Tax & Financial Records Case

Deutsche Bank-Capital One Case
Key Excerpts from 2019 District Court Opinion

Prepared by Elise J. Bean
Levin Center at Wayne Law

On May 22, 2019, ruling from the bench after oral argument in this matter, SDNY District Judge Ramos denied President Trump's motion for a preliminary injunction to prevent bank compliance with three House subpoenas, and read a lengthy opinion into the hearing record. *Trump v. Deutsche Bank AG*, No. 19 CIV. 3826 (ER), 2019 WL 2204898 (S.D.N.Y. May 22, 2019), *aff'd in part, remanded in part*, 943 F.3d 627 (2d Cir. 2019), *cert. granted*, No. 19-760, 2019 WL 6797733 (U.S. Dec. 13, 2019). Here are some key excerpts from that 38-page bench opinion, which was included as an appendix to the Supreme Court petition filed by President Trump in this matter. Each excerpt consists of a direct quotation taken from the hearing transcript, with no changes in punctuation.

Court ruling
The question presented in plaintiffs' motion is straightforward: Does the Committees' subpoenas violate the Constitution or the RFPA [Right to Financial Privacy Act]? After reviewing the parties' briefs and hearing from them today, the Court is convinced that the answer is no. Accordingly, I will not enjoin enforcement of the subpoenas.

Standard for preliminary injunction
The Court begins with the applicable standard of review. "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. National Resources Defense Council, Inc.*, 555 U.S. 7. In this circuit, if a plaintiff does not establish a likelihood of success on the merits, a preliminary injunction, nonetheless, may issue if the plaintiff shows that there exists sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the plaintiff. … At all times, the Court remains mindful that preliminary injunction is an extraordinary and drastic remedy, and it is never awarded as of right.

Preliminary injunction is inappropriate
The Court finds that while plaintiffs have shown that they will suffer irreparable harm, absent a preliminary injunction, they are unlikely to succeed on the merits of their claims, that the questions presented in their motion are not sufficiently serious in light of Supreme Court precedent and the plain text of the Right to Financial Privacy Act, the balance of hardships and equities, in conjunction with consideration of the public interest, do not weigh in their favor. Consequently, the Court concludes that a preliminary injunction is inappropriate.

Disclosure of private information is quintessential type of irreparable harm
Plaintiffs allege that if this Court does not intervene to preserve the status quo, there will be no way to unring the bell once the banks give Congress the requested information. The Court agrees. In this circuit, it is well settled that individuals whose financial records are subpoenaed possess a privacy interest in their personal financial affairs that gives them standing to move to quash a subpoena served on a non-party financial institution, which is why all parties appear to agree that plaintiffs have standing to challenge subpoenas that were issued to them directly.

Courts in this circuit have recognized that the disclosure of private, confidential information is the quintessential type of irreparable harm that cannot be compensated or undone by money damages.

No showing necessary of likely misuse or unauthorized disclosure of information
The Court is of the opinion, however, that plaintiffs possess strong privacy interests in their financial information such that unwanted disclosure may properly constitute irreparable injury, without an additional showing of likelihood of misuse or unauthorized disclosure by the recipient.

Interest includes keeping records private from congresspersons
[P]laintiffs have an interest in keeping their records private from everyone, including congresspersons, and that interest necessarily will be impinged by the records' disclosure to the committees. In any event, the committees have not committed one way or the other to keeping plaintiffs' records confidential from the public once received.

Congress not subject to RFPA
The RFPA [Right to Financial Privacy Act] provides that no government authority may have access to or obtain copies of information containing the financial records of any customer from a financial institution unless certain notification and certification requirements are met. … [T]he [Supreme]Court found that a straightforward interpretation of the phrase "department or agency" leads inexorably to the conclusion that the phrase only covers the Executive Branch. Moreover, as detailed in the Committees' papers, the structure and context of the RFPA makes clear that Congress did not believe it was binding itself to the RFPA. More on this point need not be said. Congress is not bound by the RFPA.

Four challenges to House subpoenas
[P]laintiffs challenge the committees' subpoenas on four principal grounds: the committees' subpoenas are not supported by a legitimate legislative purpose; the committees' subpoenas are really an unlawful exercise of law-enforcement power; the committees' subpoenas are overly broad; and finally, the committees' motives in issuing the subpoenas render the subpoenas unlawful, as they seek exposure for the sake of exposure. The Court addresses and rejects, each argument in turn[.]

Congress' authority to investigate is beyond debate
While Article 1 does not expressly refer to Congress' investigative powers, Congress' authority to investigate matters related to contemplated legislation is beyond debate. … Without the power to investigate, including of course the authority to compel testimony, either through its own processes or through judicial trial, Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively.

Subpoenas help committees serve as eyes and ears of Congress
So too is the committees' general authority to issue subpoenas well settled, given that committee members serve as the representatives of the parent assembly in collecting information for a legislative purpose and their function is to act as the eyes and ears of the Congress in obtaining facts upon which the full legislature can act. *Watkins v. United States*, 354 U.S. 178.

