No. _____

In the Supreme Court of the United States

DONALD J. TRUMP; DONALD J. TRUMP REVOCABLE TRUST; DJT HOLDINGS LLC; DJT HOLDINGS MANAGING MEMBER, LLC; DTTM OPERATIONS LLC; DTTM OPERATIONS MANAGING MEMBER CORP.; LFB ACQUISITION LLC; LFB ACQUISITION MEMBER CORP.; LAMINGTON FARM CLUB, LLC,

Applicants,

v.

COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES; UNITED STATES DEPARTMENT OF THE TREASURY; INTERNAL REVENUE SERVICE; CHARLES PAUL RETTIG, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE INTERNAL REVENUE SERVICE; JANET L. YELLEN, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF THE TREASURY,

Respondents.

ON APPLICATION FOR STAY
TO THE U.S. COURT OF APPEALS, D.C. CIRCUIT

APPENDIX TO EMERGENCY APPLICATION FOR STAY

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APPENDIX CONTENTS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued March 24, 2022 Decided August 9, 2022

No. 21-5289

COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES,
APPELLEE

v.

UNITED STATES DEPARTMENT OF THE TREASURY, ET AL.,
APPELLEES

DONALD J. TRUMP, ET AL.,
APPELLANTS

Appeal from the United States District Court
for the District of Columbia
(No. 1:19-cv-01974)

Cameron T. Norris argued the cause for appellants. With him on the briefs was *William S. Consovoy*.

Douglas N. Letter, General Counsel, U.S. House of Representatives, argued the cause for appellee Committee on Ways and Means, United States House of Representatives.

With him on the brief were *Todd B. Tatelman*, Principal Deputy General Counsel, *Stacie M. Fahsel*, Associate General Counsel, *Eric R. Columbus* and *Michelle S. Kallen,* Special Litigation Counsel, *Seth P. Waxman, Kelly P. Dunbar, David M. Lehn, Andres C. Salinas, Susan M. Pelletier*, and *Katherine V. Kelsh*.

Gerard Sinzdak, Attorney, U.S. Department of Justice, argued the cause for Executive Branch appellees. With him on the brief were *Sarah E. Harrington*, Deputy Assistant Attorney General, and *Michael S. Raab*, Attorney. *Mark R. Freeman*, Attorney, entered an appearance.

Elizabeth B. Wydra and *Brianne J. Gorod* were on the brief for *amicus curiae* Constitutional Accountability Center in support of appellees.

Before: HENDERSON and WILKINS, *Circuit Judges*, and SENTELLE, *Senior Circuit Judge*.

Opinion for the Court filed by *Senior Circuit Judge* SENTELLE.

Opinion concurring in part and concurring in the judgment filed by *Circuit Judge* HENDERSON.

SENTELLE, *Senior Circuit Judge*: The Chairman of the United States House of Representatives Committee on Ways and Means filed a statutory request for documents from the Department of the Treasury related to then-President Donald J. Trump and related entities. Treasury initially objected to the request, and the Committee filed this lawsuit. After a change of administrations, Treasury acquiesced, stating that it intended to comply with the request. In the meantime, the Trump Parties intervened in the action. The district court ruled in favor of the

Committee. Intervenors appeal. For the reasons set forth below, we affirm.

I. Background

As a general rule, Title 26, Section 6103 of the United States Code makes tax returns and return information confidential unless their release is authorized by an exception enumerated in that same section. 26 U.S.C. § 6103(a). Section 6103 includes a number of exceptions to the general rule of confidentiality but only one is at issue here. Section 6103(f)(1) provides that

> [u]pon written request from the chairman of the Committee on Ways and Means of the House of Representatives . . . the Secretary shall furnish such committee with any return or return information specified in such request . . . .

26 U.S.C. § 6103(f)(1). At bottom, this case simmers down to the constitutionality and application of § 6103(f)(1).

Operating separately from § 6103(f)(1), IRS regulations give the President's tax returns special consideration. While IRS audits are often random, the IRS has required the audit of the sitting President's tax returns since 1977. This Presidential Audit Program is a creature of IRS regulations and is not required or governed by statute. *See Internal Rev. Man.* § 3.28.3.5.3.

On April 3, 2019, Representative Richard Neal, Chairman of the Committee on Ways and Means ("the Chairman") invoked § 6103(f)(1) in a writing to the Commissioner of Internal Revenue ("the 2019 Request"). In the Request, the

Chairman requested the federal income tax returns of then-President Donald J. Trump as well as Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, DTTM Operations LLC, DTTM Operations Managing Member Corp., LFB Acquisition Member Corp., LFB Acquisition LLC, and Lamington Farm Club, LLC doing business as Trump National Golf Club—Bedminster (collectively "Appellants" or "the Trump Parties"). In his letter, Chairman Neal stated that the Committee was "considering legislative proposals and conducting oversight related to our Federal tax laws, including, but not limited to, the extent to which the IRS audits and enforces the Federal tax laws against a President." JA 46.

On May 6, 2019, the Department of the Treasury responded that it did not intend to comply with the 2019 Request because it was not supported by a legitimate legislative purpose. This position was supported by an Office of Legal Counsel opinion issued on June 13, 2019, which concluded that the Chairman's stated reasons for requesting the tax information were pretextual.

In receipt of Treasury's denial, the Committee filed suit against the Internal Revenue Service and its Commissioner and the Department of the Treasury and its Secretary (collectively "Treasury") to force compliance with the 2019 Request. The Trump Parties intervened in the case soon after.

While the case was pending in the district court, Joseph R. Biden was elected as President of the United States. He was inaugurated on January 20, 2021.

In June 2021, the Chairman again wrote to the Secretary of the Treasury and Commissioner of the Internal Revenue Service. Invoking § 6103(f)(1), the Chairman requested the

same information regarding the Trump Parties ("the 2021 Request"). However, in this Request, the Chairman provided more detail as to why the Committee wanted this information. Generally, Chairman Neal stated that the Committee continued "to consider and prioritize legislation on equitable tax administration, including legislation on the President's tax compliance, and public accountability" and legislation related to the IRS's mandatory audit program of the sitting President's returns.

Upon receipt of the 2021 Request, Treasury again consulted the Office of Legal Counsel. In July 2021, the Office released a second opinion, this time concluding that the 2021 Request was valid, and therefore that Treasury had no choice but to comply with it per the mandatory language of § 6103(f)(1).

After the second Office of Legal Counsel opinion was issued, Treasury informed the district court and the Trump Parties that it intended to comply with the 2021 Request and provide the Committee with the requested materials. The Committee then voluntarily dismissed the Complaint it had filed against Treasury. Upon learning that Treasury intended to comply with the 2021 Request, the Trump Parties, still intervenors at that time, filed a crossclaim against the Department of the Treasury and its Secretary as well as the Internal Revenue Service and its Commissioner. In addition, the Trump Parties filed a counterclaim against the Committee. These claims allege that the 2019 and 2021 Requests were unlawful and therefore Treasury should not comply with them.

Against both the Committee and Treasury, the Trump Parties asserted that the Request lacks a legitimate legislative purpose and violates the separation of powers. Against Treasury, the Trump Parties alleged that § 6103(f)(1) is facially

unconstitutional and that compliance with the Request would be a violation of the First Amendment.

Across eight claims, the Trump Parties alleged that (1) the Request lacks a valid legislative purpose, (2) the Request violates the separation of powers, (3) Section 6103(f)(1) is facially unconstitutional, (4) the Treasury's change of position was motivated by retaliation and therefore violates the First Amendment, and (5) the Request violated the Trump Parties' Due Process rights. Both Treasury and the Committee filed motions to dismiss the cross and counterclaims for failure to state a claim.

In a thorough and well-reasoned memorandum opinion, the district court granted the motions to dismiss. *Committee on Ways and Means v. U.S. Dep't of the Treasury*, --- F. Supp. 3d. ---, 2021 WL 5906031 (D.D.C. Dec. 14, 2021). First, the district court held that the 2021 Request was supported by the valid legislative purpose of the Committee's study of the Presidential Audit Program. *Id.* at *7. Per the district court, Congress could seek these records to inform legislation regulating "how many staff the IRS may assign to the audit of a sitting President" or legislation to ensure funding to the Presidential Audit Program. *Id.* at *7.

The district court then, after debating the pros and cons of various tests, applied *Nixon v. Administrator of General Services* ("*Nixon v. GSA*") and determined that the Chairman's Request did not violate the separation of powers. *Id.* at *18, *21.

The district court went on to examine whether § 6103(f)(1) is facially unconstitutional by asking if the Trump Parties had shown that there was no set of circumstances under which the law would be valid. It determined that the Trump Parties had

failed to do so. *Id.* at *20. It next found that Treasury's intent to comply with the 2021 Request is not out of retaliation against the Trump Parties, and therefore is not a violation of the First Amendment, because Treasury is required by statute to comply with a valid request. *Id.* at *21. Finally, the district court held that there was no violation of the Trump Parties' Due Process Rights. *Id.* at *22.

The Trump Parties timely appealed the district court's granting of the motions to dismiss.

II. Analysis

There are four issues before us on appeal: (1) Whether the Chairman's Request is supported by a legitimate legislative purpose, (2) whether the Chairman's Request violates the separation of powers, (3) whether § 6103(f)(1) is facially unconstitutional, and (4) whether Treasury's compliance with the Request would violate the First Amendment. We address each in turn.

We review the district court's granting of the motions to dismiss *de novo*. *Cierco v. Mnuchin*, 857 F.3d 407, 414 (D.C. Cir. 2017). To survive a motion to dismiss, the complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In evaluating the sufficiency of the complaint, we accept the complaint's factual allegations as true. *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1113 (D.C. Cir. 2000). But "we are not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

A.

The Trump Parties contend that the Chairman's Request exceeds Congress's investigative powers. It does not.

The case law concerning Congressional requests for information is confined almost entirely to information sought via a Congressional subpoena. *See generally Trump v. Mazars USA, LLP*, 140 S. Ct. 2019 (2020) (House committee subpoenas to private financial institutions for financial information); *Eastland v. United States Servicemen's Fund*, 421 U.S. 491 (1975) (Senate subcommittee subpoena to a bank for financial information); *Quinn v. United States*, 349 U.S. 155 (1955) (House subcommittee subpoena to individual to answer questions); *McGrain v. Daugherty*, 273 U.S. 135 (1927) (Senate subcommittee subpoena to individual to answer questions). Those cases are not directly on point in this case where the vehicle for requesting information was created by a statute passed by Congress and signed into law by the Executive. However, we see no reason that the case law shaping when and how Congress can request certain information via subpoena should not inform our analysis of Congress's ability to do so via statute.

Congress's authority to "secure needed information" is not enumerated in the Constitution. *McGrain*, 273 U.S. at 161. Regardless, it has long been held that the "power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function." *Id.* at 174. This power is broad and indispensable, but it is not without limits. *Mazars*, 140 S. Ct. at 2031.

A Congressional request for information "is valid only if it is 'related to, and in furtherance of, a legitimate task of Congress." *Mazars*, 140 S. Ct. at 2031 (quoting *Watkins v.*

United States, 354 U.S. 178, 187 (1957)). Generally, the request must "concern[] a subject on which 'legislation could be had.'" *Eastland*, 421 U.S. at 506 (quoting *McGrain*, 273 U.S. at 177). Congress does not have the "general power to inquire into private affairs and compel disclosures." *McGrain*, 273 U.S. at 173 (internal quotation marks omitted). "[T]here is no congressional power to expose for the sake of exposure." *Watkins*, 354 U.S. at 200.

The Trump Parties contend that the Chairman's Request is an unconstitutional exercise of Congress's investigative powers for two reasons: because the Request is motivated by the improper purpose of exposing the Trump Parties' private financial information and because the Request does not identify a valid legislative purpose.

"There is no general authority to expose the private affairs of individuals without justification in terms of the functions of Congress." *Watkins*, 354 U.S. at 187. "No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible." *Id.* Similarly, Congress cannot exercise its investigative powers for the purpose of law enforcement because the power of law enforcement is vested in the executive and judicial branches. *Quinn*, 349 U.S. at 161. But that an investigation "might possibly disclose crime or wrongdoing" does not invalidate an otherwise proper investigation. *McGrain*, 273 U.S. 179–80.

The Trump Parties claim that the Chairman's Request is mere pretext for an unconstitutional ulterior motive. In a deluge of citations to statements of individual committee members, statements made during Committee debate, reports published by Representative Neal, statements from the Speaker of the

House of Representatives, an op-ed, interview statements, social media posts, and statements of Representatives who are not members of the Committee, the Trump Parties assert that the true purpose behind the Chairman's Request is to expose the Trump Parties' tax returns to the public and to uncover evidence of criminal conduct. However, they are looking for evidence of improper purpose in the wrong place.

"[I]n determining the legitimacy of a congressional act we do not look to the motives alleged to have prompted it." *Eastland*, 421 U.S. at 508. The Speech or Debate Clause, U.S. Const. art. 1, § 6, cl. 1, protects against inquiry into the motives behind the regular course of the legislative process, *Eastland*, 421 U.S. at 508. It is not our function to "test[] the motives of committee members for this purpose." *Watkins*, 354 U.S. at 200. "Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served." *Id.*

Where, then, do we look for the purpose of the 2021 Request? For committee subpoenas, we have looked to resolutions from the Committee. Here, where the Chair of the Committee is authorized by statute to request the information on his own without a committee vote, we look to the Chairman's written requests.

The Trump Parties insist that we can look only to the 2019 Request for a valid legislative purpose because they have "plausibly alleged . . . that the 2019 [R]equest was narrowed in 2021, not reissued." Appellant Br. at 30. But Appellants cannot constrain what documents we consider through allegations in their Complaint. The Chairman's ability to request tax returns and return information is governed by § 6103(f)(1). Nothing in the statute constrains how many requests the Chairman can submit or with what frequency he can submit them. The

Chairman was free to supplement or supersede the 2019 Request with the 2021 Request, and that is where we will look for whether the Request is supported by a legitimate legislative purpose.

The 2021 Request identifies two potential subjects on which Congress could legislate and therefore investigate. First, the administration of the tax laws as they apply to a sitting President. Second, a sitting President's conflicts of interest. Because we conclude that the requested returns and return information could inform tax legislation concerning the President, we do not reach the question of whether it could inform legislation concerning a President's conflicts of interest.

Throughout the 2021 Request, the Chairman makes it clear that the Committee is concerned about "the extent to which the IRS audits and enforces the Federal tax laws against a President." JA 87. Specifically, the Committee requires information concerning the Presidential Audit Program.

In 1974, the public learned that the IRS had failed to properly examine President Nixon's tax returns. JA 87–88. This led to the IRS implementing the Presidential Audit Program. This program subjects every sitting President's tax returns to mandatory review by the IRS. *Internal Rev. Man.* 4.8.4.2. To this date, this program is solely regulated by IRS regulations and has not been codified in statute.

According to the 2021 Request, "[t]he Committee has reason to believe that the mandatory audit program is not advancing the purpose for which it was created, which may require Congress to act through legislation." JA 88. The Committee wants "assurance that sufficient safeguards exist to shield a revenue agent from undue influence at the hands of a President trying to secure a favorable audit." *Id.* The

Committee "seeks to explore legislation intended to ensure that IRS employees in any way involved in a President's audit are protected in the course of their work and do not feel intimidated because of the taxpayer's identity." *Id.* The Committee also intends to explore "whether agents have had access to the necessary resources to undertake an exhaustive review of a complex taxpayer on an annual basis." *Id.* at 89.

The Request includes an explanation as to why the Trump Parties' tax returns and return information are particularly relevant to their inquiry. According to the Chair, President Trump was a unique taxpayer as a President because his returns were "inordinately large and complex." JA 90 (quoting Letter from Sheri A. Dillon and William F. Nelson to Mr. Donald J. Trump, *Re: Status of U.S. federal income tax returns* (March 7, 2016)). The Committee is concerned that the regulations governing the Presidential Audit Program "do not account for such substantial business activities." JA 91. The Committee also cites to then-candidate Trump's and then-President Trump's public statements directed toward the IRS that the audit of his returns was "extremely unfair." JA 91–92.

The 2021 Request articulates a clear legislative purpose on a matter which legislation could be had: the Presidential Audit Program. The Trump parties insist that any legislation codifying the requirement that all Presidents undergo a mandatory audit would violate the separation of powers. But codifying the requirement of the audit is not the only legislation contemplated by the Committee in the 2021 Request. The Chairman states that the Committee is exploring the need for legislation that would provide further protection to the IRS employees conducting the audit and legislation ensuring that they have sufficient resources to conduct the audit even when the returns in question are "inordinately large and complex." The Chairman then goes on to explain why these specific

returns and return information are particularly relevant to this inquiry. This is all we can ask.

The Chairman has identified a legitimate legislative purpose that it requires information to accomplish. At this stage, it is not our place to delve deeper than this. The mere fact that individual members of Congress may have political motivations as well as legislative ones is of no moment. Indeed, it is likely rare that an individual member of Congress would work for a legislative purpose without considering the political implications.

The statements of individual Committee members and members who are not part of the Committee provided by the Trump Parties do not change this. The courts do not probe the motives of individual legislators. These motives are explicitly protected by the Speech or Debate Clause.

B.

The Supreme Court has made it clear that when a Congressional request for information concerns a President and his personal papers, we must also examine whether that request violates separation of powers principles.

A Congressional request for a President's information raises "significant separation of powers issues." *Mazars*, 140 S. Ct. at 2033. When Congress has requested a President's information, we "must perform a careful analysis that takes adequate account of the separation of powers principles at stake, including both the significant legislative interests of Congress and the 'unique position' of the President." *Id.* at 2035 (quoting *Clinton v. Jones*, 520 U.S. 681, 698 (1997)).

While it is clear from *Mazars* that we must consider how this Request implicates the separation of powers, that Donald Trump is a former President rather than a sitting President complicates the analysis. How we should evaluate a Congressional request for the information of a former President is less clear.

The parties disagree over which test should be applied in this case. The Executive Branch parties and the Committee ask that we apply the separation of powers test from *Nixon v. GSA*. 433 U.S. 425 (1977). The Trump Parties ask us to apply the test laid out in *Mazars*. 140 S. Ct. 2019 (2020).

This Court recently addressed this question in the most recent iteration of the *Mazars* litigation, *Trump v. Mazars USA, LLP*, --- F.4th ---, No. 21-5176, 2022 WL 2586480 (D.C. Cir. July 8, 2022) ("*Mazars V*"). In *Mazars V*, the panel was similarly confronted with a Congressional request for the personal information of a former President. Despite familiar arguments from the parties over which test should apply, the panel found no reason "to abandon the Supreme Court's *Mazars* test in the *Mazars* case itself." *Mazars V*, 2022 WL 2586480 at *8.

Therefore, it is likely law of the circuit that a Congressional request for a sitting President's personal information is evaluated under the heightened *Mazars* standard regardless of whether the President in question remains in office. *See id.* However, because of the possibility of further appellate review in both this case and *Mazars* and because of distinctions, likely without a difference, between the case before us and *Mazars*, we hold at the outset that the Chairman's request in this case passes muster under all suggested variations of the separation of powers analysis. We walk through each in turn.

1. *Nixon v. GSA*

The Committee insists that the proper test for determining whether the Request violates the separation of powers was laid out by the Court in *Nixon v. GSA*. In that case, former President Nixon brought a challenge to the Presidential Recordings and Materials Preservation Act ("the PRMPA"). The PRMPA was passed by Congress in reaction to the Watergate scandal. *Nixon v. GSA*, 433 U.S. at 430–433. The Act required the Administrator of the General Services Administration to acquire and store certain Nixon administration records. *Id.* at 434. Former President Nixon challenged the PRMPA as a violation of the separation of powers.

In *Nixon v. GSA*, the Court held that in determining whether Congress has "disrupt[ed] the proper balance between the coordinate branches, the proper inquiry focuses on the extent to which it prevents the Executive Branch from accomplishing its constitutionally assigned functions." *Nixon v. GSA*, 433 U.S. at 443 (citing *United States v. Nixon*, 418 U.S. 683, 711–12 (1974)). "Only where the potential for disruption is present must we then determine whether that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress." *Id.*

In applying this test to the PRMPA, the Court held that "nothing contained in the Act render[ed] it unduly disruptive of the Executive Branch. . . ." *Id.* at 445. In particular, the Court noted that the PRMPA was minimally intrusive because the Executive Branch itself retained custody of the disputed materials, and there was "abundant statutory precedent" requiring disclosure of certain Executive Branch records. *Id.*

Applying *Nixon v. GSA* to the case before us, we must first ask if the Chairman's Request has created any potential disruption of the "Executive Branch from accomplishing its constitutionally assigned functions." *Nixon v. GSA*, 433 U.S. at 443. As noted by the district court, the only alleged burden to the Executive Branch is that Congress could use § 6103(f)(1) requests of a former President in an effort to influence a sitting President's conduct while in office. *Committee on Ways and Means v. U.S. Dep't of the Treasury*, --- F. Supp. 3d. ---, 2021 WL 5906031, at *17 (D.D.C. Dec. 14, 2021). Because this does represent a "potential for disruption," we turn to "whether that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress." *Nixon v. GSA*, 433 U.S. at 443.

This potential disruption, while extant, is minimal. For this disruption to occur, Congress would need to make a request under § 6103(f)(1) for the returns of a former President, and then in the traditional give-and-take between the Legislature and the Executive, threaten to do the same to the then-sitting President when he is no longer in office. While this is certainly possible, sitting Presidents, many of whom voluntarily release tax returns and return information, may view this as no burden at all. Therefore, the need demonstrated by Congress to justify that potential disruption of the Executive Branch does not need to be overwhelming.

We have already determined that the information requested by the Chairman concerns a subject on which legislation could be had: the efficacy of the Presidential Audit Program. This inherently means that the Chairman is acting within the "constitutional authority of Congress." *Nixon v. GSA*, 433 U.S. at 443. As for whether the "need" to legislate on this issue is overriding of the burden imposed on the Executive Branch, the Chairman made clear in his letter that the tax

returns and return information of the Trump Parties are unique among former Presidents, JA 90–91, and learning about how the audit of these complex returns proceeded is necessary to learn whether the Audit Program is sufficiently staffed and resourced to handle such complex information. In this case, the need for the Trump Parties' information to inform potential legislation overrides the burden to the Executive Branch largely because that burden is so tenuous. Were *Nixon v. GSA* the appropriate test to apply in this situation, the Trump Parties have failed to demonstrate a burden that would outweigh the Committee's need for the requested information.

2. *Mazars*

The Trump Parties insist that we should apply the test developed by the Court in *Mazars*. 140 S. Ct. 2019. In *Mazars*, then-President Trump petitioned the courts to enjoin his accounting firm from complying with House-issued subpoenas. 140 S. Ct. 2027–28. The Court found that existing frameworks for evaluating Congressional subpoenas were insufficient to account for both the "significant legislative interests of Congress" and "the unique position of the President." *Id.* at 2035 (quoting *Clinton*, 520 U.S. at 698). The Court produced four factors that a court must consider when a Congressional request implicates the President's personal information:

> 1. "Whether the asserted legislative purpose warrants the significant step of involving the President and his papers[;]"
> 2. Whether the subpoena is "no broader than necessary to support Congress's legislative objective[;]"

> 3. Whether Congress has offered "detailed and substantial evidence" to show the subpoena furthers a valid legislative purpose; and
> 4. Whether the subpoena burdens the President as Chief Executive.

Id. at 2035–36. Because the Court of Appeals had not properly considered the House's request for the President's personal documents as an interbranch dispute, the Supreme Court remanded for reconsideration under this framework.

On remand, the district court was ordered to apply the *Mazars* four-part test, but a significant event prevented a simple application of facts to law. President Trump was no longer the sitting President, and the *Mazars* test was created with a sitting President in mind. Recognizing this, the district court created a "*Mazars* lite" test, "that is, an examination of the *Mazars* factors cognizant of the fact that this case now involves a subpoena directed at a former President." *Trump v. Mazars USA LLP*, 560 F. Supp. 3d 47, 65 (D.D.C. 2021) ("*Mazars IV*"). Under *Mazars* lite, the analysis of each *Mazars* factor is somewhat less rigorous because the request at issue concerns a former President rather than a sitting President. *Mazars IV*, 560 F. Supp. 3d at 65–66. According to the Trump Parties, if we conclude that *Mazars* is not the correct framework to apply in this case, we should apply *Mazars* lite or a test like it.

While the district court's development of the *Mazars* lite test is well reasoned, we do not need to decide which version of *Mazars* should be applied because the Chairman's Request survives the application of the more-rigorous *Mazars*.

First, we must "carefully assess whether the asserted legislative purpose warrants the significant step of involving the President and his papers." *Mazars*, 140 S. Ct. at 2035. Because "confrontation between the two branches should be avoided whenever possible," *Cheney v. United States Dist. Court. for Dist. of Columbia*, 542 U.S. 367, 389–90 (2004) (internal quotations omitted), "Congress may not rely on the President's information if other sources could reasonably provide Congress the information it needs in light of its particular legislative objective," *Mazars*, 140 S. Ct. at 2035–36. Congress cannot look to the President as a "case study" for general legislation, and the legislative process does not necessarily require "full disclosure of all the facts" in the way that criminal proceedings do. *Id.* at 2036 (citations omitted).

The Committee has asserted that its legislative purpose is to assess the effectiveness of the Presidential Audit Program. In particular, the Committee is interested in whether the program is adequately resourced and sufficiently guarded from external pressures. The Committee is evaluating a program that applies only to the President and Vice President; this is not a case study for general legislation. *Mazars*, 140 S. Ct. at 2036. This is not an attempt by Congress to rely on the President's information when "other sources could reasonably provide Congress the information it needs. . . ." *Id.* at 2035–36.

While the Committee could possibly have received similar information by requesting the returns and return information of different former Presidents or the sitting President, this does not tilt this factor to weigh in the Trump Parties' favor. Any path the Committee could take to inform themselves about the adequacy of the Presidential Audit Program would require them to access the personal information of a former President. There is no other source that would reasonably provide the

Committee with the information it seeks while also completely circumventing separation of powers concerns.

Second, Congress's requests for a President's personal information should be "no broader than reasonably necessary to support Congress's legislative objective." *See Mazars*, 140 S. Ct. at 2036. This is a "safeguard against unnecessary intrusion into the operation of the Office of the President." *Id.* (quoting *Cheney,* 542 U.S. at 387). In the 2021 Request, the Chairman requested the Trump Parties' tax returns and return information for each of the tax years 2015–2020. JA 92. The Chairman also requested additional information about each return

> specifying: (a) whether such return is or was ever under any type of examination or audit; (b) the length of such examination or audit; (c) the applicable statute of limitations on such examination or audit; (d) the issue(s) under examination or audit; (e) the reason(s) the return was selected for examination or audit; and (f) the present status of such examination or audit (to include the date and description of the most recent return or return information activity).

Id. at 92–93. By requesting information from tax years 2015–2020, the Chairman has requested one return that would have been filed before President Trump assumed office, the four returns filed while in office, and one return filed after President Trump left office.

The Trump Parties contend that the Committee should not need to look at more than one year's worth of information and should only need access to the audit files but not the returns themselves. The Trump Parties also assert that the returns and return information from before and after President Trump was in office are irrelevant to the Committee's inquiry. Finally, the Trump Parties insist that the Request is overbroad because it makes no promises of confidentiality.

The Chairman's Request has not clearly gone beyond the scope of the Committee's inquiry. It is understandable that the Committee would want to compare returns filed during the presidency with those filed in the years before and after to see what effect, if any, Mr. Trump being the sitting President had on how his returns were treated by the Presidential Audit Program. Further, there is no reason that the Chairman's Request should be confined to a single year of returns and return information. The Chairman has stated that the value of requesting six years of information is the ability to compare one year with another. And while it is possible that not every document requested by the Chairman will provide the Committee with the sought-after information, that is of no consequence. The Committee is permitted to go "up some 'blind alleys' and into nonproductive enterprises." *Eastland*, 421 U.S. at 509.

A Congressional request for information does not need to ensure confidentiality to remain valid. *United States v. Rumely*, 345 U.S. 41, 43 (1953) ("It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees." (internal quotation marks and citation omitted)). When an inquiry uncovers information worthy of legislation, that information often comes to light. This is particularly true with regard to tax returns. There is no constitutional guarantee to the privacy of tax returns. Rather,

the privacy of tax returns is a creature of statute, the same statute that authorizes the Chairman to request this information. *See* 26 U.S.C. § 6103.

However, despite no guarantee of confidentiality in the Chairman's Request, the statute does address the Trump Parties' concerns. "[A]ny return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure." 26 U.S.C. § 6103(f)(1). What occurs during an executive session of a committee may not be disclosed to the public without a vote of the committee. Rules of the House of Representatives, 117th Cong., Rule XI, cl. 2(k)(7) (2021).

Third, we must be "attentive to the nature of the evidence offered by Congress to establish that a [request] advances a valid legislative purpose." *Mazars*, 140 S. Ct. at 2036. "The more detailed and substantial the evidence of Congress's legislative purpose, the better." *Id.* When the contemplated legislation "raises sensitive constitutional issues . . . it is 'impossible' to conclude that a [request] is designed to advance a valid legislative purpose unless Congress adequately identifies its aims and explains why the President's information will advance its consideration of the possible legislation." *Id.* (citing *Watkins*¸ 354 U.S. at 205–06, 214–15).

In this case, the evidence cited in the 2021 Request is primarily statements by President Trump or his agents. President Trump's own tax attorneys stated that his returns were "inordinately large and complex." JA 90. The Chairman then cited to then-candidate Trump's public statements referring to the audits of himself and his assets as unfair. JA 91. The Chairman even cited to the President's own statement,

delivered via the White House Press Secretary, describing the Presidential Audit Program as "extremely unfair." JA 91–92.

These public statements directly relate to the areas of the Presidential Audit Program that the Chairman intends to investigate: whether it is sufficiently resourced to audit a President with large and complex returns, and whether those conducting the audit have been improperly influenced by President Trump's statements regarding the Presidential Audit Program. These statements do not provide irrefutable proof that the Audit Program is lacking in resources or unable to insulate itself from outside pressure, but that is not required. The Committee is relying on public, verifiable sources rather than on anonymous tips or pure conjecture.

Fourth, we must "be careful to assess the burdens imposed on the President by a [request]." *Mazars*, 140 S. Ct. at 2036. "[B]urdens imposed by a congressional [request] should be carefully scrutinized, for they stem from a rival political branch that has an ongoing relationship with the President and incentives to use [requests] for institutional advantage." *Id.*

This *Mazars* factor is difficult to assess in this case. President Trump is no longer in office, and the current administration has stated before the Court that it intends to comply with the Chairman's Request. Therefore, the question presents itself of which burden should be examined. Do we look at the burden the Request places on former President Trump and the other Trump Parties, or do we look at the burden these requests place on the current President? However, in this case, we do not need to decide because after considering both possible burdens, we find that the Request does not impose a burden that would violate separation of powers principles.

The Trump Parties insist that the Request imposes too great a burden because it threatens to expose private financial information of the Trump Parties and will deny the Trump Parties their due process rights by interfering with an ongoing audit. These certainly are burdens on the Trump Parties. As discussed above, should the Committee find it necessary, it is possible that the information turned over to the Chairman might be made public. This is certainly inconvenient, but not to the extent that it represents an unconstitutional burden violating the separation of powers. Congressional investigations sometimes expose the private information of the entities, organizations, and individuals that they investigate. This does not make them overly burdensome. It is the nature of the investigative and legislative processes.

The Trump Parties further urge us to consider the burden that this Request imposes on the sitting President. They claim that it would hinder Congress's "ongoing relationship with the President," *Mazars*, 140 S. Ct. at 2036, because this would empower a future Congress to threaten or influence the sitting President with invasive requests once he leaves office. As we discussed in our *Nixon v. GSA* analysis, this burden is not substantial. While it is possible that Congress may attempt to threaten the sitting President with an invasive request after leaving office, every President takes office knowing that he will be subject to the same laws as all other citizens upon leaving office. This is a feature of our democratic republic, not a bug.

While the provided list of factors to consider in *Mazars* may not be exhaustive, none of the provided four factors weigh in favor of enjoining the 2021 Request. Therefore, we do not see the need to consider any others. Applying the *Mazars* or even the *Mazars* lite test, the Trump Parties' attempt to halt the Committee's investigation fails.

The separation of powers analysis in this case has required much discussion of the intrusion by Congress into the Executive Branch and the personal life of the Trump Parties and the burden that such intrusions impose. While the burden to the Trump Parties having their returns and return information shared with the Committee is concrete, any burden to the sitting President or the Executive Branch as a whole is tenuous at best. Regardless, neither burden, under any test, proves sufficient to require us to enjoin the Chairman's Request for the returns and return information.

The Trump Parties also contend that § 6103(f)(1) is facially unconstitutional and therefore the Chairman's Request is invalid. Rather than arguing that there is no set of circumstances under which § 6103(f)(1) could be constitutionally applied, the Trump Parties misconstrue precedent to argue that the statute is unconstitutional because it fails to state a "valid rule." Appellant Br. 23. According to the Trump Parties, when a key limitation is missing from the statutory text, the statute is unconstitutional. Applying this rule to § 6103(f)(1), the Trump Parties argue that the statute empowering the Chairman to request tax returns and return information from Treasury must also include a requirement that the request have a legitimate legislative purpose, otherwise the statute cannot stand. However, this argument misstates the test for assessing the facial constitutionality of a statute and misunderstands the case law supporting it.

As recently as last year, the Supreme Court has confirmed that outside of the First Amendment context, "a plaintiff bringing a facial challenge must 'establish that no set of circumstances exists under which the [law] would be valid,'" *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373,

2387 (2021) (alteration in original) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)), "or show that the law lacks 'a plainly legitimate sweep,'" *id.* (quoting *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008)).

In support of their argument, the Trump Parties rely on this Court's decision in *Gordon v. Holder*, 721 F.3d 638 (2013), to support their "no valid rule" test. In that case, a plaintiff sought a preliminary injunction against the Prevent All Cigarette Trafficking Act ("PACT Act") which would require him to collect and pay all state and local taxes in advance of a delivery of his products. If a seller failed to do so, they were subject to federal criminal and civil penalties. *Gordon*, 721 F.3d at 642. The statute in question did not include an explicit requirement that the seller must first have established minimum contacts with a jurisdiction before being required to pay taxes obligated by the jurisdiction.

In considering the breadth of a preliminary injunction, we stated that "when a statute erases the boundaries that define a sovereign's jurisdiction, as the PACT Act does to the boundaries of state and local taxing jurisdictions, any legitimate application is pure happenstance," and that laws like this "led the Supreme Court to sustain facial challenges to laws that omit constitutionally-required jurisdictional elements, even though all such laws necessarily have a 'plainly legitimate sweep.'" *Id.* at 654. In support of this statement, we pointed to *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000). In those cases, the Supreme Court permitted facial challenges to the Gun-Free School Zones Act of 1990 and the Violence Against Women Act on the grounds that they lacked a clear jurisdictional hook. *Lopez*, 514 U.S. at 551; *Morrison*, 529 U.S. at 613.

But neither *Gordon*, *Lopez*, nor *Morrison* are comparable to the case before us. Those cases permitted facial challenges to statutes criminalizing private conduct. The statute before us now, § 6103(f)(1), does not penalize private conduct, it regulates how the government interacts with itself. To succeed, the Trump Parties must show that there is no set of circumstances under which § 6103(f)(1) can be constitutionally applied. If the statute is constitutional in "at least one scenario," the facial challenge fails. *Chemical Waste Mgmt. v. EPA*, 56 F.3d 1434, 1437 (D.C. Cir. 1995)).

This statute can be properly applied in numerous circumstances, including the one before the court. The Chairman could request returns and return information to inform legislation concerning the Tax Code or the laws provisioning the Treasury Department. Section 6103(f)(1) is not facially unconstitutional.

Finally, the Trump Parties contend that Treasury's intent to comply with the Chairman's Request violates their First Amendment rights because Treasury is politically motivated. Those being investigated by Congress do not lose the protections of the First Amendment. *Barenblatt*, 360 U.S. 109, 126 (1959). To state a claim for First Amendment retaliation, the Trump Parties must allege that they engaged in protected conduct, that the government took retaliatory action capable of deterring another from the same protected activity, and that there is a causal link between the two. *Scahill v. District of Columbia*, 909 F.3d 1177, 1185 (D.C. Cir. 2018). The improper motive must be a but-for cause of the government action, "meaning that the adverse action against the plaintiff would not have been taken absent the retaliatory motive." *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019).

The Trump Parties have failed to state a claim for the reason that they cannot show that Treasury's decision to comply with the 2021 Request would not have happened absent a retaliatory motive. The language of § 6103(f)(1) is mandatory. The statute provides that "the Secretary *shall* furnish," 26 U.S.C. § 6103(f)(1) (emphasis added), the requested information to the Committee upon written request. When the Committee makes a request that is within its authority to make, *i.e.*, within Congress's investigative power, the Secretary does not have a choice as to whether to provide the information. Where, as here, the Executive Branch comes to the conclusion that a § 6103(f)(1) request is valid, JA 123, it has no choice but to comply with the request. Any motive, retaliatory or otherwise, becomes irrelevant. Therefore, the Trump Parties' First Amendment claim, like their other claims, fails.

III. Conclusion

The 2021 Request seeks information that may inform the United States House of Representatives Committee on Ways and Means as to the efficacy of the Presidential Audit Program, and therefore, was made in furtherance of a subject upon which legislation could be had. Further, the Request did not violate separation of powers principles under any of the potentially applicable tests primarily because the burden on the Executive Branch and the Trump Parties is relatively minor. Finally, § 6103(f)(1) is not facially unconstitutional because there are many circumstances under which it can be validly applied, and Treasury's decision to comply with the Request did not violate the Trump Parties' First Amendment rights. We affirm.

KAREN LECRAFT HENDERSON, *Circuit Judge*, concurring in part and concurring in the judgment: I concur in Parts I and II.A and the portions of Part II.B of the majority opinion analyzing the Trump Parties' constitutional challenge to 26 U.S.C. § 6103(f)(1) and their First Amendment claim. I agree with my colleagues that the Committee has stated a valid legislative purpose, § 6103(f)(1) is not facially unconstitutional and the Treasury Department's compliance with the 2021 Request does not violate the First Amendment. With respect to the majority's separation-of-powers analysis in Parts II.B.1, II.B.2 and III, I concur in the judgment only, as detailed *infra*.

Although I agree with my colleagues that the burdens imposed on the Presidency by the Committee's Request do not rise to the level of a separation-of-powers violation, I conclude that the burdens borne by the Executive Branch are more severe and warrant much closer scrutiny than my colleagues have given them. I write separately to highlight this shortcoming and to urge caution given the foundational constitutional principles at stake.

My colleagues correctly identify the four factors that the Supreme Court in *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019 (2020), instructed the court to consider when the Congress requests the President's personal papers or information.[1] *See* Majority Op. at 17–18 (citing *Mazars*, 140 S. Ct. at 2035–36). Under the fourth factor, the Supreme Court directs that "courts should be careful to assess the burdens imposed on the President by" the congressional request. *See Mazars*, 140 S. Ct.

