Tax and Financial Records Case

New York Law on State Tax Returns Case
Key Excerpts from 2019 District Court Opinions

Prepared by Elise Bean
Levin Center at Wayne Law

In July 2019, New York State enacted a law, the TRUST Act, allowing the state to provide upon request copies of state tax returns filed by the President (or by the Vice President, a New York Member of Congress, or the New York governor) to Congress' three tax committees. On July 23, 2019, President Trump filed suit in the DC federal district court to block Congress from requesting and New York State from providing copies of his New York state tax returns.

On Nov. 11, 2019, D.C. District Judge Nichols dismissed from the lawsuit the New York State officials for lack of personal jurisdiction. *Trump v. Comm. on Ways & Means*, 2019 WL 5866752 (D.D.C. Nov. 11, 2019). On Nov. 18, 2019, the judge ordered Congress to provide contemporaneous notice to President Trump and the court of any request for his New York state tax returns, and barred Congressional receipt of those returns for 14 days after the request in order to give President Trump an opportunity to litigate the issues. *Trump v. Comm. on Ways & Means*, 2019 WL 6138993 (D.D.C. Nov. 18, 2019). On Dec. 17, 2019, the House Ways & Means Committee filed an interlocutory appeal of the Nov. 18 decision. To date, neither the House nor Senate has requested a copy of the President's New York state tax returns.

Here are some key excerpts from the district court's 19-page opinion dismissing the New York State officials from the lawsuit and from its 19-page opinion requiring notice of a New York state tax return request. Each excerpt consists of a direct quotation taken from the text of the opinion, with no changes in punctuation but with footnotes omitted.

District Court Opinion dismissing New York State officials

No jurisdiction

For the reasons that follow, the Court concludes that it does not presently have jurisdiction over either New York Defendant. Mr. Trump bears the burden of establishing

personal jurisdiction, but his allegations do not establish that the District of Columbia's long-arm statute is satisfied here with respect to either Defendant. Mr. Trump has also not demonstrated that jurisdictional discovery is warranted.

Long-arm statute does not apply to states
[T]he D.C. Circuit has held that the District of Columbia's long-arm statute does not apply to states themselves. … Accordingly, Mr. Trump's only avenue to satisfy the long-arm statute is to demonstrate that, if treated as individuals, each New York Defendant is subject to personal jurisdiction in the District of Columbia.

No long-arm jurisdiction over New York officials
Mr. Trump does not argue that the [New York] Commissioner or Attorney General transacted business in the District of Columbia through the New York legislature's enactment of the TRUST Act. Nor could he. … And even if Mr. Trump alleged that either New York Defendant was involved in the legislative process, he cites no authority for the proposition that enacting or helping to enact a state statute in another state would constitute "transacting business" in the District of Columbia[.]

No business activity
Mr. Trump has not pointed to any decision holding that corresponding with a congressional committee and sending it information (or any similar act) would constitute a commercial or business activity [within the District of Columbia].

No injury in D.C.
Mr. Trump argues that if the [New York] Commissioner produces his state tax returns to the [House] Committee, Mr. Trump would be injured in the District of Columbia. Even assuming that Mr. Trump would suffer that injury here, subsection (a)(3) also requires that the injury be caused by an "act or omission in the District of Columbia." D.C. Code § 13-423(a)(3). At this time, Mr. Trump does not (and cannot) allege that the Commissioner's act of transmitting information to the Committee will definitely occur in the District.

State sovereignty concerns
Exercising jurisdiction over New York state officials would also raise state sovereignty and federalism concerns. Mr. Trump—who apparently considered New York his primary residence until recently, when he changed it to Florida, *Restuccia*, *supra*—seeks to hale New York state officials into federal court in the District of Columbia to litigate the constitutionality of a New York state tax statute. Other courts have been cautious to permit similar suits to proceed. … And some courts have gone so far as to hold that haling officials from other states into federal courts outside of their home states violates the Due Process Clause. … Because Mr. Trump has not demonstrated that any provision of the District's long-arm statute is satisfied here, the Court need not reach this question.

Case dismissed
[T]he New York Defendants' Motion to Dismiss is GRANTED, and Mr. Trump's Amended Complaint is DISMISSED without prejudice as to them. Mr. Trump may press

his claims against the New York Defendants in this Court should future events support the exercise of personal jurisdiction over them, or he may opt to pursue those claims in an appropriate forum.

