

Conflict mounts between White House and Congress over subpoenas

By Patrick Martin
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The conflict between the White House and the Democratic-controlled House of Representatives escalated this week as President Trump confirmed Wednesday that he has ordered executive branch officials to refuse to comply with subpoenas to testify or supply documents to House committees investigating him. “We’re fighting all the subpoenas,” he declared.

The hard-line defiance of Congress began following the release of the Mueller report, which found no evidence of collaboration between the Trump campaign and the Russian government during the 2016 campaign, while indicating that Trump repeatedly sought to obstruct the investigation or derail it outright.

Trump never asserted executive privilege to block Mueller from taking the testimony of any executive branch officials or obtaining documents, although he refused to testify in person himself. Now that policy is being shelved, with White House officials revealing that Trump has invoked executive privilege to bar former White House Counsel Don McGahn from testifying before the House Judiciary Committee.

Democrats want to question McGahn about episodes from June 2017 and January 2018. The first involved Trump’s order to fire Mueller, the special counsel, which McGahn refused to do. The second involved Trump’s order to lie about the attempted firing after press reports made it public.

There are myriad House investigations confronting the refusal of the executive branch to cooperate. In each case, the committee can cite the official involved for contempt or submit a motion to the full House to find the official in contempt, and then go to court to seek a judicial order—a lengthy process that could well extend beyond the 2020 election.

The House Ways and Means Committee has

requested Trump’s federal income tax returns under a 1924 law giving it the clear power to do so. Treasury Secretary Steven Mnuchin has not yet directly defied the request, but he has allowed two deadlines to elapse, claiming he is still deciding whether it is lawful to comply. In a letter this week to the committee he promised a final response by May 6.

The House Financial Services Committee has subpoenaed documents related to Trump’s financial dealings in Russia. At least three investigations by the House Oversight Committee face White House defiance:

- * The White House instructed former White House security official Carl Kline not to comply with a subpoena to give a deposition about the security clearance process at the White House.

- * A former security official calling herself a whistleblower said she was fired for objecting to orders to provide top secret clearances to Trump’s son-in-law Jared Kushner over the opposition of the intelligence agencies.

- * Trump and the Trump Organization filed suit Monday seeking to quash a committee subpoena of the accounting firm Mazars USA. The firm prepared unaudited financial statements for the Trump Organization, the president’s business operation, used to obtain loans and lobby for tax reductions.

The Justice Department said Wednesday that John Gore, principal deputy assistant attorney general, would not comply with a subpoena for testimony Thursday about how a question on citizenship was added to the proposed questionnaire for the 2020 census over the opposition of career Census Bureau officials. The question was demanded by the White House as a means of intimidating immigrants and lowering the census count in immigrant-heavy

neighborhoods.

The Oversight Committee passed a resolution Tuesday to find Carl Kline in contempt, likely to be the first of many such resolutions. “The White House and Mr. Kline now stand in open defiance of a duly authorized congressional subpoena with no assertion of any privilege of any kind by President Trump,” Chairman Elijah Cummings said in a statement.

Trump gave an interview Tuesday to the *Washington Post* in which he declared that after cooperating with the Mueller investigation, “There is no reason to go any further, and especially in Congress where it’s very partisan, obviously very partisan.”

In a tweet Wednesday morning, Trump declared that he would go to the Supreme Court to fight any effort by the House Democrats to impeach him, clearly regarding the five-member ultra-right majority, including two of his own nominees, as his personal defenders.

As a constitutional matter, however, the Supreme Court has no jurisdiction over impeachment, which is a purely legislative process involving a House vote to impeach the president, the equivalent of an indictment, and a Senate trial ending in a vote to remove the president, which requires a two-thirds majority. The only role for the Supreme Court in the impeachment process, as laid out in Article I, Section 3 of the Constitution, is that of the chief justice, who presides over the Senate during the trial.

House Speaker Nancy Pelosi and the Democratic congressional leadership have largely rejected impeachment, initially characterizing it as a futile gesture given the Republican majority in the Senate. Pelosi has emphasized stepping up the various investigations, including into issues raised in the Mueller report, but this avenue could be foreclosed by an all-out White House refusal to supply witnesses or documents.

Meanwhile, the chairman of the House Intelligence Committee, Representative Adam Schiff, has sought to revive the discredited “Russian puppet” charge against Trump. In an extraordinary op-ed column in the *Washington Post*, under the McCarthy-style headline, “We must ensure that Trump isn’t working for foreign interests,” Schiff notes that only one paragraph in Mueller’s 448-page report deals with the FBI counterintelligence investigation that ran in parallel

with Mueller’s probe, and the report gives no details.

“If a foreign power possessed compromising information on a US government official in a position of influence, that is a counterintelligence risk,” Schiff writes. “If a foreign power possessed leverage, or the perception of it, over the president, that is a counterintelligence nightmare. ... There is no activity more significant than an investigation to determine whether a foreign power exercises leverage over the president or his inner circle.”

Schiff demands that FBI Director Christopher Wray, Director of National Intelligence Daniel Coats and other top intelligence officials appear before his committee—likely behind closed doors—and concludes that “it is up to Congress to assure that the president and his associates work for the American people and not for some undisclosed personal or foreign interests.”

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