

September 7, 2021

One Hundred Seventeenth Congress
Select Committee to Investigate the January 6th
Attack on the United States Capitol
U.S. House of Representatives
Washington, D.C. 20515

Re: Select Committee 8kun Inquiry

Chairman Thompson and Members of the Committee:

We write in response to your letter dated August 26, 2021 asking 8kun to produce a broad range of information related to “[m]isinformation, disinformation, and malinformation related to the 2020 election.” Without doubt, it is the duty of all citizens to cooperate with congressional efforts to obtain relevant facts needed for legislation. Equally so, it is incumbent upon Congress to respect the constitutional rights of the witnesses it calls upon. To be more direct, the “Bill of Rights is applicable to investigations as to all forms of governmental action.”¹

8kun will respond to appropriate requests issued by this Committee. But as the Supreme Court reminded Congress just last year, congressional investigatory and subpoena requests are valid only when they are “related to, and in furtherance of, a legitimate task of Congress and must serve a valid legislative purpose.”² Because of constitutional and pertinence concerns, we seek to narrow and better identify the information this Committee would like produced.

1. Introductory Constitutional Principles

Congress has sporadically wrestled with contentious issues of the day by means of investigatory committees. Unfortunately, Congress also has a history of abusing that power through targeting disfavored political actors and associations.³ This is forbidden by the First Amendment and the Due Process Clause of the Fifth Amendment to the Constitution.⁴

a. New Deal and “Un-American Activity” Analogues

The D.C. Circuit Court of Appeals and Supreme Court struck down congressional investigatory attempts to chill political speech and association in *U.S. v. Rumely*. There, the New Deal Congress was

¹ *Watkins v. U.S.* (“*Watkins P*”), 354 U.S. 178, 197 (1957).

² *Trump v. Mazars USA, LLP*, 140 S.Ct. 2019, 2031 (2020).

³ *Barsky v. U.S.*, 167 F.2d 241, 263 (D.C. Cir. 1948) n.8 (“‘Hollywood Fires 10 Cited in Contempt. Film Heads Rule They Must Swear Theyre Not Reds To Be Rehired’. Washington Post, Nov. 26, 1947, . 1, col. 4.”).

⁴ See *Rumely v. U.S.*, 197 F.2d 166, 173 (D.C. Cir. 1952) (Congress “represents the people, and its power comes from the people. It is not a source or a generator of power; it is a recipient and user of power”); see also *U.S. v. Rumely*, 345 U.S. 41, 46 (1953).

irritated with the conservative agitator Dr. Edward Rumely and the Committee for Constitutional Government (“CCG”). They organized business opposition to New Deal legislation, perhaps too effectively.⁵ The House Committee on Lobbying Activity demanded the names of anyone who purchased books, pamphlets, or other literature from CCG.⁶ The D.C. Circuit found this inquiry to be outside the power of Congress.⁷

The Court concluded the House Committee could never be constitutionally empowered to generally investigate all aspects of lobbying. It could investigate particular abuses, particular people, particular records, or particular criminal endeavors. But the First Amendment would forbid Congress from examining, publicizing, or reporting the “names and addresses of purchasers of books, pamphlets and periodicals” because that would serve as a “realistic interference with the publication and sale of those writings.”⁸ The investigation into Rumely and CCG suffered from another malady: the congressional mandate to investigate was flawed. Congressional desires to examine attempts to influence, encourage, promote, or retard legislation or to influence public opinion are simply void under the First Amendment.⁹

Courts have sometimes upheld limited inquiries where authorizing resolutions are sharply focused about threats to overthrow the government. But the congressional power to investigate even serious threats to overthrow the government is not limitless. In *Watkins I*, Congress stressed the urgency of its need to root out domestic extremists and to “be informed of efforts to overthrow the Government by force and violence so that adequate legislative safeguards can be erected.”¹⁰ But the Supreme Court cautioned that broad congressional authorizations for investigations could produce disastrous results:

