



August 13, 2020

The Hon. James Lankford, Chairman
The Hon. Christopher A. Coons, Vice Chairman
Senate Select Committee on Ethics
220 Hart Office Building
Washington, DC 20510

Re: Request for Investigation of the Honorable Ron Johnson

Dear Senators Lankford and Coons:

American Oversight¹ and the Center for Media and Democracy² hereby request that the Senate Select Committee on Ethics (the “Ethics Committee”) initiate an investigation into apparent violations of the Senate Ethics Code by Senator Ron Johnson in his role as Chairman of the Homeland Security and Governmental Affairs Committee (“HSGAC”).

The public record is now replete with evidence that the Committee “investigation” that Senator Johnson has initiated into former Vice President Joseph R. Biden’s conduct of United States policy towards Ukraine is an abuse of his official position and a misuse of official resources to launder and promote fully discredited political attacks on the presumptive Democratic presidential nominee in the months and weeks before the general election. The seriousness and unprecedented nature of this abuse is underscored by Senator Johnson’s coordination of this effort with foreign state actors who have themselves declared their intent to harm Vice President Biden’s candidacy. Their intent has been confirmed by the United States intelligence community as an effort to influence the outcome of the election.

The Ethics Committee must investigate Senator Johnson’s ongoing effort to use his official Senate position to improperly engage in partisan political activity and to accept and legitimize foreign efforts to influence an American election. President Trump infamously

¹ American Oversight is a nonpartisan nonprofit organization dedicated to exposing and fighting corruption in government.

² The Center for Media and Democracy is a nonpartisan, nonprofit watchdog dedicated to exposing the undue influence of special interests on our democracy.

declared that he would “listen” if foreign actors offered him “dirt” on his political opponents.³ Senate rules prohibit Senator Johnson from following the president’s lead.

I. Factual Background

A. The Investigation is Pretextual and Purely Political

Senator Johnson has not publicly described the scope of the investigation he is undertaking (the “Investigation”). However, his purpose can be discerned from two letters that Senator Johnson co-wrote with Senator Chuck Grassley, Chairman of the Finance Committee, to the Department of State requesting documents and testimony, as well as a convoluted defense of his various investigations set forth in an open letter on August 10, 2020.

In the first letter, sent on November 6, 2019, while the House impeachment inquiry was ongoing, Senators Johnson and Grassley described their objective as an effort “[t]o better understand what actions, if any, the Obama administration took to ensure that policy decisions relating to Ukraine and Burisma were not improperly influenced by the employment and financial interests of family members.”⁴

In the second letter, dated April 30, 2020 (the “April 30 Letter”), Senators Johnson and Grassley said that their respective committees were “continu[ing] to examine potential conflicts of interest relating to the Obama administration’s policy decisions with respect to Ukraine and Burisma Holdings.”⁵ The April 30 Letter also expanded the Investigation to include another subject unrelated to Vice President Biden’s work in Ukraine: “the extent to which representatives of Burisma used individuals with close personal connections to high-level officials within the Obama administration to gain access to and potentially influence U.S. government agencies.”⁶

In his more recent third, open letter, Johnson described his Ukraine investigation as relating to two allegations that have been discredited by the United States intelligence community:

The investigation by my committee of allegations of conflicts of interest within the Obama administration related to Ukraine policy and of allegations of corruption within the Obama administration affecting the 2016 election is focused

³ Kevin Liptak, “Trump says he would accept dirt on political rivals from foreign governments,” CNN (June 13, 2019), <https://www.cnn.com/2019/06/12/politics/donald-trump-abc-political-dirt-foreign-country-rivals/index.html>.

⁴ Ltr. to Hon. Michael R. Pompeo, Secretary of State, at 3 (Nov. 6, 2019), available at <https://www.grassley.senate.gov/sites/default/files/documents/2019-11-06%20RHJ%20CEG%20to%20State%20-%20Burisma%20Inquiry.pdf>.