[1] I focus on my colleagues' application of the Supreme Court's *Mazars* test because, as they rightly note, "it is likely law of the circuit that a congressional request for a sitting President's personal information is evaluated under the heightened *Mazars* standard regardless of whether the President in question remains in office." Majority Op. at 14 (citing *Trump v. Mazars USA, LLP*, --- F.4th ---, No. 21-5176, 2022 WL 2586480 (D.C. Cir. July 8, 2022)).

at 2036. The reason is self-evident: the burdens "should be carefully scrutinized" because "they stem from a *rival political branch* that has an ongoing relationship with the President and incentives to use" similar requests "*for institutional advantage*." *Id.* (emphases added). In a brief paragraph, my colleagues dismiss what I view to be the most significant burden—that granting such a request "would empower a future Congress to threaten or influence the sitting President with invasive requests once he leaves office"—as merely "possible" and "not substantial."[2] Majority Op. at 24. I disagree and this analysis, in my view, falls short of the "careful[] scrutin[y]" required by *Mazars*. 140 S. Ct. at 2036.

To begin, the question of which burden should be examined, Majority Op. at 23 (asking whether "we look at the burden the Request places on former President Trump and the other Trump Parties, or . . . at the burden these requests place on the current President"), has been answered in *Mazars*. There, the Supreme Court repeatedly made clear that the focus of the inquiry is the burden imposed on the Office of the President as an independent and co-equal branch of government rather than the particular officeholder at the time the request is made or during the then-current phase of litigation. *See* 140 S. Ct. at 2036 (discussing "ongoing relationship" and potential for "institutional advantage" between rival political branches in context of burdens factor); *see also id.* at 2034 (noting that similar requests "unavoidably pit the political branches against one another"), 2036 (highlighting concerns about "intrusion[s] into the operation of the Office of the President" with respect to the second factor—

[2] I agree with my colleagues that the potential exposure of the Trump Parties' private financial information is not a burden that implicates the separation of powers. *See* Majority Op. at 24.

ensuring that request is "no broader than reasonably necessary to support Congress's legislative objective" (citation omitted)).

Next, the Congress's potential and incentive to threaten a sitting President with a post-Presidency § 6103(f)(1) request in order to influence the President while in office should not be dismissed so quickly. *See* Majority Op. at 24. The Supreme Court recognized this as a legitimate concern in *Mazars*. *See* 140 S. Ct. at 2034 ("[A] demand may aim to harass the President or render him 'complaisan[t] to the humors of the Legislature.'" (quoting THE FEDERALIST No. 71, at 483 (Alexander Hamilton) (J. Cooke ed. 1961) (second alteration in original)); *id.* (without limits on such inquiries "Congress could 'exert an imperious controul' over the Executive Branch and aggrandize itself at the President's expense, just as the Framers feared" (quoting THE FEDERALIST No. 71, at 484 (Alexander Hamilton))). We have recently done so as well. *Trump v. Mazars USA, LLP*, --- F.4th ---, ---, No. 21-5176, 2022 WL 2586480 at *8 (D.C. Cir. July 8, 2022) ("Congress could perhaps use the threat of a post-Presidency pile-on to try and influence the President's conduct while in office." (quoting *Trump v. Thompson*, 20 F.4th 10, 44 (D.C. Cir. 2021)). What's more, I do not believe this concern can be dismissed so casually as a mere possibility. *See* Majority Op. at 24. Indeed, it happened to President Trump in *Mazars*. *See* --- F.4th at ---, 2022 WL 2586480 at *8 ("[T]he Committee specifically made known, while President Trump remained in office, that the Committee 'fully intend[ed] to continue [its] investigation . . . in the next Congress, regardless of who holds the presidency.'" (alterations in original)). Although we cannot know the extent to which the requests and investigations influenced—or were intended to influence—President Trump's conduct while in office, it is not far-fetched to believe that such intrusive inquiries could have a chilling effect on a President's ability to

fulfill his obligations under the Constitution and effectively manage the Executive Branch.

Finally, I would place no significance on the fact that President Trump no longer holds the office or on the current Administration's statement "that it intends to comply with the Chairman's Request." Majority Op. at 23. This dispute pits the Executive Branch against the Legislative Branch as institutions, not current or former Presidents against the chairmen of various congressional committees. And "the interbranch conflict here does not vanish" simply because the current Administration says so, the political winds shift or different parties control one or the other rival branch. *Cf. Mazars*, 140 S. Ct. at 2034. The constitutional principle at stake is separation of powers, not separation of parties.[3]

As noted, the inquiry focuses on the burden imposed on the Office of the President, not merely the former or current occupant of that office. *See id.* at 2036. And here, given the very real potential for the Congress to threaten a sitting President with post-Presidency investigations, the burden on the Executive imposed by a § 6103(f)(1) request is more severe than the burden in *Mazars*. There, the Congress sought production of financial records from President Trump's

[3] Notably, as our court recently observed in another context, the Supreme Court has left open "the possibility that President Trump's ability to assert executive privilege may be unaffected by his status as a former President—even in the face of the sitting President's opposition." *Mazars*, --- F.4th at ---, 2022 WL 2586480 at *9; *see also Trump v. Thompson*, 142 S. Ct. 680, 680 (2022) (Kavanaugh, J., respecting denial of application for stay) (observing "former President must be able to successfully invoke the Presidential communications privilege for communications that occurred during his presidency, even if the current President does not support the privilege claim").

personal accounting firm. *Mazars*, --- F.4th at ---, 2022 WL 2586480 at *1. The subpoena there did not necessarily impose a severe burden on the Executive Branch as an institution because the Executive had no role in retrieving, examining or preparing documents for disclosure. Here, by contrast, the Executive Branch—and the President as head of that branch—is necessarily involved in complying with the request as the Treasury Department and, specifically, the Internal Revenue Service must retrieve, examine and prepare the requested tax documents for disclosure.

My colleagues discuss none of this. And although their thorough analysis of the Committee's asserted legislative purpose, the breadth of the request and the evidence offered by the Committee to establish its legislative purpose, *see* Majority Op. at 19–23, may suggest that the burden on the Executive Branch may not be severe enough to violate the separation of powers, a more searching inquiry into the burdens imposed by the Committee's request is warranted given the core constitutional principle at issue.

Accordingly, I concur fully in Parts I and II.A, as well as in Part II.B's analysis of the Trump Parties' constitutional challenge and First Amendment claim. With respect to the separation-of-powers discussion in Parts II.B.1, II.B.2 and III, I concur in the judgment only.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-5289 **September Term, 2021**

FILED ON: AUGUST 9, 2022

COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES,
APPELLEE

v.

UNITED STATES DEPARTMENT OF THE TREASURY, ET AL.,
APPELLEES

DONALD J. TRUMP, ET AL.,
APPELLANTS

Appeal from the United States District Court
for the District of Columbia
(No. 1:19-cv-01974)

Before: HENDERSON and WILKINS, *Circuit Judges*, and SENTELLE, *Senior Circuit Judge*

J U D G M E N T

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. On consideration thereof, it is

ORDERED and **ADJUDGED** that the judgment of the District Court appealed from in this cause be affirmed, in accordance with the opinion of the court filed herein this date.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy
Deputy Clerk

Date: August 9, 2022

Opinion for the court filed by Senior Circuit Judge Sentelle.
Opinion concurring in part and concurring in the judgment filed by Circuit Judge Henderson.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-5289 **September Term, 2022**

1:19-cv-01974-TNM

Filed On: October 27, 2022

Committee on Ways and Means, United States House of Representatives,

Appellee

v.

United States Department of the Treasury, et al.,

Appellees

Donald J. Trump, et al.,

Appellants

BEFORE: Henderson and Wilkins, Circuit Judges; and Sentelle, Senior Circuit Judge

O R D E R

Upon consideration of appellee Committee on Ways and Means for the U.S. House of Representatives' motion for immediate issuance of the mandate and for expedited treatment of its motion, the opposition thereto, and the reply; appellants' cross-motion to stay the mandate pending the filing and disposition of a petition for writ of certiorari in the Supreme Court, the opposition thereto, and the reply; and appellants' petition for panel rehearing filed on August 18, 2022, it is

ORDERED that the motions be denied. It is

FURTHER ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-5289 **September Term, 2022**

1:19-cv-01974-TNM

Filed On: October 27, 2022

Committee on Ways and Means, United States House of Representatives,

Appellee

v.

United States Department of the Treasury, et al.,

Appellees

Donald J. Trump, et al.,

Appellants

BEFORE: Srinivasan, Chief Judge; Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker, Childs, and Pan*, Circuit Judges; and Sentelle, Senior Circuit Judge

O R D E R

Upon consideration of appellants' petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

* Circuit Judge Pan did not participate in this matter.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, Plaintiff, v. **U.S. DEPARTMENT OF THE TREASURY**, ***et al.***, Defendants, **DONALD J. TRUMP**, ***et al.***, Defendant-Intervenors.	Case No. 1:19-cv-01974 (TNM)

MEMORANDUM OPINION

Former President Donald J. Trump sues to keep the Treasury from giving his tax returns to the House Committee on Ways and Means, which can publish them. He marshals an array of evidence suggesting the Committee's purported interest in the Presidential Audit Program, an IRS policy that requires audits of the sitting President, is a subterfuge for improper motives—like exposing his returns. He also raises legal arguments against the statute on which the Committee relies.

But even if the former President is right on the facts, he is wrong on the law. A long line of Supreme Court cases requires great deference to facially valid congressional inquiries. Even the special solicitude accorded former Presidents does not alter the outcome. The Court will therefore dismiss this case.

I.

A.

Congress first levied an income tax in 1862, at the height of the Civil War. *See* Act of July 1, 1862, § 6, 12 Stat. 432, 434. Under that law, the public could access and inspect any tax return. *See id.* §§ 14-16, 18-19. Many criticized such liberal access, causing Congress to let the law lapse a decade later. *See* Office of Tax Policy, Dep't of Treasury, *Report to the Congress on Scope and Use of Taxpayer Confidentiality and Disclosure Provisions* 16 (2000) ("Tax Policy Report").[1] Congress returned to an income-tax model several years later but needed a constitutional amendment to enact it. *See* U.S. Const. amend. XVI. The first post-Amendment tax law denied public inspection of tax returns, providing instead that returns submitted to the IRS would be "open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury." Tariff Act of 1913, Pub. L. No. 63-16, § II.G(d), 38 Stat. 114, 177.

In the Revenue Act of 1926, Congress first allowed its committees to access tax returns. *See* Pub. L. No. 69-20, § 257(b)(1), 44 Stat. 9, 51. The relevant provision directed that the Secretary of the Treasury "shall furnish" the House Ways and Means Committee and the Senate Finance Committee with "any data of any character contained in or shown by any return." *Id.* The committees then could submit that information to the full Senate or House. *Id.* § 257(b)(3).

These provisions remained largely unchanged until the mid-1970s, when the Nixon Administration returned taxpayer privacy to the fore. In 1973, President Nixon issued two executive orders authorizing the Department of Agriculture to inspect "for statistical purposes"

[1] Available at https://home.treasury.gov/system/files/131/Report-Taxpayer-Confidentiality-2010.pdf.

the tax returns of all farmers. *See* Exec. Order 11697, 38 Fed. Reg. 1723 (Jan. 17, 1973); Exec. Order 11709, 38 Fed. Reg. 8131, 38 Fed. Reg. 8131 (Mar. 27, 1973). Congress objected, and the President revoked the orders. *See* Exec. Order 11733, 39 Fed. Reg. 10,881 (Mar. 22, 1974).

More concerning to Congress, however, was that members of the Nixon White House obtained IRS records, including tax returns, for many of Nixon's political opponents. *See* Tax Policy Report at 21. The Senate Watergate Committee also learned that the White House had often requested the tax returns and audit information of certain taxpayers. *See id.* And the House Judiciary Committee heard evidence that President Nixon himself had improperly accessed IRS tax records. *See id.* These revelations worried the House committee enough that it proposed an article of impeachment alleging that Nixon had violated the constitutional rights of taxpayers. *See Report on the Impeachment of Richard M. Nixon*, H.R. Rep. No. 93-1305, at 3 (1974).

Congress addressed these concerns in the Tax Reform Act of 1976. *See* Pub. L. No. 94-455, 90 Stat. 1520. That Act established a comprehensive statutory scheme, codified at 26 U.S.C. § 6103, for disclosing tax records. In general, tax returns and return information "shall be confidential" unless they fall into one of thirteen narrow exceptions. 26 U.S.C. § 6103(a), (c)-(o). Indeed, unauthorized disclosure of tax returns is a felony. *See* 26 U.S.C. § 7213.

Of relevance here, § 6103(f) allows congressional committees—in language like the original 1926 provision—to request tax returns from the Treasury. Specifically, "[u]pon written request from the chairman" of the Ways and Means Committee or the Senate Finance Committee, the Treasury "shall furnish such committee with any return or return information specified in such request." 26 U.S.C. § 6103(f)(1). For any information associated with a particular taxpayer, the Committee must sit in closed executive session to receive it. *See id.*

Congressional requests under § 6103(f) rarely reach the public eye. Committees usually request returns for statistical data purposes. *See* Congressional Committee's Request for the President's Tax Returns Under 26 U.S.C. § 6103(f), 2019 WL 2563046 at *4 (O.L.C. Jun. 13, 2019). The statute allows three committees, however, to "submit[ ]" the received information to the full House or Senate, placing it in the congressional record. *See* 26 U.S.C. § 6103(f)(4)(A). But committees hardly ever do so. In fact, a committee has published tax information only once under the current iteration of § 6103(f)—in 2014 after an investigation into the IRS's discriminatory treatment of conservative organizations. *See generally* George Yin, *Preventing Congressional Violations of Taxpayer Privacy*, 69 Tax Lawyer 103, 108–113 (2015). No party has identified a previous request under § 6103(f) for the tax information of a former or sitting President. We are in uncharted territory.

With this historical and statutory background in mind, the Court turns to the congressional request here.

B.

As Donald Trump campaigned for the 2016 Republican presidential nomination, he refused to publicly release his tax returns. *See* Amended Answer and Counterclaims/Crossclaims (ACCC) ¶ 6, ECF No. 129. That refusal led many—including his eventual opponent, Hilary Clinton, and then-Vice President Joe Biden—to demand that he release his returns. *See id.* ¶¶ 13–15. He did not oblige. Trump won the nomination and the election without ever releasing his tax returns. Republicans also won a majority in both the House and the Senate. *See id.* ¶ 20.

Representative Richard Neal was the Committee's Ranking Member at the time. *See id.* Within months of President Trump's inauguration, he and other Democratic lawmakers

suggested that the Committee should invoke § 6103(f) to request President Trump's tax returns. Ninety-two House Democrats, including Neal, sponsored a resolution to require the Treasury to provide Trump's returns to the House. *See* H. Res. 186, 115th Congress; ACCC ¶ 25. The Committee's Republican majority rejected it. *See* ACCC ¶ 27. Despite this setback, congressional Democrats tried to obtain President Trump's tax returns "through letters, resolutions, draft legislation, proposed amendments, and more" throughout the 115th Congress. *Id.* ¶ 30. They were unsuccessful.

Voters in the 2018 elections gave Democrats control of the House and thus of the Committee. *See id.* ¶ 74. Ranking Member Neal became chairman and announced that the Committee "would pursue the public release of President Trump's tax returns." *Id.* ¶¶ 74, 83.

In April 2019, Chairman Neal officially requested the tax returns through a two-page letter to the IRS. *See id.* ¶ 123; *see also* Counterdefendant's Motion to Dismiss, Ex. A (2019 Request), ECF No. 133-1. That letter said the Committee was considering "the extent to which the IRS audits and enforces the Federal tax laws against a President." 2019 Request at 1.[2] Chairman Neal noted that IRS policy—called the Presidential Audit Program (Program)—required a mandatory examination of the President's tax returns. *See id.* The Chairman then wrote that the Committee needed "to determine the scope of any such examination" and whether it reviewed all "underlying business activities required to be reported." *Id.*

To that end, Chairman Neal requested under § 6103(f) the tax returns from 2013–2018 for President Trump and for eight business organizations controlled by him. *See id.* at 1–2. Chairman Neal also requested any administrative files for those returns, as well as a statement by

[2] All page citations refer to the pagination generated by the Court's CM/ECF system and all exhibit numbers refer to the numbered attachments to the CM/ECF filings.

the IRS on whether it had audited each taxpayer and, if so, what information each audit had examined. *See id.*

The Treasury denied his request. Reviewing public statements by congressional Democrats, the Treasury concluded that the request's stated purpose contradicted what Democrats had "repeatedly said was the request's intent: to publicly release the President's tax returns." ACCC ¶ 217. The Department of Justice agreed. In a memorandum opinion, DOJ's Office of Legal Counsel (OLC) summarized public statements from Democrats and found that no one had previously explained an interest in the tax returns by reference to the IRS audit Program. *See id.* ¶ 219–20. The Committee's newly asserted rationale "blink[ed] reality" and was "pretextual." *Id.* ¶ 220.

The Committee then sued the IRS and the Treasury (collectively, Executive Branch Defendants). *See* Compl., ECF No. 1. President Trump and his businesses (collectively, Intervenors) intervened on the side of the Executive Branch Defendants. *See* Order, ECF No. 14. During the pendency of the case, President Trump lost the 2020 election, and the incoming Biden Administration reconsidered the Executive Branch's litigating posture.

Meanwhile, in June 2021, Chairman Neal sent another letter to the Treasury requesting Intervenors' tax returns. *See* Counterdefendant's Motion to Dismiss, Ex. C ("2021 Request"), ECF No. 133-3. The 2021 Request asked for the same types of information as the 2019 Request, invoking various justifications. Unlike that earlier letter, however, Chairman Neal requested Intervenors' materials from 2015–2020. *See id.* at 6.

Shortly after Chairman Neal sent the 2021 Request, OLC released a new opinion stating that § 6103(f) required the Executive Branch to comply with the Committee's request. *See* Ways and Means Comm.'s Request for the Former President's Tax Returns and Tax Information

Pursuant to 26 U.S.C. § 6103(f)(1), 2021 WL 3418600, at *25 (O.LC. July 30, 2021). Armed with the new OLC opinion, the Executive Branch Defendants announced their intention to hand over Intervenors' tax returns. *See* Joint Status Report at 2, ECF No. 111. So the Committee dismissed its claims against the Executive Branch Defendants. *See* Minute Order (Aug. 5, 2021).

Intervenors then brought counterclaims and crossclaims against the Committee and the Executive Branch Defendants (collectively, Federal Parties). *See* ACCC. Across eight claims, Intervenors allege that (1) the Committee's request for tax materials lacks a valid legislative purpose; (2) the Committee's request violates the separation of powers; (3) § 6103(f) is facially unconstitutional; (4) the Executive Branch Defendants switched position in retaliation against Intervenors based on their protected speech, in violation of the First Amendment; and (5) the request violates Intervenors' Due Process rights. The Federal Parties move to dismiss the case. *See* Counterdefendant's Motion to Dismiss ("Comm. MTD"), ECF No. 133; Cross-Defendants' Motion to Dismiss ("Gov't MTD"), ECF No. 135-1. Those motions are now ripe.[3]

II.

The Federal Parties seek dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). To avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Court accepts the pleading's factual allegations as true and grants Intervenors "all inferences that can

[3] This Court has jurisdiction over these claims under 28 U.S.C. § 1331.

be derived from the facts alleged." *L. Xia v. Tillerson*, 865 F.3d 643, 649 (D.C. Cir. 2017) (cleaned up).

"A claim crosses from conceivable to plausible when it contains factual allegations that, if proved, would allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Banneker Venture, LLC v. Graham*, 798 F.3d 1119, 1129 (D.C. Cir. 2015) (cleaned up). Although the Court must draw inferences in the claimant's favor, it need not "assume the truth of legal conclusions." *Id.* The Court also need not credit "a legal conclusion couched as a factual allegation." *Iqbal*, 556 U.S. at 678.

The Committee's dismissal motion is entitled to special consideration. "When one branch of Government is being asked to halt the functions of a coordinate branch[,]" courts must give the dispute a "most expeditious treatment." *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 511 n.17 (1975). To act otherwise risks a "protracted delay" that might "frustrate[ ] a valid congressional inquiry." *Id.* *Eastland* teaches that cases seeking to stymie congressional investigations must be resolved at the earliest opportunity.

III.

A.

1.

To analyze the Committee's legislative purpose, the Court first must decide which of Chairman Neal's letters is at issue. Intervenors contend that the Chairman's 2019 letter is the operative request, and that the 2021 Request is a "retroactive rationalization" for it. *See* Intervenors' Combined Opposition to the Motions to Dismiss (Int. Opp'n) at 41, ECF No. 140. Intervenors also argue that the Court should generally analyze the request based on facts at the time of objection: 2019. Happily—for Intervenors—those facts would include Trump's position

as head of the Executive Branch, and the constitutional protections afforded that status. *See Trump v. Mazars, LLC*, 140 S. Ct. 2019, 2035 (2020) ("Congressional subpoenas for the President's personal information implicate weighty concerns regarding the separation of powers.").

Intervenors essentially ask the Court to ignore events that have occurred since 2019. This the Court cannot do. A fair reading of the 2021 Request shows that it supersedes the 2019 one. Chairman Neal said the Committee "continues to seek" the tax return materials and then requested information for years different from the ones mentioned in the 2019 Request. 2021 Request at 1, 6–7. And Chairman Neal ended the letter with "I request the following tax returns" before listing the newly requested information. *Id.* at 6. Given his language in the 2021 Request and the explicit request for different returns, the 2019 Request cannot govern. Whether Neal made one request or two, the operative one can be found in the 2021 letter. *See* Hr'g Tr. at 12. (Committee Counsel: "But overwhelmingly, [the 2019 Request] was superseded by the 2021 letter.").

Intervenors cite only criminal cases for the contention that the Court should evaluate the request at the time of objection. *See, e.g.*, *Watkins v. United States*, 354 U.S. 178, 181 (1957) (reviewing a conviction for contempt of Congress); *United States v. Rumely*, 345 U.S. 41, 42 (1953) (same). As Judge Mehta recently observed, "[t]his distinction is crucial." *Trump v. Mazars, LLP*, — F. Supp. 3d —, 2021 WL 3602683, at *12 (D.D.C. Aug. 11, 2021).

Due Process requires that a defendant charged with the offense of contempt of Congress must know the subject about which Congress is asking. *See Watkins*, 354 U.S. at 208–09. Every criminal prohibition requires such fair warning. *See Rogers v. Tennessee*, 532 U.S. 451, 457 (2001). Thus, "criminal punishment for non-compliance cannot be imposed on a witness based

on facts not yet in existence" when the witness decided not to answer questions. *Mazars*, 2021 WL 3602683, at *12. No such concern exists in a civil proceeding like this one.

More, Intervenors seek prospective relief. Their right to that relief "must be determined as of the time of the hearing." *Duplex Printing Press Co. v. Deering*, 254 U.S. 443, 464 (1921). The Court can consider "subsequent events," such as the 2021 Request and the departure of Donald Trump from the presidency, as part of that determination. *Senate Select Comm. on Pres'l Campaign Activities v. Nixon*, 498 F.2d 725, 732 (D.C. Cir. 1974).[4]

The Court thus will analyze the 2021 Request and its contents as the operative request by the Committee.

2.

The next question is whether there is a valid legislative purpose for the 2021 Request.

a.

Several cases from the past century provide the contours of a legitimate legislative purpose. The first was *McGrain v. Daugherty*, 273 U.S. 135 (1927). There, a congressional committee investigating the Attorney General had seized his brother for questioning. *See id.* at 150–54. The brother argued that his seizure had not advanced a legislative purpose. *See id.* at 154. The Court determined that though the committee's authorizing resolution mentioned no legislation, it did mention administration of DOJ. *See id.* at 177. That interest was a subject "on which legislation could be had" and which "would be materially aided by" information from the investigation. *Id.* The committee's resolution could have more plainly avowed a legislative

[4] Intervenors argue that *Senate Select Committee* has no application here because that case concerned Executive privilege, not whether Congress had a legitimate legislative purpose for an action. *See* Int. Opp'n at 42. But Intervenors offer no persuasive reason why the substance of *Senate Select Committee* allowed the D.C. Circuit there to account for "subsequent events" as of the time of enforcement. For its part, this Court can discern none.

goal, but such an express statement was unnecessary "in view of the particular subject-matter." *Id.* at 178. The Court thus upheld the investigation as legitimate and concluded that the brother had wrongfully refused to testify. *See id.* at 180. *McGrain* suggests that the legitimate legislative purpose bar is a low one, and the purpose need not be clearly articulated.

The Court next analyzed legislative purpose in several cases about investigations into Communists. In *Tenney v. Brandhove*, the Court considered a civil complaint brought by a witness before a California Senate committee on Communist activities. 341 U.S. 367 (1951). The witness had circulated a pamphlet in the legislature arguing that the committee had tried to "smear" a mayoral candidate as a Communist. *Id.* at 370. The witness appeared for a hearing but refused to testify, and the State prosecuted him for contempt. *See id.* at 371. He sued the committee, arguing that it held the hearing not for a legislative purpose, but to "intimidate and silence" him. *Id.*

The Court refused to credit the witness's allegation. As the Court noted, "[i]n 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." *Id.* at 378. To invalidate a legislative investigation, "it must be obvious that there was a usurpation of functions exclusively vested" in another branch. *Id.* The Court found no such usurpation. The witness's pamphlet had "raised serious charges" about the committee as it "investigat[ed] a problem with legislative concern." *Id.* The committee thus could require his appearance, and the Court dismissed his complaint. *See id.* at 378–79. So while Congress need clear only a low bar to establish a valid purpose, Intervenors face a formidable bar to impeach that purpose.

Next, *Watkins v. United States* considered a conviction for contempt of Congress. The defendant had appeared before a House committee and had refused to say whether certain

individuals were members of the Communist Party. *See* 354 U.S. at 185. He doubted the relevance of these questions to the committee's work and whether the committee could expose private persons based on past activities. *See id.*

The Court admitted that the defendant had "marshalled an impressive array of evidence that" exposure of Communists motivated the committee. *Id.* at 199. That evidence included official committee publications, one of which said the committee "believed itself" called "to expose people and organizations attempting to destroy this country." *Id.* at 199, n.32. But this evidence could not invalidate the committee's inquiry. *See id.* at 200. As the Court said, "a solution to our problem is not to be found in testing the motives of committee members." *Id.* "Their motives alone would not vitiate an investigation" by the House "if that assembly's legislative purpose is being served." *Id.* The Court ultimately overturned the witness's conviction but only on statutory grounds. *See id.* at 214.

Similarly, *Barenblatt v. United States* considered a conviction for contempt of Congress. 360 U.S. 109 (1959). A professor refused to answer questions before a House committee about his and others' membership in the Communist Party. *See id.* at 113, 114. The Court relied on prior cases to find that Congress's power to "legislate in the field of Communist activity" included investigations into Communists at universities. *Id.* at 127, 131–32. The witness responded that "the true objective of the [c]ommittee and of the Congress was purely exposure," not legislation. *Id.* at 132. The Court disagreed. "So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene" based on the "motives which spurred the exercise of that power." *Id.* The Committee had a legitimate legislative purpose for its investigation and questioning of the witness. *See id.* at 134.

Finally, *Eastland v. U.S. Servicemen's Fund* reviewed a Senate subcommittee subpoena for records of a nonprofit that catered to servicemembers and advocated against the Vietnam War. The organization sued, arguing that the subpoena's "sole purpose" was to publicly disclose unpopular opinions and to harass the organization for its opinions. 421 U.S. at 495. Relying on *McGrain*, the Court explained that the subject of any congressional inquiry "must be one on which legislation could be had." *Id.* at 504 n.32. The Senate had charged the subcommittee to study "the administration, operation, and enforcement of the Internal Security Act of 1950." *Id.* at 506. Thus, "the investigation upon which the Subcommittee had embarked concerned a subject on which legislation could be had." *Id.* (cleaned up). More, the Court refused to credit the nonprofit's allegation about exposure. Prior cases "ma[d]e clear that in determining the legitimacy of a congressional act [the Court does] not look to the motives alleged to have prompted it." *Id.* at 508. The Court also held that a valid legislative inquiry need not have a "predictable end result." *Id.* at 509. The Court upheld the investigation.

These cases teach a few general principles directing this Court's review. Congress's power to investigate "is inherent in the legislative process" and serves as an "adjunct" to that process. *Watkins*, 354 U.S. at 187, 197. The power to investigate covers inquiries into "the administration of existing laws," "proposed or possibly needed statutes," and "surveys of defects in our social, economic or political system." *Id.* at 187. But Congress's investigatory power is not unlimited. Congress may not expose someone simply "for the sake of exposure." *Id.* at 200. Nor may Congress use its investigatory power for law enforcement purposes—an executive function. *See Mazars*, 140 S. Ct. at 2032. More fundamental than these limitations, however, any action by Congress must be "related to a valid legislative purpose." *Barenblatt*, 360 U.S. at

127. The Supreme Court has identified as such a purpose "any subject on which legislation could be had." *Eastland*, 421 U.S. at 506 (quoting *McGrain*, 273 U.S. at 177).[5]

b.

The Federal Parties assert that the Committee has identified two valid legislative purposes behind its request. The first is the Committee's study of the Presidential Audit Program. The second is congressional oversight of government officials and development of legislation to prevent conflicts of interest for those officials. *See* Comm. MTD at 28. The Court upholds as valid the first asserted purpose and therefore need not analyze the second.

Since 1977, IRS procedures require the audit of a sitting President's tax returns. *See* 2021 Request at 2. But the Presidential Audit Program exists only in IRS regulations, not in any statute. *See* Int'l Rev. Man. § 3.28.3.5.3. According to the 2021 Request, the Committee has "serious concerns" about the IRS's ability to audit a President. 2021 Request at 2. The Committee worries that the Program "is not advancing the purpose for which it was created." *Id.* at 2. That might be due to "gaps" in the Program, which could "require Congress to act through legislation." *Id.* at 2–3.

According to the Committee, President Trump's information will uniquely aid its legislative efforts. The Request suggests that President Trump's public criticisms of the IRS threatened the integrity of any audit of his tax returns during his presidency. *See id.* at 4–5. And

[5] These principles do not change simply because this case concerns a statutory request rather than a subpoena. Requests under § 6103(f) are compulsory. *See* 26 U.S.C. § 6103(f)(1) ("[T]he Secretary *shall* furnish . . . .") (emphasis added). So are congressional subpoenas. *See McGrain*, 273 U.S. at 175 ("[S]ome means of compulsion are essential to obtain what is needed.") Thus, precedents about the viability of congressional subpoenas apply with equal force to a § 6103(f) request. Neither party defending the 2021 Request suggests another analytical framework that distinguishes between the two types of inquiries. Indeed, all parties agree that the request must have a valid legislative purpose. *See* Comm. MTD at 25; Gov't MTD at 26; Int. Opp'n at 28.

the Committee wonders whether the Program sufficiently accounts for a President who, like Trump, controls hundreds of businesses and typically files "inordinately large and complex" tax returns. *Id.* at 4.

Intervenors argue that the Committee seeks only to codify the Program and that such a statute would violate the Constitution. *See* Int. Opp'n 79–81; *see also Quinn v. United States*, 349 U.S. 155, 161 (1955) (noting that Congress's power to investigate does not "extend to an area in which Congress is forbidden to legislate"). The parties have not fully briefed the constitutionality of this hypothetical statute, but the Court assumes for now that Intervenors are correct.

After all, the power to investigate "lies at the core of the Executive's duty to see the faithful execution of the laws." *Cmty for Creative Non-Violence v. Pierce*, 786 F.2d 1199, 1201 (D.C. Cir. 1986). Congress could not usurp such a patently Executive power. *See Bowsher v. Synar*, 478 U.S. 714, 727 (1986). The Federal Parties at points have suggested that Congress might use the requested tax returns to inform a full codification of the Program. *See* May 10, 2019 Letter from Chairman Neal, Counterdefendants' MTD, Ex. D at 2, ECF No. 133-4; Gov't MTD at 40. A congressionally mandated presidential audit would likely commandeer the Executive's investigatory powers and thus could not serve as a valid legislative purpose for the 2021 Request. But the Federal Parties also suggest other, less suspect, legislative options that would pass constitutional muster.

For example, Congress could legislate how many staff the IRS may assign to the audit of a sitting President. Or Congress could ensure adequate funding for presidential audits if the IRS undertakes them. Such legislation would allow the IRS to decide whether to audit a sitting President. Nothing would *require* the IRS to do so. Imposing these types of "safeguards" or

"guardrails" on the IRS's discretionary process would be well within Congress's Article I authority. 2021 Request at 2, 3. And the Committee need not say exactly what legislation it intends to enact. *See In re Chapman*, 166 U.S. 661, 669–70 (1897) ("[I]t was certainly not necessary that the resolutions should declare in advance what the [S]enate meditated doing when the investigation was concluded."). The Committee need only show that the Program is a subject on which legislation "could be had." *Eastland*, 421 U.S. at 506. Based on those potential legislative enhancements to the IRS's discretionary audit of a sitting President, the Committee has done so.[6]

i.

Intervenors respond that a study of the Program is simply a pretext for the Committee's actual goal: to "obtain and expose" Donald Trump's tax information. ACCC ¶ 295.

As evidence, Intervenors include in their pleading dozens of statements by Members of the Committee and other Democrats. These statements show a years-long obsession of congressional Democrats to expose President Trump. They include:

- "We must see Trump's tax returns to know just how far and how deep the crimes go." "Americans have a right to know if their President is a crook." *Id.* ¶ 42 (Rep. Pascrell (D-NJ)).
- "We need to know if the [P]resident has illegally evaded taxes or unethically avoided them by exploiting special breaks in the law." *Id.* ¶ 102 (Rep. Pascrell (D-NJ)).
- "The only thing that matters is evidence of wrongdoing." "The public wants answers and so do I. And to get the truth, we need Trump's tax returns." *Id.* ¶ 108 (Rep. Gomez (D-Cal.)).

[6] For similar reasons, the Court rejects Intervenors' argument that the description of this interest is too vague and loosely worded. *See* Int. Opp'n at 55–56. Over several paragraphs, the 2021 Request identifies the Program as the focus of the Committee's study. Given this language, a reader of the Request "could reasonably deduce" the object of the Committee's interest. *Watkins*, 354 U.S. at 204.

- "Seeing Trump's business and personal taxes is the only way we'll know how far his crimes go." *Id.* ¶ 148 (Rep. Pascrell (D-NJ)).

- "The American people have a right to know whether President Trump's benefitting from the very policies that he's pushing, whether or not he's cheated on his taxes, whether or not he's paying his fair share, whether he's enriching himself and violating the public trust. All of those can be determined, I think, if we can get the tax returns." *Id.* ¶ 172 (cleaned up) (Rep. Sanchez (D-Cal.)).

- "Americans have waited long enough to know the extent of Trump's crimes and thievery." *Id.* ¶ 240 (Rep. Pascrell (D-NJ)).

These statements raise questions about the 2021 Request's purported object. Congressional Democrats speak mainly about finding "evidence of wrongdoing" in the Trump tax documents. *Id.* ¶ 108. Almost none mention the Presidential Audit Program. In fact, only one rank-and-file Member mentioned the Program. And even that statement appears motivated by exposure; the Member cited Trump's "tax avoidance schemes," not some need for legislative fixes, as the reason to study the Program. *Id.* ¶ 181 (statement of Rep. Kildee (D-Mich.)). Statements also suggest that the Committee "buil[t]" a case for the tax returns, implying that the 2021 Request's stated purpose is pretextual. *Id.* ¶ 115 (statement of Rep. Beyer (D-Va.)).

Ultimately, though, these statements are irrelevant to the Court's analysis. Section 6103(f) allows a request by "the chairman of the Committee." This distinguishes a § 6103(f) request from a subpoena authorized by committee vote. *See* Rules of the U.S. House of Reps. (117th Cong.) XI.2(m)(3)(A)(i) ("[A] subpoena may be authorized and issued by a committee . . . only when authorized by the committee or subcommittee, a majority being present."). Rank-and-file Members can fulminate all they want, but they cannot direct the

Committee to make a request under the statute.[7] Only Chairman Neal can do that, even if individual Members give their "input." Int. Opp'n at 72. Indeed, only he signed the 2019 and 2021 Requests. *See* 2021 Request at 7; 2019 Request at 2. Thus, the many statements from rank-and-file Members do not factor into the Court's legislative purpose analysis.[8]

In contrast, Chairman Neal's statements are relevant. The Federal Parties admit as much. *See* Hr'g Tr. at 7, 13, 39. The Court will also consider statements made by Speaker Nancy Pelosi about the Committee's actions. Her statements are relevant because Intervenors allege that Chairman Neal needed her approval for his request. *See* ACCC ¶ 74, 122.

Start with Chairman Neal. Like his colleagues, Neal has long sought the Trump tax returns. In 2017, as Ranking Member of the Committee, he said he wanted the public to see them and "the media to sift and sort them." *Id.* ¶ 37. He also wrote in a public report that the tax returns would "provide the clearest picture" about Trump's finances and "whether he uses tax shelters, loopholes, or other special-interest provisions to his advantage." *Id.* ¶ 41.

As Chairman, Neal spoke about "putting together the case" for the tax returns and implored his Democratic colleagues not to undermine the Committee's legal case through their rhetoric. *Id.* ¶¶ 87–88; *see id.* ¶ 222. He then sent the 2019 Request to the Treasury. That Request referenced the Program and cited the Committee's need "to determine the scope of any

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[7] For this reason, the Court need not decide whether statements by rank-and-file Members show "motive" or "purpose." *See* Int. Opp'n at 60–61. Regardless, § 6103(f)'s terms render irrelevant their statements.

[8] *Shelton v. United States*, 404 F.2d 1292 (D.C. Cir. 1968) does not mandate otherwise. True, the D.C. Circuit there suggested courts could review the hearing statements by members of a committee as evidence of legislative purpose. *See id.* at 1297. *Shelton* also said, however, that when a committee asserts a "specific" purpose that "could be the subject[ ] of appropriate legislation," a court cannot say the committee overstepped its authority. *Id.* The Program mentioned by the 2021 Request is a specific purpose. And despite *Shelton*'s language about rank-and-file Members, the Circuit there considered only statements by the Chairman of the committee. *See id.* at 1297–98. This Court does likewise.

such examination." 2019 Request at 1. But the Request failed to mention or detail what kind of legislation the Committee might consider.

Other of Neal's statements also undermine the alleged purpose of studying the Program. One day after the 2019 Request, Neal admitted that he had "constructed a case" for the Trump tax returns and that the Program rationale would best "stand up" in court. ACCC ¶¶ 127–28. He also said that House legal counsel had "prepared" him on what to say about the Request. *Id.* ¶ 128. Later in 2020, Neal said that "unraveling President Trump's sophisticated tax avoidance"—not the Program—"is a reason for the [P]resident to release his tax forms." *Id.* ¶ 145.

Now for Speaker Pelosi. Her statements resemble Neal's. As early as 2017, when she was Minority Leader, she said the Trump tax returns would "be useful in the investigation of what [ ] the Russians have on Donald Trump." *Id.* ¶ 36. After her elevation to Speaker, Pelosi chose to continue investigations of President Trump because she "want[ed] to see him in prison." *Id.* ¶ 144. And just before the 2020 election, she claimed that under a new President "the world will see what [President Trump] has been hiding all of this time." *Id.* ¶ 235.

As required at the motion-to-dismiss stage, the Court takes Intervenors' allegations as true. *See Iqbal*, 556 U.S. at 678. They suggest at least some mixed motives for Chairman Neal's request; specifically, that he wants to expose former President Trump.

The problem for Intervenors is the low bar that the Committee must clear. Even at this stage, courts should not "go beyond the narrow confines of determining that a committee's inquiry may fairly be deemed within its province." *Tenney*, 341 U.S. at 378. It is not a court's "function" to invalidate a congressional investigation that serves a legislative purpose. *Watkins*, 354 U.S. at 200.

