Trump v. Mazars USA, LLP
Trump et al. v. *Deutsche Bank AG*

___ U.S. ___ (2020)
Vote: 7 (Breyer, Ginsburg, Kagan, Sotomayor, Gorsuch, Kavanaugh, Roberts)
2 (Alito, Thomas)
Opinion of the Court: Roberts
Dissenting Opinions: Alito, Thomas

In April 2019, three committees of the U. S. House of Representatives issued four subpoenas seeking information about the finances of President Donald J. Trump, his children, and affiliated businesses. The House Committee on Financial Services issued a subpoena to Deutsche Bank seeking any document related to account activity, due diligence, foreign transactions, business statements, debt schedules, statements of net worth, tax returns, and suspicious activity identified by Deutsche Bank. It issued a second subpoena to Capital One for similar information. The Permanent Select Committee on Intelligence issued a subpoena to Deutsche Bank that mirrored the subpoena issued by the Financial Services Committee. And the House Committee on Oversight and Reform issued a subpoena to the President's personal accounting firm, Mazars USA, LLP, demanding information related to the President and several affiliated businesses.

Although the committees sought overlapping sets of financial documents, each supplied different justifications for the requests, explaining that the information would help guide legislative reform in areas ranging from money laundering and terrorism to foreign involvement in U. S. elections. Petitioners—the President in his personal capacity, along with his children and affiliated businesses—filed two suits challenging the subpoenas. They contested the subpoena issued by the Oversight Committee in the District Court for the District of Columbia (*Mazars*), and the subpoenas issued by the Financial Services and Intelligence Committees in the Southern District of New York (*Deutsche Bank*). In both cases, petitioners contended that the subpoenas lacked a legitimate legislative purpose and violated the separation of powers. The President did not, however, argue that any of the requested records were protected by executive privilege.

Mazars and the banks took no positions on the legal issues in these cases, and the House committees intervened to defend the subpoenas.

In *Mazars*, the District Court granted judgment for the House and the D. C. Circuit affirmed, finding that the subpoena issued by the Oversight Committee served a valid legislative purpose because the requested information was relevant to reforming financial disclosure requirements for Presidents and presidential candidates. In *Deutsche Bank*, the District Court denied a preliminary injunction and the Second Circuit affirmed in substantial part, holding that the Intelligence Committee properly issued its subpoena to Deutsche Bank as part of an investigation into alleged foreign influence in the U. S. political process, which could inform legislation to strengthen national security and combat foreign meddling. The court also concluded that the subpoenas issued by the Financial Services Committee to Deutsche Bank and Capital One were adequately related to potential legislation on money laundering, terrorist financing, and the global movement of illicit funds through the real estate market.

The Supreme Court granted cert to decide whether the subpoenas exceeded the authority of the House under the Constitution.

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

We have never addressed a congressional subpoena for the President's information. Two

hundred years ago, it was established that Presidents may be subpoenaed during a federal criminal proceeding, and earlier today we extended that ruling to state criminal proceedings, *Trump* v. *Vance*. Nearly fifty years ago, we held that a federal prosecutor could obtain information from a President despite assertions of executive privilege, *United States* v. *Nixon*, and more recently we ruled that a private litigant could subject a President to a damages suit and appropriate discovery obligations in federal court, *Clinton* v. *Jones* (1997). *[Note from Prof. Epstein: We'll cover all these cases later in the semester.]*

This case is different. Here the President's information is sought not by prosecutors or private parties in connection with a particular judicial proceeding, but by committees of Congress that have set forth broad legislative objectives. Congress and the President—the two political branches established by the Constitution—have an ongoing relationship that the Framers intended to feature both rivalry and reciprocity. That distinctive aspect necessarily informs our analysis of the question before us…

The question presented is whether the subpoenas exceed the authority of the House under the Constitution. Historically, disputes over congressional demands for presidential documents have not ended up in court. Instead, they have been hashed out in the "hurly-burly, the give-and-take of the political process between the legislative and the executive."

