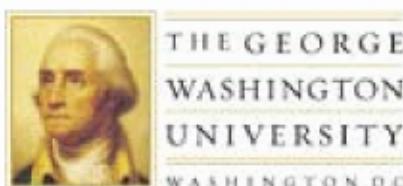


The Burger Court Opinion Writing Database

Eastland v. United States Servicemen's Fund

421 U.S. 491 (1975)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 4, 1975

Re: 74-1923 - Eastland v. United States Servicemen's Fund

MEMORANDUM TO THE CONFERENCE:

Enclosed draft of opinion in the above. I
contemplate more work on it, essentially stylistic and
probably some cutting.

Regards,

WB B

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: The Chief Justice

Circulated: APR 4 1975

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1923

James O. Eastland et al.,
Petitioners,
v.
United States Servicemen's
Fund et al. } On Writ of Certiorari to the
United States Court of
Appeals for the District
of Columbia Circuit.

[April —, 1975]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether a federal court may enjoin the issuance or implementation by Congress of a subpoena *duces tecum* that directs a bank to produce the bank records of an organization which claims a First Amendment privilege status for those records on the ground that they are the equivalent of confidential membership lists. The Court of Appeals for the District of Columbia Circuit held that compliance with the subpoena "would invade the constitutional rights" of the organization, and that judicial relief is available to prevent implementation of the subpoena.

1

In early 1970 the Senate Subcommittee on Internal Security was given broad authority by the Senate to "make a complete and continuing study and investigation of . . . the administration, operation and enforcement of the Internal Security Act of 1950. . . ." S. Res. 341, 91st Cong., 2d Sess., 116 Cong. Rec. 3419 (January 30, 1970). The authority encompassed discovering the "extent, nature and effect of subversive activities in

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 21, 1975

Re: 73-1923 - Eastland v. United States

Dear Thurgood:

Enclosed is revised draft of my opinion in the above.

I believe it will meet at least a large part of your concurring opinion. I had used "implementation" to mean the process of implementing the investigation by hearings, etc. Of course no court can enjoin such but since only the subpoena is involved here, I've narrowed the language.

Regards,



Mr. Justice Marshall

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1, 13-16, 19

From: The Chief Justice

Circulated:

Recirculated: APR 21 1975

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1923

James O. Eastland et al.,
Petitioners,
v.
United States Servicemen's
Fund et al. } On Writ of Certiorari to the
United States Court of
Appeals for the District
of Columbia Circuit.

[April —, 1975]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether a federal court may enjoin the issuance by Congress of a subpoena *duces tecum* that directs a bank to produce the bank records of an organization which claims a First Amendment privilege status for those records on the ground that they are the equivalent of confidential membership lists. The Court of Appeals for the District of Columbia Circuit held that compliance with the subpoena "would invade the constitutional rights" of the organization, and that judicial relief is available to prevent implementation of the subpoena.

I

In early 1970 the Senate Subcommittee on Internal Security was given broad authority by the Senate to "make a complete and continuing study and investigation of . . . the administration, operation and enforcement of the Internal Security Act of 1950. . . ." S. Res. 341, 91st Cong., 2d Sess., 116 Cong. Rec. 3419 (January 30, 1970). The authority encompassed discovering the "extent, nature and effect of subversive activities in

To: Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From the Author's Note

Circulated:

Recirculated: APR 29 1975

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1923

James O. Eastland et al.,
Petitioners,
v.
United States Servicemen's
Fund et al. } On Writ of Certiorari to the
United States Court of
Appeals for the District
of Columbia Circuit.

[April —, 1975]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether a federal court may enjoin the issuance by Congress of a subpoena *duces tecum* that directs a bank to produce the bank records of an organization which claims a First Amendment privilege status for those records on the ground that they are the equivalent of confidential membership lists. The Court of Appeals for the District of Columbia Circuit held that compliance with the subpoena "would invade the constitutional rights" of the organization, and that judicial relief is available to prevent implementation of the subpoena.

I

In early 1970 the Senate Subcommittee on Internal Security was given broad authority by the Senate to "make a complete and continuing study and investigation of . . . the administration, operation and enforcement of the Internal Security Act of 1950. . . ." S. Res. 341, 91st Cong., 2d Sess., 116 Cong. Rec. 3419 (January 30, 1970). The authority encompassed discovering the "extent, nature and effect of subversive activities in

Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
THE CHIEF JUSTICE

May 6, 1975

Re: 73-1923 - Eastland v. U. S. Servicemen's Fund

MEMORANDUM TO THE CONFERENCE:

Henry Putzel suggested to me that because the House and Senate cases are consolidated under one number in this Court some language clarifying the disposition should be added. I have made some changes in pp. 19-21, as reflected in the attached pages.

