

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 DONALD J. TRUMP, ET AL.,)

4 Petitioners,)

5 v.) No. 19-715

6 MAZARS USA, LLP, ET AL.,)

7 Respondents,)

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9 DONALD J. TRUMP, ET AL.,)

10 Petitioners,)

11 v.) No. 19-760

12 DEUTSCHE BANK AG, ET AL.,)

13 Respondents.)

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15

16 Washington, D.C.

17 Tuesday, May 12, 2020

18

19 The above-entitled matter came on
20 for oral argument before the Supreme Court of the
21 United States at 10:00 a.m.

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11 Representatives Respondents.
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1 P R O C E E D I N G S

2 (10:00 a.m.)

3 CHIEF JUSTICE ROBERTS: The first case
4 we will argue today is Case 19-715, Donald Trump
5 versus Mazars, USA.

6 Mr. Strawbridge.

7 ORAL ARGUMENT OF PATRICK STRAWBRIDGE

8 ON BEHALF OF THE PETITIONERS

9 MR. STRAWBRIDGE: Before these cases
10 -- Mr. Chief Justice, and may it please the
11 Court:

12 The subpoenas at issue here are
13 unprecedented in every sense. Before these
14 cases, no court had ever upheld the use of
15 Congress's subpoena power to demand the personal
16 records of a sitting President, and no committee
17 of Congress had even tried to compel production
18 of such a broad swath of the President's
19 personal papers, let alone for the stated
20 purpose of considering potential legislation.

21 There is a reason that this is the
22 first time a congressional committee has
23 attempted such a gambit. It has long been
24 understood that because Congress's subpoena
25 power is implied, it is auxiliary and

1 subordinate. And when that power is deployed
2 against the President, it must yield absent any
3 long-standing tradition or particularly
4 compelling showing of need. The committees can
5 satisfy neither condition here, and that should
6 decide this case.

7 The committees contend that these
8 subpoenas satisfy the limits this Court has
9 always applied to congressional subpoenas. But
10 their arguments would render those limits
11 meaningless. For example, they contend that
12 this Court should ignore the committees' avowed
13 improper purpose so long as they simply tack on
14 a broad reference to potential legislation.

15 They claim that Congress can use
16 subpoenas to uncover individual wrongdoing
17 simply because that will always inform the
18 sufficiency of existing laws. And they
19 challenge this Court's ability to even question
20 the constitutionality of the potential
21 legislation that they rely upon.

22 The committees' obvious overreach is
23 sufficient to invalidate these subpoenas even in
24 a typical case. But the Court simply does not
25 proceed against the President as it does against

1 an ordinary individual. The committees have not
2 even tried to show any critical legislative need
3 for the documents these subpoenas seek.

4 Now it is no secret the relationship
5 between the House of Representatives and the
6 President is frayed, but this is neither the
7 first nor the last time that one House of
8 Congress will be at odds with the President.
9 The rule that the Court applies here will affect
10 not only this President but the presidency
11 itself. The Court should deny the committees
12 the blank check they seek and reverse the
13 decisions below.

14 CHIEF JUSTICE ROBERTS: Mr. --
15 Mr. Strawbridge, I want to make sure that I
16 understand the scope of your argument.

17 Your -- your brief begins by
18 questioning whether the House has any power to
19 subpoena presidential records, but you seem at
20 the end of the brief to pull back from that.
21 You say that such subpoenas "press the outer
22 limits of Congress's authority" and that there
23 is every reason to doubt whether subpoenaing the
24 personal documents of the President is a
25 necessary incident of lawmaking.

1 Do you concede any power in the House
2 to subpoena personal papers of the President?

3 MR. STRAWBRIDGE: I think it is very
4 hard to imagine that the House is ever going to
5 have the power, you know, pursuant to its
6 legislative powers, to subpoena the records of
7 the President because, quite frankly, the House
8 has limited powers to regulate the presidency
9 itself.

10 So I think it's very difficult to
11 imagine a situation where its implied power to
12 subpoena --

13 CHIEF JUSTICE ROBERTS: Well, that's
14 another --

15 MR. STRAWBRIDGE: -- documents --

16 CHIEF JUSTICE ROBERTS: -- that's
17 another formulation for what I was just focusing
18 on. Difficult to imagine, reason to doubt.

19 In other words, is your position
20 recognized -- does it recognize in a particular
21 case that the Congress -- the House may have
22 such authority and that in such a case it would
23 be for the courts to decide whether it's
24 exceeded any bounds in that situation?

25 MR. STRAWBRIDGE: Yes, we have argued

1 that, at a minimum, this Court should apply the
2 demonstrated need standard that it has applied
3 in other cases when -- when -- when there's an
4 attempt to serve process that targets the
5 President. So --

6 CHIEF JUSTICE ROBERTS: Okay. So --

7 MR. STRAWBRIDGE: -- the Court does --

8 CHIEF JUSTICE ROBERTS: -- so you say
9 -- you say there is some power, in the House,
10 you think there's a high standard. I understand
11 the House to concede there is some limit to its
12 authority.

13 So it sounds like at the end of the
14 day this is just another case where the courts
15 are balancing the competing interests on either
16 side. Is that the wrong way to look at it?

17 MR. STRAWBRIDGE: Well, I don't -- I
18 don't think that we're asking this Court to do
19 anything different than it has to do in an
20 ordinary case. We're just noting that the --
21 the restraints upon the powers of Congress are
22 emphasized in this case because this is a
23 separation of powers dispute.

24 And although --

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 Justice Thomas? Justice Thomas?

3 Justice Ginsburg?

4 JUSTICE GINSBURG: Counsel, in so many
5 of these prior cases, there was a cooperation,
6 for example, tax returns. Every President
7 voluntarily turned over his tax returns. So it
8 gets to be a pitched battle here because
9 President Trump is the first one to refuse to do
10 that. And, initially, he said because an audit
11 was ongoing. Now it seems to be broader than
12 that.

13 But the aura of this case is really
14 sauce for the goose that serves the gander as
15 well. So how do you distinguish, say,
16 Whitewater, when President Clinton's personal
17 records were subpoenaed from his accountant, or
18 even Hillary Clinton's law firm billing records
19 were subpoenaed?

20 It seems that in prior cases -- you
21 say this one is one of a kind, but it seems in
22 prior cases there was a much greater collision
23 of interests. Take the Nixon tapes.

24 How do you distinguish all of those
25 cases, Watergate, Whitewater, the Nixon tapes

1 case, the Paula Jones case?

2 MR. STRAWBRIDGE: Well, Your Honor, we
3 distinguish them in a number of ways.

4 With respect to Watergate and
5 Whitewater, obviously, those are cases of
6 relatively recent vintage. And in separation of
7 powers disputes, this Court has generally, such
8 as in Noel Canning, looked back for a much
9 longer precedent for the type of issue that
10 needs to be decided, examples of -- of the
11 encroachment upon the separation of powers.

12 And the recent examples, there are
13 just a handful of them that the House identifies
14 are two recent, you know, under that -- under
15 that stricture, as the Court recognized in
16 Southwest General.

17 Now it's also important to note that
18 almost all of those cases, I think all of those
19 cases actually involve cooperative efforts. And
20 as the -- as the Court recognized below, consent
21 is not the measure of constitutionality. In
22 none of those cases was there a challenge to the
23 scope or to the -- to the power of the
24 legislative committee in that case to request
25 those documents.

1 And I think Whitewater --

2 CHIEF JUSTICE ROBERTS: Thank you,
3 counsel.

4 Justice Thomas?

5 JUSTICE THOMAS: Yes. Thank you,
6 Chief.

7 Counsel, the -- I'm very interested,
8 do you think that there are any implied powers
9 for the Congress to request or to subpoena
10 private documents?

11 MR. STRAWBRIDGE: I think that there
12 might be limited powers in some cases for the
13 House to subpoena private documents, although
14 the Court has been very clear in Watkins and a
15 number of other cases that Congress lacks any
16 power to just inquire --

17 JUSTICE THOMAS: Okay. Would you
18 define what you mean by that limited power?

19 MR. STRAWBRIDGE: Well, I think -- I
20 think that we -- we don't quarrel with the
21 general notion that Congress has some implied
22 power to exercise its legislative powers. And
23 we don't -- and we recognize that in some cases
24 Congress has been able to seek information that
25 would be directly relevant to its consideration

1 of potential legislation.

2 But, as the D.C. Circuit recognized in
3 Senate Select Committee and Judge Livingston
4 recognized below, most often, that's going to
5 take the view of forward-looking information,
6 perhaps aggregated information, and not an
7 attempt to, you know, reassemble a precise
8 factual history --

9 JUSTICE THOMAS: Well, it said --

10 MR. STRAWBRIDGE: -- of precisely what
11 --

12 JUSTICE THOMAS: -- in the D -- in the
13 D.C. Circuit opinion, it says that this sort of
14 information or subpoena should be requested
15 under the impeachment power.

16 What's the line between the -- a
17 subpoena, a legislative subpoena, and a -- an
18 impeachment-related subpoena?

19 MR. STRAWBRIDGE: Well, in Kilbourn,
20 this Court recognized that -- that -- that
21 they're two very different powers and that --
22 and that when impeachment is properly pending
23 before either body of the House, the ability to
24 subpoena pursuant to impeachment is coextensive
25 with that of a court. Of course, court

1 subpoenas are not unlimited.

2 But that has no bearing on this
3 dispute because the parties -- the committees
4 have waived any reliance on impeachment. And --
5 and -- and -- nor could they. These committees
6 don't even have jurisdiction over impeachment.
7 So regardless of whether --

8 CHIEF JUSTICE ROBERTS: Justice
9 Breyer?

10 JUSTICE BREYER: All right. I'd --
11 I'd like to follow up on both Justice Thomas's
12 and Justice Ginsburg's questions.

13 As to Justice Thomas's questions, are
14 you saying that Sam Ervin's subpoenas, which
15 were done under the legislative power at the
16 time of Watergate, which were fairly broad, are
17 you saying they were unlawful, that a court
18 should not enforce them? Yes or no?

19 And as to Justice Ginsburg's question,
20 I would like to know why, since in Watergate and
21 other cases, Watergate particularly, the Court
22 gave contested material involving the very
23 workings of the Presidential office to the
24 prosecutor, why isn't whatever standard applies
25 to personal papers a weaker one, not a stronger

1 one?

2 MR. STRAWBRIDGE: Well, if I can
3 answer that last question first, I think that
4 the Court cannot refuse to see what others see,
5 to quote Rumely, and -- and the -- the -- the
6 threat in this case of subpoenaing, you know,
7 decades worth of papers, not only of the
8 President but of the President's family members,
9 of his children, of his grandchildren, as the
10 House has done in this case, poses an obvious
11 problem with respect to harassment and
12 infringement upon the ability of the executive
13 to discharge his duties 24 hours a day.

14 Unlike Congress, the President is
15 never in recess. And these types of subpoenas
16 are -- are -- are going to be particularly
17 troublesome and burdensome.

18 JUSTICE BREYER: Are you saying that a
19 weaker case -- look, whatever it is, why
20 wouldn't whatever standard applies to personal
21 papers before the Presidency be equal to or
22 weaker than the standard for material that is
23 the workings of the administration at the time?

