Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HAMILTON *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 09–46. Decided July 30, 2020

Amid heated nationwide protests against the United States State Police (USSP), an agency of the Municipality of Washington, D. C., Congress began considering legislation to abolish the agency or reform its internal accountability structures. In connection with its consideration of those pieces of legislation, a congressional committee subpoenaed petitioner to testify and provide documents pertaining to USSP's internal affairs system. Petitioner showed up to testify but declined to turn over the requested documents. He was charged with obstruction of Congress for his violation of the subpoena. He moved to dismiss that prosecution on the grounds that Congress lacked a legitimate legislative purpose for its subpoena because both pieces of potential legislation would violate the Constitution. The District Court denied the motion and petitioner appealed.

Held: Congress lacks the power to enact legislation abolishing or reforming the internal structures of a local agency like USSP. As such, a subpoena issued in connection with those legislative purposes is both illegitimate and unenforceable. Pp. 4–13.

(a) Congress lacks the power to abolish a local agency like the United States State Police. For Congress to act, it must have authority vested by the Constitution. None of the three plausible sources of congressional authority in this case (the Commerce Clause, Necessary and Proper Clause, and the Guarantee Clause) authorizes this type of legislation. Pp. 4–10.

(b) Congress cannot reform the internal structures of a local agency like the United States State Police without running afoul of the anti-commandeering doctrine, which prohibits Congress from regulating inviolably sovereign entities like Municipalities. Congress can regulate

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the People of the United States directly, but it cannot commandeer and regulate through the Municipalities. Pp. 10–13.

4:20–1957, reversed and remanded.

HOLMES, C. J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

No. 09–46

SIRALEXANDERHAMILTON, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[July 30, 2020]

CHIEF JUSTICE HOLMES delivered the opinion of the Court.

Section 1505 of Title 18 makes it a federal crime to refuse compliance with a subpoena validly issued by a committee of Congress. For a subpoena to be valid, it must be issued in furtherance of a legitimate legislative purpose. Our cases explain that a legislative subpoena must "concern[] a subject on which legislation 'could be had.'" *Eastland* v. *United States Servicemen's Fund*, 421 U. S. 491, 506 (1975) (citation omitted). Petitioner is a former chief of the United States State Police. While he headed USSP, petitioner was subpoenaed to produce a variety of internal affairs records in connection with legislation pending before Congress that would have purported to abolish the agency. He refused to comply. He was held in contempt of Congress and referred for prosecution by the United States Attorney, who filed charges. Petitioner seeks dismissal of the charges on the grounds that the underlying subpoena was invalid. The question before us is if a legitimate legislative purpose existed for petitioner's subpoena. If one did, then as a substantive matter, the subpoena was valid and dismissal on

this ground must be refused. If none existed, however, the Government has not stated a case under 18 U. S. C. §1505 and dismissal is mandatory.

The Government, for its part, concedes this point. It advances no plausible legislative purpose and expressly states that Congress failed to identify one. But we have an independent obligation to assure ourselves that the subpoena is indeed invalid before declaring it so. The legislative record suggests that the subpoena may have been issued to assist Congress in deciding whether to pass legislation abolishing USSP. But Congress has no power to abolish a Municipal agency without any plausible grant of authority in the Constitution to do so. Alternatively, in light of the specific documents requested, perhaps the subpoena was issued to help Congress determine whether to reform USSP's accountability structures. Congress, however, cannot hijack a Municipality's control of its agency's internal structures. We therefore hold—because Congress can neither abolish nor reform a Municipal agency without violating the Municipality's inviolable sovereignty—that the subpoena at issue here was invalid. We reverse the District Court's denial of the motion to dismiss and remand for further proceedings consistent with this opinion.

