No. 19-715 and 19-760

IN THE

Supreme Court of the United States

DONALD J. TRUMP, *et al.*,

Petitioners,

v.

MAZARS USA, LLP, *et al.*,

Respondents.

DONALD J. TRUMP, *et al.*,

Petitioners,

v.

DEUTSCHE BANK AG, *et al.*,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE DC CIRCUIT AND SECOND CIRCUITS

BRIEF FOR *AMICUS CURIAE* CENTER FOR MEDIA AND DEMOCRACY AND CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON IN SUPPORT OF RESPONDENT COMMITTEES OF THE U.S. HOUSE OF REPRESENTATIVES

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STATEMENT OF INTEREST[1]

Amicus Center for Media and Democracy ("CMD") is, and continues to be, a nationally recognized watchdog that has been researching and exposing the undue influence of powerful special interests on our democracy. After 25 years of pulling back the curtain on numerous cases of corruption and policy manipulation by special interests, CMD has launched the Legal Impact Project to enhance its investigative work through strategic litigation.

The work of CMD -- and so many other public watchdogs -- depends on effective and appropriate statutorily required disclosure by those who serve in government. *Amici* firmly believe in, and advocate for, full and effective legislative authority to promulgate appropriate statutory disclosure requirements. Not enforcing the subpoenas as Petitioners request would greatly inhibit Congressional authority to write and consider appropriate disclosure legislation.

Amicus Citizens for Responsibility and Ethics in Washington ("CREW") is a nonpartisan, nonprofit corporation organized under section 501(c)(3) of the Internal Revenue Code. Through a combined approach of research, advocacy, public education, and litigation, CREW seeks to combat corrupting influences in government and protect citizens' right to be informed about the financial

1. This brief is filed under the blanket written consent of all parties. The letters of blanket consent are on file with this Court. No counsel for a party authored this brief in whole or in part, and no counsel or party funded its preparation or submission. No person other than the *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

considerations that may cause elected officials to betray the public trust. Among its principal activities, CREW reviews financial disclosures of government officials, including the President, and educates the public about possible conflicts of interest. CREW is also an active litigant seeking to enforce the duty to preserve and disseminate public records.

Accordingly, this brief is submitted on behalf of *amici* CMD and CREW in support of the Respondent Committees of the U.S. House of Representatives for enforcement of their subpoenas.

SUMMARY OF ARGUMENT

Amici submit this brief to focus on the crucial role that the subpoenas at bar play in the evaluation, writing and passage of apt disclosure legislation. There is no doubt that Congress is empowered to consider and act on disclosure legislation, as it has done for more than 50 years. This Court's authority establishes that the executive branch is not immune from the importance of transparency in the public interest. Given the Lead Petitioner's stark break with traditional disclosure by prior presidential candidates and presidents, Congress is well within its rights to re-examine the necessity of stricter disclosure laws. It cannot be gainsaid that access to the Petitioners' information is well within the purview of Congressional study to diagnose the current questions and develop appropriate remedial legislation for consideration by the Senate and the House of Representatives.

ARGUMENT

I. Disclosure requirements for public officials are standard and necessary legislative matters

Congressional power to legislate under Article I fully embraces the power to investigate and to employ compulsory process. *Watkins v. United States*, 354 U.S. 178, 187-188 (1957) (noting that the power "to conduct investigations is inherent in the legislative process."); *McGrain v. Daugherty*, 273 U.S. 135 (1927) ("[T]he power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function."). That investigative authority is indispensable to inform new legislation, to oversee administration of existing law, and to appropriate funds. *See Watkins*, 354 U.S. at 187. *U.S. v. Butler*, 297 U.S.1 (1936) (discussing Congress's power to appropriate funds). Accordingly, Congress' power to investigate sweeps equally broadly as its power to legislate: "It is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." *Barenblatt v. United States*, 360 U.S. 109, 111 (1959).