Here, the Presidential Audit Program is a "subject on which legislation could be had." *Eastland*, 421 U.S. at 506. That conclusion all but decides the Court's analysis. True, the statements by Chairman Neal and Speaker Pelosi plausibly show mixed motives underlying the 2021 Request.

But the Supreme Court's precedents analyze whether Congress has a valid legislative purpose, not whether that is the only purpose. Notably, the *Watkins* Court refused to consider a committee's explicit statements that it wanted to expose Communists. *See Watkins*, 354 U.S. at 199, n.32. The inquiry by a court into legislative purpose is therefore narrow. "So long as Congress acts in pursuance of its constitutional power" by stating a valid purpose, "the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power." *Barenblatt*, 360 U.S. at 132. That limited role governs here despite the "impressive array of evidence" amassed by Intervenors to show pretext. *Watkins*, 354 U.S. at 199; *see also Eastland*, 421 U.S. at 508 ("Our cases make clear that in determining the legitimacy of a congressional act we do not look to the motives alleged to have prompted it.").

Troubling as Intervenors' evidence may be, the Committee need only state a valid legislative purpose. It has done so. A faithful application of binding precedent blocks the Court from any further analysis, whatever Intervenors might say about the motives behind the Committee's request.

Amended Counterclaim and Crossclaim I will be dismissed.

ii.

Intervenors next allege that the Committee made its request for law enforcement, not for a valid legislative purpose. Recall that Congress's power to investigate cannot be "confused with any of the powers of law enforcement." *Quinn*, 349 U.S. at 161. Congress thus may not

"try someone before a committee for any crime or wrongdoing." *Mazars*, 140 S. Ct. at 2032 (cleaned up). According to Intervenors, the Committee attempts exactly that by using President Trump's tax information to "prov[e] his supposed criminal wrongdoing" and to conduct its own investigation. ACCC ¶¶ 301, 303.

This allegation fails for two reasons. *First*, Intervenors mainly rely on and incorporate by reference the "public statements" discussed above. *Id.* ¶ 301. We have already seen why those statements do not overcome the valid purpose stated by the Committee.

Second, that an investigation "might possibly disclose crime or wrongdoing on [Trump's] part" does not present a valid objection to the investigation. *McGrain*, 273 U.S. at 179–80. To be sure, the Committee might unearth some tax violations in the returns. But this Court cannot intervene on that basis so long as the Committee has asserted a valid legislative purpose for its action. *See Barenblatt*, 360 U.S. at 132; *Trump v. Thompson*, — F. 4th —, No. 21-5254, 2021 WL 5832713, at *24 (D.C. Cir. Dec. 9, 2021) ("The mere prospect that misconduct might be exposed does not make the Committee's request prosecutorial."). The Supreme Court has been clear on that. *See Hutcheson v. United States*, 369 U.S. 599, 618 (1962) ("But surely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever . . . crime or wrongdoing is disclosed."). The Committee's valid legislative purpose overcomes Intervenors' allegation that the 2021 Request was for law enforcement purposes. Thus, Amended Counterclaim and Crossclaim II will be dismissed.

iii.

In a final effort to show that the Committee lacks a legislative purpose, Intervenors allege that the records requested are not "related to, and in furtherance of" a legislative purpose.

Mazars, 140 S. Ct. at 2031; *see* ACCC ¶ 306.[9] Intervenors say that the requested documents are not "reasonably relevant to studying the IRS's audit process" because they single out only one President's records. ACCC ¶ 309.

Intervenors have a point. A full study of the Program would arguably involve each of the seven Presidents who have held office since it began in 1977. One wonders how much the returns of one President can say about the Program.

But the Committee need surmount only a low threshold here. The 2021 Request concerns a subject "on which legislation may be had." *Eastland*, 421 U.S. at 506. That is enough for the Court to uphold the Committee's request. Similarly, the failure to seek records from other Presidents who controlled various businesses does not invalidate the request. True, the tax returns from those Presidents would more fully describe how the IRS accounts for a President with vast business holdings. *See* ACCC ¶¶ 278-81. But it is not for this Court to prescribe the most effective vehicle for congressional inquiries. *Cf. Eastland*, 421 U.S. at 509 ("The very nature of the investigative function—like any research—is that it takes the searchers up some blind alleys and into nonproductive enterprises."). And perhaps the Committee will later seek information on other Presidents. The requested information need only "materially aid[

[9] Intervenors allege that the requested records are not "pertinent to" valid legislation. ACCC ¶ 306. Technically, a "pertinency requirement" originates not from cases about legislative purpose, but from cases about 2 U.S.C. § 192, the contempt-of-Congress statute. It penalizes refusal to answer questions or provide documents that are "pertinent" to a congressional inquiry. 2 U.S.C. § 192; *see McPhaul v. United States*, 364 U.S. 372 (1960) (analyzing whether records called for by a subpoena were "pertinent to" a committee inquiry, not whether the committee had a legislative purpose for its inquiry). The Government has charged no one here with contempt. Thus, the so-called "pertinency requirement" is inapt. But Congress may compel only disclosures "within [Congress's] legislative sphere." *Watkins*, 354 U.S. at 206. The Supreme Court has described this as a "jurisdictional concept of pertinency." *Id.* Based on that guidance, the Court reads the pleading as alleging that the Committee has not met that jurisdictional requirement.

]" an investigation into a subject "on which legislation could be had." *McGrain*, 273 U.S. at 177. As a President's tax information, the Trump returns would aid the Committee's study of the Program.

Intervenors also allege that the Committee has no valid legislative purpose to request tax returns for years when Trump did not occupy the White House. The Court agrees with Intervenors' general point—a study of the Program should focus on returns filed during the Trump presidency. For that reason, the Committee's 2019 Request likely extended too far; the Committee requested returns and audit info from tax years 2013–2018. For three of those years, Trump was not the President. The IRS thus would not have included his returns from those years in its Program.[10]

In contrast, the 2021 Request seeks material from tax years 2015–2020. That request comprises returns from all four years of Trump's presidency, plus one year on either side. The Court agrees with the Federal Parties that returns from those other years could further the Committee's study of the Program.[11] Like an audit of any other taxpayer, a presidential audit can extend beyond a current return to "related returns" from other years. Int'l Rev. Man. § 4.10.2.7.1.5. Returns from before President Trump's tenure would likely be "related," and the Committee has limited itself to only one year of those returns. As for post-presidency returns,

[10] A taxpayer typically files tax documents for a tax year during the next calendar year. Donald Trump became President in 2017. He would have filed his taxes for 2013, 2014, and 2015 all before his election.

[11] A split panel of the D.C. Circuit made a similar finding about a subpoena from the House Financial Services Committee for financial documents from 2011–2018. *See Trump v. Mazars, LLC*, 940 F.3d 710, 739–42 (D.C. Cir. 2019). But the Supreme Court vacated that ruling, *see Mazars*, 140 S. Ct. at 2036, rendering it at most persuasive, not binding, *see NRDC v. Hodel*, 865 F.2d 288, 317 n.31 (D.C. Cir. 1988). This Court declines to rely on it.

they may provide some context for the returns considered in the Program. They can serve as a control sample with which to compare the audited returns.

Lest this seem an amorphous reason to request post-presidency returns, the Supreme Court has repeatedly emphasized the narrowness of this Court's inquiry into legislative purpose. *See Eastland*, 421 U.S. at 506 ("The propriety of making [the subpoena recipient] a subject of the investigation and subpoena is a subject on which the scope of our inquiry is narrow."); *Tenney*, 341 U.S. at 378 ("To find that a committee's investigation has exceeded the bounds of legislative power it must be *obvious* that there was a usurpation of functions exclusively vested in the Judiciary or the Executive.") (emphasis added). Applying that deferential analysis, the Court finds that the records requested by the Committee will "aid" its legislative purpose. *McGrain*, 273 U.S. at 177.

Intervenors' pleading on relevance includes two other arguments, both meritless. *First*, they allege that the requested audit files would contain little information about President Trump's foreign ties. *See* ACCC ¶ 310. Those allegations do not deny, however, that the audit files would say much about the IRS audit process. And for those audit files to be remotely comprehensible, Congress would need the tax returns on which the audits relied. The Committee has therefore properly requested both tax returns and audit statements to fully study the Program. *See* 2021 Request at 6–7.

Second, Intervenors allege that Congress cannot require the President "to disclose particular information or divest from certain businesses." *Id.* ¶ 311. The Court cannot accept these conclusory legal statements as true. Everyone agrees that Congress can compel some information from the Executive. The Supreme Court said as much in *Mazars*, so long as courts account for the separation of powers in such disputes. *See* 140 S. Ct. at 2035–36 ("Legislative

inquiries might involve the President in appropriate cases[.]"). Thus, Intervenors' allegation in this claim must depend on the nature of this "particular" information. ACCC ¶ 311. Unfortunately, Intervenors do not specify that nature.[12] Without more, the Court cannot accept as true—and indeed must reject—the legal statement that Congress cannot require disclosure of "particular" information from the President. *See Iqbal*, 556 U.S. at 678. Regarding divestment of businesses, the Committee has not suggested that it plans to require presidential divestments of foreign businesses. And even if it had, a study of the Program would remain a legitimate legislative purpose.

Amended Counterclaim and Crossclaim III will be dismissed.

B.

The next question is whether the Committee's 2021 Request, although made with a valid legislative purpose, violates the separation of powers. It might strike one as odd that Intervenors could raise *any* separation-of-powers claim here. After all, Donald Trump is no longer President, so any dispute between him and Congress is not an "interbranch conflict." *Mazars*, 140 S. Ct. at 2035; *see also* The Federalist No. 69 (Alexander Hamilton) (Benediction Classics, 2017) ("The President of the United States would be an officer elected by the people for four years; the king of Great Britain is a perpetual and hereditary prince."). Indeed, the current President seems eager to heed the Committee's request. But the Supreme Court's precedent allows former Presidents to assert a separation-of-powers claim. *See Nixon v. Adm'r of Gen. Servs.*, 433 U.S.

[12] The "particular information" referenced by Intervenors could be information on open investigative files. That information is the subject of Amended Crossclaim VII, addressed below. *See infra* III.E.

425, 439 (1977) (*Nixon v. GSA*) ("We reject the argument that only an incumbent President may assert such claims . . . .").

That leaves the question of what standard governs the separation-of-powers analysis. Intervenors say the Court should apply *Mazars*, the Executive Branch seems to agree, and the House says the Court must apply *Nixon v. GSA*. The House is correct. Applying *Nixon v. GSA*, the Committee's 2021 Request does not trench on the separation of powers.

1.

This is not the first clash between Congress and the President (or a former President) over an informational request. During previous disputes, the Supreme Court has articulated standards governing congressional requests for a current or former President's records. The Court begins by reviewing those cases.

Two canonical decisions arose from Watergate. A grand jury indicted officials from the Nixon White House for various offenses, including conspiracy to defraud the United States and to obstruct justice. *See United States v. Nixon*, 418 U.S. 683, 687 (1974) (*Nixon I*). To further those prosecutions, a Special Prosecutor issued a subpoena to President Nixon. *Id.* at 688. The subpoena sought documents and tapes "relating to certain precisely identified meetings between the President and others." *Id.* As relevant here, the President moved to quash the subpoena, arguing that (1) an absolute, unreviewable executive privilege covered the requested materials; and (2) even if no *absolute* privilege existed, a qualified executive privilege "prevail[ed] over the subpoena." *Id.* at 689, 703.

The Supreme Court rejected President Nixon's assertion of absolute privilege. A sweeping privilege would impede the "constitutional duty of the Judicial Branch to do justice in criminal prosecutions." *Id.* at 707. That left the Court with two competing interests. On one

hand, the President and his aides "must be free to explore alternatives in the process of shaping policies" and "to do so in a way many would be unwilling to express except privately." *Id.* at 708. On the other hand, the need to develop facts in criminal prosecutions "is both fundamental and comprehensive." *Id.* at 709.

The Supreme Court sought to accommodate these interests while "preserv[ing] the essential functions of each branch." *Id.* at 707. It thus devised the following standard: when the President's claim of privilege rests on concern for "military or diplomatic secrets," courts should not "insist[ ] upon an examination of the evidence." *Id.* at 710–11 (quoting *United States v. Reynolds*, 345 U.S. 1, 10 (1953)). But the assertion of a "general privilege of confidentiality"—disconnected from any national security concerns—"cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice." *Id.* at 713. Placing President Nixon's assertion of executive privilege into the latter category, the Court held that the Special Prosecutor had rebutted the privilege. *See id.* 713–14. The Court ordered *in camera* review of the subpoenaed material.

That would not conclude the Watergate saga. After President Nixon left office, Congress passed the Presidential Recordings and Materials Preservation Act (PRMPA or the Act). *See Nixon v. GSA*, 433 U.S. at 433. In relevant part, the Act directed the Administrator of the General Services Administration (GSA) to obtain and store tape recordings of Nixon's conversations in the White House and his White House documents. *See id.* at 433–34. The Act directed GSA to make the materials available in response to a subpoena, subject to "any rights, defenses, or privileges which the Federal Government or any person" could invoke. *Id.* at 434.

It also directed GSA to promulgate regulations governing public access, keeping in mind "the need to provide the public with the full truth" about Watergate. *Id.* at 434–35.

Former President Nixon challenged the Act in *Nixon v. GSA*. He raised two separation-of-powers arguments.[13] *First*, he argued that the Act wrought an "impermissible interference by the Legislative Branch into" Executive Branch matters by delegating to a subordinate Executive officer the authority to determine whether and how to disclose Executive materials. *Id.* at 440. *Second*, by authorizing GSA to take control of a "broad, undifferentiated" swath of presidential records, the Act "offend[ed] the presumptive confidentiality of Presidential communications recognized in [*Nixon I*]." *Id.*

The Supreme Court disagreed. Nixon's nondelegation argument rested on "an archaic view of the separation of powers" as "three airtight departments of government." *Id.* at 443. Rejecting that trichotomy, the Court applied *Nixon I*'s functionalist approach:

> [I]n determining whether the Act disrupts the proper balance between the coordinate branches, the proper inquiry focuses on the extent to which it prevents the Executive Branch from accomplishing its constitutionally assigned functions. Only where the potential for disruption is present must we then determine whether that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress.

Id. (cleaned up). Applied to the PRMPA, the Court found minimal intrusion on the "constitutionally assigned functions" of the Executive Branch. *Id.* The Act directed *the Executive Branch itself* to take custody of the disputed materials and to regulate their disclosure. *Id.* at 444. And "abundant statutory precedent" required regulation and disclosure of documents held by the Executive Branch. *Id.* at 445 (citing, among others, Freedom of Information Act, 5

[13] Congress and President Ford agreed that the Act was lawful, but the Supreme Court nonetheless held a former President could raise separation-of-powers claims. *See* 433 U.S. at 439 ("We reject the argument that only an incumbent President may assert such claims and hold that appellant, as a former President, may also be heard to assert them.").

U.S.C. § 552 (1970)). Those statutes had "never been considered invalid as an invasion of [the Executive Branch's] autonomy." *Id.* Accordingly, "nothing contained in the Act render[ed] it unduly disruptive of the Executive Branch." *Id.*[14]

The final case on an interbranch dispute is *Trump v. Mazars, LLC*. President Trump sought to enjoin his personal accounting firm from complying with House subpoenas for his personal financial information. *See* 140 S. Ct. at 2027–28. He argued that the "subpoenas lacked a legitimate legislative purpose and violated the separation of powers," *id.* at 2048, but he did *not* claim executive privilege over the subpoenaed information. So *Mazars* presented a novel posture: The case differed from *Nixon I* because the President had not asserted executive privilege over the information; and it differed from *Nixon v. GSA* because (1) Donald Trump was the sitting President, and (2) Congress, not the Executive, would take custody of the subpoenaed materials.

President Trump asked the Supreme Court to treat *Mazars* like a typical executive privilege case, requiring the House to show a "'demonstrated, specific' need for the financial information." *Id.* at 2032 (quoting *Nixon I*, 418 U.S. at 683). In contrast, the House wanted the Court to apply the *Eastland* standard, asking only whether the subpoenas "relate[d] to a valid legislative purpose." *Id.* at 2033.

The Court denied both proposed frameworks. Applying the executive privilege cases would elide key distinctions "between privileged and nonprivileged information, between official and personal information, [and] between various legislative objectives." *Id.* "Congress's

[14] The Court also rejected Nixon's second separation-of-powers argument. It found the "perceived need to preserve the materials for legitimate historical and governmental purposes" justified "the mere screening" of the designated materials, a "very limited intrusion." *Id.* at 451, 452.

important interests in conducting inquiries to obtain the information it needs to legislative effectively" demanded more respect. *Id.* And applying only *Eastland* would ignore that Congress sought *the President's* information, not that of an ordinary citizen. *See id.* "[C]ongressional subpoenas for the President's information unavoidably pit the political branches against one another," so *Eastland* would "leav[e] essentially no limits on the congressional power to subpoena the President's personal records." *Id.* at 2034.

The Court cut its own path reminiscent of the functionalist approach established in the Watergate cases. To account for "the significant legislative interests of Congress" *and* "the unique position of the President," *id.* at 2035, the Court identified four factors to guide review of congressional requests for the President's personal information:

1. Whether the asserted legislative purpose warrants the significant step of involving the President and his papers;
2. Whether the subpoena is no broader than necessary to support Congress's legislative objective;
3. Whether Congress has offered substantial evidence to show the subpoena furthers a valid legislative purpose; *and*
4. Whether the subpoena burdens the President as Chief Executive.

Id. at 2035–36. The Court remanded for reconsideration under this framework. That litigation remains pending. *See Trump v. Mazars USA, LLP*, — F. Supp. 3d —, 2021 WL 3602683 (D.D.C. Aug. 11, 2021), *appeal docketed* Nos. 21-5176, 21-5177 (D.C. Cir. Aug. 20, 2021).

Nixon I, *Nixon v. GSA*, and *Mazars* set forth a general framework. The separation-of-powers analysis focuses on whether one branch's action unduly interferes with the constitutionally assigned functions of another branch. *See Nixon I*, 418 U.S. at 712 (holding an unreviewable executive privilege "would . . . gravely impair the basic function of the courts"); *Nixon v. GSA*, 433 U.S. at 445 ("[N]othing contained in the Act renders it unduly disruptive of

the Executive Branch"); *Mazars*, 140 S. Ct. at 2036 (directing courts to consider the burden complying with a subpoena imposes on Trump as President). When a "potential for disruption" is present, the Court asks whether that disruption "is justified by an overriding need." *Nixon v. GSA*, 433 U.S. at 443; *see also Mazars*, 140 S. Ct. at 2035 ("[C]ourts should carefully assess whether the asserted legislative purpose warrants the significant step of involving the President and his papers."). And as the "potential for disruption" increases, the concomitant showing required to justify that disruption increases. *See Nixon I*, 418 U.S. at 706; *Nixon v. GSA*, 433 U.S. at 445–446; *Mazars*, 140 S. Ct. at 2036.

Viewed this way, the trilogy forms a sliding scale. At one end is *Nixon I*—to justify piercing a sitting President's executive privilege, the Special Prosecutor had to show a "demonstrated, specific need for evidence in a pending criminal trial." 418 U.S. at 713. This was a high bar indeed.

Next is *Mazars*—the separation-of-powers concerns there were lessened relative to *Nixon I* because the information sought was not covered by executive privilege. But an "interbranch conflict" did not "vanish simply because the subpoenas s[ought] personal papers." *Mazars*, 140 S. Ct. at 2034. Congress would have to show "detailed and substantial" evidence of a valid legislative purpose and that such purpose "warrants the significant step of involving the President and his papers." *Id.* at 2035, 2036.

Then comes *Nixon v. GSA*, a case involving a *former* President but implicating materials potentially covered by executive privilege. Because the PRMPA directed retention of the disputed materials within the Executive and guarded against unlawful disclosure, there was little "potential for disruption" on the Executive *qua* Executive. *Nixon v. GSA*, 433 U.S. at 443. The Court's review was accordingly far less searching.

And, of course, all three tests sit above the low threshold set for congressional subpoenas to private parties. Because such a request would never implicate the "constitutionally assigned functions" of another branch, *id.*, the only question is whether the request "relate[s] to a valid legislative purpose," *Barenblatt*, 360 U.S. at 127.

This case falls on the "less intrusive" side of the scale. As in *Nixon v. GSA*, the requested records implicate a *former* President, not a sitting one. That fact alone substantially lessens (but does not eliminate) any potential burden the § 6103(f) request might impose on the Executive Branch. And like in *Nixon v. GSA*, Congress and the current President stand united, not at odds. *See* 433 U.S. at 439 ("The Act was the product of joint action by Congress and the President, who signed the bill into law."). This case does not present the "clash between rival branches of government over records" that confronted the Supreme Court in *Mazars*. 140 S. Ct. at 2034. Intervenors' insistence that *Mazars* applies therefore rings hollow.

More, Congress requested tax returns and information about the IRS's mandatory audit program, not information arguably covered by executive privilege. In these respects, this case presents a weaker separation-of-powers claim than *Nixon v. GSA*. But all parties agree some separation-of-powers concerns exist, and the Committee concedes it must meet the *Nixon v. GSA* test, *see* Comm. MTD at 41, so the Court applies that test here.

The D.C. Circuit has recently taken a similar tack. In *Trump v. Thompson*, a House committee requested presidential records from the Trump White House about January 6. *See* 2021 WL 5832713, at *5. Former President Trump objected, claiming executive privilege over hundreds of requested pages. *See id.* at *6. Although the parties mainly disputed executive privilege, Trump also argued that the request violated the separation of powers. *See id.* at *23. *Thompson* doubted that *Nixon I* or *Mazars* applied because those decisions "involved requests

for information from a sitting President, not a former President, and called upon the courts to resolve an interbranch dispute." *Id.* at *24. It found *Nixon v. GSA* was "more closely on point[] because it specifically involved a former President's objection" over the united position of Congress and the Executive. *Id.* So too here.

2.

Intervenors must first allege that the 2021 Request "prevents the Executive Branch from accomplishing its constitutionally assigned functions." *Nixon v. GSA*, 433 U.S. at 443. The Court struggles to find any part of Intervenors' pleading that does so on its face. Admittedly, they have an uphill climb on this point. They no longer speak for the Executive Branch, which agrees with the Committee's request. *See Trump v. Thompson*, 2021 WL 5832713, at *26 (limiting analysis under *Nixon v. GSA* balancing to the burdens on President Biden, not former President Trump, and noting that President Biden considers as "within reasonable bounds" the efforts required to comply with a congressional request).

That does not excuse them, however, from their pleading obligations. Intervenors do allege that the request "burdens [them] by interfering with ongoing examinations, disclosing substantial amounts of sensitive financial information, providing no safeguards or accommodations, and overriding the Tax Code's purpose." ACCC ¶ 317. None of those alleged burdens involve the Executive Branch. *See United States v. Burr*, 25 F. Cas. 30, 34 (C.C.D. Va. 1807) (Marshall, Circuit Justice) ("[T]he president is elected from the mass of the people, and, on the expiration of the time for which he is elected, returns to the mass of the people again."). If anything, they burden Intervenors in their individual capacities. Intervenors make no other

facial allegation about how the request burdens "the Executive Branch." *Nixon v. GSA*, 433 U.S. at 443.

But even without a facial allegation, Intervenors' whole pleading plausibly alleges that § 6103(f) requests, even to a former President, might disrupt the Executive Branch. Intervenors allege that congressional Democrats have pursued the Trump tax returns over many years because "the information they obtain could be relevant politically." ACCC ¶ 234. And according to the pleading, congressional Democrats "believe this information will damage President Trump politically," a welcome development for Democrats. *Id.*

Those alleged facts suggest that Congress could use requests like this one to obtain derogatory information on a former President. Congress could then threaten a sitting President with a post-presidency subpoena, thereby leveraging § 6103(f) to influence the President's conduct while in office. *See* Int. Opp'n at 35. Congress thus could use a "post-Presidency pile-on" through a § 6103(f) request to "try and influence the President's conduct while in office."[15] *Trump v. Thompson*, 2021 WL 5832713, at *26.

A "potential for disruption" is therefore present.[16] *Nixon v. GSA*, 433 U.S. at 443. But that potential seems slight. Section 6103(f) is a twig, not a cudgel, against the Executive when

[15] The Federal Parties argue there is no impact to the presidency because President Biden now agrees to the request. He would not agree, the argument goes, if he thought the Committee's request burdened the presidency. *See* Hr'g Tr. at 28. *Nixon v. GSA* has already rejected this. *See* 433 U.S. 443. There, the current President defended the Act against President Nixon's separation-of-powers argument. If the Federal Parties were right, the Supreme Court would have stopped there. But the Court analyzed the former President's argument. This Court will do the same.

[16] The Committee sees little to no disruption because past Presidents have voluntarily released their tax returns. *See* Comm. MTD at 45; Hr'g Tr. at 21. The Court cannot agree. Any disclosure of tax returns might expose a President to ridicule or worse. That some Presidents took that risk does not signify zero disruption to the office. And here *Congress* is the one that might release returns. When wielded by another branch, such authority increases the potential for political squabbles that impose, even slightly, on a President's time. More, not all Presidents

directed at a past President. It does not by its own terms restrict the President from taking any action. *See, e.g.*, *Free Enterprise Fund v. PCAOB*, 561 U.S. 477, 495–98 (2010) (invalidating on separation of powers grounds an Act that "stripped" the President of the ability to hold subordinates accountable for their conduct). Thus, a threatened post-presidency § 6103(f) request would not bind a sitting President. Nor would it occupy a "substantial amount of" a sitting President's time. *Clinton v. Jones*, 520 U.S. 681, 702 (1997). He would understand that Congress could make good on the threat only after he left office. By then, his tax returns would be less salient, and the request would not restrict his abilities as a sitting President.

More still, a sitting President could justifiably decide to call Congress's bluff. Times change quickly in politics, and Congress might drop its threat once the President leaves office or control of Congress changes hands. In sum, a threatened post-presidency § 6103(f) request poses a limited potential to disrupt the Executive Branch. "Still, even remote threats to separation of powers must be given appropriate consideration." *Mazars*, 2021 WL 3602683, at *13.

That limited disruptive potential guides the second step under *Nixon v. GSA*. The Court must determine "whether that impact" on the Executive "is justified by an overriding need to promote objectives within the constitutional authority of Congress." *Nixon v. GSA*, 433 U.S. at 443. When that impact is low—as it is here—Congress need not show a large interest to "justif[y]" the intrusion. *Id.*; *see also Jud. Watch, Inc. v. Nat'l Energy Policy Dev. Grp.*, 219 F. Supp. 2d 20, 50 (D.D.C. 2002) (holding under *Nixon v. GSA* that "[t]he greater the intrusion into the Executive sphere, the greater the interest necessary to justify the intrusion").

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who released tax returns released all of their returns. *See* ACCC ¶ 12. The Committee therefore overstates this historical practice.

Here, much of the Court's previous analysis on legislative purpose applies. Legislation "may be had" on the Program. *Eastland*, 421 U.S. at 506. Thus, the Request's objectives fall within "the constitutional authority of Congress." *Nixon v. GSA*, 433 U.S. at 443.

As for an "overriding need," Intervenors argue that the IRS could answer the Committee's questions without presidential tax returns and audit forms. *See* Int. Opp'n at 56. Perhaps. But much of the IRS's internal process remains hidden. The individual auditor retains significant discretion over a presidential audit, and the Internal Revenue Manual does not specify how that auditor should consider returns from business entities controlled by a sitting President. *See* Comm. MTD at 14–15.

Intervenors' audit files would show how IRS auditors use that discretion. And the tax returns themselves would allow the Committee to see how those audits materialized. True, the IRS could tell the Committee about these things. But the Committee need not accept the agency's assurances. *See McGrain*, 273 U.S. at 175 ("Experience has taught that mere requests for [ ] information often are unavailing, and also that information which is volunteered is not always accurate or complete . . . ."). The Committee can demand documentary evidence of how the IRS audit process works.

Intervenors also recycle their argument that the Committee has not shown why it needs only the records of President Trump. *See* Int. Opp'n at 57. The Court has already credited much of the Committee's explanation. President Trump routinely criticized the IRS and controlled dozens of business entities during his time in office. Those unique factors matter. President Trump or his subordinates might have expressed privately to the IRS auditor the same criticisms that the President expressed publicly. The Committee has reason to explore such a possibility and to learn how the IRS deals with such pressure from a sitting President. His information

would clarify the resiliency of IRS procedures in that situation. More, the Committee could learn from the Trump returns how the IRS includes a President's business entities in any audit. How that process incorporates a President's businesses provides a compelling reason to request Intervenors' tax materials.

These reasons justify the Committee's need for Intervenors' tax materials. And they are enough to "overrid[e]" the low "impact" on the Executive Branch. *Nixon v. GSA*, 433 U.S. at 443. That low impact largely decides this analysis. If § 6103(f) intruded more on Executive decision-making, the *Nixon v. GSA* balance would look different. But the threat to the Executive Branch from a § 6103(f) request on a former President is minimal. The Court holds that the Committee's many reasons for its request overcome that minimal intrusion.

Amended Counterclaim and Crossclaim IV will be dismissed.

C.

Intervenors also allege that § 6103(f) is facially unconstitutional. They bear a "heavy burden" to invalidate the statute on its face. *United States v. Salerno*, 481 U.S. 739, 745 (1987). To succeed, Intervenors must show that "no set of circumstances exists under which the law would be valid." *Id.* That a statute "might operate unconstitutionally under some conceivable set of circumstances" is not enough. *Id.* The statute's operation in all circumstances is what matters. The Supreme Court has recently reiterated this standard for facial challenges. *See Ams. for Prosperity Fund v. Bonta*, 141 S. Ct. 2373, 2387 (2021).

Intervenors correctly note that § 6103(f)'s text includes no requirement that the Committee have a valid legislative purpose when it requests tax returns. Lacking such a requirement (Intervenors say), § 6103(f) allows Congress to request tax information without a

legitimate legislative purpose. Thus, they say, § 6103(f) states a rule of law incapable of constitutional application.

They are mistaken. Intervenors must allege "no set of circumstances" in which a statute can be constitutionally applied. *Salerno*, 481 U.S. at 745. Even if the statute is constitutional in "at least one scenario," the facial challenge fails. *Chem. Waste Mgmt. v. EPA*, 56 F.3d 1434, 1437 (D.C. Cir. 1995). Here, the Court need not grasp for hypotheticals in which Congress could permissibly use § 6103(f). A congressional committee with a valid legislative purpose for a § 6103(f) request acts within the scope of Article I. Section 6103(f) authorizes that request as much as one without such a valid purpose. *See City of Los Angeles v. Patel*, 576 U.S. 409, 418–19 (2015) (noting that proper focus of a facial challenge is what the statute "actually authorizes"). Thus, a committee's request premised on a valid legislative purpose represents a set of circumstances in which Congress's use of § 6130(f) would be constitutional. That dooms Intervenors' facial challenge.

Intervenors do not disagree that a committee could use § 6103(f) with a valid legislative purpose. Instead, they argue that hypothetical application is irrelevant in a facial challenge. In their view, the "no set of circumstances" language from *Salerno* is not a test but a legal conclusion in a successful facial challenge. *See* Int. Opp'n at 30–32. As Intervenors put it, when a statute states an invalid rule of law, the statute is thus invalid in all its applications. *See id.* at 30. Courts need not consider hypothetical applications of the statute. Under this argument, facial analysis simply asks whether the bare terms of the statute conflict with some rule of law.

Intervenors cite *United States v. Lopez*, 514 U.S. 549 (1995), for this approach. *Lopez* invalidated the Gun-Free School Zones Act, which criminalized gun possession near schools. *See id.* at 551. The Court held that the Act exceeded Congress's authority under the Commerce

Clause because the Act "ha[d] nothing to do with 'commerce' or any sort of economic enterprise" and "contain[ed] no jurisdictional element" to ensure that the firearm possession affected interstate commerce. *Id.* at 561.

Intervenors focus on the second holding and argue that the Court never considered various hypotheticals where a gun possessed near a school could have arrived there by interstate commerce. Instead, they say, the Court simply analyzed the statutory language, determined that it lacked a jurisdictional element, and refused to engraft one. Intervenors argue that, based on *Lopez*, this Court should not read Article I's "valid legislative purpose" limitation into § 6103(f).

Even putting aside the heightened notice requirements of a criminal statute, Intervenors misconstrue *Lopez*. The Supreme Court also held that mere possession of a gun involved no "economic activity," unlike prior cases upholding congressional statutes under the Interstate Commerce Clause. *Id.* at 560. Thus, although an express jurisdictional requirement would have provided an "Interstate" tie, the statute still would not have governed an economic activity that could be considered "Commerce." That deficiency would taint any prosecutions authorized by the statute. *See Nebraska v. EPA*, 331 F.3d 995, 998 n.2 (D.C. Cir. 2003).

More, the Supreme Court since *Lopez* has followed the same approach as this Court does now. In *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008), the Court considered a facial challenge by political parties to a state statute that permitted all primary candidates to list their party preference, even if the parties had not endorsed those candidates. *See id.* at 447–48. The top two recipients of primary votes would proceed to the general election. *See id.* The parties argued that the new law burdened their associational rights because voters would assume that candidates on the general election ballot had received endorsements from their preferred party. *See id.* at 454.

The Court acknowledged that "it [was] *possible* that voters" would misinterpret the party preference of each candidate as an endorsement by that party. *Id.* at 455 (emphasis in original). But the parties had brought a facial challenge, and the Court thus could not invalidate the law "based on the mere possibility of voter confusion." *Id.* Instead, the Court asked whether ballots "could conceivably be printed in such a way" as to eliminate problematic voter confusion. *Id.* at 456. The Court listed multiple examples to show the "variety of ways" in which ballots could be printed with minimal confusion. *Id.* That those conceivable implementations of the law would comport with the First Amendment doomed the parties' facial challenge. *See id.* at 457.

So too here. As in *Washington State Grange*, this Court can easily conceive ways in which congressional committees could use § 6103(f) with a valid legislative purpose and thus consistent with Article I.[17] Intervenors therefore have not alleged a facial challenge to § 6103(f). Amended Crossclaim V will be dismissed.

D.

Intervenors next claim that the Executive Branch Defendants impermissibly retaliated in violation of the First Amendment when they switched positions on the Committee's request. *See* ACCC ¶¶ 336–37. According to Intervenors, the Executive flip-flopped because of former President Trump's politics. The reversal "came under President Biden, a Democrat who made

[17] The Supreme Court has also noted that a facial challenge will succeed when a law "lacks any plainly legitimate sweep." *Id.* at 449 (cleaned up). This is a "less stringent" standard than the "no set of circumstances" test from *Salerno*. *Id.* But Intervenors cannot meet even that lower standard. Because Article I allows requests under § 6103(f) with a valid legislative purpose, § 6103(f) has a plainly legitimate sweep. *See In re Sealed Case*, 936 F.3d 582, 589 (D.C. Cir. 2019).

the disclosure of President Trump's tax returns a campaign issue and knows that President Trump remains the most high-profile Republican and his top political rival." *Id.* ¶ 337.[18]

The First Amendment prohibits the Government from discriminating, harassing, or retaliating because of political party, association, or speech. *See Rutan v. Repub. Party of Ill.*, 497 U.S. 62, 75 (1990). To establish a First Amendment claim, Intervenors must allege that (1) they engaged in protected conduct; (2) that the Executive Branch Defendants took some retaliatory action sufficient to deter a person of ordinary firmness in Intervenors' position from speaking again; and (3) that there is a "causal link" between the two. *Scahill v. Dist. of Columbia*, 909 F.3d 1177, 1185 (D.C. Cir. 2018). To establish that causal link, a plaintiff must allege that the protected speech was "the but-for cause of the retaliatory action," *id.*, meaning that "the adverse action against the plaintiff would not have been taken absent" the defendant's "retaliatory motive," *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019).

The Court's previous analysis disposes of this claim. Recall that the Committee has a legislative purpose for the 2021 Request, and that the Request does not offend the separation of powers. It is thus constitutional, and the Executive Branch "shall" comply with it. *See* 26 U.S.C. § 6103(f)(1). That statutory command requires the Executive Branch Defendants to furnish the requested tax returns to the Committee. And thanks to that command, their decision to disclose Intervenors' materials "would have [occurred] anyway." *Hartman v. Moore*, 547 U.S. 250, 260 (2006). More, that command gives the Executive Branch Defendants a "legitimate basis" for their compliance with the 2021 Request. *Daugherty v. Sheer*, 891 F.3d 386, 391 (D.C. Cir. 2018).

[18] Although Intervenors have not brought this claim against the Committee, they also allege that the Committee wished "to retaliate against President Trump because of his policy positions" and his political speech. *Id.* ¶ 331.

Thus, Intervenors fail to allege that former President Trump's politics were "the but-for cause" of the switch by the Executive Branch Defendants. *Nieves*, 139 S. Ct. at 1722. Section 6103(f) required compliance with the 2021 Request, regardless of any alleged retaliatory motive by the Executive Branch Defendants. Intervenors therefore fail to allege a "causal link" between former President Trump's politics and the switch by the Executive Branch Defendants. Amended Crossclaim VI will be dismissed.

E.

Intervenors next claim that the IRS continues to audit their tax returns and that "allowing the Committee to obtain files that are the subject of ongoing examinations violates the separation of powers." ACCC ¶¶ 340, 344. The Executive Branch Defendants respond that this claim is not ripe because the Committee's receipt of the tax materials will not allow the Committee to "partner in" the audits with the Executive Branch. *Id.* ¶ 342; Gov't MTD at 58–59. The Court need not decide that issue because Intervenors do not raise a plausible claim.

The Court must accept as true the factual statement that the IRS continues to audit Intervenors. *See Twombly*, 550 U.S. at 555. But the Court cannot similarly accept the conclusory legal statement that disclosure to Congress of ongoing examinations violates the separation of powers. *See Iqbal*, 556 U.S. at 678. Intervenors themselves have not adequately supported this alleged legal rule.

They cite only two OLC opinions from the 1980s. Both opinions discuss the Executive's historical unwillingness to share open investigative files with Congress. That historical practice seemingly favors Intervenors. Yet each opinion also notes that the Executive can disclose open investigative files "in extraordinary circumstances," directly contradicting Intervenors' alleged legal rule. Response to Cong. Requests for Info. Regarding Decisions Made Under the Indep.

Counsel Act, 10 Op. O.L.C. 68, 76 (1986); Cong. Subpoenas of DOJ Investigative Files, 8 Op. O.L.C. 252, 262 (1984). Thus, even were the Court to credit the historical practice between the branches, Intervenors' own legal sources permit the Executive to hand over open investigatory files. That is enough to make implausible, at least on this pleading, Intervenors' broad and conclusory separation-of-powers claim.

Amended Crossclaim VII will be dismissed.

F.

Finally, Intervenors claim that congressional access to their tax materials during audits will violate their Due Process rights. They allege that because the Committee's investigation focuses on a pending adjudication, the IRS no longer has an appearance of impartiality. *See* ACCC ¶ 348. According to Intervenors, "[e]ven the most scrupulous IRS officials could not help but be influenced by" the Committee's scrutiny of their work. *Id.* ¶ 349.