24 MR. STRAWBRIDGE: Well, setting aside
25 any executive privilege concerns, which I

1 understand is not -- not the focus of your
2 question, the answer is because Congress has --
3 or this Court has repeatedly emphasized in
4 Kilbourn and Watkins and everywhere else that
5 Congress lacks any power to inquire into the
6 private affairs of any individual.

7 And that's distinct from whatever
8 interest it may have in informing themselves
9 about the workings of government. Now that
10 informing power does not extend to the
11 President. It generally applies to lower
12 executive branch officials and agencies.

13 JUSTICE BREYER: Thank you. I -- I
14 see. What about the first question, are you
15 saying that the Ervin committee subpoenas were
16 unlawful? Yes or no?

17 MR. STRAWBRIDGE: This case -- we do
18 not -- we do not argue that and we do not need
19 to address the power of impeachment because it's
20 not at issue in this case.

21 JUSTICE BREYER: It wasn't
22 impeachment.

23 CHIEF JUSTICE ROBERTS: Justice Alito?

24 JUSTICE ALITO: Counsel, are there any
25 circumstances in which a House of Congress can

1 justify a subpoena for a sitting President's
2 personal records on the ground that it wants to
3 use the President as a case study for possible
4 broad regulatory legislation?

5 MR. STRAWBRIDGE: I -- I think it's
6 difficult to imagine for a couple of reasons.
7 One is, even setting aside the fact that it's
8 the President, this Court has always required
9 some showing that -- that -- that the
10 information being sought is pertinent.

11 And I think that the -- the -- the
12 swath and the -- and the -- and the scope of the
13 subpoenas that are at issue here create serious
14 problems even in an ordinary case.

15 But -- but, to directly answer the
16 question, no, the President's personal papers
17 are not related to anything having to do with
18 the workings of government. And to empower the
19 committees to simply declare him a useful case
20 study is to open the door to all sorts of
21 oppressive requests.

22 You could have subpoenas directed
23 seeking all of Jimmy Carter's financial history
24 simply because he used to be a peanut farmer and
25 they want a case study on agriculture. You

1 could have all sorts of requests for medical
2 records, for educational records, any imaginable
3 detailed personal records because Congress does
4 have the general power to legislate in lots of
5 areas.

6 JUSTICE ALITO: Well, perhaps before
7 my time expires I can ask you one other
8 question. I think you said that Congress has
9 limited power to regulate the conduct of a
10 President.

11 Does Congress have any power to
12 regulate the conduct of the President, which is
13 an office that is created by the Constitution
14 itself and not by Congress?

15 MR. STRAWBRIDGE: The answer to that,
16 I think, is clear from this Court's cases. It's
17 not very much, which is why it frequently
18 applies avoidance principles to -- to avoid even
19 having to decide whether Congress has -- has
20 attempted to reach the President.

21 Now the one example, obviously, in --
22 in recent history is the Nixon versus General
23 Administrative Services case, but even in that
24 case, it was a very limited right to -- to --
25 regarding presidential documents.

1 One could imagine maybe some
2 hypothetical where there'd be some limited
3 personal papers that might be relevant to a
4 question regarding custody of official
5 documents. But, of course, even in that case,
6 what saved the constitutionality of that statute
7 was the fact that it was not seeking the
8 President's personal papers, and that control
9 remained in the executive branch, neither of
10 which --

11 CHIEF JUSTICE ROBERTS: Justice
12 Sotomayor?

13 JUSTICE SOTOMAYOR: Counsel, there is
14 a long, long history of Congress seeking records
15 and getting them, as Justice Ginsburg pointed
16 out, from Presidents. And in some of those
17 cases, we have said, especially Eastland and
18 McGrain, that a congressional subpoena is valid
19 so long as there is a conceivable legislative
20 purpose and the records are relevant to that
21 purpose.

22 I see a tremendous separation of
23 powers problem when you're talking about placing
24 a heightened standard or a clear statement, your
25 various formulations of this, on an

1 investigation that a committee is embarking
2 upon.

3 Now I understand your complaint about
4 the Financial Services subpoena on the money
5 laundering issue, but are you disputing that the
6 stated purpose of the Intelligence Committee
7 subpoena at issue, investigation efforts by
8 foreign entities to influence the U.S. political
9 process and related to the financial records of
10 -- of that, that those were irrelevant to that
11 purpose and that's an illegitimate purpose by
12 the investigative committee, by the Intelligence
13 Committee?

14 MR. STRAWBRIDGE: Well, taking --
15 taking the relevance question first, yes, even
16 if you accepted that there was some legitimate
17 legislation that could be had that reached the
18 President because what we're seeking here is
19 presidential finances, when you look at --

20 JUSTICE SOTOMAYOR: No, we're --

21 MR. STRAWBRIDGE: -- the face of the
22 --

23 JUSTICE SOTOMAYOR: -- I'm sorry.
24 Pardon, sir. Not presidential finances. We're
25 asking for his personal tax returns before he

1 became President. Those are very different
2 things. And we're not asking him to produce it.
3 And some of the subpoenas that Congress, through
4 history as far back as 1792, have asked for
5 personal papers of the President while being
6 President. This is before he was President.

7 I -- I -- I don't understand. It --
8 it is -- and they're not his papers in the sense
9 of he's not in possession of them. These are to
10 private -- subpoenas to private entities.

11 MR. STRAWBRIDGE: Okay, so there are a
12 number of issues there. With respect to the
13 custodian issue, this Court, even going back to
14 Eastland, has always recognized the ability of a
15 person who stands in the President's whose
16 records are in the hands of a third-party to
17 come in and challenge them, and that's certainly
18 the case here.

19 JUSTICE SOTOMAYOR: Well, that --
20 those papers all have to do with executive
21 privilege questions, and --

22 MR. STRAWBRIDGE: Not in --

23 JUSTICE SOTOMAYOR: -- they're not --

24 MR. STRAWBRIDGE: -- not in Eastland.

25 JUSTICE SOTOMAYOR: -- personal --

1 they're not personal papers. That -- all those
2 cases have to do with papers that belong to the
3 Office of the President. Again, these are
4 personal papers.

5 MR. STRAWBRIDGE: Well, Eastland --

6 CHIEF JUSTICE ROBERTS: Briefly,
7 counsel.

8 MR. STRAWBRIDGE: Yeah. Eastland --
9 Eastland was not -- didn't even raise that
10 issue. Eastland was, in fact, personal papers.

11 But, with respect, I guess the main
12 point I would make is whatever presumption this
13 Court has previously applied in cases that
14 involve separation of powers, it should not put
15 a -- any -- any finger on the scale for
16 Congress's asserted legislative power in this
17 case.

18 And, indeed, in numerous separation of
19 powers cases, starting with Kilbourn, the Court
20 has declined to extend any presumption that --
21 that -- that Congress had a legitimate power.
22 That was also true below in the D.C. Circuit in
23 Tobin, in the Senate Select Committee case, and
24 even in the AT&T cases.

25 CHIEF JUSTICE ROBERTS: Justice Kagan?

1 JUSTICE KAGAN: Good morning,
2 Mr. Strawbridge. I think what strikes me about
3 this case is, you know, this isn't the first
4 conflict between Congress and the President, as
5 many of my colleagues have pointed out.

6 We've never had to address this issue,
7 and the reason is because Congress and the
8 President have reached accommodations with each
9 other, and sometimes one has gotten more and
10 sometimes the other has gotten more, but there
11 has always been this accommodation-seeking.

12 And what it seems to me you're asking
13 us to do is to put a kind of 10-ton weight on
14 the scales between the President and Congress
15 and essentially to make it impossible for
16 Congress to perform oversight and to carry out
17 its functions where the President is concerned.

18 And you're quite right in what you
19 said before, that this isn't going to be the
20 last such case, and I wonder whether that fact
21 isn't a good reason to reject your proposed
22 rule.

23 MR. STRAWBRIDGE: Well, no, I -- I --
24 I don't -- I don't think that that's the case
25 because -- well, and for several reasons. One,

1 the fact that this is the first time that
2 Congress has attempted to -- to -- to subpoena
3 this scale and this scope of documents from the
4 President, and none of the other historical
5 cases involved a direct subpoena for the
6 President's documents in the way that this one
7 does, I think requires this Court to draw a
8 line.

9 It is unfortunate that the House did
10 not attempt to seek these documents directly
11 from the President or engage in any negotiation
12 but simply ran to third-party custodians and
13 forced the President to bring this. Among other
14 things, it has the effect of limiting the number
15 of defenses the President can bring.

16 But, even on the test this Court has
17 always applied in this scenario, these subpoenas
18 fail every hallmark of a legitimate legislative
19 investigation.

20 JUSTICE KAGAN: But I -- I -- I --

21 MR. STRAWBRIDGE: And whatever --

22 JUSTICE KAGAN: Go ahead. Sorry.

23 MR. STRAWBRIDGE: I was going to say
24 whatever power Congress has to conduct oversight
25 of lower branch agencies or inform itself as to

1 the workings of government, these documents are
2 not relevant to that. And that power does not
3 extend to the President, who is a separate
4 constitutionally created officer.

5 JUSTICE KAGAN: Yeah, I mean, I think
6 some former presidents might contest the idea
7 that this -- these subpoenas go further than has
8 ever gone before. And this gets me back to what
9 Justice Breyer had said, is that, you know,
10 these subpoenas are for personal records, where
11 the President is just a man.

12 They're not for official records,
13 where the President might have executive
14 privilege, where we have to worry about the
15 conduct of governance and about the way the
16 executive branch operates.

17 And as with Justice Breyer, I guess I
18 would like to hear your views on why that
19 wouldn't suggest that there is a lower standard
20 here, not a higher one.

21 MR. STRAWBRIDGE: Well, because I -- I
22 guess -- I guess because the -- the fact that
23 they seek personal documents doesn't mean that
24 they're not targeting the President. And,
25 indeed, both the Oversight Committee and the --

1 and the Financial -- or, I'm sorry, the -- the
2 House Intelligence Committee have identified the
3 President in his role as President as one of the
4 motivating factors for their investigation.

5 Secondly, as this Court has note --
6 has noted, even in -- even in Clinton v. Jones,
7 when it rejected a broader immunity argument,
8 there's still a need to ensure that the
9 President is not going to face undue harassment
10 or distraction and there's a necessity to
11 accommodate him.

12 We think that that's best accommodated
13 in this case at a minimum by applying the
14 demonstrated need standard, in which --

15 CHIEF JUSTICE ROBERTS: Justice
16 Gorsuch?

17 JUSTICE GORSUCH: Counsel, I'd like to
18 pick up right there where you left off. You
19 argue that there is no demonstrated need, no
20 substantial legislative purpose. The House is
21 before us, and I'm sure we're going to hear from
22 them that there is a substantial legislative
23 need.

24 Why -- why should we not defer to the
25 House's views about its own legislative

1 purposes?

2 MR. STRAWBRIDGE: For several reasons,
3 Justice Gorsuch. To begin, the subpoena power
4 is an implied power, and this Court made clear,
5 most recently in NFIB v. Sebelius, that Congress
6 cannot use its implied powers to challenge the
7 structure of government. And a subpoena
8 targeting the President's personal documents is
9 a challenge to the separation of powers.

10 In -- in Morrison v. Olson as well,
11 the Court did not apply a presumption on either
12 side of that dispute precisely because it was a
13 battle between the branches. As Justice Scalia
14 pointed out in his opinion, there's simply no
15 need for a presumption on either side, whatever
16 might normally apply in a case against an
17 ordinary individual, because the President has
18 his own powers that are created by the
19 Constitution.

