Per Curiam

SUPREME COURT OF THE UNITED STATES

No. 07–26

LYDXIA ET AL., PETITIONERS *v.* HOUSE OF REPRESENTATIVES ET AL.

ON WRIT OF REVIEW TO THE UNITED STATES GOVERNMENT

[September 13, 2019]

PER CURIAM.

Under the Constitution, Congress and its committees may issue subpoenas "*only* in furtherance of a legislative purpose." *Watkins* v. *United States*, 354 U. S. 178, 201 (1957). But a conclusion by Congress that a subpoena is so justified warrants great respect and courts should hesitate to set it aside. This deference has its predicates, however. Relevantly, to enable effective judicial review and provide fair notice to recipients, the Constitution requires that a subpoena's basis be disclosed upfront and with "sufficient particularity." *Ibid*; see *id.*, at 217. The Court granted review in this case to determine whether a subpoena issued against petitioner with only a passing reference to its underlying subject-matter meets that threshold.

After review was granted, however, several events took place that, taken together, moot this dispute. To begin with, petitioner announced they would discontinue active participation in the United States and would "quit" ROBLOX. Standing alone, this by no means requires dismissal. As we have emphasized before, a petitioner who "'quit[s]' ROBLOX . . . does not [necessarily] lack a continuing [legal] interest in th[eir] case's outcome." *Benda* v. *United States*, 6 U. S. 24, 29 (2018). They remain legally capable of pursuing their case and automatic dismissal would be inap-

propriate. In this case, though, the detail of petitioner quitting helps to contextualize subsequent developments. For example, petitioner neglected to attend the hearing they were subpoenaed to even after the Court declined to temporarily injunct the subpoena against them. In response, however, rather than pursue any enforcement action, the House Judiciary Committee chose to terminate its investigation with respect to petitioner.

This choice, viewed in context, reveals there is virtually no likelihood the Committee would reinstate the challenged subpoena following dismissal. Furthermore, it is even less likely they would "resume [their] *allegedly unconstitutional conduct*," which is what the mootness doctrine's voluntary cessation exception actually targets. *Ultiman* v. *United States*, 6 U. S. 19, 23 (2018) (emphasis added). After all, this case does not claim that the challenged subpoena is substantively invalid. Instead, it is the purportedly inadequate explanation that petitioner took issue with and which was arguably unconstitutional. There is no reason to think that the Committee would not provide a more concrete explanation the next time around in the extremely unlikely event it chose to reinstate the subpoena.

For these reasons, the writ of review is dismissed as moot.

It is so ordered.

JUSTICE BRANDEIS took no part in the decision of this case.

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JUSTICE CHASE, with whom JUSTICE DOUGLAS joins, concurring in part.

The petitioner initially portrays their case as if a private citizen was summoned by one of the House's committees, but further investigation reveals that the specialized supervisory committee of the House is investigating the executive officers of the Department of Justice—the petitioner is an assistant attorney general.

I

On one hand, the Constitution says nothing about the power of Congress to obtain documents or testimony that relate to Executive and on the other hand the Constitution says nothing about the privilege to withhold; the petitioner doesn't bother briefing us on the latter, but is very quick to the former. If this were a case about privilege—made in entirely different circumstances—I would be willing to accept a petition for anytime review, as "privilege" has been ignored by the Executive's competitors and misapplied by the Executive. This case concerns itself with undermining a rare case of legitimate congressional oversight. Oversight which scarcely exists in a political vacuum. It is why all courts at all levels should hesitate to examine what could best be described as political questions. Regardless, Congress has a clear responsibility, by virtue of constitutional authority, and interest in inquiring "[the] Department of

Justice and other officials [about] possible violations of Government Employee Rights Act and possible rebellion against the United States."[1] Such inquiry—practically speaking, oversight—translates into detecting civil rights violations, preventing dishonesty and ensuring compliance by the Executive with statutory intent. See generally *Watkins* v. *United States*, 354 U. S. 178 (1957). While there are two—and, some might argue, several—interpretations of what oversight exactly is, any coherent, balanced definition can be seen as approving the subcommittee's action: whether it's that "oversight, strictly speaking, refers to review after the fact . . . [it is] mostly composed of inquiries about policies that are or have been in effect, investigations about past administrative actions, and the calling of executive officers to account for their actions"[2] or that "oversight is behavior by legislators, which results in an impact, intended or not, on bureaucratic behavior,"[3] it is very much allowed by the Constitution.[4] As such, there is no reason to think that the house judiciary committee has no—or too vague—legislative authority to adopt the avenue of compulsory subpoena: it is the committee's choice if such avenue is used "for the purposes of evaluating operations, programs, and activities or to check, control, and provide leverage over the executive's specific actions, agencies, or officials."[5] The committee has a long history of adopting bills relating to the supervision of the Justice Department and the law enforcement agencies it administers—and, by extension, the executive officers responsible for them.

