

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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ROBERT SCHILLING,

*Plaintiff,*

v.

NANCY PELOSI, *et al.*,

*Defendants.*

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Civil Action No. 1:22-cv-162

**NOTICE OF SUPPLEMENTAL AUTHORITY**

NOW COMES Robert Schilling, by and through undersigned counsel, and files this Notice of Supplemental Authority, in order to update the Court based on information that has come to light since the hearing on the Motion to Dismiss in this matter. Specifically, Mr. Schilling states as follows:

1. Attached hereto as Exhibit A is a true and correct copy of an article dated yesterday (September 21, 2022) reflecting an interview with Chairman of the Defendant House Committee Oversight and Reform, Ro Khanna, in which the Chairman states about the investigation which is the subject of the records request at issue in this matter, *inter alia*: “We're also going to release an explosive report documenting and detailing everything sometime in October. We're going to have even more documents, even more shocking than what's already been released. And that report will be looked at by a lot of people who have an interest in holding Big Oil accountable.”
2. Attached hereto as Exhibit B is a true and correct copy of an email sent on October 31, 2020, or the Saturday before the 2020 congressional elections to be held the next

Tuesday, November , 2020, from one of the consultants for the Defendants, Phil Barnett, and then-Professor of Law at UCLA Law School Ann Carlson but also then-member of the plaintiff's legal team in the lawsuits against "Big Oil" referenced in Plaintiff's Amended Complaint, ECF No. 12 at ¶ 23 (Carlson is presently on leave and working in the Biden administration).

3. In that email, the context of which was "fight[ing] climate change" without passing legislation, Barnett states, *inter alia*, "If Tuesday goes well, we should find a time to talk so I can give you an update on some recent positive developments." Exhibit B.
4. As stated in Plaintiff's Amended Complaint, ECF No. 12 at ¶ 23, "Plaintiff states on information and belief that Barnett was referencing plans for this congressional investigation into his correspondent's legal team's litigation targets, which he would help plan if Democrats maintained their congressional majority", and that this plan was in fact adopted not for any legitimate legislative purpose as is required, but to assist lawsuits against these perceived political opponents of the Defendants. ECF No. 12 at pp. 3-4, ¶¶ 10, 15, 17-19, 24-27, 38-42.
5. In the audio posted of that same interview, available at <https://heated.world/p/ro-khanna-would-like-your-attention#details>, "A podcast for people who are pissed off about the climate crisis", at the 5:37: mark, the Chairman responds affirmatively to a question which begins at the 5:37 mark, "I assume that the purpose of these hearings, among many, are to hopefully provide not only public support for a similar [to tobacco] type of litigation but also to provide evidence to ongoing litigation and support for these ongoing legal attempts to hold the industry accountable from many other states. I guess, my question would be, is that an accurate characterization and if so, you know, what new

evidence has the Oversight Committee uncovered that could aid in these legal attempts to hold the industry accountable?”

6. Beginning at the 7:05 mark, Chairman Khanna continues in this affirmation, stating, "So, I think there is going to be troves of evidence that federal agencies can rely on, that anyone seeking the public good and accountability can rely on.”

<https://heated.world/p/ro-khanna-would-like-your-attention#details>

7. Beginning at the 7:37 mark, Chairman Khanna references a report his Committee intends to release, that “We are going to have an explosive report documenting and detailing everything sometime in October, we are going to have even more documents even more shocking than what’s already been released in October and that report I think will be looked at by a lot of people who have an interest in holding Big Oil accountable.”
8. Additionally, in the same interview (Exhibit A), Chairman Khanna stated, *inter alia*, “there were a couple articles planted about us using outside resources for hearings, which we didn’t”. Exhibit B.
9. However, as stated in Plaintiff’s Amended Complaint, ECF No. 12 at ¶¶ 10:

To help guide this enterprise, the Chairman of the Committee’s Subcommittee on the Environment, Rep. Ro “Khanna said the committee has enlisted the aid of ‘a lot of people’ involved in planning the Waxman hearings for advice and planning.” Zack Burdyk, “Democrats call for oil company executives to testify on disinformation campaign,” *The Hill*, September 16, 2021, <https://thehill.com/policy/energy-environment/572612-democrats-call-for-oil-company-executives-to-testify-on>. As such and as further detailed herein, the Committee and or its Subcommittee, professional staff and/or Chairwoman and/or Subcommittee on the Environment Chairman are lawfully charged with and/or have actual or constructive possession, custody, and control of such records as a part of carrying out Committee business. This suit does not challenge the Committee’s lawful powers or exercise of those