At first blush, this claim appears unripe because, according to the pleading, no audit has finished. The Court therefore cannot consider "whether extraneous factors intruded into" the IRS's decision because no decision exists. *Peter Kiewit Sons' Co. v. U.S. Army Corps of Eng'rs*, 714 F.2d 163, 170 (D.C. Cir. 1983). But the Court will analyze the merits because Intervenors allege that the IRS has lost any *appearance* of impartiality, which is no less objectionable than actual bias. *See* Int. Opp'n at 96; *D.C. Fed'n of Civic Ass'ns v. Volpe*, 459 F.2d 1231, 1246 (D.C. Cir. 1972).

Even under that analytical framework, the claim fails. The D.C. Circuit has held that "contemporaneous congressional proceedings do not invalidate an agency adjudication where the proceedings have no link to agency decision makers." *ATX, Inc. v. DOT*, 41 F.3d 1522, 1528 (D.C. Cir. 1994). Thus, that Congress will investigate a pending audit of Intervenors'

information does not by itself raise a Due Process problem. More, Intervenors do not allege that the Committee has ever exerted pressure on the IRS decisionmakers who conduct the audits of Intervenors' tax information.

That failure sinks this claim. Intervenors must show some "nexus between the [alleged] pressure and the actual decision maker." *Id.* at 1527. They have not shown even a tenuous one between the Committee and the IRS. For example, Intervenors never allege that Members of Congress met with any IRS decisionmaker with authority over an audit of Intervenors' tax returns. *See, e.g.*, *Connecticut v. Dep't of Int'r*, 363 F. Supp. 3d 45, 64 (D.D.C. 2019) (holding that the plaintiff had shown a sufficient nexus when the plaintiff alleged that Members of Congress had met privately with the agency's Secretary about a pending adjudication).

This claim is therefore distinguishable from *Pillsbury Co. v. FTC*, 354 F.2d 952 (5th Cir. 1966), which Intervenors invoke. There, senators asked an agency head in a public hearing why he had reached his decision on an adjudication. *See id.* at 964. Intervenors allege no similar interaction here. They instead speculate that IRS officials overseeing the audit "could not help but be influenced" by the Committee's work and public statements. ACCC ¶ 349. That is not enough to allege that the Committee's work is "targeted directly" at decisionmakers inside the IRS. *ATX*, 41 F.3d at 1528. And even if it were, Intervenors have failed to allege with any supporting facts that such pressure will "shape[ ] the [IRS's] determination of the merits" of the audit.[19] *Id.*

Amended Crossclaim VIII will be dismissed.

[19] Perhaps they can allege improper interference by Congress once the IRS finishes its audit process. *See, e.g.*, *Peter Kiewit Sons' Co.*, 714 F.2d at 169–70 (analyzing claim of improper congressional interference after an agency made its adjudication). They cannot make such an allegation now because they allege that the audits are ongoing.

IV.

If Chairman Neal's true interest in the former President's tax returns is indeed to better understand the Presidential Audit Program, he will doubtless be able to accomplish this objective without publishing the returns. Public disclosure of another's tax returns is a grave offense, and prior committee chairmen have wisely resisted using § 6103(f) to publicize individuals' returns. Anyone can see that publishing confidential tax information of a political rival is the type of move that will return to plague the inventor.

It might not be right or wise to publish the returns, but it is the Chairman's right to do so. Congress has granted him this extraordinary power, and courts are loath to second guess congressional motives or duly enacted statutes. The Court will not do so here and thus must dismiss this case.

A separate Order will issue.

2021.12.14
17:08:09 -05'00'

Dated: December 14, 2021

TREVOR N. McFADDEN, U.S.D.J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES,

Plaintiff,

v.

U.S. DEPARTMENT OF THE TREASURY, ***et al.***,

Defendants,

DONALD J. TRUMP, ***et al.***,

Defendant-Intervenors.

Case No. 1:19-cv-01974 (TNM)

ORDER

For the reasons set forth in the accompanying Memorandum Opinion and upon consideration of the law and the briefs and arguments of the parties, it is hereby

ORDERED that Counterdefendant's [133] Motion to Dismiss is GRANTED. It is also

ORDERED that Cross-Defendants' [135] Motion to Dismiss is GRANTED, and the Amended Counterclaims and Cross-claims are dismissed.

SO ORDERED.

This is a final, appealable Order. The Clerk of Court is requested to close this case.

2021.12.14
17:10:50 -05'00'

Dated: December 14, 2021

TREVOR N. McFADDEN
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES, *Plaintiff–Counterdefendant*, v. UNITED STATES DEPARTMENT OF THE TREASURY; INTERNAL REVENUE SERVICE; JANET YELLEN, in her official capacity as Secretary of the United States Department of the Treasury; and CHARLES P. RETTIG, in his official capacity as Commissioner of the Internal Revenue Service, *Defendants–Crossdefendants*, and DONALD J. TRUMP; THE DONALD J. TRUMP REVOCABLE TRUST; DJT HOLDINGS LLC; DJT HOLDINGS MANAGING MEMBER LLC; DTTM OPERATIONS LLC; DTTM OPERATIONS MANAGING MEMBER CORP.; LFB ACQUISITION MEMBER CORP.; LFB ACQUISITION LLC; and LAMINGTON FARM CLUB, LLC d/b/a TRUMP NATIONAL GOLF CLUB-BEDMINSTER, *Intervenors–Counterclaimants–Crossclaimants*.	No. 1:19-cv-1974-TNM

AMENDED ANSWER AND COUNTERCLAIMS/CROSS-CLAIMS

Intervenors—Donald J. Trump, The Donald J. Trump Revocable Trust, DJT Holdings LLC, DJT Holdings Managing Member LLC, DTTM Operations LLC, DTTM Operations Managing Member Corp, LFB Acquisition Member Corp., LFB Acquisition LLC, and Lamington Farm Club, LLC d/b/a Trump National Golf Club-Bedminster—respectfully submit this amended responsive pleading.

ANSWER

1. Intervenors deny that the Committee's requests are valid oversight requests or that they are entitled to any relief. Intervenors admit the rest.

2. The text of Section 6103(f) speaks for itself. Intervenors admit that Congress enacted the Revenue Act of 1924 in 1924. Intervenors deny for lack of knowledge the allegations regarding the frequency of the use of Section 6103(f) and the extent of the Executive Branch's compliance therewith. Intervenors deny the rest.

3. Intervenors admit that to date, Defendants have declined to produce President Trump's tax return information in response to the Committee's requests. Intervenors deny the rest.

4. The text of Section 6103(f) speaks for itself. Intervenors lack sufficient information to respond to the allegations about alleged statements by the President. Intervenors deny the rest.

5. Deny.

6. Deny.

7. Intervenors admit that to date, Defendants have not complied with the Committee's subpoenas for nearly identical information and have cited advice from the Office of Legal Counsel concluding that Defendants have acted correctly. Intervenors deny the rest.

8. The cited authority speaks for itself. The remainder of the paragraph consists of legal conclusions to which no response is required.

9. Intervenors admit that the Committee asks this Court to order Defendants to produce the requested information. Intervenors deny the rest.

10. Intervenors admit that the Court has jurisdiction over this action.

11. Admit.

12. Admit.

13. Admit.

14. Admit.

15. Deny. Janet Yellen is the current Secretary of the Treasury and this action continues against her in her official capacity.

16. Deny.

17. Intervenors deny for lack of knowledge.

18. The cited authority speaks for itself. The remainder of the paragraph consists of legal conclusions to which no response is required.

19. The cited authority speaks for itself. The remainder of the paragraph consists of legal conclusions to which no response is required.

20. The cited authorities speak for themselves. The remainder of the paragraph consists of legal conclusions to which no response is required.

21. The cited authorities speak for themselves. The remainder of the paragraph consists of legal conclusions to which no response is required.

22. The cited authorities speak for themselves. The remainder of the paragraph consists of legal conclusions to which no response is required.

23. Intervenors admit that Congress has enacted legislation purporting to require Treasury to provide the Committee with tax return information. The remainder of the paragraph consists of legal conclusions to which no response is required.

24. The cited authority speaks for itself. The remainder of the paragraph consists of legal conclusions to which no response is required.

25. Admit.

26. Admit.

27. The cited authorities speak for themselves. The remainder of the paragraph consists of legal conclusions to which no response is required.

28. The cited authority speaks for itself. The remainder of the paragraph consists of legal conclusions to which no response is required.

29. The text of Section 6103(f) speaks for itself. The remainder of the paragraph consists of legal conclusions to which no response is required.

30. Intervenors admit that Congress enacted the Revenue Act of 1924 in 1924. The remainder of the paragraph consists of legal conclusions to which no response is required.

31. The cited authorities speak for themselves. The remainder of the paragraph consists of legal conclusions to which no response is required.

32. The cited authorities speak for themselves. The remainder of the paragraph consists of legal conclusions to which no response is required.

33. The cited authorities speak for themselves. The remainder of the paragraph consists of legal conclusions to which no response is required.

34. Intervenors admit that Congress enacted the Revenue Act of 1924 in 1924. The cited authorities speak for themselves. The remainder of the paragraph consists of legal conclusions to which no response is required.

35. Intervenors admit that Congress enacted the Tax Reform Act of 1976 in 1976. The cited authorities speak for themselves. The remainder of the paragraph consists of legal conclusions to which no response is required.

36. The cited authorities speak for themselves. The remainder of the paragraph consists of legal conclusions to which no response is required.

37. The cited documents speak for themselves. Intervenors deny the remaining allegations for lack of knowledge.

38. Deny for lack of knowledge.

39. The cited documents speak for themselves. Intervenors deny the remaining allegations for lack of knowledge.

40. Deny for lack of knowledge.

41. The cited document speaks for itself. Intervenors deny the remaining allegations for lack of knowledge.

42. The cited documents speak for themselves. Intervenors admit the IRS audit policy was adopted in 1977. The remainder of the paragraph consists of legal conclusions to which no response is required.

43. The cited documents and authority speak for themselves. The remainder of the paragraph consists of legal conclusions to which no response is required.

44. The cited documents speak for themselves. The remainder of the paragraph consists of legal conclusions to which no response is required.

45. The cited documents speak for themselves. The remainder of the paragraph consists of legal conclusions to which no response is required.

46. Deny.

47. The cited documents speak for themselves. Intervenors deny that President Trump has frequently attacked the integrity of, or continually expressed disdain for, the IRS's audit system. Intervenors deny the rest.

48. The cited documents speak for themselves. Intervenors deny the rest.

49. Intervenors admit that President Trump has declined to disclose his tax returns and that President Trump and Defendant Rettig made the quoted statements. Intervenors deny the rest.

50. Intervenors admit that President Trump made the quoted statements.

51. The text of H.R. 1 speaks for itself. Intervenors deny the rest.

52. Intervenors admit that the Tax Transparency Act of 2019, H.R. 1489, 116th Cong. (2019), the Presidential Allowance Modernization Act of 2019, H.R. 1496, 116th Cong. (2019), the RIGHT Act of 2019, H.R. 1028, 116th Cong. (2019), and the Charitable Conservation Easement Program Integrity Act of 2019, H.R. 1992, 116th Cong. (2019), were referred to the Committee. Intervenors deny the rest.

53. Intervenors admit the Committee convened a hearing on February 7, 2019. The transcript of the hearing speaks for itself.

54. Intervenors admit that numerous witnesses testified at the hearing. The transcript of the hearing speaks for itself.

55. The transcript of the hearing speaks for itself. Intervenors deny the rest of the allegations in this paragraph.

56. Intervenors admit that the Committee submitted an oversight plan. The cited document speaks for itself.

57. Intervenors admit that the Committee on April 3, 2019, requested tax return information (including the "administrative files") for President Trump and eight related entities for tax years 2013 through 2018. The Committee has since submitted a modified request seeking information for the tax ears 2015-2020. Intervenors deny the rest.

58. Intervenors admit that the Committee did not include within its April 2019 Section 6103(f) request a stated reason for the request and that Chairman Neal made the quoted statement. Intervenors deny the rest.

59. Intervenors admit that the Committee has sought six years of tax return information, including "administrative files," for President Trump and eight related entities, and that Chairman Neal made the quoted statement. Intervenors deny the rest.

60. Deny.

61. Deny.

62. Admit.

63. Admit.

64. Admit.

65. Intervenors admit that on April 13, 2019, the Committee reiterated its Section 6103(f) request in a letter, the content of which speak for itself. Intervenors deny the rest.

66. Admit, except to deny the characterization of counsel's support for Treasury's decisions to consult with the Department of Justice.

67. Admit that the Secretary Mnuchin responded in a letter dated April 23, 2019, the content of which speaks for itself.

68. Intervenors admit that Secretary Mnuchin made the quoted statements. Intervenors deny the rest.

69. Intervenors admit that Secretary Mnuchin made the quoted statements. Intervenors deny the rest.

70. Intervenors admit that the Commissioner of the IRS sent a letter to the Committee dated April 23, 2019, the content of which speaks for itself.

71. Intervenors admit that Secretary Mnuchin and Commissioner Rettig sent letters to the Committee dated May 6, 2019, the contents of which speak for themselves. Intervenors deny the rest.

72. Intervenors admit that the Committee issued subpoenas with a return date of May 17, 2019, but otherwise lack sufficient information to respond to the allegations in this paragraph.

73. Intervenors admit that Chairman Neal made the quoted statements. Intervenors deny the rest.

74. Intervenors admit that Chairman Neal made the quoted statements. Intervenors deny the rest.

75. Intervenors admit that the Secretary of the Treasury and the Commissioner of the IRS responded by letters dated May 17, 2019, the contents of which speaks for themselves.

76. Intervenors admit that Secretary Mnuchin made the quoted statement. Intervenors deny the rest.

77. Intervenors admit that Commissioner Rettig made the quoted statements. Intervenors deny the rest.

78. Deny.

79. Deny for lack of knowledge.

80. Deny for lack of knowledge.

81. Deny for lack of knowledge.

82. Intervenors admit that Chairman Neal sent a letter dated June 28, 2019, the content of which speaks for itself. Intervenors deny the rest for lack of knowledge.

83. Intervenors admit that after Secretary Mnuchin and Commissioner Rettig declined to comply with the Committee's Section 6103(f) request, and that OLC published an opinion

supporting their decision to decline to provide the Committee with the tax returns, the content of which speaks for itself.

84. The OLC opinion speaks for itself. Intervenors deny the rest of this paragraph.

85. The OLC opinion speaks for itself. Intervenors deny the rest of this paragraph.

86. The OLC opinion speaks for itself. Intervenors deny the rest of this paragraph.

87. Deny.

88. The paragraph sets forth legal conclusions, to which no response is required.

89. The paragraph sets forth legal conclusions, to which no response is required.

90. Deny.

91. Deny.

92. Deny.

93. Deny.

94. Deny.

95. Intervenors admit that the House is not a continuing body and that the 116th Congress ended on January 3, 2021. Intervenors deny the rest.

96. Deny.

97. Deny.

98. Intervenors admit that the Bipartisan Legal Advisory Group voted to authorize the Committee to initiate this litigation. The cited authorities speak for themselves. Intervenors deny the rest.

99. Intervenors incorporate their responses to the preceding paragraphs, as if set forth fully herein.

100. Intervenors admit that the Committee authorized, issued, and served the subpoenas on Defendants. Intervenors deny the rest.

101. Intervenors admit that the subpoenas demand that the Defendants produce the documents set forth in Schedule A of the subpoenas. Intervenors deny the rest.

102. Deny.

103. Deny.

104. Deny.

105. Intervenors incorporate their responses to the preceding paragraphs, as if set forth fully herein.

106. Intervenors admit that the statute's text includes the quoted language.

107. Deny.

108. Section 6103(f) speaks for itself. Intervenors deny the rest.

109. Deny.

110. Deny.

111. Intervenors incorporate their responses to the preceding paragraphs, as if set forth fully herein.

112. Intervenors admit that the statute's text includes the quoted language.

113. Deny.

114. Deny.

i. Deny.

ii. Deny.

iii. Deny.

iv. Deny.

115. Deny.

116. Intervenors incorporate their responses to the preceding paragraphs, as if set forth fully herein.

117. Intervenors admit that the statute's text includes the quoted language.

118. Deny.

119. Deny.

i. Deny.

ii. Deny.

120. Deny.

121. Intervenors incorporate their responses to the preceding paragraphs, as if set forth fully herein.

122. Intervenors admit that the statute's text includes the quoted language.

123. Deny.

124. Deny.

125. Deny.

126. Intervenors incorporate their responses to the preceding paragraphs, as if set forth fully herein.

127. The text of Section 6103(f) speaks for itself. Intervenors deny the rest.

128. Intervenors admit that the Committee provided Defendants with a written request for tax return information and that Defendants have not provided the requested documents. Intervenors deny the rest.

129. Deny.

130. Deny.

131. Intervenors incorporate their responses to the preceding paragraphs, as if set forth fully herein.

132. The text of Section 6103(f) speaks for itself. Intervenors deny the rest.

133. Intervenors admit that the Committee provided Defendants with a written request for tax return information and that Defendants have not complied with that request. Intervenors deny the rest.

134. Deny.

135. Deny.

136. Intervenors incorporate their responses to the preceding paragraphs, as if set forth fully herein.

137. Deny.

138. The text of Section 6103(f) speaks for itself. Intervenors deny the rest.

139. Deny.

140. Deny.

RESPONSE TO PRAYER FOR RELIEF

Intervenors deny that the Committee is entitled to any relief.

AMENDED COUNTERCLAIMS & CROSS-CLAIMS

1. No one believes that the House Ways and Means Committee has requested President Trump's tax returns to study legislation about the IRS's mandatory presidential audit process. To quote one Congressman, the Committee's request "is not in good faith" and "nobody believes [it's] in good faith." To quote another, "[o]f course it's political and House Democrats are attacking President Trump." Or to quote another, the request is "all about politics."

2. The extensive public record, the mismatch between the Committee's request and rationale, the judgment of the executive branch, and the judgment of the U.S. Supreme Court all reflect what is already obvious to any reasonable observer: House Democrats requested President Trump's tax returns because they think he should have released the returns during the campaign, they assume he didn't because the information would hurt him politically, and they want to force the issue to cause him political damage.

3. Not even those who support the Committee's quest to obtain President Trump's tax returns disagree. No one defends the Committee's audit rationale as a real purpose for the request; they argue that courts are powerless to evaluate anything but the face of the request.

4. That has never been the law. When the House made similar arguments in *Trump v. Mazars*, the Supreme Court rejected them. As in that case, "[w]e would have to be blind not to see what all others can see and understand"—that the Committee's request is not "a run-of-the-mill legislative effort but rather a clash between rival branches of government over records of intense political interest for all involved." *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2034 (2020) (cleaned up). If this request is backed by a legitimate legislative purpose, then the legitimate-legislative-purpose standard—and the crucial separation-of-powers principles that it protects—has no meaning.

5. Although the executive branch has decided to abet the Committee's attempt to expose the sensitive financial information of a political rival, its flip-flop does not make the request any more lawful. In fact, its participation creates still more legal defects. This Court should rule for Intervenors, and against the Committee and Defendants, on Intervenors' counterclaims and cross-claims.

I. 2016 Presidential Campaign

6. During the 2016 presidential campaign, then-Candidate Trump declined to disclose his federal tax returns.

7. As Trump's tax attorneys explained then, his returns "have been under continuous examination by the Internal Revenue Service since 2002, consistent with the IRS's practice for large and complex businesses," and "[e]xaminations for returns for the 2009 year and forward are ongoing."

8. Charles Rettig, before he became IRS Commissioner, explained that no "experienced tax lawyer representing Trump in an IRS audit [would] advise him to publicly release his tax returns during the audit." Rettig said the IRS can target wealthy individuals for audits by its so-called "Wealth Squad," a "specialized, experienced group of examiners solely focused on conducting audits of high-income/high-wealth taxpayers."

9. Trump's nondisclosure of his tax returns became one of the biggest political issues in the 2016 campaign.

10. The issue divided the country along partisan lines. In 2016, public polls showed that over 90% of Democratic voters wanted to see the tax returns. By 2018, that number had not dropped—with over 90% of Democrats wanting President Trump to disclose his tax returns versus only 30% of Republicans. And still in 2020, polls showed that Democrats' demand for President Trump's tax returns remained just as high.

11. The most common talking point was that Trump should disclose his tax returns because, by tradition, other major-party nominees for President had disclosed their tax returns.

12. Trump's critics exaggerated the scope of this tradition. The tradition had only been around since 1980 (or 9 out of 58 presidential elections). Presidential candidates who released no tax returns include John F. Kennedy, Lyndon B. Johnson, Dwight D. Eisenhower, and Franklin D. Roosevelt. The disclosures after 1980, moreover, were entirely voluntary. And the number of returns varied widely—for example, Bob Dole released 30, while Ronald Reagan released only one and Mitt Romney released only two. Focusing on major-party nominees also ignores the numerous other individuals who ran for President but disclosed no tax returns, including Jerry Brown, Richard Lugar, Ralph Nader, Steve Forbes, Ross Perot, and Mike Huckabee.

13. Instead of tradition, the reason that Trump's Democratic opponents wanted him to disclose his tax returns is because they assumed that this information would damage him politically. As Secretary Clinton explained the general Democratic sentiment, "[A] lot of us were wondering, 'What is he hiding? It must be really terrible.'"

14. Secretary Clinton summarized the common theories at a presidential debate: "[W]hy won't he release his tax returns? … Maybe he's not as rich as he says he is. Second, maybe he's not as charitable as he says he is. Third, we don't know all of his business dealings …. Or maybe he doesn't want the American people ... to know that he's paid nothing in federal taxes.... It must be something really important, even terrible, that he's trying to hide." Her campaign spokesman followed up by speculating that "Trump's returns show just how lousy a businessman he is AND how long he may have avoided paying any taxes."

15. Vice President Biden agreed. Trump's position on his tax returns "anger[ed]" Biden. He accused Trump of not paying his "fair share" of taxes and of playing the American people "for suckers."

16. Several attempts were made to force the disclosure of Trump's tax information.

17. For example, Wikileaks suggested it was "working on" getting Trump's returns via hacking. Wikileaks later asked anyone with access to the tax returns to give them to Wikileaks so it could post the returns on its website while protecting the leaker's anonymity.

18. The New York Times also claimed to have pages from Trump's 1995 tax returns, which it published shortly before election day.

19. American Bridge 21st Century—a PAC closely associated with Hillary Clinton and whose goal was to "find what Republicans are hiding" and to "keep Donald Trump and the Republican Party unpopular"—created a website titled "Release Your Returns." Still today, the website pledges a donation of $5 million if Trump's returns are released. It also repeats Democrats' widely held reasons for wanting the returns disclosed. It reiterates the theories for why their disclosure would harm Trump politically, speculating that they would show "he hasn't been paying the taxes he owes," that "he isn't as wealthy as he claims," that "he hasn't donated to charity as much as he says," and even that "he has ties to the mafia."

II. 115th Congress

20. After the 2016 election, Trump was President, and the Republican Party had majorities in both the House and Senate. In this 115th Congress, Representative Kevin Brady (R-TX) was the chairman of the House Ways and Means Committee, and Representative Richard Neal (D-MA) was the ranking member.

21. After President Trump's victory, Congressional Democrats' desire to expose his tax information to the public only grew stronger. Democrats assumed that the information would

hurt President Trump politically, undermine his agenda, hurt his reelection chances or the Republican Party's chances in the 2018 midterms, or reveal unlawful conduct that would provide grounds to remove him from office.

22. During the 115th Congress, House Democrats made many attempts to obtain and publicly expose President Trump's tax information. Because they were in the minority, they knew that these attempts would likely fail—and thus never need to be defended in court. They therefore spoke more candidly about their purposes. In almost every statement, they admitted that their purpose was to disclose President Trump's tax information to the public. And they never once suggested that they wanted his information to help them study the IRS's mandatory audit process for Presidents.

23. For example, less than two weeks into the 115th Congress, and before President Trump was even sworn in, 21 Democratic ranking members—including Representative Neal—wrote a letter to then-Speaker Ryan, urging him to obtain President Trump's tax information. Their letter made no mention of the IRS's mandatory audit process for Presidents.

24. Shortly after President Trump was sworn in, Committee-Member Bill Pascrell (D-NJ) "urge[d]" Chairman Brady to use 26 U.S.C. §6103(f) to obtain "the President's federal tax returns." Without even seeing their contents, Committee-Member Pascrell also asked the Committee to "vote … to submit the President's federal tax returns to the House of Representatives—thereby … making them available to the public." Committee-Member Pascrell made no mention of the IRS's mandatory audit process for Presidents.

25. Just a few months into the 115th Congress, Committee-Member Pascrell introduced a resolution that would require the Treasury Department to provide President Trump's tax

information to the full House. Ranking Member Neal and every other Committee Democrat cosponsored the resolution. Ranking Member Neal was one of the original cosponsors.

26. In the debate over the resolution's markup, Committee Democrats argued that the resolution was appropriate because "the public" has a right to see President Trump's tax returns because he declined to disclose them during the election, because the tax returns might aid the then-ongoing Mueller investigation by proving a "Russia connection," and because the tax returns would show how the tax legislation that President Trump was pushing would affect him. No mention was made of the IRS's mandatory audit process for Presidents. In fact, Committee-Member Pascrell insisted that §6103 allows requests that are "not related to tax administration" and vehemently denied that "tax administration is the sole purpose of the disclosure."

27. The Committee rejected this resolution. It correctly noted that the resolution had "no tie to any investigation within our jurisdiction," but would be the first time that the House sought "the disclosure of confidential personal tax return information for purposes of embarrassing or attacking political figures of another party." The Committee also correctly observed that "the information sought by the [resolution's] supporters"—including proof of foreign ties—"would not appear on the President's tax returns in the first place."

28. Ranking Member Neal, and every other Committee Democrat who voted on the resolution, approved it. Speaking on behalf of all Committee Democrats, Ranking Member Neal also published a report on the resolution. The report reiterated that disclosure was warranted given the tradition of presidential candidates disclosing their tax returns "to the American public," and to show "the public" how the then-pending "tax reform will benefit President Trump and his vast business empire." No mention was made of the IRS's mandatory audit process for Presidents.

29. Committee Democrats concluded their report by explaining how, under §6103(f)(1), only the Committee could obtain President Trump's tax information and then "submi[t]" that information "to the House." "Procedurally, upon submission to the House, the tax return and return information would become available to the public." Committee Democrats pledged that they "remain steadfast in our pursuit to have his individual tax returns disclosed to the public."

30. Throughout the remainder of the 115th Congress, Committee Democrats repeatedly tried to force the public release of President Trump's tax information through letters, resolutions, draft legislation, proposed amendments, and more. Still today, Committee-Member Pascrell lists "Trump's Tax Returns" as one of the key "Issues" on his website, alongside "COVID-19," "Economy," and "Health Care." On this Trump's Tax Returns page, Committee-Member Pascrell has "a chronology" of 43 "attempts" by Democrats to disclose President Trump's confidential tax information—the first 28 of which occurred during the 115th Congress.

31. On President Trump's tax information, House Democrats in the 115h Congress were united in their efforts and purposes. They worked together on all of their attempts to disclose this information, and they spoke in collective terms ("we," "us," "Democrats," and the like).

32. While they were engaged in these relentless efforts, House Democrats gave many, ever-changing reasons for wanting President Trump's tax information. But their public statements were consistent in two major ways. First, House Democrats consistently said they wanted to expose President Trump's tax information to the public for the sake of exposure, not just to the House or a committee to study legislation. Second, they never once mentioned a desire to study the IRS's mandatory presidential audit process as a purpose for seeking President Trump's tax information.

33. For example, in February 2017, then–Minority Leader Nancy Pelosi (D-CA) and all Ranking Member Democrats (including Representative Neal) held press conferences where they discussed President Trump's tax returns.

34. In one press conference, speaking on behalf of the entire leadership team, Minority Leader Pelosi said that "we're calling on Chairman Brady to bring out those tax returns"—to "demand Trump's tax returns from the Secretary of the Treasury … and hold a committee vote to make those tax returns public." Leadership wanted these documents to find out "what do the Russians have on" President Trump.

35. In another press conference, again speaking on behalf of the Democratic leadership and citing "Mr. Neal" specifically, Minority Leader Pelosi reiterated that Chairman Brady should "ask for the President's tax returns." She insisted that "[t]he American people have a right to know the truth."

36. At another press conference in April 2017, Minority Leader Pelosi noted that "the American people want us to unlock that door"—meaning President Trump's tax information—and asked what "Republicans … are afraid of" if the information were released. Citing the ongoing Mueller investigation, Minority Leader Pelosi theorized that the tax returns "will be useful in the investigation of what do the Russians have on Donald Trump politically, personally, and financially."

37. At a press conference in February 2017, Ranking Member Neal said he wanted the public to "see [President Trump's] tax forms" and for "the media to sift and sort" them.

38. At a press conference regarding yet another attempt to "require President Trump … to disclose [his] tax returns to the American people," Ranking Member Neal admitted that House Democrats were trying to force public disclosure because President Trump had declined to

voluntarily disclose his returns during the campaign: "This is not about the law, this is about custom and practice. It's a settled tradition ... candidates reach the level of expectation that they're supposed to release their tax forms."

39. At a town hall in March 2017, Ranking Member Neal explained to his constituents that he could not obtain President Trump's tax returns because he was not the chairman of Ways and Means. He agreed that the returns should be disclosed to the public because Presidents since Gerald Ford have traditionally disclosed that information.

40. In September 2017, Ranking Member Neal provided a statement on yet another resolution to force Treasury to disclose President Trump's tax information. He stressed that "[t]ax returns" would reveal to "the American people" President Trump's "income and charitable giving."

41. One week later, Ranking Member Neal drafted another report on another failed resolution to force Treasury to disclose President Trump's tax information. "[T]he public" needs to see the "[t]ax returns," the Ranking Member stressed, because they "provide the clearest picture of a president's financial health, including how much he earns, how much tax he pays, his sources of income (e.g., capital gains, dividend income, and certain business income), the size of his deductions, whether he makes charitable contributions, and whether he uses tax shelters, loopholes, or other special-interest provisions to his advantage."

42. Committee-Member Bill Pascrell (D-NJ) stated that "[w]e must see Trump's tax returns to know just how far and how deep the crimes go." "Americans have a right to know if their President is a crook," he added. "Seeing Trump's tax returns will help us determine if he is one."

43. Another time Committee-Member Pascrell said, "After losing dad's support, Trump went on a spending spree — where did that money come from? The only way to know is to get his tax returns. I'll never give up on this."

44. In July 2018, Committee-Member Pascrell speculated that President Trump's tax returns would prove that he "skirt[ed] boundaries of ethics [and] law" and "consorted [with] mafia figures."

45. In October 2018, Committee-Member Pascrell noted that he had "led efforts to obtain Trump's tax returns" and complained that House Republicans had "voted 18 times to block us." He theorized that, once the tax returns "come out," they would prove the "depth of Trump's corruption" and that "The Art of the Deal and The Apprentice are malignant myths."

46. Also in October 2018, Committee-Member Pascrell criticized House Republicans for blocking the release of President Trump's tax information and thus preventing the Committee from proving "Trump's" supposed "lifetime of tax evasion and fraud."

47. In June 2017, Committee-Member Lloyd Doggett (D-TX) said, "Today House Republicans voted to reject a resolution I offered that would end the cover-up of President Trump's tax returns. Trump has bragged about bending the Tax Code to his whim. He has said only he can fix it. My resolution would ensure that before Congress considers Trump's tax plan, the American people will understand whether he only plans to 'fix' the Tax Code for himself."

48. In May 2018, Committee-Member Doggett noted that he had "demanded [President Trump's] tax returns" because "Americans deserve real answers on how Trump earns [and] spends [money]."

49. In September 2018, Committee-Member Doggett again called for the disclosure of President Trump's tax returns because "Trump's ongoing threats to the Mueller investigation make the need ever more urgent to see what he may be hiding."

50. In October 2018, Committee-Member Doggett surmised that House Republicans are "so determined to cover up Trump tax returns" because they want to conceal a "Russian connection" and the supposed fact that "Trump buil[t] his initial wealth through tax dodging—exploiting schemes to pay little tax on inherited millions." He added that "a New Congress" would be able to "review [President Trump's] returns" to "know whether or not the[] President is a crook."

51. Also in October 2018, Committee-Member Doggett said "we need to see Trump's tax returns" to prove his supposed "tax evasion"—"exactly what I have tried to do 7 times."

52. Committee-Member Doggett also said in October 2018 that the tax returns would reveal that "Trump's a self-made myth" and promised that, if Democrats took back the House in 2018, the Committee would not "even need a subpoena" to "obtain his tax returns." He reiterated that the returns would show a "Russian connection" and whether President Trump and his family benefited from the tax reform passed in December 2017. Once House Democrats got the returns, Committee-Member Doggett promised, "we'll … put a staff of CPAs to work looking and digging into those returns."

53. In February 2017, Committee-Member Earl Blumenauer (D-OR) posted that "[a]s we all know, Donald Trump refuses to make his tax returns public." He reassured the public that "there are several actions beings taken to try and release this information." He said he was "working with Rep. Bill Pascrell Jr. and several of my colleagues" on a forced disclosure.

54. In April 2017, Committee-Member Blumenauer said he supported the forcible release of President Trump's tax returns due to "precedent," to find out "[w]hat is he hiding," and because "America demand[s] answers."

55. In August 2018, Committee-Member Blumenauer said that President Trump must be forced to release his tax returns to uncover the existence of "illicit payments" he allegedly made.

56. In October 2018, Committee-Member Blumenauer said that, if Democrats took over the Ways and Means Committee, they would release President Trump's tax information to show that "Trump got rich through tax dodges, lied about it, & proceeded to give an enormous tax cut to the top 1%."

57. In March 2017, Committee-Member Judy Chu (D-CA) stated, "As GOP & Trump prepare to pass tax reform legislation, we need Trump's tax returns to see how much he stands to benefit from his own plan."

58. In April 2017, Committee-Member Chu said President Trump's tax returns would allow Americans to see whether he pays his "fair share" of taxes.

59. Committee-Member Chu complained in October 2018 that Republicans had "blocked" Democrats' requests "to see Trump's tax returns" "8 different times." She insisted that "[w]e need to know the truth" and to "[r]elease the returns" to see if Trump committed fraud when he was a private citizen.

60. In July 2017, Committee-Member Jimmy Gomez (D-CA) said that "[t]he American People have a right to know" what's in President Trump's tax returns and asked what House Republicans are "afraid of."

61. In October 2018, Committee-Member Gomez said a report about President Trump's supposed "tax schemes" when he was a private citizen "highlights why the American people still deserve to see" his tax returns.

62. Also in October 2018, Committee-Member Gomez said that the House should subpoena President Trump's tax returns to confirm that he committed widescale "[f]raud."

63. In March 2017, Committee-Member Susan DelBene (D-WA) said she "support[s]" Committee-Member Pascrell's "resolution to force disclosure" of President Trump's tax returns because the President should have "nothing to hide."

64. In April 2017, Committee-Member DelBene said that President Trump must be forced to "release his tax returns" because "[t]he American people deserve answers."

65. Also in April 2017, Committee-Member Gwen Moore (D-WI) said that the House must forcibly disclose President Trump's tax returns because her "constituents have been clear" and "[t]he truth must be revealed."

66. Also in April 2017, Committee-Member Dan Kildee (D-MI) said the House should forcibly disclose President Trump's tax returns because "[m]y constituents deserve transparency."

67. In February 2017, Committee-Member Don Beyer (D-VA) surmised that House Republicans "don't want the people to see [President Trump's] taxes." During the 2016 campaign, Committee-Member Beyer had said that Trump is "[h]iding" something that his tax returns would reveal.

68. In May 2017, Committee-Member Dwight Evans (D-PA) said that "[t]he American people are waiting to see" President Trump's tax returns, and noted that disclosure was "[e]specially" important due to the ongoing Russia investigation.

69. In October 2018, Committee-Member Linda Sánchez (D-CA) said she "will continue to fight along with Ways and Means Committee Democrats" to force the "release" of President Trump's tax returns. "The American people deserve answers."

70. In March 2017, Committee-Member Terri Sewell (D-AL) said she had "voted to release Trump's tax returns," tying the measure to Candidate Trump's decision to not release his tax returns during the campaign and asserting that "voters have the right to know."

71. In September 2017, Committee-Member Sewell said that the Committee should force the disclosure of President Trump's tax information because "the public deserves transparency" as "Congress considers tax reform."

72. In October 2018, Committee-Member Sewell reiterated that "[t]he Ways and Means Committee has the power to order the Treasury to release individual tax returns. That includes returns for Trump. Republicans have voted 18 times to keep Trump's tax returns buried-now is the time for them to correct course. The public deserves transparency."

73. In February 2017, Committee-Member John Larson (D-CT) issued a press release, calling it "outrageous that my Republican colleagues on the Ways and Means Committee are blocking the American public's right to know what is in President Trump's tax returns" and promising that he would "continue to press this issue, so the American public can know the whole truth."

III. 116th Congress

74. After the 2018 midterm elections, Democrats took control of the House. Representative Neal became chairman of the Ways and Means Committee, and Representative Pelosi became Speaker of the House. As Speaker, she had to be consulted on and approve all major investigative efforts, including any request for President Trump's tax information.

75. Before the election, Minority Leader Pelosi promised voters that, if Democrats won a House majority, then obtaining and releasing President Trump's tax returns "is one of the first things we'd do." "[T]hat's the easiest thing in the world. That's nothing."

76. Similarly, in September 2018, Ranking Member Neal responded "Yeah" when asked whether he would "force" the disclosure of President Trump's tax returns if Democrats took back the House. He added that "Democrats have voted again and again to release those documents."

77. Committee-Member Doggett added more detail about the Committee's plans, explaining that both "members" as well as "experts like CPAs" would do "a thorough review" of President Trump's tax returns to say "What does this show?". The likely "approach would be to get all of it, review it, and, depending on what that shows, release all or part of it" to the public.

78. After winning a majority on election day, however, incoming Speaker Pelosi tried to lower expectations. She acknowledged in December 2018 that "[t]here is popular demand for the Congress to request the President's tax returns," but she would only commit that the Ways and Means Committee would "take the first steps" toward making the request. She cautioned that securing the returns is "a little more challenging than you might think."

79. Incoming Chairman Neal echoed the Speaker's caution. He confirmed in October 2018 that, once he was chairman, he would "get the documents." But he warned that "[t]his has never happened before, so you want to be very meticulous." "It is not cut and dry." He said to "[a]nticipate a long court case."

80. Chairman Neal also explained that a decision on how to proceed would be made only after he engaged in substantial discussions with other Committee Democrats and with the wider Democratic caucus.

81. As soon as the 116th Congress began in January 2019, Speaker Pelosi confirmed that Democrats would try to obtain and expose President Trump's tax information. "I think overwhelmingly the public wants to see the president's tax returns," she added. "[T]hey want to know the truth, they want to know the facts and [that] he has nothing to hide."

82. A spokesperson for Chairman Neal agreed, but cautioned that the Chairman "wants to lay out a case about why presidents should be disclosing their tax returns before he formally forces [President Trump] to do it."

83. Chairman Neal confirmed that the Committee would pursue the public release of President Trump's tax returns because "the public has reasonably come to expect that presidential candidates and aspirants release those documents."

84. A poll taken in early 2019 found that only half of all voters thought the new Congress should prioritize obtaining President Trump's tax returns. But "the issue broke sharply along party lines, with 77 percent of Democrats saying it should be a priority, but only 19 percent of Republicans" and "49 percent" of independents. According to numerous press outlets, "liberals" were pressuring Chairman Neal to make the request quickly, were "salivating" over the chance to finally see the returns, and were hosting events, writing letters, meeting with staff, and conducting a multi-million dollar ad campaign to force Committee Democrats to make the request.