Compulsory process used only in furtherance of a legislative purpose
It is the responsibility of the Congress, in the first instance, to ensure that compulsory process is used only in furtherance of a legislative purpose. That requires that the instructions of an investigating committee spell out that group's jurisdiction and purpose with sufficient particularity. Those instructions are embodied in the authorizing resolution. That document is the committee's charter.

Legislative purpose covers different functions, including an informing function
[T]hat Congress must investigate in furtherance of a legislative purpose does not mean that the Congress is constrained to investigations in furtherance of contemplated legislation in the form of a bill or statute. Congress performs many different functions attendant to its legislative function under the Constitution. Congress' power also includes a more general informing function, that is, the power of the Congress to inquire into and publicize corruption, maladministration or inefficiency in agencies of the Government. Again citing *Watkins*.

Congressional power to conduct investigations
[T]he power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws, as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste.

Legislative purpose needed to require disclosure of private affairs
[T]he subject of any inquiry must be one on which legislation could be had. Citing *Eastland*, 421 U.S. at 504. This means that, in determining the constitutionality of requests for information, pursuant to a congressional investigation, a court must first determine whether an investigation is related to a valid legislative purpose, for Congress may not constitutionally require an individual to disclose his political relationships or other private affairs except in relation to such a purpose.

Bill of Rights applies
[T]he Bill of Rights is applicable to congressional investigations as to all forms of governmental action, and serves to limit Congress' investigative powers.

No general power to expose
[W]hile the public is entitled to be informed concerning the workings of its government, the Supreme Court has made clear that this entitlement cannot be inflated into a general power to expose, where the predominant result can only be an invasion of the private rights of individuals.

No inquiry into matters within exclusive province of other branches
[S]ince Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the exclusive province of one of the other branches of the Government.

Committees restricted by their missions
[W]ith respect to the committees, their powers are further restricted to the missions delegated to them, i.e., to acquire certain data to be used by the House or the Senate in coping with a problem that falls within its legislative sphere and, consequently, no witness can be compelled to make disclosures on matters outside that area. Among other sources to consider in ascertaining a subcommittee's boundaries in a given investigation, courts may consider the congressional resolutions authorizing the investigation, the committee's jurisdictional statements, and statements of the members of the committee. *Shelton v. United States*, 404 F.2d 1292.

Legitimate legislative purpose here
[T]he Court concludes that this committee's investigation and attendant subpoenas are in furtherance of a legitimate legislative purpose, plainly related to the subjects on which legislation can be had.

Subpoenas seek pertinent documents
[P]laintiffs contend that the committees' subpoenas as "outrageously broad," given the information the committees seek long predates the President's election to office, reaches well beyond the transactions associated with foreign parties, and encompasses reams of account records for entities, individuals, children, and spouses, who have never even been implicated in any probe. … The Court finds Plaintiffs' contention unpersuasive. Based on the cases cited by the parties in their papers, they seem to agree that so long as the requested information in the subpoenas are pertinent to legitimate legislative purposes of

the committees, the subpoenas are not overly broad, and the Court need not conduct a line-by-line review of the information requested.

Records are not plainly incompetent or irrelevant to any lawful purpose
The Supreme Court has previously concluded that where the records called for by a subpoena were not plainly incompetent or irrelevant to any lawful purpose of a subcommittee in the discharge of its duties, but, on the contrary, were reasonably relevant to the inquiry, then such records are, in fact, pertinent. Citing *McPhaul v. United States*, reported at 364 U.S. 372. As noted by Judge Mehta in his opinion earlier this week, the standard adopted by the Supreme Court is a forgiving one.

No line-by-line review
In light of the scope of the committees' investigations, the Court finds the committees' requests for information, while undeniably broad, is clearly pertinent to the committees' legitimate legislative purposes. Consequently, the Court will not engage in a line-by-line review of the subpoenas' requests, merely because some requests may be more pertinent than others.

Wisdom of congressional approach or methodology not open to judicial veto
As the Supreme Court has made clear, the wisdom of congressional approach or methodology is not open to judicial veto, nor is the legitimacy of a congressional inquiry to be defined by what it produces. The very nature of the investigative function, like any research, is that it takes the searchers up some blind alleys and into nonproductive enterprises. To be a valid legislative inquiry, there need be no predictable end result.

No need to identify legislation before or during an inquiry
[P]laintiffs challenge the subpoenas on the ground that the committees have never identified a single piece of legislation within their respective jurisdictions that they are considering. While that argument may be true as far as it goes, it is also irrelevant. Congress need not issue proposed legislation prior to the start of an investigation; it need not pass a bill; and it need not have particular legislation in mind when conducting a legitimate, lawful investigation in aid of its legislative function.