I

A

Congress's power to issue subpoenas is a byproduct of its power to legislate. As the Constitution's text suffices to show, "Congress has no enumerated . . . power to . . . issue subpoenas." *Trump* v. *Mazars USA, LLP*, 591 U. S. ___, ___ (2020) (slip op., at 11). But we have nevertheless held that each House has power "to secure needed information" in order to legislate. *McGrain* v. *Daugherty*, 273 U. S. 135, 161 (1927). As we have explained, the "power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function." *Id.*, at 174. Without

access to this power, Congress would be essentially "shooting in the dark" when it came to lawmaking. *Trump*, *supra*, at ___ (slip op., at 11). Congress would be unable to legislate "wisely or effectively." *McGrain*, *supra*, at 175. For that reason, the congressional power to obtain information by way of subpoena is "broad" and "indispensable" even if not technically enumerated. *Watkins* v. *United States*, 354 U. S. 178, 187 (1957).

When exercising this power, Congress is entitled to considerable deference. For instance, although "Congress and its committees may issue subpoenas 'only in furtherance of a legislative purpose[,]' . . . a conclusion by Congress that a subpoena is so justified warrants great respect." *Xia* v. *House of Representatives*, 7 U. S. 56 (2019) (*per curiam*) (citation omitted). This deference, however, "has its predicates." *Ibid*. In order for a subpoena to qualify for deferential review, Congress must have "disclosed" the "subpoena's basis . . . upfront and with 'sufficient particularity.'" *Ibid* (citation omitted). Where that is not the case, we must scrutinize the record and make our best judgment as to the legitimacy of potential legislative interests in a subpoena.

In the case of a prosecution under 18 U. S. C. §1505, any charges must arise from the "due and proper" use of Congress's power of inquiry. By definition, an unconstitutional subpoena would be neither "due" nor "proper." As such, the applicable statute only criminalizes the failure to comply with constitutionally valid subpoenas.

B

Petitioner is a former USSP chief. At one point during his tenure, protests swept the Nation—centered at Washington, D. C.—that took issue with a perceived pattern of abuse coming from USSP officers. Protestors demanded that the agency either face serious reform or be abolished. USSP was an agency authorized by D. C. law. Congress, recognizing the political import of the situation, sought to

get involved. It began considering legislation to abolish USSP (the No Justice, No Peace, Abolish the State Police Act) and congressional committees issued subpoenas for testimony and information from senior USSP officials.

Among those who received subpoenas was petitioner, the USSP chief at the time. While he did appear and provide testimony, he declined to produce the documents requested by Congress. The documents requested included: "[internal affairs] decisions," "[d]isciplinary actions related to complaints," and "[p]atrol recordings that occurred during [the] protests." Senate Judiciary, Ethics, and Government Affairs Committee, June 4th USSP Subpoena, pp. 1–2 (2020). In response to petitioner's noncompliance, Congress referred him to the United States Attorney for prosecution. Charges were filed and petitioner moved to dismiss. The District Court declined that motion in a minute order and certified its decision for appeal.

Petitioner filed a petition for a writ of certiorari which sought review of the District Court's denial of dismissal. In his petition, petitioner asserts the underlying congressional subpoena was invalid for lack of a legitimate legislative purpose because any possible legislation which Congress may have been considering with the subpoenaed information would have been unconstitutional. As such, he says, his prosecution for violating the subpoena is invalid as well. We granted certiorari. 9 U. S. ___ (2020).

II

To assess the underlying subpoena, we must assess the plausible justifications for it. While the Government does not suggest any, our scrutiny of the record reveals two possibilities. First, the subpoena may have been connected to the then-pending legislation to abolish USSP. And second, the subpoena may have been intended to explore the possibility of congressional reform for the USSP internal accountability system. Neither of these potential pieces of

legislation, however, would involve a legitimate exercise of congressional power. As such, we reject both arguments.

A

Under the Constitution, and in our federal system, "the National Government possesses only limited powers." *National Federation of Independent Business* v. *Sebelius*, 567 U. S. ___, ___ (2012) (slip op., at 2). The "[Municipalities] and the people retain the remainder." *Ibid*. Under this arrangement, Congress may exercise power only by pointing to a specific grant of authority within the Constitution's text. Chief Justice Marshall observed two centuries ago that "the question respecting the extent of the powers actually granted" to the Federal Government "is perpetually arising, and will probably continue to arise, as long as our system shall exist." *McCulloch* v. *Maryland*, 4 Wheat. 316, 405 (1819). To resolve the validity of this potential legislative purpose, we must once again determine whether the Constitution grants Congress the power to effectuate it. We must determine whether the Constitution grants Congress the power to enact legislation abolishing USSP. If it does, this is a legitimate legislative purpose for a subpoena; if it does not, however, this argument must be rejected.