20 And then, of course, this Court in a
21 number of cases, as we describe, has recognized,
22 going back to Chief Justice Marshall, that we do
23 not proceed against the President as we do
24 against an ordinary litigant. And so whether
25 that was in Cheney, whether that was the

1 limiting construction given to the APA in --

2 JUSTICE GORSUCH: Counsel, I'm sorry
3 to interrupt you, but I -- I guess my question
4 was more practical than that.

5 Why is this subpoena not provide --
6 supported by a substantial legislative need?

7 MR. STRAWBRIDGE: Well, one -- I guess
8 three answers. Congress has not really
9 identified any -- with any specificity what
10 actual valid legislation it could enact that
11 directly reaches the President. Even if it had,
12 it hasn't identified how documents going back
13 upwards of 10 years in some cases, completely
14 unlimited, and seeking the most minute financial
15 details, not only about him but his children and
16 his grandchildren, every credit card swipe,
17 every check, has anything to do with some
18 purpose that would actually be permissible
19 legislation.

20 And I think that any -- any allowance
21 of the case study rationale that the House has
22 relied upon, or the Financial Services
23 Committee, is a door that opens to endless
24 subpoenas and harassment anytime one party
25 controls one House of Congress opposite from the

1 President.

2 CHIEF JUSTICE ROBERTS: Thank you,
3 counsel.

4 Justice Kavanaugh?

5 JUSTICE KAVANAUGH: Thank you, Chief
6 Justice.

7 And good morning, Mr. Strawbridge. On
8 your argument that the Nixon demonstrated
9 specific need standard should apply or the
10 demonstrably critical standard, explain for me
11 how that would play out in practice in a case
12 like this.

13 MR. STRAWBRIDGE: Well, in a case like
14 this, obviously, where Congress is -- is
15 asserting its desire to enact general
16 legislation, I think it's going to be very
17 difficult.

18 I don't hold out the possibility that
19 they could meet the demonstrated need -- I mean,
20 I don't -- I don't completely rule out that
21 possibility, although I think it is telling that
22 the House devoted all of one sentence to each of
23 these subpoenas, attempting to just assert very
24 broadly that they meet the demonstrated need
25 criteria.

1 But, if there was some situation in
2 which Congress was actually -- you know, had --
3 had -- had put forth a statute for which they --
4 they needed some information to decide whether
5 to enact a statute, the statute was valid, and
6 for some reason the President's personal papers
7 were necessary to inform Congress, then perhaps
8 in that case it could meet the demonstrated need
9 statute.

10 I can't imagine that any of these
11 subpoenas could come close, given how far back
12 they look and how much of a dragnet they set up.
13 These are the kinds of subpoenas that the Court
14 in Watkins said raise specific questions about
15 whether they're really attempting to expose
16 alleged wrongdoing as opposed to achieve a valid
17 legislative end.

18 JUSTICE KAVANAUGH: Secondly,
19 following up on Justice Kagan's point about the
20 future, on page 6 of your supplemental letter
21 brief, you say that "it is likely that civil
22 litigation over the subpoenas would have been
23 foreclosed had the committee issued them to the
24 President."

25 And you say this case is different

1 because the subpoenas were issued to a
2 third-party custodian. And there's an implicit
3 assumption there that I just want to make sure
4 of, namely, that absent a court order, the
5 private custodians plan to comply with the
6 subpoenas even if the client directs or requests
7 them not to comply. Is that correct?

8 MR. STRAWBRIDGE: The -- the -- the
9 recipients of these subpoenas have indicated
10 that they consider it to be a dispute between
11 the President and the House of Representatives,
12 and -- and -- and absent some sort of court
13 order regarding its validity, they feel
14 obligated to comply.

15 And this Court in Eastland recognized
16 that it's not -- it's just not reasonable to
17 expect in this situation the third-party
18 custodian to risk contempt of Congress or other
19 collateral consequences, and there needs to be a
20 vehicle to let -- to allow for review,
21 especially in this case, where the President is
22 suffering a personal injury arising --

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 General Wall?

1 ORAL ARGUMENT OF JEFFREY B. WALL,
2 FOR THE UNITED STATES, AS AMICUS CURIAE,
3 SUPPORTING THE PETITIONERS

4 MR. WALL: Mr. Chief Justice, and may
5 it please the Court:

6 These cases are truly historic. Three
7 different congressional committees have targeted
8 not the official records of the President but
9 his personal records, stretching back years
10 before he was even a candidate for office.

11 The potential to harass and undermine
12 the President and the presidency is plain. It's
13 not much to ask that before the House delves
14 into the President's personal life, it explain
15 in some meaningful way what laws it is
16 considering and why it needs the President's
17 documents in particular.

18 The subpoenas here don't even come
19 close. That creates two problems for the House.
20 It can't satisfy any standard sensitive to
21 Article II and the separation of powers, and,
22 indeed, as in *Rumely* and *Watkins*, this Court
23 should not decide a serious constitutional
24 question the full House itself has not
25 confronted.

1 CHIEF JUSTICE ROBERTS: Counsel, you
2 spend a lot of time in your brief documenting
3 that the purpose of these subpoenas was actually
4 investigatory rather than legislative. And if
5 that is a pertinent consideration, I -- I wonder
6 how a court is supposed to look at it.

7 Should a court be probing the mental
8 processes of the legislators? Should members of
9 House committees be subject to cross-examination
10 on why you were really seeking these documents?

11 MR. WALL: No, Mr. Chief Justice. I
12 want to be clear. I don't think any of that
13 would be permissible.

14 All we are saying is that you should
15 review the subpoena on the basis of the
16 contemporaneous objective record that is the
17 basis for the legislative subpoenas themselves.
18 So we have not in our brief turned to
19 legislative statements. We haven't said that
20 they should be able to get discovery into their
21 mental processes or anything of the like.

22 We have said that Chairman Cummings'
23 memo shows the objective purpose's wrongdoing,
24 but more important, I would just point to the
25 mismatch between the breadth and duration of the

1 subpoenas and their asserted purposes.

2 I think, with respect to all three,
3 they -- they don't -- they're just -- they don't
4 match up with what the committees say they're
5 doing if you look at the information they're
6 seeking.

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.

9 Justice Thomas?

10 JUSTICE THOMAS: Mr. Wall, what if,
11 following up on the Chief Justice's question,
12 what if it was clear from those statements that
13 you reviewed that their intention was actually
14 to remove the President from office rather than
15 the sort of pretextual reason that it is for
16 legislative -- pre-textual legislative reasons?

17 MR. WALL: I -- I do think, if you
18 look at the statements, and we haven't urged
19 that, but if you do, yes, I -- I think they make
20 clear that the subpoenas are not in aid of valid
21 legislation.

22 That's the only enumerated power to
23 which Congress has pointed here. The House has
24 not relied on impeachment. And so you would
25 simply just say the subpoenas are invalid.

1 And to tie that into Justice Gorsuch's
2 question earlier, I -- I think we're not asking
3 to go back and look at -- at what they said or
4 probe their mental processes. I'm just saying,
5 if you look at pages 46 and 54 of the red brief
6 and you look at what they actually say about
7 their intended legislative proposals and then
8 why they need the document, it's paper thin.

9 They don't give you any specifics on
10 what they're thinking about doing or any
11 specifics on why they need the documents. And
12 that's not an accident. It's not the product of
13 carelessness or thought -- thoughtlessness. It
14 is because the purpose here is to expose
15 wrongdoing. And the House has never really
16 tried to substantiate why it needs these
17 documents in service of its legislative powers.

18 JUSTICE THOMAS: Thank you.

19 CHIEF JUSTICE ROBERTS: Justice
20 Ginsburg?

21 JUSTICE GINSBURG: One must
22 investigate before legislation. The purpose of
23 investigation is to frame the legislation. You
24 don't have the legislation in -- in mind. You
25 -- you want to explore what is the problem, what

1 legislative change can reduce or eliminate the
2 problem.

3 So, for example, the Ethics in
4 Government Act, Congress may decide that it
5 needs to beef up that legislation. It may also
6 decide that for financial disclosure purposes,
7 there should be disclosure of tax returns.

8 So those -- those are legislative
9 purposes. Investigate to see if you need
10 legislation of that sort. And then, to impugn
11 Congress's motive, I mean, even the policeman on
12 the beat, if he stops a car and gives the reason
13 that the car went through a stop sign, we don't
14 allow an investigation into what the subjective
15 motive really was.

16 So, here, you're -- you're distrusting
17 Congress more than the cop on the beat.

18 MR. WALL: Justice Ginsburg, I
19 absolutely agree that Congress can investigate
20 in service of what legislation might be needed.
21 Our submission is much more modest, that when
22 that legislative -- when that inquiry involves
23 the President, that you need a somewhat higher
24 standard with respect to purpose because the
25 room for regulating the President is so much

1 narrower than it is with respect to private
2 parties.

3 And on the need side, because of the
4 dangers of harassing and distracting and
5 undermining the President, and that's a common
6 theme that runs through the Court's cases, that
7 the President gets some measure of heightened
8 protection because you can't proceed against the
9 President as against an ordinary litigant.

10 And all I'm saying is that Congress
11 hasn't met that standard here.

12 CHIEF JUSTICE ROBERTS: Justice
13 Breyer?

14 JUSTICE GINSBURG: How did that work
15 out in the Paula Jones --

16 CHIEF JUSTICE ROBERTS: Justice
17 Breyer?

18 JUSTICE BREYER: Following this up,
19 assume, as I do, that for reasons set out in an
20 opinion by Judge Griffith, that we're not very
21 good courts at -- at deciding disputes between
22 two powerful political branches. So it should
23 be rare.

24 But, if it is in front of us, why not
25 apply the standard that is ordinarily applied to

1 every human being in the United States in
2 respect to, for example, grand jury subpoenas?
3 Any human being in the United States, when he
4 gets a subpoena, can go to a judge and say:
5 Judge, this is overly burdensome, and then he
6 has a chance to show it.

7 And, here, if it's the President, the
8 Court's already written in Paula Jones two or
9 three paragraphs of the kinds of things that --
10 that a President has that are special, special
11 need, not to take his time, et cetera, but would
12 you object to a decision of this Court that says
13 apply that, taking into account the special
14 needs of the Presidency, just like other human
15 beings sometimes have special needs? They might
16 be an emergency medical worker, et cetera.

17 MR. WALL: I would, Justice Breyer, on
18 two grounds. First, the Court and the D.C.
19 Circuit have rejected the analogy to grand jury
20 subpoenas served by prosecutors. These are
21 legislative subpoenas, not subpoenas issued by
22 the executive branch, for entirely different
23 interests and they trigger different concerns.
24 These subpoenas need to be in aid of valid
25 legislation, not as a prosecutor's subpoena to

1 probe wrongdoing.

2 And the second is I -- I -- to take
3 both your question and -- and I think what
4 Justice Ginsburg was going to get at, we do
5 think the analogy to Clinton v. Jones is
6 actually helpful. The Court there rejected an
7 absolute immunity but said the President was
8 entitled to some special protection.