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[1] The title and concerns of the subpoena.

[2] Joseph P. Harris, Congressional Control of Administration.

[3] Morris S. Ogul, Congress Oversees the Bureaucracy: Studies in Legislative Supervision.

[4] Whether it be direct or indirect, latent or manifested, official or unofficial, ad hoc, reactive or planned, etc.

[5] F. Kaiser, Congressional Oversight of the Presidency (1988) (talking about evaluation and control through compulsory mechanisms).

II

Nevertheless, the Court's primary points of deliberation have moved from strong legal theory—whether the Court should look forward to scrutinizing clerical errors and the legislative branch's power to obtain information in order to perform its duties—established by decades of real-life precedent,[6] laws[7] and the historical foundation "of a republican government [in which] the legislative authority necessarily predominates"[8] to the volatile theory, characterized by our ever-changing Supreme Court, of the many different interpretations of the Anytime Review Clause—how should the "necessary exercise" part be interpreted? At the very start of the its opinion—prior to the parts that any reasonable judge would agree with, but after laying waste to everything I am about to speak about—the Court says that Congressional subpoenas "warrant great respect and courts should hesitate to set [them] aside." *Ante*, at 1. It never says why, though: and it tells me something about the depths of its misperceptions.

Thus far it has been by no rule, by no doctrine: willy-nilly—cases brought here could also be accepted, and sometimes even decided, by roll of dice, because there have been cases where we explosively denied requests of review based on lack of justiciability[9] and cases where very few Justices said anything about—what should be—mandatory, defined, restrictions on exercising anytime review. Re-

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[6] *McGrain* v. *Daugherty*, 273 U. S. 135 (1927); *Watkins*, 354 U. S., at 178; *Barenblatt* v. *United States*, 360 U. S. 109 (1959) . . . to name a few.

[7] It is known that the legislative can pass laws that mandate oversight and impose specific obligations, such as reporting or consultation.

[8] The Federalist No. 51, p. 269 (Gideon ed. 2001).

[9] *Woman* v. *United States*; *Pauljkl* v. *Sights*, 6 U. S. 59 (2018); *Conjman* v. *United States*, 6 U. S. 52 (2018); *Killer* v. *Sights*, 6 U. S. 58 (2018); *Gunlow* v. *Sights*, 6 U.S. 59 (2018) . . . to name a few.

striction of this power is required by "this Court's constitutional mandate and its own convention and policy":[10] it's true, "judicial policy . . . is not mandated by the Constitution,"[11] however a legal realist is someone who "acknowledges that if there are any restraints on judicial choice they must be self-imposed [by the Court]"[12]—whether "[constraints] never had any basis in the Constitution as originally understood"[13] is irrelevant, we were empowered to determine our own competence[14] and our own right to make policy. Members of the Court have rationalized this plentiful and liberal exercise of anytime review by stating that "this is a major issue which has arisen constantly throughout our Nation's history" or that "the case is not moot and still holds much precedential value." See, *e.g.*, *Waffles* v. *Senate*, 6 U. S. 23 (2018). The Court's quite absurd, complacent justifications are bound to diminish the extraordinary nature of future interventions. An intervention, through the usage of Anytime Review, is extraordinary because it has traditionally and precedentially transcended all general principles of law—such as the exhaustion of alternative remedies, justiciability, legitimate expectations, etc. Accordingly, "[v]arious objective factors"[15] account for cases in which a series of complex, egregious actions can cause immediate, irreparable harm to the governmental or ingame structure if they are not blocked. We determined that our right to exercise this magnifying glass ends when some

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[10] *Stratton* v. *Technozo*, 2 U. S. 88 (2017) (HOLMES, C. J., dissenting); *Dynamic* v. *Technozo*, 2 U. S. 77 (2017) (HOLMES, C. J., respecting denial of certiorari).