From this core, however, the Committee can radiate outward infinitely to any topic thought to be related in some way to armed insurrection. The outer reaches of this domain are known only by the content of ‘un-American activities.’ Remoteness of subject can be aggravated by a probe for a depth of detail even farther removed from any basis of legislative action. A third dimension is added when the investigators turn their attention to the past to collect minutiae on remote topics, on the hypothesis that the past may reflect upon the present.¹¹

⁵ Rumely would not disclose donors after being served with a congressional subpoena asking him to do so. *See* 96 CONG. REC. 13882 (Aug. 30, 1950) (statement of Rep. Buchanan); *see also* 95 CONG. REC. 6431 (May 18, 1949) (statement of Rep. Sabath) (“[M]any more millions have been spent on the part of many corporations and businesses who are endeavoring to . . . stop legislation which they are opposed to I have attacked these professional lobbyists for years. . . . This committee will recommend ‘teeth’ that can properly be enacted into law thereby eliminating these abuses”).

⁶ Particularly pernicious for the House Committee were sales of “The Road Ahead,” “Labor Monopolies and Freedom,” “Compulsory Medical Care and the Welfare State,” and the “Constitution of the United States.” *Rumely*, 197 F.2d at 169–70.

⁷ *Id.* at 173.

⁸ *Id.* at 174.

⁹ *Id.* at 173–74.

¹⁰ *See Watkins*, 354 U.S. at 204; *compare with* H.Res. 282, 117th Cong., 1st Sess. (legislative purpose to examine “facts and circumstances surrounding the domestic terrorist attack on the Capitol and targeted violence and domestic terrorism relevant to such terrorist attack”).

¹¹ *Watkins*, 354 U.S. at 204.

In short, congressional resolutions setting few boundaries on nebulous topics violate constitutional norms.¹²

b. Constitutional Limits at Hand: *Watkins II*¹³

Forcing raucous businessmen of the 1930s or unorthodox platforms of the 2020s to answer questions about the most nebulous of topics—the underlying causes of political violence—is an unworkable congressional command. Worse yet, prying into intimate ideologies and thoughts is a serious censorial chokehold. As courts have realized, the requirement that one reveal purchasers of books, pamphlets, or papers marks the start of a surveillance state. And just as courts would not embrace a surveillance state arising out of congressional investigations in the past, so too is this approach inappropriate today.

Compelling online platforms to share information about users who posted about efforts to “overturn, challenge, or otherwise interfere with the 2020 election or certification of electoral college results” chills the First Amendment rights of millions of Americans who were concerned about electoral integrity during the 2020 election. They have every bit as much a First Amendment right to peacefully gather with others, exchange ideas, and let their discontent be known by public officials as *Rumely* and CCG did.¹⁴ Demanding that platforms produce mal-, mis-, or disinformation—terms that are undefined but that are usually euphemisms for speech the powers that be disagree with—works an equally pernicious chill against political speech in America. Once government is free to demand the names of users espousing unpopular, unorthodox ideas, free speech and free press rights on the internet disappear.

Like the problematic scope of inquiry in *Watkins I*, the present inquiries at hand here in “*Watkins II*” are just as troubling. Where Congress sets out to investigate nebulous topics like “subversion and subversive propaganda,” unlimited “influencing factors” behind the January 6 attack, or how misogyny and racism might impact political violence, constitutional problems grow exponentially.¹⁵ But the scope of this authorization is beyond Congress’s power due to its invasion into protected First Amendment rights and its failure to offer pertinent queries related to its otherwise legitimate concern—the spread of real political violence. Much like *Rumely*, particular queries focusing on

¹² See *Watkins*, 354 U.S. at 214 (congressional subcommittee related to rooting out risk of Communist overthrow of government could not rest its basis for information on the need to learn about “subversion and subversive propaganda” because such a request was overbroad and indefinite); compare with H.Res. 282, 117th Cong., 1st Sess. (racism, misogyny, and Islamophobia may be drivers for domestic violence extremism; listed congressional purpose includes an examination of “influencing factors that fomented such an attack on American representative democracy while engaged in a constitutional process”).

