No. 25-453

IN THE
Supreme Court of the United States

STEPHEN K. BANNON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE D.C. CIRCUIT

AMICUS CURIAE BRIEF OF IOWA IN SUPPORT OF PETITIONER

BRENNA BIRD
Attorney General of Iowa

ERIC WESSAN
Solicitor General

OFFICE OF IOWA
ATTORNEY GENERAL
1305 E Walnut Street
Des Moines, IA 50319
(515) 823-9117
eric.wessan@ag.iowa.gov

Counsel for Iowa

*(*additional counsel listed at the end of the brief)*

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INTERESTS OF AMICUS CURIAE[1]

States play a vital role under our Federalism. While the federal government is assuredly supreme, *see* U.S. Const. art. VI, cl. 2, *Amicus Curiae* State of Iowa has a vital and abiding interest in ensuring that Congress wields its formidable subpoena power when, and only when, it acts through committees possessed of lawful authority to do so.

The second question presented—whether a congressional committee's failure to comply with the House's own resolution governing its composition and appointment deprives it of "authority" to issue subpoenas enforceable through criminal prosecution—goes to the heart of the structural limits on Congress's investigative power. *See* 2 U.S.C § 192.

When the political branches clash, as they did here, the Judiciary is entrusted with policing the boundaries that preserve our constitutional equilibrium. The January 6 Select Committee's subpoenas were issued by a body that, as Judges Rao and Henderson persuasively showed, materially deviated from the very House Resolution that—alone—conferred the Committee's existence and powers. Pet.App. 50a–56a.

If such departures are tolerated, Congress may unilaterally rewrite its own rules mid-stream, appoint members in defiance of its own mandates, and then criminalize noncompliance with subpoenas issued by

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[1] *Amicus* State of Iowa notified Counsel of Record for No. 25-453 of its intent to file this brief under Sup. Ct. R. 37.

its now irregularly constituted bodies. That is not oversight; it is overreach.

States are not mere bystanders to this separation-of-powers contest. They too may be subjects of aggressive congressional investigations—often launched with slim partisan majorities and pursued with the same procedural irregularities at issue here. A rule of law that permits Congress to prosecute citizens criminally for defying subpoenas issued *ultra vires* rejects the balancing between the coordinate branches of government that the Framers established.

The decision below insulates such abuses from judicial review by treating any committee that calls itself "authorized" as conclusively so, regardless of how flagrantly it flouts the House's own rules. That holding threatens not only individual liberty but the structural safeguards of federalism itself. States thus have a direct and compelling interest in this Court's resolution of whether "by the authority of [the] House," as used in § 192, means what it says: that criminal liability may attach only when Congress has acted through a committee truly possessing the authority the House purported to bestow.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioner Stephen K. Bannon was a senior advisor to President Trump. In that role, he was part of many conversations with the President. Many of those conversations were uncontroversially protected by the constitutionally derived executive privilege. Despite that privilege, Petitioner had testified before Congress

on three occasions—and for each of those occasions, the President had "waived his invocation of the executive privilege." JA326.

In 2021, Petitioner received a subpoena from the House Select Committee. Following the advice of both Petitioner's and President Trump's counsel, Petitioner told the Committee that he would not appear to testify until the question of whether executive privilege protected his testimony was answered. Pet.7.

This case presents a question of surpassing institutional importance: whether a putative congressional committee that was never validly constituted under the House's own rules possesses the "authority of either House of Congress" to issue subpoenas whose willful defiance may be punished as a felony? *See* 2 U.S.C. § 192.

The D.C. Circuit answered that question in the affirmative, holding that violating the mandatory structural and procedural requirements set forth in H. Res. 503 was "forfeited." Pet.App. 18a. That holding is not merely wrong; it is an open invitation to future Houses to dispense with inconvenient rules whenever political expediency demands it. If the House may create a committee whose authorizing resolution expressly requires the minority leader to designate a ranking member, then reject the minority's designees, appoint no ranking member at all, yet still wield the criminal contempt power, then House rules are little more than precatory suggestions that may be discarded the moment a majority finds them inconvenient.

This Court has never sanctioned such congressional self-help. From *Christoffel v. United States*, 338 U.S. 84, 89 (1949), to *Yellin v. United States*, 374 U.S. 109, 122–24 (1963), the Court has held that criminal penalties for contempt of Congress may not be imposed when Congress has failed to follow its own rules. Indeed, for the prosecution to succeed the "government was required to establish beyond a reasonable doubt that the Select Committee's 'authority was clear and was conferred in accordance with law.' " Pet.App. 56a (quoting *Gojack v. United States*, 384 U.S. 702, 714 (1966) (cleaned up)). The decision below licenses precisely the kind of process-free prosecution that the Framers sought to prevent when they vested the legislative power in a full House of Representatives rather than in a single faction.

The January 6 Select Committee was not a duly composed committee of the House of Representatives. It was a committee of members hand-picked by the Speaker, operating without the ranking minority member that H. Res. 503 made a condition of the Committee's deposition authority. *See* Regulation 2, Regulations for the Use of Deposition Authority, 117th Congress (2021). It thus lacked authority to issue the subpoena at issue here. The Court should grant certiorari to say so.

