Home > SCOTUS Holds a Sitting President May be Issued a State Criminal Subpoena

Lisa Soronen [1]

The President’s tax returns are unlikely to be available to the public soon as a result of two Supreme Court cases. Nevertheless, Trump v. Vance [2] is a victory for state and local government authority. In this case the Supreme Court held 7-2 that the U.S. Constitution doesn’t “categorically preclude, or require a heightened standard for, the issuance of a state criminal subpoena to a sitting President.”

Regardless of this decision, the President’s tax returns aren’t likely to be released to the New York City prosecutor who subpoenaed them because litigation will probably continue in the lower court over whether the President has to comply with the subpoena. Chief Justice Robert’s majority opinion lists numerous grounds on which the President man challenge complying.

In this case the New York County District Attorney’s Office, acting on behalf of a grand jury, subpoenaed President Trump’s accounting firm for the President’s tax returns from 2011 forward related to an investigation into whether the President violated state law.

Since nearly the founding, the Supreme Court has held numerous times that a sitting President may be subpoenaed in federal criminal proceedings. The President argued “that the Supremacy Clause gives a sitting President absolute immunity from state criminal subpoenas because compliance with those subpoenas would categorically impair a President’s performance of his Article II functions.” The Solicitor General, arguing on behalf of the United States, took the position that a state grand jury subpoena for a sitting President’s personal records must, at the very least, “satisfy a heightened standard of need.”

The Supreme Court rejected both arguments. Regarding absolute immunity, Trump pointed to diversion, stigma, and harassment as the reasons he should be immune from state subpoenas. The majority opinion rejected these arguments as foreclosed by precedent or, in the case of harassment, manageable due to protections already in place to limit grand jury investigations.

The Court cited three reasons why it didn’t think a state grand jury subpoena seeking a sitting President’s private papers must satisfy a heightened need standard. “First, such a heightened standard would extend protection designed for official documents to the President’s private papers.” Second, the Solicitor General was unable to establish that “heightened protection against state subpoenas is necessary for the Executive to fulfill his Article II functions.” Finally, “the public interest in fair and effective law enforcement cuts in favor of comprehensive access to evidence.”

Trump v. Mazars [3] involves the President’s tax returns but not state or local government authority to subpoena them. In this case the Supreme Court held 7-2 that courts must apply a balancing test when determining when a Congressional Committee may issue subpoena directed at the President’s personal information.

Three House Committees sought a variety of the President’s financial documents from banks and his accounting firm. While the Supreme Court had never before heard a case involving Congress subpoenaing the President’s personal information, the Court held in other cases Congress simply
needs a “valid legislative purpose.”

The Court noted that any type of information may have “some relation to potential legislation” and that “Congress and the President have an ongoing institutional relationship as the ‘opposite and rival’ political branches.” For these reasons, according to the Chief Justice, “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,’ 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.”

The lower courts, all of which ruled against the President on this issue, must go back and apply the “careful analysis” described in the majority opinion.

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