9 And we are here saying the Court
10 should take exactly the same approach. We're
11 not saying the House has no power to get at the
12 records of a sitting President. We're saying
13 that it needs to satisfy a heightened standard
14 because, if it doesn't, these requests will
15 become routine, and that weapon in the standing
16 arsenal of the Houses of Congress will, I think,
17 be routinely deployed in a way that -- that
18 harms both the separation of powers and that
19 undermines the presidency.

20 CHIEF JUSTICE ROBERTS: Justice Alito?

21 JUSTICE ALITO: Could you apply the
22 standard that you think is appropriate to the
23 subpoena from the House Intelligence Committee?

24 MR. WALL: Sure, Justice Alito. So,
25 there, the Intelligence Committee says that it's

1 investigating foreign -- foreign influence in
2 recent elections. But the subpoena goes back to
3 2010. It doesn't link any way -- in any way to
4 foreign transactions. And it targets only the
5 President.

6 I have no idea why one would serve a
7 subpoena that broad, both in breadth and
8 duration, if what one is concerned about is a
9 far more specific topic that would apply, I
10 would think, to federal candidates more
11 generally and more narrowly to foreign
12 transactions and to more recent transactions.
13 And there is nothing in the red brief that
14 explains the mismatch.

15 On the other side, the Financial
16 Services Committee says it's investigating money
17 laundering after the 2008 financial crisis. But
18 its subpoena only goes back to the middle of
19 2016, and, again, it targets the President.

20 None of this makes any sense if what
21 you are doing is in aid of legislation.

22 JUSTICE ALITO: Justice Ginsburg
23 referred to legislation concerning disclosure
24 requirements that would apply to the President,
25 and there's also mention of conflict-of-interest

1 legislation that might apply to the President.

2 Does Congress have the power to
3 regulate the President in these ways?

4 MR. WALL: I think it's very unlikely
5 on the conflict-of-interest side, Justice Alito,
6 that even the D.C. Circuit did not rely on that
7 because of the serious constitutional questions
8 it would pose if you disabled the executive from
9 managing some part of the executive branch.

10 I think the financial disclosures are
11 the hardest. And I guess what I would say is,
12 if the House in its brief had explained with any
13 specificity what it might want to do to the
14 Ethics in Government Act and why then it needs
15 the President's documents, we could have that
16 debate. I think the room is probably narrow.

17 But we're not -- the United States is
18 not saying there's no room, but we don't even
19 get there because all they say is we might want
20 to amend the EGA, "see, e.g., HR 1," which was a
21 bill the House passed before it even issued
22 these subpoenas.

23 And so it's very hard to sort of shoot
24 at a target in the dark. I don't know what the
25 House wants to do with any specificity, so it's

1 hard to say whether that's valid legislation.

2 CHIEF JUSTICE ROBERTS: Justice
3 Sotomayor?

4 JUSTICE SOTOMAYOR: Mr. Wall, that's
5 the issue, isn't it? Which is, until Congress
6 investigates, A, it doesn't have a chance to
7 determine what might be valid, and, B, we don't
8 have a chance then to look at an actual law and
9 say it may or may not be valid. You're asking a
10 court in the guise of a heightened review
11 standard to speculate as to legislation that's
12 not in effect yet.

13 But I want to go back to the subpoenas
14 at issue and their breadth. You note that the
15 Intelligence Committee goes back 10 years. But
16 I think it's fairly common knowledge that
17 Mr. Trump, before he was President, was thinking
18 about running for President for a very long
19 period of time.

20 Why is it that Congress can't believe
21 that looking at long-standing relationships and
22 how those relationships changed or didn't change
23 is important to knowing what undue influence
24 might be occurring?

25 MR. WALL: Justice Sotomayor, if it

1 wants to do that -- our submission is just a
2 fairly modest one -- it needs to do more than
3 wave its hands about general purposes and say
4 that the President would be a useful case study
5 for prospective and generally applicable laws.

6 JUSTICE SOTOMAYOR: Mr. Wall --

7 MR. WALL: Again, I'm not denying --

8 JUSTICE SOTOMAYOR: -- Mr. Wall, in
9 what other setting does any investigative body
10 have to do more than what was done here?

11 MR. WALL: I would point to the
12 prosecutor in Nixon --

13 JUSTICE SOTOMAYOR: For private -- for
14 private records?

15 MR. WALL: Well, this particular
16 question hasn't come up to the Court before in a
17 constitutional context, but, in Nixon, of
18 course, the prosecutor had to show, demonstrate
19 a specific need. In the Senate Select Committee
20 case --

21 JUSTICE SOTOMAYOR: I'd rather that
22 you --

23 MR. WALL: -- the congressional
24 committee had to show --

25 JUSTICE SOTOMAYOR: Mr. Wall, please,

1 I don't want you to go to executive privilege
2 cases. I want you to go to papers that,
3 indisputably, have nothing to do with Mr. Trump
4 while he was a private person. They're not
5 asking for these records post being President.
6 They're asking for these records pre being
7 President.

8 MR. WALL: I think that makes the
9 problem worse, not better, Justice Sotomayor.
10 They're targeting the personal life of the
11 President before he was a candidate for office.
12 That raises, granted, somewhat different but
13 deeply troubling and equally problematic
14 constitutional concerns that you will harass --

15 CHIEF JUSTICE ROBERTS: Justice Kagan?
16 Justice Kagan?

17 JUSTICE KAGAN: Mr. Wall, I'd like to
18 go back to your use of Clinton v. Jones because
19 I -- I had read that case differently. Of
20 course, Clinton says that you're supposed to
21 treat the President's requests with respect when
22 the President says, like, I -- I need a
23 deposition scheduled at a different time or can
24 we have written interrogatories rather than a
25 deposition? But the fundamental claim of

1 presidential immunity or -- or even presidential
2 difference was rejected in that case.

3 And I suppose what -- if -- what I'd
4 like to know about your argument -- I read your
5 brief and I read the President's brief -- own
6 brief, and no place do you make a case as to why
7 these particular subpoenas place a particular
8 burden on the President such that he will be
9 prevented from carrying out his constitutional
10 responsibilities.

11 And that's what I took Clinton v.
12 Jones to be saying, is that's the kind of thing
13 a President has to come in and show, a sort of
14 case-specific argument about burden on the
15 President. And are you making that kind of
16 argument at all?

17 MR. WALL: Well, yes and no. Not if
18 what you mean by "burden" is sort of compiling
19 and delivering the documents to the House. Yes
20 if what you mean by "burden" is what I think
21 Clinton v. Jones -- in the Clinton v. Jones
22 sense, which is harassing and undermining the
23 President.

24 Now exactly these subpoenas, well, I
25 mean, I think you have to look at it --

1 JUSTICE KAGAN: Well, harassing and
2 undermining the President -- I mean, the point
3 of some of those suits is presumably to harass
4 and undermine the President, and the Court let
5 them go, let -- you know, let them proceed. And
6 it said the only thing we're going to be
7 concerned about is if you come in to us and say,
8 in defending those suits, you're going to be
9 prevented from performing the responsibilities
10 that we, the nation, need you to perform. Are
11 you making an argument of that kind?

12 MR. WALL: Yes. In the courts below,
13 when the House was pressed on the limits of its
14 theory, it said that probably it could not draw
15 the blood of the President or read his teenage
16 diary. The power that they are seeking and the
17 burden they will impose in the aggregate on the
18 President will, I think, reshape and transform
19 the balance of the separation of powers.

20 So, yes, we are saying that these
21 subpoenas, and, certainly, these subpoenas taken
22 in the aggregate, once the House has this
23 weapon, will harm and undermine the presidency
24 of the United States, not just this President,
25 the institution of the presidency going forward.

1 CHIEF JUSTICE ROBERTS: Justice
2 Gorsuch?

3 JUSTICE GORSUCH: Counsel, I believe
4 in earlier discussions with Justice Alito, you
5 indicated that Congress might be able to
6 regulate in the area of financial disclosures of
7 the President, and that is one of the interests
8 the House has asserted here.

9 What more would you require the House
10 to do to assert that interest? What -- what
11 would be enough, in your mind, to demonstrate
12 the heightened need you suggest is needed?

13 MR. WALL: I don't think it has to go
14 provision by provision, Justice Gorsuch, or
15 anything like that. But I do think it's got to
16 describe the possible legislation with enough
17 specificity to enable meaningful judicial
18 review.

19 So we know the President's required to
20 disclose certain things from the Ethics in
21 Government Act. If the House had said --

22 JUSTICE GORSUCH: Well, let me stop
23 you -- let me stop you there. Let me -- I'm
24 sorry to interrupt, but let me stop you there.

25 Let -- let's say the House says we're

1 considering legislation on whether to require
2 presidential candidates to disclose their tax
3 returns for a set number of years. Would that
4 be -- would that be sufficient and, if not, why
5 not?

6 MR. WALL: I think that might be. And
7 then the need -- then you'd have to look at what
8 they were going after from the various
9 campaigns.

10 It wouldn't get you anywhere near
11 these subpoenas or targeting the President, of
12 course, but at least in your hypothetical,
13 they'd be identifying with some detail, some
14 specificity, what they were thinking about
15 doing. And then we could have -- then it would
16 tee up what I think is the hard constitutional
17 question of what's the space for Congress in
18 regulating a constitutionally created officer
19 like the President with respect to disclosures.

20 And that's, frankly, a hard question.
21 That's the hardest of all the -- the possible
22 legislation they pointed to. I -- I just -- I
23 -- I don't see how we can have that debate in
24 this case because they haven't even enabled
25 meaningful judicial review. And that's a fact

1 that I think should cut against the House, not
2 against the President.

3 CHIEF JUSTICE ROBERTS: Justice
4 Kavanaugh?

5 JUSTICE KAVANAUGH: Thank you, Mr.
6 Chief Justice.

7 And good morning, Mr. Wall. I want to
8 make sure we touch on one of your procedural
9 arguments. You say that the full House needs to
10 authorize the subpoenas. The other side, the
11 House, argues that Resolution 507 did so.

12 What's your response to that?

13 MR. WALL: The response, Justice
14 Kavanaugh, is that 507, if you -- if you look at
15 its terms, it's both a rubber stamp and a blank
16 check. It -- it purports to authorize anything
17 and everything that ever has been done or will
18 be done by the committees.

19 It falls short then even of the fairly
20 meager resolutions in Rumely and Watkins, which
21 at least described general purposes, general
22 legislative topics. This gets back -- gets back
23 to my colloquy with Justice Gorsuch. And, here,
24 we're talking about the President.

25 So I know that three committee

1 chairmen understood what they were doing. I
2 don't think 218 members of the House have
3 understood that they understand the gravity of
4 the constitutional question they're teeing up.

5 And so the Court also requires a clear
6 statement from Congress when the separation of
7 powers is -- is at issue. We'd say the same
8 thing here. That's the -- that's the cleanest
9 and narrowest way to dispose of this case.

10 JUSTICE KAVANAUGH: Second question:
11 History and practice matter quite a bit in
12 separation of powers cases, as you know.
13 Justice Ginsburg earlier cited precedent from
14 Watergate and Whitewater, as did Justice Breyer.

15 Can you respond -- and -- and those
16 dealt with legislative subpoenas. Can you
17 respond to those points about those precedents?

18 MR. WALL: Yes. So, for the first 200
19 years of the republic, there's nothing like
20 this. The House's examples either didn't
21 involve the President --

22 JUSTICE KAVANAUGH: What about --
23 sorry to interrupt -- but specifically Watergate
24 and Whitewater.

25 MR. WALL: So that's what I was coming

1 to. I think the Watergate subpoenas were for
2 official records, and, obviously, they were
3 subject to a heightened needs standard.