That practice began with George Washington and the early Congress. In 1792, a House committee requested Executive Branch documents pertaining to General St. Clair's campaign against the Indians in the Northwest Territory, which had concluded in an utter rout of federal forces when they were caught by surprise near the present-day border between Ohio and Indiana. Since this was the first such request from Congress, President Washington called a Cabinet meeting, wishing to take care that his response "be rightly conducted" because it could "become a precedent." The meeting, attended by the likes of Alexander Hamilton, Thomas Jefferson, Edmund Randolph, and Henry Knox, ended with the Cabinet of "one mind": The House had authority to "institute inquiries" and "call for papers" but the President could "exercise a discretion" over disclosures, "communicat[ing] such papers as the public good would permit" and "refus[ing]" the rest. President Washington then dispatched Jefferson to speak to individual congressmen and "bring them by persuasion into the right channel." The discussions were apparently fruitful, as the House later narrowed its request and the documents were supplied without recourse to the courts…

Congress and the President maintained this tradition of negotiation and compromise—without the involvement of this Court—until the present dispute…

Congress has no enumerated constitutional power to conduct investigations or issue subpoenas, but we have held that each House has power "to secure needed information" in order to legislate. *McGrain* v. *Daugherty* (1927). This "power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function." Without information, Congress would be shooting in the dark, unable to legislate "wisely or effectively." The congressional power to obtain information is "broad" and "indispensable." *Watkins* v. *United States* (1957).

Because this power is "justified solely as an adjunct to the legislative process," it is subject to several limitations. Most importantly, a congressional subpoena is valid only if it is "related to, and in furtherance of, a legitimate task of the Congress." The subpoena must serve a "valid legislative purpose;" it must "concern[] a subject on which legislation 'could be had'" (*McGrain*).

Furthermore, Congress may not issue a subpoena for the purpose of "law enforcement," because "those powers are assigned under our Constitution to the Executive and the Judiciary." Thus Congress may not use subpoenas to "try" someone "before [a] committee for any crime or wrongdoing." *McGrain*. Congress has no "'general' power to inquire into private affairs and compel disclosures," and "there is no congressional power to expose for the sake of exposure," *Watkins*. Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible."

Finally, recipients of legislative subpoenas retain their constitutional rights throughout the course of an investigation. And recipients have long been understood to retain common law and constitutional privileges with respect to certain materials, such as attorney-client communications and governmental communications protected by executive privilege.

The President contends…that the usual rules for congressional subpoenas do not govern here because the President's papers are at issue. [He argues] for a more demanding standard based in large part on cases involving the Nixon tapes—recordings of conversations between President Nixon and close advisers discussing the break-in at the Democratic National Committee's headquarters at the Watergate complex. The tapes were subpoenaed by a Senate committee and the Special Prosecutor investigating the break-in, prompting President Nixon to invoke executive privilege and leading to two cases addressing the showing necessary to require the President to comply with the subpoenas.

Those cases, the President now contend[s], establish the standard that should govern the House subpoenas here. Quoting *Nixon*, the President asserts that the House must establish a "demonstrated, specific need" for the financial information, just as the Watergate special prosecutor was required to do in order to obtain the tapes. And… the President argue[s] that the House must show that the financial information is "demonstrably critical" to its legislative purpose.

We disagree that these demanding standards apply here. Unlike the cases before us, *Nixon* involved Oval Office communications over which the President asserted executive privilege. That privilege safeguards the public interest in candid, confidential deliberations within the Executive Branch; it is "fundamental to the operation of Government." As a result, information subject to executive privilege deserves "the greatest protection consistent with the fair administration of justice." We decline to transplant that protection root and branch to cases involving nonprivileged, private information, which by definition does not implicate sensitive Executive Branch deliberations.

The standards proposed by the President—if applied outside the context of privileged information—would risk seriously impeding Congress in carrying out its responsibilities. The President would apply the same exacting standards to *all* subpoenas for the President's information, without recognizing distinctions between privileged and nonprivileged information, between official and personal information, or between various legislative objectives. Such a categorical approach would represent a significant departure from the longstanding way of doing business between the branches, giving short shrift to Congress's important interests in conducting inquiries to obtain the information it needs to legislate effectively. …

Because the President's approach does not take adequate account of these significant congressional interests, we do not adopt it.

