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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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SULLIVAN, C. J., dissenting. I agree with Justice Zarella's mootness analysis, in which he concludes that the *sole* issue before this court is the validity of a legislative subpoena to the governor enforceable only by the threat of impeachment. I also agree that that issue is nonjusticiable and, accordingly, that the complaint of the plaintiff, the office of the governor of Connecticut, should be dismissed. I write separately to emphasize certain points.

The majority states that ''if the governor were required to wait until an article of impeachment was issued against him, and the governor challenged that issuance in court, then the court would be required to evaluate a discretionary function of the House, namely, the substantive grounds on which the article of impeachment was based. Such a scenario undoubtedly would pose issues of nonjusticiability.''[1] Thus, the majority recognizes that the grounds for impeachment are committed *solely* to the legislature. Moreover, the majority recognizes that whether the subpoena is enforceable by traditional means is not before it. The majority nevertheless concludes that it has jurisdiction to consider whether the governor is ''categorically immune from the legal obligation to testify.'' I disagree.

The defendant, the select committee of inquiry to recommend whether sufficient grounds exist for the House of Representatives to impeach Governor John G. Rowland pursuant to article ninth of the state constitution, cites several cases for the proposition that the chief executive is not immune from the legal obligation to respond to a legislative subpoena if the information sought outweighs any competing interest in executive independence or confidentiality. See *Clinton* v. *Jones*, 520 U.S. 681, 707–708, 117 S. Ct. 1636, 137 L. Ed. 2d 945 (1997) (president's deposition testimony required to avoid prejudice to plaintiff that might result from delaying trial of civil claim against president); *United States* v. *Nixon*, 418 U.S. 683, 687, 712–13, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974) (when special prosecutor sought information from president in connection with ongoing criminal case against seven named individuals, fundamental demands of due process of law in fair administration of criminal justice outweighed president's generalized interest in confidentiality); *Nixon* v. *Sirica*, 487 F.2d 700, 716–17 (D.C. Cir. 1973) (grand jury's need for information in criminal case outweighed president's interest in confidentiality); *United States* v. *Virgin Islands*, No. 1984-104, 2001 WL 1249674, *2 (D. Virgin Islands, October 17, 2001) (court could order governor to testify on ''matter of extreme importance to the public safety and well-being'' when governor

voluntarily placed himself under power of court by agreeing to terms of consent decree); *United States* v. *Poindexter*, 732 F. Sup. 142, 154–55 (D.D.C. 1990) (criminal defendant could subpoena former president's deposition testimony when required for fair trial); *Halperin* v. *Kissinger*, 401 F. Sup. 272, 275 (D.D.C. 1975) (plaintiff's need for former president's testimony in civil case outweighed president's interest in confidentiality when president was ''uniquely capable of clarifying certain . . . issues''); see also *United States* v. *Burr*, 25 F. Cas. 187, 192 (C.C.D. Va. 1807) (in criminal case, court must weigh president's claim of confidentiality against defendant's need for information sought); *United States* v. *Burr*, 25 F. Cas. 30, 34–35 (C.C.D. Va. 1807) (granting motion for subpoena to president in criminal case); see also *Thompson* v. *German Valley R. Co.*, 22 N.J. Eq. 111, 114–15 (1871) (governor bound to appear and testify in response to subpoena in civil case but court would not order him to do so or hold him in contempt if he refused; sole remedy was action for damages by party injured by governor's refusal to testify).[2] I am in full accord with the spirit of these cases holding that, under our system of law, not even the highest government official may deny with impunity a demand for information from another branch of government when that information is required to protect or adjudicate the rights of a third person. That principle does not apply in the present case, however. More fundamentally, in each of these cases, there existed a remedy for the chief executive's refusal to comply with the subpoena. Even if it is assumed that the chief executive could not have been subject to a capias or to contempt proceedings while in office,[3] an issue that none of these cases directly addressed, it is possible that he could have been subject to such proceedings after leaving office. Moreover, it is possible that, if a court determined that the production of information by a chief executive was essential to the fair adjudication of a third person's rights in a civil or criminal proceeding, and the chief executive nevertheless refused to produce the information, the court could dismiss the underlying proceeding, a potential collateral consequence that could also save the issue from being moot. In addition, it is possible that a chief executive who failed to comply with a valid subpoena could be subject to an action for damages. See *Thompson* v. *German Valley R. Co.*, supra, 115. In other words, in each case, practical relief was available upon a judicial determination that the subpoena was valid.

