No. 19-635

In the
Supreme Court of the United States

DONALD J. TRUMP,
Petitioner,
v.

CYRUS R. VANCE, JR., in His Official Capacity as District Attorney of the County of New York, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

AMICUS BRIEF OF CHRISTIAN FAMILY COALITION (CFC) FLORIDA, INC. IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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November 25, 2019

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AMICUS BRIEF OF CHRISTIAN FAMILY COALITION (CFC) FLORIDA, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION

The Christian Family Coalition (CFC) Florida, Inc. ("CFC" or "Amicus"), hereby submits its Brief Amicus Curiae in support of (1) the Petition for Certiorari filed by the President of The United States, Donald J. Trump, (2) reversal of the judgment of the Second Circuit, and (3) issuance of the injunction the President seeks. The Second Circuit – although reversing the District Court's dismissal of the President's action in which the District Court had ordered dismissal based on *Younger v. Harris* abstention (401 U.S. 37 (1971)) – affirmed the District Court's alternative decision denying the President's motion for an injunction against the subpoena. This Court should grant certiorari and reverse the denial of the injunction.

INTEREST OF THE AMICUS[1]

Amicus is a non-profit corporation registered in Florida since 2003 as a human rights and social justice advocacy organization representing over 500,000 fair-minded voters in the Sunshine State. Amicus actively seeks to protect human rights and social justice in litigation and political forums. These values also are

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[1] Counsel for both parties were given notice and have consented to the filing of this Amicus Brief. No counsel or other representative or agent of any party in this case authored any part of this brief or exercised any form of control or approval over this Amicus Brief or any portion of it. No person or entity, aside from Amicus or its counsel, made a monetary contribution to the preparation or submission of this Amicus Brief.

among the President's responsibilities as Chief Executive and Commander-in-Chief under Article II of the Constitution. Amicus has an interest in this petition because the subpoena which is directed to the President and his business holdings is a wide-ranging fishing expedition which will seriously impair the Presidential function and office.

SUMMARY OF ARGUMENT

This Court should grant certiorari, reverse the judgment of the Second Circuit, and order the injunction the President requests.

The subpoena at issue, in its limitless reach and draconian consequences for the President's private business interests, represents an unwarranted intrusion into the President's ability to perform his responsibilities and will cause an impermissible distraction and diversion of the President's energies and focus from his critical responsibilities in violation of Article II of the Constitution. The present wide-ranging subpoena, with its clear excess and potential for Presidential distraction and dysfunction, is not consistent with this Court's jurisprudence which permits only discrete and limited intrusions into the Presidential sphere in terms of subpoenas or personal liability.

Additionally, the subpoena violates the Division of Powers and principles of federalism. State and local officials – the present subpoena was issued by the local District Attorney in New York County, New York – may not control or impair the President's performance.

ARGUMENT

I. This Court Should Grant Certiorari Because the Petition Raises Extremely Important Issues of Presidential Immunity Which Repeatedly Have Warranted Review in This Court

This Court should grant certiorari by reason of the extremely important issues of Presidential administration and immunity raised in the petition. These issues encompass the President's ability to perform his duties under Article II of the Constitution, Presidential immunity, and the proper balance between Presidential and judicial authority in the face of the wide-ranging subpoena which is at issue here. When Presidential immunity is at issue, nothing less than the President's ability to effectively perform his official duties is at stake. This Court has repeatedly recognized the importance of certiorari to review issues of Presidential immunity. *Clinton v. Jones,* 520 U.S. 681 (1997); *Nixon v. Fitzgerald,* 457 U.S. 731 (1982); *U.S. v. Nixon,* 418 U.S. 683 (1974).

II. On the Merits, the Subpoena Should Be Quashed Because of the Plausible Risk It Will Cause Serious Distraction and Diversion From Presidential Duties

Amicus fully supports the President's petition and the grounds asserted therein. However, there is an additional and alternative ground under Article II of the Constitution for issuance of the injunction the President requests.

