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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

August 5, 2026

Dear Colleague:

I am writing to urge you to oppose the contempt resolution scheduled for a Committee vote this week. A Committee vote to hold Dr. Anthony Fauci in criminal contempt of Congress will not provide the Committee with additional information from Dr. Fauci, and it will cause both immediate and long-term damage to this Committee and Congress's oversight powers.

The rights afforded under the Fifth Amendment, and its protection from self-incrimination, have been respected by the Senate for decades. Chairman Paul's demand that this Committee reject Dr. Fauci's assertion of his Fifth Amendment rights under the Constitution – whether Members like that Dr. Fauci chose to assert those rights or not – places this Committee and the Senate's future ability to assert that it will recognize the rights and protections guaranteed under the Fifth Amendment at risk. As discussed below, those rights are not negated by the existence of a pardon.

At the July 29th hearing, Chairman Paul stated that he found Dr. Fauci's assertion of the Fifth Amendment "unsupported" for two reasons: (1) Dr. Fauci received a "full and unconditional pardon" from President Biden, and (2) Dr. Fauci waived his privilege "by testifying at the start" of the hearing. Neither of those arguments holds up to scrutiny.

A federal pardon does not eliminate an individual's Fifth Amendment protection if they still face a "real and appreciable" risk of federal or state prosecution.

Chairman Paul has asserted that the Fifth Amendment protection against self-incrimination is no longer available to Dr. Fauci because he has received a "full and unconditional" pardon from President Biden. The Chairman has suggested the 1896 Supreme Court case, *Brown v. Walker*, supports his view.¹ It does not. In *Brown v. Walker*, the witness who invoked the Fifth Amendment was covered by a statute that provided full immunity for his testimony.² In other words, he faced no clear threat of federal or state prosecution.³

¹ See *Can Republicans Actually Send Anthony Fauci to Jail?*, Wired (July 31, 2026) (www.wired.com/story/can-republicans-actually-send-anthony-fauci-to-jail/) "Republicans like Paul, however, believe that anyone who has received a presidential pardon automatically loses their Fifth Amendment rights, citing [*Brown v. Walker*] as proof."

The Supreme Court has addressed the issue clearly and held that the existence of a pardon alone does not eliminate an individual's ability to assert Fifth Amendment protections – if his testimony could be used to convict him of a crime in any United States jurisdiction.⁴ This includes prosecutions at the state level for crimes that are related to the subject matter covered by a Presidential Pardon as well as federal prosecutions for crimes alleged to involve activity not covered under such a pardon.

Courts have specified that the potential for criminal liability cannot be purely speculative and must be “real and appreciable” to rely on the Fifth Amendment's protection.⁵ In this instance, the possibility of state prosecution is clear. In a Feb. 5, 2025 letter, 17 state Attorneys General wrote to Congress regarding Dr. Fauci:

As you are aware, a pardon by former President Biden does not extend to preclude state-level investigations or legal proceedings. As state Attorneys General, we possess the authority to address violations of state law or breaches of public trust. We are fully committed to investigating any malfeasance that may have occurred to the fullest extent of our authority and are prepared to collaborate with you in further efforts. (emphasis added).⁶

Following last week's hearing, the Florida Attorney General and a candidate for Texas Attorney General have made renewed commitments to pursuing criminal charges against Dr.

² In *Brown*, the witness was covered by 27 Stat. 443, which stated “no person shall be prosecuted to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify.” *Brown v. Walker*, 161 U.S. 591, 593 (1896).

³ Under the U.S. Constitution's Supremacy Clause, a federal statute granting immunity applies to the states. U.S. Const. art. VI, § 2.

⁴ See, *Murphy v. Waterfront Commission*, 378 U.S. 52 (1964) (“[T]here is no continuing legal vitality to, or historical justification for, the rule that one jurisdiction within our federal structure may compel a witness to give testimony which could be used to convict him of a crime in another jurisdiction.”) *Id.* at 77. See also, *United States v. Balsys*, 524 U.S. 666 (1998) (clarifying that the Fifth Amendment's protection from self-incrimination does *not* extend to foreign prosecutions, but reaffirming that it applies to the possibility of federal or state prosecutions).

