

U.S. judge's delay may help Trump dodge subpoena for his federal tax returns, House Democrats say

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A federal judge in Washington has announced he would delay ruling on the Trump administration's request to toss out a lawsuit that would force the government to turn over the president's tax returns.

But according to a newly released court transcript, House Democrats objected, saying the judge's hesitation makes it more likely President Trump will be able to run out the clock and dodge a congressional subpoena for the records until well after the November election.

In a terse order Tuesday following a telephone conference with the parties in the case, U.S. District Judge Trevor N. McFadden said he would not rule in the matter until an appeals court decides whether to uphold another judge's order that former Trump White House counsel Donald McGahn must comply with a House subpoena to testify in Congress's impeachment probe. McFadden said the White House raised similar claims in both cases that it enjoys absolute immunity from lawsuits by Congress to enforce oversight demands, according to a transcript of the call released Thursday.

"My strong inclination is not to get out in front of my superiors," McFadden said. "This is a pretty extraordinary case, and I don't want to act precipitously here."

The House Ways and Means Committee filed a lawsuit last year seeking to enforce its May subpoena for six years of the president's tax records from the U.S. Treasury Department.

However, attorneys for the House — in the call that was closed to the public and announced on five-minutes' notice — strongly objected because the subpoena will expire when this term of Congress expires at the end of this year. They said the delay thwarts the House's ability to ensure White House compliance with urgent legislative oversight, including whether Trump took inappropriate advantage of tax laws to engage in decades-long tax avoidance schemes.

They also said the tax return case raises a different legal issue than addressed by McGahn's case, since the House sued under a 1924 law enacted after the Teapot Dome bribery scandal. The law gives the tax-writing committee particular authority to seek tax returns and other records to oversee the effectiveness of Internal Revenue Service audit programs.

"If this court were to hold off on a decision pending an ultimate resolution in McGahn, that would potentially make it impossible for the committee to obtain the information they're seeking during this Congress," House assistant general counsel Megan Barbero said, according to the transcript.

"Staying this case pending unknown timing in the D.C. Circuit is simply not consistent with, as the Supreme Court has indicated, expeditiously moving along the subpoena cases of the House and the committees," she said.

McFadden, who was confirmed in 2017 after serving as a Trump Justice Department appointee, disagreed. The judge noted it took the district court more than a year to rule on a motion to dismiss after Congress in 2012 sued to force then-Attorney General Eric H. Holder Jr. to respond to a congressional subpoena for documents related to [ATF's botched "Fast and Furious" gunrunning scheme](#).

McFadden said he was not proposing to stay the case for a Supreme Court appeal in McGahn.

"I'd certainly consider a motion from the House to lift the stay" if the circuit did not rule in coming weeks, McFadden said.

He also said that if the House prevailed in McGahn, he might summarily toss the administration motion to dismiss, but he hoped both sides would negotiate a solution outside the courts.

"It certainly seems to me that there's plenty of room for that accommodation process to take place, and I'd encourage the parties to be in discussions now about what it would look like," the judge said.

On Tuesday's call, Trump attorney [William Consovoy](#) supported a stay.

A decision in the McGahn case "is going to have a dramatic effect on this case, and so at a minimum it will dramatically simplify this case and at a maximum it may dispose entirely of this case," Consovoy said.

The Justice Department has argued that the courts must stay out of a fight between the two political and elected branches, an argument the administration invoked after Treasury Secretary Steven Mnuchin refused to comply with the subpoena for Trump's business and tax records.