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VIA ELECTRONIC MAIL

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515-6216

Re: Center for Countering Digital Hate, Inc.

Dear Chairman Jordan:

On August 17, 2023, the Center for Countering Digital Hate, Inc. (CCDH) responded to a request for information sent by the United States House of Representatives Committee on the Judiciary earlier that month. CCDH's letter provided substantive information regarding its activities as a not-for-profit, non-government organization "that seeks to disrupt the architecture of online hate and misinformation." The letter described CCDH's mission and approach: "the organization works to stop the spread of online hate and disinformation through innovative research, public campaigns and policy advocacy. As an Internal Revenue Code 501(c)(3) charitable entity, CCDH takes seriously its obligations to remain nonpolitical and nonpartisan. To that end, CCDH has collaborated with governmental officials from both Republican and Democratic administrations."¹ Further, refuting the Committee's implication that CCDH receives government funds, the letter definitively stated that "CCDH is funded entirely by private donors and has never received any grants, entered into any contracts, or received any donations from the United States Government."

Despite this substantive, good faith response, on August 30, the Committee issued a subpoena to CCDH demanding the production of materials relating to a wide range of subjects described in a nearly 500-word list. The subjects include the "Great Barrington Declaration," a 2020 *New York Post* article about "Hunter Biden's laptop," various forms of "election fraud," the

¹ Letter from Andrew D. Herman to Hon. Jim Jordan, Chair H. Comm. on the Judic. (Aug. 17, 2023) (internal quotation marks omitted).

treatment of “President Trump and Members of Congress” on social media, “Critical Race Theory,” “Ayatollah Khamenei,” and many, many other items.²

“Schedule A” to the subpoena contains six specific requests for “documents and communications” dating from 2020, relating to the subjects described above, in the following categories:

- 1) Between or among CCDH and the Executive Branch of the United States Government;
- 2) Referring or relating to any interaction between CCDH and the Executive Branch;
- 3) Between or among CCDH and “any company”;
- 4) Disclosing “employees of CCDH who communicated with, or had or have the responsibility of communicating with, the Executive Branch”;
- 5) Disclosing “employees of CCDH who communicated with, or had or have the responsibility of communicating with, any company.”

Finally, despite CCDH’s unequivocal response in its August 17 letter to the Committee regarding the lack of government funding, the subpoena also called for “[d]ocuments sufficient to show all grants, contracts, or any funds received from the United States Government” dating from 2015.³

In an apparent response to CCDH’s stated concerns regarding the “legislative purpose” of this congressional inquiry, the Committee’s August 30 letter asserts that its investigation seeks to understand “how the Executive Branch coerced and colluded with companies and other intermediaries to censor speech” and “the extent to which content moderation occurred as a result of the government’s influence.” As such, the letter asserts, it “is necessary for Congress to gauge the extent to which the federal government or one of its proxies worked with or relied upon CCDH to censor speech.” The end goal of these inquiries, according to the letter, is “the possible enactment of new statutory limits on the Executive Branch’s ability to work with social media platforms and other companies to restrict the circulation of content and deplatform users.”

Statements subsequently published by the Committee and several of its members which attack CCDH, mischaracterize its activities, or threaten it with contempt undermine the Committee’s assertions regarding legislative purpose. For example, on the same day that it issued the subpoena to CCDH, the Committee’s official webpage republished a Breitbart.com article which erroneously claims that CCDH is a “British nonprofit” funded by a “pro-China investment entity.”⁴ The following day, Committee Majority Member Jeff Van Drew told Newsmax that “[t]he Center for Countering Digital Hate should really be called the Center for Countering Freedom of Speech in the United States of America.”⁵ He also indicated that the Committee’s inquiry was focused on punishing CCDH: “We have to call the whole people in contempt of Congress because if we didn’t, we wouldn’t get the information. If you’re doing the right thing, if

² Letter from Hon Jim Jordan, Chair H. Comm. on the Judic. to Andrew D. Herman, and attached subpoena to Imran Ahmed, Chief Executive Officer, CCDH, Inc. (Aug. 30, 2023).

³ Naturally, CCDH does not possess documents responsive to this last request on Schedule A to the subpoena.

⁴ <https://judiciary.house.gov/media/in-the-news/jim-jordan-subpoenas-center-countering-digital-hate-org-behind-bidens>.