When undertaken pursuant to a valid lawmaking function, congressional inquiry -- even into a citizen's private affairs -- is restricted only where the Constitution confers competing authority on coordinate branches of government or where the Bill of Rights specifically protects an individual from government intrusion. *Quinn v. United States*, 349 U.S. 155, 161 (1955); *Watkins*, 354 U.S. at 198. This case implicates neither category of restrictions. The subpoenas here inquire into non-privileged financial information in the hands of private entities. And it makes

no difference that the information sought includes the private business affairs of a president—who has avowedly appeared in this litigation as a private citizen. Hence, this case turns solely on whether the congressional committees issued the subpoenas pursuant to a valid lawmaking purpose.

The subpoenas here fall squarely within the purview of Congress' lawmaking function—which does not present a difficult legal threshold for the legislature to meet. Indeed, this Court has accorded Congress significant deference because judicial inquiry into validity of lawmaking activities itself raises separation of powers concerns. *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 509 (1975) ("The wisdom of congressional approach or methodology is not open to judicial veto."). For example, the Court has wisely refused to question political motives when evaluating the efficacy of congressional subpoenas:

> In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed. Courts are not the place for such controversies. Self-discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses.

Tenney v. Brandhove, 341 U.S. 367, 378 (1951). The Court later emphasized that "motives alone would not vitiate an investigation . . . if [the] assembly's legislative purpose is being served." *Watkins*, 354 U.S. at 200. To avoid venturing into a political thicket, courts are cautioned to "not go beyond the narrow confines of determining that a [congressional] committee's inquiry may fairly be deemed within its province." *Tenney*, 341 U.S. at 378.

Consistent with this level of deference, courts have required only minimal indications from Congress that an investigation comports with legitimate lawmaking functions. In *McGrain*, this Court inferred legitimacy merely from the nature of the information sought, without an express avowal from Congress, remarking that "[a] n express avowal of the object [of the investigation] would have been better; but in view of the particular subject-matter was not indispensable." 273 U.S. at 178. The Court has looked for legitimacy in authorizing resolutions, remarks of committee members, the nature of the proceedings themselves, or in reference to proposed legislation. *Watkins*, 354 U.S. at 209. Lower courts have followed suit. *Barenblatt v. United States*, 252 F.2d 129, 134 (D.C. Cir. 1958) (considering statement of the committee counsel at the hearing, the first witness's testimony, the nature of the proceedings, and the nature of the questions.); *United States v. Fort*, 195 F.Supp. 588, 601 (D.C. Cir. 1970) (referring to committee chairman's opening statement). This Court has refused to approve the legitimacy of an investigation only where the enabling resolutions or other statements from Congress manifestly fail to justify an intrusive and unbounded committee inquiry. *Watkins,* 354 U.S. at 200-202; *U.S. v. Rumely*, 345 U.S. 41, 46 (1953). The Court has otherwise not articulated the particular quantum of information needed from Congress to justify an inquiry with compulsory process.

Where individual rights or constitutional privileges are not invoked, the Court should adhere to its decision in *McGrain* and require only that information sought be rationally related to a legitimate lawmaking purpose—regardless of whether Congress articulated that purpose in resolutions, statements or other sources. *See McGrain*,

273 U.S. at 177 ("Plainly the subject was one on which legislation could be had and would be materially aided by the information which the investigation was calculated to elicit."). Article I gives Congress the right to determine the rules under which it operates. A rational basis test would avoid the risk of courts wading in too deeply into congressional procedures and specificity with which it documents the reasons for pursuing a particular investigation. Instead, it would be more consistent with judicial review of congressional enactments generally. *See, e.g., F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 313–14 (1993) ("Where there are plausible reasons for Congress' action, our inquiry is at an end.") (internal quotation marks omitted).

