

Mr. Gohmert 12/4

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Opinion | Biden Probe, Trump Taxes Raise Similar Questions

Daniel Huff

5-6 minutes



President Trump speaks in Burnsville, Minn., April 15. Photo: Susan Walsh/Associated Press

The U.S. Supreme Court last week blocked a House committee's subpoena for eight years' worth of President Trump's tax returns. The committee will press the matter in further litigation. But the logic that supports the subpoena

undercuts House Democratic efforts to impeach Mr. Trump for asking Ukraine to investigate Joe Biden. In both cases, the use of official power to get dirt on a political rival is consistent with a broader, and valid, official purpose.

House ethics rules explicitly prohibit using official resources to oppose a presidential candidate. Yet last April the Oversight and Government Reform Committee subpoenaed an accounting firm for the Trump tax records. The demand mirrored one by the House Ways and Means Committee, seeking six years of returns from the Internal Revenue Service. Obtaining these returns was a campaign issue for Democrats in 2016.

Mr. Trump's lawyers sought to block the subpoenas as an abuse of power. They argued the claimed legislative purpose was pretextual, and the true motive was to "turn up something that Democrats can use as a political tool against the President now and in the 2020 election."

In response to the Ways and Means subpoena, the Justice Department prepared a compelling 33-page memo that argued: "No one could reasonably believe that the Committee seeks six years of President Trump's tax returns because of a newly discovered interest in legislating on the presidential-audit process." Democrats argued it doesn't matter as long as there's a fig leaf of official purpose. Chairman Richard Neal insisted the administration may not "question or second guess the motivations of the Committee . . . regarding its need for the requested . . . information."

Oversight Committee Democrats echoed the point in federal

court: “The Supreme Court has consistently noted that the motivations underlying Congressional action are not to be second-guessed, even by the courts.” They cited *Barenblatt v. U.S.* (1959): “So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power.” Judge Amit Mehta agreed. Given “facially valid legislative purposes,” he held, “it is not for the court to question whether the committee’s actions are truly motivated by political considerations.”

Mr. Trump is likewise accused of using his official powers to target a political rival. His defenders also claim a valid official purpose, fighting corruption in Ukraine, which experts at the impeachment hearings acknowledge is a real problem. Fighting foreign corruption falls squarely within the president’s constitutionally assigned foreign-policy and law-enforcement functions. That’s why Mr. Biden was comfortable boasting in 2018 that as vice president he withheld foreign aid to fight corruption in Ukraine.

Democrats say Mr. Trump’s justification is pretextual. But they’ve also taken the position that one may not look behind a valid official purpose, even in the face of strong evidence of political motivation. That going after Mr. Biden was about Ukrainian corruption is no less plausible than that pursuing Mr. Trump’s tax returns was about legislation.

Mr. Huff is a former counsel to the House and Senate judiciary committees.

Opinion: Joe Biden Forced Ukraine to Fire Prosecutor for Aid Money

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Best of the Web: During a Council on Foreign Relations discussion on January 23, 2018, former Vice President Joe Biden spoke about his dealings in Ukraine. Image: Shutterstock / AP / Composite: Brad Howard

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