¹³ “*Watkins II*” is the authors’ nomenclature for the impending dispute over the present congressional inquiry into Mr. Watkins and 8kun.

¹⁴ The National Park Service authorized a gathering of up to 30,000 people for the Washington, DC pro-Trump rally. Stephanie Dube Dwilson, *How Many Were at the MAGA Trump March & Protest in DC? Crowd Size Photos*, HEAVY, Jan. 6, 2021, available at <https://heavy.com/news/maga-march-trump-dc-rally-crowd-photos/>. It is currently unknown what small percentage of the peaceful rally attendees committed acts of political violence at the Capitol.

¹⁵ *U.S. v. Peck*, 154 F.Supp. 603, 608–09 (D.D.C. 1957).

particular people, particular records, or particular criminal acts may be examined. Fishing expeditions into the closely-held thoughts and beliefs of the American people rest beyond Congress's prying eyes. The controversies surrounding the 2020 election, well settled within the Beltway, are hardly settled for many Americans. Roughly one-third of Americans—almost 110 million people—believe that President Biden's 2020 victory was the result of widespread voter fraud.¹⁶ The First Amendment encourages citizens to debate and talk about issues of self-government—without fear of the government collecting and pouring over their communications. As Congress continues in this direction, some citizens will fear to espouse, and some will fear to read, messages that those in power dislike. The million-fold eyes of Argus Panoptes become a reality by congressional fiat.¹⁷ The resulting shadow the government will cast over online discussion that does not conform to the dominant party's narrative should frighten every American.

2. Past Compliance with the Committee on Homeland Security

Mr. Watkins, as a representative of 8kun (formerly 8chan) freely appeared before the House Committee on Homeland Security in September 2019 to address that committee's concerns over the proliferation of online extremist content. In doing so, 8kun produced relevant documents and Mr. Watkins answered relevant inquiries about the site's operations. We attach the submitted "Congressional Primer on 8chan" for your reference as ADDENDUM A. Notably, 8kun included more than fifty pages of voluntary interactions with law enforcement about particular criminal investigations. Where requests are focused and particular and do not run afoul of constitutional norms, 8kun is enthusiastic to aid Congress and law enforcement in their operations. We hope we may be equally helpful here.

3. Clarification of Existing Requests

It is Mr. Watkins's desire that we continue 8kun's practice of responding to lawfully issued requests and to provide as much respectful cooperation with your committee's investigation as the First Amendment allows. However, the requests contained in your form letter dated August 26, 2021 are an unworkable starting point for cooperation. For example, item 1 requests production of "All . . . data . . . regarding your platform . . ." Even if this sentence is read in conjunction with the items described in items "i." through "iv.," this request is so broad as to render compliance impossible. Other form requests, such as requests for "internal or external reviews and reports" regarding 8kun's "algorithms" seem misdirected. 8kun is a small organization and a relatively simple website. There are no "internal or external reviews" nor are there website "algorithms." This is but an entrée of errors—the requests, as written, need substantial clarification and focus for 8kun to attempt cooperation.


Please contact Mr. McDonald at your convenience to discuss your requests and determine if there is any specific information that the Committee is constitutionally empowered to seek and that Mr. Watkins is capable of producing. Alternatively, 8kun may be accessed through the internet at

¹⁶ Max Greenwood, *One-third of Americans believe Biden won because of voter fraud: poll*, THE HILL, June 21, 2021, available at <https://thehill.com/homenews/campaign/559402-one-third-of-americans-believe-biden-won-because-of-voter-fraud-poll>

¹⁷ Argus Panoptes is a subject of Greek mythology and is a many-eyed giant who kept subjects of his observation under close scrutiny. Mike Greenberg, *Argus: Hera's Hundred-Eyed Guard*, MYTHOLOGY SOURCE, available at: <https://mythologysource.com/argus-greek-giant/>

<https://8kun.top/index.html>. All of the information the Committee appears to seek is likely available in an open manner for viewing on the website. Should any substantive issues arise over related constitutional concerns, please contact Mr. Barr directly.

Respectfully,



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