⁵ See, *Brown* at 599 (“the danger to be apprehended must be real and appreciable”); *Zicarelli v. New Jersey Investigation Commission*, 406 U.S. 472, 478 (1972) (“it is well established that the privilege protects against real dangers, not remote and speculative possibilities”).

⁶ Letter from 17 State Attorneys General to Speaker of the House Mike Johnson and Majority Leader John Thune (Feb. 5, 2025) (www.scag.gov/media/1jeb3sqw/letter-to-congress-covid-19-response-feb-5-2025.pdf).

Fauci.⁷ Chairman Paul has also committed to sharing a “mountain of evidence” with state Attorneys General who are investigating Dr. Fauci.⁸

Chairman Paul and many others have argued that the pardon is invalid and should be challenged in court.

In addition to a well-founded belief that he could be subject to state prosecution, Dr. Fauci may also have reason to believe he could face federal charges despite the existence of the pardon. Chairman Paul and several other government officials have asserted that Dr. Fauci’s pardon is invalid because it was alleged to have been signed by auto-pen. Chairman Paul has said: “The New York Times reports Fauci was quietly pardoned by an autopen, operated by Biden’s staff. If the President didn’t authorize this pardon personally, then the Department has a duty to investigate and prosecute as it would any ordinary citizen.”⁹ Even President Trump has suggested any pardon issued by his predecessor that was signed by auto-pen is invalid.¹⁰ These repeated statements by President Trump, Chairman Paul, and other elected officials that Dr. Fauci’s pardon is not valid and cannot protect him from criminal charges, whether accurate or not, provides sufficient basis for Dr. Fauci to credibly believe he could be at risk of future prosecution for allegations related to matters covered by this pardon.

Dr. Fauci did not waive his Fifth Amendment right in his initial statement before the Committee.

At the start of the July 29th hearing, Dr. Fauci made a statement prior to explicitly invoking the protection of the Fifth Amendment, which Chairman Paul later asserted “waived the privilege.”¹¹ The question of whether a witness subpoenaed to appear at a congressional hearing waives his Fifth Amendment privilege by making voluntary opening statement was examined closely in 2013. In that case, the House of Representatives voted to hold Lois Lerner in contempt following her appearance at a hearing before the Committee on Oversight and Government Reform, during which she gave an opening statement and then invoked the Fifth Amendment and declined to answer questions.

⁷ *Florida AG launching investigation into Fauci after Senate hearing*, The Hill (July 29, 2026) (thehill.com/homenews/state-watch/5998421-florida-ag-investigates-fauci-senate-hearing/); *Republican AG Candidate Mayes Middleton Pledges Texas Investigation of Anthony Fauci*, Texas Scorecard (July 29, 2026) (texasscorecard.com/decisiontexas/republican-ag-candidate-mayes-middleton-pledges-texas-investigation-of-anthony-fauci/).

⁸ Benny Johnson, X post (July 29, 2026, 6:31 p.m.) (x.com/bennyjohnson/status/2082594897782268410).

⁹ Senator Rand Paul: *Senator Rand Paul Re-Refers Dr. Anthony Fauci to the Department of Justice* (July 14, 2025) (www.hsgac.senate.gov/media/reps/senator-rand-paul-re-refers-dr-anthony-fauci-to-the-department-of-justice/).

¹⁰ In a March 2025 Truth Social Post, President Trump asserted: “The ‘Pardons’ that Sleepy Joe Biden gave to the Unselect Committee of Political Thugs, and many others, are hereby declared VOID, VACANT, AND OF NO FURTHER FORCE OR EFFECT, because of the fact that they were done by Autopen.” Donald J. Trump, Truth Social Post (Mar. 17, 2025) (truthsocial.com/@realDonaldTrump/posts/114175908922736427).

¹¹ Senate Committee on Homeland Security and Governmental Affairs, Opening Statement of Dr. Anthony Fauci, *Testimony of Anthony Fauci*, 119th Cong. (July 29, 2026).

Ultimately, the United States Attorney’s Office declined to prosecute, stating that it disagreed with the Committee’s conclusion that Ms. Lerner waived her privilege.¹² Moreover, Dr. Fauci’s statement is not comparable to Ms. Lerner’s and provides an even weaker basis to argue the privilege was waived.