85. Recounting the general sense of Committee Democrats, a Committee aide told the press that "many of us have tried to express the sense of urgency which we and our constituents feel about … obtaining Trump's tax returns." The urgency was that Democrats wanted to obtain and expose this information as quickly as possible because they thought it would help prevent President Trump's reelection in 2020 or help Congress remove him from office before then.

86. Over the next three months, Chairman Neal consulted with the House's lawyers, Committee Democrats, and others to construct a case for obtaining President Trump's tax information that would stand up in court. He admitted that he was trying to create the legislative purpose that would be most likely to prevail, rather than asserting Committee Democrats' actual purposes for obtaining the information. And he warned Committee Democrats not to repeat their actual purposes because it would make the constructed purpose seem pretextual, and thus make it harder to win in court.

87. In late January 2019, Chairman Neal said "I plan to do it" when asked whether he planned to request President Trump's tax returns. He said, "We are now in the midst of putting together the case. It will be a long and grinding legal case."

88. Also in January 2019, Chairman Neal explained that the official request for President Trump's tax information "has to be part of a carefully prepared and documented legal case." "It will be done judiciously and methodically, but it will be done." He stressed that he had "been meticulous about [his] choice of words, for good reason," because the request would "become the basis of a long and arduous court case." He implored his fellow Democrats to "resist the emotion of the moment," not "step on [their] tongue[s]," and "approach this gingerly and make sure the rhetoric that is used does not become a footnote to the court case." These statements were not slips of the tongue; they remain posted on Chairman Neal's official website today.

89. In February 2019, Chairman Neal reiterated that he was proceeding "quite judiciously." "This is the beginning of a court case." He added that "the idea here is to … make sure that the product stands up under critical analysis."

90. Later in February 2019, Chairman Neal confirmed to the press that "the staff is preparing the documentation" for requesting President Trump's tax information. The goal,

according to the Chairman, was "to figure out what is the most efficient way to make a request" that would survive in court. He again warned that he and other Democrats have to "resist the impulse to say or do something that clouds the case," and that he planned to proceed on "a better or more deliberative case base[d] on the advice of counsel."

91. In March 2019, Chairman Neal's spokesperson reassured voters that "Chairman Neal has consistently said he intends to seek President Donald Trump's federal tax returns." Chairman Neal "is currently in the process of consulting with the counsel of the U.S. House of Representatives and the Joint Committee on Taxation to determine the appropriate legal steps to go forward with this unprecedented request," the spokesperson explained. "A strong case is being built." And "Chairman Neal will continue to conduct this process in a judicious, methodical and deliberative manner."

92. Also in March 2019, Chairman Neal reiterated that "[t]his is likely going to be a long court case. So rather than … succumb to the emotion of the moment, … we're far better off making sure we get it right." He noted that §6103(f) "has not been tested," and he anticipated "a long court case that will be tested at the highest levels of the federal judiciary." He assured the public that "we're proceeding with what I think will be a very sound case."

93. That same month, Chairman Neal told another press outlet that "[w]e continue to work with counsel and I continue to limit my comments because of counsel's advice."

94. Committee-Member Kildee also gave an update in February 2019, explaining that "[w]hat we need to do, and what the speaker said, and what Chairman Neal is absolutely doing" is "laying a legal foundation," "mak[ing] the justification to use this rarely used authority." "This is unchartered territory," he added.

95. During this same period, Committee Democrats confirmed that they wanted President Trump's tax information for the same reasons that they had wanted it in the past. Because the tax-reform bill had already passed and Mueller's investigation was ending, Committee Democrats focused on their other past justifications: Namely, they reiterated their continued desire to expose President Trump's information for the sake of exposure and to uncover evidence of criminal wrongdoing. Their statements were more candid because they were made before the Committee had constructed its made-for-litigation "case." Although President Trump had been in office for two years at this point, no House Democrat said during this period that they wanted his tax information to help study the IRS's mandatory audit process for Presidents.

96. For example, in March 2019, Speaker Pelosi's spokeswoman told the press that "all roads lead[] back" to President Trump's tax returns, which would show his "improprieties," "potential tax evasion," and "violations of the Constitution."

97. Committee-Member Pascrell, noting that "this fight" had been ongoing since "February 2017," promised that "the committee" "will not rest … until Donald Trump's personal and business records are given total scrutiny." He predicted that, in the 116th Congress, House Democrats can "finally expose Trump's financial history to sunlight." He said doing so was imperative because "[w]e must see how far the crimes go."

98. On the first day of the 116th Congress, Committee-Member Pascrell announced that "we continue to work to expose Donald Trump's tax returns to vital congressional sunlight."

99. In February 2019, Committee-Member Pascrell said that "Congress must see [President Trump's] tax records" to determine whether he had engaged in "criminal" behavior. Later that month, Pascrell stated that "Congress can [and] must conduct oversight of Trump's taxes" because the returns "would likely reveal evidence of criminal conduct by Donald Trump."

100. Also in February 2019, Committee-Member Pascrell told the press that the Committee should obtain President Trump's tax returns to see how Michael Cohen was allegedly reimbursed. "If Trump wrote these payments off as a business expense, that would constitute fraud and his returns would show that," Pascrell said.

101. Committee-Member Pascrell likewise stated that Cohen, who had accused Trump of committing various financial crimes while he was a private citizen, "brought out many situations where the tax returns are the only answer." "That's why the returns are so important," Committee-Member Pascrell explained. President Trump's "tax returns would show" any alleged "fraudulent scheme."

102. In March 2019, Committee-Member Pascrell wrote an op-ed, stating that Michael Cohen's "allegations that Donald Trump routinely evaded taxes and committed other financial fraud should result in an immediate request to the Treasury to turn over President Trump's business and personal tax returns." "We need to know if the president has illegally evaded taxes or unethically avoided them by exploiting special breaks in the law."

103. Also in March 2019, Committee-Member Pascrell said that "[t]he tax returns are the key to finding out what this guy"—meaning President Trump—"is all about."

104. On his "Trump Tax Returns" website, under the header "Chronology of Attempts," Committee-Member Pascrell documents 14 attempts in the 116th Congress alone, spanning January 2019 to September 2020. Under the header "Why Is This So Important?", Committee-Member Pascrell makes no mention of the need to study the IRS's mandatory audit process for Presidents. He does note, however, that he believes that "it is imperative for the public to know and understand [President Trump's] 564 financial positions in domestic and foreign companies, and his self-reported net worth of more than $10 billion."

105. In February 2019, Committee-Member Doggett said that President Trump's tax information should be disclosed because "[t]he public has an interest in knowing of the President's personal and business affairs."

106. In March 2019, Committee-Member Doggett said that the Committee needed to obtain President Trump's returns to uncover "a potential criminal enterprise"—a "criminal, sleazy kind of operations that would deny revenue the government needs."

107. In February 2019, Committee-Member Gomez spoke to the press about the Committee's plans to obtain President Trump's tax information. He said, "We really need to get those tax returns to get a better picture and to understand if he committed a crime." While Committee-Member Gomez thought "the information leads us in that direction," he said "we need those tax returns to seal the deal."

108. In March 2019, Committee-Member Gomez opined that the House "should move to obtain Trump's tax returns" because it "need[s] more" evidence of Trump's supposed criminal wrongdoing. "The only thing that matters," he stressed, "is evidence of wrongdoing." A few days later, Committee-Member Gomez added that "[t]he public wants answers and so do I. And to get the truth, we need Trump's tax returns."

109. In March 2019, Committee-Member Kildee said that President Trump's tax returns should be forcibly disclosed because "[p]eople don't take [Trump's] word for it when they [hear] he's done nothing wrong, they want to see the evidence, and they have the right to that, and we're gonna get to the bottom of this." He later added that the returns' disclosure was "a simple matter of transparency," something "[t]he American people" have a right to.

110. In February 2019, Committee-Member Moore said that President Trump's tax returns "could be a key piece of the puzzle" to determining the legality of "Trump's business dealings" with Deutsche Bank.

111. Also in February 2019, Committee-Member Sánchez reacted to an article that predicted the Trump administration would resist the Committee's attempt to obtain and disclose his tax information by saying "[t]he American people" have a right to know whether President Trump is a "crook."

112. In February 2019, Committee-Member Boyle justified the Committee's upcoming request for President Trump's tax information in terms of "transparency" and nullifying President Trump's earlier decision "not to disclose."

113. Other Democrats—including Committee Democrats, other committee chairs, and Speaker Pelosi—were included in Chairman Neal's strategic discussions and decisionmaking process about how to obtain and disclose President Trump's tax information. They all approved Chairman Neal's ultimate decision, supported it, and discussed it in collective terms ("we," "us," "the Committee," "Committee Democrats," and the like).

114. For example, Committee-Member Boyle announced on February 5, 2019 that "[t]oday" the Committee "began seeking a copy of President Trump's tax returns."

115. Later that month, Committee-Member Beyer said, "We on the House Ways [and] Means Committee are building the most bullet-proof legal case for why the public should be able to see Pres[ident] Trump's tax returns."

116. As Committee-Member Gomez described the process, Chairman Neal "knew what was going to be before us as a committee," was acting in a "strategic" manner, and was "setting up something to make sure that we abided by the law." Chairman Neal also "made sure every

committee member understood." "[T]his is why he's done it so slow," according to Committee-Member Gomez, "because he knows that this is too important and the American people are counting on him."

117. In February 2019, Chairman Neal confirmed that he had recently talked to Committee-Member Pascrell "on the phone" about his strategy and that Pascrell was satisfied that the Chairman "was handling it the right way."

118. Committee-Member Doggett said in March 2019 that he "ha[s] confidence in [Chairman Neal] and the approach he's taken" to obtaining and disclosing President Trump's tax information.

119. In March 2019, Committee-Member Pascrell gave the press an update on when the Committee would request President Trump's tax information. "We're almost ready to go," he said, speaking from personal knowledge.

120. Also in March 2019, Committee-Member Brian Higgins (D-NY) told the press that Chairman Neal was "waiting on the appropriate time," making sure that he "underst[ood]" the strategy first.

121. Committee-Member Larson also recounted the decision-making process, recalling that "several on our committee" had "pressure[d]" Chairman Neal to move faster.

122. Speaker Pelosi, too, approved Chairman Neal's ultimate request and, speaking from personal knowledge, said that the Chairman had been "very thoughtful" in his actions. Her spokeswoman confirmed in March 2019 that Ways and Means was working with the Oversight, Financial Services, Intelligence, and Judiciary Committees to "present the strongest possible case" to "review the President's tax returns."

123. On April 3, 2019, Chairman Neal finally made the request. In a letter to Commissioner Rettig on behalf of the Committee, Chairman Neal invoked §6103(f) and requested, for tax years 2013 through 2018, the following:

1. The Federal individual income tax returns of Donald J. Trump.

2. For each Federal individual income tax return requested above, a statement specifying: (a) whether such return is or was ever under any type of examination or audit; (b) the length of such examination or audit; (c) the applicable statute of limitations on such examination or audit; (d) the issue(s) under examination or audit; (e) the reason(s) the return was selected for examination or audit; and (f) the present status of such examination or audit (to include the date and description of the most recent return or return information activity).

3. All administrative files (workpapers, affidavits, etc.) for each Federal individual income tax return requested above.

4. The Federal income tax returns of the following entities:
   - The Donald J. Trump Revocable Trust;
   - DJT Holdings LLC;
   - DJT Holdings Managing Member LLC;
   - DTTM Operations LLC;
   - DTTM Operations Managing MemberCorp;
   - LFB Acquisition Member Corp;
   - LFB Acquisition LLC; and
   - Lamington Farm Club, LLC d/b/a Trump National Golf Club—Bedminster.

5. For each Federal income tax return of each entity listed above, a statement specifying: (a) whether such return is or was ever under any type of examination or audit; (b) the length of such examination or audit; (c) the applicable statute of limitations on such examination or audit; (d) the issue(s) under examination or audit; (e) the reason(s) the return was selected for examination or audit; and (f) the present status of such examination or audit (to include the date and description of the most recent return or return information activity).

6. All administrative files (workpapers, affidavits, etc.) for each Federal income tax return of each entity listed above.

7. If no return was filed for the tax year requested, a statement that the entity or individual did not file a return for such tax year.

124. The Committee's request specified only one ostensible legislative purpose: studying "the extent to which the IRS audits and enforces the Federal tax laws against a President"

under the "mandatory examination" process specified in the "Internal Revenue Manual." Specifically, the Committee sought to determine "the scope of any such examination and whether it includes a review of underlying business activities required to be reported on the individual income tax return."

125. This stated purpose was not the primary purpose, or even one actual purpose, for the request.

126. Chairman Neal and other Committee Democrats admitted, both before and after the request, that their asserted legislative purpose would be a "case" or a "product" that was "constructed" by attorneys to win in court—not their actual purposes.

127. One day after making the request, Chairman Neal again admitted that he had "constructed" a "case" for obtaining President Trump's tax information. Because this dispute "is likely to wind its way through the federal court system," he said that the Committee "wanted to make sure" the constructed case "was in fact one that would stand up under the critical scrutiny of the federal courts."

128. The next day, Chairman Neal admitted that "[o]ur intent is to test" §6103(f) and thus the Committee had chosen the audit rationale because that rationale would best "stand[] up" "under the magnifying glass." He also told the press that the legal case for his request, as opposed to the real political case, was prepared by House counsel, and that he had met with House lawyers more than a dozen times, where they "prepared" him on what he should say.

129. A source close to Chairman Neal's reelection campaign defended the Chairman against an attack from a primary challenger, insisting that Chairman Neal had "really done everything he could" to obtain President Trump's tax information. The "case" he ultimately chose, the source explained, was "meticulously" developed "with House counsel."

130. Committee-Member Pascrell, who was personally familiar with the discussions and decisions that went into the request for President Trump's tax information, said that the audit rationale "was chosen according to counsel" because the Committee thought it would be "the best way" to "make sure we got the tax returns."

131. Over the three prior years, Chairman Neal and other Committee Democrats were not shy about offering numerous reasons why they wanted President Trump's tax information. The IRS's mandatory audit process for Presidents, however, was never mentioned as a potential purpose. That purported purpose appeared for the first time in Chairman Neal's April 3 letter.

132. Many observers who are well-informed, are supportive of Chairman Neal's efforts, or both recognized that Chairman Neal's audit rationale was obviously pretextual.

133. One former Democratic official observed that the Committee's stated rationale for requesting President Trump's tax information was "an obvious lie." House Democrats, the former official noted, couldn't "care less about legislation" but are "on a fishing expedition, looking for failed deals, tax write-offs, and anything else they can use to smear Trump before the 2020 election."

134. A tax professor and former IRS attorney opined that Neal had "made a mistake" by "expressing a narrow purpose"—review of the mandatory audit process—"when everyone knows Democrats have a strong partisan interest in [President Trump's] tax returns."

135. Another commentator observed that Chairman Neal's stated legislative rationale was "invented." As she noted, "[t]he fact is, of course, Neal's pursuit of Trump's tax returns has nothing to do with legitimate committee oversight functions, and everything to do with Neal's interests in damaging President Trump politically."

136. A tax professor who wrote the seminal article on this issue observed that "the committee's surgical request for President Trump's tax return information suggests that it wants to investigate President Trump specifically, rather than Presidential audits generally."

137. Ranking Member Brady—who had extensive first-hand knowledge of the Committee's prior deliberations, statements by Members, and legislative needs—immediately observed that Chairman Neal's request was made "for purely political purposes," an attempt to "[w]eaponiz[e] our nation's tax code by targeting political foes." A few weeks later, the Ranking Member explained that subsequent events had "made clear that this information is not being sought to further a valid legislative purpose, but instead to try to embarrass a political enemy." "[F]rom press accounts to statements by senior members of this Committee, it has become obvious that [Chairman Neal's] supposed legislative purpose is just a pretext, and your request is merely a means to access and make public the tax returns of a single individual for purely political purposes."

138. Senator Grassley, then Chairman of the Senate Finance Committee, has comparable authority and legislative needs to Chairman Neal, including the same authority to request tax returns under §6103(f). When asked about the Committee's request for Intervenors' tax information, Senator Grassley immediately observed that "the House Democrats are using the IRS for political purposes." He noted there was not even "a shred of evidence to suggest that the IRS hasn't done its job auditing President Trump's taxes." The Committee was "not concerned about oversight of the IRS enforcement process at all," but only "in using their oversight authority to collect as much information about this President's finances as they can get their hands on." He recognized that their stated reasons were "pretexts" and "circular." "[A]ll you have are Democrats who want to go after the president any way they can"; "[t]hey dislike him with a passion, and they

want his tax returns to destroy him." "That's all this is about, and it's Nixonian to the core." Senator Grassley noted his history of taking "an equal opportunity approach to oversight, treating Republican administrations the same as Democratic administrations." "So, I will not go along with efforts to weaponize the authority of tax-writing committees to access tax returns for political purposes. Such an action would be unprecedented."

139. Even a former official under the Obama administration, who thinks Congress can obtain Intervenors' tax information, admitted that Chairman Neal's "audit" rationale was a stretch. One "might be forgiven," he observed, for "thinking: Really? Is Neal asking for Trump's tax returns because he wants to see if the IRS is treating him favorably?"

140. Though many supported the effort to expose President Trump's tax information and predicted that Chairman Neal would win in court, no supporter was willing to say that Chairman Neal's audit rationale was an actual purpose for the request. They simply argued that courts lack the power to question this purpose because Chairman Neal had stated it on the face of the request.

141. In a series of letters, attorneys for the President and Treasury Department challenged Chairman Neal's newly-minted rationale as illegitimate. In response, the Chairman did not dispute that his new rationale was pretextual; he merely insisted that no one could "question or second guess the motivations of the Committee."

142. Further, despite being "prepared" on what to say by the House's lawyers, Chairman Neal and other Committee Democrats repeatedly contradicted the supposed rationale in their April 3 request. They often described their request in terms of exposing President Trump's tax information to "the public," even though public disclosure is a wholly separate step under the tax code and has nothing to do with helping the Committee study legislation. To the extent they discussed the IRS's audit process, they did so in law-enforcement terms, expressing their desire to

audit President Trump's returns themselves and to uncover evidence of illegal conduct. These statements became more frequent and more candid as time went on, as Committee Democrats realized they probably would not win this case before the November 2020 election and thus had less need to hold their tongues.

143. For example, in a press release issued on the same day as the request, Chairman Neal said that the request would help the Committee determine whether President Trump is "complying with" the tax laws.

144. In June 2019, in a meeting with House Democratic leaders, Speaker Pelosi and Chairman Neal agreed that they did not want to open an impeachment inquiry against President Trump. Instead, they thought the better approach was to continue their investigations, including the request for President Trump's tax returns, in the hopes of preventing his reelection and then prosecuting him for supposed crimes. "I don't want to see him impeached, I want to see him in prison," Speaker Pelosi put it.

145. Near the end of September 2020, Chairman Neal connected a story from the New York Times accusing President Trump of paying little income tax with this case. Chairman Neal questioned President Trump's "business success," how much he paid "in income taxes," and whether President Trump is paying his "fair share," and expressed his view that "the president and his tax attorneys and accountants" have engaged in "a very sophisticated tax avoidance effort." These theories, Chairman Neal explained, were "consistent with the argument we've had in the federal courts with the president over his tax forms." He said that unraveling President Trump's "sophisticated tax avoidance" is a "reason for the president to release his tax forms."

146. The same day that the Committee made the request, Committee-Member Pascrell expressed gratitude that President Trump's "tax records" would "finally" be exposed to "sunlight" and that President Trump would experience "accountability."

147. In May 2019, Committee-Member Pascrell said that the Committee must "see Trump's actual returns" because "Trump's entire tenure is built upon the most colossal fraud in US political history. He might've been the worst businessman in the world. His campaign was a lie. He didn't pay taxes for years and lost over $1 billion."

148. In June 2019, Committee-Member Pascrell said that "[s]eeing Trump's business and personal taxes is the only way we'll know how far his crimes go."

149. In November 2019, Committee-Member Pascrell repeated on two occasions that "[i]t's past time for Congress to see the returns and find out how far [T]rump's crimes go."

150. In April 2020, Committee-Member Pascrell criticized Treasury and pledged, "I will never, ever give up until Trump's tax returns are brought out into the beautiful light of day." He said, "I will continue to push until we finally get the returns because Americans deserve to know the truth."

151. In May 2020, Committee-Member Pascrell complained about being "stymied" in "obtain[ing] Trump's tax returns," which he said were needed because "Americans have a right to know if their chief executive is a crook and they've been denied long enough."

152. In July 2020, Committee-Member Pascrell wrote that "the passage of time has not dulled the importance of seeing [President Trump's] returns" because "we know only a fraction of the potential crimes Trump is committing."

153. Commenting on the remand argument in *Mazars*, Committee-Member Pascrell connected the case to "our legal demand for [T]rump's tax returns" and urged the D.C. Circuit to resolve the case immediately "so we can at last see how far [T]rump's crimes go."

154. In September 2020, Committee-Member Pascrell aligned himself with Manhattan prosecutors and their supposed "evidence of [T]rump felonies." The suggestion that President Trump might somehow face criminal liability was "welcome news and zero surprise" to Pascrell, since he "ha[s] been chasing [T]rump's tax returns since Feb[ruary] 2017."

155. Also in September 2020, Committee-Member Pascrell observed that he has been "the leader of Congress's fight to obtain the [T]rump tax returns since Feb[ruary] 2017." He said "our case" was based on "our … fears" that President Trump was "abusing the tax system to lie, cheat, and steal."

156. In late September 2020, Committee-Member Pascrell surmised that President Trump would not disclose his tax returns because he did not pay much income tax.

157. In October 2020, Committee-Member Pascrell "sent [President Trump] a letter telling him to prove he isn't a tax cheat and asked him, What are you afraid of?"

158. The day after Chairman Neal's request, Committee-Member Doggett said the request would show whether President Trump "is complying with our tax laws" or is engaged in "questionable tax activities."

159. Again discussing Neal's request two days after it was made, Committee-Member Doggett said it would allow the Committee to determine how "[t]he Trump family may have gained as much as a billion dollars from the recent Trump tax law."

160. In May 2019, Committee-Member Doggett said that the Committee "really need[s] these returns" because President Trump has told "lies" and "Americans" need to know if he has paid his fair share of taxes.

161. In June 2019, Committee-Member Doggett surmised that President Trump's tax returns would reveal the "role tax avoidance plays in his overall business strategy," which is why the President was fighting the Committee's request.

162. In July 2019, Committee-Member Doggett complained that, "three years in, we still don't know if Donald Trump has paid what he owes, since he has hidden his tax returns and defied" the Committee's request.

163. In September 2020, Committee-Member Doggett insisted that "President Trump hides his tax returns because … he's a freeloader who doesn't believe in paying taxes." He lamented that the Committee had failed to do what it set out to: "disclosure of what a phony loser Donald Trump really is" and "his losing business empire."

164. Also in September 2020, Committee-Member Doggett said that President Trump was refusing to disclose his tax returns because he is a "fraud."

165. Also in September 2020, Committee-Member Doggett said that President Trump was refusing to disclose his tax returns "because he doesn't really believe in contributing his fair share."

166. In October 2020, Committee-Member Doggett asked rhetorically "What is [President Trump] covering up in his tax records that he doesn't want New York prosecutors, and the public, to know?"

167. Committee-Member Gomez, after parroting Chairman Neal's audit rationale, stressed on April 5, 2019 that "the American people also want to know what is really in the tax returns of this President."

168. In August 2019, Committee-Member Gomez stated that California was ready "to see [President Trump's] tax returns."

169. In October 2020, Committee-Member Gomez stated that "[o]ne way or another … the American people are going to learn the truth about Trump's finances and business entanglements."

170. In April 2019, Committee-Member Blumenauer announced that the Committee had requested President Trump's tax returns because "the American people" wanted "transparency," after President Trump's "refusal to disclose his returns" during the campaign.

171. In May 2019, Committee-Member Blumenauer said that the Committee must "continue fighting for [President Trump's] full tax returns to be released to his public" to disprove President Trump's "lies" such as his "business fortune." He surmised that President Trump was "hiding" his tax returns from the Committee to cover up his "chronic losses and years of income tax avoidance."

172. The day after Chairman Neal made the request, Committee-Member Sánchez gave an interview about it, explaining that "the American people have a right to know whether or not [President Trump's] benefitting from the very policies that he's pushing, whether or not he's cheated on his taxes, whether or not he's paying his fair share, whether he's enriching himself and violating the public trust. All of those can be determined, I think, if we can get the tax returns."

173. In July 2019, Committee-Member Sánchez said the following about the request for President Trump's tax information: "[A]ll we're trying to find out is … has he benefitted from

many of the tax policies that they've put into place, where does he get … funding from, is he … hiding assets?"

174. In September 2020, Committee-Member DelBene said that the Committee's "investigation is a first step" into determining whether "people like Trump pay their fair share" of taxes.

175. On the day that Chairman Neal made the request, Committee-Member Chu announced that she "support[ed]" it. She said "we deserve to know if [President Trump] is following the law," and noted that "every President since Nixon" has disclosed this information.

176. One week later, Committee-Member Chu gave an interview on the Committee's request, where she repeated that "every president has revealed their tax returns over the last four decades and they've done it because the American people need to know that [their] president is complying with the tax laws of this nation" and "paying their fair share."

177. In October 2019, Committee-Member Chu surmised that the IRS was "cover[ing] up" evidence of "fraud" in "Trump's tax returns."

178. Shortly after Chairman Neal made the request, Committee-Member Moore posted that "the President can't … keep his tax returns hidden from the American people."

179. In October 2020, Committee-Member Moore recounted her questioning at a Committee hearing, where she said she "raised reasons why it's important [that President Trump] disclose his tax returns: the American people deserve to know whether the President abused the tax code by making a false claim of property abandonment or paying consulting fees to his daughter."

180. The same day that Chairman Neal made the request, Committee-Member Kildee said he supported it because "President Trump is the first president in nearly a half-century to

break precedent and refuse to voluntarily release his tax returns." He added that the tax returns would reveal whether President Trump personally benefited from recent tax cuts.

181. In June 2019, Committee-Member Kildee admitted that the "audit" rationale was really a way for the Committee to engage in law enforcement: "The President has admitted to tax avoidance schemes which may have been criminal, and was accused by his own personal attorney of actions which amount to tax fraud. I cannot think of a more compelling reason to evaluate the efficacy of the IRS' presidential audit program."

182. In September 2020, Committee-Member Kildee issued a statement that "the Ways and Means Committee, led by Chairman Richard Neal, must have access to the President's tax returns to ensure the President, is in compliance with federal tax laws." He accused President Trump of "abus[ing] the tax code to avoid paying his fair share."

183. Also in September 2020, Committee-Member Beyer went on a tirade against President Trump, calling him a "liar," a "cheat," a "robber baron," a "tax dodger," and more. If any of this is "untrue," Committee-Member Beyer challenged, then President Trump could disprove it by "releas[ing] his tax returns." "Show us your tax returns," Committee Beyer added, because doing so would somehow prove that President Trump "cheats, steals, and lies so he can pay almost nothing."

184. In May 2019, Committee-Member Evans surmised that President Trump "continues to hide his returns" so Americans cannot see his "tax avoidance."

185. In July 2019, Committee-Member Evans said that "the American people have a right to see [the] President of the United States' tax returns to ensure he, too, is complying with our federal laws."

186. In October 2019, Committee-Member Jimmy Panetta (D-CA) released a statement, describing the Committee's request for President Trump's tax information as part of the House's broader "impeachment" effort. The request was "one of th[e pending] investigations" of "alleged criminality by this administration."

187. While this case was pending in 2019 and 2020, many House Democrats (including Committee members) publicly lamented that the Committee was unlikely to get the tax returns before the 2020 election. Committee-Member Kildee, for example, promised that the Committee was "going to push" to get the returns before the election. Another House Democrat involved in the process expressed her "fear" that a slow pace would prevent "us from getting the returns by next November." This fear, which was shared by Democratic voters and echoed by the media, illustrates the insincerity of the Committee's audit rationale. The Committee had no real need to study presidential audit legislation by November 2020, especially given its view that §6103(f) requests do not expire at the end of each Congress; that date was important only because the Committee wanted to inflict political damage on President Trump in time to hinder his reelection.

188. The saga with New York's so-called TRUST Act also illustrates that the Committee's audit rationale is pretextual. Enacted in May 2019, the TRUST Act is a New York statute that allows the Committee to obtain a President's state returns from New York if the Committee had requested the President's federal returns from Treasury. The text of the law is perfectly gerrymandered to President Trump's circumstances. And the legislators who voted for it uniformly and candidly admitted that the law was intended to help the Committee obtain President Trump's tax information. "What's at stake here," the bill's sponsor said, is "the desire of New Yorkers and the American people to seek the truth behind Trump's taxes." "New York, as the

home of the president and the headquarters for some of his companies, has a unique role and responsibility in that regard to allow Congress to do its constitutionally-mandated job."

189. New York legislators thought the disclosure of President's state tax returns would assist the Committee's investigation because they understood, correctly, that the Committee's audit rationale was pretextual. President Trump's state tax returns are entirely irrelevant to Chairman Neal's stated purpose of wanting to study how the IRS audits federal tax returns. New York legislators thus understood what was obvious to everyone else: Committee Democrats did not really want to study IRS audits, but rather it wanted (in the legislators' words) to find out "what [President Trump's] hiding," force him to comply with the "tradition[]" of candidates releasing tax returns, and inform "the public" about his finances.

190. The willingness of multiple Committee Democrats to use the TRUST Act illustrated the same point—as did the willingness of Democrats on the other committees that were working with Ways and Means to obtain President Trump's financial information. Again, this interest in President Trump's state tax returns directly contradicts the Committee's stated interest in studying federal IRS audits: As the Committee's attorneys warned the Members, Congress does "not have jurisdiction over those [state] tax forms."

191. For example, referencing the TRUST Act, Committee-Member Pascrell said he supports using "any tool … that might shed sunlight on Trump's tax return history" because the country needs to know what he "is hiding" and whether he "is a crook."

192. Committee-Member Chu declared that "[t]he new law out of New York State is a new and interesting option that I believe should be considered and examined as we move forward."

193. Committee-Member Doggett agreed that "we should take a look" at "New York's information."

194. Representative Maxine Waters (D-CA), who chairs the House Financial Services Committee, said "I'm for" "[w]hatever it takes to get" the President's tax returns.

195. Representative Pramila Jayapal (D-WA), co-chair of the House Progressive Caucus, similarly said, "Yes, absolutely, we need to ask [for the state returns]. We need to know."

196. Representative Charlie Crist (D-FL) answered a question about the TRUST Act by asking rhetorically, "Why not? I don't think there is any downside for us."

197. According to Representative Jerry Nadler, a New Yorker and the Democratic Chair of the House Judiciary Committee, the TRUST Act means "we can turn to New York State" "[i]f confronted with inability to receive the federal tax return." Referencing this litigation, he called the Act a "workaround to a White House that continues to obstruct and stonewall the legitimate oversight work of Congress."

198. So did Representative Hakeem Jeffries (D-NY), the fifth highest ranking Democrat in the House. Representative Jeffries predicted that "continued obstruction from the administration" in this case "may cause the chairman of the Ways and Means Committee" to turn to the TRUST Act. But Chairman Neal didn't get that chance because Judge Nichols enjoined the Committee from invoking the TRUST Act without first giving President Trump notice and an opportunity to be heard—an opportunity the Committee had declined to give the President.

199. Committee Democrats and New York legislators were not the only Democratic officials who attempted to force the public disclosure of President Trump's tax returns and other financial information. Other House committees engaged in similar efforts, as did Democratic officials in other States and localities. That so many officials made so many attempts to obtain the same documents at the same time—each giving different justifications for their requests—was no coincidence. It demonstrated the national obsession with President Trump's information and how

officials were willing to manufacture justifications to achieve their one real goal: exposing this information to the public in the hopes of damaging President Trump politically.

200. For example, in July 2019, California passed a law purporting to "prohibit the Secretary of State from printing on a primary election ballot the name of a candidate for President of the United States who has not filed with the Secretary of State the candidate's federal income tax returns for the five most recent taxable years." A federal district court found that, despite its ostensibly neutral framing, this law "was primarily intended to force President Trump to disclose his tax returns." The law was invalidated by the California Supreme Court.

201. In August 2019, the Democratic District Attorney of New York County requested President Trump's tax returns in what was the nation's first state grand-jury subpoena to a sitting President. The District Attorney stated that his subpoena was part of an investigation into "potential crimes under New York law." As Justice Alito observed in a similar context, "it would be quite a coincidence if the records relevant to an investigation of possible violations of New York criminal law just so happened to be almost identical to the records thought by congressional Committees to be useful in considering federal legislation." *Trump v. Vance*, 140 S. Ct. 2412, 2449 (2020) (dissenting op.).

202. Numerous Democratic Senators and Representatives, including Speaker Pelosi, sued President Trump for supposed violations of the Foreign Emoluments Clause. After Judge Sullivan incorrectly refused to dismiss the case, the Democratic plaintiffs suggested that they would use discovery to obtain President Trump's tax returns. As Committee-Member Pascrell observed, the emoluments lawsuit was viewed by Congressional Democrats as an opportunity to "finally open the Trump Organization to disinfecting sunlight and reveal the contents of Trump's tax returns."

203. Since the beginning of the 116th Congress, Speaker Pelosi and the chairs of "multiple House committees" worked together to each "furnish a rationale for needing to see [President Trump's] tax returns." Chairman Neal thus "contacted the chairs of several other House investigative committees, including Oversight and Government Reform, Financial Services, Intelligence and Judiciary, asking them to provide detailed arguments for why they need the president's tax returns." The "idea" was that House Democrats would develop as many theories as possible to achieve their common goal: exposing President Trump's information to the public.

204. Thus, in February 2019, the Financial Services and Intelligence Committees subpoenaed President Trump's banks for "a broad range of financial records of Donald J. Trump, members of his family, and affiliated entities." The Committees expressly read their subpoenas to request tax returns.

205. In April 2019, just days after the Committee had requested President Trump's tax information, the Oversight Committee subpoenaed President Trump's accountant for eight years' worth of his sensitive financial documents. According to the Committee, this subpoena also seeks President Trump's tax returns.

206. The Supreme Court reviewed the legality of these subpoenas in *Mazars*. A 7-Justice majority of the Court said that "[w]e would have to be blind not to see what all others can see and understand: that the [House's] subpoenas [for President Trump's financial information] do not represent a run-of-the-mill legislative effort but rather a clash between rival branches of government over records of intense political interest for all involved." *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2034 (2020) (cleaned up). The Court said that about requests for President Trump's accounting and banking records. But its observation is even truer for the Committee's

current, direct request for President Trump's tax returns—the holy grail of President Trump's financial information, if you're a Democrat.

207. Indeed, given their coordination and shared vision, Democratic members of the Oversight Committee who discussed obtaining President Trump's tax returns expressed the same purposes that Democratic members of the Ways and Means Committee and other committees had expressed: exposure and law enforcement.

208. For example, Chairwoman Carolyn Maloney (D-NY) claimed that President Trump failed to disclose his tax returns because they were "embarrassing" and "also potentially illegal." She also claimed to "know why Trump went to such great lengths to hide [his tax returns]—devastating losses as a businessman, gaming the system to avoid taxes, massive debts that will come due over the next few years, and completely out of touch with American families."

209. Representative Jim Cooper (D-TN) framed the impact of the Supreme Court's decision in *Mazars* as delaying when "Americans will have the chance to see" President Trump's financial information. He also compared President Trump to Leona Helmsley, a convicted felon, in claiming to "know why he hasn't" released his tax returns.

210. Representative Rashida Tlaib (D-MI) claimed to "finally know" why President Trump "resisted releasing his tax returns for so many years: they reveal a failed businessman using unscrupulous—and potentially illegal—tactics to avoid paying the fair share that the rest of us pay into our society."

211. Representative Mark DeSaulnier (D-CA) asserted that "[i]t is past time the American public gets to see the President's tax returns."

212. Representative Alexandria Ocasio-Cortez (D-NY) stated, through her questioning of a witness, that the Oversight Committee should "review" President Trump's "tax returns" to

determine whether, as a private citizen, President Trump "provide[d] inflated assets to an insurance company" and "improperly devalued his assets to avoid paying taxes."

213. Chairman Neal's request is a major departure from historical practice. Chairman Neal himself recognized that the request was "unprecedented." Indeed, §6103(f) had never been used to obtain and release the individual tax returns of a President, a former President, or any elected official. The only supposed counterexample that the Committee could identify—President Nixon—was irrelevant because that request was made with President Nixon's consent, without clearly invoking §6103, for nonlegislative purposes, and under a substantially different version of the tax code.

214. Chairman Neal's request for Intervenors' tax information also was starkly disconnected from, and would not meaningfully further, his stated rationale of studying the IRS's mandatory audit process for Presidents. The request asks for the information of only one President, asks for older returns that could not have been subject to the presidential audit process, asks for open files for which audits have not been completed, and never asks the IRS for the most relevant information—namely, how it audits Presidents.

215. Choosing this ill-fitting, never-before-articulated rationale about IRS audits made sense from the Committee's perspective, though, because it was the only legislative purpose that gave House Democrats a chance to publicly disclose President Trump's tax returns. Other types of legislation that House Democrats might pass—including H.R. 1, financial-disclosure laws, presidential ethics reforms, and foreign policy—fell outside the Ways and Means Committee's legislative jurisdiction, and thus could not serve as the legitimate legislative purpose that the Constitution requires. While other committees might have legislative jurisdiction over these topics and could make requests under §6103, Democrats had to use the Ways and Means Committee

because only it has the power to both request and disclose President Trump's tax information to the public. *See* 26 U.S.C. §6103(f)(4).

216. On May 6, 2019, the Treasury Department informed the Committee that it could not comply because the request for the President's federal tax returns lacked a legitimate legislative purpose. The Treasury Department was correct.

217. After compiling and reviewing over 40 pages of Democrats' public statements, Treasury observed that the request asserts a "purpose that is at odds with what you and many others have repeatedly said is the request's intent: to publicly release the President's tax returns." The Committee's April 3 request was instead "the culmination of a long-running, well-documented effort to expose the President's tax returns for the sake of exposure." Treasury refused this effort to "disclo[se] tax return information for political purposes." It accurately pointed out the "widespread, contemporaneous acknowledgement by the Committee Chairman and other key Members that the actual objective is to use the IRS as a means to expose the tax returns of a political opponent."

218. Treasury also highlighted the "objective" mismatch between the Committee's audit rationale and "the terms of [its] request." The request "does not inquire about the IRS's procedures for presidential audits," ask for "additional information about those policies," ask "whether [they] have changed over time," or ask about "the extensive protections that ensure such audits are conducted with extreme confidentiality and without improper interference." The request also focuses on one President, even though most of the requested categories of information have "never been publicly released with respect to any President." And it seeks files concerning audits that are still "ongoing," which would not allow the Committee to genuinely assess any audit because the Committee would not know "the outcome."

219. The Justice Department rightly agreed with Treasury's decision. In a June 13, 2019 memorandum, the Office of Legal Counsel carefully summarized the record to date and concluded that "Chairman Neal's April 3 letter represents the culmination of a sustained effort over more than two years to seek the public release of President Trump's tax returns." "[T]hroughout 2017 and 2018, Chairman Neal and other Members of Congress made clear their intent to acquire and release the President's tax returns. They offered many different justifications for such an action," but never "oversight of 'the extent to which the IRS audits and enforces the Federal tax laws against a President.'"

