General Garland’s order appointing Smith as special counsel authorized him to oversee the investigation examining “efforts to interfere with the lawful transfer of power following the 2020 presidential election or the certification of the Electoral College vote held on or about January 6, 2021.”⁸⁰ In the weeks and months following his appointment, Special Counsel Smith’s team proposed over a dozen additional toll record subpoenas, with Smith approving the vast majority of them.

On January 9, 2023, Timothy Duree, now an Assistant Special Counsel working for Jack Smith, proposed a major expansion of the Biden-Harris DOJ’s investigation into Congressional Republicans, advocating for a new batch of toll record subpoenas for nine Members of Congress and one staffer.⁸¹ Ray Hulser, Counselor to Special Counsel Smith and informally his third-in-command, approved Duree’s subpoena request within an hour—before Duree told him which Members would be targeted or what specific predication made the subpoenas necessary.⁸² Hulser asked Duree to include additional Members who were slandered by the partisan, illegitimate January 6th Select Committee, writing “look at page 608 of the House Report and let me know if we have already gotten tolls for the members that Trump and Giuliani contacted on 1/6.”⁸³ This evidence shows how much the Special Counsel investigation relied on the shoddy work of partisan Democrats in Congress—Hulser’s request to Duree came shortly after Special Counsel Smith led his top deputies through a page-by-page review of the partisan January 6 Select Committee report.⁸⁴ Hulser explained Smith led his top prosecutors through the Select

⁷⁸ *In re Sealed Case*, 80 F.4th 355 (D.C. Cir. 2023).

⁷⁹ Glenn Thrush et al., *Garland Names Special Counsel for Trump Inquiries*, N.Y. TIMES (Nov. 18, 2022).

⁸⁰ Order, U.S. Dep’t of Justice, Order No. 5559-2022, Appointment of John L. Smith As Special Counsel (Nov. 18, 2022) (on file with Comm.).

⁸¹ Emails among Timothy Duree, Assistant Special Counsel, Ray Hulser, Counselor to the Special Counsel, and Thomas Windom, Senior Assistant Special Counsel (Jan. 9, 2023), *see* Ex. 8.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Transcribed Interview of Raymond Hulser, Counselor to the Special Counsel, Dep’t of Justice, at 36-37 (Mar. 24, 2025).

Committee's report and logged all the information shortly after Smith became Special Counsel. Hulser testified:

- Q. On page 12 of this document at the very top there's mention of the House's January 6th report. . . . And . . . it says, "Leadership team fully read and reviewed. Last weekend we went over it page by page and incorporated into our investigative plan." Who did the leadership team encompass, do you recall?
- A. Yes. My recollection is that was Mr. Smith, Mr. Cooney, Mr. Windom and me.
- Q. Would it be accurate to say you went over it page by page?
- A. Yes. That's the way Mr. Smith works. And it's a long report.
- Q. And the next bullet says, "We have a methodical process for logging all information contained in the report." How did you log the information?
- A. I wasn't involved in that, but I think Thomas Windom was—he's a very detailed well organized prosecutor, and he had been on this the whole time, so I think he had charge of cataloging was it new? Was it inconsistent with what we have? Is it something we need to follow up on? That sort of thing.
- Q. And in reference to the inconsistent information, you mentioned that, and then it's in the bullet here, inconsistent information, can you tell us what information was inconsistent, how did you figure that out?
- A. I can't tell you sitting here today, that that is something that Thomas would know having been on that investigation the entire time, and he would be able to compare what we knew through interviews or grand jury with what he saw in that report.
- Q. And at a high level, can you remember whether there were any inconsistencies between what your investigation found and what was in the January 6th report?
- A. There were so many details, so many witnesses, so many documents, I am sure there are things that are different in one

source or another, but I can't tell you what they are sitting here.⁸⁵

From: RNH (JSPT) <RNH@usdoj.gov>
Sent: Monday, January 9, 2023 5:07 PM
To: TAD (JSPT) <TAD@usdoj.gov>
Subject: RE: PIN

Can you look at page 608 of the House Report and let me know if we have already gotten tolls for the members that Trump and Giuliani contacted on 1/6?
If not, let's talk about whether we should do it all now.

Ray Hulser asked Timothy Duree to issue subpoenas to Members named in the final report of the partisan, illegitimate January 6 Select Committee.

In response to Hulser's request, Duree updated the list of subpoena targets, bringing the total number to 14 Members and one staffer.⁸⁶

From: TAD (JSPT) <TAD@usdoj.gov>
Sent: Monday, January 9, 2023 10:36 PM
To: RNH (JSPT) <RNH@usdoj.gov>
Subject: RE: PIN

Ray,

Several additions from the House report. I've added them to the list in red. Do you want to talk for a minute or two just before or after our SOD meeting tomorrow morning about whether to subpoena these all at once right now?

1. Brian Babin
2. Andy Biggs
3. Mo Brooks
4. Matt Gaetz
5. Paul Gosar
6. Louie Gohmert
7. Connie Hair (staffer to Gohmert)
8. Jody Hice
9. Mike Lee
10. Lee Zeldin
11. Dan Sullivan
12. Marsha Blackburn
13. Bill Hagerty
14. Lindsey Graham
15. Josh Hawley
16. Ted Cruz

Duree added several senators to the subpoena list after consulting the January 6 Select Committee's report.

Duree later wrote to Hulser that he hoped to subpoena Senator Josh Hawley's records as well, but left him off the list because he did not "have a phone number for him."⁸⁷ It is unclear how the

⁸⁵ Transcribed Interview of Raymond Hulser, Counselor to the Special Counsel, Dep't of Justice, at 36-37 (Mar. 24, 2025).

⁸⁶ Emails among Timothy Duree, Assistant Special Counsel, Ray Hulser, Counselor to the Special Counsel, and Thomas Windom, Senior Assistant Special Counsel (Jan. 9, 2023), *see* Ex. 8.

⁸⁷ *Id.*

Department obtained the phone numbers of the other 14 Members and staff it sought to subpoena, although some of the numbers were likely available to Democrat Members who served on the partisan January 6th Select Committee.

Duree's list included a brief explanation of why he sought subpoenas for these Members' records. His reasons included communications with Representative Scott Perry, Representative Chip Roy, White House Chief of Staff Mark Meadows, and then-Director of National Intelligence John Ratcliffe.⁸⁸ In other words, Special Counsel Smith's predication for spying on Republican Members of Congress was entirely related to their official duties: communications with other legislators, members of the Executive Branch, and interested parties. These communications are "an integral part of the deliberative and communicative processes by which Members participate in" legislative proceedings,⁸⁹ and therefore entitled to "absolute" protection under the Speech or Debate Clause.⁹⁰

⁸⁸ Emails among Timothy Duree, Assistant Special Counsel, Ray Hulser, Counselor to the Special Counsel, and Thomas Windom, Senior Assistant Special Counsel (Jan. 9, 2023), *see* Ex. 8.

⁸⁹ *Gravel v. United States*, 408 U.S. 606, 625 (1972) (citing *United States v. Doe*, 455 F.2d 753, 760 (1st Cir. 1972)).

⁹⁰ *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 501 (1975) ("The prohibitions of the Speech or Debate Clause are absolute.").

From: TAD (JSPT) <TAD@usdoj.gov>
Sent: Tuesday, January 10, 2023 5:23 PM
To: RNH (JSPT) <RNH@usdoj.gov>
Subject: RE: PIN

A little later than expected, but here's the list with parentheticals:

1. Brian Babin (texts with Meadows; calls with Chip Roy, Perry, Ratcliffe, and Meadows)
2. Andy Biggs (lots of texts with Meadows; calls with Meadows, Perry, and Chip Roy)
3. Mo Brooks (texts with Meadows; calls with Meadows, Perry, and Chip Roy)
4. Matt Gaetz (calls in relevant period with Meadows, Perry, J. Keith Rose (apparently connected to Waldron/ASOG))
5. Jody Hice (texts with Meadows; calls with Roy, Perry, Meadows, Giuliani)
6. Paul Gosar (calls with Perry, Meadows, and Alex Bruesewitz)
7. Louie Gohmert (plaintiff in Gohmert v. Pence; texts with Meadows; calls with Meadows, Perry, Chip Roy)
8. Connie Hair (staffer to Gohmert) (communications with Ken Klukowski, Perry, Cieta Mitchell, Chip Roy; also knowledge of Gohmert v. Pence lawsuit)
9. Mike Lee (contacted by Giuliani on 1/6; lots of texts with Meadows; calls with Eastman, Meadows, Chip Roy, Cieta Mitchell)
10. Lee Zeldin (2 texts with Meadows; calls with Meadows and Perry)
11. Dan Sullivan (called by Giuliani on 1/6; Gasaway attempted contact in late Nov./early Dec.)
12. Marsha Blackburn (called by Giuliani on 1/6; contacts with Meadows on 12/12 and 1/6)
13. Bill Hagerty (called by Giuliani on 1/6)
14. Lindsey Graham (called by Giuliani on 1/2)
15. Ted Cruz (called by Giuliani on 1/6; also calls in relevant time frame with Meadows, John Eastman, John Ratcliffe, Chip Roy)

We already have phone tolls for Scott Perry, Jim Jordan, and Chip Roy, so they're not on the list. Josh Hawley is mentioned in the Select Committee's report, but I haven't been able to identify a number for him, so I removed him from the list.

(Also, FYI, please note that when I mention "calls" above, that indicates only that calls were placed between the two numbers. I'm not saying all the calls were answered or resulted in long conversations.)

Let me know if you'd like to discuss in more detail.

Timothy A. (Tad) Duree
U.S. Department of Justice

Duree explained that he wanted to subpoena 14 Members of Congress and one congressional staff member because of their contacts with congressional colleagues and Executive Branch officials.

Once the list expanded, Hulser sought Special Counsel Smith's approval for the expanded subpoenas.⁹¹ Smith directed the prosecutors to "narrow . . . down" the list of Members but approved most of the subpoenas.⁹² Duree then worked with Senior Assistant Special Counsel Thomas Windom, who had been involved in the Biden-Harris DOJ's earlier efforts to harass and spy on Republican Members of Congress, to come up with the final list.⁹³

According to an internal memorandum, on January 13, 2023, Smith briefed President Biden's Attorney General, Merrick Garland, on proposed additional toll record subpoenas for Members of Congress, including the sitting Speaker of the House Kevin McCarthy.⁹⁴ Attorney General Garland knew that his prosecutors were planning to subpoena toll records for currently

⁹¹ Emails among Timothy Duree, Assistant Special Counsel, Ray Hulser, Counselor to the Special Counsel, and Thomas Windom, Senior Assistant Special Counsel (Jan. 9, 2023), *see* Ex. 8.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Notes for Briefing of Att'y Gen. Merrick Garland (Jan. 13, 2023), *see* Ex. 9.

serving Members of Congress, including the Speaker of the House, pertaining to their deliberations in advance of official actions in certifying the 2020 presidential election. In the material prepared in advance of the Garland briefing, Special Counsel Smith’s team candidly admitted that they sought toll records of the Members’ phone calls from the phone carriers because “[i]t is unlikely that many of those members will cooperate . . . and they likely have a valid Speech or Debate privilege immunizing them from compelled testimony.”⁹⁵ In other words, prosecutors sought to get around the Constitution’s Speech or Debate protections by subpoenaing the Members’ records from a third party. Despite this admission, Attorney General Garland—President Biden’s handpicked attorney general—blessed the abusive subpoenas or, at the very least, did nothing to stop them.