Regards,

Attachment

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 13, 1975

PERSONAL

Re: 73-1923 - Eastland v. United States Servicemen's Fund

Dear Lewis:

I agree wholeheartedly with your sentiments and am as offended as you at the protracted nature of this litigation but felt a Court opinion could not stress this too much without provoking a concurrence -- but not like yours. The purposes served by the Speech or Debate Clause -- especially when they relate to an ongoing legislative function -- clearly require speedy resolution of actions like this one. I am not sure, however, whether the respondents were entirely responsible for the delay. Petitioners, who had just been "burned" by Powell v. McCormack, it seems to me were in no great haste. Several times they agreed to extensions of time, and after the original expeditious hearings in both the District Court and the Court of Appeals everything seemed to settle down and, to my knowledge, petitioners did not press for expedited consideration of the matter.

In the opinion I have tried to remedy the delay problem to some extent. For example, on page 14 the opinion states:

"On this record the pleadings show that the actions of the Members and the Chief Counsel fall within the 'sphere of legitimate legislative activity.' " (Emphasis added)

The underlined phrase is for the benefit of the District Judge confronted by one of these actions. It is intended to remind District Judges that they may dismiss on the pleadings alone when a complaint shows on its face that no relief may be granted against those enjoying Speech or Debate protection.

It might be wise for me to add something, making it even clearer that expeditious treatment of cases like this one is essential. For instance, at the end of the first full paragraph on page 19 I could add a footnote to this effect:

A / Although the Speech or Debate Clause has never been read so broadly that legislators "are absolved from the duty of filing a motion to dismiss," Powell v. McCormack, supra, 395 U.S. 486, 505 n.25; see Tenney v. Brandhove, 341 U.S. 367, 376-77, the purposes which the Clause serves require that such motions be given the most expeditious treatment by District Courts because one branch of government is being asked to halt the functions of a coordinate branch. If there is a dismissal and an appeal, Courts of Appeals have a duty to see that the litigation is swiftly resolved. Delay ~~in~~ in this litigation has frustrated a valid Congressional inquiry.

For my part, I would see no need to hand even "negative bouquets" to the lawyers for the respondents. I'd give them no brickbats, but no brownie points!

Regards,

WRB

Mr. Justice Powell

I'll stand by to discuss further awaiting your reaction to my proposed footnote - so as to get it out to others. WRB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 15, 1975

Re: 73-1923 - Eastland v. United States Servicemen's Fund

MEMORANDUM TO THE CONFERENCE:

I have added the footnote on the attached page
to the opinion at page 19, after the words "investigative
authority" at the end of the first full paragraph.

Regards,

URB

17/

Although the Speech or Debate Clause has never been read so broadly that legislators "are absolved from the duty of filing a motion to dismiss," Powell v. McCormack, supra, 395 U.S. 486, 505 n. 25; see Tenney v. Brandhove, 341 U.S. 367, 376-77, the purposes which the Clause serves require that such motions be given the most expeditious treatment by District Courts because one branch of government is being asked to halt the functions of a coordinate branch. If there is a dismissal and an appeal, Courts of Appeals have a duty to see that the litigation is swiftly resolved. Enforcement of the Subcommittee's subpoena has been restrained since June 1970, nearly five years, while this litigation dragged through the courts. This protracted delay has frustrated a valid Congressional inquiry.



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 21, 1975

Re: 73-1923 - Eastland v. United States Servicemen's Fund

MEMORANDUM TO THE CONFERENCE:

A purely stylistic change is being made on page 20 so that the final sentence in the first full paragraph will read:

"In view of these problems, and because the House aspects of this case were not briefed or argued here, we conclude it would be unwise to attempt to decide any issues they might present that are not resolved in the Senate aspect of this case. Powell v. McCormack, 395 U.S. 486, 496 n. 8, 559 (STEWART, J., dissenting)."

The Headnote "lineup" prepared by Mr. Putzel reads:

"BURGER, C.J., delivered the opinion of the Court, in which BRENNAN, STEWART, WHITE, MARSHALL, BLACKMUN, POWELL, and REHNQUIST, JJ., joined. MARSHALL, J., filed a concurring opinion in which BRENNAN and STEWART, JJ., joined. DOUGLAS, J., filed a dissenting opinion."

