

**ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 23, 2022**

---

**No. 22-5123****IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

**REPUBLICAN NATIONAL COMMITTEE***Appellant,***v.****NANCY PELOSI, et al.,***Appellees.*

---

**UNOPPOSED MOTION BY CONGRESSIONAL  
DEFENDANTS/APPELLEES TO DISMISS ON GROUNDS OF  
MOOTNESS**

The Congressional Defendants/Appellees move to dismiss this case as moot. The case should therefore be removed from the Court's oral argument calendar. The grounds for this motion are stated below.<sup>1</sup>

Plaintiff/Appellant Republican National Committee ("the RNC") takes no position on this motion. Defendant/Appellee Salesforce.com

---

<sup>1</sup> The Congressional Defendants/Appellees here are all of the Defendants other than Salesforce.com Inc.

Inc. consents to dismissal of the case upon withdrawal of the subpoena at issue.

As the Court is aware, the House of Representatives Select Committee to Investigate the January 6th Attack on the United States Capitol (the “Select Committee”) is engaged in an extensive and thorough investigation into: the attack on Congress, the Capitol, and the counting of the Electoral College ballots on January 6, 2021; why and how the attack happened; and what legislative and policy responses should be taken to prevent such an attack from ever happening again.

As part of that investigation, on February 23, 2022, the Select Committee issued a subpoena to Salesforce, requiring production of certain Salesforce records concerning the RNC’s confidential information relating to emails and other communications sent around the time of the November 2020 Presidential election and the January 2021 counting of the Electoral College vote.

The RNC filed this suit to enjoin the Select Committee from enforcing that subpoena and to prevent Salesforce from complying with the subpoena. On May 1, 2022, the district court dismissed the suit against the Congressional Defendants under the Constitution’s Speech

or Debate Clause, while also rejecting the merits of the RNC's claims against Salesforce.

The RNC appealed the district court's ruling to this Court, and sought an injunction pending appeal from the district court. The district court denied that request, but granted a short administrative injunction. This Court then granted an injunction pending appeal. To this point, the Select Committee has not received documents or data from Salesforce pursuant to the challenged subpoena.

Since the Select Committee issued the subpoena to Salesforce, its investigation has progressed substantially. In June and July 2022, the Select Committee held eight hearings laying out portions of the evidence it has gathered to date. The Select Committee is also now actively engaged in drafting its final report and legislative recommendations, as required by House Resolution 503. *See* H. Res. 503, 117th Cong. (2021).

Given the current state of its investigation, the Select Committee has determined that it no longer has a need to pursue the specific information requested in the Salesforce subpoena. The Select Committee has therefore withdrawn this subpoena in its entirety and

represents to the Court and the parties that it will not renew that subpoena for the duration of its investigation.

The Select Committee further represents that it is not currently seeking, and will not in the future seek, the RNC's data from Salesforce—or from any other source—in the discharge of its obligations under House Resolution 503. The Select Committee, through Chairman Thompson, communicated this information to Salesforce and the RNC by letter on September 2, 2022 (see attached letter).

“An actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.” *Arizonaans for Off. Eng. v. Arizona*, 520 U.S. 43, 67 (1997) (internal quotation marks and citation omitted). “If an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must be dismissed as moot.” *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013) (internal quotation marks omitted).

Here, because the subpoena at issue has been withdrawn, and because the Select Committee will not seek any of the RNC's data during the remainder of its investigation, this case is now moot. *See*

*Senate Permanent Subcomm. on Investigations v. Ferrer*, 856 F.3d 1080, 1085 (D.C. Cir. 2017); *Kupperman v. U.S. House of Representatives*, 436 F. Supp. 3d 186, 191 (D.D.C. 2019) (dismissing case challenging House subpoena as moot after the subpoena was withdrawn).<sup>2</sup>