Respondent's wide-ranging and blunderbuss criminal subpoena for virtually all the President's private financial records and income-tax returns for the past 8 years poses a plausible risk of serious distraction from the President's performance of his official duties and responsibilities. The likely distraction and diversion from the duties of Office are palpable and real. Article II of the Constitution commands that the subpoena be quashed.

The official duties and responsibilities of the President are daunting. Under Article II of the Constitution, the President is Commander-in-Chief of the nation's armed forces, is responsible for their conduct everywhere in the world, is Chief Executive of the United States government, the nation's representative to the rest of the world, the person responsible for choosing all major department heads and federal judges (subject to Senate approval), and the single person ultimately responsible for the functioning of the entire Executive Branch of Government.

The President has the nuclear-launch codes by his side 24/7, must be ready and focused at a moment's notice to address any crisis at any time anywhere in the world and beyond, is on-call at 3:00 AM no less than 9-5, and requires a live-in office in the White House to discharge his official duties around the clock and around the world.

The details of the present subpoena show the enormity and breadth of its likely distraction from the President's critical Article II responsibilities. The subpoena in blunderbuss fashion seeks "all" income tax returns, financial statements, work papers, source

documents, and much more, for an 8-year period from 2011 to present (App.pp.117a-120a). Any reasonable person in its focus would be distracted by it and actively concerned in its wake. Common sense and the reality of ***any*** broad-ranging criminal subpoena compel this conclusion. The subpoena inherently carries with it the dual potential for draconian consequences in its criminal nature and the specter of litigation surprise and guesswork in its enormous breadth. Its effect, if not purpose, will keep any target guessing, concerned, distracted, and in constant contact with one's accountants, advisors and attorneys over it – precisely the distraction and dysfunction that Presidential immunity and Article II are designed to avoid.

The far-reaching and intrusive reach of the subpoena distinguishes this case from decisions of this Court which allowed limited judicial inroads into the President's time and energies. Specifically, the wide-ranging and virtually limitless reach of the present criminal subpoena distinguishes it from the narrow and discrete exceptions to Presidential immunity allowed in *Clinton v. Jones, supra,* 520 U.S. 681 (1997), and *U.S. v. Nixon, supra,* 418 U.S. 683 (1974).

An examination of *Clinton* and *Nixon* underscores the point. In *Clinton* this Court allowed Ms. Paula Jones to pursue her claim against the sitting President Clinton arising from ***discrete and limited*** instances of sexual abuse by Mr. Clinton occurring prior to his Presidency. This Court in *Clinton* discussed the relatively limited intrusion that the action – which arose from specific discrete events primarily on a single day in 1991 (520 U.S. at 685) – would portend for the

functioning of the Clinton Presidency. *Id.,* at 691-92. This Court held that "separation-of-powers principles would [not] be violated by allowing ***this action*** to proceed." *Id.,* at 699 (emp.added). This Court in *Clinton* further underscored the limited nature of the intrusion from Ms. Jones's highly specific claim by analogizing it to – and implicitly approving – two similarly non-intrusive lawsuits against President Kennedy arising from a single automobile accident occurring prior to his Presidency. *Id.,* at 692.

This Court permitted, the same type of limited intrusion into Presidential administration in *U.S. v. Nixon.* In *Nixon* this Court upheld a relatively narrowly focused criminal trial subpoena for discrete communications between President Nixon and some of his aides when the latter were criminal defendants. This Court in *Nixon* underscored the extremely limited intrusion of the subpoena because it reflected a "demonstrated specific need for evidence" consisting of "disclosure of a ***limited number of conversations*** " (418 U.S. at 713; emp.added).

Thus the discrete and limited foci of both the lawsuit in *Clinton* and subpoena in *Nixon* underscored the limited nature of any intrusion or dysfunction they would cause. Neither would adversely affect Presidential administration or the President's responsibilities and duties under Article II. Neither a single lawsuit arising from discrete sexual acts (*Clinton*) nor a subpoena compelling "disclosure of a limited number of conversations" (*Nixon*) would impair the proper functioning of the Presidency or present a

plausible risk that Presidential energies or focus would be diverted or distracted in a material way.

