



January 6 Committee Subpoena of Former President Trump Raises Questions

With the Friday subpoena issued by the special committee of the House of Representatives to former President Donald Trump to both hand over documents and appear for personal testimony before the committee, several constitutional questions have been raised. The committee was tasked by House Speaker Nancy Pelosi to investigate the events of January 6, 2021, when several people entered the United States Capitol during a protest over the outcome of the 2020 presidential election.

All nine committee members voted to issue the subpoena, and threatened to charge Trump with contempt of Congress if he fails to comply. Considering that the committee filed such a charge against former Trump aide Steve Bannon and the Biden Justice Department secured a conviction, it is likely that the committee, composed of strongly anti-Trump members, would follow through with that threat.

Bennie Thompson, a Democrat from Mississippi who chairs the committee, and Liz Cheney, a Republican from Wyoming who is vice chair of the committee, issued a joint letter to Trump in which they told the former president, “We recognize that a subpoena to a former president is a significant and historic action. We do not take this action lightly.”

The letter added that the committee had compiled “overwhelming evidence” that Trump had “personally orchestrated” an effort to overturn his defeat for reelection in 2020, and that he had spread false allegations of widespread voter fraud. They also accused him of having attempted to “corrupt” the Department of Justice, and of pressuring state election officials, members of Congress, and then-Vice President Mike Pence to change the results.

“In short, you were at the center of the first and only effort by any U.S. President to overturn an election and obstruct the peaceful transition of power, ultimately culminating in a bloody attack on our own Capitol and on the Congress itself,” Thompson and Cheney claimed.

Finally, the letter cited former President Theodore Roosevelt’s testimony before Congress in which he said that “an ex-President is merely a citizen of the United States, like any other citizen, and it is his plain duty to try to help [a] committee or respond to its invitation.”

David Warrington, a partner in the Dhillon Law Group, which is representing Trump, responded to the subpoena later in the day on Friday. “We understand that, once again, flouting norms and appropriate



AP Images



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and customary process, the Committee has publicly released a copy of its subpoena. As with any similar matter, we will review and analyze it, and will respond as appropriate to this unprecedented action.”

Whether what this committee has done is “unprecedented” is one of the many questions surrounding the issuance of the subpoena to Trump. Unfortunately, few answers have been offered by the mainstream media — which is openly anti-Trump, regularly referring to his challenges to the validity of the 2020 election results as “lies” — and, in fact, they have not even asked the questions, for the most part choosing to simply parrot the positions of the Democrats.

First of all, few have questioned the composition of the committee. Ordinarily, membership on a congressional committee is apportioned roughly by the percentage of the overall political party division in the House of Representatives or the Senate. If that had been done in this case, with the House almost equally divided, the Democrats would have had only one more member than the Republicans.

But the January 6 Committee has seven Democrats on the committee, with only two Republicans. Ordinarily, each party selects its members who will serve on a committee. In this case, House Speaker Nancy Pelosi rejected the selections of the Republican Party leadership in the House, and the two Republicans on the committee were chosen by her instead.

Both minority members of the committee — Adam Kinzinger and Liz Cheney — were known critics of Trump, having voted to impeach him. Kinzinger said of the subpoena and the possibility that they might have to hold a former president in contempt of Congress, “That’s a bridge we cross if we have to get there. He’s made it clear he has nothing to hide, is what he says. So, he should come in.”

The spectacle of Trump testifying before a committee which has clearly already determined his guilt reminds one of the old joke in Western movies that an accused person should be given a fair trial before he is hanged.

Finding a former president of the United States to be in contempt of Congress would truly be unprecedented.

In 1953, former President Harry Truman was given a subpoena by the House Committee on Un-American Activities to testify about his appointment of an assistant secretary of the treasury who was suspected of being a subversive communist. Truman refused to honor the subpoena, citing issues of separation of powers. The committee did not pursue the matter any further.

President Gerald Ford did testify to Congress about his pardon of former President Richard Nixon, but there was no threat of contempt of Congress involved in getting his testimony.

Nixon himself was sent a subpoena by Congress concerning documents related to the Watergate scandal, but Nixon fought the subpoena in court. The D.C. Circuit Court rejected the request from the Senate committee, although the U.S. Supreme Court later did uphold the right of a grand jury to obtain the infamous tapes.

What about Teddy Roosevelt’s apparent support of Congress compelling testimony to a congressional committee? First of all, this is fairly audacious of Roosevelt (who was prone to audacity), who essentially re-defined the scope of presidential power with his “Stewardship Theory of Presidential Power.” He argued that a president could do anything he wished, just so long as the Constitution did not forbid his actions.

Before Roosevelt, presidents generally operated — at least theoretically — under the Whig Theory of Presidential Power, which said that presidents could only do what the Constitution specifically allowed



them to do.

In the case of Roosevelt's testimony before a congressional committee, he was there voluntarily, after he was invited to testify. He was not dragged before Congress, accused of having violated laws and the like. There was certainly no threat that he would be held in contempt if he did not testify. In fact, Roosevelt testified to support Congress' investigation of United States Steel, an investigation he supported.

What Trump's response will be is uncertain, but he could challenge the subpoena in court. In that circumstance, the case could drag out until this present Congress ends on January 3, 2023, at which time the committee's authority will come to an end, and a new Congress will be sworn in — with a House of Representatives likely to be controlled by the Republican Party. It is probable that the new House will have no desire to extend the life of Pelosi's anti-Trump committee.



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