[11] *Cursive* v. *United States*, 7 U. S. ___, ___ (2019) (slip op., at 6).

[12] K. Holland, Judicial Activism vs. Restraint (1983).

[13] *Heave* v. *United States*, 5 U. S. 87, 88 (2018) (BORK, J., concurring).

[14] "[A]t any time [we] deem necessary," Art. III, § 4.

[15] *Heave*, *supra*, at 86 (HOLMES, C. J., concurring).

of these factors are not apparent.[16] It's a tool that intrinsically accounts for consequences—whether we like it or not, it's a tool shaped to remedy a mistake before it happens or in the immediate aftermath. Make no mistake, as there is nothing immediate, irreparable, complex[17] or egregious about Congress exercising its power to investigate and inform itself, undeterred by the fact that the reasoning behind this exercise of power is on irregular grounds due to the poor specificity of the Committee.[18] "[W]hen [Congress is] acting within the scope of their authority concerning matters reasonably germane to potential legislation, judicial review is *inappropriate*"[19] and "if the legislative committee is, in fact, effecting some valid legislative purpose and acting within the authority delegated by statute, such a committee is *beyond interference by the judiciary*."[20]

III

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[16] For example, we have determined that we have no jurisdiction to hear cases against the FEC., even through anytime review. See *Isner* v. *FEC*; *Sawnberg* v. *Clan Managers*; *Lincere* v. *Clan Managers*. By claiming that there are no constraints on anytime review, you support a radical level of judicial activism which promotes against standing by even the most predictable and determinable decisions that add to the integrity of the law and judiciary; unchecked and uncheckable judicial rule through the usage of anytime review.

[17] Complexity, if brought up, is a factor solely because some of my colleagues do not trust the court that has original jurisdiction to review any case beyond rubber stamping on the basis of who the parties are.

[18] "We must assume, for present purposes, that neither house will be disposed to exert the power beyond its proper bounds, or without due regard to the rights of witnesses," *McGrain* v. *Daugherty*, 273 U. S. 135, 174–176 (1927) and ". . . weight should be accorded by the courts to a presumption that a legislative investigating committee would not act invalidly or beyond the scope of its power and authority." *State ex rel. Hodde* v. *Sup. Ct.*, 40 Wn. 2d 502, 507 (Wash. 1952) (italics added).

[19] *Ibid.*

[20] *Jordan* v. *Hutcheson*, 208 F. Supp. 131, 135 (citing *Eastland* v. *United States Servicemen's Fund*, 421 U. S. 491 (1975); italics added).

In future cases it should be noted that a "witness may refuse to answer where the bounds of the power are exceeded or the questions are not pertinent to the matter under inquiry":[21] whereas exceeded power is based on the three requirements of a "legally sufficient"[22] subpoena and, perhaps, even the *Thompson* notion of fruitlessness—which, in this case, is not limited to "personal affairs" but any affairs that are beyond the legislature's power. See *Kilbourn* v. *Thompson*, 103 U. S. 168, 195 (1880) ("Was it to be simply a fruitless investigation into the personal affairs of individuals? If so, the House of Representatives had no power or authority in the matter more than any other equal number of gentlemen interested for the government of their country. By "fruitless" we mean that it could result in no valid legislation on the subject to which the inquiry referred.").

Once the petitioner refuses to answer and takes the claim to court, the House is not protected by the Speech and Debate Clause. Let me be clear, the House is not the final judge of its own power and privileges in cases in which the rights and liberties of the subject are concerned, but the judiciary may examine and determine the legality of its action, as it is the province and duty of the judiciary to examine whether the powers of any branch of government, and even those of the legislature, in the enactment of laws, have been exercised in accordance with the Constitution. See *Burnham* v. *Morrissey*, 14 Gray, at 226.

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Therefore, it was remarkably improper for us to grant review. Footed by reasons that can only be called terribly imprudent—a tyrannical exercise of this power inspires distrust in anything but us. By allowing this case to be heard, we have only served to weaken an already exhausted

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[21] *McGrain* v. *Daugherty*, 273 U. S. 135 (1927).

[22] *Wilkinson* v. *United States*, 365 U. S. 399 (1961).

legislative which, in recent, modern times, has resorted to using its only sensible check—impeachment—on the other compartments of the internal structure of the government.