4 The Whitewater subpoena is the closest
5 analogy. It's modern. It was never litigated.
6 But I'll -- I'll -- I'll -- I'll grant that
7 subpoena looks very much like this one.

8 I don't think that there's any
9 historical precedent for it. And the concern,
10 Justice Kavanaugh, again, if we go down this
11 road and the -- the Houses of Congress can
12 weaponize the subpoena power in this new way,
13 that's going to sit in the standing arsenal for
14 years against the President and any other
15 constitutionally created officer.

16 And I don't think it takes much
17 imagination to know where that road will lead or
18 that we will regret having taken it.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel.

21 Mr. Letter.

22 ORAL ARGUMENT OF DOUGLAS N. LETTER
23 ON BEHALF OF THE COMMITTEES OF THE U.S.
24 HOUSE OF REPRESENTATIVES RESPONDENTS

25 MR. LETTER: Yes, Mr. Chief Justice,

1 and may it please the Court:

2 I would like to jump right in and
3 address some of the -- the very key points that
4 have been made by my friends here.

5 Mr. Wall, my very good friend, Mr.
6 Wall, said that the legislation here doesn't
7 match up. Mr. Wall referred the Court to the
8 wrong pages of our brief.

9 If you look at pages 17 through 36,
10 you see that we discuss in great detail the
11 purposes of the investigations and the
12 subpoenas. And, indeed, the D.C. Circuit said
13 that, in telling terms, the -- the House has put
14 legislation where its mouth is. We have
15 specifically provided bills.

16 Mr. Wall said that the full House did
17 not confront the subpoenas. Page 241 of the
18 appendix, I refer you to, where the -- the House
19 specifically referred to these very subpoenas,
20 these specific ones.

21 And I don't think Mr. Wall really
22 meant that the -- to say that the members -- 218
23 members of the House did not know what they were
24 doing when they passed that. That obviously is
25 not a valid argument to be made.

1 Then we turn to something that came
2 out in answer to Justice Sotomayor's question.
3 Remember, the key records here, some of the key
4 ones that we want, are ones that President Trump
5 has not even seen. We want records from
6 third-party business entities that bear analyses
7 of -- of, for instance, requests for loans. So
8 the -- these are documents that there's no
9 privacy interests in, no constitutional liberty
10 interests, et cetera.

11 Next, we do have limiting principles.
12 The House very much does. This Court's
13 precedents set those. It must be pertinent to a
14 legislative purpose, can't violate
15 constitutionally protected liberty interests or
16 privileges, and can't undermine the President's
17 ability to carry out his responsibilities.

18 And --

19 CHIEF JUSTICE ROBERTS: Mr. -- Mr.
20 Letter, the -- let's talk about the standard you
21 propose. The -- the -- the quotes in your --
22 your brief is that concern is subject on which
23 legislation could be had.

24 Could you give me a plausible example
25 of a subject that you think is beyond any

1 legislation that Congress could write?

2 MR. LETTER: Your Honor, I think the
3 best I can do is refer you to the Court's
4 decision in Kilbourn, where the Court there said
5 that Congress didn't seem to put forward any
6 possible legislation there. It had to do with
7 bankruptcy proceedings that Congress was looking
8 into.

9 CHIEF JUSTICE ROBERTS: Well, you
10 don't think it -- do you think bankruptcy
11 proceedings is -- is a subject on which
12 legislation could not be had?

13 MR. LETTER: Oh, no, obviously,
14 bankruptcy could be, and -- but in the Kilbourn
15 case, this Court thought that no such reason had
16 been put forward. But -- but, no, Congress's
17 legislative authority is extremely broad,
18 especially because of its appropriations --

19 CHIEF JUSTICE ROBERTS: Well, that's
20 what I'm suggesting, that your -- your -- your
21 test is really not much of a test. It's not a
22 limitation. And it doesn't seem in any way to
23 take account of the fact they were talking about
24 a coordinate branch of government, the executive
25 branch.

1 Do you have any alternative to that
2 limitless test that would take account of -- of
3 the fact that you're dealing with a coordinate
4 branch of government?

5 MR. LETTER: Yes, I do, Your Honor.
6 And I'm -- by the way, the test that I'm
7 referring you to was the test that this Court
8 had set about pertinent to a legislative
9 purpose. But, Your Honor, it's -- it's what
10 this Court said in Nixon versus GSA and a -- and
11 a number of other cases.

12 Congress -- there would be a limit if
13 Congress is interfering with the President's
14 ability to carry out his Article II functions.
15 No such claim has been made here, nor,
16 obviously, can it be made given --

17 CHIEF JUSTICE ROBERTS: Justice
18 Thomas?

19 JUSTICE THOMAS: Yes. Thank you,
20 Chief Justice.

21 Mr. Letter, I'd like you to discuss
22 the -- how the power, the legislative subpoena
23 power, is implied or how we arrive at that
24 power, because I think that's part of why we're
25 wandering around in the wilderness trying to

1 determine what standards we are to use.

2 MR. LETTER: Your Honor, this -- this
3 Court has explained in -- in quite a few cases
4 -- I think Watkins, Barenblatt, others -- that
5 the Congress's legislative power, which -- I
6 mean investigative power, which stems from the
7 British parliament's power, is an obvious and
8 integral part of legislation.

9 We obviously can't have Congress
10 passing legislation in -- in ignorance. And
11 this Court has said, for instance, most recently
12 in Franchise Tax Board, that just because a
13 power is -- is something to be implied doesn't
14 mean that it's not important.

15 For instance, this Court's power of
16 judicial review, that's nowhere mentioned in the
17 Constitution. So the -- the power to
18 investigate --

19 JUSTICE THOMAS: Can you give an
20 example, another example of a power that -- a
21 legislative power that is implied?

22 MR. LETTER: The -- the -- I'm sorry,
23 Your Honor, I'm not coming up with something
24 right now off the -- the tip of my tongue.

25 JUSTICE THOMAS: That's okay. The --

1 can you give me the earliest example you have of
2 Congress issuing a legislative subpoena?

3 MR. LETTER: The -- the Congress
4 investigated the -- the St. Clair expedition.
5 It didn't actually issue a subpoena in that case
6 but its equivalent of the time. And President
7 Washington consulted with his closest advisors
8 and decided to provide Congress with every
9 single thing that it requested.

10 So that was just several years into
11 the --

12 JUSTICE THOMAS: What's the first
13 example of Congress issuing a legislative
14 subpoena to a private party for private
15 documents?

16 MR. LETTER: The -- I'm sorry, Your
17 Honor. The -- the Watkins decision has a
18 lengthy discussion of that. I don't have off
19 the top of my head the very first one. But my
20 memory is that this Court describes that in
21 great detail in Watkins.

22 JUSTICE THOMAS: Thank you.

23 CHIEF JUSTICE ROBERTS: Justice
24 Ginsburg?

25 JUSTICE GINSBURG: The -- the concern

1 has been expressed that Congress could be using
2 the subpoena power to harass a political rival.
3 So what is your answer to -- what is the
4 principle, the limiting principle, that would
5 say legitimate legislative purpose, yes, looking
6 toward enacting a law, but not to harass a
7 President from the opposing party?

8 MR. LETTER: Two answers, Your Honor.
9 First is this Court's decision in McGrain, which
10 is -- is extremely important here. Now McGrain
11 was not seeking papers of the President, but,
12 there, the lower court struck down -- said the
13 subpoena was no good, the congressional
14 investigation was no good because it was
15 inspired by politics. This Court absolutely and
16 flatly and unanimously rejected that as a reason
17 that it couldn't be done.

18 And then the other is Clinton versus
19 Jones, where this Court said, if there is
20 harassment, the courts can take care of that.
21 And that's the answer to the Justice
22 Department's entire brief. There is no -- no
23 responsible claim here that all that's going on
24 is harassment. And if there is, this Court has
25 said we're here.

1 JUSTICE GINSBURG: Thank you.

2 CHIEF JUSTICE ROBERTS: Justice
3 Breyer?

4 JUSTICE BREYER: Thank you.

5 In respect to the authorization, was
6 there proper authorization by the full House of
7 the legislative subpoenas, two points. One,
8 Rumely says look at the subpoena and its
9 authorization as of the time the subpoena was
10 issued, here, perhaps, the time that it was
11 challenged first before the later authorization
12 in the full House was passed.

13 Two, compare it with the Senate Select
14 Committee on Presidential Campaign Activities v.
15 Nixon. Look at the authorization. The
16 authorization there is highly detailed, highly
17 specific, and it suggests they could go after
18 the information held by any person, presumably,
19 including the President.

20 This authorization, which came after
21 the challenge, in fact, writes a pretty blank
22 check for anything, without detail.

23 Now those are arguments made by the
24 other side. I'd like to hear what you say.

25 MR. LETTER: Thank you, Justice

1 Breyer. Several responses, and I'll try to be
2 quick.

3 First, McGrain, this Court said very,
4 very clearly, you don't just look at the
5 authorization. There was no authorization
6 there.

7 Second, yes, Section -- Resolution 507
8 is, in part, broadly worded, but it is extremely
9 specific in its third "whereas" clause. Right
10 there on page 241, it refers to these very
11 specific subpoenas.

12 And, in addition, authorization is
13 much -- is much different now in the modern
14 Congress. The modern Congress has authorized
15 committee chairs to -- has authorized committees
16 to issue subpoenas, and those committees then
17 have, in general, delegated that authority to
18 its chairs.

19 So the modern Congress, there clearly
20 is authorization to committee chairs to issue
21 these subpoenas. And as I said, if there's any
22 doubt at all about that, the full House ratified
23 these very specific subpoenas.

24 JUSTICE BREYER: Before or after
25 Rumely? I mean, before or after they were

1 issued and challenged?

2 MR. LETTER: This is after they were
3 issued and challenged. The issuance, as I said,
4 is authorized by House rules, which this Court
5 has said it -- it will not examine, and then the
6 full House -- because there were arguments made,
7 the full House said: Oh, no, we authorize these
8 exact subpoenas. We ratify the -- the issuance
9 of these subpoenas.

10 It is extremely clearly worded, page
11 241a of the -- of the petition appendix.

12 JUSTICE BREYER: Thank you.

13 CHIEF JUSTICE ROBERTS: Justice Alito?

14 JUSTICE ALITO: Mr. Letter, I was
15 somewhat baffled by your answer to Justice
16 Ginsburg about the use of congressional
17 subpoenas for purposes of harassing a president.

18 Your final answer was courts can take
19 care of that. But that's the issue here,
20 whether something should be done to prevent the
21 use of these subpoenas for the harassment of a
22 president. So could you explain what you meant?

23 MR. LETTER: Absolutely, Justice
24 Alito. This Court in Clinton versus Jones and
25 in other cases, like Nixon versus GSA, has said

1 we are here to protect the President if there is
2 harassment from Congress or private individuals.

3 And, here, there -- there clearly,
4 though, is, we think, valid legislative
5 purposes. The four courts below all found that
6 there was.

7 JUSTICE ALITO: So, I mean, I -- I
8 don't want to cut you off, but I have very
9 limited time. So your answer is that the
10 protection against the use of a subpoena for
11 harassment is simply the assessment whether the
12 subpoena is conceivably -- is relevant to some
13 conceivable legislative purpose?

