

A county district attorney opened a criminal investigation into the President's business transactions conducted before the President assumed office. The district attorney brought the case before a grand jury, which validly issued a subpoena duces tecum requiring the President to produce various financial records related to the business transactions at issue. The President has refused to produce the financial records, citing absolute immunity and executive privilege.

Under what circumstances, if any, may the grand jury compel production of the financial records over the President's assertions of absolute immunity and executive privilege?

- A. It may compel production only if the subpoena seeks critical evidence that cannot be obtained by any other means.
- B. It may compel production without providing any additional justification.
- C. It may not compel production under any circumstances because the disclosure of financial records is protected by executive privilege.
- D. It may not compel production under any circumstances because the President has absolute immunity from complying with a subpoena.

Explanation:

Presidential immunity & privilege

Immunity Absolute immunity from civil suits seeking damages for official executive actions

- No immunity for actions that occurred before taking office
- No immunity for actions unrelated to executive functions
- No immunity from criminal subpoena

Privilege Power to withhold official documents & communications:

- National security secrets – afforded greatest deference
- Civil case – afforded greater deference than in criminal trial
- Criminal case – afforded least deference (disclosure required if prosecution shows need)

As the head of the executive branch, the President possesses all [Article II powers](#), including the power to execute federal laws and serve as the commander in chief of the armed forces. To **safeguard** the **President's ability to perform** these important duties, the President has the following **protections in judicial proceedings**:

- **Executive privilege** – prevents the disclosure of confidential documents and communications made in performance of **official duties and responsibilities**
- **Absolute immunity** – prevents civil suits for damages against the President for any act performed as part of the President's official duties and responsibilities*

However, these protections are not infinite. For example, executive privilege **does not extend to** documents and communications that were made in performing **private functions** (ie, private papers). Since the financial records at issue here relate to the President's private affairs before taking office—not official conduct while in office—the records are *not* protected by executive privilege (**Choice C**).

Additionally, the President is not absolutely immune from complying with a validly issued subpoena that seeks the President's private papers in a criminal proceeding (**Choice D**). Instead, the President must comply with the subpoena just like any other citizen. Since the grand jury validly issued the [subpoena duces tecum](#) in this case, the President must produce the requested financial records. As a result, the grand jury need not provide any additional justification to compel production of those records.

*The U.S. Supreme Court has never ruled whether a President can be indicted for a crime while in office. However, Congress can use the [impeachment process](#) to remove the President from office for a high crime or misdemeanor.

(Choice A) The grand jury does not need to meet a heightened standard of need by showing that the subpoena seeks critical evidence that cannot be obtained by any other means. The reason is that, in the absence of a need to protect the President, the public interest in fair and effective law enforcement favors access to such evidence.

Educational objective:

Executive privilege and absolute immunity safeguard a President from liability when performing official duties and responsibilities. However, these protections are not absolute and will not shield the President from complying with a criminal subpoena that seeks the President's private papers.

References

- Trump v. Vance, 140 S. Ct. 2412, 2430 (2020) (holding that the President is not absolutely immune from state criminal subpoenas seeking his private papers and is not entitled to a heightened standard of need).