⁵ Ltr. to Hon. Michael R. Pompeo, Secretary of State, at 1 (Apr. 30, 2020), available at [https://www.hsgac.senate.gov/imo/media/doc/2020-04-30%20RHJ%20CEG%20to%20State%20\(Ukraine%20Follow%20Up\).pdf](https://www.hsgac.senate.gov/imo/media/doc/2020-04-30%20RHJ%20CEG%20to%20State%20(Ukraine%20Follow%20Up).pdf)

⁶ *Id.*

on documents and officials from U.S. government agencies and a U.S. Democrat-linked lobbying firm.⁷

It is impossible to miss Senator Johnson’s intent. The discredited concerns around Burisma and potential corruption in Ukraine more than four years ago are unique in only one respect: a connection—albeit attenuated and unsubstantiated—to Vice President Biden, via his son Hunter Biden, and the presidential campaign of 2020.

B. The Investigation Has Already Been Discredited

To the extent the Investigation relates to allegations against Vice President Biden, the allegations already have been exposed as wholly false.

The sworn testimony of Administration officials most knowledgeable about policy toward Ukraine and Vice President Biden’s role in it uniformly refuted these claims. In fact, nine witnesses with expertise in policy related to Ukraine testified that they were unaware of any evidence to support an allegation of improper conduct by Vice President Biden; to the contrary, they confirmed that Vice President Biden executed official U.S. policy—one that was uniformly shared by international partners. The president’s legal team offered no evidence to the contrary.⁸ Numerous media outlets have also determined that there is no basis in fact to support any allegations of wrongdoing by Vice President Biden in connection with Ukraine.⁹

In fact, Senator Johnson well knows that the allegations against Vice President Biden are false because Senator Johnson *himself* supported the very conduct that is alleged to have been corrupt—the conditioning of international aid on the dismissal of Viktor Shokin, then Ukraine’s prosecutor general, who had been actively blocking anti-corruption reform efforts in Ukraine.¹⁰ In February 2016, Senator Johnson, a member of the Senate’s Ukraine caucus, signed a letter to then-Ukrainian President Petro Poroshenko “urging” him “to press ahead with urgent reforms to

⁷ Open Letter from Sen. Johnson, Aug. 10, 2020, available at <https://www.politico.com/f/?id=00000173-d624-dbf9a97f-dfff64110000>; see also Ryan Goodman & Asha Rangappa, “How Sen. Ron Johnson’s Investigation Became an Enabler of Russian Disinformation: Part I,” Just Security, Aug. 11, 2020, <https://www.justsecurity.org/71947/how-sen-ron-johnsons-investigation-became-an-enabler-of-russian-disinformation-part-i/> (hereinafter “Goodman/Rangappa”) (analyzing myriad flaws and misstatements in Johnson’s August 10, 2020 letter).

⁸ See Philip Bump, “Trump’s impeachment defense offers two weak — and contradictory — arguments for investigating Biden,” *Wash. Post* (Jan. 30, 2020), <https://www.washingtonpost.com/politics/2020/01/30/trumps-impeachment-defense-offers-two-weak-contradictory-arguments-investigating-biden/>.

⁹ E.g., Glenn Kessler, “A Quick Guide to Trump’s False Claims About Ukraine and the Bidens,” *Wash. Post* (Sept. 27, 2019), <https://www.washingtonpost.com/politics/2019/09/27/quick-guide-trumps-false-claims-about-ukraine-bidens/>; Daniel Dale, “A Readers’ Guide to Fact-Checking Trump’s Ukraine Controversy,” *CNN* (Oct. 7, 2019), <https://www.cnn.com/2019/09/28/politics/fact-checking-trump-ukraine-scandal-bidens/index.html>.

¹⁰ Impeachment Depositions Before the H. Permanent Select Comm. on Intelligence, H. Comm. on Oversight, and H. Comm. on Foreign Affairs (Oct. 15, 2019) (deposition of George Kent, p. 336) (“Prosecutor General Shokin was an impediment to the reform of the prosecutorial system, and he had directly undermined in repeated fashion U.S. efforts and U.S. assistance programs.”); Impeachment Hearings (Nov. 21, 2019) (testimony of David Holmes, pp. 63-64).

the Prosecutor General’s office and judiciary.”¹¹ And just last October, Senator Johnson reaffirmed his support for the dismissal, saying, “The whole world... felt that this, that Shokin wasn’t doing a [good] enough job. So we were saying hey you’ve ... got to rid yourself of corruption.”¹²