14 MR. LETTER: Correct. That's what the
15 Court has said. But also again Clinton versus
16 Jones and Nixon versus GSA, it --

17 JUSTICE ALITO: Well, that's not much
18 protection. In fact, that's no protection,
19 isn't it?

20 MR. LETTER: It is protection, Your
21 Honor, if what -- what Congress is doing is
22 interfering with the President's ability to do
23 his job. These subpoenas are to private
24 parties. The President does not need to do
25 anything.

1 JUSTICE ALITO: Well, when you talk
2 about interfering with the President's ability
3 to do his job, you mean this is going to take up
4 too much of his time, or do you -- does that
5 include the potential for the use of subpoenas
6 solely for harassment and political purposes?

7 MR. LETTER: Your Honor, if they were
8 solely for harassment, then they wouldn't meet
9 the standards of they have to be pertinent to a
10 legislative purpose. So I think the combination
11 of all of those provides ample protection, but
12 there's no --

13 JUSTICE ALITO: But you were not able
14 to give the Chief Justice even one example of a
15 subpoena that would be -- that would not be
16 pertinent to some conceivable legislative
17 purpose, were you?

18 MR. LETTER: As -- as I said, Your
19 Honor, the -- that -- that's correct, because
20 this Court itself has said Congress's power is
21 -- to legislate is extremely broad, especially
22 when you take into account appropriations.

23 JUSTICE ALITO: Well, so the end
24 result is that there is no protection whatsoever
25 in your view, and maybe this is -- this is the

1 correct answer, but, in your view, there is
2 really no protection against the use of
3 congressional subpoenas for the purpose of
4 preventing the harassment of a president because
5 the only requirement is that the subpoena be
6 relevant to a conceivable legislative purpose,
7 and you can't think of a single example of a
8 subpoena that wouldn't meet that test?

9 MR. LETTER: No, Your Honor, because,
10 remember, there may be constitutionally based
11 privileges or things like executive privilege --
12 you know, executive privilege --

13 JUSTICE ALITO: All right. Well,
14 there might be congress -- there might be
15 constitutionally based privileges. Which
16 constitutionally based privileges apply to a
17 subpoena for records in the hands of a
18 third-party?

19 MR. LETTER: There could be, Your
20 Honor, issues --

21 JUSTICE ALITO: What are they? Would
22 you name one?

23 MR. LETTER: Well, it seems to me
24 executive privilege could enter in. State
25 secrets privilege could enter in depending upon

1 the specific circumstances, Your Honor.

2 JUSTICE ALITO: Let me ask you one
3 more thing if I -- if I can and there's time.
4 Are there any limits on the use -- on using a
5 president's records as a case study relating to
6 the need for legislation?

7 So, for example, if the salary and the
8 net worth of a future president before election
9 was that of a person who would be regarded as
10 middle class, and Congress says, you know, we
11 want to study possible revisions of tax laws and
12 the provision of services to members of the
13 middle class, so we're going to subpoena all
14 available information about the assets, income,
15 expenditures, and services obtained by this
16 sitting President and his family for purposes of
17 considering that legislation, would that be
18 permissible?

19 MR. LETTER: It -- it certainly could
20 be, Your Honor. So, here -- that's a very good
21 question. Here, remember, the Financial
22 Services Committee is doing an extremely broad
23 investigation of a financial services sector,
24 and there's massive public reporting that
25 President -- that before he became President,

1 President Trump's personal records and his
2 businesses and his family have been heavily
3 involved in those very activities. And we're
4 investigating numerous other banks and
5 individuals having nothing whatsoever to do with
6 the President.

7 This is part of a much larger
8 sector-wide, industry-wide investigation. And
9 President Trump is the --

10 CHIEF JUSTICE ROBERTS: Justice
11 Sotomayor?

12 JUSTICE SOTOMAYOR: Counsel, we have
13 said that personal records would -- with the aim
14 of making the President a case study threaten to
15 run afoul of this Court's teaching that there's
16 no congressional power to expose for the sake of
17 exposure.

18 And your -- the other side points to
19 some hypotheticals that are troubling: the
20 President's transcripts simply to pass on
21 educational reform legislation or subpoenas of
22 his personal medical records simply to enact
23 general healthcare reforms.

24 Tell me what we say to ensure against
25 those hypotheticals and against a proposed

1 subpoena that might be just for the sake of
2 exposure.

3 MR. LETTER: Your Honor, a couple of
4 answers. One is, yes, you said just for the
5 sake of exposure is no good, but the -- the --
6 this Court said that exposure involving
7 government activities can be.

8 Pertinence would be the key,
9 pertinence to a valid -- a legislative purpose.
10 And, here, the Intelligence Committee, the --
11 there's an obvious need to focus on the
12 President's financial records to determine if
13 the President is subject to foreign leverage.
14 It's -- it's obvious that that ties in with that
15 legislative purpose. So pertinence --

16 JUSTICE SOTOMAYOR: Let me put -- let
17 me put -- I'm sorry to interrupt you, but we're
18 limited in time.

19 On that issue of what laws are
20 possible, I can see the argument on conflicts of
21 law, but aren't there already a lot of
22 disclosure laws in place? How could this
23 investigation help improve those or change
24 those?

25 MR. LETTER: I assume what Your Honor

1 is referring to is disclosure laws, disclosure
2 laws by the -- the President. And so we -- we
3 would have to look to see what -- exactly what
4 the oversight committee was looking at.

5 Do we need better laws about conflicts
6 of interest? Do we need better laws about, for
7 example, a president dealing in contracts with
8 government agencies? The -- the -- the Congress
9 could limit government agencies' ability to
10 enter into or -- or keep contracts with elected
11 public officials.

12 In addition, Congress maybe would want
13 to provide for more, you know, exposure of -- of
14 assets and conflicts of interest. Maybe those
15 --

16 JUSTICE SOTOMAYOR: One last question:
17 Was the breadth of these subpoenas litigated
18 below?

19 MR. LETTER: Yes, Your Honor, those --

20 JUSTICE SOTOMAYOR: The breadth?

21 MR. LETTER: -- those -- yes, Your
22 Honor, those exact claims were made and they are
23 discussed in great detail by the Second Circuit
24 and the D.C. Circuit. So those were fully
25 litigated below.

1 JUSTICE SOTOMAYOR: Breadth or --

2 CHIEF JUSTICE ROBERTS: Justice Kagan?

3 JUSTICE KAGAN: Good morning, Mr.

4 Letter. In -- in -- in talking to the Chief
5 Justice about the limits on congressional power,
6 you said -- and tell me if I'm quoting you
7 correctly -- you said that a subpoena couldn't
8 impair the President in carrying out his
9 constitutional functions.

10 Is that -- is that right?

11 MR. LETTER: Your Honor, there would
12 have to be a balance there.

13 JUSTICE KAGAN: Okay. But that's what
14 we should be looking to. And then you said no
15 such claim has been made or could be made.

16 And I also took the briefs not to be
17 making that claim, that this subpoena would
18 impair the President in carrying out his
19 constitutional functions, but Mr. Wall told me
20 that he was kind of making such a claim because
21 he thought that this subpoena would undermine
22 the President in -- in -- in his job.

23 And I guess I -- I would like you to
24 comment on that.

25 MR. LETTER: Your Honor, it's

1 fascinating because I wrote a note specifically
2 on that. That -- that argument was not made in
3 the Justice Department's brief, to my knowledge,
4 anywhere.

5 My friend, Mr. Wall, mentioned it
6 here. But there's no way that this could
7 interfere with the President because he doesn't
8 have to do anything. This is a subpoena to --
9 to banks and an accounting firm. And as I said
10 before, in fact, some of the key documents we
11 want the President probably has never even seen
12 or doesn't even know that they exist. We want
13 to know banks' analyses of his -- his request
14 for a loan, internal bank analyses.

15 But, yes, Your Honor, that argument
16 was not made in the briefs.

17 JUSTICE KAGAN: Okay. And if I could
18 get you to talk about the history that some of
19 your colleagues have talked about.

20 What do you think the history shows us
21 with respect to this issue?

22 MR. LETTER: Your Honor, very briefly,
23 what it shows is -- is -- ties in with a key
24 principle of law that this Court has said of
25 constitutional interpretation. History can help

1 inform what the Constitution means.

2 There's a lengthy history of
3 presidents either voluntarily or not voluntarily
4 complying with requests for information by
5 Congress. And we went through -- it's -- it's,
6 you know, Presidents Washington, Jackson,
7 Buchanan, Grant, and in more modern times,
8 Nixon, Carter, Reagan, and Clinton, all
9 complying with in various ways either
10 voluntarily or not.

11 For instance, in the Nixon case, Nixon
12 voluntarily provided certain tax returns. He
13 didn't provide all of them. Congress then got
14 more pursuant to statutory authority, like a
15 subpoena, from President Nixon and his family's
16 tax returns. I don't think that either the
17 Justice Department or Mr. Trump answered that
18 hypothetical.

19 History really matters here, and it
20 shows that the arguments being made here by
21 President Trump are -- astonishingly ask you to
22 ignore a massive amount of history.

23 JUSTICE KAGAN: Thank you.

24 CHIEF JUSTICE ROBERTS: Justice
25 Gorsuch?

1 JUSTICE GORSUCH: Good morning, Mr.
2 Letter. Normally, we use law enforcement
3 investigative tools like subpoenas to
4 investigate known crimes and not to pursue
5 individuals' defined crimes. That's a principle
6 you're well familiar with from your time at the
7 Department of Justice.

8 And I'm wondering what limiting
9 principle you offer us here that can prevent
10 that danger. The first one was it has to be
11 pertinent to a legislative purpose, but I think,
12 as we've explored, that's very, very broad and
13 -- and maybe limitless, some would suggest on
14 the other side at least.

15 Constitutional privileges, if you're
16 investigating someone in their private capacity,
17 there are going to be few, maybe attorney-client
18 privilege, things like that.

19 And it can't be burdensome, I heard,
20 was your third, but in an age where everything's
21 online and can be handed over on a disk or a
22 thumb drive, that -- that -- that much pretty
23 much disappears too.

24 So what -- what -- what is left to
25 protect that important value that I know you

1 share?

2 MR. LETTER: I do share that, Your
3 Honor. And, by the way, burden here -- none of
4 the subpoena recipients have claimed burden.

5 Your Honor, I -- I answer it this way
6 because, again, it has to be -- I'm going to
7 stick with the pertinent to legislative purpose
8 because, for example, Congress did a massive
9 investigation of what happened at 9/11.
10 Obviously, a lot of that had --

11 JUSTICE GORSUCH: Well, let me -- let
12 me stop -- let me stop you there if that's where
13 you're going to go. And I thought that might
14 be, Mr. Letter, and I apologize for
15 interrupting.

16 But I would think a federal prosecutor
17 might say that an investigation of an individual
18 could be pertinent to a criminal investigative
19 purpose too because there are so many federal
20 crimes out there and it's possible this person
21 jaywalked or failed to pay his taxes or whatever
22 the -- whatever his concern is, that that's a
23 legitimate investigatory purpose for sure.

24 So what -- what -- what -- what --
25 what takes us out of that -- that realm and that

1 concern?