The House meanwhile would have us ignore that these suits involve the President. Invoking our precedents concerning investigations that did not target the President's papers, the House urges us to uphold its subpoenas because they "relate[] to a valid legislative purpose" or "concern[] a subject on which legislation could be had. That approach is appropriate, the House argues, because the cases before us are not "momentous separation-of-powers disputes" … [The House] sought only personal documents [and so the] case "present[ed] no direct interbranch dispute."

The House's approach fails to take adequate account of the significant separation of powers issues raised by congressional subpoenas for the President's information. Congress and the President have an ongoing institutional relationship as the "opposite and rival" political branches established by the Constitution. The Federalist No. 51.

As a result, congressional subpoenas directed at the President differ markedly from congressional subpoenas we have previously reviewed, *e.g.*, *Barenblatt*, and they bear little resemblance to criminal subpoenas issued to the President in the course of a specific investigation. Unlike those subpoenas, congressional subpoenas for the President's information unavoidably pit

the political branches against one another.

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. 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.

Without limits on its subpoena powers, Congress could "exert an imperious controul" over the Executive Branch and aggrandize itself at the President's expense, just as the Framers feared. And a limitless subpoena power would transform the "established practice" of the political branches. Instead of negotiating over information requests, Congress could simply walk away from the bargaining table and compel compliance in court…

Indeed, Congress could declare open season on the President's information held by schools, archives, internet service providers, e-mail clients, and financial institutions. The Constitution does not tolerate such ready evasion; it "deals with substance, not shadows."

Congressional subpoenas for the President's personal information implicate weighty concerns regarding the separation of powers. Neither side, however, identifies an approach that accounts for these concerns. For more than two centuries, the political branches have resolved information disputes using the wide variety of means that the Constitution puts at their disposal. The nature of such interactions would be transformed by judicial enforcement of either of the approaches suggested by the parties, eroding a "[d]eeply embedded traditional way[] of conducting government."

A balanced approach is necessary…

We therefore conclude that, in assessing whether a subpoena directed at the President's personal information is "related to, and in furtherance of, a legitimate task of the Congress," *Watkins* courts must 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. Several special considerations inform this analysis.

First, courts should carefully assess whether the asserted legislative purpose warrants the significant step of involving the President and his papers. "'[O]ccasion[s] for constitutional confrontation between the two branches' should be avoided whenever possible." Congress may not rely on the President's information if other sources could reasonably provide Congress the information it needs in light of its particular legislative objective. The President's unique constitutional position means that Congress may not look to him as a "case study" for general legislation….

While we certainly recognize Congress's important interests in obtaining information through appropriate inquiries, those interests are not sufficiently powerful to justify access to the President's personal papers when other sources could provide Congress the information it needs.

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. The specificity of the subpoena's request "serves as an important safeguard against unnecessary intrusion into the operation of the Office of the President."

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 evidence of Congress's legislative purpose, the better. See *Watkins* (preferring such evidence over "vague" and "loosely worded" evidence of Congress's purpose). That is particularly true when Congress contemplates legislation that raises sensitive constitutional issues, such as legislation concerning the Presidency. In such cases, it is "impossible" to conclude that a subpoena

is designed to advance a valid legislative purpose unless Congress adequately identifies its aims and explains why the President's information will advance its consideration of the possible legislation.

Fourth, courts should be careful to assess the burdens imposed on the President by a subpoena. We have held that burdens on the President's time and attention stemming from judicial process and litigation, without more, generally do not cross constitutional lines. But burdens imposed by a congressional subpoena should be carefully scrutinized, for they stem from a rival political branch that has an ongoing relationship with the President and incentives to use subpoenas for institutional advantage.

Other considerations may be pertinent as well; one case every two centuries does not afford enough experience for an exhaustive list.