The Federal Government "is acknowledged by all to be one of enumerated powers." *Ibid*. Rather than simply grant Congress a general power to govern—by granting the power to "perform all the conceivable functions of government"—the Framers thought it most prudent to "list" specific powers that Congress would be authorized to exercise on behalf of the People. *NFIB*, *supra*, at ___ (slip op., at 2). The "enumeration of powers is also a limitation of powers." *Ibid*. After all, "enumeration presupposes something not enumerated." *Gibbons* v. *Ogden*, 9 Wheat. 1, 195 (1824). Therefore, in order for Congress to prevail on this argument, the claimed legislative purpose must be somehow rooted in one of its enumerated authorities. With respect to

the proposed purpose here (the potential abolition of USSP), we can think of three possible sources of authority: the Commerce Clause, the Necessary and Proper Clause, and the Republican Government Clause. None, however, is availing.

1

We begin with the Commerce Clause, the usual source of congressional authority to legislate. In most cases where there is power to be had, the Commerce Clause will be the fountainhead. But the Commerce Clause plainly does not authorize the action under consideration here.

As an initial matter, even if the sphere of its reach appears to be so, the power conferred by the Commerce Clause is not unlimited. It is true that virtually every activity touches on commerce in some respect, but the Commerce Clause does not confer the broad "police power" possessed by the Municipalities to generally "safeguard the vital interests of [their] people." *United States* v. *Morrison*, 529 U. S. 598, 618–619 (2000); *Home Bldg. & Loan Assn.* v. *Blaisdell*, 290 U. S. 398, 434 (1934). Under the Commerce Clause, Congress may only regulate "the channels of . . . commerce," "persons or things in . . . commerce," and "those activities that substantially affect . . . commerce." *Morrison*, *supra*, at 609. To begin with, legislation to abolish USSP could not plausibly be justified as regulating the "channels" of commerce or "persons or things" in them. As such, our analysis must focus on the third category of permissible regulation: activities that "substantially affect" commerce. For three reasons, we conclude that USSP and its activities do not substantially affect commerce.

First, the activities of USSP are not commercial in nature. USSP is a law enforcement agency tasked with enforcing Municipal laws in the District of Columbia. This is not inherently commercial. Our cases have always recognized, however much they differ on particular details, that

at its core commerce involves "economic" behavior. *United States* v. *Lopez*, 514 U. S. 549, 556 (1995) (citing *Wickard* v. *Filburn*, 317 U. S. 111, 125 (1942)). We can find no justification for extending the reach of the Commerce Clause to local government activity that has *no* demonstrable connection to economic affairs whatsoever. If we were to do so, we would be rewriting the law, not applying it.

Second, the chain of causation required to find a link to commerce is too attenuated to be marked substantial. In order for there to be *any* connection to commerce, we would have to assume a scenario where: (1) a USSP officer makes an arrest; (2) the arrested person was involved in commerce; (3) due to their arrest, the person was unable to take part in commerce for a period of time; and (4) that small period of noninvolvement substantially affected commerce. Even taking the logic of that hypothetical scenario as a given, a hypothetical incident of that kind could not alone be sufficient to justify broad legislation abolishing an entire police force. But even that is a generous view because the logic of the hypothetical breaks down on its own terms. A small interruption in one person's involvement with the commercial system does not "substantially affect" commerce. Moreover, arrests are not legally made without justification. Any harm to the commercial system is more fairly traceable to the decision of someone involved in that system to commit a crime, not a dutiful law enforcement officer's decision to do their job.

And third, accepting this Commerce Clause theory would erase any meaningful limit on Congress's authority. As we have consistently made clear in our commerce rulings, the scope of the Commerce Clause "must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon . . . commerce so indirect and remote that to embrace them . . . would effectively obliterate the distinction between what is national and

what is local and create a completely centralized government." *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 37 (1937). We cannot approve of an application of the Commerce Clause which would have this effect. And it is abundantly clear that if we were to accept this reading, there would likely remain nothing outside the reach of the Federal Government's commerce power. We therefore conclude that the Commerce Clause does not provide a legitimate basis for Congress to adopt legislation abolishing USSP.