2 MR. LETTER: Your Honor, I think this
3 will largely depend on the courts. The only
4 thing I can suggest that takes it out of that
5 concern is, as we know, Congress can't
6 prosecute, but, as we know, it clearly can look
7 into criminal activity in order to figure out
8 whether the criminal laws should be changed.

9 The -- the most obvious example would
10 be this Court's decision just a -- a -- a little
11 while ago overturning a -- a key criminal
12 conviction involving white-collar crime.
13 Obviously, Congress could do a very thorough
14 investigation of that to determine whether to
15 pass a different criminal law statute that would
16 actually make it a crime to -- to do what was
17 done in -- in Bridgegate.

18 So it's going to be very difficult to
19 separate the two and say that what Congress is
20 doing in looking into criminal activity for the
21 purposes of determining if the FBI is doing a
22 good job and needs more money or whether to
23 amend the criminal statute, it's -- it's --
24 there's going to be an extremely rare case where
25 that is going to be invalid on Congress's part.

1 CHIEF JUSTICE ROBERTS: Justice
2 Kavanaugh?

3 JUSTICE KAVANAUGH: Thank you, Mr.
4 Chief Justice.

5 And good morning, Mr. Letter. I want
6 to follow up on the line of questioning that
7 several of my colleagues have pursued, the Chief
8 Justice, Justice Ginsburg, Justice Alito,
9 Justice Kagan, and others, which I think come
10 down to the idea of limitless authority and how
11 to deal with that.

12 The other side says that allowing
13 these subpoenas and subpoenas like these, say,
14 for medical records, would be a grave threat to
15 future presidencies. It would be open season,
16 they say, on private records of anyone who is
17 President and maybe other government officials
18 too. And they worry about the harassing nature
19 of subpoenas like that.

20 You say -- and Justice Gorsuch was
21 just exploring this -- it's okay so long as it's
22 pertinent to a legislative purpose. But I think
23 everyone has explore -- explored with you that
24 just about everything can be characterized, in
25 terms of a subpoena, as pertinent to a

1 legislative purpose. I don't think you could
2 answer the Chief Justice's question about
3 something that wasn't.

4 And the question then boils down to,
5 how can we both protect the House's interest in
6 obtaining information it needs to legislate but
7 also protect the presidency? How can the Court
8 balance those interests?

9 I guess the thing I would say is why
10 not employ the demonstrably critical standard or
11 something like that -- this is what the other
12 side would say -- as something that's borrowed
13 from a different context but that might serve to
14 balance the strong competing concerns here?

15 MR. LETTER: Your Honor, that's a very
16 good question. I have -- I have several
17 responses.

18 The first one goes to the last thing
19 you said about why not employ a demonstrably
20 critical test. I -- I don't know how the Court
21 would -- the courts would do that without
22 violating the separation of powers.

23 I was reminded recently by -- by the
24 congressional leaders that often, they're doing
25 investigations, they don't know where the

1 legislation might go at that point. So I don't
2 know how you would force Congress to do -- to
3 show some sort of demonstrably critical reason
4 --

5 JUSTICE KAVANAUGH: Well, wouldn't it
6 be the -- wouldn't it be the same way that it's
7 shown in an investigation where executive
8 privilege is asserted and the demonstrably
9 critical standard in that context has been the
10 tried and true method for about 50 years?

11 MR. LETTER: Because then, Your Honor,
12 you could look at -- you could demand that the
13 executive branch show that its reason for -- for
14 seeking something over -- outweighs the
15 executive privilege claim.

16 But, here, remember, we're not dealing
17 with executive privilege at all. These -- these
18 are financial business records. It's -- it's
19 difficult to see how these could ever come
20 within that kind of -- of balance that -- that
21 would override Congress's authority to do
22 investigation.

23 The one other thing I can suggest,
24 obviously, is -- this Court has suggested, I
25 believe, is -- is the voters, but also Nixon

1 versus Fitzgerald, where this Court said that
2 the President has absolute immunity from certain
3 kinds of claims. The Court said specifically
4 that -- that one of the reasons that's okay is
5 because we have congressional oversight of the
6 President. This Court specifically used that to
7 justify absolute immunity for the President in
8 other areas.

9 And last is Clinton versus Jones.

10 This Court --

11 JUSTICE KAVANAUGH: Can I interrupt
12 right there? What about medical records?

13 MR. LETTER: Your Honor, medical
14 records of the President would, I think, almost
15 always be not pertinent to valid legislative
16 purpose. On the other hand, if you look at --

17 JUSTICE KAVANAUGH: Why not? Can
18 you just --

19 MR. LETTER: -- the Twenty-Fifth
20 amendment, they would -- they certainly would be
21 pertinent.

22 JUSTICE KAVANAUGH: Why wouldn't they
23 be pertinent to, say, ethics legislation,
24 healthcare legislation or the like in your view?

25 MR. LETTER: Your Honor, I'm having

1 difficulty thinking of a -- of a hypothetical
2 where, if -- if Congress is -- is examining and
3 deciding on amendments to the Affordable Care
4 Act, how the President's personal medical
5 records would be relevant to that.

6 It -- if -- as I say, the -- the most
7 important public health statute of many, many
8 decades I don't think would be affected by that
9 at -- at all.

10 JUSTICE KAVANAUGH: Okay. Thank you.

11 MR. LETTER: So I'm sure we can come
12 up with some odd hypotheticals where
13 presidential health would clearly be relevant,
14 maybe changing the -- the statutes that involve
15 the succession of when a president becomes
16 incapacitated, something like that, I -- I
17 suppose.

18 But, in general, Congress -- there
19 would be no valid reason for Congress to be
20 asking for the President's personal medical
21 records that I can think of.

22 JUSTICE KAVANAUGH: Thank you.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 Mr. Letter, I know you will be

1 delighted to learn that we have time for
2 additional questioning, so I think I'll begin
3 with myself, and then we'll go through in order
4 and just see how far we get.

5 One thing that hasn't come up is the
6 fact that we're dealing here with three separate
7 committees, and we're concerned, as you've
8 recognized, with the potential for harassment.
9 And how does that play in? I mean, at what
10 point does the number of committees
11 investigating the -- the President's personal
12 papers become a factor in an analysis of the
13 issue of harassment?

14 MR. LETTER: Your Honor, I am very
15 pleased there's more time for questions.

16 But, Your Honor, it -- it would seem
17 to me that there are situations, again, you'd
18 have to look to, you know, Clinton versus Jones,
19 when does it reach a particular stage? We're
20 nowhere near that here.

21 And, in fact, the -- the subpoena by
22 the Intelligence Committee matches the subpoena
23 from the Financial Services Committee to
24 Deutsche Bank because, specifically,
25 Intelligence did not want to cause too much of a

1 burden to subpoena the --

2 CHIEF JUSTICE ROBERTS: What about --
3 what about -- as -- as you know, very shortly,
4 in the second case, we're going to talk about
5 subpoenas from district attorneys. How does
6 that factor in? I mean, should those be counted
7 in the balance in terms of when congressional
8 subpoenas become harassment?

9 MR. LETTER: Definitely not, Your
10 Honor, since we -- we have nothing to do with
11 such -- the subpoena in Vance. We don't -- we
12 have no -- we had no contact with the -- the --
13 the City of New York before that subpoena was
14 issued. And so I don't know how that would tell
15 us about anything about what the House of
16 Representatives --

17 CHIEF JUSTICE ROBERTS: What about --
18 what about the Senate? I suppose they can issue
19 subpoenas too, can't they?

20 MR. LETTER: Of course, Your Honor.
21 Yes.

22 CHIEF JUSTICE ROBERTS: So how do you
23 balance that? You've got, in this case, three
24 different House committees seeking subpoenas.
25 You've got the district attorney in New York.

1 You know, depending upon party composition of
2 different bodies in the future, you might have
3 the Senate joining in. How do you measure
4 harassment in a case like that?

5 MR. LETTER: Your Honor, I think what
6 you would do is, if these were subpoenas from
7 the House and the Senate, a massive number of
8 them, going to the -- the White House, then
9 there certainly would be at a certain point
10 where it would affect the ability of the White
11 House and the President to function. There's no
12 doubt about that.

13 But these subpoenas are to three
14 private businesses involving --

15 CHIEF JUSTICE ROBERTS: Thank you.
16 Justice Thomas, any further
17 questioning?

18 JUSTICE THOMAS: Yes. I'd like to
19 follow up on that, Mr. Chief Justice.

20 Mr. Letter, the -- that's -- you know,
21 at some point, there's a straw that breaks the
22 camel's back, and it seems as though you're
23 saying that we should look at these in isolation
24 as opposed to in aggregate -- in the aggregate.

25 Why wouldn't we look at all of them

1 and look at the -- the full effect and whether
2 at some point it debilitates the President?

3 MR. LETTER: Your Honor, I'm sorry, I
4 -- I must have misspoken. I meant to answer the
5 Chief Justice's question by saying, yes, if
6 there are a massive number of subpoenas from the
7 House and the Senate to the White House, and --
8 and the White House can come in and say: Look,
9 we -- we can't do anything. All we're doing is
10 answering subpoenas all day long. This is -- is
11 impacting the ability of the President to do his
12 job.

13 JUSTICE THOMAS: Why would it be
14 limited to the House and the Senate? I mean, it
15 could be every grand jury. It could be every
16 prosecutor. The concern that we had in the
17 Clinton case is, at some point, this thing -- it
18 gets out of control, as one -- one could be
19 manageable, but 100 could be impossible.

20 MR. LETTER: And Your -- Your Honor is
21 right. And, therefore, if there were -- if our
22 subpoenas were on top of numerous others from
23 grand juries around the United States, you could
24 look at that. But let me emphasize one more
25 time, our subpoenas are -- the three are not to

1 the President. They are to private business
2 entities. Nothing is required of the President
3 here to -- for these subpoenas to be fully
4 complied with. Not a single thing is required
5 of the President or the White House.

6 CHIEF JUSTICE ROBERTS: Justice
7 Ginsburg, any further --

8 JUSTICE THOMAS: Well, I think we all
9 know it's about the President.

10 CHIEF JUSTICE ROBERTS: Justice
11 Ginsburg, any further questioning?

12 JUSTICE GINSBURG: No, I'll pass.

13 CHIEF JUSTICE ROBERTS: Justice
14 Breyer?

15 JUSTICE BREYER: Yes, you emphasized
16 it goes to a private person and it's for tax
17 returns. But the subpoenas that I've seen go
18 far beyond that. They apply to 15
19 Trump-affiliated entities. They ask for all
20 documents related to opening of accounts, due
21 diligence, closing, requests for information by
22 other parties, et cetera.

23 Now that's a lot of information, and
24 some of it's pretty vague. And if somebody
25 subpoenaed you for that information or

1 subpoenaed your tax accountant or subpoenaed
2 somebody in your business, wouldn't you at least
3 want to know what was being turned over?

4 Wouldn't you want to ask them? And might that
5 not take time? And might that not take effort?

6 So my problem is there may be burdens
7 here, third-party or not, and not just political
8 burdens. The job of the House and Senate, in
9 part, as the President, is politics. That
10 doesn't bother me.

11 But the Clinton v. Jones information
12 does bother me. And the fact that what I hold
13 today will also apply to a future Senator
14 McCarthy asking a future Franklin Roosevelt or
15 Harry Truman exactly the same questions, that
16 bothers me.