AG BRIEFING January 13, 2023
TOLLS FOR MEMBERS OF CONGRESS • Some members of Congress communicated with Trump and his surrogates in the lead up to and during the events of January 6—such as Kevin McCarthy, Mike Lee, Louis Gohmert, and others • It is unlikely that many of those members will cooperate with our investigation, and they likely have a valid Speech or Debate privilege immunizing them from compelled testimony • In the coming week or so, we intend to issue subpoenas for the toll records of certain members of Congress for the period between the 2020 election and January 20 to investigate those communications—and to establish logical evidentiary inferences regarding Trump and his surrogates’ actions and intent. • This requires PIN consultation, which Ray will captain. • We intend to obtain the following toll records: ○ Louie Gohmert (plaintiff in <i>Gohmert v. Pence</i>; texts with Meadows; calls with Meadows, Perry, Chip Roy) ○ Connie Hair (staffer to Gohmert) (communications with Ken Klukowski, Perry, Cleta Mitchell, Chip Roy; also knowledge of <i>Gohmert v. Pence</i> lawsuit) ○ Mike Lee (contacted by Giuliani on 1/6; lots of texts with Meadows; calls with Eastman, Meadows, Chip Roy, Cleta Mitchell; he also received calls from Trump and Giuliani on 1/6 that were intended for Sen. Tuberville)
○ Kevin McCarthy (had calls in the relevant period with Meadows, Ratchliffe, Perry, and Chip Roy) • We previously obtained toll records of Rep. Scott Perry (for which we also obtained PIN concurrence)

Preparation materials for Smith’s January 2023 briefing of Attorney General Garland indicate that Garland blessed the toll record subpoenas.

On January 23, 2023, just sixteen days after Kevin McCarthy was elected Speaker of the House, Special Counsel Smith’s team issued a subpoena for his phone records from November

⁹⁵ Notes for Briefing of Att’y Gen. Merrick Garland (Jan. 13, 2023), *see* Ex. 9.

2020 through January 2021.⁹⁶ Special Counsel Smith's team attempted to rewrite history on the true purpose of the phone record subpoenas in testimony before the Committee, alleging that the subpoena was necessary to obtain an exact record of telephone calls placed on January 6, 2021.⁹⁷ Specifically, Smith testified in his deposition:

Q. So you subpoenaed Speaker McCarthy's toll records after he became Speaker, and you sought records from November 2020 through January 8th, 2021. What were you looking for with his records? Like what did you do with the information you obtained?

A. Okay. So the relevance of those records, there would be several examples, but his contacts with either [alleged] co-conspirators, the President, or conduits of information to the President was relevant to our investigation. An example I could give you is, on January 6th, we had information from Mark Meadows, who was present for a call where Congressman McCarthy was asking for help. He was asking the President to come to his aid while the Capitol was being seized. Getting the exact toll records for when that happened was relevant for our investigation both to question other witnesses about it so we had an accurate timeline and also to corroborate that the call happened at approximately the time witnesses said it happened.

Q. But it's pretty significant to subpoena the Speaker of the House's toll records, right?

A. We followed Department policy, and we followed all legal requirements in getting those records.⁹⁸

Senior Assistant Special Counsel Molly Gaston also testified that the purpose of the toll record subpoenas was necessary to establish a timeline. She stated:

Q. And in the previous hour, you had discussions about how the Members' records—the team needed those records because of evidence of President Trump, Mayor Giuliani, and White House officials being in contact with Members of Congress. And I know my colleague asked several times . . . why did you need the Members' records. I'm going to ask it again. . . . [I]f you had all of the phone records and you were

⁹⁶ Letter from Mr. Michael Bopp, Counsel for AT&T, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Nov. 14, 2025) (on file with Comm.).

⁹⁷ Deposition of Jack Smith, Special Counsel, U.S. Dep't of Justice, at 93-94 (Dec. 17, 2025); Transcribed Interview of Molly Gaston, Senior Assistant Special Counsel, U.S. Dep't of Justice, at 62-63 (Feb. 25, 2026).

⁹⁸ Deposition of Jack Smith, Special Counsel, U.S. Dep't of Justice, at 93-94 (Dec. 17, 2025).

really interested in what was happening at the White House, why go to Members of Congress?

- A. [M]y memory is that we didn't have complete records of the phone calls. So I think there were some inconsistencies in Mayor Giuliani's toll records. I think it was difficult to get reliable records of phone calls being placed . . . from the White House switchboard. . . . And then some of the evidence we had that calls had taken place were from I think text messages or emails or even a handwritten note. So there were . . . various kinds of evidence that calls had taken place and it was not all from other toll records.⁹⁹

Contrary to Gaston's testimony to the Committee in February 2026, a contemporaneous memorandum authored by Gaston in May 2023 provided a different reason for subpoenaing Members' toll records. In that memorandum, Gaston stated that the purpose of congressional toll record subpoenas was to determine who "may have called these Members, as well as who the Members called" on the evening of January 6 as they prepared to vote on the election certification.¹⁰⁰

⁹⁹ Transcribed Interview of Molly Gaston, Senior Assistant Special Counsel, U.S. Dep't of Justice, at 62-63 (Feb. 25, 2026).

¹⁰⁰ Memorandum on Limited Toll Records Subpoenas for Members of Congress, Office of the Special Counsel, U.S. Dep't of Justice (May 17, 2023), *see* Ex. 16.



U.S. Department of Justice

Jack Smith

950 Pennsylvania Ave. NW
Room B-206
Washington, DC 20530

To: J.P. Cooney and Ray Hulser
From: The Election Investigation Team
Subject: Limited Toll Record Subpoenas for Members of Congress

These records would advance our investigation in several ways. First, although in many cases, we already have some record of these calls—for instance, in Giuliani’s tolls—getting the Members’ records would corroborate Giuliani’s tolls (which can vary in quality depending on provider) and would allow us to understand who else may have called these Members, as well as who the Members called at around the same time as they were contacted by Giuliani. With respect to Hawley and Hagerty, we do not have toll records reflecting the calls that Michael suggested Trump had placed to them. We have also subpoenaed Verizon to identify some apparent gaps in our White House switchboard records, including the Hawley and Hagerty calls, but Verizon’s initial response was that there are no responsive records to our request. Finally, an important issue in our investigation is who was involved in the Electors scheme; it would be relevant and probative to our investigation if Johnson or Kelly were in phone contact with any of our Electors scheme subjects close in time to January 6.

Once we receive your approval, we will conduct a consultation with PIN and advise them of the above facts before issuing subpoenas.

An internal memorandum explained that the toll records subpoenas were intended to return information about Members’ legislative fact-gathering.

It is a subtle but important distinction: the true purpose of the toll records subpoenas was to obtain protected information pertaining to Members’ legislative acts. This information is clearly shielded by the Constitution’s Speech or Debate Clause, and Special Counsel Smith’s answer that the subpoenas were meant to capture communications with President Trump and his alleged co-conspirators sought to sidestep that point, and was misleading at best.¹⁰¹ Special Counsel Smith also failed to provide a substantive answer when asked why he chose to subpoena Speaker McCarthy’s toll records without first asking McCarthy’s lawyer to turn them over voluntarily.¹⁰² Instead, Smith defended the subpoena by merely asserting that it was consistent with DOJ policy.¹⁰³ Smith testified:

Q. [I]t’s pretty significant to subpoena the Speaker of the House’s toll records, right?

¹⁰¹ Deposition of Jack Smith, Special Counsel, U.S. Dep’t of Justice, at 93-94 (Dec. 17, 2025).

¹⁰² *Id.* at 94-95.

¹⁰³ *Id.*

- A. We followed Department policy, and we followed all legal requirements in getting those records.
- Q. . . . [N]obody disputed the Speaker and the President were having communications on January 6th. So one way you could have gotten that information is you could have asked the Speaker's lawyer to look at his phone records and to give you the information you needed, right?
- A. Well, you say now that nobody is disputing, but my experience in criminal investigations is that people often at trial dispute things that you never thought were going to be in dispute during the investigation, and so, when I conduct a criminal investigation, I don't assume there will be no disputes. Having a record that is a hard record about a time, and the timeline of that afternoon was particularly important because that violence started. The President refused to stop it. He endangered the life of his Vice President, and then he's getting calls, and not just—not calls from Democrats, not calls from people he doesn't know—calls from people he trusts, calls from people he relies on—and still refuses to come to the aid of the people at the Capitol. That's very important evidence for criminal intent in our case.
- Q. Right, but you could have asked Elliot Berke for that information, the Speaker's lawyer. You could have asked Elliot Berke to say, "Can you get us the Speaker's . . . phone records for this time," and he probably would have said, "Of course," avoiding a toll record subpoena?
- A. And your question?
- Q. Why didn't you do that?
- A. We got these records in a manner that was consistent with the law and consistent with Department policy. There was nothing improper about how we got these records.¹⁰⁴

In his hearing testimony before the Committee, Rep. Darrell Issa questioned Smith about the seizure of Speaker McCarthy's toll records. Smith testified:

- Q. So you spied on the Speaker of the House and these other Senators and so on, and informed no one, and in fact, put in a gag order so they couldn't discover it. If they were not subjects of a conspiracy investigation, why did Congress, a

¹⁰⁴ *Id.*

separate branch that you, under the Constitution, have to respect, why is it that no one should be informed, including the judges. As you went in to spy on these people, did you mention that you were spying on seeking records so you could find out about when conversations occurred between the U.S. Speaker of the House and the President? Did you inform the judge? Or did you hold that back?

A. My office didn't spy on anyone.

Q. Wait a second. The question I asked you, Mr. Smith, was pretty straight forward. Did you withhold that information from an Article III judge in the process of taking the records of the Speaker of the House?

A. . . . We did not provide that information to the judge when we requested a nondisclosure order, consistent with the law.¹⁰⁵

Shockingly, Duree, who signed Speaker McCarthy's subpoena, did not even remember issuing a subpoena for the Speaker of the House's phone records. Duree admitted to the Committee that he did not recall specifics about this subpoena because he had sought "dozens and dozens" of them and it was "absolutely par for the course."¹⁰⁶ Specifically, Duree testified:

Q. So you don't remember signing a subpoena for the toll records of the Speaker of the House of Representatives?

A. . . . I don't dispute that I did. . . . I don't remember one way or the other if I did. And as I said, it would not have been—and I understand why that might seem like a particularly notable thing. But in the course of this investigation, given the topics we were investigating and the magnitude of things being investigated, this doesn't strike me and I suppose didn't strike me as particularly abnormal. . . .¹⁰⁷

Duree later added, "I can only tell you that, while I don't remember the specific subpoena or NDO, getting a subpoena like this, getting an NDO was absolutely par for the course in so many subpoenas that I have issued in my career and that we issued in the Special Counsel's

¹⁰⁵ *Hearing on the Oversight of the Office of Special Counsel Jack Smith: Before the H. Comm. on the Judiciary*, 119th Cong., at 42-43 (2026) (testimony of Jack Smith, Former Special Counsel, U.S. Dep't of Justice).

¹⁰⁶ Transcribed Interview of Timothy Duree, former Assistant Special Counsel, U.S. Dep't of Justice, at 64, 83 (Mar. 5, 2026).

¹⁰⁷ *Id.* at 83-84.

Office.”¹⁰⁸ In other words, Special Counsel Smith’s team was so desensitized to issuing expansive and intrusive subpoenas—and accompanying gag orders—that it did not register that they sought the records of the Speaker of the House, the highest elected Representative in Congress and the second-in-line to the presidency.

In fact, when it sought an NDO to prevent Speaker McCarthy’s phone carrier from informing him about the subpoena of his records, the Special Counsel team justified the gag order as it did several other subpoenas—by calling the subject a “flight risk.”¹⁰⁹ Special Counsel Smith and team did not seriously believe that Speaker McCarthy was really a flight risk—he traveled with an armed security detail and had official and ceremonial duties in Washington. The prosecutors had become so accustomed to unchecked prosecutorial authority that they never considered the absurdity of their representation to the court.

