GIBSON DUNN

How Former President Trump's Tangles With Committees Have Weakened Congress's Investigative Powers

January 10, 2022

Click for PDF

The tense political battles between former President Donald J. Trump and the United States House of Representatives under Democratic leadership renewed debates over the nature and extent of Congress's authority to investigate and conduct oversight and have wide-ranging implications for congressional investigation of not just the Executive Branch but also of private parties.

In furtherance of the House of Representatives' vigorous efforts to investigate President Trump, three House committees issued a series of subpoenas to banks and an accounting firm seeking the personal financial records of the President relating to periods both before and after he took office. The President and his business entities resisted, challenging the congressional subpoenas in court, thus drawing the judiciary into the fray. The President's challenges culminated in the issuance of the Supreme Court's historic decision in *Trump v. Mazars* and *Trump v. Deutsche Bank AG*, which announced groundbreaking new principles of law that will have profound implications for congressional oversight and investigations. In addition, the D.C. Circuit recently encountered related questions of congressional authority over the Executive Branch in connection with separate information requests to former White House Counsel Donald McGahn, leading to a series of hotly debated rulings (and an eventual settlement) in *Committee on the Judiciary v. McGahn*.

These cases arose against a seemingly well-established backdrop. It has long been understood that Congress possesses inherent constitutional authority to inquire into matters that could become the subject of legislation, such as through the use of compulsory process directed to both government officials and private citizens. As the Supreme Court recognized nearly a century ago, Congress "cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change." Thus, "the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function." The Executive and Legislative Branches often resolve disputes about congressional requests for information through the "hurly-burly, the give-and-take of the political process between the legislative and the executive." Only recently has Congress resorted repeatedly to the courts in an effort to enforce subpoenas against Executive Branch officials.

Read More

Washington, D.C. partners Michael Bopp *and* Thomas Hungar*, with Chantalle Carles Schropp, prepared this article, originally published by the University of Virginia's* Journal of Law & Politics*, Vol. 37, No. 1, in 2021.*

© 2022 Gibson, Dunn & Crutcher LLP

Attorney Advertising: The enclosed materials have been prepared for general informational purposes only and are not intended as legal advice.