17 So what do I do?

18 MR. LETTER: Justice Breyer, I fully
19 understand that concern. None of the subpoena
20 recipients have complained about burden. The
21 reason these subpoenas go back a ways is
22 because, as you know --

23 JUSTICE BREYER: I'm sorry to
24 interrupt you. I'm not talking about their
25 burden. I'm talking about the President's

1 burden in having to monitor, decide if there are
2 privileges, figure out what his answers are to
3 all those documents you are requesting which go,
4 in my opinion, way, way, way beyond just tax
5 returns.

6 MR. LETTER: Two -- two answers, Your
7 Honor. Yes, we're -- we're -- tax returns,
8 we're going far beyond tax returns, but no
9 privilege claim has been made in this case. No
10 party, nobody, has raised a privilege claim.

11 Second is we're investigating, for
12 instance, among other things, money laundering.
13 Money laundering requires looking at a whole
14 range of financial activity. What we're doing
15 here is exactly the kind of thing that Senate
16 and House staff do when they're looking at a
17 financial sector and what kinds of reforms
18 should be made to the banking industry.

19 Let me say one more time: There has
20 been no claim of privilege here. There has been
21 no claim that there is a burden. No claim
22 whatsoever. So those may be relevant in
23 different cases, but certainly not this one.

24 CHIEF JUSTICE ROBERTS: Justice Alito?

25 JUSTICE ALITO: If one House of

1 Congress were to subpoena personal records in
2 the hands of a third-party regarding a member of
3 the other House, let's say someone in a
4 leadership position in the other House, do you
5 think that the doctrine of separation of powers
6 would impose any limitation on that subpoena?

7 MR. LETTER: Very interesting
8 question. Your Honor, the -- the first thing
9 that comes to mind, though, is wouldn't that
10 violate the speech or debate clause. Remember,
11 no member of either the House or Senate can be
12 questioned anywhere else.

13 And so, if there's a -- a request for
14 records, if it's tied in in any way to the
15 legislative functions of that -- of that Senator
16 or House member, that would be invalid.

17 JUSTICE ALITO: Well, let's say
18 they're similar to the subpoenas here. So they
19 don't have anything to do with the performance
20 of the legislative function. They are records
21 regarding the personal activities of this
22 individual, purely personal activities. And we
23 can even say that they concern things that were
24 done before the person was elected to Congress.

25 MR. LETTER: Still -- and does part --

1 part of your hypothetical include that they
2 would, nevertheless, be pertinent to a -- a
3 legislative purpose?

4 JUSTICE ALITO: Well, pertinent to a
5 legislative purpose.

6 MR. LETTER: Then --

7 JUSTICE ALITO: The committee wants to
8 use someone in a leadership position in the
9 other House as a case study for possible
10 legislation.

11 MR. LETTER: Then, if it met then your
12 hypothetical, I -- I think that -- that would be
13 a valid subpoena. I'm not aware that it has
14 ever happened in the history of the House or
15 Senate. I'm -- I'm not -- I don't know of
16 anything that would be like that --

17 CHIEF JUSTICE ROBERTS: Justice --
18 Justice Sotomayor, anything further?

19 JUSTICE SOTOMAYOR: Yes. That's the
20 whole point, though, isn't it? Justice Alito is
21 raising this hypothetical because he says
22 shouldn't then we look at history. And it's
23 only modern history where committees have asked
24 for personal papers. So he presumably would
25 discount that. And he would say shouldn't we

1 respect the separation of powers, that what's
2 personal to the President is similarly personal
3 to a Congressperson?

4 MR. LETTER: Justice Sotomayor, I -- I
5 have to -- to disagree strongly with one thing
6 you said, a key part. No, the history -- we --
7 we have history of seeking, Congress seeking
8 personal papers of Jackson, Buchanan, Grant, et
9 cetera. No, there -- there's been lots of
10 seeking of personal papers by Congress for many,
11 many decades. This is not just a modern
12 practice at all.

13 JUSTICE SOTOMAYOR: So how do we get
14 --

15 CHIEF JUSTICE ROBERTS: Justice Kagan?

16 JUSTICE KAGAN: Mr. Letter, I'm
17 wondering if I could ask you to comment on a
18 potential difference between, on the one hand,
19 the Oversight and Intelligence Committee
20 subpoenas and, on the other hand, the Financial
21 Services subpoena.

22 The -- the first two subpoenas address
23 the President directly, you know, the financial
24 disclosures that the President makes, conflicts
25 of interest, foreign involvement in Presidential

1 campaigns, but the Banking Committee, Financial
2 Services Committee, you know, was taking a much
3 broader scope.

4 And -- and when the -- when -- when
5 that's true, when the Congress doesn't seem to
6 be looking into the President but in a much
7 broader topic, might there not be some
8 heightened need for Congress to say why it is
9 that they're focusing on Presidential records
10 for that purpose?

11 MR. LETTER: Your Honor, I think that
12 still would get into -- would raise major
13 separation of powers problems. As a court would
14 have hearing, the court would ask chairmans of
15 various committees to come and testify as to
16 what they were doing and why.

17 You're certainly right in your
18 description. This is -- there are 11 subpoenas
19 issued by financial services to members of, you
20 know, banks, et cetera. And -- and only two of
21 them have to do -- I mean three subpoenas, two
22 entities, have to do with the President. This
23 is a much, much broader investigation.

24 And last is there's massive public
25 reporting about the -- the -- the subjects of

1 these subpoenas and their banking practices, and
2 Deutsche Bank and Capital One have both been
3 sanctioned many millions of dollars by banking
4 regulators for failing to properly comply with
5 money laundering laws.

6 CHIEF JUSTICE ROBERTS: Justice
7 Gorsuch, anything further?

8 JUSTICE GORSUCH: No, Chief. Thank
9 you.

10 CHIEF JUSTICE ROBERTS: Justice
11 Kavanaugh?

12 JUSTICE KAVANAUGH: Yes. Thank you,
13 Chief Justice.

14 And, Mr. Letter, I want to follow up
15 on Justice Alito's question, and this really
16 goes to the fact, I think, that there's concern
17 about what the limiting principle is here, I
18 think, pertinent to a legislative purpose is
19 almost no limiting principle at all, at least I
20 think that's what some of the questions have
21 explored, and his hypothetical about a committee
22 would start subpoenaing members of Congress of
23 the other House or of the other party, and you
24 said, well, that hasn't happened.

25 But isn't the whole point that once

1 you start down this road and this Court
2 articulates too low a standard, that something
3 like that will start happening? That's the
4 concern that I heard identified or that I took
5 away from that hypothetical.

6 So I want to give you a chance to
7 respond to that hypothetical of why it wouldn't
8 spiral.

9 MR. LETTER: I -- I greatly appreciate
10 that chance, Justice Kavanaugh. Two -- two
11 responses.

12 First, remember exactly what this
13 Court did in Clinton versus Jones. And -- and,
14 you know, I was on one of the losing briefs
15 there. But this Court said we're going to let
16 this happen because -- and then -- but we will
17 -- the courts will monitor the situation and --
18 and if there are abuses, the courts are still
19 here.

20 In addition, you know, Justice Alito's
21 hypothetical, I also realize it -- it might be
22 there getting into things like privileged
23 information or information involving
24 constitutional liberty interests. And that's --
25 this Court has struck down criminal convictions,

1 et cetera, for subpoenas that -- that do involve
2 --

3 JUSTICE KAVANAUGH: Well, if it was
4 personal records exactly identical to the
5 personal records here but for members of
6 Congress, none of those would apply, presumably,
7 at least under what you've articulated so far
8 today.

9 MR. LETTER: I -- I think that's
10 right. But, again, this -- I -- I come back to
11 Clinton versus Jones. You -- you -- this Court
12 issued a very clear decision saying we're going
13 to allow this one, but, obviously, the courts
14 are going to monitor this.

15 So, if, contrary to what has happened
16 in the past over our -- our lengthy history, if
17 there are situations when there -- the
18 President's ability to do his job is being
19 undermined, thank goodness the courts still
20 exist and they are there to take care of it.

21 CHIEF JUSTICE ROBERTS: Mr. Letter,
22 would you like to take a minute to wrap up?

23 MR. LETTER: Your Honor, I -- I
24 greatly appreciate that.

25 The -- I'm sorry. Just flipping back

1 to my notes. I apologize.

2 As -- as I was saying before, remember
3 that some of the key records here are ones that
4 the -- the President has never seen and never
5 had anything to do with.

6 And the -- we ask the Court to focus
7 on the specific subpoenas in this case because
8 we're not dealing with "what if's" here. We're
9 not dealing with situations where -- like a lot
10 of the Justice Department argument focuses on.
11 As I said before, fortunately, this Court exists
12 to fix those kinds of situations should they
13 arise.

14 CHIEF JUSTICE ROBERTS: Thank you, Mr.
15 Letter.

16 Mr. Strawbridge, you have two minutes
17 for rebuttal.

18 REBUTTAL ARGUMENT OF PATRICK STRAWBRIDGE
19 ON BEHALF OF THE PETITIONERS

20 MR. STRAWBRIDGE: Thank you, Mr. Chief
21 Justice.

22 You know, my friend from the other
23 side struggled with every hypothetical that he
24 was given about his ability to set some sort of
25 limiting principle or some category of

1 information or documents about the President
2 that would not be obtainable under his theory.
3 And I think that's very telling because there
4 are no limits to their theories.

5 And, in particular, let's just
6 consider the example that was given regarding
7 medical records. There is no reason under his
8 theory why the President and his family and his
9 grandchildren could not be declared useful case
10 studies and, therefore, Congress could send out
11 a subpoena for their medical records.

12 For that matter, the President eats
13 and drinks like everybody else and Congress
14 naturally has the ability to regulate food
15 safety.

16 But that does not mean that Congress
17 can subpoena medical records or even the
18 President's DNA. My friend refused to even rule
19 out that hypothetical categorically below, and I
20 think it's telling that -- that he can't provide
21 any meaningful limit today.

22 And I think that's consonant with the
23 fact that they failed to consider what their
24 actual legislative need is. This is an implied
25 power in aid of legislation. It's not a

1 free-ranging warrant to investigate wrongdoing
2 going back 10 years.

3 They -- he cites to a laundry list of
4 legislative proposals, almost all of which were
5 passed before these subpoenas even issued. And
6 at no point in the argument section of their
7 brief or today does he try to tie any particular
8 legislative proposal specifically to the
9 President's finances, let alone the vast swath
10 of documents that they seek here.

11 This is not an attempt to preserve the
12 separation of powers. It's an attempt to
13 eviscerate that.

14 On that point, I wanted to note, in
15 response to Justice Breyer's question, which I
16 may have misunderstood, the Senate Watergate
17 committee, in fact, did serve congressional
18 subpoenas under the legislative power and,
19 applying the heightened need standard, the D.C.
20 Circuit invalidated it, just as this Court
21 invalidated the attempt to hold in contempt
22 somebody in Kilbourn when it violated the
23 separation of powers, just as the lower courts
24 every time separation of powers has squarely
25 been presented have invalidated it.

1 These subpoenas are overreaching.
2 They are an obvious distraction. They are going
3 to multiply if this Court accepts the path that
4 the House is attempting to lay. The decisions
5 below should be reversed. Thank you.

6 CHIEF JUSTICE ROBERTS: Thank you,
7 counsel. The case is submitted.

8 (Whereupon, at 11:37 a.m., the case
9 was submitted.)

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