¹⁰⁸ *Id.* at 85.

¹⁰⁹ Grand Jury Subpoena for Speaker McCarthy’s Phone Records, U.S. Dist. Court for the Dist. of Columbia (Jan. 23, 2023), *see* Ex. 10.; *See also* Deposition of Jack Smith, Special Counsel, U.S. Dep’t of Justice, at 40 (Dec. 17, 2025).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE APPLICATION OF USA FOR
2705(b) NONDISCLOSURE ORDER FOR
GRAND JURY SUBPOENA
[REDACTED]

SC No. 23-SC-142

Filed Under Seal

ORDER

This matter having come before the Court pursuant to an application under 18 U.S.C. § 2705(b) requesting an order directing [REDACTED] (“PROVIDER”), an electronic communication and/or remote computing service provider located in [REDACTED] not to notify any other person of the existence of subpoena number [REDACTED] issued by the United States on behalf of a federal Grand Jury empaneled in the United States District Court for the District of Columbia (the “Subpoena”), the Court finds reasonable grounds to believe that such disclosure will result in flight from prosecution, destruction of or tampering with evidence, intimidation of potential witnesses, and serious jeopardy to the investigation. See 18 U.S.C. § 2705(b)(3)-(5).

IT IS THEREFORE ORDERED that, pursuant to 18 U.S.C. § 2705(b), PROVIDER and its employees shall not disclose the existence of the Subpoena to any other person (except attorneys for PROVIDER for the purpose of receiving legal advice) for a period of one year (commencing on the date of this Order), unless the period of nondisclosure is later modified by the Court.

Order granting the Special Counsel’s Office’s application for nondisclosure for Speaker McCarthy’s phone record subpoena.

It appears that the court approved the NDO as a matter of course, as the Special Counsel’s Office did not inform the judge that the subpoena targeted records belonging to the Speaker of the House.¹¹⁰ At his deposition, Special Counsel Smith argued that he was not required to notify the judge about the potential constitutional implications of the subpoena, but did not offer a substantive defense for his actions, simply saying it was “consistent” with DOJ policy.¹¹¹ Duree and Smith both conceded that Speaker McCarthy was not actually a risk for “flight from prosecution,” raising questions about their candor with the court.¹¹² Smith

¹¹⁰ Grand Jury Subpoena for Speaker McCarthy’s Phone Records, U.S. Dist. Court for the Dist. of Columbia (Jan. 23, 2023), see Ex. 10.

¹¹¹ Deposition of Jack Smith, Special Counsel, U.S. Dep’t of Justice, at 103 (Dec. 17, 2025).

(This practice was “consistent with the law and department regulations at the time.”)

¹¹² *Hearing on the Oversight of the Office of Special Counsel Jack Smith: Before the H. Comm. on the Judiciary*, 119th Cong., at 50 (2026) (testimony of Jack Smith, Former Special Counsel, U.S. Dep’t of Justice); See also Transcribed Interview of Timothy Duree, former Assistant Special Counsel, U.S. Dep’t of Justice, at 85 (Mar. 5, 2026).

acknowledged at his hearing that McCarthy “was not” a flight risk,¹¹³ and Duree agreed, testifying in a transcribed interview that he did not believe “that anyone on [the] team thought Kevin McCarthy was going to . . . flee from prosecution.”¹¹⁴

Instead, in testimony to the Committee, both Special Counsel Smith and Duree tried to claim that other investigative subjects, not Speaker McCarthy, were flight risks or were likely to intimidate witnesses or destroy evidence.¹¹⁵ In his hearing testimony before the Committee, Rep. Brandon Gill questioned Smith on whether Speaker McCarthy was a flight risk. Smith testified:

Q. Mr. Smith, in January of 2023, did you subpoena then Speaker of the House, Kevin McCarthy’s toll records?

A. Yes, sir. We did.

Q. The subpoena covered the time period between November of 2020 and January 2021. How many days after Kevin McCarthy was sworn in as Speaker did you subpoena his records?

A. I don’t recall, but those two things had nothing to do with one another.

Q. It was 16 days after becoming the highest ranking Republican in the House of Representatives, you subpoenaed his toll records. Do you agree that that might reasonably be considered a violation of the Speech or Debate clause?

Q. I do not and I want to be clear that the toll records—

A. You were collecting months’ worth of phone data on the Republican Speaker of the House, the leader of the opposition. Right after he got sworn in as Speaker, all around the time of a major vote, that sounds like a flagrant violation of the Speech or Debate clause to me and I think most people agree with me. And Speaker McCarthy had no recourse, did

¹¹³ *Hearing on the Oversight of the Office of Special Counsel Jack Smith: Before the H. Comm. on the Judiciary*, 119th Cong., at 50 (2026) (testimony of Jack Smith, Former Special Counsel, U.S. Dep’t of Justice).

¹¹⁴ Transcribed Interview of Timothy Duree, former Assistant Special Counsel, U.S. Dep’t of Justice, at 85 (Mar. 5, 2026).

¹¹⁵ See *Hearing on the Oversight of the Office of Special Counsel Jack Smith: Before the H. Comm. on the Judiciary*, 119th Cong., (2026) (testimony of Jack Smith, Former Special Counsel, U.S. Dep’t of Justice); Deposition of Jack Smith, Special Counsel, U.S. Dep’t of Justice, at 38-39 (Dec. 17, 2025) (Smith testified that his team adopted this practice because of “a grave risk of obstruction of justice, given the obstructive conduct of President Trump,” including alleged attempts to “intimidate witnesses or keep them from cooperating.”).

he, because you issued a nondisclosure order ensuring that neither he nor any of the American people knew about these subpoenas Is that right?

A. The toll records, the noncontent toll records subpoenas, we did secure nondisclosure orders for those subpoenas.

Q. You did and let me ask you, Mr. Smith, at the time you secured those nondisclosure orders, was Speaker McCarthy a flight risk?

A. The nondisclosure order was based on concerns about—

Q. Was Speaker McCarthy a flight risk?

A. He was not.

Q. He was not, then why did your nondisclosure order refer to him as a flight risk? It says right here, the court finds reasonable grounds to believe that such disclosure will result in flight from prosecution.

A. When securing a nondisclosure order, the risks don't have to be associated—

Q. But the Speaker of the House is a flight risk? . . . Do you think the Speaker of the House is a flight risk? Do you think he is going to hop on a plane and leave the country?

A. No. What I was trying to explain is with respect to a nondisclosure order, the risks aren't necessarily associated with the subscriber to the phone. They are at risk to the investigation.

Q. Okay. I think that you were using—this is clearly in reference to Speaker McCarthy and you were using clearly false information to secure nondisclosure order to hide from Speaker McCarthy and from the American people the fact that you were spying on his toll records.¹¹⁶

This after-the-fact justification also falls flat. The only person ever prosecuted in the election case was President Trump, who had a full-time Secret Service detail that monitored his every move. In addition, Special Counsel Smith's team could not identify any specific violations of

¹¹⁶ *Hearing on the Oversight of the Office of Special Counsel Jack Smith: Before the H. Comm. on the Judiciary*, 119th Cong., at 48-50 (2026) (testimony of Jack Smith, Former Special Counsel, U.S. Dep't of Justice).

witness tampering statutes that would justify a gag order.¹¹⁷ Gaston could not identify one example where the Special Counsel's Office pursued charges against President Trump for witness tampering or violating the terms of his release, and she could not name any witnesses who were chilled from coming forward due to any of President Trump's statements.¹¹⁸ Without credible risks of flight from prosecution or witness tampering, it is unclear what purpose the NDOs could have had other than concealing the existence of the subpoenas from the targeted Members.

In January 2023, Special Counsel Smith also subpoenaed phone records for Representative Louie Gohmert and Senator Mike Lee.¹¹⁹ In February 2023, Special Counsel Smith subpoenaed the toll records of Representative Gohmert's chief of staff.¹²⁰ By this point, Special Counsel Smith and the Biden-Harris DOJ had subpoenaed the phone records of at least six Congressional Republicans. Apparently, that was not enough.

On May 16, 2023, Special Counsel Smith's top deputies, including J.P. Cooney, Thomas Windom, and Molly Gaston, drew up a new list of proposed subpoenas targeting Representative Mike Kelly, Senator Marsha Blackburn, Senator Lindsey Graham, Senator Bill Hagerty, Senator Josh Hawley, Senator Cynthia Lummis, Senator Ron Johnson, Senator John Kennedy, Senator Rick Scott, Senator Dan Sullivan, and Senator Tommy Tuberville.¹²¹ Again, the Special Counsel team raised the prospect of going after Chairman Jordan's and Speaker McCarthy's toll records, even though the Biden-Harris DOJ had already seized both of their records.¹²²

¹¹⁷ See Deposition of Jack Smith, Special Counsel, U.S. Dep't of Justice, at 35 (Dec. 17, 2025).

¹¹⁸ Transcribed Interview of Molly Gaston, former Senior Assistant Special Counsel, U.S. Dep't of Justice, at 101-102 (Feb. 25, 2026).

¹¹⁹ Grand Jury Subpoena for Senator Lee's Phone Records, U.S. Dist. Court for the Dist. of Columbia (Jan. 23, 2023), *see* Ex. 11; Grand Jury Subpoena for Representative Gohmert's Phone Records, U.S. Dist. Court for the Dist. of Columbia (Jan. 23, 2023), *see* Ex. 12.

¹²⁰ Grand Jury Subpoena for Phone Records of Representative Gohmert's Chief of Staff, U.S. Dist. Court for the Dist. of Columbia (Feb. 3, 2023), *see* Ex. 13.

¹²¹ Emails among Molly Gaston, Senior Assistant Special Counsel, Thomas Windom, Senior Assistant Special Counsel, and J.P. Cooney, Deputy Special Counsel (May 16, 2023), *see* Ex. 14.

¹²² *Id.*

From: "MGG (JSPT)" <[REDACTED]@usdoj.gov>
To: "JPC (JSPT)" <[REDACTED]@usdoj.gov>, "TPW (JSPT)" <[REDACTED]@usdoj.gov>
Subject: RE: Toll Record Subpoena
Date: Tue, 16 May 2023 12:25:47 -0400
Importance: Normal

Ron Johnson/Rep Mike Kelly?

From: MGG (JSPT)
Sent: Tuesday, May 16, 2023 12:23 PM
To: JPC (JSPT) <[REDACTED]@usdoj.gov>; TPW (JSPT) <[REDACTED]@usdoj.gov>
Subject: RE: Toll Record Subpoena

We should also include, to extent we don't have, Jim Jordan and Lindsey Graham

From: JPC (JSPT) <[REDACTED]@usdoj.gov>
Sent: Tuesday, May 16, 2023 12:21 PM
To: TPW (JSPT) <[REDACTED]@usdoj.gov>; MGG (JSPT) <[REDACTED]@usdoj.gov>
Subject: RE: Toll Record Subpoena

Kevin McCarthy

J.P. Cooney
[REDACTED]

From: JPC (JSPT)
Sent: Tuesday, May 16, 2023 12:20 PM
To: TPW (JSPT) <[REDACTED]@usdoj.gov>; MGG (JSPT) <[REDACTED]@usdoj.gov>
Subject: Toll Record Subpoena

I know it won't be to one company, but pretend for a minute.