Here, however, the Court need not decide the precise contours of the procedures to justify a congressional investigation. The committee record clearly identifies at least three subject areas in which it may legitimately pursue legislation or excise oversight: ethics-in-government; anti-money laundering; and foreign financial exploitation of U.S. officials. *See* Ethics in Government Act of 1978, Pub. L. No. 95-521, §§703, 705; *see also In re Sealed Case*, 932 F.3d 915 (D.C. Cir. 2019). That record is more than adequate to support the subpoenas at issue. Each of these topics are already the subject of proposed and existing legislation. The ability of Congress to oversee implementation of existing statutes is also inherent in its appropriation power. *Todd Garvey*, Congressional Subpoenas: Enforcing Executive Branch Compliance, at 2 (March 27, 2019).

Petitioners have made, and can make, no argument that Congress lacks authority to legislate in these subject areas, and do not invoke other constitutional protections.

A. Congress has passed numerous laws in furtherance of government transparency.

It is axiomatic that public oversight is an essential element of a well-functioning democracy. The public right to information regarding governmental affairs is particularly strong in this nation, where sovereignty rests with the people. *See, e.g.*, *The Federalist No. 46*, at 291 (James Madison) (Clinton Rossiter ed., 2003). For this reason, as the branch of government most directly representative of the people, Congress is empowered to enact legislation in furtherance of government transparency. To the extent Congress now seeks to gather information to determine the propriety of a law requiring more robust public disclosure (including, for example, tax returns for a president) and expanded enforcement remedies, such legislation is accordant with the system of law Congress has developed to facilitate an open government and upon which the public has come to rely.

In the modern era, there are myriad laws protecting and enforcing the public's right to accountability and transparency in government. The movement for transparency in government in the United States gained traction following World War II with the increased restriction of information by government departments and agencies. *See* Harold Relyea & Michael W. Kolakowski, CRS Report for Congress: Access to Government Information in the United States (2007), https://web.archive.org/web/20170301001844/http://www.dtic.mil/dtic/tr/fulltext/u2/a470219.pdf. Congress promulgated additional laws in the wake of the Watergate scandal during a time of public distrust in the government. Regardless of the circumstances prompting their

enactment, public disclosure laws have since become an essential exercise of Congressional power to further the interest of the public in a well-ordered government, and their requirements provide ongoing benefits to the public.[2]

In 1976, Congress passed the Government in the Sunshine Act (the "Sunshine Act"), Pub. L. No. 94-409, 90 Stat. 1241 (codified as 5 U.S.C. § 552b). The Act was passed in the wake of the Watergate scandal during a time when the public sought increased government transparency and accountability. *See, e.g.*, Thomas H. Tucker, *"Sunshine"-The Dubious New God*, 32 ADMIN. L. REV. 537, 538 (1980). The Act requires that all meetings of multi-member federal agencies be open to the public, unless discussion falls within one of ten narrowly defined exemptions. Congress's intent in passing the Sunshine Act was to "enhance citizen confidence in government, encourage higher quality work by government officials, stimulate well-informed public debate about government programs and policies, and promote cooperation between citizens and government." *Common Cause v. Nuclear Regulatory Comm'n*, 674 F.2d 921, 928 (D.C. Cir. 1982). All fifty states have some form of open meetings laws governing state

2. Indeed, while public financial disclosures are a staple of our democratic system, the idea that tax returns should be private is less enduring. *See, e.g.,* Act of July 1, 1862, ch. 119, §§ 15, 19, 12 Stat. 432, 437, 439 (repealed 1870) (requiring public disclosure of tax returns); Revenue Act of 1924, ch. 234, § 257, 43 Stat. 293 (repealed by Revenue Act of 1926, ch. 27, § 257, 44 Stat. 52) (requiring the disclosure of certain tax return information); *United States v. Dickey*, 268 U.S. 378, 386 (1925) (upholding the 1924 disclosure requirements and assuming that the legislature has "the power . . . to forbid or allow such publication, as in the judgment of that body the public interest may require.").

and local governing bodies. *See Open Government Guide*, RFCP.org, https://www.rcfp.org/open-government-guide/ (last visited Feb. 26, 2020) (collecting statutes).