Therefore, the official *congressional* record is clear that Vice President Biden was not “influenced in any way by financial or personal motives in carrying out his duties as Vice President.”¹³

Perhaps recognizing the factual failings of an Investigation into the conduct of Vice President Biden, Senator Johnson has more recently focused his investigation on Burisma, the Ukraine natural gas company, and Hunter Biden’s role on the board of that company. Yet this new allegation only underscores the improper purpose of this inquiry. The record established in this matter shows there was no ongoing investigation by Shokin’s office—or any Ukrainian investigator—into Burisma when Shokin was dismissed.¹⁴ Shokin’s removal and replacement with a new prosecutor general therefore could have only *increased* the chance that Ukraine would pursue corruption investigations, including potentially against a company like Burisma or its corrupt founder.¹⁵

Given that it has been established that Vice President Biden’s conduct was based solely on official United States policy and supported by our allies (and by Senator Johnson), it is clear that the added focus on the private business dealings of the Vice President’s son is no more than another attempt, after the collapse of the charges against Vice President Biden, to fabricate information for use in the upcoming presidential election—now less than three months away.

With its factual and logical underpinnings stripped, the legitimacy of the Investigation as anything more than a targeted partisan political effort collapses. No matter how broad the Senate investigative power is, it does not encompass such conduct. As the Supreme Court has held, Congress may only investigate in furtherance of its constitutional duties; it is not empowered to

¹¹ Office of Senator Rob Portman, *Portman, Durbin, Shaheen, and Senate Ukraine Caucus Reaffirm Commitment to Help Ukraine Take on Corruption* (Feb. 12, 2016),

<https://www.portman.senate.gov/newsroom/press-releases/portman-durbin-shaheen-and-senate-ukraine-caucus-reaffirm-commitment-help>.

¹² Zack Budryk, “GOP Senator Says He Doesn’t Remember Signing 2016 Letter Urging ‘Reform’ of Ukraine Prosecutor’s Office,” *The Hill* (Oct. 3, 2020), <https://thehill.com/homenews/senate/464302-gop-senator-says-he-doesnt-remember-signing-2016-letter-urging-reform-of>.

¹³ Impeachment Hearings (Nov. 19, 2019) (testimony of Kurt Volker, p. 20); *id.* (“I have known Vice President Biden for 24 years. He is an honorable man and I hold him in the highest regard.”).

¹⁴ Impeachment Hearings (Nov. 21, 2019) (testimony of David Holmes, p. 64) (“My understanding is the Prosecutor General at the time, Shokin, was not at that time pursuing investigations of Burisma or the Bidens.”); Impeachment Depositions (Nov. 15, 2019) (deposition of David Holmes, pp. 36-37) (understanding allegations that the United States had pressured Shokin to close an investigation into the founder of Burisma to be false). Johnson’s August 10 letter refers to a British investigation into the founder of Burisma for conduct when he was a government official, not a Ukrainian investigation.

¹⁵ Impeachment Hearings (Nov. 15, 2019) (testimony of Marie Yovanovitch, p. 50); Impeachment Hearings (Nov. 21, 2019) (testimony of David Holmes, p. 64).

use its investigative power for other purposes, much less for “expos[ure] for the sake of exposure.”¹⁶ Congress has no “general’ power to inquire into private affairs and compel disclosures.” *McGrain v. Daugherty*, 273 U.S. 135, 179 (1927). The Court emphasized just weeks ago, congressional “[i]nvestigations conducted solely for the personal aggrandizement of the investigators or to ‘punish’ those investigated are indefensible.”¹⁷

As described below, the only purported “evidence” that runs counter to the official record is offered by shady foreign individuals with declared partisan ends and apparent ties to Russia.

C. Senator Johnson’s Political Abuse of his Official Position Involves Knowing Facilitation of Illegal Foreign Interference in the Upcoming Election

The renewal of these political attacks has also provided a vehicle through which interested foreign parties, including malign foreign actors, can funnel disinformation into our political processes and public discourse in order to exert improper and illegal influence over the American presidential election.