Clinton and *Nixon* stand in extreme contrast to the present subpoena. The present subpoena is a blunderbuss, broad, and virtually limitless command by a local prosecutor for production of "all" income tax returns, financial statements, financial records, supporting papers, and far more, concerning the President's vast multi-billion-dollar business enterprise spanning a period of 8 years since 2011 (App.pp.117a-120a). There is no way the present subpoena is consistent with proper and reasonable functioning of the Presidential Office. The subpoena requires inordinate focus and distraction from any other calling or endeavor. The ultimate victims will be the American citizenry and indeed all persons worldwide who depend on the President's undistracted attention to the weighty matters of state and the pursuit of world peace.

The Second Circuit's rationale to the contrary is flawed. The Second Circuit belittled the intrusive nature of the subpoena, reasoning it "does not require the President to do anything at all" (App.p.20a) – apparently because the subpoena technically is directed not to the President but to his accountants who hold his financial and tax records. The Second Circuit focused on the wrong burden. The problem is not the burden of production but the burdens of distraction and diverted attention. The latter burdens are real and palpable under the present subpoena which poses a plausible risk of substantial distraction and diversion

from Presidential duties in violation of Article II of the Constitution.

This Court has underscored the disastrous potential for Presidential distraction that compels a finding of Presidential immunity. In *Nixon v. Fitzgerald, supra,* 457 U.S. 731 (1982), this Court held that the President is immune from personal liability for official acts performed in office because of the serious potential for Presidential distraction over fears of personal liability. This Court held:

> "Because of the singular importance of the President's duties, diversion of his energies by concern with private lawsuits would raise unique risks to the effective functioning of government. As is the case with prosecutors and judges – for whom absolute immunity is now established – a President must concern himself with matters likely to arouse the most intense feelings…. Nor can the sheer prominence of the President's office be ignored. In view of the visibility of his office and the effect of his actions on countless people, the President would be an easily identifiable target for suits for civil damages. Cognizance of this personal vulnerability frequently could distract a President from his public duties, to the detriment of not only the President and his office but also the Nation that the Presidency was designed to serve."

Nixon v. Fitzgerald, 457 U.S. at 751-53.

Admittedly, *Nixon v. Fitzgerald* dealt with Presidential immunity for official acts rather than immunity from litigation over private acts. But the distraction and diversion of energies that both cause are the same especially where, as here, the titanic nature of the subpoena concerning private acts carries over into the public sphere and creates a plausible risk of diversion of energies and distraction from official Presidential duties.

This Court's later analysis of *Nixon v. Fitzgerald* is not inconsistent with this result. In *Clinton v. Jones,* this Court explained that the "dominant concern" in *Nixon v. Fitzgerald* was to protect the President from liability for official acts by enabling the President to make official decisions without "diversion of the President's attention" caused by concerns over a later damage action. 520 U.S. at 694 n.19. But the fact that this was the "dominant concern" in *Nixon v. Fitzgerald* does not mean it was the only concern. This Court's broader recognition in *Nixon v. Fitzgerald* – of the deleterious effects that the judicial process (including subpoenas) may have on Presidential function and performance – applies as much to overbroad judicial intrusion into private matters as to personal liability arising from official acts.

This Court left open exactly this issue in *Clinton v. Jones*. In *Clinton* this Court recognized that – and expressly did not decide whether – an "exceptional case[ ]" may require a blanket Presidential immunity from a particular judicial process notwithstanding its origin in private rather than official acts (520 U.S. at 690n.12: not decide "exceptional case[ ]"). For this

purpose, the present petition clearly involves an "exceptional case" warranting Presidential immunity and entry of the requested injunction. The enormous breadth and depth of the wide-ranging criminal subpoena – and the distraction and diversion of Presidential energy and focus it will cause – distinguish this present case from the discrete and limited incursions into Presidential time this Court permitted in *Clinton v. Jones* for the singular lawsuit arising from discrete acts of sexual harassment or in *U.S. v. Nixon* for the specific and limited trial subpoena for "disclosure of a limited number of conversations."

Indeed, if this case is not an "exceptional case[ ]" warranting Presidential immunity, it is hard to imagine any case that would be. The integrity and function of the Presidency clearly warrant the injunction the President seeks.