The House Committee on Oversight and Government Reform took several weeks to thoroughly examine the issues and consider arguments submitted by Ms. Lerner’s counsel, the committee Minority, among others.¹³ Chairman Issa ultimately concluded that Ms. Lerner waived her Fifth Amendment privileges, emphasizing that her statement contained “four specific denials,” which were “at the core of the committee’s investigation.”¹⁴

In contrast to Lois Lerner’s opening statement, Dr. Fauci made no specific denials of wrongdoing in his opening remarks. At the May 22, 2013, House Committee on Oversight and Government Reform hearing, Ms. Lerner stated:

I have not done anything wrong. I have not broken any laws. I have not violated any IRS rules or regulations, and I have not provided false information to this or any other congressional committee.¹⁵

Dr. Fauci made no equivalent claims in his opening. He did reference the fact he has previously provided information to Congress – but unlike Ms. Lerner, his statement did not include any denials of wrongdoing. Regarding past information given to Congress, Dr. Fauci stated:

In fact, I testified before and/or briefed Senate and House committees well over 200 times over those 38 years. During and after the COVID pandemic I have appeared multiple times for

¹² Letter from Ronald C. Machen Jr., U.S. Attorney, to John A. Boehner, Speaker, U.S. House of Representatives, (Mar. 31, 2025) (www.taxnotes.com/research/federal/legislative-documents/congressional-tax-correspondence/doj-tells-boehner-it-will-not-prosecute-lerner-for-contempt/fs5j).

¹³ The Committee Report explained: “On June 28, 2013, Chairman Issa convened a Committee business meeting to allow the Committee to determine whether Ms. Lerner had in fact waived her Fifth Amendment privilege. After reviewing during the intervening five weeks legal analysis provided by the Office of General Counsel, arguments presented by Ms. Lerner’s counsel, and other relevant legal precedent, **Chairman Issa concluded that Ms. Lerner waived her constitutional privilege when she made a voluntary opening statement that involved several specific denials of various allegations**” (emphasis added). House Oversight and Governmental Reform Committee, *Resolution Recommending that the House of Representatives find Lois G. Lerner in Contempt of Congress* (Apr. 14, 2014) ([H. Rept. 113-415](#)).

¹⁴ See, House Committee on Oversight and Government Reform, Statement of Chairman Darrell Issa, *Business Meeting*, 113th Cong. (June 28, 2013); House Oversight and Governmental Reform Committee, *Report on Resolution Recommending that the House of Representatives find Lois G. Lerner in Contempt of Congress* (Apr. 2014) ([H. Rept. 113-415](#)).

¹⁵ House Committee on Oversight and Government Reform, Opening Statement of Lois G. Lerner, *The IRS: Targeting Americans for their Political Beliefs*, 113th Cong. (May 22, 2013) (H. Hrg. 113-33) (oversight.house.gov/hearing/the-irs-targeting-americans-for-their-political-beliefs/).

hearings in the Senate and the House, usually under oath, and sat for several days-long, transcribed, sworn interviews, answering questions about the very issues that are now the subject of this hearing.¹⁶

Explaining its reasoning for declining to prosecute Lois Lerner, the Department of Justice stated: “Where witnesses do not offer substantive testimony, however, and instead merely make general denials or summary assertions, federal courts have been unwilling to infer a waiver of the Fifth Amendment privilege.”¹⁷ To justify a contempt resolution against Dr. Fauci based on a waiver of Fifth Amendment protection, Chairman Paul would need to explain why this case is *stronger* than the case against Lois Lerner. The facts suggest the opposite.

A contempt resolution against Dr. Fauci will not result in new information or in a criminal conviction.

When an individual intentionally defies a valid congressional subpoena, they can be charged with criminal contempt under 2 U.S.C. §§ 192 and 194. A criminal contempt charge is punitive and does not compel a witness to provide testimony or information.¹⁸ Criminal contempt is an extreme measure and has been pursued sparingly throughout the history of Congress.¹⁹ The Senate has been particularly judicious in seeking to hold individuals in criminal contempt – only doing so once in the past 50 years.²⁰

For the reasons detailed above, it would be exceedingly difficult for Chairman Paul’s contempt resolution to result in a criminal conviction.²¹ Additionally, Chairman Paul has suggested that if the Committee approves the resolution, he will attempt to bypass the full

¹⁶ Senate Committee on Homeland Security and Governmental Affairs, Opening Statement of Dr. Anthony Fauci, *Testimony of Anthony Fauci*, 119th Cong. (July 29, 2026).