For the period January 1, 2021, through January 20, 2021, produce subscriber information and call/SMS detail records for the following persons:

1. Mike Lee
2. Tommy Tuberville
3. Marsha Blackburn
4. Bill Hagerty
5. Tim Scott
6. Cynthia Lummis
7. Dan Sullivan
8. John Kennedy

Should we add—
Cruz, Hawley, Perry, Gomer? Others?

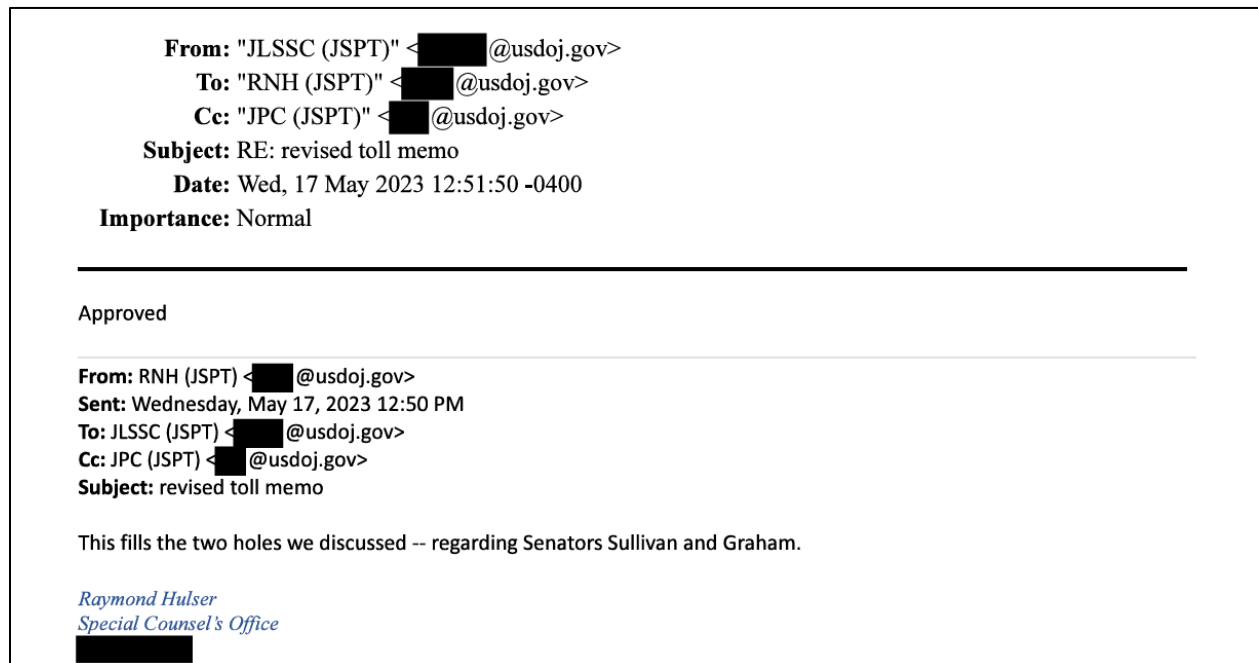
J.P. Cooney

Smith's top prosecutors debated who else to subpoena in May 2023.

Prosecutors from Special Counsel Smith's team then prepared a memorandum seeking his approval for these additional toll record subpoenas.¹²³ Cooney, who briefly ran as a

¹²³ Memorandum on Limited Toll Records Subpoenas for Members of Congress, Office of the Special Counsel, U.S. Dep't of Justice (May 17, 2023), *see* Ex. 16.

progressive Democrat to represent Virginia in Congress, charged Gaston with drafting this memorandum and led the charge with Hulser for this new set of subpoenas.¹²⁴ In preparing the memorandum, Gaston sought and received PIN's approval for the toll record subpoenas, despite PIN again acknowledging that these subpoenas generated "litigation risk"—meaning that a federal court could find the subpoenas to be unconstitutional.¹²⁵ Gaston admitted in the memorandum that "in many cases, we already have some record of these calls," raising questions about the necessity and purpose of these subpoenas.¹²⁶ The memorandum justified the subpoenas by claiming that they "would allow us to understand who else may have called these Members, as well as who the Members called" during the official Congressional proceedings to certify the 2020 presidential election.¹²⁷ These subpoenas clearly sought to capture information relating to the deliberations of the Members pertaining to their official duties in the House of Representatives—votes on the election certification. Despite Gaston's admission that subpoenas were not necessary and the dubious constitutional bases, Special Counsel Smith approved the subpoenas on May 17, just one day after his team created this list.¹²⁸



Smith sent a one-word response in approving the additional toll record subpoenas.

¹²⁴ See Press Release, J.P. Cooney for Congress, J.P. Cooney, Former Prosecutor of President Trump, Launches Campaign for Congress in Virginia (Feb. 11, 2026), https://x.com/greg_price11/status/2021603950542078372/photo/1; Memorandum on Limited Toll Records Subpoenas for Members of Congress, Office of the Special Counsel, U.S. Dep't of Justice (May 17, 2023), see Ex. 16.

¹²⁵ Emails between John Keller, Principal Deputy Chief, Public Integrity Section, and Molly Gaston, Senior Assistant Special Counsel (May 17, 2023), see Ex. 15.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Email from Jack Smith, Special Counsel, to Ray Hulser, Counselor to the Special Counsel, and J.P. Cooney, Deputy Special Counsel (May 17, 2023), see Ex. 17.

Like the other subpoenas for Members' toll records, Special Counsel Smith's team sought and received nondisclosure orders for each of the phone carriers, preventing them from informing the Members about the subpoenas and ensuring that Members would not know that the Biden-Harris DOJ had seized their records.¹²⁹ Once again, the Special Counsel team did not inform the judge—in this case, Chief Judge James Boasberg of the D.C. District Court—that they sought records for Members of Congress.¹³⁰ In his hearing testimony before the Committee, Rep. Brandon Gill questioned Smith on the nondisclosure orders for the May 2023 subpoenas. Smith testified:

- Q. In May of 2023, you also issued subpoenas for toll records of nine U.S. Senators and an additional Representative. Is that right?
- A. In May of '23, we did issue—
- Q. You did. And there were nondisclosure orders in conjunction with those subpoenas as well, right?
- A. That is correct, consistent with Department policy and law.
- Q. So again, nobody would know what you were doing. The Senators wouldn't and the Representatives wouldn't and the American people wouldn't know what you were doing. Is that right?
- A. The toll records that we secured and the nondisclosure orders were consistent with policy and consistent with—¹³¹

This much is clear: Special Counsel Smith's team and the Biden-Harris DOJ sought intrusive information about their political adversaries in Congress and the contacts that certain Members had pursuant to their official duties ahead of a major vote. These prosecutors minimized and dismissed serious and legitimate constitutional concerns with their actions, and even admitted to Attorney General Garland that they sought toll records because the Constitution prevented them from forcing Members to cooperate directly. These actions of a rogue and reckless set of prosecutors created a significant chilling effect and impeded the people's duly elected legislators from conducting their duties.

D. Smith's team violated DOJ protocols in reviewing the content of text messages between the Executive Branch and Members of Congress.

Smith's team violated DOJ's own internal policy and obtained the content of text messages between Members of Congress and Executive Branch officials that may have included

¹²⁹ Deposition of Jack Smith, Special Counsel, U.S. Dep't of Justice, at 39 (Dec. 17, 2025).

¹³⁰ *Id.* at 103.

¹³¹ *Hearing on the Oversight of the Office of Special Counsel Jack Smith: Before the H. Comm. on the Judiciary*, 119th Cong., at 51 (2026) (testimony of Jack Smith, Former Special Counsel, U.S. Dep't of Justice).

privileged content, without any screening by a filter team for potential privileges.¹³² This violation included text messages with 44 Members of Congress—implicating both Republicans and Democrats in both chambers of Congress.¹³³

According to the DOJ’s *Justice Manual*, which sets forth DOJ’s internal policies and procedures, prosecutors should use a “filter” team to protect legally recognized privileges and ensure that any potentially privileged material gathered during an investigation is not compromised.¹³⁴ Starting in May 2022, prosecutors collaborated with Deloitte contractors to create a filter team to review all incoming documents related to Arctic Frost and the presidential records investigation.¹³⁵ The prosecutors tasked the filter team with reviewing all incoming documents gathered as a part of the investigation.¹³⁶ Under the established filter procedures, the filter team could only forward relevant, non-privileged information to the investigative team.¹³⁷ The filter procedures explicitly stated that “[n]o materials shall be disclosed to the investigative team without approval of a filter team attorney.”¹³⁸

The filter team existed to ensure that the prosecutors respected potential privileges, and accordingly it maintained a strict separation from the investigative team. For example, one of the “Key Filter Protocol Provisions” in place for this investigation was that “Filter Team members will not be part of (or communicate with) the investigative team. All communication to/from the Filter Team must go through the Coordinator. No materials shall be disclosed to the investigative team without approval of a filter team attorney.”¹³⁹ Another filter team provision stated that “the Investigative Team will neither learn about nor be granted access to any Potentially Privileged material unless the Filter Team seeks review of those materials by, and approval from, the Court, or discloses those materials and confers with the potential privilege holder.”¹⁴⁰

¹³² Letter from Patrick Davis, U.S. Dep’t of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 14, 2026), *see* Ex. 18.

¹³³ *Id.*

¹³⁴ Justice Man. § 9-13.420 (E) (Jan. 2025).

¹³⁵ Email from Senior Service Delivery Advisor, Deloitte, to Thomas Windom, former Senior Assistant Special Counsel, U.S. Dep’t of Justice (May 27, 2022).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Slide Deck for DOJ Filter Team as of May 2023 (on file with Comm.).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

Key Filter Protocol Provisions

- Filter Team members will not be part of (or communicate with) the investigative team, with the exception of the Filter Team Coordinator.
 - All communication to / from the Filter Team must go through the Coordinator.
- No materials shall be disclosed to the investigative team without approval of a filter team attorney.
- *Communications to or from anyone known by the Filter Team to be an attorney will be automatically identified and segregated as Potentially Privileged material.*
- The Investigative Team will neither learn about nor be granted access to any Potentially Privileged material unless the Filter Team seeks review of those materials by, and approval from, the Court, or discloses those materials to and confers with the potential privilege holder.

Filter team protocols from May 2023.

From documents produced to the Committee, Smith’s investigators initially attempted to comply with the filter protocols, repeatedly checking permission settings to ensure “that NO ONE on the substantive team (from SCO or FBI) had access to anything for any search warrant return. . . .”¹⁴¹

¹⁴¹ Email from Maria Vento, U.S. Dep’t of Justice, to Deloitte Project Coconut Team (June 11, 2023) (on file with the Comm.).

From: "MKV (JSPT)" <[REDACTED]@usdoj.gov>
To: '[REDACTED] <[REDACTED]@deloitte.com>, US Project Coconut
[REDACTED]@deloitte.com>
Cc: "JPC (JSPT)" <[REDACTED]@usdoj.gov>, "JAE (JSPT)" <[REDACTED]@usdoj.gov>, "EBP2 (JSPT)"
[REDACTED]@usdoj.gov>
Subject: Project Coconut Relativity
Date: Sun, 11 Jun 2023 11:06:42 -0400
Importance: Normal

[REDACTED] and Deloitte Team –

As we have discussed, we now need to address the permission settings on the search warrant returns on the CDI side. Please adjust the settings so that NO ONE on the substantive team (from SCO or FBI) has access to anything for any search warrant return (other than Chamberlain Harris, which still needs to be scoped) that has not been tagged Relevant and exported to us for production.

So substantive team/SCO/FBI only have access to (1) documents marked relevant and exported out; and (2) the Chamberlain Harris email that recently cleared filter. Nothing else from the search warrant returns.

This is the top priority item right now from our end.