Several current and former Ukrainian officials with known ties to Russia have overtly declared their intentions to assist President Trump’s reelection effort.¹⁸ Remarkably, notwithstanding their publicly stated intention to interfere in the presidential election, Senator Johnson has reportedly met or communicated with at least two of these foreign persons.¹⁹ Moreover, Senator Johnson appears to be using materials provided—or made publicly available—by them as part of the Investigation. Although he has recently declared that he has not directly received documents from these foreign actors, he has not disavowed his reliance on information made public by them.²⁰ Notably, in a recent letter to Democratic congressional leadership, Johnson acknowledged that he has met with a foreign individual about the Ukraine investigation.²¹

¹⁶ *United States v. Watkins*, 354 U.S. 178, 200 (1957).

¹⁷ *Trump v. Mazars USA, LLP*, 591 U.S. ____ (2020), slip op. at 12 (quoting with approval *Watkins*, 354 U.S. at 187).

¹⁸ Christopher Miller, “Rudy Giuliani’s Crew is Still Trying – and Failing – to Smear Joe Biden,” *Buzzfeed News* (July 24, 2020), <https://www.buzzfeednews.com/article/christopherm51/rudy-giuliani-ukraine-joe-biden-smear-efforts>. Several of these individuals previously peddled false Russian propaganda that Ukraine interfered in the 2016 election, which has been rejected by all facets of the United States government.

¹⁹ *Id.*

²⁰ In his August 10 open letter, Senator Johnson cites a January 2017 *Politico* article as the source of his allegations. That article, which relied on suspect Ukrainian sources, subsequently has been discredited. *See* Goodman/Rangappa, *supra* note 7.

²¹ Sen. Johnson & Sen. Grassley Letter to Sen. Schumer, Speaker Pelosi, Sen. Warner and Rep. Schiff, Aug. 4, 2020, <https://www.hsgac.senate.gov/media/majority-media/johnson-grassley-call-for-pelosi-schumer-schiff-warner-to-stop-playing-political-games-with-election-security-intelligence>.

That Ukrainian official is likely Andriy Telizhenko, who has publicly declared his intention to push damaging attacks against Vice President Biden via congressional Republicans.²² Among other things, it has been reported that:

- Telizhenko met with Senator Johnson and HSGAC staff in July of 2019 to discuss the false Biden allegations.²³
- In September 2019, Senator Johnson wrote a letter to Attorney General William Barr referencing Telizhenko’s allegations.²⁴
- Earlier this year, Senator Johnson expressed an intention to request documents, and potentially testimony, from Telizhenko.²⁵ But, after an FBI counterintelligence briefing related to foreign efforts to influence our election, several senators urged Senator Johnson to abandon those efforts because of concerns regarding the credibility and intent of Telizhenko.²⁶
- In May, Telizhenko released recordings of alleged conversations between Vice President Biden and former Ukrainian President Poroshenko.

Another Ukrainian official with Russian ties is Andriy Derkach, a member of the Ukrainian parliament who was formerly aligned with the pro-Russia Party of Regions and who graduated from the KGB academy in Russia. On August 7, 2020, in a statement from NCSC William Evanina on election threats, the Office of the Director of National Intelligence (ODNI) specifically confirmed that “pro-Russia Ukrainian parliamentarian Andriy Derkach is spreading claims about corruption—including through publicizing leaked phone calls—to undermine former Vice President Biden’s candidacy and the Democratic Party.”²⁷

In addition, public reporting, including Derkach’s own website, indicates that:

²² *Id.*

²³ Elise Viebeck and Dalton Bennett, “Sen. Johnson, ally of Trump and Ukraine, surfaces in crucial episodes in the saga,” *Wash. Post* (October 28, 2019), https://www.washingtonpost.com/politics/sen-johnson-ally-of-trump-and-ukraine-surfaces-in-crucial-episodes-in-the-saga/2019/10/28/40b9e44c-f684-11e9-8cf0-4cc99f74d127_story.html. On July 11, Telizhenko posted a picture with Senator Johnson on his Facebook page.

²⁴ Senators Charles Grassley & Ron Johnson, Ltr. to U.S. Attorney General William Barr (Sept. 27, 2019), available at <https://www.grassley.senate.gov/news/news-releases/grassley-johnson-renew-inquiry-doj-actions-reported-election-meddling>.