2

We next consider the Necessary and Proper Clause. Certainly, that Clause is worded broadly and could be construed to have expansive effect. But our cases, from the founding generation to now, have rejected such a grand conception of the Clause's force. The Clause, instead, vests Congress with authority to enact provisions "incidental to the [enumerated] power, and conducive to its beneficial exercise." *McCulloch*, 4 Wheat., at 418. It empowers Congress to "legislate on that vast mass of incidental powers which must be involved in the constitution," but it does not permit the exercise of any "great substantive and independent power[s]" beyond those specifically enumerated. *Id.*, at 411, 421. The Clause is "'merely a declaration, for the removal of all uncertainty, that the means of carrying into execution those [powers] otherwise granted are included in the grant.'" *Kinsella* v. *United States ex rel. Singleton*, 361 U. S. 234, 247 (1960) (quoting VI Writings of James Madison 383 (G. Hunt ed. 1906)).

Without pointing to a specific enumerated power, Congress cannot invoke the Necessary and Proper Clause as the basis for legislation. The Necessary and Proper Clause confers no independent authority; it merely supplements existing authority and authorizes the creation of comprehensive pieces of legislation that are foundationally based on an enumerated power. We therefore conclude that Congress

cannot rest its case entirely on the Necessary and Proper Clause. Additionally, we have our doubts as to both the necessity and propriety of the legislation suggested here.

First, there is nothing in the legislative record which supports even a facial case that abolishing USSP would be "necessary." Every law enforcement agency has its share of troubles, but nobody has ever suggested that such troubles automatically warrant abolishment. If that were the case, it is unclear if any law enforcement agency would be left standing. If Congress were to make a case that abolishing USSP is "necessary" based on its completely normal troubles, it would need to explain why it has chosen to act on the necessity here and not with respect to every other agency that shares those same troubles. When Congress asserts necessity but leaves a considerable region within that field of purported necessity unaddressed, chances are the claim of necessity is exaggerated.

Second, we have an independent obligation to review the propriety of congressional action under the Necessary and Proper Clause. And the requirement of propriety is a demanding one, especially in cases like these where Congress seeks to transgress usual boundaries. As we recently reaffirmed, "[l]aws which are not 'consistent with the letter and spirit of the constitution . . . are not *proper* means for carrying into Execution' the powers of the Government." *Caldwell* v. *United States*, 9 U. S. ___, ___ (2020) (slip op., at 12) (quoting *NFIB*, 567 U. S., at ___ (slip op., at 29)). Such laws are mere "acts of usurpation which deserve to be treated as such." *Ibid* (quoting *Printz* v. *United States*, 521 U. S. 898, 924 (1997); quotation marks omitted). Invasions of the Constitution's federalist structure are presumptively against its letter and spirit. We can think of no adequate reason to rebut that presumption here.

3

Finally, we consider the Guarantee Clause, which secures

to each Municipality a "Republican Form of Government." U. S. Const., art. IV, §4. Congress has the power to enact legislation effectuating this guarantee. As an original matter, Congress may have had a case for abolishing USSP under this Clause years ago when it merely existed as part of the District of Columbia's "baseline infrastructure." *Cabot* v. *State Police*, 9 U. S. ___, ___ (2020) (slip op., at 2). But now, the democratically-elected government of the District of Columbia has adopted legislation authorizing USSP and any federal intervention now would be precisely *against* the republican values the Guarantee Clause endeavors to secure for each Municipality.

B

Having made clear that the Constitution does not authorize Congress to pass legislation abolishing USSP and therefore having ruled out the first potential legislative purpose for the underlying subpoena, we turn now to the backup possibility. That is, we consider whether Congress has the power to enact legislation reforming USSP's internal accountability structure without Municipal consent. For the reasons that follow, we conclude Congress does not.