President Lyndon B. Johnson signed the Freedom of Information Act (FOIA), Pub. L. No. 89-487, 80 Stat. 250 (codified as amended at 5 U.S.C. § 552), into law in July 1966. FOIA gives citizens the right to request information and records kept by federal government agencies. Agencies must disclose the requested records unless the records fall under an exception or an exemption. The Act contains only three exceptions and nine exemptions. As this Court has recognized, "[t]he basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *N.L.R.B. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). "Consistent with FOIA's goal of broad disclosure, its exemptions have been consistently given a narrow compass." *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 2 (2001).

A third example, the Ethics in Government Act of 1978, Pub. L. No. 95-521, 92 Stat. 1824 (codified as amended in scattered sections of 5 U.S.C.), hails from a similar vintage. Like the Sunshine Act and FOIA, the law was enacted to "preserve and promote the accountability and integrity of public officials." S. Rep. No. 95-170 at 1 (1977), *as reprinted in* 1977 U.S.C.C.A.N. 4216, 4217. In passing the Act, Congress sought to "increase public confidence in all three branches of the federal government, demonstrate the high level of integrity of the vast majority of government officials, deter conflicts of interest from arising, deter some persons who should not be entering

public service from doing so, and better enable the public to judge the performance of public officials." *Duplantier v. United States*, 606 F.2d 654, 668 (5th Cir. 1979) (citing S. Rep. No. 95-170 at 21–22 (1977), 1978 U.S.C.C.A.N. 4216, 4237–4238).

The Act requires high-level elected and appointed officials to disclose certain personal interests at various times, including upon entering public service, annually during such service, and upon departing their positions. For example, Title III of the Act requires judges to file annually with the Judicial Ethics Committee a personal financial report containing a full statement of assets, income and liabilities, and those of their spouses and dependent children. Pub. L. 95-521, Title III, 92 Stat. 1851–1861 §§ 301–309. As with all disclosures under the Act, these reports are public documents, available for inspection and reproduction. *Id.* §§ 303(b), 305(a), (b).

B. As existing legislation demonstrates, the public's interest in government transparency applies with equal, if not greater, force to the executive.

Congress' recognition of the importance of transparency in the executive branch is exemplified by the requirements of the Presidential Records Act of 1978 (PRA), 44 U.S.C. §§ 2201 *et seq.*. The PRA establishes public ownership and access to presidential records created during a president's term in office. While a president has discretion and control over his or her records while in office, all records are the property of the United States and must be furnished to the Archivist of the United States at the end of the president's term in office, where they are

subject to public disclosure under FOIA beginning five years after a president leaves office. 44 U.S.C. §2201(2). The disclosure scheme embodied in the PRA recognizes not only the public's interest in presidential transparency, but also the historical significance of such records.

The Ethics in Government Act also enables public oversight over some aspects of a president. Individuals that qualify as "presidential candidates" must file a Public Financial Disclosure Report. 5 U.S.C. app. § 101(c). Like other high-level government officials, candidates must include a brief description of any financial interest held by the filer, the filer's spouse, and dependent children, as well as these individuals' noninvestment and investment income. These disclosures increase the public's ability to evaluate integrity of the candidates and "bolster public confidence in the integrity of the presidential campaign and election process." U.S. Office of Gov't Ethics, *Legal Advisory To A Designated Agency Ethics Official Regarding Public Financial Disclosure Report Guidance For Presidential Candidates* 4 (2011), https://www.oge.gov/web/ oge.nsf/Legal%20Advisories/A2E172617AC08FA185257E96005FBEBD/$FILE/8c49965d6b5a4dc6b2e2c1a61d724dfa5.pdf.; *see also* Carroll Kilpatrick, Nixon Tells Editors, *'I'm Not a Crook,'* Wash. Post, Nov. 18, 1973, at A1 ("People have got to know whether or not their President is a crook. Well, I'm not a crook. I earned everything I've got.").

C. An act of Congress requiring more robust enforcement and disclosure of public officials' financial records would further the goal of transparency in Government.