²⁵ Andrew Desiderio & Betsy Woodruff Swan, “Senators Clashed over Hunter Biden Probe in Classified Briefing,” *Politico* (Apr. 3, 2020), <https://www.politico.com/news/2020/04/03/hunter-biden-senate-probe-162118>.

²⁶ *Id.*

²⁷ Statement by NCSC Dir. William Evanina: Election Threat Update for the American Public (Aug. 7, 2020), <https://www.dni.gov/index.php/newsroom/press-releases/item/2139-statement-by-ncsc-director-william-evanina-election-threat-update-for-the-american-public>. Notably, Senator Johnson’s 11-page August 10 open letter does not reference this public statement by the ODNI, which directly implicates his investigation.

- In December 2019, after meeting with Rudy Giuliani in Ukraine, Derkach confirmed that he had sent materials to Republican members of Congress, including Senator Lindsey Graham, Chairman of the Judiciary Committee. In February, Graham warned: “Any documents coming out of the Ukraine against any American, Republican or Democrat, need to be looked at by the intelligence services who have expertise—I don’t—because Russia is playing us like a fiddle.”²⁸ More recently, Senator Graham has referred inquiries about these materials to Senator Johnson and HSGAC.²⁹
- In May, June, and July, Derkach released tranches of heavily edited recordings, purportedly of conversations between Vice President Biden and President Poroshenko in 2016.³⁰ Notably, the content of the recordings is entirely consistent with the uniform belief of impeachment witnesses and independent fact-checkers that Vice President Biden acted at all times in furtherance of the national interest and in accordance with official U.S. policy.
- On June 22, Derkach held a press conference during which he levied a number of baseless accusations about Vice President Biden and other American officials.³¹ Two days later, Senator Johnson reportedly sent letters requesting interviews and documents from two former State Department officials who were discussed at Derkach’s press conference.³² According to *Politico*, the Investigation is relying upon a Ukrainian document that was not mentioned in either of Senator Johnson’s letters to the State Department.³³
- On July 9, after Derkach released a third tranche of recordings, the Foreign Intelligence Service of Ukraine issued a statement: “Russian special services continue to use their capabilities in Ukraine to conduct information operations against the Ukrainian state,” which it described as “an attempt to use Ukraine for external influence on the development of political events in the world.”³⁴ At least

²⁸ David Morgan, “Justice Department Receiving Information on Bidens from Giuliani: Senator,” *Reuters* (Feb. 9, 2020), <https://www.reuters.com/article/us-usa-trump-ukraine-graham/justice-department-receiving-information-on-bidens-from-giuliani-senator-idUSKBN2030QP>.

²⁹ Natasha Bertrand, Andrew Desiderio & Kyle Cheney, “Democrats: Packets Sent to Trump Allies are Part of Foreign Plot to Damage Biden,” *Politico* (July 23, 2020), <https://www.politico.com/news/2020/07/23/democrats-letters-to-trump-allies-are-foreign-plot-to-damage-biden-380217>.

³⁰ *See, e.g., supra notes* 12-18.

³¹ *Records of Conversations Testifying to International Corruption, YouTube* (June 22, 2020), <https://www.youtube.com/watch?v=Ei6O14Td89g>.

³² Natasha Bertrand, “Inside the Biden Campaign’s Pushback Against Foreign Interference,” *Politico* (July 20, 2020), <https://www.politico.com/news/2020/07/20/biden-foreign-russia-kremlin-373277>.

³³ *Id.*

³⁴ Foreign Intelligence Service of Ukraine, *Statement* (July 9, 2020), available at <https://szru.gov.ua/en/news/news/the-statement-by-the-foreign-intelligence-service-of-ukraine>.

one major Ukrainian newspaper connected this official announcement to Derkach.³⁵

Finally, a third Ukrainian official, Oleksandr Onyshchenko, has also declared his intention to assist President Trump in the upcoming presidential election. Onyshchenko is a pro-Russia former member of the Party of Regions in Ukraine who was charged in 2016 with embezzlement and, according to former President Poroshenko, holds a Russian passport.³⁶