- powers, but seeks records relating to the weaponization of the Committee to perform extra-legislative duties aided by and at the behest of outside actors.” See also ECF No. 12 at ¶¶ 28, 38-42 (donors boast about providing outside resources to assist government oversight, including specifically the consultants the Amended Complaint cites as being brought in to assist the defendants’ proceedings).
10. Third, attached hereto as Exhibit C is a true and correct copy of a letter Mr. Schilling received from Counsel for the defendants, in which the respondents assert that “As an initial matter, other than official Committee proceedings, recordings of which are maintained on a public website, neither the full Committee on Oversight and Reform, nor its Environment Subcommittee, record or maintain other video recordings of any other videoconference meetings between staff, Members, and outside persons or parties. Consequently, no such video recordings exist that can be produced.” Exhibit C.
11. At the July 18, 2022, hearing in this matter, the Court inquired “what sort of a lift” it would be for the respondents to prepare a *Vaughn* log. Transcript, ECF No. 17 at 16:8 *et seq.*
12. In response to the Court’s question, the defense indicated that three defendants had no records and that “how much or how little” other Defendants may have is unknown.
13. Specifically, counsel for the defense stated, *inter alia*:
- MR. LETTER: Your Honor, I will be completely honest with you, I do not know because we have not -- we know the three officers that I talked about, they don't have them, because they have no control over it. Whether the Oversight Committee, how much or how little they might have -- there may be none, by the way, but if there are, we don't know how many because we did not ask the Committee to give us a list or anything. ECF No. 17 at 16:13 *et seq.*
14. Counsel further stated, *inter alia*:

MR. LETTER: Especially the video recordings or whatever. I suspect there are zero, but I don't know the answer. ECF No. 17 at 16:22 *et seq.*

15. On information and belief, defense assertions at the July 18 hearing relating to the volume of records that exist in the possession of the Defendants were erroneous for at least the following reasons:

a. As set forth in the attached letter, the defense has unequivocally stated the Oversight Committee has no records responding to Schilling's request for video recordings:

“As an initial matter, other than official Committee proceedings, recordings of which are maintained on a public website, neither the full Committee on Oversight and Reform, nor its Environment Subcommittee, record or maintain other video recordings of any other videoconference meetings between staff, Members, and outside persons or parties. Consequently, no such video recordings exist that can be produced.” See Exhibit C.

b. As set forth in the Amended Complaint, ECF No. 12 at ¶ 84:

“84: On April 18, 2022, through the House General Counsel, the Committee denied Schilling's re-submitted request in full, also disputing that the records sought were subject to a common law right of access. The Committee denied that any videos (responding to part one of Schillings request) exist and denied access to the correspondence between the named outside parties and related records...”

c. However, as set forth at the July 18, 2022, hearing, the defense asserted regarding the Oversight Committee's possession of such records, “Especially the video recordings or whatever. I suspect there are zero, but I don't know the answer.”

ECF No. 17 at 16:22 *et seq.*

16. Additionally, at the July 18 hearing in this matter, Defendants asserted that “The Oversight Committee has said, no, you cannot have these documents -- you requested these documents, to the extent they exist, no, we're not turning them over. There's your Decision.” ECF No. 17 at 8:11 *et seq.*
17. Counsel for the defense also stated, *inter alia*, “We staffers, we have no authority to make those decisions on our own,” but that decisions must be made by leadership and specifically “in general” committee chairs, and “And as I said, under House rules, different people in the House, sometimes the Speaker, but often committee chairs have control.” ECF No. 17 at 18:15 *et seq.*
18. Contrary to defense assertions, no vote of the Committee defendant nor of the House of Representatives as a whole has been held in which such defendants can be said to have reached a decision to deny Mr. Schilling’s records. To the extent that the decision has been made at all, it appears to have been made (as set forth in Exhibit C) unilaterally by counsel for the defendants, without lawful or designated authority to deny Mr. Schilling access to records.
19. Plaintiff states that the escalating and ever-changing public statements cited herein and attached hereto demonstrate the urgent public interest in the records that are at issue in this case, and specifically amplify Mr. Schilling’s proprietary interest as a journalist in obtaining records that could contribute to the public discourse.
20. Further, to the extent that the parties in this case have agreed in briefing that in this mandamus action “the question of jurisdiction merges with the question on the merits,” ECF Nos. 13 and 15, and to the extent that the continuing onslaught of headlines and reversals of prior statements by House officials relating to the topic Mr. Schilling’s

request focused on demonstrates continuing and heightened public interest in the records that are at issue in this case, Mr. Schilling respectfully submits that recent developments support a finding that jurisdictional discovery should be conducted or that the issue of jurisdiction should be reserved pending trial. See, e.g., *Med. Sols. v. C Change Surgical LLC*, 468 F. Supp. 2d 130, 135 (D.D.C. 2006) (“The D.C. Circuit has stated that “if a party demonstrates that it can supplement its jurisdictional allegations through discovery, then jurisdictional discovery is justified.”), *New Wellington Fin. Corp. v. Flagship Resort Dev. Corp.*, 416 F.3d 290, 294 n.5 (4th Cir. 2005) (permitting a plaintiff to prove the existence of personal jurisdiction... either at trial or at a pretrial evidentiary hearing.”).

WHEREFORE, Mr. Schilling submits that he remains entitled to the relief sought in his First Amended Complaint and that this Court ought to take judicial notice of the facts set forth herein in considering the extant motion.

Respectfully submitted this the 22<sup>nd</sup> day of September, 2022,

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