Please confirm to this group when this is complete.

Please let us know if you have questions.

Best Regards, Maria

Maria K. Vento | [REDACTED]
United States Department of Justice

Smith's prosecutor worked with Deloitte to ensure filter protocols were maintained in June 2023.

However, despite having these procedures in place, Smith's team obtained text messages of 44 Members of Congress—implicating both Republicans and Democrats in both Chambers of Congress—that may have included privileged content.¹⁴² On August 21, 2023, Senior Assistant Special Counsel Thomas Windom received an email from Gary Stern, the General Counsel of the National Archives and Records Administration (NARA), in response to the Special Counsel Office's request for NARA to produce "Presidential records of the Trump administration. . . ."¹⁴³ In his email to Windom, Stern attached "54 spreadsheets containing requested custodians' text messages" from White House phones.¹⁴⁴

¹⁴² *Id.*

¹⁴³ Email from Gary Stern, Gen. Couns., Nat'l Archives and Records Admin., to Thomas Windom, Dep't of Justice (Aug. 21, 2023).

¹⁴⁴ *Id.*

On Mon, Aug 21, 2023 at 12:19 PM Gary Stern garym.stern wrote:

Thomas:

In response to the June 2, 2023 [REDACTED] for NARA to produce records pursuant to 44 U.S.C 2205(2)(A) of the Presidential Records Act (PRA), and following the requisite notification to the representatives of the former and incumbent Presidents, we have identified the following Presidential records of the Trump administration responsive to the request:

- 54 spreadsheets containing requested custodians' text messages

You will shortly receive an email from my colleague [REDACTED] containing a link to download these records, followed by the password.

Please let us know if you have any questions.

Sincerely,
Gary

Gary M. Stern
General Counsel
National Archives and Records Administration

NARA's General Counsel emailed Thomas Windom 54 spreadsheets containing text messages between Executive Branch officials and Members of Congress.

Windom then reviewed the text messages and proceeded to forward the content of the texts to fellow prosecutors on the investigative team.¹⁴⁵ There is no record in the documents produced to the Committee that Windom transmitted the records to the filter team for its review. Instead, according to the documents, Windom passed the entire production along to fellow investigators within an hour of receiving it from Stern.

From: "TPW (JSPT)" <[REDACTED]@usdoj.gov>

To: "MKV (JSPT)" <[REDACTED]@usdoj.gov>, "GDB (JSPT)" <[REDACTED]@usdoj.gov>

Cc: "Garman, Jamie Roseannlyn (WF) (FBI)" <[REDACTED]@fbi.gov>, "MGG (JSPT)" <[REDACTED]@usdoj.gov>, "Mehochko, Daniel A. (WF) (FBI)" <[REDACTED]@fbi.gov>, "RRK (JSPT)" <[REDACTED]@usdoj.gov>

Subject: RE:

Date: Mon, 21 Aug 2023 13:12:55 -0400

Importance: Normal

Single production consisting of 54 excel files with text messages from White House phones
tw

Windom informed members of the investigative team that he received text messages from White House phones in August 2023.

Windom, as a member of Smith's investigative team, should not have had access to the content of those text messages until after they were reviewed by the filter team. Windom not only violated the filter protocol by reviewing the documents himself, but he then forwarded certain text messages to other prosecutors on Smith's team, including Tad Duree and Molly

¹⁴⁵ Email from Thomas Windom, Dep't of Justice, to Tad Duree et. al. (Aug. 21, 2023).

Gaston.¹⁴⁶ In his deposition, Windom repeatedly refused to answer questions or properly make privilege assertions during his deposition, thereby impeding the Committee's investigation. In particular, when the Committee sought to examine whether Smith's team received Member records from sources other than toll record subpoenas, Windom refused to answer.¹⁴⁷ He testified:

Q. Were there any other records of Members of Congress that were swept up by a legal process in your investigation?

A. I respectfully decline to respond for the reasons stated by my counsel.¹⁴⁸

On November 19, 2025, due to his refusal to cooperate fully with the Committee's oversight, the Committee referred Windom for obstructing a congressional investigation.¹⁴⁹

On July 14, 2026, the DOJ notified the Committee that a total of 44 Members of Congress had their records obtained by Jack Smith's team without the filter team screening for potential privilege.¹⁵⁰

¹⁴⁶ *Id.*

¹⁴⁷ Deposition of Thomas Windom, Senior Assistant Special Counsel, Dep't of Justice, at 15 (June 12, 2025).

¹⁴⁸ *Id.*

¹⁴⁹ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Hon. Pamela Bondi, Att'y Gen., U.S. Dep't of Justice (Nov. 19, 2025).

¹⁵⁰ Letter from Patrick Davis, U.S. Dep't of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (July 14, 2026), *see* Ex. 18.

1. Senator Chuck Grassley (R-IA)	23. Rep. Jim Jordan (R-OH)
2. Senator Ron Johnson (R-WI)	24. Rep. Devin Nunes (R-CA)
3. Senator John Cornyn (R-TX)	25. Rep. Adam Smith (D-WA)
4. Senator Lindsey Graham (R-SC)	26. Rep. Andy Biggs (R-AZ)
5. Senator Josh Hawley (R-MO)	27. Rep. Mark Walker (R-NC)
6. Senator Mike Lee (R-UT)	28. Rep. Bryan Steil (R-WI)
7. Senator Cory Booker (D-NJ)	29. Rep. Dan Newhouse (R-WA)
8. Senator Cindy Hyde-Smith (R-MS)	30. Rep. Doug Collins (R-GA)
9. Senator Dan Sullivan (R-AK)	31. Rep. Dusty Johnson (R-SD)
10. Senator David Perdue (R-GA)	32. Rep. Elise Stefanik (R-NY)
11. Senator Lamar Alexander (R-TN)	33. Rep. John Katko (R-NY)
12. Senator Martha McSally (R-AZ)	34. Rep. Joshua Gottheimer (D-NJ)
13. Senator Rand Paul (R-KY)	35. Rep. Karen Bass (D-CA)
14. Senator Rick Scott (R-FL)	36. Rep. Ken Buck (R-CO)
15. Senator Rob Portman (R-OH)	37. Rep. Lee Zeldin (R-NY)
16. Senator Roy Blunt (R-MO)	38. Rep. Mario Diaz-Balart (R-FL)
17. Senator Susan Collins (R-ME)	39. Rep. Mo Brooks (R-AL)
18. Senator Tim Scott (R-SC)	40. Rep. Morgan Griffith (R-VA)
19. Senator Tom Cotton (R-AR)	41. Rep. Rodney Davis (R-IL)
20. Senator Cory Gardner (R-CO)	42. Rep. Russ Fulcher (R-ID)
21. Rep. Kevin McCarthy (R-CA)	43. Rep. Scott Perry (R-PA)
22. Rep. Steve Scalise (R-LA)	44. Rep. Thomas Massie (R-KY)

Smith's team received text messages from 44 Members of Congress in August 2023.

On July 22, 2026, the Committee referred Smith to the DOJ for investigation as to whether he made false statements during his deposition about his office's receipt of content of Members' communications.¹⁵¹ The responses provided by Smith during his deposition gave the impression that neither Smith nor his team had access to the content of Members' text messages. Based on the documents produced by the DOJ, the Committee now knows this to be false. Further, Smith's team failed to follow the DOJ's own filter protocol—by reviewing text messages between Members of Congress and the Trump White House officials without the filter team first reviewing and filtering out privileged information. Smith's team again circumvented key constitutional protections and disregarded the DOJ's own filter process to gain access to the content of text messages between Members of Congress and Executive Branch officials, revealing just how far his team was willing to go to get President Trump.

¹⁵¹ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Hon. Todd Blanche, Acting Att'y Gen., U.S. Dep't of Justice (July 22, 2026).

II. Special Counsel Smith’s secret subpoenas for the phone records of Members of Congress were unconstitutional.

Special Counsel Smith’s and the Biden-Harris DOJ’s subpoenas for the phone records of Congressional Republicans were not just a gross abuse of prosecutorial power to spy on political adversaries. The subpoenas violated the Constitution. Under the Constitution’s Speech or Debate Clause, prosecutors may not compel production of materials related to Members’ official duties, including toll records of phone calls in which Members exchange information relating to or deliberate on matters pending before Congress.¹⁵² The Clause is a key safeguard against executive branch intrusion on legislative processes—and Special Counsel Smith flouted it. He and his team used an untested and artificial reading of the Speech or Debate Clause to make an end-run around its protections and spy on the Biden-Harris Administration’s political opposition.¹⁵³ Worse, these prosecutors tried to keep it secret, seeking and obtaining orders ensuring that Members would never know they were being spied on, and could not go to court to stop it.¹⁵⁴

A. The Speech or Debate Clause prohibits the Executive Branch from secretly obtaining toll records for Members’ calls related to legislative acts.

The Constitution’s Speech or Debate Clause states that “for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other place.”¹⁵⁵ The Speech or Debate privilege is a vital safeguard for the legislative process. As the Supreme Court has stated, “the Speech or Debate Clause was designed to assure a co-equal branch of government wide freedom of speech, debate, and deliberation without intimidation or threats from the executive branch.”¹⁵⁶ The Supreme Court “without exception” reads the Speech or Debate Clause “broadly,”¹⁵⁷ seeking to “implement its fundamental purpose of freeing the legislator from executive and judicial oversight that realistically threatens to control his conduct as a legislator.”¹⁵⁸ For this reason, federal courts interpret the Speech or Debate Clause to place an “absolute” bar on compelled disclosure of a Member’s “legislative material.”¹⁵⁹

Under Supreme Court precedent, the Speech or Debate privilege attaches to matters that are “an integral part of the deliberative and communicative processes by which Members participate in” legislative proceedings.¹⁶⁰ As the U.S. Court of Appeals for the D.C. Circuit,

¹⁵² U.S. CONST., Art. I, § 6, cl. 1; *see Rayburn*, 497 F.3d at 660.

¹⁵³ *See* Deposition of Jack Smith, Special Counsel, U.S. Dep’t of Justice, at 44 (Dec. 17, 2025); Transcribed Interview of Molly Gaston, former Senior Assistant Special Counsel, U.S. Dep’t of Justice, at 36 (Feb. 25, 2026); Transcribed Interview of Timothy Duree, former Assistant Special Counsel, U.S. Dep’t of Justice, at 76 (Mar. 5, 2026).

¹⁵⁴ *See infra* Sec. II(C).

¹⁵⁵ U.S. CONST., Art. I, § 6, cl. 1.

¹⁵⁶ *Gravel*, 408 U.S. at 616.

¹⁵⁷ *Eastland*, 421 U.S. at 501.

¹⁵⁸ *Gravel*, 408 U.S. at 618.

¹⁵⁹ *Rayburn*, 497 F.3d at 660; *see Eastland*, 421 U.S. at 501 (“The prohibitions of the Speech or Debate Clause are absolute.”).

¹⁶⁰ *Gravel*, 408 U.S. at 625 (citing *United States v. Doe*, 455 F.2d 753, 760 (1st Cir. 1972)).

which handles the lion’s share of Speech or Debate litigation,¹⁶¹ has stated: “A key purpose of the [Speech or Debate] privilege is to prevent intrusions in the legislative process and . . . the legislative process is disrupted by the disclosure of legislative material, regardless of the use to which the disclosed materials are put.”¹⁶² The danger posed by this disclosure is not just public exposure; disclosure to the Executive Branch, as here, threatens the independence of the Legislative Branch and legislative proceedings.