This is not a political or partisan issue. Rather, this is an issue that goes to the heart and soul of the Presidential Office and the President's ability to function effectively as the elected Chief Executive of the nation. This is an issue which cuts across party lines and transcends partisan beliefs. A Republican or Conservative President today who is victimized by an abusive subpoena issued by Democratic or liberal governmental officials may be followed tomorrow by a Liberal Democratic President victimized by a similar subpoena issued by Conservative Republican opponents. Neither is permissible. Neither can withstand scrutiny under Article II of the Constitution. The protection of the institution of the Presidency requires the injunction the President seeks.

For these reasons, the President's ability to perform his Article II responsibilities unimpaired by distractions from respondent's wide-ranging blunderbuss criminal subpoena mandate reversal of the judgment of the Second Circuit with directions to issue the requested injunction quashing the subpoena.

III. The Subpoena Should Be Quashed Also Because State and Local Authorities May Not Issue Process Which Impairs The President's Ability to Perform His Official Duties

In addition to the above reasons for granting the requested injunction, the nature of our federal system separately requires the same result. The subpoena at issue emanates not from a federal authority but from the local District Attorney in New York County, New York. This Court has consistently held that State and local officials may not use their powers to impair or affect the functions of federal officials. *Clinton v. Jones,* 520 U.S. at 691 n.13 ("Because [of] the Supremacy Clause … any direct control by a state court over the President … may implicate concerns that are quite different from the inter-branch separation-of-powers questions addressed here [federal court vs. President]"); [2] *see also Johnson v. Maryland,* 254 U.S. 51 (1920) (State may not require U.S. Post Office mail-truck driver to obtain State driver's license); *Osborn v.*

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[2] This Court in *Clinton v. Jones* expressly declined to decide whether a State court action could proceed against the President, 520 U.S. at 691, while strongly intimating that it may not. *Id.,* at 691n.13.

Bank of United States, 22 U.S. 738, 867-68 (1824) (State may not control or tax an entity of the federal government); *M'Culloch v. Maryland,* 17 U.S. 316, 429-30 (1819) (same).

The import and lesson of these cases are clear. They restrict State authority which purports to control or impair in any way the official performance of a federal governmental official or entity. This principle should apply with special vigor to protect the Office of the President – the federal government's Chief Executive officer – from assertions of control by State courts.

There are an estimated 5,000+ local prosecuting attorneys' offices throughout the United States. The potential for abuse and political mischief is obvious. Many local District Attorneys, if not most – including the present respondent – are elected in partisan elections with strong political biases. Not surprisingly, the present respondent is a Liberal Democrat who has served the present wide-ranging criminal subpoena seeking information and documents concerning a Conservative Republican President. To allow this kind of political gamesmanship to infect and distract the Presidency with compulsory subpoena process is to degrade the Office of the President and expose every future President to the same meddling, control, distraction and abuse.

If allowed in this case, then every future President – especially Presidents with extensive business holdings – will be vulnerable to the same abuse and degradation. It will not matter whether the President is a Democrat, Republican, Liberal, Conservative, or

otherwise. There will always be some local prosecutor somewhere – among the 5,000+ in the United States – who will want to follow suit against any given President, if allowed in this case. Article II of the Constitution and the integrity of the Office of the President command that this be shut down, now.

CONCLUSION

It bears emphasis that the impermissibility of a State court subpoena in this situation is merely an ***additional*** reason to quash this subpoena. The primary reason, discussed above, remains: The subpoena is not confined to the type of discrete and limited intrusion into the Presidential function allowed in *Clinton v. Jones* or *U.S. v. Nixon* but instead constitutes a wide-ranging, virtually limitless and blunderbuss command for production of documents that triggers a plausible risk of serious Presidential distraction and diversion of energy and focus that will impair the ability of the President to perform his official duties.

For either or both of these reasons, the subpoena contravenes Article II of the Constitution. This Court should grant certiorari, reverse the judgment of the Second Circuit, and order entry of the injunction the President requests.

Respectfully submitted,

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