220. OLC found that "[n]o 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. The Committee's request reflects the next assay in a long-standing political battle over the President's tax returns. Consistent with their long-held views, Chairman Neal and other majority members have invoked the Committee's authority to obtain and publish these returns. Recognizing that the Committee may not pursue exposure for exposure's sake, however, the Committee has devised an alternative reason for the request." That alternative reason "blinks reality. It is pretextual."

221. OLC agreed with Treasury that "the Committee's request does not objectively 'fit' [its] stated purpose." "[M]any of the requested documents are barely relevant" to the audit process, including the tax returns themselves, which are filed before that process begins. Several of the requested returns were filed when President Trump was not even President. And the Committee asked only for President Trump's information, "decid[ing] at the outset to rely on a sample consisting of only one conceded outlier."

222. OLC also agreed with Treasury that the Committee's request is "perfectly tailored to accomplish the Chairman's long-standing and avowed goal" of "obtain[ing] and expos[ing]" President Trump's tax returns. "Congressional investigations ordinarily begin with a legislative purpose, and that purpose defines the scope of the documents that are pertinent to the Committee's investigation. But here, by the Committee's own admission, the Committee's investigation began in the opposite direction. The Committee started with the documents it planned to obtain and release (the President's tax returns), and then it sought—in Chairman Neal's words—to 'construct[]' a 'case' for seeking the documents that would appear to be in furtherance of a legitimate legislative purpose." And the constructed case was chosen because it fell within the Ways and Means Committee's jurisdiction, the one committee that the tax code allows to both request tax returns and publicly disclose them.

223. The Committee later issued a subpoena for the same information, which Treasury refused for the same reasons.

224. The executive branch's decision to not comply with the Committee's request was not only substantively correct, but it was reached in an independent and impartial manner. Suspecting otherwise, Chairman Neal asked an inspector general to investigate how the relevant actors had handled his request. After a thorough investigation, the inspector general concluded that "the Department processed the request properly" and there was no "basis to question" its decision.

225. As Senator Grassley summarized the inspector general's report, with no apparent contradiction from Democrats, "This should put to bed any question about the Treasury Department's handling of this matter.… The Administration [wa]s correct to reject attempts by Democrats to politicize this process. Treasury personnel should be commended for avoiding outside pressures and doing their work by the book."

IV. Biden Administration

226. Then–Vice President Biden was the Democratic nominee for President in the 2020 election cycle, running against the Republican nominee, President Trump.

227. As he and other Democrats had done in 2016, Vice President Biden made the disclosure of President Trump's tax returns a major political issue in the 2020 campaign. He articulated the same arguments and theories that were articulated during the 2016 campaign about why President Trump should disclose the returns and what politically damaging information the returns might contain.

228. For example, at a campaign stop in October 2019, Vice President Biden called President Trump "a corrupt president." He said, "Mr. President, even Richard Nixon released his tax returns." And he demanded: "Mr. President, release your tax returns or shut up." He made similar statements again in November 2019 and January 2020.

229. Also in November 2019, Vice President Biden said, "The American people deserve to know what the most corrupt president in modern history is hiding in his tax returns."

230. Similarly, in February 2020, the Vice President said that "Donald Trump is the most corrupt president we've ever had — and the American people deserve to know what he's hiding in his tax returns."

231. At a presidential debate, Vice President Biden complained that President Trump had not released his tax returns during the last "four years." "Show us. Just show us. Stop playing around," the Vice President said to the President. The Vice President surmised that President Trump had not released them because "you're not paying your taxes" or "you're paying taxes that are so low."

232. At another presidential debate, Vice President Biden pointed at President Trump and said, "You have not released a single solitary year of your tax returns. What are you hiding?"

Vice President Biden openly theorized that the tax returns would show that "[t]he foreign countries are paying you a lot. Russia's paying you a lot. China's paying you a lot." He bellowed at President Trump to "[r]elease your tax returns or stop talking about corruption."

233. After the 2020 election, Democrats kept a majority in the U.S. House. In this 117th Congress, Speaker Pelosi was still Speaker, and Chairman Neal was still Chairman of the Ways and Means Committee.

234. Even after President Biden was sworn in, House Democrats continued their quest to obtain and release Intervenors' tax information. Their request and the purposes behind it, as they have repeatedly explained, are the same in the 117th Congress as they were in the 116th and 115th Congresses. Democrats still believe this information will damage President Trump politically. And they are still motivated to release it because President Trump remains the most high-profile Republican and their top political rival. As a report described the prevailing Democratic sentiment in June, Democrats felt it "important" to "keep pursuing" their pending cases against President Trump—including this one—because "the information they obtain could be relevant politically."

235. As early as August 2020, Speaker Pelosi promised, "When we win this election and we have a new president of the United States in January, and we have a new secretary of the Treasury, and Richie Neal asks for the president's tax returns, then the world will see what the president has been hiding all of this time."

236. In September 2020, Chairman Neal said that the Committee had already "determined" to "continue" this "lawsuit" "whether or not the president is successful on Election Day." The Committee decided to do so because "we want to make sure that future presidents are also prepared to release their forms."

237. Shortly after the election, in November 2020, Committee-Member Pascrell rejected the notion that Congress would have "mercy" on former President Trump. The Committee has "got to follow through" on its outstanding request for Intervenors' tax information, according to Pascrell, because "there needs to be some accountability" for President Trump.

238. On January 22, 2021, in a status conference with this Court, the House's general counsel stated on behalf of the Committee that §6103 requests "carry over from one Congress to the next." So despite the adjournment of the 116th Congress on January 3, 2021, the Committee's 2019 request for Intervenors' tax returns was "live" and "still there before the Treasury Department."

239. In February 2021, Chairman Neal issued in a statement to the press. In it, he confirmed that the Committee would "continue to pursue" in the 117th Congress the "case for the President's tax returns" that it had pursued in the prior Congress. The purpose of that case, he reiterated, was "oversight of the mandatory presidential audit program." Chairman Neal did not provide any other ostensible purpose for continuing to pursue Intervenors' tax information.

240. Also in February 2021, Committee-Member Pascrell recapped that he had "been demanding [T]rump's tax returns for exactly four years. Americans have waited long enough to know the extent of [T]rump's crimes and thievery."

241. That same month, Committee-Member Gomez connected the Committee's outstanding request to investigations that the House had started in the beginning of the 116th Congress. He surmised that President Trump "wouldn't release" his tax returns because he "aggressively avoid[ed] paying his fair share in taxes" and "employed some legally-questionable maneuvers."

242. Days after President Biden was sworn in, many assumed that the executive branch would change positions on the Committee's request for President Trump's tax information. John Koskinen, the IRS Commissioner under the Obama administration, explained that the Biden administration would make a decision about releasing Intervenors' tax returns, but the decision would be made at a high level because it was "a matter of politics."

243. At some point in the first six months of his presidency, President Biden decided to release President Trump's returns. His decision was unsurprising, since he had made the disclosure of President Trump's tax returns a major campaign issue and agrees with Democrats nationwide that the information must be politically damaging for President Trump.

244. When asked in February 2021 about the release of President Trump's tax returns, the White House Press Secretary similarly pointed to what President Biden had said "on the campaign trail," stressing that "the American people deserve transparency" on tax returns. Continuing the campaign criticism, in May 2021 President Biden included a gratuitous and "not-so-subtle dig" at President Trump's decision to not disclose his tax returns on the White House website. President Biden has not changed course on this issue because President Trump remains his top political rival.

245. The Biden administration also faced substantial pressure from liberals to release President Trump's tax information to the public. By April, the media was reporting that "liberal advocates" and "lawmakers" were "growing impatient that the Justice Department ha[d]n't" flipped positions yet on "Democrats' white whale": President Trump's tax returns.

246. CREW, for example, repeatedly pressed Defendant Yellen to give into Chairman Neal's request. It urged her to "revers[e] the previous administration's decision and release[e] Trump's tax returns." When Defendants had not done so by May 2021, CREW asked "why

Treasury Secretary Janet Yellen hasn't released Trump's tax returns to Congress yet, as she's legally required to."

247. Committee-Member Pascrell expressed "confiden[ce]" that President Biden, Attorney General Garland, and Treasury Secretary Yellen would "work expeditiously … to fulfill the Ways and Means Committee's legal request."

248. Meanwhile, over the same time period, the parties in this case filed six monthly joint status reports with this Court.

249. In the first two reports, the Committee reiterated its position that its April 2019 request "remains outstanding."

250. In the next three reports, the Committee and Defendants reported that they were engaged in "communications" about this litigation. Although Intervenors asked to be involved in those communications, they were never afforded that opportunity.

251. In the sixth report, filed on July 2, 2021, the Committee and Defendants again said they were engaged in "communications"—and again, Intervenors were not allowed to participate. The Committee and Defendants asked the Court to direct them to file a "final status report" by July 30, 2021.

252. What the Committee and Defendants did not reveal—either to this Court or to Intervenors—is that, two weeks earlier on June 16, 2021, Chairman Neal had written a letter to Defendants Yellen and Rettig. Although they knew about this letter when they filed the sixth joint status report, the Committee and Defendants did not reveal its existence to Intervenors or the Court until July 30, 2021.

253. In the June 16 letter, Chairman Neal explains that the Committee "previously requested former President Trump's tax returns and return information" and "continues to seek"

this information "to inform its legislative work." "Because this matter remains in active litigation," the Committee offered the letter "as an accommodation." The letter concludes by repeating the same request for Intervenors' tax information under §6103, except the years are shifted upward from tax years 2013 through 2018 to "tax years 2015 through 2020."

254. The June 16 letter largely focuses on the audit rationale that Chairman Neal first articulated in his April 2019 letter. Though, it adds two conclusory sentences about how the information "could reveal hidden business entanglements raising tax law and other issues, including conflicts of interest, affecting proper execution of the former President's responsibilities," or "might also show foreign financial influences on former President Trump."

255. Neither "business entanglements" nor "foreign financial influences" were mentioned in Chairman Neal's April 2019 letter. That letter justified the request for Intervenors' tax information solely in terms of studying "the Federal tax laws." And Chairman Neal expressly denied that his request concerned "the Mueller report" or exposing any sort of "nefarious undertaking" by President Trump. It was solely about studying the IRS's mandatory audit process for Presidents.

256. Nor has President Trump criticized "the automatic, mandatory audit described in the [Internal Revenue Manual]." On the campaign trial in 2016, President Trump did criticize how frequently he was audited as a private businessman. He suspected that the IRS audited him every year because of his politics, a criticism that was of course about the IRS's *choice* of who it *discretionarily* audits. When he was in office, President Trump repeated that same criticism on a few occasions, but the criticism remained about the nonmandatory process that he had been subject to since long before becoming President. On September 27, 2020, for example, President Trump said he was voicing the same criticism of the IRS that he had voiced "four years ago."

257. That President Trump criticized the IRS does not make him unusual. Many Presidents, officials, candidates for office, and Americans of all stripes have criticized our tax system, the IRS, and IRS audits. Per a famous quote that is featured on the IRS's website, "People who complain about taxes can be divided into two classes: men and women."

258. Several presidential candidates have proposed abolishing the IRS, including Senator Dole in the 1996 cycle and Senator Ted Cruz in the 2016 cycle. Also in the 2016 cycle, Senator Marco Rubio criticized the IRS for using audits to target conservative groups. And in 2013, Secretary Ben Carson accused the IRS of auditing him because he had criticized President Obama at the National Prayer Breakfast.

259. President Ronald Reagan was highly critical of the IRS, both as a candidate and President. He called our tax system "utterly unfair." He compared it to "a baby"—"an alimentary canal with an appetite at one end and no sense of responsibility at the other." As a candidate, he criticized inquiries into his taxes as an "invasion of privacy." Reagan refused to release his tax returns when running for President in 1976.

260. When reports surfaced that the IRS was using audits to target conservative groups, then-President Obama called the IRS's actions "outrageous." Senators, Representatives, and many others criticized the IRS for using audits to target political opponents. The IRS later confirmed that it had been using terms like "tea party" as a basis to subject organizations to special scrutiny. As the Sixth Circuit summarized the findings of the inspector general, the IRS "used political criteria to round up applications for tax-exempt status filed by so-called tea-party groups," "often took four times as long to process tea-party applications as other applications," and "served tea-party applicants with crushing demands for … 'unnecessary information.'" *In re United States (NorCal Tea Party Patriots)*, 817 F.3d 953, 955 (6th Cir. 2016).

261. President Jimmy Carter called our tax system "a disgrace to the human race."

262. When President Lincoln first created what would become the IRS, he "apologize[d]" for audits, which he knew would create "inequities in the practical applications."

263. At no point has the Committee unearthed evidence that President Trump or anyone else in the executive branch was trying to interfere with his mandatory audit by the IRS. While the Committee tried to introduce "whistleblower" evidence to that effect earlier in this case, the Committee later retracted that evidence.

264. On the afternoon of July 30—the same day that the parties' seventh joint status report was due—Defendants revealed the existence of a new opinion from the Office of Legal Counsel regarding the Committee's request. According to the opinion, the Treasury Department had sought OLC's advice on June 17, which was one day after Chairman Neal sent his letter to Defendants.

265. The new OLC opinion concludes that Treasury can lawfully comply with the Committee's request for Intervenors' tax information. Notably, the new opinion does not disavow or disprove OLC's prior conclusion that the record reveals the Committee's purpose is not to pursue "a newly discovered interest in legislating on the presidential-audit process," but to "obtain and publish" Intervenors' tax information. It instead concludes that Treasury must accept the Chairman's stated purposes at face value.

266. OLC's new opinion was unusual. OLC rarely overrules itself; it does so in less than 3% of its opinions. It is even less common for OLC to overrule itself so quickly, in the span of only a few years; as Attorney General Eric Holder explained, "We don't change OLC opinions simply because a new administration takes over." OLC's reversal here is particularly unusual because the only intervening authority since OLC's first opinion was the Supreme Court's decision

in *Mazars*, which substantially *restricted* Congress's authority to request this kind of information. And OLC's reversal is more unusual still because its new opinion takes a position that weakens the executive branch vis-à-vis Congress.

267. OLC's new opinion is also poorly reasoned and internally inconsistent, reflecting its outcome-driven approach. For example, the new opinion agrees with the old opinion that §6103(f) requires a legitimate legislative purpose, that the executive branch can deny requests that lack such a purpose, and that such a denial would be appropriate in "exceptional circumstances." While the new opinion apparently finds that standard not satisfied here, it never explains why. It does not address the substantial record that Treasury and OLC compiled, explain why that record is unpersuasive, or attempt to defend Chairman Neal's audit rationale as legitimate. It analyzes the Committee's request only on its face. Even assuming this request were facially legitimate, if this record is not the kind of "exceptional circumstances" that could defeat a facially legitimate request, then nothing is. Further, OLC's blind deference to the Committee is nowhere supported in its cited authorities, which discuss a far weaker "presumption of regularity" for government officials and "presumption of constitutionality" for federal statutes. Nor does OLC reconcile its willingness to give a presumption of regularity to the Committee with the Committee's unwillingness to give a presumption of regularity to the IRS officials who audit Presidents.

268. The OLC opinion references emails and letters between the Justice Department and Treasury Department that Intervenors have not seen and have not been disclosed. The Committee and executive branch likewise negotiated over the Committee's request for Intervenors' tax information for over six months, without allowing Intervenors to participate. Intervenors believe that discovery of these nonprivileged communications would reveal a coordinated effort by the Committee and Defendants to release Intervenors' information, where the parties worked together

to craft an approach that would give the executive branch cover to change positions but have the Committee make only cosmetic changes to its request. This inference is amply supported by the surrounding circumstances, including the parties' decision to exclude Intervenors from their discussions over Intervenors' own tax information, the parties' decision to keep Intervenors in the dark about the Committee's new letter until the OLC opinion was already prepared, and the parties' sudden urgency to rush the disclosure of Intervenors' information once their deal came to light.

269. As soon as OLC's new opinion was published, Committee Democrats quickly praised it. Thinking they had now secured President Trump's tax returns, they once again expressed their actual, original, illegitimate purposes for making the request in the first place: exposure and law enforcement.

270. For example, in reaction to OLC's opinion, Speaker Pelosi said "[t]he American people" would now "know the facts" about President Trump.

271. Committee-Member Doggett reacted that, with the "evidence" from President Trump's tax returns, the Committee can now uncover "his tax evasion."

272. Committee-Member Pascrell expressed approval of OLC's opinion, calling President Trump a "corrupt private citizen" and connecting "[t]his case" to "Donald Trump's crimes."

273. Chairman Neal was "glad" to see that the Justice Department "agrees" with "the committee's case"—the same one "I have maintained for years."

274. Committee-Member Beyer likewise said that OLC's new opinion "confirmed what we have always said."

275. Senator Grassley, however, rightly maintained that "[t]here's no legitimate legislative purpose for targeting an individual's tax information like this, even if it's the former

president. It's always been obvious that House Democrats wanted to get the former president's tax returns just so they could release them to the public, and the Ways and Means Committee's excuse about doing oversight on the presidential audit program is an obvious pretext that deserves no deference from the Treasury Department."

276. Senator Grassley identified the "new [OLC] opinion" as "just politics." It contradicts a "very recent opinion," lacks "thoughtful legal analysis," and provides "political justifications to back up partisan House investigations." He observed that, unlike this opinion, the executive branch's prior decisionmaking process was investigated and approved as proper by the inspector general.

277. The Committee's request is not designed to learn about the IRS's mandatory audit process for Presidents. By seeking information about President Trump alone, the Committee's sample size is too small. Nor is President Trump an especially useful case study into Presidents generally, as the Committee admits when stressing his unusual facts.

278. For example, the year after his term as Vice President ended, Jill and Joe Biden immediately became wealthy. They made twice as much money in 2017—over $11 million—than they had made in the previous 18 years combined. Their money was earned from speaking engagements and the publication of two books. The Bidens funneled the money through two S-corporations, which allowed them to avoid approximately $500,000 in taxes. According to several tax experts, who are quoted in a report by the Wall Street Journal, this strategy of avoiding taxes by attributing the compensation from speeches and books to S-corporations, rather than to the Bidens themselves, is "aggressive" and legally dubious. It is a "similar tax-avoidance strategy" to what President Trump's critics have accused him of doing. In other words, to paraphrase the Committee's June letter, "news reports indicate that the former [Vice] President used his

businesses to take aggressive tax positions to minimize his tax liability." Yet the Committee has not asked Treasury for President Biden's audit files or any other tax information.

279. The IRS also reviews the tax returns of the Speaker of the House and the Chairman of the Ways and Means Committee. These powerful lawmakers have at least as much leverage and influence over the IRS as the President and Vice President, since they dictate the IRS's budget and whether its preferred policies get passed. And the Speaker is third in the presidential line of succession, right after the President and Vice President. Yet neither Speaker Pelosi nor Chairman Neal have released their tax returns. And the Committee has not asked Treasury for their tax returns, audit files, or any other tax information.

280. Vice President Rockefeller is the richest Vice President to ever serve. He did not place his vast business holdings in a blind trust while in office. Because he was so wealthy, he was subject to a routine IRS audit before he was nominated; and the IRS gave him even more scrutiny after he was nominated and confirmed. While his nomination was pending, the IRS found that Rockefeller had drastically underpaid federal income and gift taxes. Rockefeller reached a substantial settlement with the IRS for over $900,000 in 1974 dollars. Rockefeller also refused to let the audit files be disclosed to the public. The Committee has not asked Treasury for audit files or any other tax information concerning Vice President Rockefeller.

281. Before he became President, Jimmy Carter was a wealthy businessman. Yet, in his first tax year as President, he calculated that he owed zero federal income tax. President Carter engaged in several discussions with the IRS about that return, and he ultimately received a refund of approximately $20,000. While President Carter had placed his businesses in a trust, the trust was not fully blind and it generated several ethics investigations and inquiries. The Committee has not asked Treasury for audit files or any other tax information concerning President Carter.

282. The Committee's request seeks returns from years when President Trump was not President. These returns by definition cannot provide any useful information about the IRS's process for auditing Presidents. If the Committee wants to study President Trump's tax returns that were not subject to the mandatory audit process, it has not explained why, and its chosen sample is arbitrary.

283. When asked to explain why he chose a six-year date range, Chairman Neal said that the Committee "followed IRS guidelines, which suggests to taxpayers that six years is generally the measurements that they use for advising taxpayers on how long to keep their forms." That explanation might make sense if the Committee was planning to conduct its own audit of President Trump's tax returns—*i.e.*, to engage in law enforcement. But it makes no sense if the Committee was trying to study how the IRS audits Presidents, as it claims.

284. The information that the Committee requested would not uncover any hidden business ties or foreign entanglements. As former IRS Commissioner Koskinen recently explained, Intervenors' tax returns likely cannot reveal "previously unknown business relationships," since that kind of information does not appear on tax returns. Defendant Rettig, before he was Commissioner, likewise agreed that reviewing Intervenors' tax returns would be unlikely to provide "an accurate overall financial picture." And President Trump has already filed financial disclosures covering the same period that are publicly available and far more extensive than tax returns.

285. The Committee claims that it has various questions about the IRS's mandatory audit process, including whether audits are truly mandatory, how broad the examination is, what protections exist for auditors, what procedures are and are not followed, and more. But the only way to find answers to these questions is to ask the IRS. The requested information would provide

no information about the audit process (e.g., the tax returns) or would provide only an unreliable, circumstantial snapshot of the audit process for a given year and given President (e.g., everything else).

286. The Committee has not asked the IRS to answer its questions about the mandatory audit process, or explained why the IRS's answers to date are insufficient. The Committee did not accept a briefing from the IRS until after it requested Intervenors' tax information. The Committee has not said that it doubts IRS's answers or materials provided to date. Even if it did doubt them, it has not explained why it would maintain those doubts now that the target of its request is no longer in charge of the executive branch. As this case reveals, the executive branch is now extremely cooperative with the Committee in terms of getting it information. The Committee and Defendants have no excuse for reaching an accommodation during their six months of negotiations, one that would take into account Intervenors' interests as well.

287. Much of the mandatory audit process is written down in the Internal Revenue Manual, which the Committee can simply consult. The Manual states that the IRS examines the "individual income tax returns for the President and Vice President." It also states that the examination is done under the normal "relevant IRM procedures" and is processed like an employee's returns would be. While the Committee says that the IRS told it that some prior audit procedures are no longer followed, the Committee does not say which ones, whether the changes are minor, whether the changes are reflected in the Manual, or how requesting President Trump's information would help answer any of these questions.

288. The Committee claims to be worried about Presidents interfering with their audits. But by investigating and requesting files from audits that are ongoing, the Committee is itself

interfering with those audits, diluting the evidence to the point of uselessness. And the fairness of any given audit cannot be assessed before the audit is complete.

289. The Committee has made no effort to minimize the burden on Intervenors by, for example, agreeing to redactions, conducting in camera examination, or foregoing any disclosure to the House or the public. Defendants have not demanded any such efforts either, even though it is within their power as a matter of accommodation.

CROSS-CLAIM & COUNTERCLAIM I
No Legitimate Legislative Purpose – Exposure
(Against Plaintiff and Defendants)

290. Intervenors incorporate and restate the prior allegations regarding their counterclaims and cross-claims.

291. "The powers of Congress … are dependent solely on the Constitution," and "no express power in that instrument" allows Congress to investigate individuals or to demand their private information. *Kilbourn v. Thompson*, 103 U.S. 168, 182-89 (1880). The Constitution instead permits Congress to enact certain kinds of legislation. *E.g.*, Art. I, §8. Thus, Congress' power to investigate "is justified solely as an adjunct to the legislative process." *Watkins v. United States*, 354 U.S. 178, 197 (1957). In other words, the inquiry must have a "legitimate legislative purpose." *Eastland*, 421 U.S. at 501 n.14.

292. "Oversight" and "transparency," in a vacuum, are not legitimate purposes. For more than a century, the Supreme Court has been quite "sure" that neither the House nor the Senate "possesses the general power of making inquiry into the private affairs of the citizen." *Kilbourn*, 103 U.S. at 190. "[T]here is no congressional power to expose for the sake of exposure." *Watkins*, 354 U.S. at 200. "No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress." *Id*. at 187.

293. When assessing whether a committee's request has a valid purpose, courts must determine the inquiry's "real object," its "primary purpose[]," its "gravamen." *McGrain v. Daughtery*, 273 U.S. 135, 178 (1927); *Barenblatt v. United States*, 360 U.S. 109, 133 (1959); *Kilbourn*, 103 U.S. at 195. "[S]everal sources are available in aid of ascertaining this," including "statements of the members of the committee." *Shelton v. United States*, 404 F.2d 1292, 1297 (D.C. Cir. 1968).

294. The Committee's request for Intervenors' tax information lacks a legitimate legislative purpose.

295. The primary purpose of the request is to obtain and expose Intervenors' information for the sake of exposure—not to study federal legislation. The stated purposes are rationalizations that were created for litigation, not actual bases for the request. Chairman Neal and other Committee members admitted as much in countless statements. And the disconnect between the subpoena's stated rationales and actual requests proves the point.

296. That the Committee is proceeding under §6103(f), rather than a subpoena, is irrelevant. Like subpoenas, §6103(f) is an exercise of Congress's power of inquiry and thus subject to the same Article I limits.

297. And the Committee's request does not satisfy the terms of §6103(f) anyway. By targeting President Trump and his businesses, the request seeks "the President's information." *Mazars*, 140 S. Ct. at 2026. While §6103(f) speaks in generic terms, it does not explicitly authorize the Committee's chairman to request the returns or return information of the President or a former President. Under "the canons of construction applicable to statutes that implicate the separation of power," that "textual silence" means that §6103(f) cannot be read to cover the information of Presidents or former Presidents. *Armstrong v. Bush*, 924 F.2d 282, 289 (D.C. Cir. 1991).

CROSS-CLAIM & COUNTERCLAIM II
No Legitimate Legislative Purpose – Law Enforcement
(Against Plaintiff and Defendants)

298. Intervenors incorporate and restate the prior allegations regarding their counterclaims and cross-claims.

299. Because Congress must have a legislative purpose for its inquiries, it cannot demand personal, confidential information to exercise "any of the powers of law enforcement." *Quinn*, 349 U.S. at 161. Those enforcement powers "are assigned under our Constitution to the Executive and the Judiciary." *Id*. Because Congress is not "a law enforcement or trial agency," congressional investigations conducted "for the personal aggrandizement of the investigators" or "to 'punish' those investigated" are "indefensible." *Watkins*, 354 U.S. at 187. Our tripartite system of separated powers requires that "any one of the[] branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other." *Kilbourn*, 103 U.S. at 190-91.

300. If the Committee's primary purpose is not exposure for the sake of exposure, then it is law enforcement—not legislation.

301. Per their repeated public statements, Committee Members requested President Trump's tax information for the purpose of proving his supposed criminal wrongdoing.

302. The Committee's request bears the hallmarks of law enforcement as it singles out one individual, asks for evidence of wrongdoing, and mirrors a request made by an actual prosecutor.

303. Committee Members also requested President Trump's tax information so they could conduct their own investigation, examination, and audit of President Trump, proving that he

owed more in taxes than he claims or uncovering other wrongdoing. These powers, however, belong exclusively to the executive branch.

CROSS-CLAIM & COUNTERCLAIM III
No Legitimate Legislative Purpose – Pertinent to Valid Legislation
(Against Plaintiff and Defendants)

304. Intervenors incorporate and restate the prior allegations regarding their counterclaims and cross-claims.

305. "Congress is not invested with a general power to inquire into private affairs. The subject of any inquiry always must be one on which legislation could be had." *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 504 n.15 (1975) (cleaned up). And legislation could not "be had" if it would be unconstitutional. *See Quinn v. United States*, 349 U.S. 155, 161 (1955) ("[T]he power to investigate" does not "extend to an area in which Congress is forbidden to legislate.").

306. "[T]he records called for" by Congress also must be "pertinent" to the valid legislation. *McPhaul v. United States*, 364 U.S. 372, 380 (1960). This "pertinency" requirement ensures that Congress is "coping with a problem that falls within its legislative sphere." *Watkins*, 354 U.S. at 206. If the congressional request is not "reasonably 'relevant to the inquiry,'" then it lacks a legitimate purpose entirely. *McPhaul*, 364 U.S. at 381-82; *accord Hearst v. Black*, 87 F.2d 68, 71 (D.C. Cir. 1936); *Bergman v. Senate Special Comm. on Aging*, 389 F. Supp. 1127, 1130 (S.D.N.Y. 1975).

307. Moreover, the legislative purpose justifying a committee's investigation must fall within that committee's jurisdiction. "The theory of a committee inquiry is that the committee members are serving as the representatives of the parent assembly in collecting information for a legislative purpose." *Id.* at 200. The committee therefore "must conform strictly to the resolution" creating its jurisdiction. *Exxon Corp. v. FTC*, 589 F.2d 582, 592 (D.C. Cir. 1978). Especially when

an investigation is "novel" or "expansive," courts will construe the committee's jurisdiction "narrowly." *Tobin v. United States*, 306 F.2d 270, 275 (D.C. Cir. 1962).

308. Congress cannot constitutionally require the IRS to audit a President. Presidents alone are vested with the executive power. Congress cannot direct one component of the executive branch to wield that power against its head.

309. The Committee's request is not reasonably relevant to studying the IRS's audit process. It singles out one President, asks for open files, asks for pre-President files, seeks tax returns themselves, is not aimed at answering procedural questions, and has other flaws.

310. Other contemplated laws would fall outside the Committee's legislative jurisdiction and would be impertinent to the Committee's request. The Committee's request is not limited to "foreign" ties, for example. The audit files would contain virtually no information about business entanglements, and the tax returns contain no information about the audit process.

311. Further, Congress cannot require the President—a coequal office created by the Constitution itself—to disclose particular information or divest from certain business relationships. *See Gordon v. United States*, 117 U.S. 697, 699 (1864); *Kendall v. U.S. ex rel. Stokes*, 37 U.S. 524, 610 (1838).

CROSS-CLAIM & COUNTERCLAIM IV
No Legitimate Legislative Purpose - *Mazars*
(Against Plaintiff and Defendants)

312. Intervenors incorporate and restate the prior allegations regarding their counterclaims and cross-claims.

313. Congressional requests for information that implicate the separation of powers must satisfy the heightened standard articulated by the Supreme Court in *Mazars*.

314. The *Mazars* test applies to the Committee's request, which was made while President Trump was in office. Because Intervenors immediately objected, the legality of the

request must be assessed at that time. *Watkins*, 354 U.S. at 214-15; *see id.* at 206 (requiring a "clear determination" by the body "initiating" the investigation); *United States v. Rumely*, 345 U.S. 41, 48 (1953) ("as of the time of [the] refusal"); *Shelton v. United States*, 327 F.2d 601, 607 (D.C. Cir. 1963) ("when the subpoena was issued").

315. Chairman Neal's June 2021 letter was not a new request, but a voluntary adjustment to the April 2019 request—a request that, according to the Committee, never expired, was made only because President Trump was President, and is supposedly meant to pursue President-specific legislation. It, too, should be evaluated as a request to a President.

316. Regardless, subpoenas to former Presidents are also covered by the Mazars standard. That standard is grounded in the "separation of powers." *Mazars*, 140 S. Ct. at 2033, 2034, 2035, 2036. The Supreme Court has "reject[ed] the argument that only an incumbent President may assert" separation-of-powers claims defending the Office of the President; a "former President" can "also be heard to assert them." *Nixon v. GSA*, 433 U.S. 425, 439 (1977). A "former President in this context can hardly be viewed as an ordinary private citizen." *Pub. Citizen, Inc. v. DOJ*, 111 F.3d 168, 170 (D.C. Cir. 1997). The protection that he—and, in turn, "'the Republic'"—needs from congressional subpoenas of his private papers "'cannot be measured by the few months or years between the submission of the [subpoena] and the end of the President's tenure.'" *Nixon*, 433 U.S. at 449.

317. Chairman Neal's request badly fails the *Mazars* test. Among other things, his asserted legislative purpose lacks a basis in evidence and is admittedly pretextual. Passing broad reforms that the Chairman has already identified does not justify the significant step of requesting a President's records. Other sources could provide the needed information, especially since Defendants are now so eager to disclose information about presidential audits. And the Chairman's

request burdens Intervenors by interfering with ongoing examinations, disclosing substantial amounts of sensitive financial information, providing no safeguards or accommodations, and overriding the Tax Code's "core purpose of protecting taxpayer privacy." *Tax Analysts v. IRS*, 117 F.3d 607, 615 (D.C. Cir. 1997); *accord Nat'l Treasury Employees Union v. FLRA*, 791 F.2d 183, 184 (D.C. Cir. 1986).

CROSS-CLAIM V
Unconstitutionality of §6103(f)
(Against Defendants)

318. Intervenors incorporate and restate the prior allegations regarding their counterclaims and cross-claims.

319. The only authority that the Committee has cited for requesting Intervenors' tax information is 26 U.S.C. §6103(f). While the Committee initially backed up its §6103(f) request with a subpoena, the Committee contends that the subpoena expired with the 116th Congress and has not been reissued.

320. If §6103(f) is unconstitutional, then the default rule of taxpayer privacy controls. The Committee would have no authority to request, and Defendants would have no authority to comply with its request, for Intervenors' information. *See* 18 U.S.C. §1905; 26 U.S.C. §§7213(a)(1), 7431(a).

321. Section 6103(f) states, in relevant part, that "[u]pon written request from the chairman of the Committee on Ways and Means of the House of Representatives," the Treasury Secretary "shall furnish such committee with any return or return information specified in such request."

322. According to the Committee, the text of §6103(f) is "clear" and "unequivocal." It "imposes no restriction on the purpose for which a Congressional tax committee may submit a request to Treasury for returns or return information." In other words, the statute "contains no

exception to Treasury's obligation to furnish returns or return information to the Congressional tax committees upon written request," not even an exception for when "the Committee lacks a legitimate legislative purpose." As Speaker Pelosi put it, "[t]he law is very clear"; it says "shall—not may, should, could." As Chairman Neal put it, "[t]he law on this is very clear: The IRS 'shall furnish' the Ways and Means Committee with the requested tax returns." Or as Committee-Member Pascrell put it, §6103(f) is "clear as day."

323. Under Article I of the Constitution, however, "Congress has no general power to inquire into private affairs and compel disclosures," and "there is no congressional power to expose for the sake of exposure." *Mazars*, 140 S. Ct. at 2032. As OLC explained in both its 2019 and 2021 opinions, Congress cannot delegate authority that it doesn't have, and so §6103(f)(1) cannot give Chairman Neal or the Committee the power to obtain otherwise confidential information without a legitimate legislative purpose.

324. If §6103(f) neither requires a legitimate legislative purpose nor contains an ambiguity that would allow the Court to read that requirement into the statute, then §6103(f) is unconstitutional on its face.

CROSS-CLAIM VI
Violation of First Amendment
(Against Defendants)

325. Intervenors incorporate and restate the prior allegations regarding their counterclaims and cross-claims.

326. The "First Amendment freedoms" of "speech," "political belief," and "association" apply to congressional investigations. *Watkins*, 354 U.S. at 188.

327. The First Amendment prohibits the government from discriminating, harassing, or retaliating on the basis of political party, association, or speech. *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 75 (1990); *Lozman v. City of Riviera Beach*, 138 S.Ct. 1945, 1949 (2018).

328. The government violates the First Amendment when the target's speech or politics motivated its actions "at least in part." *Cruise-Gulyas v. Minard*, 918 F.3d 494, 497 (6th Cir. 2019). That is because, even when the government could legitimately act "for any number of reasons, there are some reasons upon which the government may not rely"—including "constitutionally protected speech or associations." *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

329. To determine whether an impermissible purpose exists, courts look at the "face" of the action to see if, for example, it has been "'gerrymander[ed]'" to particular individuals. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 564 (2011); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533-34 (1993). An impermissible purpose can also be detected from "the effect" of the action and other evidence in "the record." *Id*. at 535; *Sorrell*, 564 U.S. at 564. "Relevant evidence includes, among other things, the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body." *Lukumi*, 508 U.S. at 540.

330. Based on all the evidence, the Committee's request for President Trump's tax information is unlawfully motivated by discrimination, harassment, and retaliation in violation of the First Amendment. This Court can and should direct relief against Defendants to prevent them from carrying out this unlawful request.

331. As OLC found and never disavowed, the record overwhelming reveals that the purpose of the request for Intervenors' tax information is to expose the private tax information of one individual—President Trump—for political gain. The request is tailored to, and in practical operation will affect, only President Trump. The request singles out President Trump because he is a Republican and the chief political opponent of Committee Democrats. It was made to retaliate

against President Trump because of his policy positions, his political beliefs, and his protected speech, including the positions he took during the 2016 and 2020 campaigns.

332. The Committee's attempt to forcibly disclose President Trump's tax information is in direct retaliation to his refusal to disclose the returns voluntarily during the 2016 and 2020 elections. It is also done with the intent to damage him politically because he is a Republican, whose beliefs, agenda, and politics Committee Democrats oppose in full, and who did or could run against their preferred Democratic candidate for President (Hillary Clinton, then Joe Biden). When President Trump was in office, Committee Democrats consistently voted against his agenda and voted to remove him; their continued pursuit of his tax information is an attempt to keep him at bay.

333. The Committee's request is a major departure from historical practice. Section 6103(f) has never been used against a President, a former President, or any elected official.

334. The Committee's request has always been a transparent effort by one political party to harass an official from the other party because they dislike his politics and speech. Chairman Neal sought President Trump's tax returns and return information because his party had recently gained control of the House, President Trump was (and is) their political opponent, and they want to use the information to damage him politically. The Chairman's party has been clamoring for President Trump's tax returns since before the 2016 election.

335. Chairman Neal and other Committee Democrats have admitted that the stated purpose of the request is pretextual—a retroactive rationalization to help win this case.

336. Independently, and for many of the same reasons, Defendants' decision to comply with the Committee's request is itself unlawfully motivated by discrimination, harassment, and retaliation in violation of the First Amendment.

337. Though the executive branch once confirmed the request's impermissible purpose, it switched positions once President Biden came into office after six months of consulting with the Committee. Intervenors were not warned, and were not invited to attend the parties' negotiations. The new OLC opinion does not deny the record of impermissible intent, but instead gives wobbly justifications and shallow reasoning for why the executive branch should ignore that evidence. The government's complete reversal on the legality of Chairman Neal's request came under President Biden, a Democrat who made the disclosure of President Trump's tax returns a campaign issue and knows that President Trump remains the most high-profile Republican and his top political rival. The reversal of position was also made via unusual procedures and under pressure from liberal groups who wanted President Trump's information immediately exposed.

CROSS-CLAIM VII
Violation of Separation of Powers
(Against Defendants)

338. Intervenors incorporate and restate the prior allegations regarding their counterclaims and cross-claims.

339. "Under our Constitution, the 'executive Power'—all of it—is 'vested in a President," who must "take Care that the Laws be faithfully executed.'" *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2191 (2020).

340. Information requested by the Committee is the subject of ongoing examinations by the IRS.

341. The executive branch has long refused to "provide committees of Congress with access to, or copies of, open law enforcement files." 10 Op. O.L.C. 68, 76 (1986).

342. Making Congress "a partner in the investigation," as every administration since George Washington has recognized, would create "a substantial danger that congressional pressures will influence the course of the investigation." 8 Op. O.L.C. 252, 263 (1984).