Furthermore, this matter does not fall into the exception permitting this Court to entertain an appeal of an otherwise moot matter if the dispute is “capable of repetition” yet evading review. *See Ferrer*, 856 F.3d at 1087-1088 (citing *Spencer v. Kemna*, 523 U.S. 1, 17 (1998)); *see also Kupperman*, 436 F. Supp. 3d at 191. Because the Select Committee has informed all parties and this Court that it will not seek any RNC data during the remainder of its investigation, there is no “reasonable expectation” or “demonstrated probability” that the Select

---

<sup>2</sup> *See also Gordon v. Lynch*, 817 F.3d 804, 805-07 (D.C. Cir. 2016) (dismissing case as moot based on government lawyer’s statement at oral argument that the government would not prosecute the plaintiff for the conduct the plaintiff sought to have declared legal); *Clarke v. United States*, 915 F.2d 699, 700-02, 708 (D.C. Cir. 1990) (dismissing case as moot in reliance on concession by government lawyer at oral argument that government would not be able to prosecute plaintiffs); *Ray v. CLH N.Y. Ave, LLC*, No. 19-cv-2841, 2020 WL 5594064, at \*4 (D.D.C. Sept. 18, 2020) (“Because plaintiff withdrew the subpoena, the Court will deny defendants’ Motion to Quash as moot.”).

Committee will issue a “similar subpoena, seeking similar documents, and raising similar issues.” *See id.* at 1088.

For the foregoing reasons, this case should be removed from the oral argument calendar and should be dismissed as moot.

Respectfully submitted,

/s/ Douglas N. Letter

DOUGLAS N. LETTER

*General Counsel*

TODD B. TATELMAN

*Principal Deputy General  
Counsel*

ERIC R. COLUMBUS

*Special Litigation Counsel*

OFFICE OF GENERAL  
COUNSEL

U.S. HOUSE OF

REPRESENTATIVES

5140 O’Neill House Office  
Building

Washington, D.C. 20515

(202) 225-9700

Douglas.Letter@mail.house.gov

September 2, 2022

## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), the undersigned hereby certifies that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2).

1. The motion contains 900 words.
2. The motion has been prepared in proportionally spaced typeface using Microsoft Word for Microsoft 365 in 14 point Century Schoolbook font. As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

/s/ Douglas N. Letter  
DOUGLAS N. LETTER

September 2, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of September, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Douglas N. Letter  
DOUGLAS N. LETTER



ZOE LOFGREN, CALIFORNIA  
ADAM B. SCHIFF, CALIFORNIA  
PETE AGUILAR, CALIFORNIA  
STEPHANIE N. MURPHY, FLORIDA  
JAMIE BASKIN, MARYLAND  
ELAINE G. LURIA, VIRGINIA  
LIZ CHENEY, WYOMING  
ADAM KINZINGER, ILLINOIS



U.S. House of Representatives  
Washington, DC 20515  
january8th.house.gov  
(202) 225-7600

One Hundred Seventeenth Congress

Select Committee to Investigate the January 6th Attack on the United States Capitol

September 2, 2022

VIA EMAIL

Salesforce.com, Inc.  
415 Mission Street, 3rd Floor  
San Francisco, CA 94105

Dear Custodian of Records:

On February 23, 2022, in my capacity as Chairman of the House Select Committee to Investigate the January 6th Attack on the U.S. Capitol (the "Select Committee"), I issued a subpoena to Salesforce.com, Inc. ("Salesforce") requesting data and documents relating to the Republican National Committee's ("RNC") use of Salesforce tools.

Given the current state of its investigation, the Select Committee has determined that it no longer has a need to pursue the specific information requested in the Salesforce subpoena. Further, the Select Committee will not attempt to obtain in the future any covered documents or information or any of RNC's data, from Salesforce or any other party.

Therefore, through this letter, I hereby formally withdraw the February 23, 2022, subpoena issued to Salesforce, and notify Salesforce and RNC that Salesforce is no longer obligated to comply or produce records in response to said subpoena.

We appreciate your engagement with the Select Committee on this matter.

Sincerely,

Bennie G. Thompson  
Chairman

cc: RNC