The Supreme Court heard oral argument in two cases involving subpoenas of President Trump’s pre-presidency tax returns and other financial documents from third parties.

*Trump v. Mazars* [2] involves House Committees’ subpoenas of the President’s financial records. According to the House Committees [3], the Supreme Court “has long recognized that Congress may investigate potential wrongdoing if the investigation relates to a *valid legislative purpose*.” The committees claim they had such a purpose in seeking the President’s records.

At oral argument, when questioning President Trump’s lawyer, a number of the more liberal Justices, Breyer and Kagan in particular, seemed sympathetic to the House Committees’ arguments pointing out the records in this case were personal rather than official. Likewise, more conservative Justices, Chief Justice Roberts and Justice Gorsuch, asked Trump’s lawyer and the lawyer arguing for the United States (who filed on President Trump’s side), why and how the Court should probe Congressional committees as to their motives in seeking particular information.

The argument took an interesting turn when the Justices questioned the attorney arguing for the House Committees. In their first round of questioning, nearly all the Justices asked what limiting principle he could offer to “valid legislative purpose.” More specifically, Chief Justice Roberts asked the attorney if he could name any subject upon which Congress couldn’t legislate. Justice Sotomayor likewise asked whether a Congressional committee could seek the President’s health records as they might do so under the guise of passing legislation when they really want to “expose the President for exposure sake.” The House Committee’s attorney had difficulty identifying a limiting principle that satisfied the Justices.

In *Trump v. Vance* [4] a New York City prosecutor subpoenaed the President’s pre-presidency tax returns and other financial information from an accounting firm as part of a grand jury investigation.

The President argues [5] he should have absolutely immunity from state criminal process while in office. He claims the “Supremacy Clause does not permit interference with the President’s fulfillment of the obligation he owes to the entire nation.” The President’s lawyer asked the Justices whether the President should have to take time out of his schedule to deal with subpoenas given the other burdens on his time including a pandemic.

Most of the Justices seemed skeptical about granting the President absolute immunity. Justice Ginsburg pointed out that the information sought in this case isn’t privileged or confidential. Chief Justice Roberts noted that in *Clinton v. Jones* (1997), the Supreme Court allowed discovery in a civil federal court case against President Clinton related to pre-Presidency sexual harassment allegations. President Trump’s lawyer responded that defending against a criminal case may be more burdensome than a civil case and that the Supremacy Clause disallows state court control over the President.

The United States and the New York City prosecutor agreed the Court should apply some version of
United States v. Nixon (1974), and hold that a state grand-jury subpoena for a sitting President’s personal records must satisfy a “heightened standard of need.” The Justices spent a lot of time trying to find, in Justice Gorsuch’s words, the “daylight” between the two positions.

Whatever the contours of the standard, the United States argued it wasn’t met because the prosecutor copied the House Committee subpoenas nearly word for word and failed to explain “why exactly the same information demanded by a congressional committee, ostensibly for the purpose of investigating federal legislation, also happens to be essential to the investigation of a state crime.” The prosecutor claims the standard is met because the President isn’t burdened at all by requests to his accountants over documents he may have never seen and may not even know exist.

We can expect a decision in these cases sometime this summer.

By:
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