Beyond the value to the electorate, Congress has a long history of responding to national debate and issues with new legislation. For instance, the Dodd-Frank Act came from the 2008 financial crisis. Randall Guynn, *The Financial panic of 2008 and Financial Regulatory Reform*, https://corpgov.law.harvard.edu/2010/11/20/the-financial-panic-of-2008-and-financial-regulatory-reform/. New regulations on how communities test drinking water for lead arose after the crisis in Flint. Paolo Zialcita, *EPA Proposes New Regulations For Lead In Drinking Water*, https://www.npr.org/2019/10/11/769047500/epa-proposes-new-regulations-for-lead-in-drinking-water. Likewise, Watergate led to multiple reforms and rules in an attempt to reassure the electorate and increase public confidence in government. Mark Stencel, *the Reforms*, https://www.washingtonpost.com/wp-srv/national/longterm/watergate/legacy.htm. Underlying the ability to make these legislative responses is the authority of Congress to investigate and "serve as the eyes and ears of the American public." https://www.senate.gov/artandhistory/history/ common/briefing/Investigations.htm. This power allows Congress to investigate issues before making legislative responses, and allows those responses to be fully informed and reasoned.

Congress now confronts a disclosure crisis like none other since Watergate. The Lead Petitioner is a closed book, stonewalling any effort at Congressional oversight, and persistently and vigorously shielding his financial

machinations from Congressional view. The House of Representatives is entirely within its constitutional and statutory mandate to peel back the curtain because of national security and other concerns. Just as with Watergate, a fresh look by Congress at disclosure laws is necessary.

For example, a federal tax-return disclosure law would fill gaps in the current disclosure regime and promote important government and public interests. At present, presidential candidates must disclose certain financial information. However, this information does not capture the full scope of a candidate's financial interests. The required disclosures capture only recent financial history; an individual planning to run for office could therefore alter his or her financial activities in the short-term to create an impression that is not reflective of the candidate's overall financial status.

Disclosure of tax returns also has several unique benefits not captured by the current financial disclosure laws. The disclosures may bolster tax payer morale and confidence by demonstrating that their elected leader also pays part of the price "for civilized society." *Compañía General de Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting) ("Taxes are what we pay for civilized society . . . ."). This information may also aid voters in evaluating whether tax reforms proposed by the President serve his or her personal interest, the general interest, or both. Indeed, President Trump's 2005 federal income tax returns revealed that he would have paid no federal income taxes that year but for the alternative minimum tax, which has since been narrowed during the Trump Administration.

See Patricia Cohen, A.M.T., With Few Defenders, is Newly Targeted in Trump Tax Plan, N.Y. Times (April 27, 2017), https://www.nytimes.com/2017/04/27/ business/economy/ trump-alternative-minimum-tax.html.

Tax returns may also help to uncover potential conflicts of interests, both foreign and domestic. As many in favor of a tax-return disclosure law have pointed out, tax returns may reveal the extent of a president's financial ties to foreign powers. *See* Norman Eisen & Richard W. Painter, What Trump's Tax Returns Could Tell Us About His Dealings with Russia, Politico Mag. (Oct. 31, 2016), http://www.politico.com/magazine/story/2016/10/donald-trump-taxes-russia-214405. The disclosure may also serve as a check on presidential influence over the IRS. *See* Daniel J. Hemel, *Can New York Publish President Trump's State Tax Returns*?, 127 Yale L.J. Forum 62, 68 (2017) (noting that the president appoints the Commissioner of the IRS and can remove him or her at will).

Nevertheless, the petitions argue that the subpoenas lack legitimacy because of the unusual circumstances in which the information sought involves the Lead Petitioner's personal financial affairs. This Court has held that a president stands in the shoes of any citizen when subjected to judicial inquiry and civil process. *Clinton v. Jones*, 520 U.S. 681, 705-06 (1997). It rejected the argument that accountability to another branch posed an insurmountable distraction to the executive branch. *Id.* at 702-03. In concluding that "it is settled law that the separation-of-powers doctrine does not bar every exercise of jurisdiction over the President of the United States," the Court highlighted instances throughout history in which the president was subjected to compulsory process.

