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POLITICS

Trump's Request to Block Request for Tax Returns Met with Skepticism by Judges

At least one judge said that the final word on the matter would likely come from the U.S. Supreme Court.



Manhattan District Attorney Cyrus R. Vance Jr. arrives at the U.S. Courthouse in Manhattan for a hearing regarding President Trump's personal and corporate tax returns. PHOTO: SHANNON STAPLETON/REUTERS

By Corinne Ramey

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A federal appeals court in New York on Wednesday appeared skeptical of President Trump's sweeping claim that he is immune from criminal investigations while in office, questioning his request to block his accounting firm from complying with a subpoena for tax returns.

At the same time, at least one judge said that the final word on the matter would likely come from the U.S. Supreme Court.

In September, Mr. Trump sued Manhattan District Attorney Cyrus Vance Jr. and Mazars USA LLP, his longtime accounting firm, to block a subpoena for eight years of personal and business tax returns and other financial information. Mr. Vance's office had subpoenaed the returns as part of its investigation into whether payments to former adult-film star Stormy Daniels, and how they were recorded, violate a state law against falsifying business records.

On Wednesday, a three-judge panel heard arguments in the case.

Robert Katzmann, chief judge of the Second U.S. Circuit Court of Appeals, said on Wednesday that the court didn't have to deal with the broader question of whether the president is immune from indictment and prosecution.

Rather, he said, "the only question arguably that is before us is whether a state may lawfully demand production by a third party of a president's personal financial records for use in an ongoing grand-jury investigation while the president is in office."

In addition to Judge Katzmann, an appointee of President Bill Clinton, the panel included Christopher Droney and Denny Chin, both appointees of President Barack Obama.

William Consovoy, a lawyer for Mr. Trump, told the panel that a sitting president had temporary immunity while in office. He said that while a president might choose not to invoke this immunity in a federal investigation, especially since those prosecutors are overseen by the Justice Department, he might when investigated by local prosecutors, who are more likely to be politically motivated.

"Every president, I think, will have to make his own determination about when to invoke these kinds of immunities," Mr. Consovoy said.

At one point, Judge Chin and Mr. Consovoy had an exchange about a hypothetical situation in which Mr. Trump stands on Fifth Avenue and shoots someone, an apparent reference to a remark the president made during his 2016 campaign. The judge asked if the president could be investigated for such a crime while in office.

"Local authorities couldn't investigate, they couldn't do anything about it?" Judge Chin.

"Once a president is removed from office, any local authority" could investigate or prosecute him, the lawyer said. "This is not a permanent immunity."

"Nothing could be done, that's your position?" asked Judge Chin.

"That is correct," Mr. Consovoy said.

Mr. Vance has argued his subpoena is valid. Carey Dunne, Mr. Vance's general counsel, told the panel that Mazars had been complying with the office's document requests until the office sent the subpoena for tax returns.

"There is no privilege to tax returns," Mr. Dunne said. "Tax returns do in fact get subpoenaed all the time."

He said while any information turned over to the grand jury would remain private under the law, some information from an investigation could surface during a trial.

The judges also questioned how future disputes could be resolved in the investigation. “What about the next subpoena?” asked Judge Droney.

“What subpoena, your honor?” said Mr. Dunne.

“The one you’re probably thinking about right now,” the judge replied, prompting chuckles from the courtroom.

Earlier this month, a federal judge tossed the lawsuit and effectively ordered the accounting firm to comply with the subpoena, saying Mr. Trump’s claims of immunity from a criminal investigation were overly broad.

The appeals court then quickly blocked the subpoena.

Earlier this week, lawyers for Mr. Vance and Mr. Trump came to an agreement to delay enforcement of the subpoena under a timeline that makes it possible the case could be heard by the U.S. Supreme Court this term.

The panel didn’t say when it would issue a ruling, although it did note its decision likely wasn’t the final say on the matter. “This case seems bound for the Supreme Court,” said Judge Katzmann.

“Both parties see that as an inevitability, your honor,” Mr. Dunne said.

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