ARGUMENT

I. There Cannot Be a Willful Default of a Congressional Subpoena if There is No Validly Propounded Congressional Subpoena.

The Committee was improperly constituted and that is fatal to its authority to issue subpoenas. Without a validly issued subpoena, there was no obligation for Petitioner to appear before the Committee. And there certainly was no intentional violation of a validly issued subpoena. The House of Representatives may not violate legal rights or ignore its own rules in conducting oversight. *See Watkins v. United States*, 354 U.S. 178, 198–99 (1957); *see also Yellin*, 374 U.S. at 114. Indeed, Congressional committees' rules are judicially cognizable and committees are held to their observance. *Yellin*, 374 U.S. at 114 (citations omitted).

A. The Select Committee Did Not Follow its Own Authorizing Resolution.

The first step to issuing a valid Congressional committee subpoena is for there to be a valid Congressional committee. And here, House Resolution 503 mandated that "the Speaker shall appoint thirteen Members, five of whom shall be appointed after consultation with the minority leader." H. Res. 503, § 2(a). Vacancies on the committee had to be filled consistent with the procedures for selecting the membership of the committee. *See id.* But the Committee had only nine members due to the Speaker's willful failure to follow that procedure. Pet.App. 48a; *see* Olivia Beavers, *et al.*, *Pelosi vetoes Banks, Jordan for Jan. 6 select committee*, Politico (July 21, 2021), http://bit.ly/4r8ceY5 (accessed Nov. 21, 2025).

Compounding the failures to follow the general membership requirements imposed by House Resolution 503, the Speaker failed to appoint a ranking member. Pet.App. 61a. While the Select Committee eventually named Representative Elizabeth Cheney "Vice Chair" that is a distinct and functionally different role than the Resolution-required Ranking Member. That difference is recognized by House Rules, conference rules, caucus rules, and precedent. Rule XI, Rules of the U.S. House of Representatives, 117th Cong. (2021); Rule XIV, Rules of the House Republican Conference, 118th Congress (2023); Rule 21, Rules of the Democratic Caucus, 118th Congress (2023).

House Resolution 503 articulates actions that only may be taken in certain circumstances—including some that may be taken only "in consultation with the ranking minority member." H.R. Res. 503, 117th Cong. § 2 (2021). That includes the authority to conduct depositions. H.R. Res. 503, 117th Cong. § 5 (2021).

Beyond the specific authorizing resolution for this Select Committee, House Resolution 503 bolsters the need to consult the ranking member by explaining that the Select Committee's deposition authority is "governed by the procedures submitted by the chair of the Committee on Rules for printing in the Congressional Record." H.R. Res. 503, 117th Cong. § 5(6)(B) (2021). Under the House Committee on Rules' Regulations for the Use of Deposition Authority, the Chairman is required to consult the ranking minority member before conducting a deposition. The Regulations explain that "[c]onsultation with the ranking minority

member shall include three days' notice before any deposition is taken." Regulation 2, Regulations for the Use of Deposition Authority, 117th Congress (2021). With no ranking member, there is no argument that requirement was met here.

Given it was impossible for the Select Committee to comply with this regulation when it issued the subpoena for Mr. Bannon's deposition and on the date specified by the Select Committee for his deposition, there can be no legal recourse imposed on the applicant for not appearing for the deposition. Indeed, that is even truer given that his noncompliance must be willful for a successful prosecution. 2 U.S.C. § 192. Failing to appear for an improperly propounded subpoena cannot be a willful violation of this criminal statute. *Cf.* Pet.App. 36a–37a (outlining why this Court should consider overruling the D.C. Circuit's holding in *Licavoli v. United States*, 294 F.2d 207 (D.C. Cir. 1961)).

B. Appointing a Vice Chair Did Not Cure the Lack of Ranking Minority Member.

While both a ranking minority member and the Select Committee's vice chair share the same partisan valence here (Republican), that unusual decision is a departure from standard practice. Indeed, House Resolution 503 and the House Rules more generally both require a ranking minority member for a properly composed committee.

Rule XI of the Rules of the House for the 117th Congress stated that a "member of the majority party on each standing committee or subcommittee shall be

designated by the chair of the full committee as the vice chair." Rule XI, Rules of the U.S. House of Representatives, 117th Cong. (2021). If the chair of the committee is not present, then the vice chair—who is usually a member of the same party as the chair—shall preside over the proceeding. *Id.* Driving that point home, both the Democratic Caucus and Republican Conference use the term vice chair to describe a position junior to the chair to be filled by a Member from the same political party. *See*, *e.g.*, *House Republican Conference Vice Chair Blake Moore*, House GOP, https://bit.ly/3X6K2Y1 (accessed November 21, 2025).

Committee Chair Bennie Thompson selected a Vice Chair of the Select Committee as contemplated by House Rule XI. After offering the role to Democrat Jamie Raskin, who declined, Thompson named Cheney Vice Chair. Robert Draper & Luke Broadwater, *Inside the Jan. 6 Committee*, N.Y. Times (Dec. 23, 2022), https://bit.ly/4phmnQo (accessed Nov. 21, 2025). Thompson named Cheney Vice Chair in the same manner that Vice Chairs are named under Rule XI. She thus fulfilled the role of a Vice Chair—but not ranking minority member.

