

United States Senate

WASHINGTON, DC 20510

August 26, 2026

David Warrington
White House Counsel
Executive Office of the President
1600 Pennsylvania Ave. N.W.
Washington, DC 20500

Dear Mr. Warrington:

We are writing to express serious concern regarding the latest Department of Justice Office of Legal Counsel (OLC) opinion to come at the behest of the White House's attempts to shield any communications involving the President from Congress's constitutional oversight responsibilities. On August 10, 2026, OLC published an opinion titled "Applicability of Executive Privilege to Presidential Communications with Private Advisers" in which it argued the President can assert executive privilege over a broad purview of communications with "private advisers."¹

The opinion, which was rendered at the request of your office, asserts that executive privilege related to presidential communications extends to communications with individuals outside the Executive Branch – including private citizens. This expansive interpretation appears designed to build a blanket shield around external and informal influences on presidential decision-making, insulating the President's personal and non-governmental advisers from any potential congressional scrutiny. Further, much like an April 1, 2026, OLC opinion concerning the Presidential Records Act that has already been enjoined by a federal judge,² this opinion does not arise from an inter-agency legal disagreement or statutory conflict, but rather serves to unilaterally broaden executive secrecy.

The August 10 OLC opinion asserts that executive privilege applies to private advisers so long as communications relate to official presidential decision-making, involve or reflect communications with the President or direct advisers, and are confidential.³ This position stands in stark contrast to long-established separation-of-powers principles and federal jurisprudence.⁴ Federal courts have repeatedly emphasized that executive privilege must be narrowly construed

¹ See generally *Applicability of Executive Privilege to Presidential Communications with Private Advisers*, 50 Op. O.L.C. (Slip Op.) at 1 (Aug. 10, 2026) (hereinafter August 10 OLC opinion).

² *American Historical Association v. Trump*, No. 26-1169 (JDB), slip op. (D.D.C. May 20, 2026) (consolidated with *Freedom of the Press Foundation v. Trump*, No. 26-1402 (JDB)).

³ *Id.*

⁴ See *U.S. v. Nixon*, 418 U.S. 683, 706 (1974) ("[N]either the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity..."); see also *Nixon v. Adm'r of Gen. Serv.*, 433 U.S. 425, 450 (1977) ("An absolute barrier to all outside disclosure is not practically or constitutionally necessary.").

due to its direct tension with Congress's core Article I oversight functions and the public's right to government transparency.⁵ In applying the presidential communications privilege to communications that are either by the President directly or by his immediate advisers in the wake of the Nixon-era Watergate scandal, the judiciary cautioned that not every communication with a presidential adviser would be protected.⁶ The courts further declined to grant the privilege to certain Justice Department officials outside of the President's immediate advisers.⁷

Executive privilege is a qualified doctrine intended to ensure that the President receives candid, uninhibited advice from government subordinates in the execution of Article II duties. It is not an unlimited shield designed to insulate private citizens, informal advisers, and non-governmental actors from congressional oversight and public accountability.⁸

Extending this constitutional protection to private individuals — who hold no official government position, take no oath to support the Constitution, and are exempt from federal ethics and record-keeping laws — fundamentally distorts the intent of the executive privilege. Allowing the President to extend privilege to outside consultants or advisers creates an unchecked loophole through which private citizens can shape public policy without public, electoral, or congressional accountability.

OLC's traditional role is to provide objective legal guidance on complex legal questions, not to fashion novel legal theories designed to overcome existing or anticipated congressional oversight.⁹ Furthermore, OLC lacks the authority to override judicial precedent or unilaterally dictate the boundaries of congressional oversight established by the Constitution.¹⁰

We are deeply concerned that the White House requested guidance pursuant to the August 10 OLC opinion with the intent of improperly withholding documents and instructing private individuals and non-governmental advisers to defy lawful congressional subpoenas and oversight inquiries, now and in the future. Such actions severely harm Congress's ability to fulfill its constitutional oversight responsibilities and obstruct any public accountability. Our concerns are furthered by your failure to respond to our previous April 29, 2026, inquiry regarding OLC's April 1 opinion on the Presidential Records Act.¹¹

⁵ *Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 726 (D.C. Cir. 1974).

⁶ Aziz Huq, *Background on Executive Privilege*, Brennan Ctr. for Justice (Mar. 23, 2007), <https://www.brennancenter.org/our-work/research-reports/background-executive-privilege>.

⁷ *Id.*

⁸ *See In re Sealed Case*, 121 F.3d 729, 752 (D.C. Cir. 1997).

⁹ Project on Government Oversight, *Rubber Stamp or Rule of Law?* (Mar. 2, 2021), [Rubber Stamp or Rule of Law? | Project On Government Oversight](#).

¹⁰ Sonia Mittal, "OLC's Day in Court: Judicial Deference to the Office of the Legal Counsel," *Harvard Law & Policy Review*, Vol. 9, No. 1 (2015), https://journals.law.harvard.edu/lpr/wp-content/uploads/sites/89/2015/04/9-1_Mittal.pdf.

¹¹ Letter from Senator Schiff and Colleagues to White House Counsel, (Apr. 29, 2026), <https://www.schiff.senate.gov/wp-content/uploads/2026/04/26.04.29-Sen.-Schiff-and-Colleagues-to-WHCO-on-OLC-Opinion-on-PRA.pdf>.

Please confirm by September 4, 2026, that the White House will fully cooperate with current and future congressional inquiries, including by providing all requested or subpoenaed information or communication records between any non-governmental advisers and the President. Additionally, we request a detailed list of all non-governmental advisers for whom the White House claims executive privilege protections – including their employers, titles, and relation to the President – as well as all communications in your office’s and DOJ’s possession regarding the August 10 OLC opinion. Please provide these records no later than September 4, 2026.

We look forward to your response.

Sincerely,



Adam B. Schiff
United States Senator



Charles E. Schumer
United States Senator



Richard J. Durbin
United States Senator



Richard Blumenthal
United States Senator



Mazie K. Hirono
United States Senator



Cory A. Booker
United States Senator



Alex Padilla
United States Senator



Peter Welch
United States Senator



Chris Van Hollen
United States Senator



Tammy Duckworth
United States Senator