

## Supreme Court Decisions Regarding State and Congressional Subpoenas for Presidential Financial Records

In two decisions issued on July 9, 2020, the Supreme Court addressed challenges to several subpoenas that sought the President's financial records, including tax returns. In a case concerning a subpoena issued by a state district attorney's office, the Court held that a sitting president is not categorically immune from issuance of a subpoena in a state criminal proceeding. The case was remanded to the District Court for further proceedings, including potentially an analysis of additional defenses. In a separate case concerning subpoenas issued by various U.S. House of Representatives committees, the Court remanded the cases to the District Courts for further analysis of whether the House exceeded its constitutional authority in issuing the subpoenas.

### *Trump v. Vance, 591 U.S. \_\_\_\_ (2020)*

*Trump v. Vance* concerned a subpoena *duces tecum* issued by the New York County District Attorney's Office during a state criminal grand jury investigation and served on Mazars USA, President Trump's personal accounting firm. The subpoena sought financial records pertaining to the President and his businesses, including tax returns and related schedules, from 2011 to present. The President broadly argued that the U.S. Constitution's Supremacy Clause gives a sitting President absolute immunity from state criminal subpoenas, reasoning that any such subpoena categorically impairs the performance of the President's powers under Article II of the U.S. Constitution, which guarantees the independence of the Executive.

The Court rejected all three arguments: (i) that the issuance of properly tailored subpoenas in a state criminal proceeding would necessarily divert the executive from its duties; (ii) that the stigma associated with subpoenas would undermine his leadership at home and abroad; and (iii) that the allowance of such subpoenas would lead to significant political harassment and frivolous litigation against any President.<sup>1</sup> To reach its conclusion that absolute immunity is not necessary or appropriate under the U.S. Constitution's Article II or its Supremacy Clause, the Court relied on precedent established in cases regarding federal subpoenas, including *Nixon v. Fitzgerald*, 457 U.S. 731 (1982); *Clinton v. Jones*, 520 U.S. 681 (1997); and *U.S. v. Burr*, 25 F. Cas. 30 (Cir. Ct. D. Va. 1807), as well as the existing safeguards applicable to grand jury investigations.<sup>2</sup> Notably, the Court unanimously agreed on this holding.<sup>3</sup>

The Solicitor General further argued that such a subpoena, if allowed as a general matter, should meet a heightened standard of need. The Court rejected this argument, too, reasoning that such a standard was designed for the protection of official rather than private papers, and that heightened protection is unnecessary to protect the President's Article II functions.<sup>4</sup> The Court further found that "the public interest in fair and effective law enforcement cuts in favor of comprehensive access to evidence."<sup>5</sup>

<sup>1</sup> *Trump v. Vance*, 591 U.S. \_\_\_\_ (2020) at \*12–17.

<sup>2</sup> *See id.*

<sup>3</sup> *Id.* at \*17.

<sup>4</sup> *Id.* at \*18.

<sup>5</sup> *Id.* at \*19.

In rejecting a heightened standard of need requirement, the Court noted the President may invoke the protections available to every other citizen, such as challenges based on bad faith and undue burden or breadth.<sup>6</sup> Through this opinion, the Court acknowledged that taxpayer information is generally safeguarded and that every taxpayer has the right to protect such information using the described challenges.<sup>7</sup> The Court further noted that the President may make additional arguments against the subpoena at the District Court level that are only available to a sitting President, such as challenging it as an attempt to influence the performance of his official duties or arguing that it impedes his official duties.<sup>8</sup>

In a 7-2 decision, the judgment of the Second Circuit's Court of Appeals was affirmed and the case remanded to the District Court for further proceedings. On July 10, 2020, the Court of Appeals remanded the case to the District Court. On July 15, 2020, the parties filed joint statements with the District Court agreeing on a schedule for the President to raise, and for the District Attorney to respond to, additional arguments. On July 17, 2020, the Supreme Court granted the District Attorney's request that the Court immediately issue its judgment in *Trump v. Vance* in order to expedite the District Court proceedings.

### ***Trump v. Mazars USA, LLP, 591 U.S. \_\_\_\_ (2020)***

*Trump v. Mazars USA, LLP* concerned four subpoenas issued by three committees of the U.S. House of Representatives seeking financial information, including tax returns, of President Trump, his children, and affiliated businesses from accounting firm Mazars USA and several banks. The question on appeal was whether the subpoenas exceeded the authority of the House under the U.S. Constitution, and, specifically, whether the subpoenas for the President's personal information were "related to, and in furtherance of, a legitimate task of the Congress."<sup>9</sup> The Court repeatedly noted that such a dispute over congressional demands for presidential documents has never involved the Supreme Court. Rather, the two branches have historically achieved a resolution through negotiation without resorting to the judiciary.