A ranking minority member is not just a member of the minority party but is a member of the minority party selected by that party to serve as a ranking minority member. According to House Rules, the standing committee members shall be elected "from nomination submitted by the respective party caucus or conference." Rule X, Rules of the U.S. House of Representatives, 118th Cong. (2023).

Cheney was not selected by the Republican minority leader to serve on the committee—she was instead appointed as one of the eight selections reserved for then-Speaker Nancy Pelosi. While those slots traditionally would be reserved for Democrats, there is no ambiguity as to who put Cheney on the Select Committee. The Republican minority's selections for the Select Committee were vetoed—leading to only nine members of the committee. And at no point was there a properly appointed ranking member.

C. This Court's Precedents Foreclose Conviction for Failing to Appear Before an Improperly Constituted Committee.

Failing to follow both the Select Committee and House Rules makes a successful prosecution under section 192 impossible. *See Gojack*, 384 U.S. at 716 ("[A] clear chain of authority from the House to the [committee issuing a subpoena] is an essential element" of a section 192 charge); *see* Pet.App. 56a. That requires the prosecution to "establish beyond a reasonable doubt that the Select Committee's 'authority was clear and was conferred in accordance with law.'" Pet.App. 56a (quoting *Gojack* 384 U.S. at 714). Ensuring compliance with legislative procedures is important in applying a "criminal statute." *Id.* at 57a (quoting *Gojack*, 384 U.S. at 714); *see Christoffel*, 338 U.S. at 88.

The Select Committee's defective composition renders any subpoena that it issued invalid for purposes of criminal contempt because it was not issued "by the authority of either house of Congress." 2 U.S.C. § 192; *see* Pet.App. 57a. As discussed above, the number of

members, partisan make up, and lack of ranking member all violated the Select Committee's authorizing resolution. H. Res. 503, 117th Cong. § 2(a) (2021). Indeed, at the D.C. Circuit, the House of Representatives acknowledged that the Select Committee was in those ways structurally deficient. Brief for the U.S. House of Representatives as Amicus Curiae in Support of Neither Party at 11, *United States v. Bannon*, No. 22-3086.

This Court has not yet determined whether a structurally deficient committee may issue subpoenas in violation of its own authorizing resolution. Nor has it determined whether failure to comply with that illegally issued subpoena can be grounds for prosecution. This Court should grant *certiorari* to answer those questions in the negative.

Indeed, Judge Rao's dissental highlighted "several principles" that can derive from this Court's precedents assessing congressional authority and criminal prosecutions.

"First, a committee has authority to issue subpoenas *only* when acting within its delegated authority." Pet.App. 58a. That follows logically from the committee's authority to investigate flowing from investigative power delegated to the committee from the full House. *Id.* (citing *United States v. Rumely*, 345 U.S. 41, 44 (1953)). This Court has reversed section 192 convictions when a committee exceeded the authority conferred to it by its authorizing resolution. *See*, *e.g.*, *Rumely*, 345 U.S. at 47; *Gojack*, 384 U.S. at 716.

"Second, even when a committee possesses delegated authority to issue subpoenas, it must issue those subpoenas in conformity with the procedures contained in the committee (and House or Senate) rules." Pet.App. 59a. If there is any doubt as to whether a subpoena was lawful, conviction cannot follow. *Id.* (quoting *United States v. Helen Bryan*, 339 U.S. 323, 330 (1950)).

And third, "a committee must follow the rules governing its composition in order to be a 'competent tribunal.'" Pet.App. 60a (quoting *Christoffel*, 338 U.S. at 89). Congress has a wide berth to establish rules for its own committees' operation—but it is bound to those rules and is responsible to ensure "they have been followed." *Id.*

Petitioner's concerns about the Select Committee's composition are worthy of *certiorari* review. As is the important question as to whether a citizen may be sent to prison for failing to comply with a subpoena issued by a committee that failed to follow its own authorizing resolution. As Judge Rao acknowledged, "it is 'unthinkable' that a committee without authority 'can be the instrument of a criminal conviction." Pet.App. 62a (citing *Christoffel*, 338 U.S. at 90).

* * *

Separation of powers is of vital interest to the States. Not only horizontal separation of powers—but vertical too. Congress has the power to preempt or otherwise modify States' behavior. It is strongly in States' interest to ensure that Congress's power is used consistent with the enumerated authorities under the

Constitution. Here, there is a dispute between the Executive Branch and Legislative Branches that implicate vital questions of executive privilege and legislative authority. This Court should grant *certiorari* to ensure that both branches are complying with their constitutional obligations.

CONCLUSION

The Court should grant the petition for certiorari.

Dated: December 10, 2025
Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa
ERIC H. WESSAN
Solicitor General
Counsel of Record
1305 E. Walnut St.
Des Moines, IA 50319
(515) 823-9117
eric.wessan@ag.iowa.gov

Counsel for Amicus *State of Iowa*