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United States District Court

FOR THE
District of Columbia

1593-73

CIVIL ACTION FILE NO. _____

SENATE SELECT COMMITTEE ON PRESIDENTIAL
CAMPAIGN ACTIVITIES, suing in its own
name and in the name of the UNITED STATES,
et al

Plaintiff s

v.

SUMMONS

RICHARD M. NIXON, individually and as
President of the United States

Defendant

To the above named Defendant :

You are hereby summoned and required to serve upon

SAMUEL DASH
Chief Counsel

plaintiff's attorney, whose address is

United States Senate
Washington, D. C. 20510

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES F. DAVLEY

Clerk of Court.

Mary B. Leavers
Deputy Clerk.

Date: August 9, 1973

[Seal of Court]

NOTE: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATE SELECT COMMITTEE ON PRESIDENTIAL
CAMPAIGN ACTIVITIES, suing in its own
name and in the name of the UNITED
STATES,

and

SAM J. ERVIN, JR.; HOWARD H. BAKER, JR.;
HERMAN E. TALMADGE; DANIEL K. INOUE;
JOSEPH M. MONTOYA; EDWARD J. GURNEY;
and LOWELL P. WEICKER, JR., as United
States Senators who are members of the
Senate Select Committee on Presidential
Campaign Activities.

United States Senate
Washington, D.C. 20510

Plaintiffs

v.

RICHARD M. NIXON, individually and as
President of the United States.

The White House
Washington, D.C. 20500

Defendant

FILED AUG 9 1972

JAMES F. DAVEN
CLERK

Civil
Action
No.

1593-73

COMPLAINT FOR DECLARATORY JUDGMENT,
MANDATORY INJUNCTION AND MANDAMUS

1. This action seeks a declaratory judgment, a mandatory injunction and a writ of mandamus to direct Richard M. Nixon, individually and as President of the United States, to comply with two subpoenas duces tecum, duly served upon him by the Senate Select Committee on Presidential Campaign Activities pursuant to its authority under Senate Resolution 60, 93d Congress, 1st Session (1973), attached hereto as Exhibit A.

2. This action arises under Article I of the Constitution of the United States, which vests investigative and legislative powers in the Congress of the United States, and under Article II of the Constitution of the United States, which vests executive powers in the President of the United States.

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Parties

3. The plaintiff Senate Select Committee on Presidential Campaign Activities is a duly authorized and constituted committee of the Senate of the United States. It was created pursuant to S. Res. 60, which was enacted by a unanimous vote of the Senate on February 7, 1973. Under S. Res. 60, the Select Committee is empowered to investigate and study "illegal, improper or unethical activities" in connection with the Presidential campaign and election of 1972 and to determine the necessity of new legislation "to safeguard the electoral process by which the President of the United States is chosen." The Select Committee is further empowered by a standing order of the Senate, Senate Resclution 262, 70th Congress, 1st Session (May 28, 1928), attached hereto as Exhibit B, "to bring suit on behalf of and in the name of the United States in any court of competent jurisdiction if the committee is of the opinion that the suit is necessary to the adequate performance of the powers vested in it or the duties imposed on it by the Constitution, resolution of the Senate, or other law."

4. The plaintiffs Senator Sam J. Ervin, Jr., of North Carolina (Chairman), Senator Howard H. Baker, Jr., of Tennessee (Vice Chairman), Senator Herman E. Talmadge of Georgia, Senator Daniel K. Inouye of Hawaii, Senator Joseph M. Montoya of New Mexico, Senator Edward J. Gurney of Florida, and Senator Lowell P. Weicker, Jr., of Connecticut are duly designated members of the plaintiff Senate Select Committee on Presidential Campaign Activities. Each of the aforementioned members of the Select Committee is suing in his official capacity as a member of that Committee.

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5. The defendant Richard M. Nixon is President of the United States and was a candidate for that office in the 1972 Presidential campaign and election. He is sued in both his official and individual capacity.

Jurisdiction

6. The jurisdiction of this Court rests on 28 U.S.C. §1331, granting to this Court "original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States." This case arises under the Constitution of the United States. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

7. The jurisdiction of this Court further rests on 28 U.S.C. §1345, granting to this Court "original jurisdiction of all civil actions, suits or proceedings commenced by the United States,..." and on Article III of the Constitution of the United States, vesting in this Court jurisdiction over "Controversies to which the United States is a Party." The plaintiff Select Committee is authorized to bring this suit "on behalf of and in the name of the United States" by virtue of S. Res. 262.

