

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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August 22, 2021

Mr. Douglas Logan
Chief Executive Officer and Principal Consultant
Cyber Ninjas, Inc.

c/o Jack D. Wilenchik, Esq.
2810 North Third Street
Phoenix, AZ 85004

Dear Mr. Logan:

This letter follows up on the Committee's July 14, 2021, request to Cyber Ninjas for documents related to the company's participation in an "audit" of ballots cast in Maricopa County, Arizona, in the 2020 election. Cyber Ninjas has refused to comply with the Committee's requests and instead raised a litany of unjustified objections in an apparent effort to avoid producing documents that the Committee needs to investigate the company's conduct. We write today to advise you to end your obstruction immediately and comply with the Committee's requests.

Our July 14, 2021, letter detailed the Committee's concerns about your company's role in the highly unusual and dubious audit taking place in Maricopa County. Our concerns stem from Cyber Ninjas' apparent lack of experience in conducting election-related audits, constant reports that the company engaged in sloppy and insecure audit practices that compromised the integrity of ballots and voting equipment, and evidence that you and several individuals funding the audit have not displayed impartiality, but rather sought to promote the "big lie" of debunked election fraud allegations in the November 2020 presidential election. In light of these serious concerns, the Committee requested documents and communications related to Cyber Ninjas' audit procedures, funding sources, and related issues.¹

These documents were due on July 28, 2021. The Committee accommodated Cyber Ninjas' request to extend the deadline until August 9, 2021. Rather than producing the requested documents, Cyber Ninjas sent a letter objecting to all nine of the Committee's requests. Cyber Ninjas also sent 336 pages of material that was already publicly available, as noted in the

¹ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, to Douglas Logan (July 14, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-07-14.CBM%20JR%20to%20Logan-Cyber%20Ninjas%20re%20Arizona%20Election%20Audit.pdf>).

company's response letter, and that failed to address the Committee's serious concerns.² More than half of the production consists of public legal filings.

Cyber Ninjas failed to produce key documents responsive to the Committee's requests, including the company's communications with former President Trump, his allies and advisors, and the partisan dark money groups that financed this audit. Cyber Ninjas also declined to produce communications related to the company's engagement by the Arizona State Senate and the various conspiracy theories that reportedly have been considered by you and your company in connection with the 2020 election.

The Committee needs those and other documents we requested in order to determine whether any individuals or entities have exerted inappropriate influence over the audit and to determine the extent to which partisanship and conspiracy theories compromised the credibility of this audit, which are key issues in the Committee's assessment of the need for various federal legislative reforms to protect the constitutionally guaranteed right to vote. If the company has conducted this audit "in a transparent and professional manner" as Cyber Ninjas has claimed,³ then you should produce these materials to the Committee without further obfuscation or delay.

Cyber Ninjas' letter to the Committee raised a host of objections, none of which provides a legitimate justification to obstruct the Committee's inquiry.

The company reflexively claims that all nine requests from the Committee are "vague" and either "poorly-defined" or "overbroad" and "overburdensome."⁴ On the contrary, the Committee's nine-page letter sent on July 14 explains in detail the reasons we are seeking these documents, specifically describes the categories of documents that are responsive to our requests, and encloses a detailed set of instructions and definitions to aid your company in making a complete and timely production of the materials Congress is requesting.

Cyber Ninjas also baselessly asserts that the Committee's requests would implicate "attorney-client privilege, legislative privilege, and objections or privileges arising under the Tenth Amendment with respect to federal Congressional interference in a state legislative matter." The letter further claims that the Committee's requests are "outside of the legitimate scope of a Congressional inquiry" and intended "to suppress and interfere with First-Amendment protected activity."⁵

These objections are based on a fundamental misunderstanding of Congress's authorities under the Constitution to regulate federal elections and protect Americans' right to vote—and to conduct investigations related to these topics. Article I grants Congress the power to pass laws

² Letter from Jack D. Wilenchik, Esq., to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (Aug. 9, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/8-9-21%20Cyber%20Ninjas%20Letter%20to%20Committee%20on%20Oversight%20and%20Reform.pdf>).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

regulating the time, place, and manner of federal elections.⁶ The Fifteenth Amendment guarantees the right to vote and empowers Congress to legislate to protect that right.⁷ Congress has for many years enacted legislation to safeguard the right to vote and to ensure that elections are safe, secure, and administered fairly and impartially.⁸

The Supreme Court has held that Congress's power to obtain information is "broad" and "indispensable"⁹ and that its investigatory authority "is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution."¹⁰ These authorities empower Congress to investigate conduct that may infringe on the fundamental right to vote or affect Congress's regulation of federal elections, whether by private companies or state governments. The Committee has repeatedly examined state administration of voting and elections, under both Democratic and Republican leadership.¹¹

Your privilege claims and objections are also patently invalid. The Committee—under chairs of both parties—does not recognize common law privileges such as attorney-client privilege as a valid reason to withhold documents from Congress.¹² As a private entity, Cyber Ninjas cannot legitimately invoke claims of "legislative privilege" or the Tenth Amendment to

⁶ U.S. Const. art. I, § 4 ("The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations.").

⁷ U.S. Const. amend. XV ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The Congress shall have power to enforce this article by appropriate legislation.").

⁸ See, e.g., Help America Vote Act of 2002, Pub. L. No. 107-252; National Voter Registration Act of 1993, Pub. L. No. 103-31; Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. No. 99-410 (1986).

⁹ *Watkins v. United States*, 354 U.S. 178 (1957).

¹⁰ *Barenblatt v. United States*, 360 U.S. 109, 111 (1959).

