The U.S. House of Representatives authorized a House committee to investigate current election laws and develop new legislation to close any loopholes that permit foreign governments to interfere in the U.S. election process. The House authorized this investigation because of widespread reports of foreign interference in the most recent presidential election. As part of its investigation, the House committee issued subpoenas to various financial institutions that sought the President's financial records for the years preceding her election to the presidency. The Internal Revenue Service (IRS) possesses nearly the same information as the financial records sought by the House committee.

The President filed suit against the financial institutions in federal court to enjoin them from complying with the congressional subpoenas.

Which of the following is the best argument in favor of the President's effort to obtain the injunction?

A. A congressional subpoena that seeks the President's personal information violates the separation of powers.

B. A subpoena is unnecessary when the information that Congress seeks can be reasonably obtained from a source other than the President.

C. The power to conduct investigations or issue subpoenas is not among the powers of Congress enumerated in Article I.

D. The President's private information from before taking office is protected by executive privilege.

Explanation:

The necessary and proper clause allows Congress to take actions that are reasonably necessary to carry out its enumerated Article I powers. Although conducting investigations and issuing subpoenas are not enumerated powers, investigations are reasonably necessary to obtain information that will help Congress carry out its enumerated powers **(Choice C)**. As part of an investigation, a congressional committee may issue subpoenas to compel testimony and/or the production of documents and tangible things related to the investigation.

However, a **congressional subpoena** that seeks the **President's personal information** raises significant separation of powers issues between these two branches of government. Without proper limitations, Congress could usurp presidential authority. But prohibiting *all* subpoenas seeking the President's personal information would undercut Congress's investigatory power **(Choice A)**. As a result, a **congressional committee** seeking the President's personal information **must provide detailed evidence** that the subpoena:

- is **necessary** to **obtain the information sought** because that information *cannot* be reasonably obtained from another source

- is **limited in scope** to a valid legislative purpose (not vague or overbroad) *and*

- does **not impose an undue burden** on the President's time and attention.

Here, the IRS possesses nearly the same information as the financial records sought by the House committee. Therefore, the President's best argument to enjoin the financial institutions from complying with the congressional subpoenas is that they are unnecessary since the information that Congress seeks *can* be reasonably obtained from a source other than the President—the IRS.

(Choice D) The President may assert executive privilege to prevent the disclosure of confidential documents and communications made in performance of *official* duties and responsibilities—not *private* functions (eg, the President's personal financial records sought here).
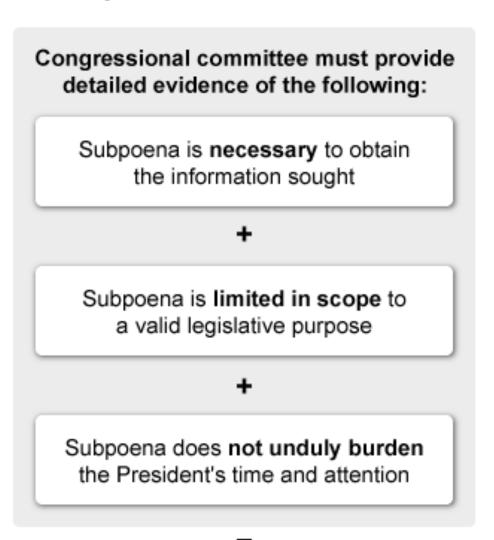
Educational objective:

A congressional committee seeking the President's personal information must provide detailed evidence that a subpoena (1) is necessary to obtain the information, (2) is limited in scope to a valid legislative purpose, and (3) does not unduly burden the President's time and attention.

References

- Trump v. Mazars, USA, Ltd. Liab. P'ship, 140 S. Ct. 2019, 2035–36 (2020) (setting forth the requirements for a congressional subpoena of the President's personal documents).

Congressional subpoena of President's personal information

Congressional committee must provide detailed evidence of the following:

Subpoena is **necessary** to obtain the information sought

+

Subpoena is **limited in scope** to a valid legislative purpose

+

Subpoena does **not unduly burden** the President's time and attention

=

Subpoena enforceable

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