These protections extend to phone toll records of Members of Congress. Federal appeals courts have consistently found that use of the telephone “by House members in the process of persuading each other on the merits of proposed legislation” is “a “legislative act[] by even the narrowest test” and “plainly integral to the deliberative or communicative processes of the House.”¹⁶³ The same is true of toll records: Members’ call logs, reflecting with whom they communicate as they deliberate on official matters, are “legislative materials” that are constitutionally shielded from compelled disclosure.¹⁶⁴ Toll records “at least as to some telephone calls, record the fact that a legislative act took place,” and therefore are protected by the Speech or Debate Clause.¹⁶⁵ One federal appeals court wrote that it “cannot imagine why the toll record of such a call should not be protected.”¹⁶⁶

Even Counselor to the Special Counsel Ray Hulser, whom Smith described as “the Department’s expert on [Speech or Debate] issues,” conceded in his transcribed interview with the Committee that toll records may constitute privileged materials.¹⁶⁷ He testified:

Q. So, in getting then the toll records, there would be some Speech or Debate material—protected material that would be swept in under those subpoenas. Would you agree?

A. I would agree.¹⁶⁸

The logic of the Speech or Debate Clause supports this notion: Executive Branch knowledge of who Members call before specific votes could affect how Members conduct their official legislative duties. As the U.S. Court of Appeals for the D.C. Circuit has explained, “the possibility of compelled disclosure may . . . chill the exchange of views with respect to legislative activity.”¹⁶⁹ The purpose of the Speech or Debate Clause is to insulate legislative deliberation and decision-making from potential Executive Branch influence. Members might

¹⁶¹ See, e.g., Todd Garvey, *Understanding the Speech or Debate Clause*, CONG RSCH. SERV. No. R45043 (Dec. 1, 2017) (cataloguing Speech or Debate cases in the D.C. Circuit).

¹⁶² *Rayburn*, 497 F.3d at 660.

¹⁶³ *In re Grand Jury*, 587 F.2d at 594; *In re Sealed Case*, 80 F.4th 355 (D.C. Cir. 2023) (slip op. at 26) (“Communications with Members and staff about legislation, votes, committee assignments, and caucus affairs [are] squarely ‘legislative acts.’”).

¹⁶⁴ See *Rayburn*, 497 F.3d at 660.

¹⁶⁵ *In re Grand Jury*, 587 F.2d at 595.

¹⁶⁶ *Id.*

¹⁶⁷ Deposition of Jack Smith, Special Counsel, U.S. Dep’t of Justice, at 47 (Dec. 17, 2025); See also Transcribed Interview of Raymond Hulser, Counselor to the Special Counsel, Dep’t of Justice, at 26 (Mar. 24, 2025).

¹⁶⁸ Transcribed Interview of Raymond Hulser, Counselor to the Special Counsel, Dep’t of Justice, at 26 (Mar. 24, 2025).

¹⁶⁹ *Rayburn*, 497 F.3d at 661.

rationally change their behavior if they know that their call records before or after major votes may end up in the hands of the Executive Branch. That is precisely the sort of “chilling” effect that the Speech or Debate Clause is intended to avoid.

And there is no doubt that Special Counsel Smith and the Biden-Harris DOJ sought to collect information about who Members were in communication with ahead of a major vote in Congress, the certification of the 2020 presidential election. Even the narrowest subpoenas issued by Special Counsel Smith were targeted specifically at the timeframe surrounding the election certification vote on January 6, 2021.¹⁷⁰ Under federal law, 3 U.S.C. § 15, Members must vote on the certification of electors for each state.¹⁷¹ Gathering information and deliberating about this vote, which is required by federal statute, is unquestionably an official duty of a Member of Congress. Special Counsel Smith’s team knowingly compelled disclosure of this protected information in violation of the Constitution.

B. Special Counsel Jack Smith and the Biden-Harris DOJ used a contrived, untested, and unsound reading of the Speech or Debate Clause to spy on Republicans in Congress.

The case law is clear: the Constitution places an “absolute” bar on compelled disclosure of documents related to Members’ legislative acts, including toll records.¹⁷² When appearing before the Committee, however, Special Counsel Smith and his deputies all essentially made the same argument to the contrary, stating: “I’m aware of no case in the Supreme Court or the D.C. Circuit that says that getting noncontent toll records from a third party violates the Speech or Debate Clause[.]”¹⁷³ Simply put, Smith and his team claimed that because the subpoenas were issued to third parties, the Members’ telecommunication service providers and not to the Members themselves, the “absolute” bar on disclosure did not apply.¹⁷⁴ Special Counsel Smith’s team also relied heavily on the fact that these Members were not the targets of the investigation in attempting to defend their position. They argued, wrongly, that because the records would never be used against those Members in court, the act of merely obtaining the records was not prohibited.¹⁷⁵

These after-the-fact defenses are unpersuasive. The issuance of the subpoena to a third party, rather than to a Member himself, has no effect on the subpoena’s constitutionality. As the

¹⁷⁰ See Memorandum on Limited Toll Records Subpoenas for Members of Congress, Office of the Special Counsel, U.S. Dep’t of Justice (May 17, 2023), *see* Ex. 16.

¹⁷¹ 3 U.S.C. § 15.

¹⁷² *Rayburn*, 497 F.3d at 660; *see Eastland*, 421 U.S. at 501 (“The prohibitions of the Speech or Debate Clause are absolute.”).

¹⁷³ Deposition of Jack Smith, Special Counsel, U.S. Dep’t of Justice, at 44 (Dec. 17, 2025); *see also* Transcribed Interview of Molly Gaston, former Senior Assistant Special Counsel, U.S. Dep’t of Justice, at 36 (Feb. 25, 2026) (“I’m not aware of any court case that stands for the proposition that the Justice Department cannot issue a toll record subpoena to a third-party provider for a Member of Congress’ toll records.”); Transcribed Interview of Timothy Duree, former Assistant Special Counsel, U.S. Dep’t of Justice, at 76 (Mar. 5, 2026) (“There is no case law, that I’m aware of, supporting the idea that toll records, basically records of one phone communicating with another, are themselves legislative acts.”).

¹⁷⁴ *Rayburn*, 497 F.3d at 660.

¹⁷⁵ Transcribed Interview of Molly Gaston, former Senior Assistant Special Counsel, U.S. Dep’t of Justice, at 64-65 (Feb. 25, 2026).

Supreme Court has explained, “it is axiomatic that [the government] may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish.”¹⁷⁶ There is no reason that the Speech or Debate Clause’s “absolute” bar on compelled production of legislative materials would not extend to compelled production of documents by third parties, as Special Counsel Smith’s team claimed. Indeed, such a reading would tear a hole through the heart of the Speech or Debate Clause, allowing prosecutors to make clear end-runs around it by targeting third parties.

In a different context, Special Counsel Smith’s team conceded that its reading of the Speech or Debate Clause would leave the Clause meaningless. In addition to seizing Representative Perry’s cell phone, the Special Counsel’s Office issued search warrants to Google and Apple for the contents of Representative Perry’s personal email and messaging accounts.¹⁷⁷ Special Counsel prosecutors argued that the Speech or Debate Clause did not apply to these warrants because they sought “records from a third party” rather than Representative Perry himself.¹⁷⁸ At a hearing before Judge Beryl Howell of the U.S. District Court for the District of Columbia, the prosecutors conceded that this reading of the Speech or Debate Clause would allow them to review “privileged” material without any of the attendant Speech or Debate protections, but sought Judge Howell’s approval anyway.¹⁷⁹ Such a reading would render the Speech or Debate Clause a dead letter, and Judge Howell rightly rejected the prosecutors’ move.¹⁸⁰

In addition, in a briefing document prepared for Special Counsel Smith’s January 2023 meeting with Attorney General Garland, Special Counsel Smith all but admitted that the toll records subpoenas were an attempt to subvert the Speech or Debate Clause. Smith’s notes for the meeting stated that Members “likely have a valid Speech or Debate privilege immunizing them from compelled testimony,” implicitly admitting that the third-party toll records subpoenas were attempts to compel production of information that Smith could not lawfully obtain directly from the Members.¹⁸¹

The complete disregard for constitutional protections was not limited to Special Counsel Smith’s team. PIN, within the Biden-Harris DOJ, recognized that Smith’s subpoenas for Members’ toll records were constitutionally suspect but approved them nonetheless.¹⁸² PIN is tasked with overseeing “all federal crimes affecting government integrity”;¹⁸³ however, it blatantly ignored the constitutional provisions it should have honored. Throughout the Arctic

¹⁷⁶ *Norwood v. Harrison*, 413 U.S. 455, 465 (1973).

¹⁷⁷ Emails among James Pearce, Assistant Special Counsel, Ray Hulser, Counselor to the Special Counsel, and J.P. Cooney, Deputy Special Counsel (Jan. 6, 2023), *see* Ex. 7.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

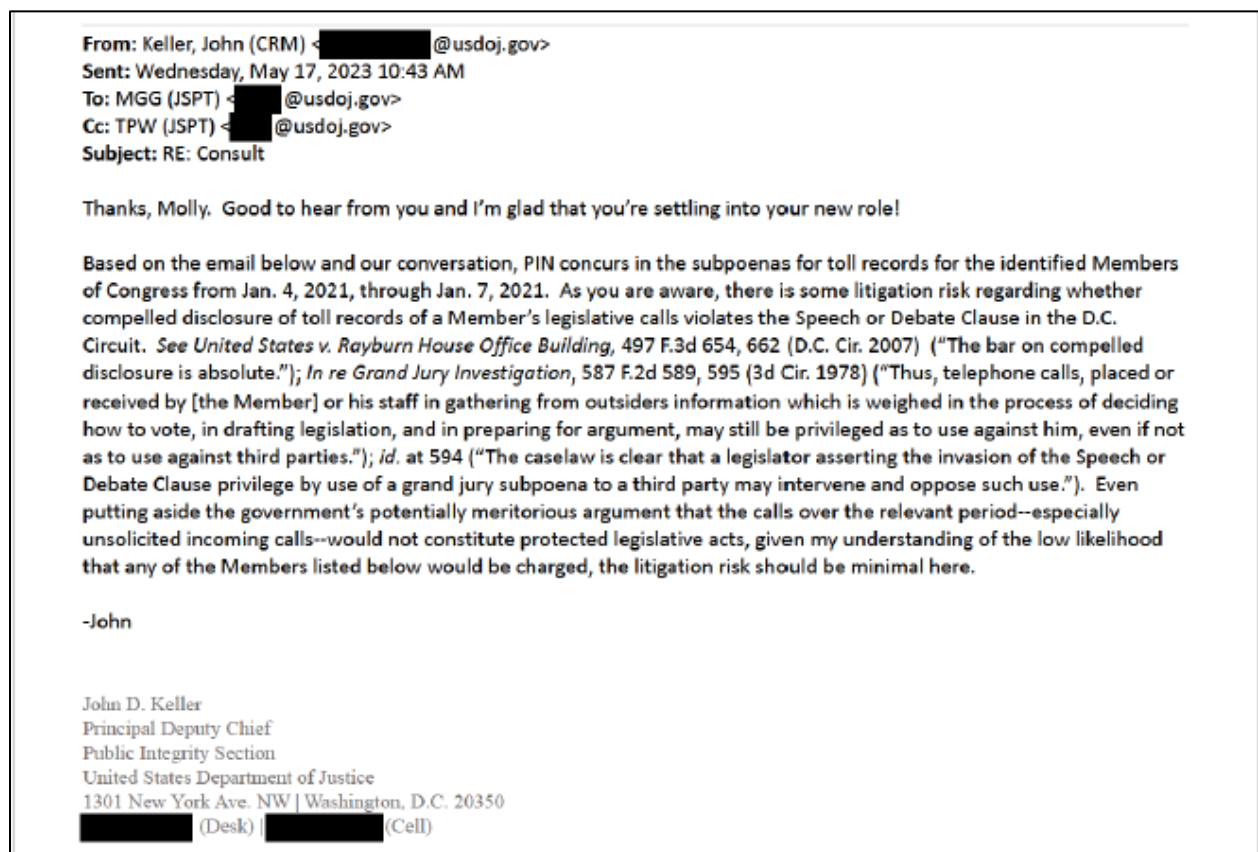
¹⁸⁰ *Id.*

¹⁸¹ Notes for Briefing of Att’y Gen. Merrick Garland (Jan. 13, 2023), *see* Ex. 9.