¹⁷ Letter from Ronald C. Machen Jr., U.S. Attorney, to John A. Boehner, Speaker, U.S. House of Representatives, (Mar. 31, 2025) (www.taxnotes.com/research/federal/legislative-documents/congressional-tax-correspondence/doj-tells-boehner-it-will-not-prosecute-lerner-for-contempt).

¹⁸ See, Congressional Research Service, *Congress’s Contempt Power and the Enforcement of Congressional Subpoenas: Law, History, Practice, Procedure* (May. 2017) ([RL34097](#)) “The criminal contempt statute and corresponding procedure are punitive in nature. It is used when the House or Senate wants to punish a recalcitrant witness . . . The criminal sanction is not coercive because the witness generally will not be able to purge himself by testifying or supplying subpoenaed documents after he has been voted in contempt by the committee and the House or Senate.”

¹⁹ See, *Id.*

²⁰ On September 25, 2024, the Senate agreed to a Resolution holding Seward Health Care CEO Ralph de la Torre in criminal contempt for defying a subpoena issued by the HELP Committee. This followed a bipartisan 20-0 vote by the Senate HELP Committee finding De la Torre in contempt. Every Member of the HELP Committee voted to support the contempt resolution either in person or by proxy – *except for Senator Paul*, who did not attend the markup and did not submit a proxy vote. See Senate Committee on Health, Education, Labor, and Pensions, *Proceeding Against Dr. Ralph de La Torre for Contempt of The Senate*, (Sept. 2024) ([S. Rept. 118-230](#)).

²¹ This is not an exhaustive list of the shortcomings that any prosecution resulting from this contempt resolution would face – only the most flagrant.

Senate vote required to refer the contempt case to the Department of Justice (DOJ).²² To do so would defy precedent and likely violate Senate rules. It is the Senate, not an individual Member or group of Members, that asserts its prerogatives, including whether to direct the Justice Department to enforce a resolution for contempt of Congress. If Chairman Paul refers a contempt resolution to DOJ without a full Senate vote, it would permanently weaken both the Senate and this Committee's ability to conduct oversight, as discussed further below, and would create additional legal challenges to any prosecutions that may flow from such a referral. Any future subject of congressional oversight would be able to point to Chairman Paul's actions and argue correctly that another chairman of this or any other committee may act unilaterally in avoiding the requirement for the Senate as a whole to act and decline to cooperate with legitimate oversight. No one Member or group of Members may speak for the Senate as a whole and it is the Senate that must authorize legal action to vindicate its authorities.

The Chairman's pursuit of contempt undermines Congress's investigative power.

In addition to the potential damaging precedent set by a failed effort to prosecute a contempt charge, the Chairman's actions have already undermined the Senate's ability to assert its investigative power in court. In a recent civil action challenging the HELP Committee's authority to enforce a subpoena, the witness argued that the Fifth Amendment shielded him from even *appearing* at a Committee hearing.²³ Throughout this dispute, the HELP Committee asserted that a witness under subpoena must still appear, even if they intend to assert their Fifth Amendment rights in response to questions.²⁴ During the litigation, Senate Legal Counsel, representing the Committee, emphasized that the Senate has always respected individuals' Fifth Amendment rights:

When witnesses have asserted a Fifth Amendment privilege at Senate hearings, the committees have treated the witness respectfully, communicating the committee's recognition and understanding of the privilege, and correspondingly excused the witness from the hearing once the privilege has been specifically invoked.²⁵

Following the July 29th hearing, this is no longer the case. If the Committee approves a contempt resolution – without even attempting to provide a sound legal basis – it sends the clear message that this Committee does not respect witnesses' Fifth Amendment rights. Any

²² See, Senator Rand Paul, X Post (Jul. 29, 2026, 8:30 PM)(x.com/SenRandPaul/status/208262471643162).

