Tax & Financial Records Case

Oversight Committee-Mazars Case
Key Excerpts from 2019 District Court Opinion

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On April 15, 2019, the House Committee on Oversight and Reform ("Oversight Committee") subpoenaed documents from President Trump's longtime accounting firm, Mazars USA, requesting copies of Trump-related tax returns and other financial records. The request was made to advance committee investigations into the President's financial and ethics disclosures, conflicts of interest, and compliance with the Constitution's emolument clause. On April 22, 2019, President Trump filed suit in D.C. federal district court to quash the subpoena. On May 20, 2019, D.C. District Judge Mehta dismissed the case and upheld the House subpoena. *Trump v. Committee on Oversight & Reform of U.S. House of Representatives*, 380 F. Supp. 3d 76 (D.D.C. 2019), *aff'd sub nom. Trump v. Mazars USA, LLP*, 940 F.3d 710 (D.C. Cir. 2019). Here are key excerpts from his 41-page opinion, each excerpt of which consists of a direct quotation taken from the text of his opinion, with no changes in punctuation but with footnotes omitted.

Presumption and deference to Congress

Courts have grappled for more than a century with the question of the scope of Congress's investigative power. The binding principle that emerges from these judicial decisions is that courts must presume Congress is acting in furtherance of its constitutional responsibility to legislate and must defer to congressional judgments about what Congress needs to carry out that purpose. To be sure, there are limits on Congress's investigative authority. But those limits do not substantially constrain Congress. So long as Congress investigates on a subject matter on which "legislation could be had," Congress acts as contemplated by Article I of the Constitution.

Facially valid legislative purposes

Applying those principles here compels the conclusion that President Trump cannot block the subpoena to Mazars. According to the Oversight Committee, it believes that the requested records will aid its consideration of strengthening ethics and disclosure laws, as well as amending the penalties for violating such laws. The Committee also says that the records

will assist in monitoring the President's compliance with the Foreign Emoluments Clauses. These are facially valid legislative purposes, and it is not for the court to question whether the Committee's actions are truly motivated by political considerations.

Legislative function
"There can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation." *Quinn v. United States*, 349 U.S. 155, 160 (1955).

Informing function
Related to Congress's legislative function is its "informing function." The Supreme Court has understood that function to permit "Congress to inquire into and publicize corruption, maladministration or inefficiency in agencies of the Government." *Watkins v. United States*, 354 U.S. 178, 200 n.33 (1957). "From the earliest times in its history, the Congress has assiduously performed an 'informing function' of this nature." … Thus, though not wholly distinct from its legislative function, the informing function is a critical responsibility uniquely granted to Congress under Article I.["]

High deference is due Congress
When a court is asked to decide whether Congress has used its investigative power improperly, its analysis must be highly deferential to the legislative branch.

Presumptions of legitimacy and regularity
To start, the court must proceed from the assumption "that the action of the legislative body was with a legitimate object, if it is capable of being so construed, and [the court] ha[s] no right to assume that the contrary was intended." *McGrain*, 273 U.S. at 178 (citation omitted). It also "must presume that the committees of Congress will exercise their powers responsibly and with due regard for the rights of affected parties." *Exxon Corp*., 589 F.2d at 589. So, when it appears that Congress is investigating on a subject-matter in aid of legislating, "the presumption should be indulged that this was the real object." *McGrain*, 273 U.S. at 178. An important corollary to this presumption of regularity is that courts may not "test[] the motives of committee members" to negate an otherwise facially valid legislative purpose.

No line-by-line review
Once a court finds that an investigation is one upon which legislation could be had, it must not entangle itself in judgments about the investigation's scope or the evidence sought. Only an investigative demand that is "plainly incompetent or irrelevant to any lawful purpose of the [committee] in the discharge of its duties" will fail to pass muster. *McPhaul v. United States*, 364 U.S. 372, 381 (1960) (citation omitted) (cleaned up). Importantly, in making this assessment, it is not the judicial officer's job to conduct a "line-by-line review of the Committee's requests." *Bean LLC v. John Doe Bank*, 291 F. Supp. 3d. 34, 44 (D.D.C. 2018).