Regards,



To: The Clerk of the Supreme Court
Mr. Justice Blackmun
Mr. Justice B. White
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

Circulation

S/16/75

1st DRAFT

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 73-1923

James O. Eastland et al.,
Petitioners, } On Writ of Certiorari to the
v. } United States Court of
United States Servicemen's } Appeals for the District
Fund et al. } of Columbia Circuit.

[May —, 1975]

MR. JUSTICE DOUGLAS, dissenting.

I would affirm the judgment below.

The basic issues in this case were canvassed by me in *Tenney v. Brandhove*, 341 U. S. 367, 381-383 (dissenting opinion), and by the Court in *Dombrowski v. Eastland*, 387 U. S. 82, in an opinion which I joined. Under our federal regime that delegates, by the Constitution and Acts of Congress, awesome powers to individuals, that power may not be used to deprive people of their First Amendment or other constitutional rights. It is my view that no official, no matter how high or majestic his or her office, who is within the reach of judicial process, may invoke immunity for his actions for which wrongdoers normally suffer. There may be few occasions when, on the merits, it would be appropriate to invoke such a remedy. But no regime of law that can rightfully claim that name may make trustees of these vast powers immune from actions brought by people who have been wronged by official action. See *Watkins v. United States*, 354 U. S. 178, 198.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

May 2, 1975

RE: No. 73-1923 Eastland v. U.S. Servicemen's Fund

Dear Thurgood:

Please join me in your concurring opinion in the
above.

Sincerely,



Mr. Justice Marshall

cc: The Conference

V
Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE POTTER STEWART

April 28, 1975

73-1923 - Eastland v. U. S. Servicemen's Fund

Dear Thurgood,

I should appreciate your adding my name
to your concurring opinion in this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

149-2
OC 7X

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 22, 1975

Re: No. 73-1923 - Eastland v. U.S. Servicemen's
Fund

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 19, 1975

Re: No. 73-1923 - Eastland v. U.S. Servicemen's
Fund

Dear Chief:

Your new footnote 17 is all right with me.

Sincerely,



The Chief Justice

Copies to Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

Circulated: APR 16 1974

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1923

James O. Eastland et al.,
Petitioners, } On Writ of Certiorari to the
v. } United States Court of
United States Servicemen's } Appeals for the District
Fund et al. } of Columbia Circuit.

[April —, 1975]

MR. JUSTICE MARSHALL, concurring.

I agree with the Court that Speech and Debate Clause protects the actions of the Senate petitioners in this case from judicial interference, and that the House cases should be reconsidered by the District Court. As our cases have consistently held, however, the Speech and Debate Clause protects legislators and their confidential aides from suit; it does not immunize congressional action from judicial review. I therefore join in the opinion of the Court except insofar as it may be read to suggest that a congressional subpoena is entirely immune from challenge by a party not in a position to assert his constitutional rights by refusing to comply with it.

¶

When the Senate Subcommittee on Internal Security subpoenaed the records of respondent's bank account, respondent brought this suit in the District of Columbia against the Members of the Subcommittee, its counsel, and the bank to declare invalid and restrain enforcement of the subpoena. Suit was brought in the District of Columbia because the Court of Appeals for the Second Circuit had held one week before in a suit against the same Subcommittee and its counsel that jurisdiction and

Wm. Douglas Apr 74

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

Circulated:

Recirculated: APR 23 1

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

1975

No. 73-1923

James O. Eastland et al., Petitioners,
v.
United States Servicemen's Fund et al. } On Writ of Certiorari to the
United States Court of Appeals for the District of Columbia Circuit.

[April —, 1975]

MR. JUSTICE MARSHALL, concurring.

I agree with the Court that Speech and Debate Clause protects the actions of the Senate petitioners in this case from judicial interference, and that the House cases should be reconsidered by the District Court. As our cases have consistently held, however, the Speech and Debate Clause protects legislators and their confidential aides from suit; it does not immunize congressional action from judicial review. I write today only to emphasize that the Speech and Debate Clause does not entirely immunize a congressional subpoena from challenge by a party not in a position to assert his constitutional rights by refusing to comply with it.

I

When the Senate Subcommittee on Internal Security subpoenaed the records of respondent's bank account, respondent brought this suit in the District of Columbia against the Members of the Subcommittee, its counsel, and the bank to declare invalid and restrain enforcement of the subpoena. Suit was brought in the District of Columbia because the Court of Appeals for the Second Circuit had held one week before in a suit against the same Subcommittee and its counsel that jurisdiction and

Wm Brewster

To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

From: Marshall, J.

