

Status Update: Democrat Subpoenas for the President's Financial Records September 9, 2020

* Key Messages *

- On July 9, 2020, the Supreme Court invalidated subpoenas issued to Deutsche Bank by Chairwoman Waters and Chairman Schiff that covered every financial transaction by every member of the President's extended family. *The Court affirmed what House Republicans have said all along: Democrats abused their Article I oversight authority by seeking the President's financial records for political purposes.*
- The case was remanded to the lower courts, where House Democrats must amend the subpoenas to comply with the Court's decision, which prohibits using the President as a "case study" for legislation. *Rather than withdraw their subpoenas for the President's financial records, House Democrats concocted a plan for an end-run around the Court's decision.*
- Chairwoman Waters amended her subpoenas to cover the President's more distant relatives, and Chairman Schiff amended his subpoenas to cover the President and his immediate family. The revised Waters and Schiff subpoenas collectively cover the same universe of records as their original, invalid subpoenas: those belonging to the President, and his immediate and extended family. *The Democrats' decision to bring the same subpoenas back to court risks further damage to the House's institutional interests.*

Recent Developments

On July 9, 2020, the Supreme Court issued an opinion in *Donald J. Trump, et al. v. Mazars USA, LLP*. The Court held House Democrats overreached in their partisan effort to obtain the President's financial records and created a test to determine the legitimacy of subpoenas for the President's records, to preclude Congress from enforcing partisan and unnecessarily invasive subpoenas. The Court specifically prohibited Congress from using the President as a "case study" for legislation.

Because the Court specifically rejected the scope and purpose of the subpoenas issued by Chairwoman Waters and Chairman Schiff to Deutsche Bank and Capital One, and a related subpoena by Chairwoman Maloney to the President's accounting firm, House Democrats must revise those subpoenas. In a series of memoranda and court filings, Chairwoman Waters and Chairman Schiff revealed how they intend to obtain and share the President's financial and tax records in circumvention of the Court's decision:

- Chairwoman Waters will drop the portions of her subpoenas that cover the President and his immediate family and keep the portions that cover records for the President's more distant relatives.
- Chairman Schiff will drop the portion of his subpoenas that cover the President's more distant relatives and keep the portions that cover records for the President and his immediate family.
- The revised Waters and Schiff subpoenas collectively cover the very same people as the original, invalid subpoenas: the President, his immediate family, and extended family, including minor children and grandchildren). Pursuant to a Memorandum of Understanding between Chairwoman Waters and Chairman Schiff, any records obtained pursuant to their subpoenas will be shared among their respective committees.

Their intent is clear: House Democrats are attempting an end-run around the Supreme Court by creating the appearance they are amending their subpoenas for the President's financial records.

Background

In April 2019, Chairwoman Waters and Chairman Schiff issued subpoenas to Deutsche Bank and Capital One for the President's financial records. The unprecedented subpoenas covered every checking withdrawal, credit-card swipe, and debit-card purchase by every member of the Trump family. Chairwoman Waters claimed the subpoenas were relevant to an investigation into "financial industry compliance with banking statutes and regulations, including Bank Secrecy Act compliance [and] anti-money laundering policies and practices." The President challenged the subpoenas and the case became known as *Donald J. Trump, et al. v. Mazars USA, LLP*.

In court, Chairwoman Waters claimed the financial records of the President could be "a useful case study" to learn about "unsafe lending practices" and "money laundering." Chairman Schiff claimed the subpoenas are relevant to investigating "efforts by Russia and other foreign entities to influence the U.S. political process during and since the 2016 U.S. election."

Chairwoman Waters' Subpoenas Did Not Meet the Court's Test for Legitimacy

The Supreme Court remanded the case back to the lower courts to consider the validity of the subpoenas to Deutsche Bank and Capital One based on the *Mazars* test. Because the Court specifically rejected that the President's financial records can be obtained as a "case study" for anti-money laundering legislation, the stated legal basis for the Chairwoman's subpoenas is no longer viable. On August 26, 2020, Chairwoman Waters accordingly narrowed her subpoena to Deutsche Bank to exclude the President's records and withdrew her subpoena to Capital One entirely. The Chairwoman's decision to amend and withdraw the portions of her subpoenas that cover the President and his immediate family reflects the fact that House Democrats took an extremely weak set of facts to the courts and must now abide by an unfavorable decision from the Supreme Court, as Committee Republicans cautioned.

Status of the Democrats' Investigation

In an August 25, 2020 memorandum, Chairman Schiff stated there is a "substantial factual basis" for continuing the Committee's election interference investigation. The Schiff memo cited unreliable public source information and speculative reporting, and unrelated testimony obtained during the Democrats' impeachment investigation. With respect to continuing to press the subpoenas to Deutsche Bank and Capital One, Chairman Schiff stated, "The Committee's subpoena, as amended, clearly satisfies the Court's new legal test for evaluating Congress's need for the President's personal information." Chairwoman Maloney issued a similar memorandum to justify her ongoing effort to obtain the President's tax records. Chairwoman Waters, however, did not issue a corresponding memorandum related to her "money laundering" investigation. In fact, Chairwoman Waters did not issue a statement of any kind regarding the decision to withdraw her subpoenas that cover the President.

The fact is: among the millions of pages obtained from Deutsche Bank, Capital One, and other sources, the committees have not obtained any documents or information that contradict Special Counsel Robert Mueller's finding that President Trump's campaign did not coordinate with Russia to influence the 2016 election. Neither have the committees identified any new information that would indicate any opportunity for the Russian government to leverage the President based on Trump Organization dealings. Mueller and his team spent 22-months and over \$30 million investigating these same claims. Still, House Democrats will continue their investigations and risk further institutional damage.

Next Steps

The Second Circuit Court of Appeals will consider whether the revised Waters and Schiff subpoenas comport with the Supreme Court's *Mazars* test or remand the case to the Southern District of New York, as the President's lawyers requested.