Id. at 703-05. As Chief Justice Marshall remarked on the prosecution of Vice President Aaron Burr, "The propriety of introducing any paper into a case, as testimony, must depend on the character of the paper, not on the character of the person who holds it." *United States v. Burr*, 25 F. Cas. 30, 34 (C.C.Va. 1807). In *United States v. Nixon*, the Court approved a congressional subpoena seeking the Watergate tapes made in the oval office against a much more serious claim of immunity. 418 U.S. 683, 706 (1974) (explaining, "neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified presidential privilege of immunity from judicial process under all circumstances"). Here, the President's involvement hardly delegitimizes the inquiry—it makes the inquiry even more relevant to Congressional legislation and oversight because of the potential for influence that money involved in private affairs can influence public conduct.

II. Current Events Make the Subpoenas Timely and Important

When the Lead Petitioner became president, he became the first president since Richard Nixon to not make his tax returns, or even summaries of his returns, public. Kevin Kruse, *All the Presidents' Tax Returns*, https://www.esquire.com/news-politics/a54383/all-the-presidents-taxes/._This includes many candidates, for example Mitt Romney, who had initially balked at making their returns public but later relented. *Id.* In 2016, all the major candidates for the office of President released at least some returns. *Id.* Further, since President Nixon each president disclosed tax returns for each year they were in office until the Lead Petitioner. *Id.*

As we reach a new election, this historical precedent is becoming more important to ensure candidates cannot hide their finances, if not from the public, then from Congress. The issue is only exacerbated by the Lead Petitioner's refusal to use a blind trust. Jennifer Wang, *Why Trump Won't Use a Blind Trust And What His Predecessors Did With Their Assets*, https://www.forbes.com/sites/jenniferwang/2016/11/15/why-trump-wont-use-a-blind-trust-and-what-his-predecessors-did-with-their-assets/#275aa28c29c0. This refusal goes in contrast to bi-partisan precedent mostly recently followed by Bill Clinton and George W. Bush. *Id.*

Disclosure to Congress cannot be said to harm or diminish a candidate, or a president, as 50 years of precedent has shown candidates winning and governing while disclosing tax returns. Historically, public disclosure strengthened governance through furthering public debate and allowing the electorate to be reassured about the honesty of claims made by their President or a candidate. When there were questions regarding President Nixon's finances, his disclosure settled those. It enhanced the public view of President Reagan as fiscally responsible, the view of President Clinton as the lowest paid governor, and later confirmed a loss on the Whitewater land deal to quell suspicion. Disclosure of President Obama's returns also disclosed charitable contributions to a church that helped public debate about Jeremiah Wright.

The subpoenaed information directly bears on Congress's inquiries into the adequacy of existing disclosure laws.

For example, the *Mazars* subpoena (issued by the House Oversight Committee) is directly relevant to Congress's inquiry into whether reforms are necessary to address deficiencies in the existing laws' enforcement or implementation. The Government Office of Ethics has already identified one inaccuracy in Lead Petitioner's financial disclosures, and as the D.C. Circuit correctly concluded, Petitioners' accounting records and underlying source documents for calendar years 2014 through 2018 are "highly relevant" to the Oversight Committee's inquiry into whether, and to what extent, there are others. *Trump v. Mazars*, 940 F.3d 710, 740 (2nd Cir. 2019). Indeed, Petitioners did not even *raise* a relevance objection to this subset of documents. *Id.* at 741. Also relevant to that inquiry are Petitioners' records for calendar years 2011 through 2013, which will paint a fuller picture of the scope of any later misrepresentations, and the related communications and agreements that will enable Congress to interpret the foregoing documents. *See Id.* at 741-42. It follows that this information will inform Congress's judgment in deciding whether legislation is needed to strengthen the Ethics in Government Act's enforcement mechanisms, including by making the director of the Office of Government Ethics removable only for cause, or by enhancing penalties for noncompliance.