Circulated:

Recirculated: APR 30 1975

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1928

James O. Eastland et al.,
 Petitioners,
 v.
 United States Servicemen's
 Fund et al.] On Writ of Certiorari to the
 United States Court of
 Appeals for the District
 of Columbia Circuit.

[April —, 1975]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE STEWART joins, concurring.

I agree with the Court that Speech and Debate Clause protects the actions of the Senate petitioners in this case from judicial interference, and that the House cases should be reconsidered by the District Court. As our cases have consistently held, however, the Speech and Debate Clause protects legislators and their confidential aides from suit; it does not immunize congressional action from judicial review. I write today only to emphasize that the Speech and Debate Clause does not entirely immunize a congressional subpoena from challenge by a party not in a position to assert his constitutional rights by refusing to comply with it.

I

When the Senate Subcommittee on Internal Security subpoenaed the records of respondent's bank account, respondent brought this suit in the District of Columbia against the Members of the Subcommittee, its counsel, and the bank to declare invalid and restrain enforcement of the subpoena. Suit was brought in the District of Columbia because the Court of Appeals for the Second Circuit had held one week before in a suit against the same Subcommittee and its counsel that jurisdiction and

Wm. Douglas
 Apr 1975

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1,4

From: Marshall, J.

Circulated: _____

Recirculated: MAY 20 1975

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1923

James O. Eastland et al.,
Petitioners,
v.
United States Servicemen's
Fund et al. On Writ of Certiorari to the
United States Court of
Appeals for the District
of Columbia Circuit.

[April —, 1975]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN and MR. JUSTICE STEWART join, concurring.

I agree with the Court that Speech and Debate Clause protects the actions of the Senate petitioners in this case from judicial interference, and that the House cases should be reconsidered by the District Court. As our cases have consistently held, however, the Speech and Debate Clause protects legislators and their confidential aides from suit; it does not immunize congressional action from judicial review. I write today only to emphasize that the Speech and Debate Clause does not entirely immunize a congressional subpoena from challenge by a party not in a position to assert his constitutional rights by refusing to comply with it.

I

When the Senate Subcommittee on Internal Security subpoenaed the records of respondent's bank account, respondent brought this suit in the District of Columbia against the Members of the Subcommittee, its counsel, and the bank to declare invalid and restrain enforcement of the subpoena. Suit was brought in the District of Columbia because the Court of Appeals for the Second Circuit had held one week before in a suit against the same Subcommittee and its counsel that jurisdiction and

W.M. - York 08/1985

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 25, 1975

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 15, 1975

No. 73-1923 Eastland v. United States

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

1fp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 25, 1975

Re: No. 73-1923 - Eastland v. U. S. Servicemen's Fund

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference



April 26, 1975

Re: No. 73-1923 - Eastland v. U. S. Servicemen's Fund

Dear Chief:

As you will note, I have joined you by separate letter. Your agreement with the following suggestions will not affect my join, but I thought that footnote 14 on page 9 answered a question that really wasn't here, and that I am not sure I would want to answer quite as unequivocally as the footnote appears to do. You will recall that the footnote presently states:

"The Court of Appeals correctly held that that the District Court properly entered in this action initially. As the Court of Appeals indicated, 488 F. 2d 1259-1260, there is a significant difference between a subpoena that seeks information directly from a party and one that seeks the same information from a third person. In the former case, of course, the party can resist and thereby test the subpoena. In the latter case, however, unless a court may inquire to determine whether a legitimate legislative purpose is present the third person may comply and render impossible all judicial inquiry."

As a matter of separation of powers, which was argued in this case but which your opinion very properly does not reach,



- 2 -

I am not at all sure that I think a District Court invariably has the authority to inquire into a claimed constitutional violation of a third person's rights by reason of a subpoena not directed to him, simply because if that court did not make the inquiry, there would be no judicial inquiry. I think in some cases the separation of powers would require us to hold that there very well may be no judicial inquiry. But we don't have to resolve that question here. If you could just change the footnote in these minor particulars, to make it a historical recitation of what that court held, rather than indicate our approval of it, I would be happier and I should thank you might, too:

"The Court of Appeals held that the District Court properly entertained this action initially. The Court of Appeals indicated, 488 F. 2d. 1259-1260, that it felt there is a significant difference between a subpoena that seeks information directly from a party and one that seeks information from a third person. In the former, the party can resist and thereby test the subpoena. In the latter case, however, unless a court may inquire to determine whether a legitimate legislative purpose is present, the third person may comply and render impossible all judicial inquiry."

Sincerely,

WHR

The Chief Justice