343. "The Constitution's division of power among the three branches is violated where one branch invades the territory of another, whether or not the encroached-upon branch approves the encroachment." *New York v. United States*, 505 U.S. 144, 182 (1992). "The constitutional authority of Congress cannot be expanded by the 'consent' of the governmental unit whose domain is thereby narrowed," even when "that unit is the Executive Branch." *Id.*

344. Allowing the Committee to obtain files that are the subject of ongoing examinations violates the separation of powers.

CROSS-CLAIM VIII
Violation of Due Process
(Against Defendants)

345. Intervenors incorporate and restate the prior allegations regarding their counterclaims and cross-claims.

346. Information requested by the Committee is the subject of ongoing examinations by the IRS.

347. IRS examinations are adjudications. Basic principles of due process require IRS examination to be insulated from congressional interference.

348. When a congressional investigation focuses on a "pending" adjudication, it violates "the right of private litigants to a fair trial and, equally important, with their right to the appearance of impartiality"—the "sine qua non of American judicial justice." *Pillsbury Co. v. FTC*, 354 F.2d 952, 964 (5th Cir. 1966).

349. Even the most scrupulous IRS officials could not help but be influenced by the fact that Congressional partisans are scrutinizing their work in real time. *Id*. That is especially true here, where the Committee seeks to look over officials' shoulders in real time on a theory that they are being too lax on particular taxpayers.

350. Congressional inquiries made "while the decisionmaking process is ongoing" impose the "greatest" intrusion on "the Executive Branch's function of executing the law." 5 Op. O.L.C. 27, 31 (1981).

351. Allowing the Committee to obtain files that are the subject of ongoing examinations violates Intervenors' due-process rights.

WHEREFORE, Intervenors ask this Court to enter judgment in their favor and provide the following relief:

a. A declaratory judgment that Plaintiff has not lawfully requested Intervenors' tax information;

b. A declaratory judgment that Defendants cannot lawfully disclose Intervenors' tax information;

c. A permanent injunction prohibiting Defendants from complying with, or taking any other action to disclose, Intervenors' tax information;

d. A temporary restraining order and preliminary injunction granting the relief specified above during the pendency of this action;

e. Intervenors' reasonable costs and expenses, including attorneys' fees; and

f. All other preliminary and permanent relief that Intervenors are entitled to, including equitable relief under the All Writs Act to protect this Court's jurisdiction.

Respectfully submitted,

Dated: August 4, 2021

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U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:19–cv–01974–TNM

COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES v. UNITED STATES DEPARTMENT OF THE TREASURY et al
Assigned to: Judge Trevor N. McFadden
Case in other court: 21–05289
Cause: 05:0706 Judicial Review of Agency Actions

Date Filed: 07/02/2019
Date Terminated: 05/05/2022
Jury Demand: None
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: U.S. Government Plaintiff

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LAMINGTON FARM CLUB, LLC represented by **Patrick Neilson Strawbridge**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William S. Consovoy
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cameron Thomas Norris
(See above for address)
ATTORNEY TO BE NOTICED

Cross Claimant

DTTM OPERATIONS MANAGING MEMBER CORP.

represented by **Patrick Neilson Strawbridge**
(See above for address)
LEAD ATTORNEY
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Cross Claimant

LFB ACQUISITION MEMBER CORP.

represented by **Patrick Neilson Strawbridge**
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Cross Claimant

DJT HOLDINGS LLC represented by **Patrick Neilson Strawbridge**
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Cross Claimant

DONALD J. TRUMP REVOCABLE TRUST represented by **Patrick Neilson Strawbridge**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William S. Consovoy
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cameron Thomas Norris
(See above for address)
ATTORNEY TO BE NOTICED

V.

Cross Defendant

UNITED STATES DEPARTMENT OF THE TREASURY represented by **Cristen Cori Handley**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elizabeth J. Shapiro
(See above for address)
LEAD ATTORNEY
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TERMINATED: 10/21/2022
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TERMINATED: 09/11/2020

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(See above for address)
TERMINATED: 11/10/2021
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Cross Defendant

INTERNAL REVENUE SERVICE represented by **Cristen Cori Handley**
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TERMINATED: 10/21/2022

Cross Defendant

STEVEN T. MNUCHIN
in his official capacity as Secretary of the United States Department of the Treasury
TERMINATED: 09/28/2021

represented by **Cristen Cori Handley**
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Cross Defendant

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in his official capacity as Commissioner of the Internal Revenue Service

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Counter Claimant **DONALD J. TRUMP**	represented by	**Patrick Neilson Strawbridge** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **William S. Consovoy** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Cameron Thomas Norris** (See above for address) *ATTORNEY TO BE NOTICED*
Counter Claimant **LAMINGTON FARM CLUB, LLC**	represented by	**Patrick Neilson Strawbridge** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **William S. Consovoy** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Cameron Thomas Norris** (See above for address) *ATTORNEY TO BE NOTICED*
Counter Claimant **DTTM OPERATIONS MANAGING MEMBER CORP.**	represented by	**Patrick Neilson Strawbridge** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **William S. Consovoy** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **Cameron Thomas Norris** (See above for address) *ATTORNEY TO BE NOTICED*
Counter Claimant **LFB ACQUISITION MEMBER CORP.**	represented by	**Patrick Neilson Strawbridge** (See above for address) *LEAD ATTORNEY*

ATTORNEY TO BE NOTICED

William S. Consovoy
(See above for address)
LEAD ATTORNEY
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Cameron Thomas Norris
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Counter Claimant

LFB ACQUISITION LLC represented by **Patrick Neilson Strawbridge**
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Counter Claimant

DTTM OPERATIONS LLC represented by **Patrick Neilson Strawbridge**
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Counter Claimant

DJT HOLDINGS LLC represented by **Patrick Neilson Strawbridge**
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Counter Claimant

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Counter Claimant

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V.

Counter Defendant

COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES

represented by **Andres C. Salinas**
(See above for address)
ATTORNEY TO BE NOTICED

Brooks McKinly Hanner
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ATTORNEY TO BE NOTICED

David Mark Lehn
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Josephine T. Morse
(See above for address)
TERMINATED: 02/04/2021

Katie Kelsh
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TERMINATED: 05/31/2022
PRO HAC VICE

Megan Barbero
(See above for address)
TERMINATED: 07/09/2021

Sarah Edith Clouse
(See above for address)
ATTORNEY TO BE NOTICED

Stacie Marion Fahsel
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TERMINATED: 07/29/2022
ATTORNEY TO BE NOTICED

Todd Barry Tatelman
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Douglas N. Letter
(See above for address)
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Cross Claimant

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Cross Defendant

UNITED STATES DEPARTMENT OF THE TREASURY

represented by **Cristen Cori Handley**
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Cross Defendant

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in his official capacity as Secretary of the United States Department of the Treasury
TERMINATED: 09/28/2021

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in his official capacity as Commissioner of the Internal Revenue Service

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Counter Claimant

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V.

Counter Defendant

COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES	represented by	**Andres C. Salinas** (See above for address) *ATTORNEY TO BE NOTICED* **Brooks McKinly Hanner** (See above for address) *ATTORNEY TO BE NOTICED* **David Mark Lehn** (See above for address) *ATTORNEY TO BE NOTICED* **Josephine T. Morse** (See above for address) *TERMINATED: 02/04/2021* **Katie Kelsh** (See above for address) *TERMINATED: 05/31/2022* **Kelly P. Dunbar** (See above for address) *ATTORNEY TO BE NOTICED* **Megan Barbero** (See above for address) *TERMINATED: 07/09/2021* **Sarah Edith Clouse** (See above for address) *ATTORNEY TO BE NOTICED* **Seth Paul Waxman** (See above for address) *ATTORNEY TO BE NOTICED* **Stacie Marion Fahsel** (See above for address) *TERMINATED: 07/29/2022* *ATTORNEY TO BE NOTICED* **Todd Barry Tatelman** (See above for address) *ATTORNEY TO BE NOTICED* **Douglas N. Letter** (See above for address) *ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
07/02/2019	1	COMPLAINT against CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY (Fee Status:Filing Fee Waived) filed by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P, # 17 Civil Cover Sheet, # 18 Summons, # 19 Summons, # 20 Summons, # 21 Summons, # 22 Summons, # 23 Summons)(Letter, Douglas) (Entered: 07/02/2019)
07/03/2019		Case Assigned to Judge Trevor N. McFadden. (zsb) (Entered: 07/03/2019)

07/03/2019	2	STANDING ORDER Establishing Procedures for Cases Before Judge Trevor N. McFadden. The parties are hereby ORDERED to read and comply with the directives in the attached standing order. Signed by Judge Trevor N. McFadden on 07/03/2019. (lctnm2) (Entered: 07/03/2019)
07/08/2019	3	SUMMONS (6) Issued Electronically as to CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY, U.S. Attorney and U.S. Attorney General (Attachment: # 1 Notice and Consent)(zsb) (Entered: 07/08/2019)
07/08/2019	4	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 7/8/2019. Answer due for ALL FEDERAL DEFENDANTS by 9/6/2019. (Letter, Douglas) (Entered: 07/08/2019)
07/11/2019	10	MOTION to Intervene by DUANE MORLEY COX. (Attachments: # 1 Exhibit – Answer in Intervention, # 2 Exhibit – Notice of Appearance, # 3 Text of Proposed Order) (tth) (Entered: 07/16/2019)
07/16/2019	5	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 07/10/2019. (Letter, Douglas) (Entered: 07/16/2019)
07/16/2019	6	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. INTERNAL REVENUE SERVICE served on 7/9/2019 (Letter, Douglas) (Entered: 07/16/2019)
07/16/2019	7	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. STEVEN T. MNUCHIN served on 7/10/2019 (Letter, Douglas) (Entered: 07/16/2019)
07/16/2019	8	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. CHARLES P. RETTIG served on 7/9/2019 (Letter, Douglas) (Entered: 07/16/2019)
07/16/2019	9	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. UNITED STATES DEPARTMENT OF THE TREASURY served on 7/10/2019 (Letter, Douglas) (Entered: 07/16/2019)
07/17/2019	11	NOTICE of Appearance by William S. Consovoy on behalf of DONALD J. TRUMP, THE DONALD J. TRUMP REVOCABLE TRUST, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, LLC, DTTM OPERATIONS LLC, DTTM OPERATIONS MANAGING MEMBER CORP., LFB ACQUISITION LLC, LFB ACQUISITION MEMBER CORP., LAMINGTON FARM CLUB, LLC D/B/A TRUMP NATIONAL GOLF CLUB–BEDMINSTER (Consovoy, William) (Entered: 07/17/2019)
07/17/2019	12	Unopposed MOTION to Intervene by DTTM OPERATIONS LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, LLC, DTTM OPERATIONS MANAGING MEMBER CORP., LAMINGTON FARM CLUB, LLC D/B/A TRUMP NATIONAL GOLF CLUB–BEDMINSTER, LFB ACQUISITION LLC, LFB ACQUISITION MEMBER CORP., THE DONALD J. TRUMP REVOCABLE TRUST, DONALD J. TRUMP (Attachments: # 1 Text of Proposed Order)(Consovoy, William) (Entered: 07/17/2019)
07/18/2019	13	LCvR 26.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by DTTM OPERATIONS LLC, DJT HOLDINGS MANAGING MEMBER, LLC, DTTM OPERATIONS MANAGING MEMBER CORP., LAMINGTON FARM CLUB, LLC D/B/A TRUMP NATIONAL GOLF CLUB–BEDMINSTER, LFB ACQUISITION LLC, LFB ACQUISITION MEMBER CORP. (Consovoy, William) (Entered: 07/18/2019)
07/18/2019	14	ORDER granting 12 Unopposed Motion to Intervene. Upon consideration of the Proposed Defendant–Intervenors' 12 Motion to Intervene, it is hereby ordered that the motion is granted. The Clerk of Court shall add the movants as Intervenor–Defendants to the case. See attached Order for further details. Signed by Judge Trevor N. McFadden on 07/18/2019. (lctnm2) (Entered: 07/18/2019)
07/25/2019	15	NOTICE of Appearance by Steven A. Myers on behalf of CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES

		DEPARTMENT OF THE TREASURY (Myers, Steven) (Entered: 07/25/2019)
07/25/2019	16	Memorandum in opposition to re 10 MOTION to Intervene *filed by Duane Morley Cox* filed by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # 1 Text of Proposed Order)(Myers, Steven) (Entered: 07/25/2019)
07/25/2019	17	NOTICE of Appearance by Serena Maya Schulz Orloff on behalf of All Defendants (Orloff, Serena) (Entered: 07/25/2019)
07/25/2019	18	NOTICE of Appearance by Cristen Cori Handley on behalf of CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY (Handley, Cristen) (Entered: 07/25/2019)
08/06/2019	25	AMENDED REPLY to opposition to motion re 10 MOTION to Intervene filed by DUANE MORLEY COX. (tth) Modified event title on 8/14/2019 (znmw). (Entered: 08/12/2019)
08/06/2019	26	NOTICE by DUANE MORLEY COX re 10 MOTION to Intervene. (tth) (Entered: 08/12/2019)
08/09/2019	19	NOTICE of Appearance by Brooks McKinly Hanner on behalf of COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Hanner, Brooks) (Entered: 08/09/2019)
08/09/2019	20	NOTICE of Appearance by Douglas N. Letter on behalf of COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Letter, Douglas) (Entered: 08/09/2019)
08/09/2019	21	NOTICE of Appearance by Josephine T. Morse on behalf of COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Morse, Josephine) (Entered: 08/09/2019)
08/09/2019	22	NOTICE of Appearance by Megan Barbero on behalf of COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Barbero, Megan) (Entered: 08/09/2019)
08/09/2019	23	NOTICE of Appearance by Sarah Edith Clouse on behalf of COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Clouse, Sarah) (Entered: 08/09/2019)
08/09/2019	24	NOTICE of Appearance by Todd Barry Tatelman on behalf of COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Tatelman, Todd) (Entered: 08/09/2019)
08/09/2019	27	REPLY to opposition to motion re 10 MOTION to Intervene filed by DUANE MORLEY COX. (ztd) (Entered: 08/13/2019)
08/15/2019	28	Consent MOTION for Leave to File Excess Pages by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Attachments: # 1 Text of Proposed Order)(Letter, Douglas) (Entered: 08/15/2019)
08/16/2019		MINUTE ORDER. Upon consideration of the Plaintiff's 28 Motion for Leave to Exceed Page Limit, it is hereby ordered that the Plaintiff's motion is granted. It is further ordered that the Plaintiff's forthcoming Memorandum of Law in support of its Motion for Summary Judgment may be up to 55 pages in length. SO ORDERED. Signed by Judge Trevor N. McFadden on 8/16/2019. (lctnm2) (Entered: 08/16/2019)
08/20/2019	29	MOTION for Summary Judgment by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Attachments: # 1 Statement of Facts, # 2 Memorandum in Support, # 3 Declaration of Todd B. Tatelman, # 4 Exhibit A to Decl., # 5 Exhibit B to Decl., # 6 Exhibit C to Decl., # 7 Exhibit D to Decl., # 8 Exhibit E to Decl., # 9 Exhibit F to Decl., # 10 Exhibit G to Decl., # 11 Exhibit H to Decl., # 12 Exhibit I to Decl., # 13 Exhibit J to Decl., # 14 Exhibit K to Decl., # 15 Exhibit L to Decl., # 16 Exhibit M to Decl., # 17 Exhibit N to Decl., # 18 Exhibit O to Decl., # 19 Exhibit P to Decl., # 20 Exhibit Q to Decl., # 21 Exhibit R to Decl., # 22 Exhibit S to Decl., # 23 Exhibit T to Decl., # 24 Exhibit U to Decl., # 25 Exhibit V to Decl., # 26 Exhibit W to Decl., # 27 Exhibit X to Decl., # 28 Exhibit Y to Decl., # 29 Exhibit Z to Decl., # 30 Exhibit AA to Decl., # 31 Exhibit BB to Decl., # 32 Exhibit

		CC to Decl., # 33 Exhibit DD to Decl., # 34 Exhibit EE to Decl., # 35 Exhibit FF to Decl., # 36 Exhibit GG to Decl., # 37 Exhibit HH to Decl., # 38 Exhibit II to Decl., # 39 Exhibit JJ to Decl., # 40 Exhibit KK to Decl., # 41 Exhibit LL to Decl., # 42 Exhibit MM to Decl., # 43 Exhibit NN to Decl., # 44 Exhibit OO to Decl., # 45 Exhibit PP to Decl., # 46 Exhibit QQ to Decl., # 47 Exhibit RR to Decl., # 48 Exhibit SS to Decl., # 49 Exhibit TT to Decl., # 50 Exhibit UU to Decl., # 51 Exhibit VV to Decl., # 52 Exhibit WW to Decl., # 53 Exhibit XX to Decl., # 54 Text of Proposed Order)(Letter, Douglas) (Entered: 08/20/2019)
08/20/2019	30	MOTION to Expedite *Consideration of this Case*, MOTION for Briefing Schedule by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Attachments: # 1 Text of Proposed Order)(Letter, Douglas) (Entered: 08/20/2019)
08/20/2019	31	NOTICE of Appearance by James Mahoney Burnham on behalf of All Defendants (Burnham, James) (Entered: 08/20/2019)
08/20/2019	32	NOTICE of Appearance by James J. Gilligan on behalf of All Defendants (Gilligan, James) (Entered: 08/20/2019)
08/20/2019	33	MOTION to Hold in Abeyance re 29 MOTION for Summary Judgment *(Defendants' and Defendant–Intervenors' Consolidated Motion to Hold Plaintiff's Motion for Summary Judgment in Abeyance Pending Resolution of Defendants' and Defendant–Intervenors' Forthcoming Motion(s) To Dismiss and Opposition to Plaintiff's Motion for Concurrent Briefing)* by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY (Attachments: # 1 Text of Proposed Order)(Gilligan, James) (Entered: 08/20/2019)
08/20/2019	34	Memorandum in opposition to re 30 MOTION to Expedite *Consideration of this Case* MOTION for Briefing Schedule *(Defendants' and Defendant–Intervenors' Consolidated Motion to Hold Plaintiff's Motion for Summary Judgment in Abeyance Pending Resolution of Defendants' and Defendant–Intervenors' Forthcoming Motion(s) To Dismiss and Opposition to Plaintiff's Motion for Concurrent Briefing)* filed by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # 1 Text of Proposed Order)(Gilligan, James) (Entered: 08/20/2019)
08/21/2019		MINUTE ORDER. It is hereby ordered that the Plaintiff's 29 Motion for Summary Judgment is held in abeyance pending the Court's ruling on the 30 Motion to Expedite Consideration of this Case. Signed by Judge Trevor N. McFadden on 08/21/2019. (lctnm2) (Entered: 08/21/2019)
08/26/2019	35	Memorandum in opposition to re 33 MOTION to Hold in Abeyance re 29 MOTION for Summary Judgment *(Defendants' and Defendant–Intervenors' Consolidated Motion to Hold Plaintiff's Motion for Summary Judgment in Abeyance Pending Resolution of Defendants)* filed by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. (Letter, Douglas) (Entered: 08/26/2019)
08/26/2019	36	REPLY to opposition to motion re 29 MOTION for Summary Judgment , 30 MOTION to Expedite *Consideration of this Case* MOTION for Briefing Schedule filed by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. (See Docket Entry 35 to view document). (ztth) (Entered: 08/27/2019)
08/27/2019	37	NOTICE by DUANE MORLEY COX. (ztth) (Entered: 08/29/2019)
08/29/2019	38	ORDER denying 29 Motion for Summary Judgment as premature; denying 30 Motion to Expedite; denying 33 Motion to Hold Motion for Summary Judgment in Abeyance as moot. See attached order for details. Signed by Judge Trevor N. McFadden on 08/29/2019. (lctnm2) (Entered: 08/29/2019)
08/30/2019		Set/Reset Deadlines: Any responsive pleading(s) to the Complaint, by the Administration and President Trump, is due by 9/6/2019. (hmc) (Entered: 08/30/2019)
09/03/2019	42	MOTION to Amend/Correct by DUANE MORLEY COX. (ztth) (Entered: 09/05/2019)

09/04/2019	39	ORDER denying 10 Motion to Intervene. See attached Order for details. Signed by Judge Trevor N. McFadden on 9/4/2019. (lctnm1) (Entered: 09/04/2019)
09/04/2019	40	NOTICE of Appearance by Andrew Marshall Bernie on behalf of All Defendants (Bernie, Andrew) (Entered: 09/04/2019)
09/04/2019		MINUTE ORDER. Any amicus brief in support of the Administration or President Trump shall be filed on or before September 6, 2019. Any amicus brief in support of the Committee shall be filed on or before September 20, 2019. Any amicus brief shall include a statement certifying that the amicus has attempted not to duplicate arguments presented in a party's brief and shall be no longer than 15 pages. Signed by Judge Trevor N. McFadden on 9/4/2019. (lctnm1) (Entered: 09/04/2019)
09/04/2019	41	Consent MOTION for Leave to File Excess Pages by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY (Attachments: # 1 Text of Proposed Order)(Bernie, Andrew) (Entered: 09/04/2019)
09/04/2019		MINUTE ORDER. Upon consideration of the Defendants' and Defendant–Intervenors' 41 Motion for Leave to Exceed Page Limit, it is hereby ordered that the motion is granted. It is further ordered that the Defendants' and Defendant–Intervenors' forthcoming consolidated Memorandum of Law in support of their Motion to Dismiss may be up to 60 pages in length. Signed by Judge Trevor N. McFadden on 09/04/2019. (lctnm2) (Entered: 09/04/2019)
09/05/2019		Set/Reset Deadlines: Amicus brief in support of the Administration or President Trump due by 9/6/2019. Amicus brief in support of the Committee due by 9/20/2019. (hmc) (Entered: 09/05/2019)
09/06/2019		MINUTE ORDER. The Court denied Duane Morley Cox's 10 Motion to Intervene. *See* Order, ECF No. 39 . Mr. Cox's 42 Motion to Amend his proposed Answer in Intervention therefore is denied as moot. Mr. Cox may, however, file an amicus brief, which shall not exceed fifteen pages. Signed by Judge Trevor N. McFadden on 09/06/2019. (lctnm2) (Entered: 09/06/2019)
09/06/2019	43	MOTION to excuse filing of certified list of contents of administrative record by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY (Attachments: # 1 Text of Proposed Order)(Myers, Steven) (Entered: 09/06/2019)
09/06/2019	44	MOTION to Dismiss *(joint motion of Defendants and Defendant–Intervenors)* by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY (Attachments: # 1 Exhibit A. 1960 House Memo, # 2 Exhibit B. Transcript of Trump v. Committee on Ways and Means, # 3 Declaration of Frederick Vaughan and Exhibits, # 4 Declaration of Sunita Lough and Exhibits, # 5 Text of Proposed Order)(Myers, Steven); Modified event and text on 9/9/2019 (ztth). (Entered: 09/06/2019)
09/09/2019		MINUTE ORDER. Upon consideration of the Defendants' 43 Motion to Excuse Filing of a Certified List of Contents of the Administrative Record, it is hereby ordered that the motion is granted. The Defendant is directed to file the certified index with the Court within 7 days of a ruling on the 44 Motion to Dismiss. This Order is without prejudice to the Defendant–Intervenors' ability to file a motion for discovery after the Court's decision on the Motion to Dismiss. Signed by Judge Trevor N. McFadden on 09/09/2019. (lctnm2) (Entered: 09/09/2019)
09/09/2019	45	AMICUS BRIEF by DUANE MORLEY COX. (ztth) (Entered: 09/12/2019)
09/12/2019		MINUTE ORDER. Any amicus brief shall be filed on or before September 20, 2019. Any amicus brief shall include a statement certifying that the amicus has attempted not to duplicate arguments presented in a party's brief and shall be no longer than 15 pages. Signed by Judge Trevor N. McFadden on 9/12/19. (lctnm1) (Entered: 09/12/2019)
09/12/2019		Set/Reset Deadlines: Amicus Brief due by 9/20/2019. (hmc) (Entered: 09/12/2019)

09/18/2019	46	Joint MOTION to Modify *Scheduling Order* by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Attachments: # 1 Text of Proposed Order)(Letter, Douglas) Modified event on 9/19/2019 (znmw). (Entered: 09/18/2019)
09/18/2019	47	NOTICE *of filing of Supplemental Declaration of Frederick W. Vaughan* by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY (Attachments: # 1 Declaration (Supplemental) of Frederick W. Vaughan)(Myers, Steven) (Entered: 09/18/2019)
09/19/2019	48	Consent MOTION for Leave to File Excess Pages by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Letter, Douglas) (Entered: 09/19/2019)
09/19/2019		MINUTE ORDER. Upon consideration of the parties' 46 Joint Motion for Scheduling Order and the Plaintiff's 48 Consent Motion for Leave to File Excess Pages, it is hereby ordered that both motions are granted. It is further ordered that the Plaintiff's opposition to the 44 Motion to Dismiss is due on or before September 23, 2019. It is further ordered that the Plaintiff's forthcoming opposition may be up to 65 pages in length. It is further ordered that the Defendants' and Defendant–Intervenors' replies are due on or before September 30, 2019. Signed by Judge Trevor N. McFadden on 09/19/2019. (lctnm2) (Entered: 09/19/2019)
09/19/2019		Set/Reset Deadlines: Plaintiff's opposition to the Motion to Dismiss due by 9/23/2019. Defendants' and Defendant–Intervenors' replies due by 9/30/2019. (hmc) (Entered: 09/19/2019)
09/20/2019	49	NOTICE of Appearance by Lawrence Saul Robbins on behalf of Geraldine R. Gennet, Kerry W. Kircher, Irvin B. Nathan, William Pittard, Thomas J. Spulak, Charles Tiefer (Robbins, Lawrence) (Entered: 09/20/2019)
09/20/2019	50	NOTICE of Appearance by Wendy Liu on behalf of Geraldine R. Gennet, Kerry W. Kircher, Irvin B. Nathan, William Pittard, Thomas J. Spulak, Charles Tiefer (Liu, Wendy) (Entered: 09/20/2019)
09/20/2019	51	NOTICE of Appearance by David Hunter Smith on behalf of Geraldine R. Gennet, Kerry W. Kircher, Irvin B. Nathan, William Pittard, Thomas J. Spulak, Charles Tiefer (Smith, David) (Entered: 09/20/2019)
09/20/2019	52	MOTION for Leave to File *Brief as Amici Curiae* by Geraldine R. Gennet, Kerry W. Kircher, Irvin B. Nathan, William Pittard, Thomas J. Spulak, Charles Tiefer (Attachments: # 1 Brief of Amici Curiae, # 2 Text of Proposed Order)(Robbins, Lawrence) (Entered: 09/20/2019)
09/20/2019	53	MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Laurence H. Tribe, :Firm– Harvard Law School, :Address– 1575 Massachussetts Avenue, Cambridge, MA 02138. Phone No. – 617–495–1767. Fax No. – 617–496–4947 Filing fee $ 100, receipt number 0090–6391192. Fee Status: Fee Paid. by Constitutional Law Scholars (Attachments: # 1 Declaration of Laurence H. Tribe, # 2 Text of Proposed Order)(Matz, Joshua) (Entered: 09/20/2019)
09/20/2019	54	MOTION for Leave to File *Amicus Brief* by Constitutional Law Scholars (Attachments: # 1 Exhibit A – Amicus Brief, # 2 Exhibit B – Proposed Order)(Matz, Joshua) (Entered: 09/20/2019)
09/23/2019		MINUTE ORDER granting 53 Motion for Leave to Appear Pro Hac Vice. Laurence H. Tribe shall promptly register for this Court's CM/ECF system. Signed by Judge Trevor N. McFadden on 09/23/2019. (lctnm2) (Entered: 09/23/2019)
09/23/2019		MINUTE ORDER granting the 52 Motion for Leave to File Amicus Brief. Signed by Judge Trevor N. McFadden on 09/23/2019. (lctnm2) (Entered: 09/23/2019)
09/23/2019		MINUTE ORDER granting 54 Motion for Leave to File Amicus Brief. Signed by Judge Trevor N. McFadden on 09/23/2019. (lctnm2) (Entered: 09/23/2019)
09/23/2019	55	Memorandum in opposition to re 44 MOTION to Dismiss *(joint motion of Defendants and Defendant–Intervenors)* filed by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. (Letter, Douglas) (Entered:

		09/23/2019)
09/23/2019	56	AMICUS BRIEF by GERALDINE R. GENNET, KERRY W. KIRCHER, IRVIN B. NATHAN, WILLIAM PITTARD, THOMAS J. SPULAK, CHARLES TIEFER. (ztd) (Entered: 09/24/2019)
09/23/2019	57	AMICUS BRIEF by CONSTITUTIONAL LAW SCHOLARS. (ztd) (Entered: 09/24/2019)
09/27/2019	58	Consent MOTION for Leave to File Excess Pages *for Consolidated Reply Memorandum on behalf of Defendants and Defendant–Intervenors due September 30* by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY (Attachments: # 1 Text of Proposed Order)(Myers, Steven) (Entered: 09/27/2019)
09/27/2019		MINUTE ORDER. Upon consideration of the Defendants' and Defendant–Intervenors' 58 Consent Motion for Leave to File Excess Pages, it is hereby ordered that the motion is granted. It is further ordered that the Defendants' and Defendant–Intervenors' forthcoming consolidated Reply Memorandum in support of their Motion to Dismiss may be up to 40 pages in length. Signed by Judge Trevor N. McFadden on 09/27/2019. (lctnm2) (Entered: 09/27/2019)
09/30/2019	59	REPLY to opposition to motion re 44 MOTION to Dismiss *(joint motion of Defendants and Defendant–Intervenors)* filed by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Myers, Steven) (Entered: 09/30/2019)
10/01/2019		MINUTE ORDER. It is hereby ORDERED that the parties shall appear for a hearing on the 44 Joint Motion to Dismiss filed by Defendants and Defendant–Intervenors, on November 6, 2019, at 10:00 a.m. in Courtroom 2, before Judge Trevor N. McFadden. Signed by Judge Trevor N. McFadden on 10/1/2019. (lctnm2) (Entered: 10/01/2019)
10/02/2019		Set/Reset Hearings: Motion Hearing set for 11/6/2019 at 10:00 AM in Courtroom 2 before Judge Trevor N. McFadden. (hmc) (Entered: 10/02/2019)
10/03/2019	60	Memorandum in opposition to re 44 MOTION to Dismiss *(joint motion of Defendants and Defendant–Intervenors)* filed by DUANE MORLEY COX. "Leave to file GRANTED" by Judge Trevor N. McFadden on 10/3/2019. (ztth) (Entered: 10/04/2019)
10/03/2019	61	RESPONSE re 57 Amicus Brief, 56 Amicus Brief filed by DUANE MORLEY COX. (See Docket Entry 60 to view document). (ztth) (Entered: 10/04/2019)
10/15/2019		MINUTE ORDER. The parties are hereby invited to file supplemental briefing on the 44 Motion to Dismiss, in light of the D.C. Circuit's recent decision in *Trump v. Mazars USA, LLP*, No. 19–5142, 2019 WL 5089748 (D.C. Cir. Oct. 11, 2019). Defendants and Defendant–Intervenors shall file on or before October 22, 2019. If Defendants and Defendant–Intervenors file separately, their briefs shall not exceed ten pages each. If Defendants and Defendant–Intervenors file jointly, their brief shall not exceed 15 pages. Plaintiff shall file its brief on or before October 29, 2019. Plaintiff's brief shall not exceed 15 pages. SO ORDERED. Signed by Judge Trevor N. McFadden on 10/15/2019. (lctnm2) (Entered: 10/15/2019)
10/15/2019		Set/Reset Deadlines: Defendants and Defendant–Intervenors' supplemental brief due by 10/22/2019. Plaintiff's supplemental brief due by 10/29/2019. (hmc) (Entered: 10/15/2019)
10/15/2019	62	MOTION to Withdraw as Attorney *, by Joshua Matz* by CONSTITUTIONAL LAW SCHOLARS (Matz, Joshua) (Entered: 10/15/2019)
10/17/2019		MINUTE ORDER granting the 62 Motion to Withdraw Appearance. Joshua Matz is hereby granted leave to withdraw as counsel for Amici Curiae, Constitutional Law Scholars. The Court directs amici's attention to Local Civil Rule 83.2(c)(1): "An attorney who is a member in good standing of the bar of any United States Court or of the highest court of any State, but who is not a member of the Bar of this Court, may file papers in this Court only if such attorney joins of record a member in good standing of the Bar of this Court. All papers submitted by non–members of the Bar of this Court must be signed by such counsel and by a member of the Bar of this Court

		joined in compliance with this Rule." SO ORDERED. Signed by Judge Trevor N. McFadden on 10/17/2019. (lctnm2) (Entered: 10/17/2019)
10/18/2019	64	MOTION for Leave to File by DUANE MORLEY COX. (Attachment: # 1 Exhibit) (ztth) (Entered: 10/22/2019)
10/22/2019	63	SUPPLEMENTAL MEMORANDUM by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Bernie, Andrew); Modified event and text on 10/23/2019 (ztth). (Entered: 10/22/2019)
10/23/2019		MINUTE ORDER granting Mr. Cox's 64 Motion for Leave to File Brief. SO ORDERED. Signed by Judge Trevor N. McFadden on 10/23/2019. (lctnm2) (Entered: 10/23/2019)
10/23/2019	65	AMICUS BRIEF by DUANE MORLEY COX. (ztth) (Entered: 10/24/2019)
10/29/2019	66	SUPPLEMENTAL MEMORANDUM re Order by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. (Letter, Douglas); Modified event and text on 10/31/2019 (ztth). (Entered: 10/29/2019)
10/31/2019	68	MOTION for Leave to File by DUANE MORLEY COX. (Attachment: # 1 Exhibit – Supplement to Amicus Pleadings) (ztth) (Entered: 11/05/2019)
11/01/2019	67	NOTICE of Appearance by Deepak Gupta on behalf of CONSTITUTIONAL LAW SCHOLARS (Gupta, Deepak) (Entered: 11/01/2019)
11/06/2019		Minute Entry for proceedings held before Judge Trevor N. McFadden: Motion Hearing held on 11/6/2019 re 44 MOTION to Dismiss *(joint motion of Defendants and Defendant–Intervenors)* filed by INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY, CHARLES P. RETTIG. Arguments heard and taken under advisement. (Court Reporter: Lisa Edwards.) (hmc) (Entered: 11/06/2019)
11/06/2019		MINUTE ORDER granting Mr. Cox's 68 Motion for Leave to File. SO ORDERED. Signed by Judge Trevor N. McFadden on 11/6/2019. (lctnm2) (Entered: 11/06/2019)
11/06/2019	69	SUPPLEMENTAL MEMORANDUM to re 65 Amicus Brief, 45 Amicus Brief filed by DUANE MORLEY COX. (ztth) (Entered: 11/07/2019)
11/12/2019	70	TRANSCRIPT OF MOTION HEARING before Judge Trevor N. McFadden held on November 6, 2019; Page Numbers: 1–151. Date of Issuance: November 12, 2019. Court Reporter/Transcriber Lisa Edwards. Telephone number (202) 354–3269. Transcripts may be ordered by submitting the Transcript Order Form For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court rep orter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi–page, condensed, CD or ASCII) may be purchased from the court reporter. **NOTICE RE REDACTION OF TRANSCRIPTS:** The parties have twenty–one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov. Redaction Request due 12/3/2019. Redacted Transcript Deadline set for 12/13/2019. Release of Transcript Restriction set for 2/10/2020.(Edwards, Lisa) (Entered: 11/12/2019)
11/12/2019	71	SUPPLEMENTAL MEMORANDUM by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. (Letter, Douglas); Modified text and event on 11/13/2019 (ztth). (Entered: 11/12/2019)
11/12/2019	73	MOTION for Leave to File by DUANE MORLEY COX. (Attachment: # 1 Exhibit – Recommendations from Hearing) (ztth) (Entered: 11/15/2019)

11/13/2019	72	NOTICE *of intent to respond* by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY re 71 Memorandum (Myers, Steven) (Entered: 11/13/2019)
11/18/2019		MINUTE ORDER denying Mr. Cox's 73 Motion for Leave to File. The time for filing an amicus brief has long since passed. *See* 9/12/19 Minute Order. While the Court has been liberal in allowing Mr. Cox to supplement his 45 Amicus Brief, the Court believes that yet additional supplements are unnecessary at this time. There shall be no further briefing from Mr. Cox or any other amici in this matter unless otherwise invited by the Court. *See* LCvR 7(o)(2). SO ORDERED. Signed by Judge Trevor N. McFadden on 11/18/2019. (lctnm2) (Entered: 11/18/2019)
11/19/2019	74	RESPONSE re 71 Memorandum *(Defendants' and Defendant–Intervenors' Response to Plaintiff's Supplemental Memorandum)* filed by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Myers, Steven) (Entered: 11/19/2019)
11/26/2019	75	NOTICE OF SUPPLEMENTAL AUTHORITY by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Letter, Douglas) (Entered: 11/26/2019)
12/02/2019	77	MOTION for Reconsideration re Minute Order filed on 9/12/2019, by DUANE MORLEY COX. (Attachment: # 1 Exhibit – Attachments) (ztth) (Entered: 12/05/2019)
12/03/2019	76	RESPONSE re 75 NOTICE OF SUPPLEMENTAL AUTHORITY *(Defendants' and Defendant–Intervenors')* filed by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # 1 Exhibit A – D.C. Circuit Order)(Myers, Steven) (Entered: 12/03/2019)
12/09/2019		MINUTE ORDER. Mr. Cox's 77 Motion for Reconsideration is DENIED. SO ORDERED. Signed by Judge Trevor N. McFadden on 12/9/2019. (lctnm2) (Entered: 12/09/2019)
01/14/2020		MINUTE ORDER setting a telephone conference for January 14, 2020, at 3:00 p.m. in Chambers before Judge Trevor N. McFadden. Dial–in information will be emailed to counsel. SO ORDERED. Signed by Judge Trevor N. McFadden on 1/14/2020. (lctnm2) (Entered: 01/14/2020)
01/14/2020		MINUTE ORDER. For the reasons stated on the record during the Telephone Conference on January 14, 2020, this case is hereby STAYED pending a decision in *Committee on the Judiciary, U.S. House of Representatives v. McGahn*, No. 19–5331 (D.C. Cir.). SO ORDERED. Signed by Judge Trevor N. McFadden on 1/14/2020. (lctnm2) (Entered: 01/14/2020)
01/14/2020		Minute Entry for proceedings held before Judge Trevor N. McFadden: Telephone Conference held on 1/14/2020. (Court Reporter: Tim Miller.) (hmc) (Entered: 01/14/2020)
01/14/2020		Case Stayed. (hmc) (Entered: 01/14/2020)
01/17/2020	78	TRANSCRIPT OF TELEPHONE CONFERENCE before Judge Trevor N. McFadden held on 1–14–20; Page Numbers: 1–15; Date of Issuance: 1–17–20; Court Reporter: Timothy R. Miller, Telephone number (202) 354–3111. Transcripts may be ordered by submitting the Transcript Order Form For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced ab ove. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi–page, condensed, CD or ASCII) may be purchased from the court reporter. **NOTICE RE REDACTION OF TRANSCRIPTS:** The parties have twenty–one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov.