8. The jurisdiction of this Court further rests on 28 U.S.C. §1361, granting to this Court "original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

9. The jurisdiction of this Court further rests on the Administrative Procedure Act, 5 U.S.C. §701-706, giving this Court jurisdiction to remedy any "legal wrong" suffered by the plaintiffs as the result of Presidential action for which no

adequate review proceeding is otherwise available. 0 0 7 3 0 7 5 0 2 9 3

10. In order to aid and supplement the exercise of this Court's jurisdiction under the foregoing sections of the United States Code and the United States Constitution, the plaintiffs invoke the authority of this Court to render declaratory judgments and grant other relief under 28 U.S.C. §§ 2201 and 2202, and to issue "all writs necessary or appropriate in aid of... [its] jurisdiction [n] and agreeable to the usages and principles of law" under 28 U.S.C. §1651.

Statement of Facts

11. By virtue of Sec. 3 (a) (5) of S. Res. 60, the plaintiff Select Committee is empowered

"...to require by subpoena or order any department, agency, officer, or employee of the executive branch of the United States Government, or any private person, firm, or corporation, or any officer or former officer or employee of any political committee or organization to produce for its consideration or for use as evidence in its investigation and study any books, checks, canceled checks, correspondence, communications, documents, papers, physical evidence, records, recordings, tapes, or materials relating to any of the matters or questions it is authorized to investigate and study which they or any of them may have in their custody or under their control;..."

12. Pursuant to this section, the plaintiff Select Committee, on July 23, 1973, addressed two subpoenas duces tecum, signed by its Chairman, to "President Richard M. Nixon, The White House, Washington, D.C.," which sought specified material within the defendant President's sole possession, custody or control. Both subpoenas were duly served on that date. The two subpoenas, with their proof of service, are attached hereto as Exhibits C and D.

13. The subpoena appended as Exhibit C directed the defendant President to make available to the Select Committee certain specified electronic tapes that recorded personal conversations

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"between President Nixon and John Wesley Dean, III, discussing alleged criminal acts occurring in connection with the Presidential election of 1972 which the Committee is authorized to investigate pursuant to Senate Resolution 60." Emphasis added

14. The subpoena appended as Exhibit D directed the defendant President to make available to the Select Committee documents and other materials "relating directly or indirectly to an attached list of individuals and to their activities, participation, responsibilities or involvement in any alleged criminal acts related to the Presidential election of 1972 which the Committee is authorized to investigate pursuant to Senate Resolution 60." Emphasis added

15. Both of the aforesaid subpoenas were returnable on July 26, 1973, at 10 a.m. at the Caucus Room (Room 318), Old Senate Office Building. Neither on that date nor on any other date has the defendant President complied with the subpoenas or otherwise made available to the Select Committee the materials demanded by the subpoenas. The defendant President's refusal to comply with the subpoenas was announced in a letter of July 25, 1973, which was addressed to Senator Sam J. Ervin, Jr., Chairman of the Select Committee, and received by him on July 26, 1973. (Said letter is appended hereto as Exhibit E.) In justification of his refusal to comply with the subpoenas, the defendant President relied in part on reasons stated in letters dated July 6 and July 23, 1973, from him to the Chairman (which are appended hereto as Exhibits F and G). Thus the defendant President did willfully and intentionally refuse to comply with either subpoena, in whole or in part.

16. At no time has the defendant President moved in this

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Court or any other Court to quash, modify or narrow the scope of either subpoena.

17. At no time has the defendant President denied that he has the sole possession, custody and control of all the materials requested in the aforesaid subpoenas or denied that he is capable of submitting those materials to the Select Committee in compliance therewith. In a letter dated July 23, 1973, to the Chairman of the Select Committee, the defendant President stated that "the tapes, which have been under my sole personal control, will remain so." (See Exhibit G, appended hereto.)

18. The electronic tapes and other materials sought by the aforesaid subpoenas, which relate to alleged criminal acts in connection with the Presidential campaign and election of 1972, are relevant to the subject matters of the Select Committee's investigation pursuant to S. Res. 60. With respect to the tapes, the defendant President, in his letter dated July 23, 1973, to the Chairman of the Select Committee (Exhibit G hereto), has conceded the relevance of those tapes to the Select Committee's investigation, stating:

"The fact is that the tapes would not finally settle the central issues before your Committee. Before their existence became publically known, I personally listened to a number of them. The tapes are entirely consistent with what I know to be the truth and what I have stated to be the truth. However, as in any verbatim recording of informal conversations, they contain comments that persons with different perspectives and motivations would inevitably interpret in different ways."

