Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

Trump v. Mazars: Implications for Congressional Oversight

July 10, 2020

On July, 9 2020, the Supreme Court issued a pair of decisions concerning subpoenas seeking access to the President's personal financial records, including tax returns. In *Trump v. Vance*, the Court ruled that the President is not categorically "immune from state criminal subpoenas seeking his private papers." Nor does a "heightened showing of need" have to be made before a state grand jury subpoena can be issued for a sitting President's personal records. Thus, the President, though able to present some defenses that are unique to his office, is otherwise treated much like "every man" when called upon to produce evidence in a criminal proceeding. Not entirely so, however, in a congressional investigation. In *Trump v. Mazars*, the Supreme Court vacated appellate court opinions directing compliance with congressional subpoenas for the President's personal financial records, holding that those courts had not sufficiently considered the "weighty" separation of powers concerns specifically implicated by congressional subpoenas "directed at the President's personal information." The 7-2 decision clarified that, as in *Vance*, the President is not entirely immune from congressional process, but nevertheless laid out four "special considerations" that must inform an appropriately "balanced" and "careful analysis" that is triggered when Congress seeks the President's personal records. The Court then remanded, directing the lower courts to apply those considerations, and possibly others, to the specific subpoenas. Although giving guidance, the *Mazars* Court left the question of whether the President must comply with the congressional subpoenas for another day.

This Sidebar addresses the *Mazars* opinion and its implications on congressional investigations.

Background and Context

The *Mazars* opinion addressed the consolidated cases of *Trump v. Mazars* and *Trump v. Deutsche Bank*. Both cases involve claims filed by President Trump, his family, and the Trump Organization to block private financial entities from complying with subpoenas issued by House committees for various personal financial records, ranging from 2010 to the present and including the President's tax returns. The challenged subpoenas were issued as part of different ongoing committee investigations: the House Committee on Oversight and Reform sought information in connection to its ongoing review of federal ethics laws; the House Financial Services Committee sought information in connection to its investigation into abuses of the financial system; and the House Permanent Select Committee on Intelligence sought

Congressional Research Service
https://crsreports.congress.gov
LSB10517

information in connection to its investigation into foreign interference in U.S. elections. President Trump and the other plaintiffs objected to these subpoenas, arguing that the Committees had no "legitimate legislative purpose" for inquiring into plaintiffs' private affairs and transactions, and therefore no constitutional authority to compel the disclosure of the information sought. The House intervened in each case to protect its institutional interests.

Mazars and *Deutsche Bank* are unique for many reasons. Although the cases are technically between "private" parties (as the High Court noted, President Trump's involvement was in his "personal capacity") and do not involve governmental information, they nevertheless represent a "clash between rival branches of government over records of intense political interest." Mazars and Deutsche Bank may hold the information at issue, but the real dispute is between the President and the House committees. It is relatively rare for such an oversight dispute to make it into court, and exceedingly rare to make it to the Supreme Court. In fact, the Court has not issued a major opinion addressing Congress's investigative powers, in any context, since the 1970s. But as an "interbranch conflict" involving an oversight dispute between Congress and the President, *Mazars* is the first such case to be resolved by the Supreme Court in American history.

Moreover, in the few instances where the courts have previously been drawn into oversight disputes between the branches, those cases have usually revolved around questions of privilege, including whether the executive branch can withhold information on the basis of executive privilege, absolute immunity, or some other limited (and generally contested) exception to Congress's otherwise broad "power of inquiry." For example, the 1974 D.C. Circuit decision of *Senate Select Committee v. Nixon* (which appears to be the only appellate court case squarely addressing a congressional subpoena issued to the President) and more recent district court opinions dealing with congressional attempts to enforce subpoenas issued to executive branch officials have turned on questions of executive privilege or advisor immunity. *Mazars* is different, in that it involved neither of these defenses. It turned not on whether there was a permissible justification to *withhold* information that Congress could properly request, but instead on whether Congress had authority to seek the information in the first place. The case thus centers on the scope of Congress's investigative power.

The Court has generally viewed the scope of that power broadly, calling it both "penetrating" and "far-reaching." *Mazars* affirmed this well-established vision of Congress's investigative powers. But because the power to compel compliance with a congressional subpoena derives from the Constitution's grant of "legislative power," it may only be exercised as it "aid[s] the legislative function." The Supreme Court has implemented this required nexus by mandating that a congressional subpoena serve a valid "legislative purpose," generally asking whether the subpoenaed information is "related to, and in furtherance of, a legitimate task of Congress."