Investigating financial disclosures
[T]here can be little doubt that Congress's interest in the accuracy of the President's financial disclosures falls within the legislative sphere.

Investigating compliance with emoluments clause
Investigating whether the President is abiding by the Foreign Emoluments Clause is likewise a subject on which legislation, or similar congressional action, could be had.

Investigating conflicts of interest and ethics
So, too, is an investigation to determine whether the President has any conflicts of interest. As already discussed, it lies within Congress's province to legislate regarding the ethics of government officials.

Investigating illegal conduct by President before and after taking office
Finally, a congressional investigation into "illegal conduct before and during [the President's] tenure in office," Cummings' April 12th Mem. at 4, fits comfortably within the broad scope of Congress's investigative powers. At a minimum, such an investigation is justified based on Congress's "informing function," that is, its power "to inquire into and publicize corruption," *Watkins*, 354 U.S. at 200 n.33. It is simply not fathomable that a Constitution that grants Congress the power to remove a President for reasons including criminal behavior would deny Congress the power to investigate him for unlawful conduct—past or present—even without formally opening an impeachment inquiry.

No rollback of the tide of history
The former investigation included within its scope potential corruption by President Nixon while in office, while the latter concerned alleged illegal misconduct by President Clinton before his time in office. Congress plainly views itself as having sweeping authority to investigate illegal conduct of a President, before and after taking office. This court is not prepared to roll back the tide of history.

Exposing violations of law
[T]he Court has made clear that the mere prospect that a congressional inquiry will expose law violations does not transform a permissible legislative investigation into a forbidden executive or judicial function.

History has shown that congressionally-exposed criminal conduct by the President or a high-ranking Executive Branch official can lead to legislation. The Senate Watergate Committee provides an apt example.

Pertinency and relevancy
Plaintiffs conflate the concept of "pertinency" with the notion of "relevancy" as used in civil proceedings. "Pertinency" does not require the court to ask, as it would in a civil discovery dispute, whether the documents requested are likely to yield useful evidence. Instead, pertinency "is a jurisdictional concept . . . drawn from the nature of a congressional committee's source of authority." *Watkins*, 354 U.S. at 206. The concept appears most often in the context of a criminal conviction for contempt of Congress, in which a person has refused to comply with a subpoena or answer questions posed at a hearing. Pertinency, in this setting, is an element of criminal contempt. See 2 U.S.C. § 192 (making it a misdemeanor for a person summoned as a witness before Congress either to not appear or, if

"having appeared, [to] refuse[] to answer any question pertinent to the question under inquiry . . ."") (emphasis added).

Not plainly incompetent or irrelevant standard

But even if the court were to treat pertinency as akin to a relevance determination, that test is satisfied here. The standard adopted by the Supreme Court is a forgiving one. The subpoenaed records need only be "not plainly incompetent or irrelevant to any lawful purpose [of the Committee] in the discharge of its duties." *McPhaul*, 364 U.S. at 381 (cleaned up).

Regulating President's finances and conflicts of interest can be constitutional

Plaintiffs maintain that any regulation of the "President's finances or conflicts of interest" would be unconstitutional for the same reason. *Id.* Plaintiffs' contention flies in the face of decades of legislation covering the President.

No narrowing of subpoena

Finally, Plaintiffs suggest that the court has the authority to "narrow overbroad [congressional] subpoenas," and should consider doing so here. Pls.' Reply at 13. But the federal courts enjoy no such power. "A legislative inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress." *Townsend*, 95 F.2d at 361 (citation omitted). "There is no requirement that every piece of information gathered in such an investigation be justified before the judiciary." *McSurely*, 521 F.2d at 1041. The court therefore cannot "engage in a line-by-line review" of the Mazars subpoena and narrow its demands. *Bean LLC*, 291 F. Supp. 3d at 44; see also *Senate Select Committee on Ethics v. Packwood*, 845 F. Supp. 17, 20 (D.D.C. 1994) ("This [c]ourt . . . has no authority to restrict the scope of the Ethics Committee's investigation.").