¹⁸² *See* Email from Jennifer Clarke, Deputy Chief, Public Integrity Section, to Timothy Duree, Assistant Chief, Criminal Division (Apr. 26, 2022), *see* Ex. 1; Email from Jennifer Clarke, Deputy Chief, Public Integrity Section, to Timothy Duree, Assistant Chief, Criminal Division (May 19, 2022), *see* Ex. 3; Emails between John Keller, Principal Deputy Chief, Public Integrity Section, and Molly Gaston, Senior Assistant Special Counsel (May 17, 2023), *see* Ex. 15.

¹⁸³ *Public Integrity Section*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/criminal/criminal-pin> (last accessed Sept. 18, 2026).

Frost and Special Counsel investigations, prosecutors sought and received approval from PIN before issuing toll records subpoenas for Members of Congress. In each case where the Committee has received these communications, PIN acknowledged that these subpoenas generated “litigation risk”—meaning that a federal court might find the subpoenas to be unconstitutional—but ultimately approved them.¹⁸⁴ PIN repeatedly cited D.C. Circuit precedent stating that the Speech or Debate Clause’s “bar on compelled disclosure is absolute” and another court decision finding that “a legislator asserting the invasion of the Speech or Debate Clause privilege by use of a grand jury subpoena to a third party may intervene and oppose such use.”¹⁸⁵ Even acknowledging the subpoenas were potentially unconstitutional, PIN approved them anyway due to the “low likelihood that any Members . . . could be charged.”¹⁸⁶ In essence, PIN’s argument boiled down to: these subpoenas might be unconstitutional, but Members will never know about them and courts will never review them, so proceed.



PIN’s John Keller cited case law indicating that the toll record subpoenas were unconstitutional but approved them because Members would not be able to challenge them in court.

In his hearing testimony before the Committee, Rep. Kevin Kiley questioned Smith on his team’s reliance of PIN’s analysis in issuing toll record subpoenas despite the apparent “litigation risk.” Smith testified:

¹⁸⁴ Email from Jennifer Clarke, Deputy Chief, Public Integrity Section, to Timothy Duree, Assistant Chief, Criminal Division (Apr. 26, 2022), *see* Ex. 1.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

- Q. Mr. Smith, I've had the opportunity during my time on this committee to review the work of two Special Counsels, John Durham during—appointed during the Trump Administration, and Robert Hur, during the Biden Administration. And in both cases, they seemed to exhibit that humility and restraint that we talked about. But in reviewing in detail the way you conducted this investigation, I see a very different mode of operation—one that sought maximum litigation advantage at every turn, one that repeatedly circumvented constitutional limitations—to the point that you had to be reined in again and again throughout the process. For example, shortly after you became Special Counsel, you issued a subpoena for the phone records of the Speaker of the House of Representatives over a two-month period, along with for other Senators and Representatives, even though the Public Integrity Section at DOJ cited litigation risk to doing this. What was that litigation risk?
- A. With respect to the toll record subpoenas that we issued, they were approved by the Public Integrity Section. The Public Integrity Section, in approving those subpoenas, noted the fact that the subpoenas were for records for people who were not targets of our investigation.
- Q. But they said there was a litigation risk, and you moved forward with it anyway. And not only that, but you also sought orders from judges making it so those who were being—having their records seized would not know about it. And you even didn't tell those judges that it was Members of Congress whose records you were going after—in apparent contravention of a federal statute saying that a telephone provider for a Senate office shall not be barred from providing notice that the records have been requested. Now, if you sought to do that today, would you be able to get away with that—with asking the judges for a non-disclosure order without telling them these are Members of Congress?
- A. When we secured these toll record subpoenas, it was done consistent with Department policy. You're correct in that that policy has since changed.
- Q. They changed the policy based upon the actions that you took.¹⁸⁷

¹⁸⁷ *Hearing on the Oversight of the Office of Special Counsel Jack Smith: Before the H. Comm. on the Judiciary*, 119th Cong., at 24-25 (2026) (testimony of Jack Smith, Former Special Counsel, U.S. Dep't of Justice).

Special Counsel Smith and his team largely agreed that PIN’s constitutional analysis was lacking. Smith himself testified:

Q. I mean, this isn’t—if you look at the email, it’s not that fulsome, right? It’s not a complete analysis of the constitutionality, or even the propriety of the call record subpoenas under the Speech or Debate Clause. I mean, isn’t that—is that fair to say?

A. Yes. Certainly, there could be more analysis.¹⁸⁸

Smith also claimed without evidence that there may have been additional communications between his office and PIN that further analyzed the constitutional implications.¹⁸⁹ To date, however, the Committee has not received any documents to verify these statements, despite several prosecutors claiming that additional communications existed.¹⁹⁰

C. Special Counsel Smith sought gag orders for the toll record subpoenas so that Members would be unable to challenge them.

The Biden-Harris DOJ, including Special Counsel Smith’s team, insulated itself from this potential “litigation risk” by attaching NDOs to the toll record subpoenas. NDOs kept the subpoenas secret and ensured that the targeted Members could not vindicate their rights in court. As discussed, the justifications cited for the gag orders—flight risks and witness tampering—were pretextual and inapplicable to senior federal officials. As such, it is unclear what legitimate purpose the NDOs could have had other than concealing subpoenas that the Biden-Harris DOJ knew to be unconstitutional.

Special Counsel Smith, Hulser, and Duree each admitted that NDOs barred Members from going to court to assert their Speech or Debate privilege,¹⁹¹ while Gaston stubbornly refused to reach this obvious conclusion.¹⁹² Ray Hulser, who had been responsible for DOJ’s Speech or Debate litigation during his stint as Chief of PIN, was the only person on Smith’s team to readily concede that, because the NDOs attached to the toll record subpoenas, Members had no remedy to vindicate their Speech or Debate rights. He testified:

¹⁸⁸ Deposition of Jack Smith, Special Counsel, U.S. Dep’t of Justice, at 47 (Dec. 17, 2025).

¹⁸⁹ *Id.*

¹⁹⁰ See Transcribed Interview of Molly Gaston, former Senior Assistant Special Counsel, U.S. Dep’t of Justice, at 68 (Feb. 25, 2026); Transcribed Interview of Timothy Duree, Assistant Special Counsel, U.S. Dep’t of Justice, at 67 (Mar. 5, 2026).

¹⁹¹ Deposition of Jack Smith, Special Counsel, U.S. Dep’t of Justice, at 41 (Dec. 17, 2025) (“You are correct in that inherent in getting an NDO is that at various times, people who might have arguments about why to quash a subpoena won’t be able to make those arguments.”); Transcribed Interview of Timothy Duree, former Assistant Special Counsel, U.S. Dep’t of Justice, at 82 (Mar. 5, 2026) (“the subpoena is not going to be disclosed to them and so they wouldn’t be able to challenge it.”).

¹⁹² Transcribed Interview of Molly Gaston, former Senior Assistant Special Counsel, U.S. Dep’t of Justice, at 69 (Feb. 25, 2026) (“I’m not sure” what remedy Members had.).

Q. With the nondisclosure orders, obviously, the Members had no idea that your office had sought their records. Is that fair to say?

A. I would assume they did not at the time.

Q. And so what remedy did Members have to avail themselves of—to litigate their Speech or Debate rights prior to disclosure of their toll records to your office?

A. I can't see how they would have had a remedy at that time.¹⁹³

Special Counsel Smith largely agreed, testifying that “inherent in getting an NDO is that at various times, people who might have arguments about why to quash a subpoena won't be able to make those arguments.”¹⁹⁴ Despite conceding this fact, Smith refused to take ownership of this abusive tactic. Instead, Smith stated that President Trump was to blame for his own office's unconstitutional actions. Smith testified that President Trump “should be accountable” for the Special Counsel Office's unconstitutional subpoenas of congressional phone records because “he chose to” call certain Members of Congress.¹⁹⁵ He testified:

Q. To the extent Members of Congress and Senators are up in arms that this happened to them and they're seeking accountability . . . who should be held accountable for answering these questions?

A. Well, I think who should be accountable for this is Donald Trump. These records are people, in the case of the Senators, Donald Trump directed his co-conspirators to call these people to further delay the proceedings. He chose to do that. If Donald Trump had chosen to call a number of Democratic Senators, we would have gotten toll records for Democratic Senators. So responsibility for why these records, why we collected them . . . that lies with Donald Trump.¹⁹⁶

The application of NDOs to these subpoenas violated controlling D.C. Circuit precedent stating that a Member must be allowed the “opportunity to assert the [Speech or Debate] privilege before the Executive scour[s] his records.”¹⁹⁷ The Biden-Harris DOJ and the Special Counsel's Office not only seized legislative materials, but they also deprived Members of the chance to vindicate their constitutional rights and assert privilege over those materials.

¹⁹³ Transcribed Interview of Raymond Hulser, Counselor to the Special Counsel, Dep't of Justice, at 29-30 (Mar. 24, 2025).

¹⁹⁴ Deposition of Jack Smith, Special Counsel, U.S. Dep't of Justice, at 41 (Dec. 17, 2025).

¹⁹⁵ *Id.* at 102.

¹⁹⁶ *Id.* at 102-103.

¹⁹⁷ *Rayburn*, 497 F.3d at 662.

In addition, with respect to records sought of U.S. Senators, Special Counsel Smith's team failed to consider the federal statute barring NDOs for Senate phone records. Section 6628(c) of Title 2 of the U.S. Code states "any [telephone] provider for a Senate office . . . shall not be barred" from providing notice to the office if its records are subpoenaed.¹⁹⁸ This law expressly proscribes federal prosecutors from seeking NDOs when issuing subpoenas for Senate office phone records from a third party.¹⁹⁹ Despite this explicit bar, Special Counsel Smith and Gaston each testified that they did not "recall specifically discussing" this statute at any point when the Special Counsel's Office deliberated on subpoenaing toll records from Senators.²⁰⁰ At least one of the numbers that Smith's team subpoenaed was a landline for Senator Ted Cruz, which is squarely covered by this statute.²⁰¹ Here, too, Special Counsel Smith passed the buck for his office's abusive conduct, claiming that "it's the job of the carrier," and not the prosecutor, to ensure that NDOs comply with the Senate phone records statute.²⁰² Smith testified:

Q. [T]here's a statute regarding Senate phone records. Are you familiar with 2 United States Code 6628?

A. Yes.

Q. And did you analyze or factor in that statute before you issued the subpoenas for the Senator toll records?

A. As I sit here today, I don't recall specifically discussing that statute. I will say that my reading of that statute as it existed at that time is that that was a statute directed at providers. It actually envisions that a provider might actually get an NDO application. And the provider, who has the best information about whose phone line is whose, that they're best situated to make—to make these judgments.

Q. . . . [W]hose responsibility it is to flag that there's a statute, a law that bars NDOs with regards to certain Senators' phone numbers. Whose responsibility? Is that the special counsel's office? Is that the carrier? Is that the judge? Does the judge have to sort of figure this out, the magistrate judge? Certainly, the magistrate judge doesn't have to figure it out all on his own, does he?