²³ *De la Torre v. Senate HELP Committee*, D.D.C. (24-cv-02776). Ralph de la Torre filed a civil suit after the Senate voted to approve the criminal contempt resolution against him on Sept. 25, 2024. At this time, the referral is still pending at DOJ.

²⁴ See Senate Committee on Health, Education, Labor, and Pensions, *Proceeding Against Dr. Ralph de La Torre for Contempt of The Senate*, (Sept. 2024) ([S. Rept. 118-230](#)).

²⁵ Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss (Nov. 26, 2024), *De la Torre v. Senate HELP Committee*, D.D.C. (24-cv-02776) (citing multiple examples of hearings before HSGAC and the Permanent Subcommittee on Investigations).

future witness seeking to avoid *even appearing* before a committee to assert the Fifth Amendment, can point to our Committee's actions.

Chairman Paul had the opportunity to get additional information and testimony from Dr. Fauci – until he insisted on excluding the Committee minority from his planned interview.

Prior to the June 22, 2026 subpoena, Dr. Fauci had cooperated with Chairman Paul's oversight efforts, including by providing thousands of personal emails and text messages in response to a September 9, 2025 letter from Chairman Paul.²⁶ Additionally, Dr. Fauci initially agreed to participate in a voluntary transcribed interview at the Chairman's request, but subsequently declined after the Chairman refused to allow Committee minority staff to participate.²⁷ As I wrote to Chairman Paul, excluding the minority from a transcribed interview requested as part of a "Committee investigation" is contrary to longstanding committee practice and, to my knowledge, completely unprecedented.²⁸ Bipartisan participation in all aspects of an investigation, including witness interviews, ensures a more complete and fair record and gives more credibility to the investigation's results.

Additionally, Chairman Paul does have an avenue available if his goal is truly to get additional answers from Dr. Fauci. As detailed above, an individual can be compelled to provide testimony if they no longer face the possibility of prosecution in any U.S. jurisdiction. While a presidential pardon does not remove the potential for state-level prosecution, under 18 U.S.C. §§6002 and 6005, a congressional committee can seek a judicial order granting the witness immunity that would apply in both federal and state proceedings. To my knowledge, Chairman Paul has not sought such an order.

Chairman Paul is asking Members of this Committee to support a criminal contempt resolution that will not result in additional answers or survive any potential future prosecution, based largely on actions the Chairman has taken. It will, however, undermine future efforts by this Committee and Congress to compel information. At a minimum, all

²⁶ Letter from Chairman Rand Paul to Anthony Fauci (Sept. 9, 2025); Letter from Counsel for Dr. Fauci to Chairman Rand Paul (June 16, 2026).

²⁷ After learning that the Chairman had asked that Dr. Fauci participate in a "transcribed interview with the Committee," Minority Staff asked the Majority to coordinate on scheduling. However, Majority staff refused to allow Minority participation, stating: "To avoid any confusion, the scheduled transcribed interview with Dr. Fauci is with the Chairman's staff. Ranking Member staff will not be participating in that interview." Email from HSGAC Majority Staff to Counsel for Dr. Fauci (Apr. 27, 2026). Following several weeks of correspondence between Majority staff and Dr. Fauci's counsel negotiating terms of the requested transcribed interview, Majority Staff wrote: "Also, we've extended an invitation to the Ranking Member's staff." Email from HSGAC Majority Staff to Counsel for Dr. Fauci (June 15, 2026). In response to a request for clarification, Majority Staff made clear the invitation was a "courtesy" only and Minority staff would not be permitted to participate or ask questions. Email from HSGAC Majority Staff to Counsel for Dr. Fauci (June 15, 2026). The next day, Dr. Fauci, through counsel, notified Chairman Paul he would decline to appear for the transcribed interview. Letter from Counsel for Dr. Fauci to Chairman Paul (June 16, 2026).

²⁸ Letter from Ranking Member Peters to Chairman Paul (June 6, 2026) (https://www.hsgac.senate.gov/library/files/20260609_letter_tochairpaul_hsgacrulesandprecedent/).

Members of the Committee should have the opportunity to thoroughly examine the legal issues presented and should require the Chairman to make a serious case before proceeding.

Sincerely,



Gary C. Peters
United States Senator
Ranking Member,
Committee on Homeland
Security and Governmental
Affairs