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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 the 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: And 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 have  
4 waived any reliance on impeachment. And -- and  
5 -- 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 see.  
14 What about the first question, are you saying  
15 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: Perhaps before my time  
7 expires I can ask you one other question. I  
8 think you said that Congress has limited power  
9 to regulate the conduct of a President.

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

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

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

25 One could imagine maybe some

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

10 CHIEF JUSTICE ROBERTS: Justice  
11 Sotomayor?

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

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

1 upon.

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

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

19 JUSTICE SOTOMAYOR: No, we're --

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

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

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

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

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

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

21 MR. STRAWBRIDGE: Not in --

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

23 MR. STRAWBRIDGE: -- not in Eastland.

24 JUSTICE SOTOMAYOR: -- personal --  
25 they're not personal papers. That -- all those

1 cases have to do with papers that belong to the  
2 Office of the President. Again, these are  
3 personal papers.

4 MR. STRAWBRIDGE: Well, Eastland --

5 CHIEF JUSTICE ROBERTS: Briefly,  
6 counsel.

7 MR. STRAWBRIDGE: Yeah. Eastland --  
8 Eastland was not -- didn't even raise that  
9 issue. Eastland was, in fact, personal papers.  
10 But, with respect, I guess the main point I  
11 would make is whatever presumption this Court  
12 has previously applied in cases that involve  
13 separation of powers, it should not put a -- any  
14 -- any finger on the scale for Congress's  
15 asserted legislative power in this case. And,  
16 indeed, in numerous separation of powers cases,  
17 starting with Kilbourn, the Court has declined  
18 to extend any presumption that -- that Congress  
19 had a legitimate power. That was also true  
20 below in the D.C. Circuit in Tobin, in the  
21 Senate Select Committee case, and even in the  
22 AT&T cases.

23 CHIEF JUSTICE ROBERTS: Justice Kagan?

24 JUSTICE KAGAN: Good morning,  
25 Mr. Strawbridge. I think what strikes me about

1 this case is, you know, this isn't the first  
2 conflict between Congress and the President, as  
3 many of my colleagues have pointed out.

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

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

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

21 MR. STRAWBRIDGE: Well, no, I -- I --  
22 I don't -- I don't think that that's the case  
23 because -- well, and for several reasons. One,  
24 the fact that this is the first time that  
25 Congress has attempted to -- to -- to subpoena

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

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

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

18           JUSTICE KAGAN: But I -- I -- I --

19           MR. STRAWBRIDGE: And whatever --

20           JUSTICE KAGAN: Go ahead. Sorry.

21           MR. STRAWBRIDGE: I was going to say  
22 whatever power Congress has to conduct oversight  
23 of lower branch agencies or inform itself as to  
24 the workings of government, these documents are  
25 not relevant to that. And that power does not



1 extend to the President, who is a separate  
2 constitutionally created officer.

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

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

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

19 MR. STRAWBRIDGE: Well, because I -- I  
20 guess -- I guess because the -- the fact that  
21 they seek personal documents doesn't mean that  
22 they're not targeting the President. And,  
23 indeed, both the Oversight Committee and the --  
24 and the Financial -- or, I'm sorry, the -- the  
25 House Intelligence Committee have identified the

1 President in his role as President as one of the  
2 motivating factors for their investigation.

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

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

13 CHIEF JUSTICE ROBERTS: Justice  
14 Gorsuch?

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

22 Why -- why should we not defer to the  
23 House's views about its own legislative  
24 purposes?

25 MR. STRAWBRIDGE: For several reasons,

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

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

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

25 JUSTICE GORSUCH: Counsel, I'm sorry

1 to interrupt you, but I -- I guess my question  
2 was more practical than that.

3 Why is this subpoena not provide --  
4 supported by a substantial legislative need?

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

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

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 Justice Kavanaugh?

3 JUSTICE KAVANAUGH: Thank you, Chief  
4 Justice.

5 And good morning, Mr. Strawbridge.

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

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

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

24 But, if there were some situation in  
25 which Congress was actually -- you know, had --

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

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

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

23 And you say this case is different  
24 because the subpoenas were issued to a  
25 third-party custodian. And there's an implicit

1 assumption there that I just want to make sure  
2 of, namely, that absent a court order, the  
3 private custodians plan to comply with the  
4 subpoenas even if the client directs or requests  
5 them not to comply. Is that correct?