The *Mazars* subpoena is also relevant to Congress's inquiry into potential undisclosed conflicts of interest, and by extension, whether Congress should amend the Ethics in Government Act to broaden required disclosures. As discussed above, the Ethics in Government Act uses disclosure as a mechanism to regulate potential conflicts between a president's financial interests

and public duties.[3] But even assuming that Lead Petitioner's required financial disclosures were completely accurate, his financial holdings are such that potential conflicts of interest could remain undisclosed. Lead Petitioner's complicated financial portfolio, his decision to maintain ties to numerous closely held business ventures, and his failure to voluntarily release the sorts of tax-return information that past presidents and presidential hopefuls have routinely disclosed for the past four decades, have raised significant questions about the adequacy of existing disclosure laws.

Because the subpoenas will reveal whether Lead Petitioner has conflicts of interest that existing laws do not require him to disclose, the subpoenaed information will inform Congress in, to borrow the D.C. Circuit's words, deciding "whether the Ethics in Government Act needs an update." *Mazars,* 940 F.3d at 741. Congress has already started considering legislation aimed at doing exactly that. For example, while current law requires a president to disclose the value of an interest in a business, it does *not* require the president to disclose the business's assets and liabilities. 5 U.S.C. App. 4 § 102(a)(3), (d)(2). Requiring a president to disclose those assets and liabilities could reveal debts or favorable deals that Congress determines should be disclosed at least to government ethics officials.

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3. Indeed, as the founders recognized, although the people serve as the primary check on government, additional regulations are needed to ensure that government officials do not elevate their own individual interests above the public's: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions." *Federalist 51*, 1788 WL 465, 1 (Hamilton or Madison).

Therefore, H.R. 1 would require presidents "to list on their financial disclosures the liabilities and assets of any 'corporation, company, firm, partnership, or other business enterprise in which' they or their immediate family have 'a significant financial interest.'" H.R. 1, 116th Cong. § 8012 (2019). Moreover, H.R. 1 would also require presidential candidates to disclose ten years of tax returns, H.R. 1 § 10001(b)(1)(A), a concept for which there is bipartisan support. *See* H.R. 1612, 116th Cong. § 9001(b)(1)(A) (2019) (bill introduced by minority House Member requiring presidential candidates and sitting presidents to disclose ten years of tax returns).

But without a fuller picture of Lead Petitioner's financial interests and liabilities, Congress cannot properly assess the nature and scope of Lead Petitioner's potential conflicts of interest. A corollary of this is that without Lead Petitioners' information, Congress cannot properly evaluate what if any remedial legislation is needed to address these potential conflicts. Indeed, as this Court has long recognized, "'(a) legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change.'" *Eastland*, 421 U.S. at 504 (quoting *McGrain*, 273 U.S. at 175 (1927); also citing *Anderson v. Dunn*, 6 Wheat. 204, 5 L.Ed. 242 (1821); *United States v. Rumely*, 345 U.S. at 46 (1953)). So while *Amici* agree with Respondents that Committees need not make a greater showing than mere relevance, in this case, Congress does in fact *need* Petitioners' information to understand the ethics issues that may arise when a president's or presidential candidate's finances are as far-flung and complex as Lead Petitioner's. Hence, the subpoenas will not only inform Congress's judgment in deciding whether legislation is needed to address Lead Petitioner's potential

conflicts, but also guide Congress's decision making in crafting any such legislation so that it is appropriately tailored to resolving those concerns.

CONCLUSION

Failure to enforce the House subpoenas would thus hamstring Congress's ability to examine whether additional disclosure statutes are appropriate, and what disclosure should be required. Failure to enforce would be the authority for years, indeed for generations, to placing conduct of the Chief Executive out of the reach of Congress's disclosure statutes. *Amici* believe that would put us on a slippery slope, putting our very democracy at risk.

Dated: March 4, 2020

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