Status Update: Democrat Subpoenas for the President's Financial Records

July 9, 2020

* Key Messages *

- Today, the Supreme Court issued a 7-2 opinion that acknowledged House Democrats overreached in their partisan effort to obtain the President's financial and tax records.
- Under the pretense of investigations into Russian money laundering and election interference, House Democrats issued subpoenas for every checking withdrawal, credit-card swipe, and debit-card purchase by every member of the Trump family, among other personal, non-pertinent records.
- By issuing extraordinarily broad subpoenas that failed to meet the minimum standard for legitimacy and rushing to court to enforce those subpoenas instead of engaging in good faith negotiations with the President, Democrats eroded Congress's investigative authority.
- Rather than continuing to pursue this partisan fishing expedition, House Democrats should focus on the priorities of the American people and work with Republicans to address the ongoing health crisis.

Background

In April 2019, Chairwoman Waters and Chairman Schiff issued subpoenas to Deutsche Bank for the President's financial records. The subpoenas were issued under the pretext of broader investigations into Russian money laundering and election interference. The President sued and the Deutsche Bank case (*Trump v. Deutsche Bank AG*) was consolidated with another case involving a subpoena from Chairman Cummings for the President's tax records (*Trump v. Mazars USA, LLP*). On May 12, 2020, the Supreme Court heard oral arguments in the consolidated case, called *Trump v. Mazars USA, LLP*.

Questions and Answers

» What did the Court decide today?

In a 7-2 opinion, the Supreme Court decided: "The courts below did not take adequate account of the significant separation of powers concerns implicated by congressional subpoenas for the President's information." The Supreme Court remanded the case to the lower courts for further consideration and established a four-part test for the lower courts to apply, which will require House Democrats to narrow their subpoenas and state a more compelling need for the President's financial records. The Court effectively determined Chairwoman Waters' justification that the President's financial records provide a "useful case study" to inform anti-money laundering legislation is wholly insufficient.

» What happens next?

The case will return to the D.C. Circuit Court of Appeals, where the burden will shift to House Democrats to narrow their subpoenas in such a way as to comply with the Supreme Court's four-part test, which requires the lower court to "carefully assess whether the asserted legislative purpose warrants the significant step of involving the President and his papers." Under that test, Democrats must provide a "detailed and substantial" justification for seeking the President's records. The lower court will also consider whether House Democrats are attempting "to use subpoenas for institutional advantage." The portions of the subpoenas that cover records related to the President's family, for example, are unlikely to meet those standards.

» What exactly did the Supreme Court say today?

- **The subpoenas are too broad:** "Courts should insist on a subpoena no broader than reasonably necessary to support Congress's legislative objective."
- **House Democrats failed to negotiate:** "Far from accounting for separation of powers concerns, the House's approach aggravates them by leaving essentially no limits on the congressional power to subpoena the President's personal records."
- **The President's financial records cannot be used as a legislative case study:** "Any personal paper possessed by a President could potentially 'relate to' a conceivable subject of legislation, for Congress has broad legislative powers that touch a vast number of subjects. The President's financial records could relate to economic reform, medical records to health reform, school transcripts to education reform, and so on. Indeed, at argument, the House was unable to identify any type of information that lacks some relation to potential legislation."

» So every subpoena from Congress for the President's papers must now pass a four-part test?

Yes. House Democrats did irreparable damage to Congress's institutional oversight powers by overreaching with subpoenas for the President's financial and tax records. Congressional subpoenas for the President's records must now meet four standards:

- **Are the President's records truly necessary?** "First, courts should carefully assess whether the asserted legislative purpose warrants the significant step of involving the President and his papers."
- **Are the subpoenas narrowly tailored?** "Second, to narrow the scope of possible conflict between the branches, courts should insist on a subpoena no broader than reasonably necessary to support Congress's legislative objective."
- **Did Congress provide a detailed and compelling justification?** "Third, courts should be attentive to the nature of the evidence offered by Congress to establish that a subpoena advances a valid legislative purpose. The more detailed and substantial, the better."
- **Are the subpoenas burdensome or overtly partisan?** "Fourth, courts should assess the burdens imposed on the President by a subpoena, particularly because they stem from a rival political branch that has an ongoing relationship with the President and incentives to use subpoenas for institutional advantage."

» Why are House Democrats really seeking the President's financial records?

House Democrats initially claimed the subpoenas are 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." Today, the Court rejected those pretextual justifications for the subpoenas. The Court may have noticed that Chairwoman Waters revealed the true purpose of the investigation in a series of appearances on MSNBC, where she said the subpoenas were issued "to learn more about the finances of the President." Indeed, the House passed a bill to reform the Bank Secrecy Act's anti-money laundering provisions in October 2019. No Democrat, including Chairwoman Waters, raised the President's financial records as relevant to that effort during debate before the Committee or on the House floor.