In May, Onyshchenko told the Russian state news service Sputnik that he had turned over materials about Vice President Biden to Trump allies, including to Senator Johnson's committee.³⁷ "Because of the coronavirus, they are waiting," Onyshchenko told Sputnik. "But in September, closer to the elections, they will begin to use them more."³⁸

Concerns about Senator Johnson's reliance on possible disinformation from malign foreign actors—particularly Russia—recently intensified on July 20, 2020, when four members of the "Gang of Eight" sent a letter to FBI Director Christopher Wray. In that letter, the members—who have access to the most sensitive intelligence available—requested an all-member defensive counterintelligence briefing connected to a "concerted foreign interference campaign, which seeks to launder and amplify disinformation in order to influence congressional activity, public debate, and the presidential election in November."³⁹ The letter included a classified addendum, which reportedly raised specific concerns that the Investigation was relying on disinformation provided from foreign sources and referenced the packages that Derkach himself acknowledged sending in December to Republican congressional leaders.⁴⁰ NCSC Director Evanina's August 7 statement confirming intelligence about Derkach's efforts to interfere in the election on behalf of Russia only adds to the growing body of evidence that Senator Johnson's investigation is simply a tool to launder Russian disinformation into the public in order to influence the election.

³⁵ "Foreign Intelligence Service Warned of Russian Information Operations Against Ukraine," *Ukrainskaya Pravda* (July 9, 2020), <https://www.pravda.com.ua/rus/news/2020/07/9/7258781>.

³⁶ Paul Sonne, Rosalind S. Helderman, Josh Dawsey & David L. Stern, "Hunt for Biden Tapes in Ukraine by Trump Allies Revives Prospect of Foreign Interference," *Wash. Post* (July 1, 2020), https://www.washingtonpost.com/national-security/for-months-trump-allies-hunted-for-tapes-of-biden-in-ukraine-now-theyre-turning-up/2020/06/30/f3acaba8-a67b-11ea-8681-7d471bf20207_story.html.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Ltr. to Hon. Christopher A. Wray, Director, Federal Bureau of Investigation (July 13, 2020), available at https://intelligence.house.gov/uploadedfiles/20200713_big_4_letter_to_fbi_director_wray_-_defensive_briefing_signed.pdf.

⁴⁰ Natasha Bertrand, Andrew Desiderio & Kyle Cheney, "Democrats: Packets Sent to Trump Allies are Part of Foreign Plot to Damage Biden," *Politico* (July 23, 2020), <https://www.politico.com/news/2020/07/23/democrats-letters-to-trump-allies-are-foreign-plot-to-damage-biden-380217>. Senator Johnson's spokesman told *Politico* that HSGAC has "never received nor would we ever collect information from this individual or individuals like him."

II. The Investigation Violates Senate Rules and Standards

As described above, Senator Johnson’s Investigation lacks merit, clearly exceeds constitutional limits on the Senate’s investigative authority, and facilitates foreign efforts to unlawfully influence an American election. It also violates the law and Senate rules and standards.

Senate Rules do not allow Senator Johnson to launder derogatory political opposition research through the Senate. As detailed above, the information Senator Johnson has received lacks any legitimate legislative value. Some of it has been provided by individuals whose stated purpose is for the information to be used to influence the U.S. presidential election. The U.S. intelligence community has now confirmed that motivation. The Investigation itself—focused on one person and continuing despite extensive contradictory evidence—likely exceeds the Senate’s constitutional investigative power as articulated by the Supreme Court. Finally, the official congressional record and credible public reporting is replete with evidence that resolves the stated questions of the Investigation. Any claimed remnant of investigative value is pretextual and overwhelmed by the clear political purpose of the information.

The Senate’s standards of conduct proscribe member conduct that reflects “discredit” on the institution. As this Committee explained in its most recent Ethics Manual:

Certain conduct has been deemed by the Senate in prior cases to be unethical and improper, though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as ‘improper conduct which may reflect upon the Senate,’ and has provided the basis for the Senate’s most serious disciplinary cases in modern times.