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

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

21 CHIEF JUSTICE ROBERTS: Thank you,  
22 counsel.

23 General Wall?  
24  
25

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 spent 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 upon 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, even the policeman on the  
12 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 served by prosecutors. These are legislative  
21 subpoenas, not subpoenas issued by the executive  
22 branch, for entirely different interests and  
23 they trigger different concerns. These  
24 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, had 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 discussed 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 -- 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. Letter,  
20 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 -- and a  
11                  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 obviously  
16                  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 power,  
24                  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 the  
5 Congress's legislative power, which -- I mean  
6 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 Sinclair expedition. It  
5 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. Now those  
23 are arguments made by the other side. I'd like  
24 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 third  
18 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  
15 to run afoul of this Court's teaching that  
16 there's no congressional power to expose for the  
17 sake of 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 -- I also took the briefs not to  
17 be 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, 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  
21 is 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.

6 I want to follow up on the line of  
7 questioning that several of my colleagues have  
8 pursued, the Chief Justice, Justice Ginsburg,  
9 Justice Alito, Justice Kagan, and others, which  
10 I think come down to the idea of limitless  
11 authority and how 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? I guess the thing I  
9 would say is why not employ the demonstrably  
10 critical standard or something like that -- this  
11 is what the other side would say -- as something  
12 that's borrowed from a different context but  
13 that might serve to balance the strong competing  
14 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 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 -- in 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 in  
4 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 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 agg -- 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: But 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 think that -- that would be a  
13 valid subpoena. I'm not aware that it has ever  
14 happened in the history of the House or Senate.  
15 I'm -- I'm not -- I don't know of anything that  
16 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 has 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 --

14 CHIEF JUSTICE ROBERTS: Justice Kagan?

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

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

1 Services Committee, you know, was taking a much  
2 broader scope.

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

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

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

23 And last is there's massive public  
24 reporting about the -- the -- the subjects of  
25 these subpoenas, and their banking practices,

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

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

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

9 CHIEF JUSTICE ROBERTS: Justice  
10 Kavanaugh?

11 JUSTICE KAVANAUGH: Yes. Thank you,  
12 Chief Justice. And, Mr. Letter, I want to  
13 follow up on Justice Alito's question.

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

24 But isn't the whole point that once  
25 you start down this road and this Court

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

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

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

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

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

1 --

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

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

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

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

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

24 The -- I'm sorry. Just flipping back  
25 to my notes. I apologize.

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

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

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

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

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

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

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

1 that would not be obtainable under his theory.  
2 And I think that's very telling because there  
3 are no limits to their theories.

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

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

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

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

1 going back ten years.

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

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

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

25           These subpoenas are overreaching.



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

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

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

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## Official - Subject to Final Review