That standard is quite generous. Because Congress exercises authority over an immense range of subjects, the legislative purpose test has imposed only a handful of relatively narrow limitations on the topics appropriate for congressional investigation. Congress may not, for example, probe purely private conduct with no relation to the legislative function, or investigate a matter exclusively committed to another branch of government. Notably however, these earlier cases applying the legislative purpose test generally involved investigations of private parties or subordinate executive branch officials. *Mazars* is the Court's first opinion to directly confront the legislative purpose test in an investigation of the President.

The Holding

The *Mazars* decision makes clear that in the context of congressional investigations the President is, as a constitutional matter, treated differently than others. Writing for a seven-Justice majority, Chief Justice Roberts described the courts below as having mistakenly "treated these cases much like any other," applying standards and principles established in "precedents that do not involve the President's papers."

Subpoenas for the President's personal records, the Court determined, involve significant separation of powers concerns that trigger a different, more scrutinizing approach to the scope of Congress's power. The Chief Justice went on to identify four "special considerations" to help lower courts to appropriately balance the "legislative interests of Congress" with "the 'unique position' of the President."

- First, a reviewing court should "carefully assess whether the asserted legislative purpose warrants the significant step of involving the President and his papers." The Court elaborated that Congress's "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, courts "should insist on a subpoena no broader than reasonably necessary to support Congress's legislative objective." Specific demands, the High Court reasoned, are less likely to "intrude" on the operation of the Presidency.
- Third, "courts should be attentive to the nature of the evidence offered by Congress to establish that a subpoena advances a valid legislative purpose." To this end, Congress's position is strengthened when a congressional committee can provide "detailed and substantial evidence" of its legislative purpose.
- Fourth, "courts should be careful to assess the burdens imposed on the President by a subpoena." Here the High Court reasoned that in comparison to the burdens imposed by judicial subpoenas like those found to be permissible in *Vance*, the burdens imposed on the President by congressional subpoenas "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."

The Court did not apply these considerations to the committee subpoenas at issue, but instead left that task to the lower courts on remand. Moreover, the Court cautioned that "other considerations," besides those specifically identified, might also be relevant: "one case every two centuries does not afford enough experience for an exhaustive list" of factors to be considered by a reviewing court.

Impact on the Existing Subpoenas

The Court neither approved nor rejected the individual committee subpoenas at issue in *Mazars* or *Deutsche Bank*. Nor did it hint at how each individual subpoena should fare in the face of the new considerations other than to note generally that "[l]egislative inquiries might involve the President in appropriate cases." But the identified considerations make clear that the enforceability of the subpoenas must be addressed on a case-by-case basis. Although the committee subpoenas overlap, each committee provided different justifications to support their demands. As a result, the nature of each committee's need for the President's personal information varies, and it is therefore conceivable—and perhaps likely—that the courts, though applying the same standards, will reach different conclusions as to the validity of the individual committee subpoenas. It is clear, for example, that a committee articulating a specific and detailed need for a narrow set of documents is in a stronger position than one who can assert only a generalized need for a broad array of documents, or that is using the President as a "case study." But however applied, the Court sought to chart a course for reviewing subpoena requests for the President's personal information that was somewhere between the standard favored by the House, which the Court described as "ignor[ing] that these suits involve the President," and the standard advanced by the President and the Solicitor General, which 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."

In any event, *Mazars*'s "special considerations" are likely to spur ongoing and perhaps protracted litigation regarding the validity of the existing committee subpoenas, possibly resulting in a future trip back to the Supreme Court.

Impact on Future Investigations

The *Mazars* opinion makes clear that presidential records are subject to congressional process in certain circumstances, while also elucidating restrictions on Congress's authority to obtain the President's personal information. Although the Court explicitly rejected the President's assertion that all subpoenas to the President should be subject to a heightened "demonstrably critical" standard, the opinion's "special considerations" nonetheless subject congressional subpoenas for the President's personal records to a less deferential standard than other congressional subpoenas. But the opinion's long-term effect may be limited in various respects.

First, it is clear that *Mazars* does not impact congressional investigations of other executive branch officials or agencies. Those investigations and any resulting subpoenas, would appear to remain subject to the traditional, more lenient and deferential "legislative purpose" test.

Second, the opinion ultimately provides congressional committees with a roadmap to satisfy the Court's separation of powers concerns when issuing future subpoenas for presidential records. This includes narrow and targeted subpoenas thoroughly articulating the committees need for the information and its close relationship to the committee's legislative purpose.