The House committees purportedly issued each subpoena pursuant to its power to gather information in order to legislate. The broad legislative objectives differed for each subpoena, but generally included efforts to close loopholes that allow corruption, terrorism, and money laundering in the U.S. financial system, and the influence of foreign powers in U.S. elections.

The Court was tasked with examining whether either party developed an adequate approach to determining whether the subpoenas exceeded the House's authority. The President contended that nonprivileged, private information of the President is protected by the same strict standards that apply to official communications, which are protected by executive privilege. The Court rejected this argument, finding that this approach would hamper Congress's important interests in gathering information it needs to legislate effectively.<sup>10</sup>

The Court also rejected the House's approach, which would permit a subpoena of any information that "relate[d] to a valid legislative purpose" or "concern[ed] a subject on which legislation could be had[.]"<sup>11</sup> The Court held that this approach did not adequately account for separation of powers issues that arise when Congress subpoenas

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<sup>6</sup> *Id.* at \*19–20.

<sup>7</sup> *See id.* at \*19–20; *see also* 26 U.S.C. § 6103(a) (providing "[tax] returns and return information shall be confidential....").

<sup>8</sup> *Id.* at \*20–21.

<sup>9</sup> *Trump v. Mazars USA, LLP, 591 U.S. \_\_\_\_ (2020)* at \*11.

<sup>10</sup> *Id.* at \*14, *citing United States v. Rumely*, 345 U.S. 41, 41 (1953).

<sup>11</sup> *Id.* at \*14–15 (*quoting Barenblatt v. United States*, 360 U.S. 109, 127 (1959), and *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 506 (1975) (*quoting McGrain v. Daugherty*, 273 U.S. 135, 177 (1927))).

the President's private information.<sup>12</sup> This concern is particularly acute given that the legislative and executive branches are "opposite and rival[.]"<sup>13</sup> Instead, the approach would effectively grant a limitless Congressional power to subpoena the President's personal records.<sup>14</sup>

The Court found that separation of powers issues were invoked in this instance because the subpoenas, in essence, reflected a "clash between rival branches of government[.]"<sup>15</sup> The Court also observed that Congress is a rival branch of government that has incentives to use subpoenas for "institutional advantage."<sup>16</sup> The fact that the subpoenas sought personal papers or that the President sued in his personal capacity did not eliminate separation of powers concerns, particularly where the President constitutes the only one-person branch of government.<sup>17</sup> The Court also noted that the conflict was not avoided where the papers sought were held by third parties, observing that Presidential papers are increasingly held by third parties.<sup>18</sup>

Because neither side developed an approach that adequately addressed separation of powers concerns, nor did the lower courts adequately address the issues, the Court remanded the cases to the District Courts to "perform a careful analysis that takes adequate account of the separation of powers principles at stake, including both the significant legislative interests of Congress and the 'unique position' of the President."<sup>19</sup> The Court further suggested several considerations the courts should take into account, but noted that other factors may also be relevant, emphasizing that the Court had never before had occasion to decide on a case of this nature.<sup>20</sup> Relevant factors included whether the legislative purpose of the subpoena warranted involving the President, whether its scope was restricted to information reasonably needed by Congress to legislate, whether Congress offered evidence sufficient to establish that the subpoena would advance a valid legislative purpose, and the burdens the subpoena would impose on the President.<sup>21</sup>

Accordingly, in a 7-2 decision, the judgments of the Courts of Appeals for the D.C. Circuit and Second Circuit were vacated, and the cases remanded for further proceedings.

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<sup>12</sup> *Id.* at \*15.

<sup>13</sup> *Id.* at \*15, citing Federalist No. 51 at 349.

<sup>14</sup> *Id.* at \*16.

<sup>15</sup> *Id.* at \*16–17, citing *United States v. Rumely*, 345 U.S. 41, 44 (1953) (quoting *Child Labor Tax Case*, 259 U.S. 20, 37 (1922) (Taft, C.J.)).

<sup>16</sup> *Id.* at \*20.

<sup>17</sup> *Id.* at \*17.

<sup>18</sup> *Id.* at \*17–18.

<sup>19</sup> *Id.* at \*18, citing *Clinton v. Jones*, 520 U.S. 681, 698 (1997).

<sup>20</sup> *See id.* at \*19–20.

<sup>21</sup> *Id.* at \*19–20.