1

It is incontestable that the Constitution establishes a system of "dual sovereignty." *Gregory* v. *Ashcroft*, 501 U. S. 452, 457 (1991); *Tafflin* v. *Levitt*, 493 U. S. 455, 458 (1990). While the Municipalities "surrendered many of their powers to the new Federal Government," they retained a "residuary and inviolable sovereignty" that protects them from certain acts of interference by the Federal Government. *Printz*, 521 U. S., at 918–919; The Federalist No. 39, at 245 (J. Madison). See also *In re Ratification of the Proposed Ridgeway Courts Amendment*, 9 U. S. ___, ___ (2020) (slip op., at 5) (referring to the same principle of "inviolable sovereignty"). The Framers explicitly chose to reject the "concept of a central government that would act upon and

through the [Municipalities], and instead designed a system in which the [Municipal] and Federal Governments would exercise concurrent authority over the people—who were, in Hamilton's words, 'the only proper objects of government.'" *Printz*, *supra*, at 919–920 (quoting The Federalist No. 15, at 109); 2 Records of the Federal Convention of 1787, p. 9 (M. Farrand ed. 1911).

As such, the Federal Constitution empowers Congress to pass laws directly regulating the People of the United States, but it does not authorize Congress to infringe on the inviolable sovereignty of Municipalities by "commandeering" their entities and implementing federal legislation *through* them. 521 U. S., at 925. The proper test under this doctrine is to ask whether an Act of Congress regulates the People or an inviolably sovereign entity. The former is permissible; the latter is not.

2

Were Congress to enact legislation that purported to reform the internal accountability structures of USSP, it would not be regulating the People. It would be unmistakable regulating the Municipality of Washington, D. C., by directing one of its agencies to comply with a particular federal structure for handling internal affairs matters. The Constitution does not permit this type of federal encroachment. In rebuttal, one might argue that Congress would not be regulating the Municipality, but rather the conduct of its employees, who comprise part of the People of the United States. But this distinction merely attempts to circumvent the constitutional problem. It does not solve it.

First, controlling the employees of a Municipality is really just a backdoor method for commandeering the Municipality itself. A Municipality is a legal entity and apart from its employees, it has no capacity to effectuate any policy or implement any program. If the Constitution permitted Congress to issue orders to Municipal employees, the anti-

commandeering doctrine would be an empty protection. We cannot presume that the Constitution's requirements were meant to be so easily avoided.

Second, in a principal-agent relationship, as with the relationship between a Municipality and one of its employees, actions taken by the agent are attributable to the principal. If Congress could issue orders that specifically applied only to Municipal employees acting in their official capacity, it would be directly tantamount to commandeering the Municipality itself. This is a clear violation of the anti-commandeering doctrine. We therefore conclude that this proposed legislative purpose does not work either. As such, the subpoena is invalid, as is the prosecution for its violation. The charges must be dismissed.

III

Petitioner also presses two other points, one pertaining to his speedy trial rights and another relating to counsel choice. In light of our conclusion that the charges must be dismissed on other grounds, these remaining arguments are now moot and we decline to issue any holding in respect to them. We think it appropriate to add one comment on the speedy trial issue, however. Petitioner alleges that his right to a speedy trial was violated by the roughly one-month delay from the point of him being charged to the commencement of proceedings, but fails to note that the delay was mostly attributable to his chosen attorney's failure to state his appearance for close to the entire span of that period. Given this context, the case for a speedy trial dismissal appears specious. As petitioner himself notes, one of the primary considerations in a speedy trial case is "whether the government or the . . . defendant is more to blame for th[e] delay." Brief for Petitioner 11 (quoting *Doggett* v. *United States*, 505 U. S. 647, 651 (1992)).

In this case, it seems quite apparent to us that the primary blame for the delay rests with the defendant. When

a defendant opts to choose their own counsel, they bear the burden of ensuring that their attorney is aware of the proceedings they are hired for. Delay like the kind at issue here generally does not present a speedy trial claim.

* * *

We hold that Congress lacks the power to enact legislation either abolishing or internally reforming local agencies like USSP. As such, a subpoena issued in connection with those legislative purposes is illegitimate and unenforceable. We reverse the District Court's denial of the motion to dismiss and remand for any proceedings which remain.

It is so ordered.