Third, it is not entirely clear how the opinion may apply to investigations focused on official conduct and seeking governmental records. The precise holding of the opinion is that the identified considerations should be applied "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' …." But the opinion also suggested that the same unique separation of powers concerns that gave rise to the "special considerations" are likely implicated whether Congress is seeking personal or official information from the President. The Court noted, for example, that "there is not always a clear line between his personal and official affairs" and that "congressional demands for the President's papers can implicate the relationship between the branches regardless whether those papers are personal or official."

Still, the opinion at least implicitly draws a distinction between personal and official records, suggesting that "a subpoena for personal papers may pose a heightened risk of [] impermissible purposes, precisely because of the documents' personal nature and their less evident connection to a legislative task." The Court also rejected the President's assertion that all subpoenas to the President should be subject to the same "exacting standard" partly on the ground that it made no distinction between "official and personal information." It could be argued that the standards adopted in *Mazars* are applicable only when a congressional committee directly targets the personal or private records of a President. Under that interpretation, judicially imposed limits on Congress's authority to obtain *official* records of the President would be reviewed under the deferential "legislative purpose" standard normally employed when Congress seeks records from private or governmental entities (though, even if the subpoena is validly issued under this standard, the President might still invoke applicable privileges to withhold some records). On the other hand, it could be argued that the "special considerations" test set forth in *Mazars* applies to requests for *either* personal or official records, but these considerations may apply differently to requests for official records compared to the President's private information.

However interpreted, the *Mazars* opinion appears to add an arrow to the President's quiver when responding to congressional investigations. Future subpoenas for presidential records may very well be met with arguments that the committee lacks authority to seek presidential information grounded in the general considerations identified by the Supreme Court in *Mazars*. These arguments may be made not only in court, but also much earlier in the investigative process during political negotiations between the

legislative and executive branches over disputed information—or what then Assistant Attorney General Antonin Scalia described as the "hurly-burly" of the accommodations process. For example, Congress may be faced with claims that the President need not comply with congressional subpoenas because the information sought can be obtained elsewhere, or that unlike in judicial fact finding which requires "full disclosure of all the facts", "efforts to craft legislation involve predictive policy judgments" that may not require "every scrap of potentially relevant evidence." And these claims relate only to the threshold question of whether a given subpoena is within Congress's authority to issue. Once these arguments are addressed, committees and courts must still deal with second level objections based on any applicable privileges.

Impact on Other Litigation

Mazars is not the only major congressional oversight case percolating through the courts. In an important decision on congressional power, the D.C. Circuit recently held in *Committee on the Judiciary v. McGahn* that the judicial branch lacked constitutional authority to resolve "pure" "interbranch quarrel[s]" over information access. Congress must, the D.C. Circuit reasoned, seek resolution of its oversight disputes with the executive branch not in court, but by leveraging its own legislative powers to "bring the executive branch to heel." The opinion, which has been vacated pending en banc appeal, would have severely restricted Congress's authority to use the judiciary to compel compliance with committee subpoenas. The D.C. Circuit's en banc reconsideration of the case may have a large impact on Congress's ability to enforce subpoenas (to any executive branch official) in the future.

McGahn and *Mazars* arose in very different contexts. While *Mazars* involves a subpoena for personal records issued to a private party, *McGahn* is a civil lawsuit brought by the House Judiciary Committee to enforce a subpoena issued to a former White House official. But both cases involve blurred lines of private and governmental interests, and the lower court in *McGahn*, like the Supreme Court in *Mazars*, viewed the dispute before it as implicating important separation of powers principles. For that reason, *Mazars* could influence the pending decision in *McGahn*. For example, the Supreme Court specifically identified the conflict in *Mazars* as an "interbrach conflict." Indeed, the opinion left no doubt that despite the posture of the parties to the suit, the Court viewed the case as one between Congress and the President. And although noting that the judiciary has not historically been called to remedy such disputes, the *Mazars* Court did not question its authority to do so. The D.C. Circuit may take that into account when determining whether it has authority to resolve the *McGahn* dispute. Second, the *Mazars* opinion warned that granting Congress a "limitless subpoena power" could "transform" the practice of negotiation and accommodation that has characterized oversight disputes between the branches. "Instead of negotiating over information requests," the Court worried, "Congress could simply walk away from the bargaining table *and compel compliance in court*." The passage seems to suggest that the Court does not currently view subpoena enforcement suits like the one brought in *McGahn* as beyond the judiciary's authority to hear.

Author Information

Todd Garvey
Legislative Attorney

Disclaimer