A. Well, that statute, as I said, my reading of that statute, the language of that statute as it existed at that time is that it's the job of the carrier. And to me, that makes sense, because

¹⁹⁸ 2 U.S.C. § 6628(c).

¹⁹⁹ *Id.*

²⁰⁰ Deposition of Jack Smith, Special Counsel, U.S. Dep't of Justice, at 50 (Dec. 17, 2025); Transcribed Interview of Molly Gaston, former Senior Assistant Special Counsel, U.S. Dep't of Justice, at 74 (Feb. 25, 2026) ("I don't remember having conversations about the statute.").

²⁰¹ Letter from AT&T to Sen. Charles Grassley, Chairman, S. Comm. on the Judiciary (Oct. 24, 2025).

²⁰² Deposition of Jack Smith, Special Counsel, U.S. Dep't of Justice, at 50 (Dec. 17, 2025).

they're the ones who have the best and most accurate information about whose phone lines are whose. They actually have that information.

Q. Okay. But the package of materials that you send off to the magistrate judge or the chief judge, whoever's the duty judge, as you mentioned, you don't identify that it's a Senate phone number or a Member of Congress in those applications. So there would be no way for the judge to know that, you know, there's these additional considerations. Is that fair?

A. I think that it's fair. I think the Department guidance on that issue has changed since these events we're talking about. And so now if one were to do that, you would notify the judge.²⁰³

Despite the insistent claims that all Arctic Frost and Special Counsel toll record subpoenas were perfectly legal, Special Counsel Smith's team dropped the demands the moment that a third party pushed back on them. On June 22, 2023, in response to a subpoena requesting records for two Members, AT&T's legal counsel emailed an individual from the Special Counsel's Office stating, "[t]he users of the telephone numbers potentially implicate protections of . . . the Speech or Debate Clause"²⁰⁴ According to documents produced to the Committee, the Special Counsel's Office never responded to these concerns.

²⁰³ Deposition of Jack Smith, Special Counsel, U.S. Dep't of Justice, at 49-50 (Dec. 17, 2025).

²⁰⁴ Letter from AT&T to Sen. Charles Grassley, Chairman, S. Comm. on the Judiciary (Oct. 24, 2025).

From: [REDACTED]
Sent: Thursday, June 22, 2023 3:47 PM
To: [REDACTED]
Subject: [REDACTED] Request

[REDACTED] The users of the telephone numbers potentially implicate the protections of a [REDACTED] the Speech or Debate Clause [REDACTED] At least one court has recognized that “the mere fact that” a communication was made “with a particular person at a particular time might convey a confidential substantive message within the confines of” an applicable privilege. *In re Certain Complaints Under Investigation by an Investigating Comm. Of Jud. Council of Eleventh Cir.*, 783 F.2d 1488, 1520 n.28 (11th Cir. 1986). Because AT&T has no way of assessing whether responding to the Subpoena inadvertently would reveal any privileged communication, AT&T respectfully requests the Special Counsel’s view of the potential implications [REDACTED] so that AT&T may document the Special Counsel’s views and incorporate them as part our analysis of the Subpoena.

[REDACTED] – I am following up on my June 12, 2023, voicemail and email to you. I would like to raise a similar question related to the May 25, 2023, subpoena to AT&T, as well as an unrelated question regarding one of the telephone numbers included in that subpoena.

AT&T respectfully requests responses from the Special Counsel’s office on these matters. Please contact me should you have any questions. Many thanks.

[REDACTED]
[REDACTED]

Assistant Vice President – Senior Legal Counsel
AT&T Services, Inc.

AT&T raised concerns that the toll record subpoenas implicated the Speech or Debate Clause.

When confronted with this fact, Smith testified that he did not “have any recollection of that.”²⁰⁵ Gaston similarly testified that she “[did] not” remember this event.²⁰⁶

In a letter to the Senate Judiciary Committee, AT&T explained what happened after it pushed back on the abusive subpoenas. AT&T described how the Special Counsel’s team backed down after the company questioned the legal basis for the subpoenas:

In May 2023, Special Counsel Smith sent AT&T a grand jury subpoena that included a request for phone records associated with AT&T accounts for two other members of Congress. However, when AT&T raised questions with . . . Special Counsel Smith’s office concerning the legal basis for seeking records of members of Congress, the Special Counsel did not pursue the subpoena further, and no records were produced.²⁰⁷

²⁰⁵ Deposition of Jack Smith, Special Counsel, U.S. Dep’t of Justice, at 102 (Dec. 17, 2025).

²⁰⁶ Transcribed Interview of Molly Gaston, former Senior Assistant Special Counsel, U.S. Dep’t of Justice, at 73 (Feb. 25, 2026).

²⁰⁷ Letter from AT&T to Sen. Charles Grassley, Chairman, S. Comm. on the Judiciary (Oct. 24, 2025).

D. Special Counsel Smith’s team lost in litigation over the Speech or Debate-protected material on Representative Scott Perry’s phone.

The Biden-Harris DOJ’s interpretation of the Speech or Debate Clause went before a court only once, in litigation arising from the seizure of Representative Perry’s cell phone.²⁰⁸ Special Counsel Smith argued categorically that the contents of personal accounts and devices are unprotected by the Speech or Debate Clause.²⁰⁹ He lost.²¹⁰ The U.S. Court of Appeals for the D.C. Circuit held that the Speech or Debate Clause protects communications which are “an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings” no matter where they are found.²¹¹ Moreover, the court found that a Member’s communications about votes to certify a presidential election fell squarely into protected proceedings.²¹² The court wrote that discussions about “the 2020 election certification vote” were “quintessential legislative acts” protected by the Speech or Debate Clause.²¹³

These findings significantly undermine Special Counsel Smith’s assertion that the toll record subpoenas were constitutional. The court’s decision directly refutes Smith’s assertion that toll record subpoenas targeting Members’ personal accounts are not protected by the Speech or Debate Clause.²¹⁴ The ruling also makes clear that Smith’s toll record subpoenas sought information about calls that were properly considered legislative acts and therefore subject to Speech or Debate non-disclosure protections. While the court’s decision was limited facially to the facts of the seizure of Representative Perry’s phone, the reasoning applies as forcefully to each of the subpoenas issued for toll records of Members of Congress. The decision is indicative of the serious weaknesses in Special Counsel Smith’s justification for these abusive subpoenas for constitutionally protected communications.

²⁰⁸ *In re Sealed Case*, No. 23-3001 (D.C. Cir. Sept. 13, 2023).

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.* (slip op. at 2) (quoting *Gravel*, 408 U.S. at 625).

²¹² *Id.*

²¹³ *In re Sealed Case*, No. 23-3001 (D.C. Cir. Sept. 13, 2023) (slip op. at 3).

²¹⁴ *See* Deposition of Jack Smith, Special Counsel, U.S. Dep’t of Justice, at 44-45 (Dec. 17, 2025).

CONCLUSION

During the Biden-Harris Administration, Arctic Frost investigators and the Special Counsel's team subpoenaed phone records for over a dozen Republican Members of Congress. Special Counsel Smith and his deputies ran roughshod over the Constitution's Speech or Debate Clause, which protects Members' communications from compelled disclosure, to seize this material.²¹⁵ The evidence available to the Committee shows that Special Counsel Smith's team barely considered the constitutional protections surrounding this material—and to the extent that it did, it concluded that its subpoenas might be unconstitutional.²¹⁶ Yet, Special Counsel Smith's team forged ahead and issued the subpoenas. To prevent transparency and accountability for their abuses, DOJ prosecutors secured gag orders that would prevent the targeted Members from ever knowing that the Biden-Harris DOJ had seized records of their official communications. Further, prosecutors violated the DOJ's own procedures to review the content of private text messages between 44 Members of Congress and Executive Branch officials.

The Committee's documentary and testimonial evidence shows just how serious these constitutional violations were—indeed, Special Counsel Smith and his prosecutors admitted that the gag order deprived Members of the chance to appear in court to assert their constitutional rights under the Speech or Debate Clause. The Arctic Frost investigation and the subsequent Special Counsel investigation will remain a dark stain on the Biden-Harris DOJ and a cautionary reminder of the dangers of rogue, reckless, arrogant prosecutors. The abuses uncovered demand legislative reforms to prevent a future Jack Smith from similarly violating the Constitution. On July 15, 2026, the Committee passed H.R. 9098 out of Committee.²¹⁷ The bill seeks to protect the separation of powers enshrined in the United States Constitution and end the weaponized surveillance of Members of Congress. As the American people await action on this vital legislation, the Committee will continue to pursue the truth about this critical set of events in our nation's history.

²¹⁵ U.S. CONST., Art. I, § 6, cl. 1.

²¹⁶ *Id.*

²¹⁷ *Markup of H.R. 9098 Before the H. Comm. on the Judiciary*, 119th Cong. (2026)

INDEX OF EXHIBITS

EXHIBIT NUMBER	TITLE
1	Email from Jennifer Clarke, Deputy Chief, Public Integrity Section, to Timothy Duree, Assistant Chief, Criminal Division (Apr. 26, 2022).
2	Grand Jury Subpoena for Chairman Jordan's Phone Records, U.S. Dist. Court for the Dist. of Columbia (May 1, 2022).
3	Email from Jennifer Clarke, Deputy Chief, Public Integrity Section, to Timothy Duree, Assistant Chief, Criminal Division (May 19, 2022).
4	Grand Jury Subpoena for Representative Fitzgerald's Phone Records, U.S. Dist. Court for the Dist. of Columbia (May 31, 2022)
5	FBI Physical Surveillance Request on Representative Scott Perry (July 20, 2022).
6	FBI Form FD-302, Execution of Seizure Warrant for Representative Scott Perry's Phone (Aug. 9, 2022).
7	Emails among James Pearce, Assistant Special Counsel, Ray Hulser, Counselor to the Special Counsel, and J.P. Cooney, Deputy Special Counsel (Jan. 6, 2023).
8	Emails among Timothy Duree, Assistant Special Counsel, Ray Hulser, Counselor to the Special Counsel, and Thomas Windom, Senior Assistant Special Counsel (Jan. 9, 2023).
9	Notes for Briefing of Attorney General Merrick Garland (Jan. 13, 2023).
10	Grand Jury Subpoena for Speaker McCarthy's Phone Records, U.S. Dist. Court for the Dist. of Columbia (Jan. 23, 2023).
11	Grand Jury Subpoena for Senator Lee's Phone Records, U.S. Dist. Court for the Dist. of Columbia (Jan. 23, 2023).
12	Grand Jury Subpoena for Representative Gohmert's Phone Records, U.S. Dist. Court for the Dist. of Columbia (Jan. 23, 2023).
13	Grand Jury Subpoena for Phone Records of Representative Gohmert's Chief of Staff, U.S. Dist. Court for the Dist. of Columbia (Feb. 3, 2023).
14	Emails among Molly Gaston, Senior Assistant Special Counsel, Thomas Windom, Senior Assistant Special Counsel, and J.P. Cooney, Deputy Special Counsel (May 16, 2023).
15	Emails between John Keller, Principal Deputy Chief, Public Integrity Section, and Molly Gaston, Senior Assistant Special Counsel (May 17, 2023).

16	Memorandum on Limited Toll Records Subpoenas for Members of Congress, Office of the Special Counsel, U.S. Dep't of Justice (May 17, 2023).
17	Email from Jack Smith, Special Counsel, to Ray Hulser, Counselor to the Special Counsel, and J.P. Cooney, Deputy Special Counsel (May 17, 2023).
18	Letter from Patrick Davis, U.S. Department of Justice to Chairman Jordan, U.S. House of Representatives (July 14, 2026).