

September 19, 2022

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Chairman of the Select Committee on Restoring Law and Order
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Via email: mark.rush@klgates.com

Re: *Subpoena Duces Tecum to the DAO & Contempt Proceedings*

Dear Mr. Rush:

We write on behalf of District Attorney Larry Krasner and The Philadelphia District Attorney's Office ("DAO") regarding the Subpoena Duces Tecum ("Subpoena") served on the DAO on August 9, 2022, and the Select Committee on Restoring Law and Order's ("Select Committee") rushed and deceptive efforts to hold District Attorney Krasner in contempt of the House on September 13, 2022.

The Select Committee's Improper and Deceptive Contempt Proceedings

On September 13, 2022, the Select Committee took the highly unusual step of moving to hold District Attorney Krasner in contempt of the House for the DAO's alleged non-compliance with the Subpoena, even though the Subpoena improperly demands "the transcript of all grand jury materials" in a pending criminal case – which it would be a crime to produce. Prosecutors are prohibited by law from disclosing grand jury materials and can even go to jail for doing so. Indeed, former Attorney General Kathleen Kate was convicted of multiple felonies related to her disclosure of grand jury materials. Yet, the Subpoena expressly demands disclosure of grand jury materials. The Select Committee therefore issued a Subpoena that compelled the DAO to commit a crime and then moved to hold District Attorney Krasner in contempt of the House for rightly refusing to do so. The DAO cannot and will not break the law.

The Select Committee also rushed the contempt resolution through the House without affording District Attorney Krasner basic due process, including the opportunity to appear before the House and explain why his office did not – and could not under the law – produce grand jury and other materials sought by the Subpoena. District Attorney Krasner was not informed that the

House would be considering a House resolution to hold him in contempt. Nor was he given the opportunity to appear before the House prior to its vote. When we learned about the contempt proceedings *during* House debate on the resolution and emailed you and faxed the Speaker of the House to demand an immediate opportunity for District Attorney Krasner to be heard, you and the Speaker of the House ignored that request.

By keeping District Attorney Krasner from addressing the House, the Select Committee prevented District Attorney Krasner from responding to the contempt resolution's patently false allegation that he had "willfully refus[ed] to comply with the Subpoena." In fact, the DAO *did* respond to the Subpoena by doing exactly what the law requires in this situation: Several days before introducing the contempt resolution, the DAO filed a legal challenge to the Subpoena in the Commonwealth Court, *The Philadelphia District Attorney's Office, et al. v. The Select Committee on Restoring Law and Order, et al.*, Docket No. 450 MD 2022.¹

It is deeply troubling that the Select Committee moved to hold District Attorney Krasner in contempt of the House for filing a lawsuit to challenge an improper Subpoena instead of violating grand jury secrecy laws, and then gave District Attorney Krasner no notice of the contempt resolution and no opportunity to be heard. The Select Committee's actions confirm what we have long known – that the Select Committee is not interested in conducting a legitimate investigation but is instead focused on targeting District Attorney Krasner for impeachment because it disagrees with his policies and cannot defeat him at the polls. In the history of the Commonwealth, no elected official has ever been impeached based on policy difference. For good reason: doing so erases the votes of the citizens who elected that elected official and guts democracy.

The DAO's Publicly-Available Policies & Its Production of Additional Documents to the Select Committee

The DAO has long been proud of its policies and its transparent approach to criminal justice. Many of its criminal justice policies have been freely available to the public on its website (phillyda.org/resources/#dao-policies) since January 2022. You told us that you knew that the DAO's criminal justice policies were publicly available on its website, yet the Select Committee did not inform House members of this (crucial) fact during debate on the House resolution. To the extent the Select Committee truly wanted these policies, it already had access to them.

¹ That the Select Committee's resolution holds District Attorney Krasner in contempt, even though the Subpoena (and the Request to Show Cause) is singularly directed to the DAO, not him, confirms what has been clear from the start: that the Select Committee's goal is to seek the impeachment of District Attorney Krasner without any lawful basis for doing so.

Nonetheless, in light of the House's improperly obtained contempt finding and to move past the Select Committee's deceptive posturing and political gamesmanship, the DAO is producing today hundreds of pages of non-privileged policies relating to prosecuting crime. These include those freely-available on the website as well as additional ones that have been located to date. Please understand that the DAO is not aware of policies responsive to several of the Subpoena's Requests.

The current production constitutes a substantial set of documents that the DAO was able to identify and review based on its search and its reasonable understanding and interpretation of the Subpoena. Our search is on-going, and we may produce additional responsive, non-privileged documents on a rolling basis, to the extent such documents exist. Nothing in this or any later production waives or otherwise modifies any of the arguments or objections to the Subpoena we have made in the Commonwealth Court proceeding.

The Select Committee Should Withdraw Its Subpoena & Issue a New One that Does Not Demand Improper Materials

You have stated that the Select Committee does not seek privileged or grand jury materials. But the plain language of the Subpoena says otherwise, especially item 10, which expressly demands "the transcripts of all grand jury proceedings" in a pending case. We therefore ask the Select Committee to withdraw the Subpoena and issue a new one that does not demand improperly-subpoenaed material, including grand jury materials. We will immediately accept service of the new subpoena. We request that you issue the new subpoena within the next 48 hours. If you do not do so, we will be forced to conclude that your claim that you are not seeking privileged or otherwise protected material is more deceptive posturing.²

² To be clear, the Petition for Review filed in Commonwealth Court raises multiple other meritorious legal challenges to the Subpoena. The Select Committee's efforts to investigate and target District Attorney Krasner, even though he has not committed an impeachable act, is itself improper. But, to the extent that the Select Committee believes otherwise, the proper way to resolve this dispute is to litigate in court, as we have done. For now, in the House proceedings, we simply ask that you withdraw the Subpoena and serve a new one that does not demand items, such as requests for grand jury materials, that it would be a crime to provide or are requested in bad faith. The Select Committee cannot possibly believe in good faith that it is proper to issue a subpoena that seeks grand jury transcripts from a prosecutor.

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We look forward to receiving your response to this letter within 48 hours as well as your Answer to our Petition for Review in the Commonwealth Court.

Sincerely,



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/s/John S. Summers

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