¹¹ See, e.g., Committee on Oversight and Reform, *Hearing on Voter Suppression in Minority Communities: Learning from the Past to Protect Our Future*, 116th Cong. (Feb. 26, 2020) (online at <https://docs.house.gov/meetings/GO/GO00/20200226/110563/HHRG-116-GO00-Transcript-20200226.pdf>) (examining the results of the Committee's investigation of voter suppression allegations in Georgia, Texas, and Kansas); Committee on Oversight and Government Reform, *Hearing on Cyber-securing the Vote: Ensuring the Integrity of the U.S. Election Systems*, 115th Cong. (July 24, 2018) (online at www.govinfo.gov/content/pkg/CHRG-115hhrg33089/pdf/CHRG-115hhrg33089.pdf); Subcommittee on Information Technology and Subcommittee on Intergovernmental Affairs, Committee on Oversight and Government Reform, *Joint Hearing on Cybersecurity of Voting Machines*, 115th Cong. (Nov. 29, 2017) (online at www.govinfo.gov/content/pkg/CHRG-115hhrg30295/pdf/CHRG-115hhrg30295.pdf); Committee on Government Operations, *Hearing on Mismanagement and Voting Irregularities in the November 3, 1992, General Election* (Nov. 23, 1992) (online at [https://congressional.proquest.com/congressional/result/pqpresultpage.gispdfhitspanel.pdf/link/\\$2fapp-bin\\$2fgis-hearing\\$2f6\\$2f7\\$2fc\\$2fd\\$2fhr-1992-oph-0064_from_1_to_187.pdf/entitlementkeys=1234%7Capp-gis%7Chearing%7Chrg-1992-oph-0064](https://congressional.proquest.com/congressional/result/pqpresultpage.gispdfhitspanel.pdf/link/$2fapp-bin$2fgis-hearing$2f6$2f7$2fc$2fd$2fhr-1992-oph-0064_from_1_to_187.pdf/entitlementkeys=1234%7Capp-gis%7Chearing%7Chrg-1992-oph-0064)).

¹² See, e.g., Congressional Research Service, *Congressional Oversight Manual* (Mar. 21, 2021) (online at <https://crsreports.congress.gov/product/pdf/RL/RL30240>) (explaining that "it has generally been the congressional view that investigative committees are not bound by court-created common-law privileges"); H. Rep. No. 116-125 at 31 (2019) (concluding that "common law privileges ... are not valid reasons to withhold documents subject to a valid subpoena from Congress, which derives its investigative authority from the Constitution"); H. Rep. No. 105-792 at 11 (1998) ("The historic position of the House of Representatives is that committees of Congress are not bound to recognize any non-Constitutional privilege, such as the attorney-client privilege.").

withhold information. Such claims are in any case not proper reasons to withhold information from Congress, which routinely obtains documents related to state governments.¹³ Given that the Committee's requests are closely tied to Congress's compelling interest in safeguarding the constitutional right to vote and regulating elections in the public interest, these requests clearly further a "valid legislative purpose" and are not barred by the First Amendment.¹⁴

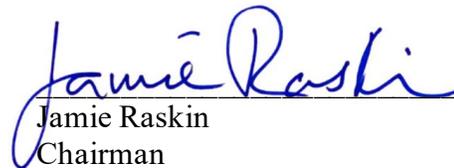
This investigation is of surpassing importance to the American people. Consistent with Congress's constitutional authorities, the Committee is investigating the extent to which your company's actions have undermined the integrity of federal elections and interfered with Americans' constitutional right to cast their ballots freely and to have their votes counted without partisan interference. The documents and communications requested in our July 14, 2021, letter are vital to the Committee's assessment of the need for federal legislative reforms to ensure that the right to vote is protected before, during, and after an election, and that third parties do not interfere with this right.

As a further discretionary accommodation to Cyber Ninjas, the Committee will grant one additional extension, until August 27, 2021, to produce responsive documents voluntarily. If your company, which purports to be acting in a lawful manner pursuing the public interest, continues to obstruct the Committee's investigation, the Committee will be forced to consider other steps to obtain compliance.

Sincerely,



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Jamie Raskin
Chairman
Subcommittee on Civil Rights and
Civil Liberties

cc: The Honorable James Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Pete Sessions, Ranking Member
Subcommittee on Civil Rights and Civil Liberties

¹³ See, e.g., Letter from Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Governor Rick Snyder, State of Michigan (Feb. 26, 2016) (online at [republicans-oversight.house.gov/wp-content/uploads/2016/02/2016-02-26-JC-EEC-to-Snyder-Michigan-Gov.-doc-req.-due-3-11.pdf](https://www.republicans-oversight.house.gov/wp-content/uploads/2016/02/2016-02-26-JC-EEC-to-Snyder-Michigan-Gov.-doc-req.-due-3-11.pdf)) (requesting documents on the Flint water crisis); Letters from Chairman Darrell Issa, Committee on Oversight and Government Reform, Chairman Jim Jordan, Subcommittee on Economic Growth, Job Creation and Regulatory Affairs, and Chairman James Lankford, Subcommittee on Energy Policy, Health Care and Entitlements, to ten governors and the Mayor of the District of Columbia (Mar. 25, 2014) (online at [raskin.house.gov/sites/raskin.house.gov/files/2014-03-25.Issa%20Jordan%20Lankford%20to%2011%20Governors%20re%20state%20exchanges%20%28003%29.pdf](https://www.raskin.house.gov/sites/raskin.house.gov/files/2014-03-25.Issa%20Jordan%20Lankford%20to%2011%20Governors%20re%20state%20exchanges%20%28003%29.pdf)) (requesting documents on Affordable Care Act exchanges).

¹⁴ See *Barenblatt v. United States*, 360 U.S. 109, 127 (1959).