Moreover, sworn testimony of John Wesley Dean, III, and H. R. Haldeman before the Select Committee has demonstrated that the subject matter of the five specified conversations falls within the investigatory jurisdiction of the Select Committee. (See Exhibit H hereto.) Furthermore, the defendant President, acting through his Special Counsel, has revealed alleged

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facts demonstrating that the subject matter of these conversations is within the Select Committee's jurisdiction. (See Exhibit I hereto.)

Cause of Action

19. The defendant President's refusal and failure to make available the electronic tapes and other materials in response to the Select Committee's lawfully issued subpoenas are unlawful, unwarranted and in breach of his legal duty to respond to and to comply with such subpoenas.

20. The defendant President's refusal and failure to make available said electronic tapes and other materials cannot be excused or justified by resort to any Presidential power, prerogative or privilege.

21. If there be any doctrine of Presidential power, prerogative or privilege that protects materials in the possession, custody or control of the President, such a doctrine does not extend to the protection of materials relating to alleged criminal acts and thus cannot justify the refusal of the defendant President to respond to or comply with the two subpoenas.

22. If there be any Presidential power, prerogative or privilege that renders confidential and protects materials in the possession, custody or control of the President, that confidentiality has been breached and the alleged power, prerogative or privilege has been waived in regard to certain, if not all, of the materials sought by the Select Committee's subpoenas because the defendant President has himself partially revealed the contents of these materials and has permitted his agents and subordinates, both present and past, to reveal portions or versions of these materials. The breach of confidentiality

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and the waiver of any alleged Presidential power, prerogative, or privilege are the result of the following actions (among others):

(a) The defendant President's statement of May 22, 1973, that:

"Executive privilege will not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct, in the matters presently under investigation, including the Watergate affair and the alleged cover-up."

(The defendant President's entire statement of this date is appended as Exhibit J.)

(b) The communications by the defendant President and his agents asserting that the defendant President would not invoke executive privilege or the attorney client privilege in regard to the testimony of certain present and former aides before the Select Committee. (See, e.g., Exhibit K hereto.)

(c) The communications by the defendant President's counsel to the Select Committee purporting to summarize certain Presidential meetings and telephone conversations with John Wesley Dean, III, which are the subject of Exhibit I.

(d) The defendant President's action in turning over certain of the tapes now under subpoena to H. R. Haldeman, a private citizen, who was instructed by the defendant President that he could listen to them.

23. The investigation of the plaintiff Select Committee is a continuing one, for which the subpoenaed electronic tapes and other materials are vitally and immediately needed if the Select Committee's mandate and responsibilities under S. Res. 60 are to be fulfilled. The defendant President's continuing refusal and failure to comply with the Select Committee's lawful subpoenas are irreparably injuring the work of the Select

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Committee and the interests of the United States on whose behalf and in whose name the Select Committee sues. There is no remedy at law adequate and appropriate in the present circumstances to the resolution of this controversy, which is of widespread public interest and concern, and relief through injunction and/or mandamus is therefore in order.

24. This case presents an actual controversy and is therefore appropriate for declaratory and other relief pursuant to 28 U.S.C. §§2201 and 2202.

25. The public interest in, and need for, the swift completion of the functions of the Select Committee and the unique and critical Constitutional considerations raised by the actions of the defendant President warrant expedition of this action at all stages and prompt resolution of the dispute.

Prayer

Wherefore, the plaintiffs pray that:

1. This Court issue a declaratory judgment stating:
 - (a) The two subpoenas duces tecum were lawfully issued by the plaintiff Select Committee, were lawfully served upon the defendant President, and must therefore be responded to, and complied with, by the defendant President.
 - (b) The defendant President may not refuse to respond to, or comply with, said subpoenas on the basis of any claim of separation of powers, executive privilege, Presidential prerogative or otherwise.
 - (c) The defendant President, by his actions in revealing, and in permitting others to reveal, the subject matters of certain of the materials sought by the subpoenas has breached the confidentiality of those materials and has waived any claim to the applicability of doctrines of separation

of powers, executive privilege or Presidential prerogative respecting those materials.

2. This Court, if such be deemed necessary, issue to the defendant President (a) a writ of mandamus and/or a mandatory injunction, if it be determined that he is withholding the subpoenaed materials in his official capacity, or (b) a mandatory injunction, if it be determined that he is withholding the subpoenaed materials in his personal capacity, directing him to make available to the plaintiff Select Committee all materials designated in the subpoenas.

3. This Court award the plaintiffs such other and further relief as may be deemed just and equitable under the circumstances.

Respectfully submitted,

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Chief Counsel

Fred D. Thompson
Fred D. Thompson
Minority Counsel

Rufus Edmisten
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