



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 15, 2019

The Honorable Adam Schiff
Chairman
House Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your October 7, 2019 letter and subpoena for documents and communications in the custody, possession, or control of the Office of Management and Budget (OMB). According to the letter and subpoena schedule, you are demanding the production of nine categories of information no later than 5:00 pm on October 15, 2019. This demand, made in consultation with the Committee on Foreign Affairs and the Committee on Oversight and Reform, is “[p]ursuant to the House of Representatives’ impeachment inquiry.”¹

The House of Representatives has yet to authorize such an inquiry. The Supreme Court has long held that the first step in assessing the validity of a subpoena from a congressional committee is determining “whether the committee was authorized” to issue the subpoena, which requires “constru[ing] the scope of the authority which the House of Representatives gave to” the committee.² Here, none of the committees has identified any House rule or House resolution that authorized the committees to begin an inquiry pursuant to the impeachment power. In marked contrast with historical precedents, the House has not expressly adopted any resolution authorizing an impeachment investigation.³ The House also has not delegated such authority to any of the three committees by rule.⁴ To the contrary, House Rule X is currently the only source of the three committees’ jurisdiction, and that rule does not provide any of the committees the power to initiate an impeachment inquiry. The rule does not mention impeachment at all.⁵ Absent a delegation by a House Rule or a resolution of the House, none of your committees has been delegated jurisdiction to conduct an investigation pursuant to the impeachment power under Article I, Section 2 of the Constitution.

Therefore, pursuant to the White House Counsel’s October 8, 2019 letter, the President has advised that “[g]iven that your inquiry lacks any legitimate constitutional foundation, any pretense of fairness, or even the most elementary due process protections, the Executive Branch

¹ Letter from Hon. Adam B. Schiff, Chairman, House Permanent Select Comm. On Intelligence, to Hon. Russell T. Vought, Acting Dir., Off. of Management and Budget (Oct. 7, 2019).

² *United States v. Rumely*, 345 U.S. 41, 42-43 (1953).

³ Letter from Pat A. Cipollone, White House Counsel to Hon. Nancy Pelosi, Speaker, House of Rep. et al., (Oct. 8, 2019).

⁴ See H. Res. 6, 116th Cong. (2019).

⁵ See H. Rule X, cl. 1(i), (n); cl. 11.

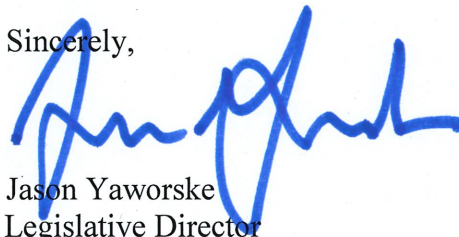
cannot be expected to participate in it.”⁶ The letter further directed that “[c]onsistent with the duties of the President of the United States, and in particular his obligation to preserve the rights of future occupants of his office, President Trump cannot permit his Administration to participate in this partisan inquiry under these circumstances.”⁷

Even if the inquiry were validly authorized, much of the information sought in the subpoena appears to consist of confidential Executive Branch communications that are potentially protected by executive privilege and would require careful review to ensure that no such information is improperly disclosed. Furthermore, as a practical matter, given the broad scope of your request, the time required to collect the documents, review them for responsiveness and relevant privileges, and produce responsive, non-privileged documents to the committee is not feasible, within the mere eight days afforded to OMB to comply with the subpoena.

Separately, your letter claims that “failure or refusal to comply with the subpoena, including at the direction or behest of the President or the White House, shall constitute evidence of obstruction of the House’s impeachment inquiry and may be used as an adverse inference against you and the President.”⁸ OMB objects to this extraordinary threat. Invoking reasonable legal defenses to a subpoena, including invoking privileges that are held by the President, in no way manifests evidence of obstruction or otherwise warrants an adverse inference. Indeed, the very idea that reasonably asserting legal rights is itself evidence of wrongdoing turns fundamental notions of fairness on their head and is inconsistent with the rule of law.

Consistent with the actions of prior Administrations, this Administration has a duty to protect the constitutional prerogatives of the Executive Branch. The committees’ “impeachment inquiry” is entirely unprecedented and occupies a novel realm that is neither general oversight nor impeachment. As the White House Counsel explained, “you simply cannot expect to rely on oversight authority to gather information for an unauthorized impeachment inquiry that conflicts with all historical precedent and rides roughshod over due process and the separation of powers.”⁹ Therefore, without waiving any other objections to the subpoena that OMB may have, OMB is unable to comply with your request for documents at this time.

Sincerely,



Jason Yaworske
Legislative Director

cc: The Honorable Devin Nunes

⁶ Letter from Pat A. Cipollone, White House Counsel to Hon. Nancy Pelosi, Speaker, House of Rep. et al., at 7 (Oct. 8, 2019) (“Cipollone Letter”).

⁷ *Id.*

⁸ Letter from Hon. Adam B. Schiff, Chairman, House Permanent Select Comm. On Intelligence, to Hon. Russell T. Vought, Acting Dir., Off. of Management and Budget (Oct. 7, 2019).

⁹ Cipollone Letter at 8.