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<sup>[1]</sup> 81:24 <b>aggregate</b> <sup>[3]</sup> 45:17,22 81:24 <b>aggregated</b> <sup>[1]</sup> 12:6 <b>ago</b> <sup>[1]</sup> 73:11 <b>agree</b> <sup>[1]</sup> 35:19 <b>agriculture</b> <sup>[1]</sup> 16:25 <b>ahead</b> <sup>[1]</sup> 23:20 <b>aid</b> <sup>[4]</sup> 33:20 37:24 39:21 94:24 <b>aim</b> <sup>[1]</sup> 65:13 <b>AL</b> <sup>[4]</sup> 1:3,6,9,12 <b>Alito</b> <sup>[27]</sup> 15:23,24 17:6 38:20,21,24 39:22 40:5 46:4 60:13,14,24 61:7,17 62:1,13,23 63:13,21 64:2 74:9 85:24,25 86:17 87:4,7,20 <b>Alito's</b> <sup>[2]</sup> 90:13 91:19 <b>alleged</b> <sup>[1]</sup> 29:14 <b>allow</b> <sup>[3]</sup> 30:18 35:14 92:12 <b>allowance</b> <sup>[1]</sup> 27:18 <b>allowing</b> <sup>[1]</sup> 74:12 <b>almost</b> <sup>[4]</sup> 10:18 77:14 90:17 95:3 <b>alone</b> <sup>[2]</sup> 4:19 95:8 <b>already</b> <sup>[2]</sup> 37:8 66:21 <b>alternative</b> <sup>[1]</sup> 54:1 <b>although</b> <sup>[3]</sup> 8:24 11:13 28:19 <b>amend</b> <sup>[2]</sup> 40:20 73:23 <b>amendment</b> <sup>[1]</sup> 77:20 <b>amendments</b> <sup>[1]</sup> 78:3 <b>amicus</b> <sup>[3]</sup> 2:6 3:7 31:2 <b>Among</b> <sup>[2]</sup> 23:11 85:12 <b>amount</b> <sup>[1]</sup> 70:22 <b>ample</b> <sup>[1]</sup> 62:11 <b>analogy</b> <sup>[3]</sup> 37:19 38:5 50:5 <b>analyses</b> <sup>[3]</sup> 52:6 69:13,14 <b>analysis</b> <sup>[1]</sup> 79:12 <b>another</b> <sup>[4]</sup> 7:14,17 8:14 55:20 <b>answer</b> <sup>[14]</sup> 14:3 15:2 16:15 17:14 52:2 57:3,21 60:15,18 61:9 63:1 72:5 75:2 82:4 <b>answered</b> <sup>[1]</sup> 70:17	<b>answering</b> <sup>[1]</sup> 82:10 <b>answers</b> <sup>[5]</sup> 27:6 57:8 66:4 85:2,6 <b>anytime</b> <sup>[1]</sup> 27:22 <b>APA</b> <sup>[1]</sup> 26:24 <b>apologize</b> <sup>[2]</sup> 72:14 92:25 <b>APPEARANCES</b> <sup>[1]</sup> 2:1 <b>appendix</b> <sup>[2]</sup> 51:18 60:11 <b>applicable</b> <sup>[1]</sup> 42:5 <b>applied</b> <sup>[5]</sup> 5:9 8:2 21:12 23:15 36:25 <b>applies</b> <sup>[5]</sup> 6:9 13:24 14:20 15:11 17:17 <b>apply</b> <sup>[14]</sup> 8:1 26:9,14 28:7 36:25 37:13 38:21 39:9,24 40:1 63:16 83:18 84:13 92:5 <b>applying</b> <sup>[2]</sup> 25:11 95:18 <b>appreciate</b> <sup>[2]</sup> 91:8 92:23 <b>approach</b> <sup>[1]</sup> 38:10 <b>appropriate</b> <sup>[1]</sup> 38:22 <b>appropriations</b> <sup>[2]</sup> 53:18 62:22 <b>area</b> <sup>[1]</sup> 46:6 <b>areas</b> <sup>[2]</sup> 17:5 77:8 <b>aren't</b> <sup>[1]</sup> 66:21 <b>argue</b> <sup>[3]</sup> 4:4 15:18 25:17 <b>argued</b> <sup>[1]</sup> 7:25 <b>argues</b> <sup>[1]</sup> 48:11 <b>argument</b> <sup>[22]</sup> 1:20 3:2,5,9,14 4:7 6:16 25:5 28:6 31:1 44:4,14,16 45:11 50:22 51:25 66:20 69:2,15 93:9,17 95:5 <b>arguments</b> <sup>[5]</sup> 5:10 48:9 58:23 60:6 70:20 <b>arise</b> <sup>[1]</sup> 93:12 <b>arising</b> <sup>[1]</sup> 30:20 <b>around</b> <sup>[2]</sup> 54:25 82:23 <b>arrive</b> <sup>[1]</sup> 54:23 <b>arsenal</b> <sup>[2]</sup> 38:16 50:13 <b>Article</b> <sup>[2]</sup> 31:21 54:14 <b>articulated</b> <sup>[1]</sup> 92:6 <b>articulates</b> <sup>[1]</sup> 91:1 <b>aside</b> <sup>[2]</sup> 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