District Court Opinion requiring notice of tax return request

Relief granted

For the reasons that follow, the Court will enter very limited relief under the All Writs Act. The Court will not prevent the Congressional Defendants from making a request under the TRUST Act, nor will it require the Congressional Defendants to provide advance notice of their intent to make a request (the relief Mr. Trump currently seeks). Instead, the Court will require the Congressional Defendants to provide the Court and Mr. Trump with contemporaneous notice of any request made by Chairman Neal, a commitment they recently made. See Nov. 18, 2019 Hr'g Tr. at 10; Notice (Nov. 18, 2019). In addition, the Court will order that the Congressional Defendants not receive the requested records for a period of fourteen days, during which time the Court can decide whether the request is lawful. In the Court's view, such limited relief will place this matter in roughly the same procedural posture as the typical subpoena case, while treading as lightly as possible on the separation of powers and Speech or Debate Clause concerns raised by the Committee Defendants.

All Writs relief for case that could ripen and become moot almost instantaneously

The All Writs Act authorizes federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). The All Writs Act thus grants a court the power to issue relief that will "preserve the status quo pending ripening of [a] claim for judicial review" if the court "may eventually have jurisdiction of the substantive claim." *Wagner v. Taylor*, 836 F.2d 566, 571 (D.C. Cir. 1987) (footnote omitted). As a result, courts have held that All Writs Act relief may be appropriate when a claim is not yet ripe for judicial review but may both ripen and become moot almost instantaneously, thereby depriving the court of jurisdiction to decide the claim.

Speech or Debate Clause immunity has limits

Speech or Debate Clause immunity is not without limits. "It protects only those congressional acts properly thought to fall within the legislative function—those 'generally done in a session of the House by one of its Members in relation to the business before it.'" … It may be that judicial inquiry into legislative purpose is out of bounds when suit is brought against Congress or others entitled to Speech or Debate Clause immunity for actions that are thought to be within the core of the legislative function, such as voting, *Hutchinson v. Proxmire*, 443 U.S. 111, 133 (1979), preparing committee reports, *id*., conducting hearings, *Doe v. McMillan*, 412 U.S. 306, 311 (1973), or disciplining members, *Rangel v. Boehner*, 785 F.3d 19, 23–24 (D.C. Cir. 2015). But in the context of investigations, and in particular cases involving congressional efforts to

gather information, the Supreme Court and D.C. Circuit have made clear that Speech or Debate Clause immunity is available only when those efforts are undertaken for a legitimate legislative purpose, that is, to gather information "concerning a subject 'on which legislation could be had.'"

Speech or Debate Clause immunity requires legitimate legislative purpose
[U]nder *Eastland* and *McSurely*, whether the Congressional Defendants will have Speech or Debate Clause immunity for a TRUST Act request turns on the legislative purpose (or purposes) behind such a request, that is, whether the "investigative activity . . . concern[s] matters 'on which "legislation could be had."'"

No analysis of legislative purpose possible where no request has been made
But no TRUST Act request has been made for Mr. Trump's state tax returns. And because the Congressional Defendants obviously have not attempted to justify a request that has not yet been made—indeed, as the Congressional Defendants admit, "[t]he Court cannot draw any conclusions as to the Committee's purpose before the Committee does anything," Defs.' Reply at 16—the Court is unable to conclude, one way or the other, whether the Congressional Defendants would be entitled to Speech or Debate Clause immunity.

Substantial risk of harm and ripeness problem justify limited relief
[I]n the Court's view, there is a sufficiently substantial risk that future harm could occur to warrant limited relief under the All Writs Act. … Just as important, the All Writs Act permits the entry of limited relief where (as here) a claim may not yet be ripe for judicial review, but the claim may both ripen and become moot almost instantaneously.

No prohibition on Congressional request for tax returns or advance notice
Cognizant of the separation of powers and Speech or Debate Clause concerns raised by the Congressional Defendants, the Court will not prevent the Congressional Defendants from making a request under the TRUST Act, nor will it require the Congressional Defendants to provide advance notice of their intent to do so.

Contemporaneous notice and delay in receipt of tax return records
But because contemporaneous notice alone would not protect Mr. Trump's claims from potentially becoming moot, the Court will also order that the Congressional Defendants not receive the requested records for a period of fourteen days, during which time the Court can decide whether the request is lawful. In the Court's view, this relief ensures that Mr. Trump has an opportunity to press his claims before they become moot while treading as lightly as possible on the Congressional Defendants' interests.

The House Ways & Means Committee filed an interlocutory appeal of the district court's November 18 order.