⁵ <https://www.newsmax.com/politics/jeff-van-drew-watchdog-jim-jordan/2023/08/31/id/1132796/>.

you're doing what you're supposed to be doing, it should be no problem. This has nothing to do with homeland security or any national security. This information should be released." On September 5, you published a thread on your X—formerly Twitter—account, @Jim_Jordan, referencing "internal [Facebook] docs recently obtained by [the Judiciary Committee and the Select Subcommittee on the Weaponization of Government]," which you also chair.⁶ Citing CCDH's research about online vaccine disinformation, that thread alleged that "Foreign activists at the CCDH feed false info to the Biden White House"⁷ and claimed that "left-wing CCDH [has] attacked" a number of listed entities, including Breitbart News and Newsmax.⁸

As we first addressed in our August 17 letter, statements from the Committee and its Members attacking CCDH and demanding the public release of information undermine any claim by the Committee that it has undertaken this inquiry for a "valid legislative purpose."⁹ Congressional investigations "conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible."¹⁰ Similarly, the Supreme Court has definitively stated that a campaign for public information—while potentially valuable in broad terms—is not by itself a part of the legislative process. Thus, when Congress asserts that it is "the duty of Members to tell the public about their activities . . . the transmittal of such information by individual Members in order to inform the public and other Members is not part of the legislative function or the deliberations that make up the legislative process."¹¹ Nor can a congressional inquiry be authorized to "collect minutiae on remote topics, on the hypothesis that the past may reflect upon the present."¹²

The recent public statements made by the Committee and several of its Members, including those described above, reinforce CCDH's deep-seated concerns regarding the validity of this legislative inquiry. Nonetheless, CCDH remains committed to assisting the Committee in its understanding of CCDH's role in combatting online hate and disinformation. In furtherance of this goal, CCDH today is producing certain materials in its possession, custody, or control responsive to the Committee's August 30, 2023 subpoena.¹³ Specifically, CCDH has produced emails and attachments that are both responsive to items one, two, or three of Schedule A to the subpoena and address the subjects defined by the Committee as "content" in Section 11 of the "Definitions" applicable to the subpoena. With respect to item three, relating to CCDH's communication with "any company," the Committee has failed to provide a definition for "company." As such, in making this production CCDH has relied on the more specific language in the Committee's August 3 letter requesting materials between CCDH and "social media companies."¹⁴

⁶ Rep. Jim Jordan (@Jim_Jordan), TWITTER (Sept. 5, 2023, 6:17 PM).
https://twitter.com/Jim_Jordan/status/1699184930331267539?s=20.

⁷ *Id.*, https://x.com/Jim_Jordan/status/1699184972198760480?s=20.

⁸ *Id.*, https://x.com/Jim_Jordan/status/1699184976825037208?s=20.

⁹ *Trump v. Mazars*, 140 S. Ct. 2019, 2031 (2020) ("a congressional subpoena is valid only if it is 'related to, and in furtherance of, a legitimate task of the Congress'") (quoting *Watkins v. United States*, 354 U.S. 178, 187 (1957)).

¹⁰ *Watkins*, 354 U.S. at 200.

¹¹ *Hutchinson v. Proxmire*, 443 U.S. 111, 113 (1979).

¹² *Watkins*, 354 U.S. at 187.

¹³ The 505 pages of documents produced by CCDH are Bates numbered CCDH, Inc. 00001 to CCDH, Inc. 00505.

¹⁴ Letter from Hon Jim Jordan, Chair H. Comm. on the Judic. to Mr. Imran Ahmed, Chief Executive Officer, CCDH, Inc. (Aug. 3, 2023). Without this limitation, the request could include CCDH's communications with journalists,

Regarding requests four and five, however, CCDH declines to provide the information to the extent that this material is not disclosed by the documents produced pursuant to requests one through three. The subpoena demands that CCDH produce “[d]ocuments sufficient to show the employees of CCDH who communicated with, or had or have the responsibility of communicating with the Executive Branch of the United States Government” (request four) and similar documents relating to CCDH employees who communicated with “any company” (request five). While some of this information is disclosed in CCDH’s responses to requests one through three, that material concerns CCDH personnel who have assumed a public-facing role. CCDH declines, however, to provide any additional material responsive to requests four and five which could disclose private aspects of its work. The Committee’s demands clearly violate CCDH’s First Amendment rights.