In contrast, in the present case, the majority's determination that the governor is obligated to testify has no attendant practical consequences.[4] The defendant indicated that it would not issue a capias or institute contempt proceedings against the governor and the legislature could issue an article of impeachment for his failure to testify regardless of this court's opinion as

to his legal obligation to do so. As the majority itself recognizes, when the court is precluded from granting practical relief, the case is moot. See *Connecticut Coalition Against Millstone* v. *Rocque*, 267 Conn. 116, 125–26, 836 A.2d 414 (2003).

The majority states that, ''[s]imply because the court would not be justified in substantively reviewing an article of impeachment based on [the governor's] failure to comply does not mean . . . that we also must deprive both the plaintiff and, indirectly, the people who elected the governor, from mounting a colorable constitutional challenge that is rendered viable because of the threat of such an article.'' The majority also states repeatedly that the question that it is deciding is whether the governor is ''categorically immune from compliance with the subpoena,'' not whether the governor may be compelled to testify. In my view, however, the plaintiff's constitutional challenge is not ''rendered viable'' by the existence of a potential practical consequence that this court's opinion cannot affect one way or the other. The majority has provided no authority for the proposition that the governor, or the people of this state, are entitled to a purely advisory opinion from this court because the plaintiff raises a matter of great public interest.

The strangeness of the phrase ''immune from compliance'' further highlights the basic flaw in the majority's analysis. As a general matter, the notion of immunity implies some sort of protection from or invulnerability to the threat of sanctions or enforcement by a third party. Presumably, the governor would always be free to comply voluntarily with a legislative request for information. The question before the court is whether he *must* comply even if he would prefer not to. The answer to that question depends on whether there is a remedy for his failure to comply—in other words, whether the legislature has some means of compulsion. Indeed, as a purely linguistic matter, it is difficult to understand what the phrase ''immune from compliance'' could mean except ''immune from compulsion.'' As the majority concedes, the only means of compulsion available to the defendant in the present case is the threat of recommending an article of impeachment. As the majority also implicitly concedes, this court has no power either to authorize the defendant to carry out that threat or to enjoin it from doing so. It is clear, therefore, that the plaintiff's claim is moot. Accordingly, I dissent.

[1] In this regard, I do not understand why the majority believes that a question that it concedes would be nonjusticiable if raised *after* impeachment proceedings have commenced is justiciable if raised *beforehand*.

[2] In the one case cited by the defendant in which a congressional committee issued a subpoena to the president seeking information relating to wrongdoings by the president, the court dismissed the committee's enforcement action because it had not shown sufficient need for the information. See *Senate Select Committee on Presidential Campaign Activities* v. *Nixon*, 498 F.2d 725, 731–33 (D.C. Cir. 1974).

[3] The majority appears to recognize, and I agree, that separation of powers principles very likely would bar such proceedings against a sitting chief

executive. See *United States* v. *Nixon*, supra, 418 U.S. 691–92 (requiring court to find president in contempt would be inappropriate). I note that the defendant has not identified a single instance in the history of this nation in which a legislative body has issued a subpoena for testimony to a sitting president or governor, in connection with an impeachment investigation or otherwise, much less an instance in which such a subpoena has been enforced through the issuance of a capias or initiation of contempt proceedings. As the United States Supreme Court has stated in another context, ''[t]hat prolonged reticence would be amazing if such interference [with the executive branch] were not understood to be constitutionally proscribed.'' *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 230, 115 S. Ct. 1447, 131 L. Ed. 2d 328 (1995) (holding that federal statute providing for reopening of court judgments violated separation of powers). Thus, it is arguable that the validity of a legislative subpoena issued to a chief executive is *never* a justiciable question because a judicial remedy is never available. See T. Peterson, ''Prosecuting Executive Branch Officials for Contempt of Congress,'' 66 N.Y.U. L. Rev. 563 (1991) (arguing that president should be immune from contempt proceedings for failure to comply with legislative requests for information).

[4] If the majority's decision had any effect on the defendant's decision whether to recommend an article of impeachment, it was a purely political one. A decision that the governor had no obligation to comply would have tended to delegitimize such a recommendation in the eyes of the public and to generate political pressure against it. The decision that the subpoena was valid presumably had the opposite effect. This court is not in the business of issuing advisory decisions for the purpose of influencing public opinion.