The Senate did not attempt to delineate all the types of conduct or the guidelines which should be followed in determining which actions by a Member would constitute ‘improper conduct’ reflecting on the Senate. The drafters of the resolution [creating the Ethics Committee] intended that ‘improper conduct’ be cognizable by the Senate when it was so notorious or reprehensible that it could discredit the institution as a whole, not just the individual, thereby invoking the Senate’s inherent and constitutional right to protect its own integrity and reputation.⁴¹

The Ethics Manual explains further that this overarching standard of conduct is comprised of “a body of unwritten but well-established norms of Senate behavior,” and is an essential complement to the “written standards (i.e., rules and statutes)” governing Member conduct.⁴²

⁴¹ United States Senate Select Committee on Ethics, *Senate Ethics Manual* (2003), Appx. E, available at https://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=F2EB14E3-1123-48EB-9334-8C4717102A6E (hereafter “*Ethics Manual*”).

⁴² *Ethics Manual* at 8.

In addition, by Joint Resolution, both Chambers of Congress have adopted a Code of Ethics for Government Service, requiring officeholders to “[p]ut loyalty to the highest moral principles and to country above loyalty to persons, party or Government department,” and to “[u]phold th[is] principle, ever conscious that public office is a public trust.”⁴³ The Senate has resolved to comply with this Code of Ethics, and has granted this Committee jurisdiction to enforce it.⁴⁴

As detailed below, Senator Johnson’s conduct contravenes these standards; it also contravenes specific laws that limit the use of government resources to official purposes and bar their misuse for campaign-related purposes.

The Senate has confronted similar behavior—implicating criminal and civil statutes, Senate rules, and the Senate’s institutional bar on discrediting behavior—and has responded by imposing discipline. For example, this Committee reprimanded and criticized Members in the “Keating Five” case in 1991 for a brazen “linkage” of official activity to campaign fundraising activity.⁴⁵ In 1967, the Select Committee on Ethics investigated the first case of improper conduct involving Senator Thomas Dodd who was censured for converting campaign funds to personal use.⁴⁶ The same set of ethical standards bar campaign use of staff resources and of the franking privilege.⁴⁷ These standards apply with no less force where a Senator is engaging in the same abuse of authority and resources but in favor of another federal candidate—in this instance, the President of the United States, who is a candidate for reelection in three months.

Senator Johnson’s sham investigation parrots thoroughly debunked attacks that the President has levied against Vice President Biden for purportedly corrupt conduct in carrying out American policy toward Ukraine. As the Committee is well aware, these attacks did not withstand factual examination in the course of the House impeachment inquiry of 2019. Administration officials credibly testified that the White House’s attempts to fabricate a corruption case against Vice President Biden were, as one senior official termed it, no more than a “political errand.”⁴⁸

⁴³ 72 Stat. B12, H.Con.Res. 175, available at <https://www.govinfo.gov/content/pkg/STATUTE-72/pdf/STATUTE-72-PgB12.pdf>.

⁴⁴ *Ethics Manual* at 436; Congressional Research Serv., *Senate Select Committee on Ethics: A Brief History of its Evolution and Jurisdiction* (Feb. 12, 2019), available at <https://fas.org/sgp/crs/misc/RL30650.pdf>.

⁴⁵ S. Rept. 102-223 (Investigation of Sen. Cranston) at 20, 29-30.

⁴⁶ *Ethics Manual* at 434.

⁴⁷ *E.g.*, 31 U.S.C. § 1301(a) (“Appropriations shall be applied only to the objects for which the appropriations were made”); United States Senate Select Committee on Ethics, *Regulations Governing the Use of the Mailing Frank*, S. Pub. 107-12 (May 2001); *see generally* U.S. Senate Select Committee on Ethics, “Ethics Rules: Campaign Activity,” <https://www.ethics.senate.gov/public/index.cfm/campaign-activity>; GOV’T ACCOUNTABILITY OFFICE, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW 3-294 (4th ed. 2017), available at <https://www.gao.gov/assets/690/687162.pdf>.

⁴⁸ Impeachment Hearings Before the H. Permanent Select Comm. on Intelligence (Nov. 21, 2019) (testimony of Fiona Hill).