Compulsory process can be used to investigate corruption or mismanagement
As the Supreme Court noted in *Watkins*, most of instances of use of compulsory process by the first Congress concerned matters affecting the qualification or integrity of their members or came about in inquiries dealing with suspected corruption or mismanagement of government officials. There was very little use of the power of compulsory process in early years to enable the Congress to obtain facts pertinent to the
enactment of new statutes or the administration of existing laws.

Disclosing crime does not invalidate congressional investigation
[T]he Supreme Court has also made clear that a congressional investigation is not transformed into the invalid exercise of law enforcement authority merely because the investigation might possibly disclose crime or wrongdoing. Citing *McGrain*.

No usurpation of Executive or Judicial power
[I]n determining whether a congressional investigation has morphed into an impermissible law enforcement investigation, the critical inquiry is whether Congress has exercised an exclusive power of the Judiciary or Executive. … [I]t is not obvious that the committees usurped any powers exclusively vested in the Judiciary or the Executive when it issued the challenged subpoenas. There is nothing here to suggest that the sole function of the challenged subpoenas is to amass evidence either to prosecute plaintiffs, civilly or criminally. On the contrary, the committees have provided ample justification establishing clear, legitimate legislative purposes for the information requested in the subpoenas.

Courts cannot halt inquiry when facially legitimate legislative purpose
[E]ven in the face of investigations in which the predominant result is exposure of an individual's privacy, courts generally lack authority to halt an investigation otherwise supported by a facially legitimate legislative purpose. … "Our cases make clear that in determining the legitimacy of a congressional act, we do not look to the motives alleged to have prompted it."

Remedy for investigative abuses is left to voters, not judges
[T]he correction of abuses committed in the exercise of a lawful power is a matter left to voters, not judges.

Judiciary must not lightly interfere with Congressional powers
[J]ust as the Constitution forbids the Congress to enter fields reserved to the Executive and Judiciary, it imposes on the Judiciary the reciprocal duty of not lightly interfering with Congress's exercise of its legitimate powers. Citing *Hutcheson*, 369 U.S. at 622.

Government action requires meeting likelihood-of-success-on-the-merits test
[I]t is uncertain whether plaintiffs may show entitlement to injunctive relief merely by showing serious questions going to the merits. The Second Circuit has explained that where the moving party seeks to stay government action taken in the public interest pursuant to a statutory or regulatory scheme, the district court should not apply the less rigorous "serious questions" standard and should not grant the injunction unless the moving party establishes, along with irreparable injury, a likelihood that he will succeed on the merits of his claim. Citing *Citigroup*, 598 F.3d at 35. This exception reflects the idea that governmental policies implemented through legislation or regulations developed through presumptively reasoned democratic processes are entitled to a higher degree of deference and should not be enjoined lightly.

No serious question on the merits
[W]hile the question at the heart of this case concerning the extent congressional power may have been an open and serious one before, it is not nearly so serious today. Of course, use of congressional subpoena power to receive from a third party a sitting President's financial records will always be serious in that the outcome will have serious political ramifications. In the context of judicial interpretation, however, the word "serious" relates to a question that is both serious and open to reasonable debate. Otherwise, every

complaint challenging the power of one of the three coordinate branches of government would result in preliminary relief, regardless of whether established law renders the complaint unmeritorious. … Whereas, here, a subdivision of Congress acts plainly within its constitutional authority, preliminary injunctive relief will not issue simply because the plaintiff challenges that authority. More is required to demonstrate entitlement to extraordinary and drastic relief in the form of a preliminary injunction. The Court concludes that plaintiffs have not raised any serious questions going to the merits.

Balancing equities, hardships and public interest
The Court finds that Plaintiffs have also failed to establish that the balance of equities and hardships, along with the public interest, favor a preliminary injunction. These factors merge when the Government is the opposing party. …

Delaying document production is inequitable and causes irreparable harm
[D]elaying what is likely lawful legislative activity is inequitable. … [H]ere, the committees have alleged a pressing need for the subpoenaed documents to further their investigation, and it is not the role of the Court or plaintiffs to second guess that need, especially in light of the Court's conclusions that the requested documents are pertinent to what is likely a lawful congressional investigation. What's more, because the House of Representatives is not a "continuing body," see *Eastland*, 421 U.S. at 512, any delay in the proceedings may result in irreparable harm to the committees.

Public interest lies in expeditious Congressional investigations
[I]n the committees' words, "Plaintiffs' contrary argument ignores the clear and compelling public interest in expeditious and unimpeded Congressional investigations into core aspects of the financial and election systems that touch every member of the public." The Court agrees and, therefore, finds that the public interest weighs strongly against a preliminary injunction.

No stay by district court
Plaintiffs will have ample time to appeal the Court's decision before it takes effect. The committees have already agreed to suspend enforcement of the subpoenas until seven days following resolution of plaintiffs' motion for preliminary injunction. Once the Court's decision is entered on the docket, plaintiffs may immediately appeal the decision to the Court of Appeals, pursuant to 28 U.S.C. Section 1292(a)(1). … [P]laintiffs' motion for a preliminary injunction is denied.