When Congress seeks information "needed for intelligent legislative action," it "unquestionably" remains "the duty of *all* citizens to cooperate." *Watkins*. Congressional subpoenas for information from the President, however, implicate special concerns regarding the separation of powers. The courts below did not take adequate account of those concerns. The judgments of the Courts of Appeals for the D. C. Circuit and the Second Circuit are vacated, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, dissenting.

I would hold that Congress has no power to issue a legislative subpoena for private, nonofficial documents—whether they belong to the President or not. Congress may be able to obtain these documents as part of an investigation of the President, but to do so, it must proceed under the impeachment power. Accordingly, I would reverse the judgments of the Courts of Appeals…

At the time of the founding, the power to subpoena private, nonofficial documents was not included by necessary implication in any of Congress' legislative powers. This understanding persisted for decades and is consistent with the Court's first decision addressing legislative subpoenas, *Kilbourn* v. *Thompson* (1881). The test that this Court created in *McGrain* v. *Daugherty* (1927), and the majority's variation on that standard today, are without support as applied to private, nonofficial documents…

The opinion in *McGrain* lacks any foundation in text or history with respect to subpoenas for private, nonofficial documents. It fails to recognize that Congress, unlike Parliament, is not supreme. It does not cite any specific precedent for issuing legislative subpoenas for private documents from 18th-century colonial or state practice. And it identifies no founding-era legislative subpoenas for private documents…

If the Committees wish to investigate alleged wrongdoing by the President and obtain documents from him, the Constitution provides Congress with a special mechanism for doing so: impeachment…

Congress' legislative powers do not authorize it to engage in a nationwide inquisition with whatever resources it chooses to appropriate for itself. The majority's solution—a nonexhaustive four-factor test of uncertain origin—is better than nothing. But the power that Congress seeks to exercise here has even less basis in the Constitution than the majority supposes. I would reverse in full because the power to subpoena private, nonofficial documents is not a necessary implication of Congress' legislative powers. If Congress wishes to obtain these documents, it should proceed through the impeachment power. Accordingly, I respectfully dissent.

JUSTICE ALITO, dissenting.

In these cases… I would assume for the sake of argument that such subpoenas are not categorically barred. Nevertheless, legislative subpoenas for a President's personal documents are inherently suspicious. Such documents are seldom of any special value in considering potential legislation, and subpoenas for such documents can easily be used for improper non-legislative purposes. Accordingly, courts must be very sensitive to separation of powers issues when they are asked to approve the enforcement of such subpoenas…

Whenever such a subpoena comes before a court, Congress should be required to make more than a perfunctory showing that it is seeking the documents for a legitimate legislative purpose and not for the purpose of exposing supposed Presidential wrongdoing. The House can inquire about possible Presidential wrongdoing pursuant to its impeachment power (THOMAS, J., dissenting), but the Committees do not defend these subpoenas as ancillary to that power.

Instead, they claim that the subpoenas were issued to gather information that is relevant to legislative issues, but there is disturbing evidence of an improper law enforcement purpose. In addition, the sheer volume of documents sought calls out for explanation.

The Court recognizes that the decisions below did not give adequate consideration to separation of powers concerns. Therefore, after setting out a non-exhaustive list of considerations for the lower courts to take into account, the Court vacates the judgments of the Courts of Appeals and sends the cases back for reconsideration. I agree that the lower courts erred and that these cases must be remanded, but I do not think that the considerations outlined by the Court can be properly satisfied unless the House is required to show more than it has put forward to date.

Specifically, the House should provide a description of the type of legislation being considered, and while great specificity is not necessary, the description should be sufficient to permit a court to assess whether the particular records sought are of any special importance. The House should also spell out its constitutional authority to enact the type of legislation that it is contemplating, and it should justify the scope of the subpoenas in relation to the articulated legislative needs. In addition, it should explain why the subpoenaed information, as opposed to information available from other sources, is needed. Unless the House is required to make a showing along these lines, I would hold that enforcement of the subpoenas cannot be ordered. Because I find the terms of the Court's remand inadequate, I must respectfully dissent.