		Redaction Request due 2/7/2020. Redacted Transcript Deadline set for 2/17/2020. Release of Transcript Restriction set for 4/16/2020.(Miller, Timothy) (Entered: 01/17/2020)
01/28/2020	79	MOTION to Lift Stay by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Attachments: # 1 Text of Proposed Order)(Letter, Douglas) (Entered: 01/28/2020)
02/04/2020	80	MOTION to Withdraw as Attorney by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY (Burnham, James) (Entered: 02/04/2020)
02/05/2020		MINUTE ORDER granting the 80 Motion to Withdraw Appearance. James Burnham is hereby granted leave to withdraw as counsel for Defendants. SO ORDERED. Signed by Judge Trevor N. McFadden on 2/5/2020. (lctnm2) (Entered: 02/05/2020)
02/11/2020	81	RESPONSE re 79 MOTION to Lift Stay *of Defendants and Defendant–Intervenors* filed by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # 1 Exhibit A (status conference transcript), # 2 Exhibit B (correspondence of counsel), # 3 Proposed Order)(Orloff, Serena) (Entered: 02/11/2020)
02/15/2020	82	REPLY to opposition to motion re 79 MOTION to Lift Stay filed by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. (Letter, Douglas) (Entered: 02/15/2020)
02/28/2020		MINUTE ORDER. It is hereby ORDERED that the parties shall appear for a hearing on the Plaintiff's 79 Motion to Lift Stay, on March 5, 2020, at 11:00 a.m. in Courtroom 2, before Judge Trevor N. McFadden. SO ORDERED. Signed by Judge Trevor N. McFadden on 2/28/2020. (lctnm2) (Entered: 02/28/2020)
02/29/2020	83	NOTICE of Appearance by Cameron Thomas Norris on behalf of DTTM OPERATIONS LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, LLC, DONALD J. TRUMP REVOCABLE TRUST, DTTM OPERATIONS MANAGING MEMBER CORP., LAMINGTON FARM CLUB, LLC, LFB ACQUISITION LLC, LFB ACQUISITION MEMBER CORP., DONALD J. TRUMP (Norris, Cameron) (Entered: 02/29/2020)
03/02/2020		Set/Reset Hearings: Motion Hearing set for 3/5/2020 at 11:00 AM in Courtroom 2 before Judge Trevor N. McFadden. (hmc) (Entered: 03/02/2020)
03/02/2020	84	NOTICE OF SUPPLEMENTAL AUTHORITY by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY (Attachments: # 1 Exhibit A – Committee on the Judiciary v. McGahn)(Myers, Steven) (Entered: 03/02/2020)
03/02/2020	85	NOTICE of Appearance by David Michael Morrell on behalf of All Defendants (Morrell, David) (Entered: 03/02/2020)
03/04/2020	86	MOTION to Vacate *Hearing* by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Attachments: # 1 Proposed Order)(Letter, Douglas). Added MOTION for Leave to File on 3/12/2020 (znmw). (Entered: 03/04/2020)
03/04/2020	87	Memorandum in opposition to re 86 MOTION to Vacate *Hearing (Joint Opposition of Defendants and Defendant–Intervenors)* filed by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # 1 Text of Proposed Order)(Myers, Steven) (Entered: 03/04/2020)
03/04/2020		MINUTE ORDER denying Plaintiff's 86 Motion to Vacate Hearing. The hearing remains scheduled for March 5, 2020, at 11:00 a.m. in Courtroom 2, before Judge Trevor N. McFadden. SO ORDERED. Signed by Judge Trevor N. McFadden on 3/4/2020. (lctnm2) (Entered: 03/04/2020)
03/05/2020		Minute entry for proceedings held before Judge Trevor N. McFadden: Motion Hearing held on 3/5/2020. Plaintiff's 79 Motion to Lift Stay, denied as moot. Stay is lifted.

		Joint Status Report due in one week. (Court Reporter: Crystal Pilgrim.) (hmc) (Entered: 03/05/2020)
03/12/2020	88	Joint STATUS REPORT by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Myers, Steven) (Entered: 03/12/2020)
03/16/2020	89	NOTICE OF SUPPLEMENTAL AUTHORITY by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Attachments: # 1 Exhibit)(Letter, Douglas) (Entered: 03/16/2020)
03/17/2020	90	NOTICE of Appearance by Joshua Adam Matz on behalf of CONSTITUTIONAL LAW SCHOLARS (Matz, Joshua) (Entered: 03/17/2020)
03/20/2020	91	ORDER. This matter is STAYED pending further order of the Court. See attached Order for details. Signed by Judge Trevor N. McFadden on 3/20/2020. (lctnm2) (Entered: 03/20/2020)
03/20/2020		Case Stayed. (hmc) (Entered: 03/20/2020)
06/05/2020	92	TRANSCRIPT OF PROCEEDINGS before Judge Trevor N. McFadden held on 03/05/2020; Page Numbers: 1–24. Date of Issuance:06/05/2020. Court Reporter/Transcriber Crystal M. Pilgrim, Telephone number 202.354.3127, Transcripts may be ordered by submitting the Transcript Order Form For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenc ed above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi–page, condensed, CD or ASCII) may be purchased from the court reporter. **NOTICE RE REDACTION OF TRANSCRIPTS:** The parties have twenty–one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov. Redaction Request due 6/26/2020. Redacted Transcript Deadline set for 7/6/2020. Release of Transcript Restriction set for 9/3/2020.(Pilgrim, Crystal) (Entered: 06/05/2020)
08/14/2020	93	WITHDRAWN PURSUANT TO NOTICE FILED 09/04/2020.....MOTION to Lift Stay by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Attachments: # 1 Text of Proposed Order)(Letter, Douglas) Modified on 9/10/2020 (eg). (Entered: 08/14/2020)
08/28/2020	94	Memorandum in opposition to re 93 MOTION to Lift Stay filed by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # 1 Text of Proposed Order, # 2 Exhibit A (correspondence among counsel regarding accommodation))(Orloff, Serena) Modified docket event/text on 8/31/2020 (eg). (Entered: 08/28/2020)
09/01/2020	95	NOTICE OF SUPPLEMENTAL AUTHORITY by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY (Attachments: # 1 McGahn Opinion)(Myers, Steven) (Entered: 09/01/2020)
09/04/2020	96	NOTICE *and Withdrawal of Motion to Lift Stay* re 93 by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Letter, Douglas) Modified to add link on 9/10/2020 (znmw). (Entered: 09/04/2020)
09/11/2020	97	NOTICE OF WITHDRAWAL OF APPEARANCE as to CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. Attorney David Michael Morrell terminated. (Morrell, David) (Entered: 09/11/2020)

01/19/2021	98	MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Patrick Strawbridge, Filing fee $ 100, receipt number ADCDC–8095166. Fee Status: Fee Paid. by DTTM OPERATIONS LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, LLC, DONALD J. TRUMP REVOCABLE TRUST, DTTM OPERATIONS MANAGING MEMBER CORP., LAMINGTON FARM CLUB, LLC, LFB ACQUISITION LLC, LFB ACQUISITION MEMBER CORP., DONALD J. TRUMP. (Attachments: # 1 Declaration Strawbridge, # 2 Text of Proposed Order)(Norris, Cameron) (Entered: 01/19/2021)
01/19/2021		MINUTE ORDER granting 98 Motion for Leave to Appear Pro Hac Vice. Attorney Patrick Strawbridge is hereby admitted to appear pro hac vice in this matter. **Counsel should register for e–filing via PACER and file a notice of appearance pursuant to LCvR 83.6(a). Click for instructions**. Signed by Judge Trevor N. McFadden on 1/19/2021. (lctnm2) (Entered: 01/19/2021)
01/19/2021	99	NOTICE of Appearance by Patrick Neilson Strawbridge on behalf of DTTM OPERATIONS LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, LLC, DONALD J. TRUMP REVOCABLE TRUST, DTTM OPERATIONS MANAGING MEMBER CORP., LAMINGTON FARM CLUB, LLC, LFB ACQUISITION LLC, LFB ACQUISITION MEMBER CORP., DONALD J. TRUMP (Strawbridge, Patrick) (Entered: 01/19/2021)
01/19/2021	100	MOTION for Telephone Conference by DTTM OPERATIONS LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, LLC, DONALD J. TRUMP REVOCABLE TRUST, DTTM OPERATIONS MANAGING MEMBER CORP., LAMINGTON FARM CLUB, LLC, LFB ACQUISITION LLC, LFB ACQUISITION MEMBER CORP., DONALD J. TRUMP. (Consovoy, William) (Entered: 01/19/2021)
01/19/2021	101	NOTICE OF WITHDRAWAL OF APPEARANCE as to GERALDINE R. GENNET, KERRY W. KIRCHER, IRVIN B. NATHAN, WILLIAM PITTARD, THOMAS J. SPULAK, CHARLES TIEFER. Attorney Wendy Liu terminated. (Liu, Wendy) (Entered: 01/19/2021)
01/19/2021		MINUTE ORDER granting the Intervenor–Defendants' 100 Motion for Telephone Conference. The parties shall appear for a telephonic status conference on January 22, 2021 at 3:00 p.m., before Judge Trevor N. McFadden and be prepared to discuss the issues raised in the Intervenor–Defendants' 100 Motion. Dial–in information will be emailed to the parties. SO ORDERED. Signed by Judge Trevor N. McFadden on 1/19/2021. (lctnm2) (Entered: 01/19/2021)
01/21/2021		Set/Reset Hearings: Telephonic Status Conference set for 1/22/2021 at 3:00 PM before Judge Trevor N. McFadden. (hmc) (Entered: 01/21/2021)
01/22/2021		Minute Entry for proceedings held before Judge Trevor N. McFadden: Telephonic Status Conference held on 1/22/2021. Joint Status Report due by 2/3/2021. (Court Reporter: Crystal Pilgrim.) (hmc) (Entered: 01/22/2021)
01/22/2021		MINUTE ORDER. As stated at the status conference, it is hereby ORDERED that, until February 5, 2021, the Defendants shall provide 72 hours' notice to counsel for the Intervenor–Defendants before a release of President Trump's tax returns. It is further ORDERED that the parties shall file a joint status report on or before February 3, 2021. SO ORDERED. Signed by Judge Trevor N. McFadden on 1/22/2021. (lctnm2) (Entered: 01/22/2021)
02/03/2021	102	Joint STATUS REPORT by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Gilligan, James) (Entered: 02/03/2021)
02/03/2021		MINUTE ORDER. Upon consideration of the parties' 102 Joint Status Report, it is hereby ordered that the parties shall file a further joint status report on or before March 3, 2021. It is further ordered that the notice requirement set forth in the Court's 1/22/2021 Minute Order shall be extended until March 3, 2021. SO ORDERED. Signed by Judge Trevor N. McFadden on 2/3/2021. (lctnm2) (Entered: 02/03/2021)
02/04/2021		Set/Reset Deadlines: Joint Status Report due by 3/3/2021. (hmc) (Entered: 02/04/2021)

02/04/2021	103	NOTICE OF WITHDRAWAL OF APPEARANCE as to COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. Attorney Josephine T. Morse terminated. (Morse, Josephine) (Entered: 02/04/2021)
02/24/2021	104	TRANSCRIPT OF PROCEEDINGS before Judge Trevor N. McFadden held on 01/22/2021; Page Numbers: 1–21. Date of Issuance:02/24/2021. Court Reporter/Transcriber Crystal M. Pilgrim, Telephone number 202.354.3127, Transcripts may be ordered by submitting the Transcript Order Form For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenc ed above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi–page, condensed, CD or ASCII) may be purchased from the court reporter. **NOTICE RE REDACTION OF TRANSCRIPTS:** The parties have twenty–one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov. Redaction Request due 3/17/2021. Redacted Transcript Deadline set for 3/27/2021. Release of Transcript Restriction set for 5/25/2021.(Pilgrim, Crystal) (Entered: 02/24/2021)
03/03/2021	105	Joint STATUS REPORT by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Gilligan, James) (Entered: 03/03/2021)
03/03/2021		MINUTE ORDER. Upon consideration of the parties' 105 Joint Status Report, it is hereby ordered that the parties shall file a further joint status report on or before March 31, 2021. It is further ordered that the notice requirement set forth in the Court's 1/22/2021 Minute Order shall be extended until April 1, 2021. In light of the concerns articulated by Plaintiff, it is further ordered that the parties shall appear for a telephonic status conference on April 1, 2021 at 10 a.m. before Judge McFadden. Dial–in details will be emailed to counsel. SO ORDERED. Signed by Judge Trevor N. McFadden on 3/3/2021. (lctnm2) (Entered: 03/03/2021)
03/04/2021		Set/Reset Deadlines/Hearings: Joint Status Report due by 3/31/2021. Notice requirement extended until 4/1/2021. Telephonic Status Conference set for 4/1/2021 at 10:00 AM before Judge Trevor N. McFadden. (hmc) (Entered: 03/04/2021)
03/31/2021	106	Joint STATUS REPORT by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Gilligan, James) (Entered: 03/31/2021)
03/31/2021		MINUTE ORDER. Upon consideration of the parties' 106 Joint Status Report, the status conference previously scheduled for April 1, 2021 is hereby VACATED. The parties shall file a further joint status report on or before April 30, 2021. It is further ordered that the parties shall appear for a telephonic status conference on May 3, 2021 at 10:00 a.m. Dial–in details will be emailed to counsel. Given the unopposed request of the Intervenor–Defendants, the notice requirement set forth in the Court's 1/22/2021 Minute Order shall be extended until May 3, 2021. SO ORDERED. Signed by Judge Trevor N. McFadden on 3/31/2021. (lctnm2) (Entered: 03/31/2021)
04/01/2021		Set/Reset Deadlines/Hearings: Joint Status Report due by 4/30/2021. Telephonic Status Conference set for 5/3/2021 at 10:00 AM before Judge Trevor N. McFadden. (hmc) (Entered: 04/01/2021)
04/30/2021	107	Joint STATUS REPORT by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Gilligan, James) (Entered: 04/30/2021)
05/03/2021		MINUTE ORDER. Upon consideration of the parties' 107 Joint Status Report and as stated at the status conference held today, it is hereby ordered that the parties shall file a joint status report on or before May 28, 2021. Given the unopposed request of the Intervenor–Defendants, it is further ordered that the notice requirement set forth in the

		Court's 1/22/2021 Minute Order shall be extended until June 4, 2021. SO ORDERED. Signed by Judge Trevor N. McFadden on 5/3/2021. (lctnm2) (Entered: 05/03/2021)
05/03/2021		Minute Entry for proceedings held before Judge Trevor N. McFadden: Telephonic Status Conference held on 5/3/2021. Joint Status Report due by 5/28/2021. (Court Reporter: Crystal Pilgrim.) (hmc) (Entered: 05/03/2021)
05/28/2021	108	Joint STATUS REPORT by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Gilligan, James) (Entered: 05/28/2021)
05/28/2021		MINUTE ORDER. Upon consideration of the parties' 108 Joint Status Report, it is hereby ordered that the parties shall file a joint status report on or before July 2, 2021. Given the unopposed request of the Intervenor–Defendants, it is further ordered that the notice requirement set forth in the Court's 1/22/2021 Minute Order shall be extended until July 9, 2021. SO ORDERED. Signed by Judge Trevor N. McFadden on 5/28/2021. (lctnm2) (Entered: 05/28/2021)
06/01/2021		Set/Reset Deadlines: Joint Status Report due by 7/2/2021. Notice requirement due by 7/9/2021. (hmc) (Entered: 06/01/2021)
07/02/2021	109	Joint STATUS REPORT by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Gilligan, James) (Entered: 07/02/2021)
07/03/2021		MINUTE ORDER. Upon consideration of the parties' 109 Joint Status Report, it is hereby ordered that the parties shall file a joint status report on or before July 30, 2021. Given the unopposed request of the Intervenor–Defendants, it is further ordered that the notice requirement set forth in the Court's 1/22/2021 Minute Order shall be extended until August 3, 2021. SO ORDERED. Signed by Judge Trevor N. McFadden on 7/3/2021. (lctnm2) (Entered: 07/03/2021)
07/06/2021		Set/Reset Deadlines: Joint Status Report due by 7/30/2021. (hmc) (Entered: 07/06/2021)
07/09/2021	110	NOTICE OF WITHDRAWAL OF APPEARANCE as to COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. Attorney Megan Barbero terminated. (Barbero, Megan) (Entered: 07/09/2021)
07/30/2021	111	Joint STATUS REPORT by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Gilligan, James) (Entered: 07/30/2021)
07/30/2021		MINUTE ORDER. Upon consideration of the parties' 111 Joint Status Report, it is hereby ordered that on or before August 4, 2021, the parties shall file a joint status report proposing a schedule for further proceedings. Pending resolution of those proceedings, and in light of the Administration's agreement, Defendants shall provide 72 hours' notice to counsel for the Intervenor–Defendants before any release of the tax return information at issue. SO ORDERED. Signed by Judge Trevor N. McFadden on 7/30/2021. (lctnm1) (Entered: 07/30/2021)
07/31/2021	112	ERRATA *((Joint Status Report (Corrected))* by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY re 111 Status Report filed by INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY, CHARLES P. RETTIG. (Gilligan, James) (Entered: 07/31/2021)
08/02/2021		Set/Reset Deadlines: Joint Status Report due by 8/4/2021. (hmc) (Entered: 08/02/2021)
08/04/2021	113	ANSWER to Complaint , CROSSCLAIM against UNITED STATES DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, CHARLES P. RETTIG, COUNTERCLAIM against COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES by DONALD J. TRUMP, LAMINGTON FARM CLUB, LLC, DTTM OPERATIONS MANAGING MEMBER CORP., LFB ACQUISITION MEMBER CORP., LFB ACQUISITION LLC, DTTM OPERATIONS LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, LLC, DONALD J. TRUMP REVOCABLE TRUST.(Strawbridge, Patrick) (Entered: 08/04/2021)

08/04/2021	114	Joint STATUS REPORT by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. (Letter, Douglas) (Entered: 08/04/2021)
08/04/2021	115	MOTION to Dismiss by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. (Letter, Douglas) (Entered: 08/04/2021)
08/05/2021		MINUTE ORDER granting the 115 Motion to Dismiss. The claims by the Committee on Ways and Means against the executive branch are hereby DISMISSED without prejudice. *See* Fed. R. Civ. P. 41(a)(2). Signed by Judge Trevor N. McFadden on 8/5/2021. (lctnm1) (Entered: 08/05/2021)
08/05/2021		MINUTE ORDER. Upon consideration of the 114 Joint Status Report, the parties are hereby ORDERED to appear for a telephonic status conference at 3:00 p.m. on August 9, 2021. Dial in details will be emailed to counsel. SO ORDERED. Signed by Judge Trevor N. McFadden on 8/5/2021. (lctnm1) (Entered: 08/05/2021)
08/05/2021		Set/Reset Hearings: Telephonic Status Conference set for 8/9/2021 at 3:00 PM before Judge Trevor N. McFadden. (hmc) (Entered: 08/05/2021)
08/05/2021	116	NOTICE of Appearance by Seth Paul Waxman on behalf of COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Waxman, Seth) (Entered: 08/05/2021)
08/05/2021	117	NOTICE of Appearance by Kelly P. Dunbar on behalf of COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Dunbar, Kelly) (Entered: 08/05/2021)
08/06/2021	118	NOTICE of Appearance by Elizabeth J. Shapiro on behalf of INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY (Shapiro, Elizabeth) (Entered: 08/06/2021)
08/06/2021	119	NOTICE of Appearance by David Mark Lehn on behalf of COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Lehn, David) (Entered: 08/06/2021)
08/09/2021	120	NOTICE of Appearance by Julia Alexandra Heiman on behalf of CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY (Heiman, Julia) (Entered: 08/09/2021)
08/09/2021		Minute Entry for proceedings held before Judge Trevor N. McFadden: Telephonic Status Conference held on 8/9/2021. Government's response to the Intervenors' Cross–Claim and Counterclaim due by 9/9/2021. Intervenors' opposition due by 10/7/2021. Government's reply due by 10/21/2021. Motion Hearing set for 11/8/2021 at 10:00 AM in Courtroom 2– In Person before Judge Trevor N. McFadden. (Court Reporter: Lisa Bankins.) (hmc) Modified on 8/9/2021 to correct dates (hmc). (Entered: 08/09/2021)
08/16/2021	121	NOTICE of Appearance by Stacie Marion Fahsel on behalf of COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Fahsel, Stacie) (Entered: 08/16/2021)
09/01/2021		MINUTE ORDER. 44 Motion to Dismiss denied as moot in light of the dismissal of the Complaint to which it referred. Signed by Judge Trevor N. McFadden on 9/1/2021. (hmc) (Entered: 09/01/2021)
09/09/2021	122	NOTICE of Appearance by Andres C. Salinas on behalf of COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Salinas, Andres) (Entered: 09/09/2021)
09/09/2021	123	MOTION to Dismiss by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Text of Proposed Order)(Letter, Douglas) (Entered: 09/09/2021)
09/09/2021	124	MOTION to Dismiss *(Cross–Defendants' Motion To Dismiss)* by CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, STEVEN T. MNUCHIN, UNITED STATES DEPARTMENT OF THE TREASURY. (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order)(Gilligan, James) (Entered: 09/09/2021)

09/10/2021	125	MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Katherine V. Kelsh, Filing fee $ 100, receipt number ADCDC–8723854. Fee Status: Fee Paid. by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. (Attachments: # 1 Declaration of Katherine V. Kelsh, # 2 Text of Proposed Order)(Lehn, David) (Entered: 09/10/2021)
09/13/2021		MINUTE ORDER granting 125 Motion for Leave to Appear *Pro Hac Vice*. **Counsel should register for e–filing via PACER and file a notice of appearance pursuant to LCvR 83.6(a).** Click here for instructions. Signed by Judge Trevor N. McFadden on 9/13/2021. (lctnm2) (Entered: 09/13/2021)
09/15/2021	126	MOTION for Leave to File *Amicus Curiae Brief in Support of Counter–Defendant and Cross–Defendants* by CONSTITUTIONAL ACCOUNTABILITY CENTER. (Attachments: # 1 Exhibit Brief of Constitutional Accountability Center as Amicus Curiae in Support of Counter–Defendant and Cross–Defendants, # 2 Text of Proposed Order)(Gorod, Brianne) (Entered: 09/15/2021)
09/15/2021		MINUTE ORDER granting 126 Motion for Leave to File Amicus Brief. Signed by Judge Trevor N. McFadden on 9/15/2021. (lctnm2) (Entered: 09/15/2021)
09/15/2021	127	NOTICE of Appearance by Katie Kelsh on behalf of COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Kelsh, Katie) (Entered: 09/15/2021)
09/15/2021	128	AMICUS BRIEF by CONSTITUTIONAL ACCOUNTABILITY CENTER. (eg) (Entered: 09/17/2021)
09/28/2021	129	ANSWER to Complaint , Amended CROSSCLAIM against UNITED STATES DEPARTMENT OF THE TREASURY, STEVEN T. MNUCHIN, CHARLES P. RETTIG, INTERNAL REVENUE SERVICE, Amended COUNTERCLAIM against COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES by LFB ACQUISITION MEMBER CORP., DONALD J. TRUMP, DONALD J. TRUMP REVOCABLE TRUST, DJT HOLDINGS MANAGING MEMBER, LLC, LFB ACQUISITION LLC, DTTM OPERATIONS LLC, DJT HOLDINGS LLC, LAMINGTON FARM CLUB, LLC, DTTM OPERATIONS MANAGING MEMBER CORP.. (Attachments: # 1 Redline)(Strawbridge, Patrick) (Entered: 09/28/2021)
09/28/2021		MINUTE ORDER. The Trump Parties have filed an 129 Amended Crossclaim and Counterclaim within the time period allowed as a matter of course under the federal rules. *See* Fed. R. Civ. P. 15(a)(1)(B). The Court accordingly denies as moot the 123 , 124 Motions to Dismiss the previous Crossclaim and Counterclaim. The new briefing schedule is as follows: the Committee on Ways and Means and the Executive Branch Defendants shall file their motions to dismiss the 129 Amended Crossclaim and Counterclaim on or before October 12, 2021; the Trump Parties shall file their opposition on or before October 26, 2021; and any replies from the Committee on Ways and Means and the Executive Branch Defendants shall be filed on or before November 2, 2021. The hearing on those motions will remain scheduled for November 8, 2021 at 10:00 a.m. in Courtroom 2 before Judge Trevor N. McFadden. SO ORDERED. Signed by Judge Trevor N. McFadden on 9/28/21. (lctnm2) (Entered: 09/28/2021)
09/28/2021		Set/Reset Deadlines: Motions to dismiss Amended Crossclaim and Counterclaim due by 10/12/2021. Opposition due by 10/26/2021. Replies due by 11/2/2021. (hmc) (Entered: 09/28/2021)
10/04/2021	130	NOTICE *of withdrawal of counsel* by GERALDINE R. GENNET, KERRY W. KIRCHER, IRVIN B. NATHAN, WILLIAM PITTARD, THOMAS J. SPULAK, CHARLES TIEFER (Smith, David) (Entered: 10/04/2021)
10/04/2021	131	ENTERED IN ERROR.....NOTICE *of withdrawal of counsel* by COMMITTEE ON OVERSIGHT AND REFORM OF THE U.S. HOUSE OF REPRESENTATIVES (Smith, David) Modified on 10/6/2021 (zeg). (Entered: 10/04/2021)
10/04/2021	132	ENTERED IN ERROR.....NOTICE *of withdrawal of counsel* by DAVID TOREN (Smith, David) Modified on 10/5/2021 (zjf). (Entered: 10/04/2021)

10/05/2021		NOTICE OF CORRECTED DOCKET ENTRY: Document Nos. re 131 Notice (Other), 132 Notice (Other) was entered in error and counsel was instructed to refile said pleading in the correct case. (zjf) (Entered: 10/05/2021)
10/12/2021	133	MOTION to Dismiss *amended counterclaims* by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Text of Proposed Order)(Letter, Douglas) (Entered: 10/12/2021)
10/12/2021	134	Unopposed MOTION for Leave to File Excess Pages *(Unopposed Motion for Leave to Exceed Page Limit)* by CHARLES P. RETTIG(in his official capacity as Commissioner of the Internal Revenue Service), INTERNAL REVENUE SERVICE, UNITED STATES DEPARTMENT OF THE TREASURY, JANET YELLEN. (Attachments: # 1 Text of Proposed Order)(Gilligan, James) (Entered: 10/12/2021)
10/12/2021	135	MOTION to Dismiss *(Cross−Defendants Motion to Dismiss Amended Cross−Claims)* by CHARLES P. RETTIG(in his official capacity as Commissioner of the Internal Revenue Service), INTERNAL REVENUE SERVICE, UNITED STATES DEPARTMENT OF THE TREASURY, JANET YELLEN. (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order)(Gilligan, James) (Entered: 10/12/2021)
10/13/2021		MINUTE ORDER granting 134 Unopposed Motion for Leave to File Excess Pages. The Executive Branch Defendants' 135 Motion to Dismiss shall remain on the docket. SO ORDERED. Signed by Judge Trevor N. McFadden on 10/13/21. (lctnm2) (Entered: 10/13/2021)
10/18/2021	136	MOTION for Leave to File *Amicus Curiae Brief in Support of Counterdefendant and Crossdefendants* by CONSTITUTIONAL ACCOUNTABILITY CENTER. (Attachments: # 1 Exhibit Brief of Constitutional Accountability Center as Amicus Curiae in Support of Counterdefendant and Crossdefendants, # 2 Text of Proposed Order)(Gorod, Brianne) (Entered: 10/18/2021)
10/18/2021		MINUTE ORDER granting 136 Motion for Leave to File Amicus Brief. Signed by Judge Trevor N. McFadden on 10/18/2021. (lctnm2) (Entered: 10/18/2021)
10/18/2021	138	AMICUS BRIEF by CONSTITUTIONAL ACCOUNTABILITY CENTER. (eg) (Entered: 10/21/2021)
10/21/2021	137	Unopposed MOTION to file a consolidated opposition to the motions to dismiss of no more than 90 pages by DTTM OPERATIONS LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, LLC, DONALD J. TRUMP REVOCABLE TRUST, DTTM OPERATIONS MANAGING MEMBER CORP., LAMINGTON FARM CLUB, LLC, LFB ACQUISITION LLC, LFB ACQUISITION MEMBER CORP., DONALD J. TRUMP. (Attachments: # 1 Text of Proposed Order)(Strawbridge, Patrick) Modified event title on 10/25/2021 (znmw). (Entered: 10/21/2021)
10/21/2021		MINUTE ORDER granting 137 Unopposed Motion to File a Consolidated Opposition. The Trump Parties shall file a combined opposition, not to exceed 90 pages, to the pending 133 , 135 Motions to Dismiss. SO ORDERED. Signed by Judge Trevor N. McFadden on 10/21/21. (lctnm2) (Entered: 10/21/2021)
10/25/2021		MINUTE ORDER. The Motion Hearing previously scheduled for November 8, 2021, is hereby RESCHEDULED to November 16, 2021, at 2:00 p.m. in Courtroom 2 before Judge Trevor N. McFadden. SO ORDERED. Signed by Judge Trevor N. McFadden on 10/25/21. (lctnm2) (Entered: 10/25/2021)
10/25/2021		Set/Reset Hearings: Motion Hearing rescheduled to 11/16/2021 at 02:00 PM in Courtroom 2− In Person before Judge Trevor N. McFadden. (hmc) (Entered: 10/25/2021)
10/25/2021	139	Unopposed MOTION for Extension of Time to File Response/Reply as to 133 MOTION to Dismiss *amended counterclaims*, 135 MOTION to Dismiss *(Cross−Defendants Motion to Dismiss Amended Cross−Claims)* by DTTM OPERATIONS LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, LLC, DONALD J. TRUMP REVOCABLE TRUST, DTTM OPERATIONS MANAGING MEMBER CORP., LAMINGTON FARM CLUB, LLC,

		LFB ACQUISITION LLC, LFB ACQUISITION MEMBER CORP., DONALD J. TRUMP. (Strawbridge, Patrick) (Entered: 10/25/2021)
10/25/2021		MINUTE ORDER denying 139 Motion for Extension of Time. The parties will adhere to the Court's previous briefing schedule, as set out in the Minute Order dated September 28, 2021. SO ORDERED. Signed by Judge Trevor N. McFadden on 10/25/21. (lctnm2) (Entered: 10/25/2021)
10/26/2021	140	Memorandum in opposition to re 133 MOTION to Dismiss *amended counterclaims*, 135 MOTION to Dismiss *(Cross−Defendants Motion to Dismiss Amended Cross−Claims)* filed by DTTM OPERATIONS LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, LLC, DONALD J. TRUMP REVOCABLE TRUST, DTTM OPERATIONS MANAGING MEMBER CORP., LAMINGTON FARM CLUB, LLC, LFB ACQUISITION LLC, LFB ACQUISITION MEMBER CORP., DONALD J. TRUMP. (Strawbridge, Patrick) (Entered: 10/26/2021)
10/30/2021	141	Unopposed MOTION for Extension of Time to File Response/Reply as to 135 MOTION to Dismiss *(Cross−Defendants Motion to Dismiss Amended Cross−Claims) Unopposed Motion for a Two−Day Extension of Time to File Their Reply* by CHARLES P. RETTIG(in his official capacity as Commissioner of the Internal Revenue Service), INTERNAL REVENUE SERVICE, UNITED STATES DEPARTMENT OF THE TREASURY, JANET YELLEN. (Attachments: # 1 Text of Proposed Order)(Heiman, Julia) (Entered: 10/30/2021)
10/30/2021		MINUTE ORDER granting 141 Motion for Extension of Time. The Executive Branch Defendants reply is due on November 4, 2021. SO ORDERED. Signed by Judge Trevor N. McFadden on 10/30/21. (lctnm2) (Entered: 10/30/2021)
11/01/2021		Set/Reset Deadlines: Executive Branch's reply due by 11/4/2021. (hmc) (Entered: 11/01/2021)
11/02/2021	142	REPLY to opposition to motion re 133 MOTION to Dismiss *amended counterclaims* filed by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. (Letter, Douglas) (Entered: 11/02/2021)
11/04/2021	143	REPLY to opposition to motion re 124 MOTION to Dismiss *(Cross−Defendants' Motion To Dismiss) (Reply in Support of Cross−Defendants' Motion to Dismiss Intervenor−Defendants' Amended Cross−Claims)* filed by CHARLES P. RETTIG(in his official capacity as Commissioner of the Internal Revenue Service), INTERNAL REVENUE SERVICE, UNITED STATES DEPARTMENT OF THE TREASURY, JANET YELLEN. (Gilligan, James) (Entered: 11/04/2021)
11/10/2021	144	NOTICE OF WITHDRAWAL OF APPEARANCE as to CHARLES P. RETTIG(in his official capacity as Commissioner of the Internal Revenue Service), INTERNAL REVENUE SERVICE, UNITED STATES DEPARTMENT OF THE TREASURY, JANET YELLEN. Attorney Serena Maya Schulz Orloff terminated. (Orloff, Serena) (Entered: 11/10/2021)
11/13/2021	145	NOTICE OF SUPPLEMENTAL AUTHORITY by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Attachments: # 1 Exhibit)(Letter, Douglas) (Entered: 11/13/2021)
11/16/2021		NOTICE. The November 16, 2021 Motion Hearing will be audio streamed on: https://www.dcd.uscourts.gov/national−audio−streaming−pilot−program (hmc) (Entered: 11/16/2021)
11/16/2021		Minute Entry for proceedings held before Judge Trevor N. McFadden: Motion Hearing held on 11/16/2021 re 133 MOTION to Dismiss *amended counterclaims*, 135 MOTION to Dismiss *(Cross−Defendants Motion to Dismiss Amended Cross−Claims)*. Held under advisement. (Court Reporter: Lisa Griffith.) (hmc) (Entered: 11/16/2021)
12/10/2021	146	TRANSCRIPT OF PROCEEDINGS before Judge Trevor N. McFadden held on 11−16−2021; Page Numbers: 1−120. Date of Issuance:12−10−2021. Court Reporter/Transcriber Lisa W Griffith, Telephone number 202−354−3247, Transcripts may be ordered by submitting the Transcript Order Form For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above.

		After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi–page, condensed, CD or ASCII) may be purchased from the court reporter. **NOTICE RE REDACTION OF TRANSCRIPTS:** The parties have twenty–one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov. Redaction Request due 12/31/2021. Redacted Transcript Deadline set for 1/10/2022. Release of Transcript Restriction set for 3/10/2022.(Griffith, Lisa) (Entered: 12/10/2021)
12/14/2021	147	NOTICE OF SUPPLEMENTAL AUTHORITY by COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES (Letter, Douglas) (Entered: 12/14/2021)
12/14/2021	148	MEMORANDUM OPINION re Counterdefendant's 133 Motion to Dismiss and Cross–Defendants' 135 Motion to Dismiss. Signed by Judge Trevor N. McFadden on 12/14/21. (lctnm2) (Entered: 12/14/2021)
12/14/2021	149	ORDER. For the reasons stated in the 148 Memorandum Opinion, Counterdefendant's 133 Motion to Dismiss and Cross–Defendants' 135 Motion to Dismiss are GRANTED. See attached Order for details. Signed by Judge Trevor N. McFadden on 12/14/2021. (lctnm2) (Entered: 12/14/2021)
12/14/2021	150	ORDER staying the Court's judgment, as discussed in the 149 Order, for 14 days. See attached Order for details. Signed by Judge Trevor N. McFadden on 12/14/21. (lctnm2) (Entered: 12/14/2021)
12/14/2021	151	NOTICE OF APPEAL TO DC CIRCUIT COURT as to 149 Order on Motion to Dismiss,,, 148 Memorandum & Opinion by DTTM OPERATIONS LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, LLC, DONALD J. TRUMP REVOCABLE TRUST, DTTM OPERATIONS MANAGING MEMBER CORP., LAMINGTON FARM CLUB, LLC, LFB ACQUISITION LLC, LFB ACQUISITION MEMBER CORP., DONALD J. TRUMP. Filing fee $ 505, receipt number ADCDC–8929739. Fee Status: Fee Paid. Parties have been notified. (Strawbridge, Patrick) (Entered: 12/14/2021)
12/14/2021	152	Amended NOTICE OF APPEAL re appeal 151 by DTTM OPERATIONS LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, LLC, DONALD J. TRUMP REVOCABLE TRUST, DTTM OPERATIONS MANAGING MEMBER CORP., LAMINGTON FARM CLUB, LLC, LFB ACQUISITION LLC, LFB ACQUISITION MEMBER CORP., DONALD J. TRUMP. (Strawbridge, Patrick) (Entered: 12/14/2021)
12/16/2021	153	Transmission of the Notice of Appeal, Order Appealed (Memorandum Opinion), and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid re 152 Amended Notice of Appeal, 151 Notice of Appeal to DC Circuit Court,. (zeg) (Entered: 12/16/2021)
12/17/2021		USCA Case Number 21–5289 for 151 Notice of Appeal to DC Circuit Court, filed by LAMINGTON FARM CLUB, LLC, DONALD J. TRUMP, DTTM OPERATIONS MANAGING MEMBER CORP., LFB ACQUISITION MEMBER CORP., DJT HOLDINGS MANAGING MEMBER, LLC, DONALD J. TRUMP REVOCABLE TRUST, LFB ACQUISITION LLC, DTTM OPERATIONS LLC, DJT HOLDINGS LLC. (zeg) (Entered: 12/23/2021)
12/20/2021	154	Emergency MOTION to Continue This Court's December 14 Order Pending Appeal re 150 Order by DTTM OPERATIONS LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, LLC, DONALD J. TRUMP REVOCABLE TRUST, DTTM OPERATIONS MANAGING MEMBER CORP., LAMINGTON FARM CLUB, LLC, LFB ACQUISITION LLC, LFB ACQUISITION MEMBER CORP., DONALD J. TRUMP. (Strawbridge, Patrick) (Entered: 12/20/2021)

12/20/2021	155	ORDER granting Intervenors' 154 Emergency Motion to Continue. See attached Order for details. Signed by Judge Trevor N. McFadden on 12/20/21. (lctnm2) (Entered: 12/20/2021)
04/12/2022	156	Unopposed MOTION to Clarify *(Defendants Unopposed Motion for Clarification of the Courts December 14 and 20, 2021, Stay Orders)* by CHARLES P. RETTIG(in his official capacity as Commissioner of the Internal Revenue Service), INTERNAL REVENUE SERVICE, UNITED STATES DEPARTMENT OF THE TREASURY, JANET YELLEN. (Attachments: # 1 Text of Proposed Order)(Gilligan, James) (Entered: 04/12/2022)
04/12/2022	157	ORDER granting 156 Motion to Clarify. See attached Order for details. Signed by Judge Trevor N. McFadden on 4/12/22. (lctnm2) (Entered: 04/12/2022)
05/31/2022	158	NOTICE OF WITHDRAWAL OF APPEARANCE as to COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. Attorney Katie Kelsh terminated. (Kelsh, Katie) (Entered: 05/31/2022)
07/29/2022	159	NOTICE OF WITHDRAWAL OF APPEARANCE as to COMMITTEE ON WAYS AND MEANS, UNITED STATES HOUSE OF REPRESENTATIVES. Attorney Stacie Marion Fahsel terminated. (Fahsel, Stacie) (Entered: 07/29/2022)
10/21/2022	160	NOTICE OF WITHDRAWAL OF APPEARANCE as to CHARLES P. RETTIG(in his official capacity as Commissioner of the Internal Revenue Service), INTERNAL REVENUE SERVICE, UNITED STATES DEPARTMENT OF THE TREASURY, JANET L. YELLEN. Attorney Steven A. Myers terminated. (Myers, Steven) (Entered: 10/21/2022)