The Ukraine president declined to pursue that “investigation” to benefit the President’s political interests, but Senator Johnson is now using his office to carry it forward. Most egregiously, Senator Johnson is coordinating this effort with foreign interests allegedly tied to the Russian intelligence community. ODNI has now publicly confirmed that these same foreign interests are trying to interfere in the November election.

Federal law expressly prohibits foreign nationals from financing activities to influence our elections,⁴⁹ but Senator Johnson is providing Russian state interests with a platform financed with United States taxpayer dollars and carrying the imprimatur of the United States Senate. Just as Senate Rules prohibit Senator Johnson from engaging in campaign activities using his official office, he cannot use his official office to do what a campaign could not.⁵⁰ Senate resources may not be used for campaign activities.⁵¹ Under the present facts, the information Senator Johnson has received from foreign government officials qualifies as such an impermissible gift.

Though the Senate has wide latitude to conduct oversight or investigation, it has also drawn lines to stop abuse of that investigatory power. The most famous of all Senate disciplinary cases in the Twentieth Century involved the censure of Senator Joseph McCarthy for the recklessness and falsehoods that characterized his investigations as a committee chair into Communist influence over the executive branch.⁵² The select committee formed to evaluate that conduct described the implicated peddling of falsehoods meant to foster “public scorn and contumely” for political ends as “reprehensible,” “inexcusable,” and ultimately censurable.⁵³ The committee concluded that Senator McCarthy had misused the oversight process to spread falsehoods in service of his own political interests. Senator Johnson is abusing the same process with similar methods in order to promote the political interests of his party’s presidential nominee.

These circumstances call for the Senate Ethics Committee to investigate and determine the appropriate disciplinary action. Under Committee Rule 2(b), we respectfully request that the Committee initiate an investigation into Senator Johnson’s conduct as Chairman of HSGAC and, if such investigation substantiates the concerns raised herein, to recommend to the full Senate appropriate disciplinary action against Senator Johnson.⁵⁴

⁴⁹ 52 U.S.C. § 30121.

⁵⁰ *Ethics Manual* at 27 (“If a contribution does not conform to the strictures of the Federal Election Campaign Act, it is a gift rather than a contribution, and must be treated as such for the purposes of this Rule” (internal quotation marks omitted)).

⁵¹ See Campaign Activity, Senate Select Committee on Ethics, <https://www.ethics.senate.gov/public/index.cfm/campaign-activity> (discussing, *inter alia*, 31 U.S.C. § 1301).

⁵² Report of the United States Senate Select Committee to Study Censure Charges, S. Rept. 83-2508 (Nov. 8, 1954), at 41-61, available at https://www.senate.gov/artandhistory/history/common/censure_cases/pdf/133McCarthy_Nov8_1954report.pdf.

⁵³ *Id.* At 60-61.

⁵⁴ As an alternative to discipline, the Ethics Committee also may criticize Senator Johnson’s conduct while stopping short of finding alleged conduct was “improper conduct reflecting upon the Senate.” See *Ethics Manual* at 435. The Ethics Committee can declare “that the conduct should not be condoned or should otherwise be criticized in a public statement by the Committee.” *Id.* at 435 n.19. For example, in 2002, the Committee severely admonished Senator Robert Torricelli for creating at least an appearance of impropriety by accepting gifts in violation of the gift rules.

Conclusion

These are serious matters that warrant this Committee’s prompt attention. The institutional interests of the United States Senate—interests that must be protected and advanced through enforcement of the Senate’s Ethics Code—have been compromised by Senator Johnson’s deployment of his office and committee chairmanship for purely political ends. That he may be doing so in concert with foreign actors, publicly seeking for their own purposes to amplify disinformation regarding the Democratic nominee for President, is behavior so “notorious or reprehensible that it could discredit the institution as a whole.” The investigation and prevention of such behavior is the very purpose for which this Committee was formed.



Austin R. Evers
Executive Director
American Oversight



Arn Pearson
Executive Director
Center for Media and Democracy

See David Kocieniewski, Tim Golden, Carl Hulse, “Ethics Committee Faults Torricelli on Gift Violations,” *N.Y. Times*, Jul. 31, 2002, <https://www.nytimes.com/2002/07/31/nyregion/ethics-committee-faults-torricelli-on-gift-violations.html>.