In general, Congress may not compel those engaged in activity protected by the First Amendment to produce records or any other information about such activities. Rather, the Supreme Court has held that “compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment.”¹⁵ “[B]efore proceeding in such a manner as will substantially intrude upon and severely curtail or inhibit constitutionally protected activities or seriously interfere with similarly protected associational rights” a congressional committee must establish a “foundation” based on “facts and reason” that demonstrates that disclosure is necessary for a “compelling . . . governmental interest.”¹⁶ Moreover, the Supreme Court has mandated that it “is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas.”¹⁷

Courts applying the high degree of scrutiny mandated by the Supreme Court in *NAACP v. Alabama*¹⁸ have consistently held that “absent a compelling government interest, an organization [can] not constitutionally be compelled to identify the names of its members, agents, contributors, or recipients of contributions if it could be demonstrated that such disclosure would subject those identified to harassment or retaliation by virtue of their association.”¹⁹

CCDH’s nonpolitical and nonpartisan mission to stop the spread of online hate and misinformation without fear or favor leaves it particularly vulnerable to government attempts to pry into private aspects of its work, or for elements of the government or public to use information disclosed by a government inquiry to subject CCDH and its associates to harassment or retaliation. As such, the First Amendment protects CCDH from such intrusion. This vital

partner groups, and professional service providers. As the precedent cited in this letter demonstrates, such a request would transgress the bounds of any valid legislative investigation and violate CCDH’s First Amendment rights.

¹⁵ *Buckley v. Valeo*, 424 U.S. 1, 64 (1976).

¹⁶ *Gibson v. Florida Legis. Invest. Comm’n*, 372 U.S. 539, 557 & n.7 (1963).

¹⁷ *Sweezy v. New Hampshire*, 354 U.S. 234, 245 (1957).

¹⁸ 357 U.S. 449, 460-61 (1958) (“[I]t is immaterial whether the beliefs sought to be advanced by [the] association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.”).

¹⁹ *United States v. Garde*, 673 F. Supp. 604, 606 (D.D.C. 1987) (citing *NAACP v. Alabama*, 357 U.S. 449 (1958) and *NAACP v. Button*, 371 U.S. 415 (1963)).

September 29, 2023

protection “reflects our ‘profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.’”²⁰ That shield encompasses all aspects and stages of a debate, from the “‘abstract discussion’ . . . of political policy generally [to] advocacy of the passage or defeat of legislation,” to “the right to engage in ‘vigorous advocacy.’”²¹

Here, public statements made by the Committee and its Members attacking and mischaracterizing CCDH and its activities make the subpoena requests extremely troublesome. Absent a compelling and clearly articulated justification from the Committee—rather than the hostile statements made by the Committee and its Members—the protection afforded to CCDH by the First Amendment bars precisely this type of intrusion. While CCDH is producing pertinent materials that relate directly to the Committee’s specific requests, the Committee has failed to provide a clear and compelling rationale justifying the wholesale disclosure of activities by CCDH employees. Thus, pursuant to its First Amendment rights, CCDH has declined to produce the records requested by the subpoena that relate to its employees.

Finally, even without these weighty constitutional concerns, the Committee cannot establish that the information sought regarding the activities of CCDH employees is “pertinent,” even to the Committee’s purported rationale for its investigation.²² As discussed above, Congress has “no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress.”²³

As with our previous response, we hope that the above information and accompanying document production assists the Committee in its understanding of CCDH’s role in combatting online hate and disinformation. This letter also serves as written certification that CCDH has completed a diligent search of the documents in its possession, custody, or control; that responsive documents have not been destroyed, modified, removed, or otherwise made inaccessible to the Committee since the date of the subpoena; and that subject to the limitations CCDH has applied to the production described above all responsive documents identified during the search have been produced to the Committee. In providing this response, CCDH reserves all constitutional and other legal rights which may apply to the Committee’s inquiry.

Please contact me if you have any questions.

Very truly yours,



Andrew D. Herman

cc: The Honorable Jerrold L. Nadler, Ranking Member

²⁰ *Buckley*, 424 U.S. at 14 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

²¹ *Id.*, 424 U.S. at 48 (quoting *New York Times Co.*, 376 U.S. at 269).

²² 2 U.S.C. § 192. The Committee has the burden of demonstrating pertinency with the degree “of explicitness and clarity that the Due Process Clause requires.” *Watkins*, 354 U.S. at 209.

²³ *Watkins*, 354 U.S. at 187.