No. 22A362

IN THE SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP, ET AL., APPLICANTS

v.

COMMITTEE ON WAYS AND MEANS,
UNITED STATES HOUSE OF REPRESENTATIVES, ET AL.

RESPONSE OF THE EXECUTIVE BRANCH RESPONDENTS IN OPPOSITION TO EMERGENCY APPLICATION FOR A STAY PENDING DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

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The Solicitor General, on behalf of the United States Department of the Treasury, the Internal Revenue Service (IRS), the Secretary of the Treasury, and the Commissioner of the IRS, respectfully submits this response in opposition to the application for a stay pending the disposition of a petition for a writ of certiorari.

This case concerns a June 2021 request by the Chairman of the House Committee on Ways and Means for tax returns and related information associated with former President Donald J. Trump and eight businesses in which he has an interest (collectively, applicants). The Chairman made the request under 26 U.S.C. 6103(f)(1), which directs the Secretary of the Treasury to furnish to the Committee "any return or return information" requested by the Chairman. The request explained that the Committee is con-

sidering legislation to address the IRS's program of mandatory audits of sitting Presidents' tax returns. In particular, the Chairman explained that the Committee is focused on the program's capacity to handle complex presidential tax returns and the pressures such audits may present for the IRS officials and agents involved. According to the request, applicants' tax records are particularly relevant to the Committee's inquiry both because of the complexity of the former President's taxes and because of his public statements criticizing the audit process.

The Executive Branch determined that Section 6103(f)(1) required the Secretary to comply with the Chairman's request because the request furthers a valid legislative purpose and comports with the separation of powers. The district court agreed, the court of appeals unanimously affirmed, and the court then denied rehearing en banc with no judge requesting a vote. The court of appeals also denied applicants' request for a stay pending the filing and disposition of a petition for a writ of certiorari.

Applicants now seek a stay from this Court, but they cannot satisfy the demanding standard for that extraordinary relief. The court of appeals correctly held that the Chairman's request articulates a legitimate legislative purpose and "passes muster under all suggested variations of the separation of powers analysis" -- including the standard this Court adopted in Trump v. Mazars

USA, LLP, 140 S. Ct. 2019 (2020), for congressional requests seeking a sitting President's personal information. Appl. App. 14.

Applicants principally assert that the court of appeals should have looked behind the request's stated legislative purpose based on evidence that it was also motivated by political considerations, including a desire to expose the former President's tax returns. But for nearly a century, this Court has refused to entangle the judiciary in such inquiries into "the motives alleged to have prompted" a congressional request that is otherwise supported by a valid legislative purpose. Eastland v. United States Servicemen's Fund, 421 U.S. 491, 508 (1975). The Court adhered to that approach in Mazars, which involved similar allegations of pretext and political motivation. The Court responded to those allegations not by sanctioning inquiries into legislators' subjective motives, but instead by articulating an objective standard that "takes adequate account of the separation of powers principles at stake." 140 S. Ct. at 2035. The court of appeals faithfully applied that standard here, and its application of Mazars to the particular circumstances of this case does not warrant further review. The application should be denied.

STATEMENT

1. The Internal Revenue Code generally provides that tax "[r]eturns and return information shall be confidential" unless their release is authorized by a statutory exception. 26 U.S.C.

6103(a). One such exception, Section 6103(f), requires the Secretary of the Treasury to disclose tax return information to congressional committees under specified conditions. Consistent with statutes dating back nearly a century, Section 6103(f) contains a preferred role for congressional tax committees. As relevant 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 of the Treasury

> shall furnish such committee with any return or return information specified in such request, except that any 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.

Tax information so obtained by the Committee, including information associated with individual taxpayers, may be submitted by the Committee to the Senate, the House, or both. 26 U.S.C. 6103(f)(4)(A).

The Secretary of the Treasury and the Commissioner of the IRS are charged with administering and enforcing the Internal Revenue Code. 26 U.S.C. 7801, 7803(a). Since the 1970s, IRS rules have required the agency to audit the tax returns of sitting Presidents and Vice Presidents. See Appl. App. 3. The procedures governing the IRS's mandatory audit program are set forth in the IRS's Internal Revenue Manual (IRM). See IRM §§ 3.28.3; 4.8.4.2.5.

2. In 2019, invoking his authority under Section 6103(f), Representative Richard E. Neal, Chairman of the Committee, sent a letter to the IRS requesting applicants' tax returns for the tax years 2013-2018, together with the associated administrative files. Appl. App. 3-4. Chairman Neal referred to the IRS policy of auditing presidential tax returns and explained that the information requested was necessary to determine "the extent to which the IRS audits and enforces the Federal tax laws against a President." Id. at 4.

After consulting with the Office of Legal Counsel (OLC), Treasury denied the Chairman's request, concluding that the request was not supported by a legitimate legislative purpose. Appl. App. 4. OLC later issued an opinion in which it explained that it determined the Chairman's stated reason for requesting the records -- "to consider legislation regarding the IRS's practices in auditing presidential tax filings" -- was "implausible" and "pretextual" and that the Chairman's "actual purpose was simply to provide a means for public disclosure of the President's tax returns." OLC, Congressional Committee's Request for the President's Tax Returns Under 26 U.S.C. § 6103(f), at 26, 31 (June 13, 2019). In reaching that conclusion, OLC acknowledged that this Court has repeatedly "declined to engage in searching inquiries about congressional motivation." Id. at 24 (collecting cases). But OLC concluded that such decisions "rest upon institutional

constraints on the Judiciary" that "do not apply to the Executive Branch." Id. at 25.

In response to Treasury's denial of the Chairman's request, the Committee sued Treasury and the IRS, seeking to compel disclosure of the requested tax information. Appl. App. 4. Applicants intervened as defendants. Ibid. The case remained pending in district court when President Trump left office in January 2021.

3. In June 2021, Chairman Neal submitted a new Section 6103(f)(1) request for applicants' tax returns and associated administrative files for tax years 2015-2020, rather than 2013-2018. Appl. App. 4-5; see App., infra, 1a-7a (request). The 2021 request offered a "more detail[ed]" justification than the Chairman's prior request. Appl. App. 5. It specified that the Committee is "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." App., infra, 1a. In particular, the Chairman expressed "serious concerns" that the IRS's mandatory audit program may not be "advancing the purpose for which it was created." Id. at 2a. The Chairman feared that the program does not account for a President, like former President Trump, with hundreds of businesses and "inordinately complex returns." Ibid. The Chairman added that the program "does not provide explicit safe-

guards in the event a President interferes with or questions the appropriateness" of an audit. Ibid.

The Chairman also explained the importance of individual tax information to the Committee's inquiry. To learn how the Presidential audit program operates "in practice," the Chairman stated that the Committee needed information about the audit of an actual President to ascertain, among other things, (i) whether IRS agents are shielded from improper interference by the President; (ii) whether agents look at ongoing audits that predate a President's term in office; (iii) whether agents review a President's underlying business activities and have access to the necessary books and records; and (iv) whether agents have the resources to undertake a full review of the returns of a President with complicated business interests and tax obligations. App., infra, 3a.

The Chairman also set forth the reasons the Committee considers former President Trump's tax information, in particular, to be "indispensable" to its inquiry into the robustness and objectivity of the Presidential audit program. App., infra, 4a-6a. The Chairman noted, for example, that the size and complexity of the former President's returns, reflecting his control of more than 500 businesses, make him "markedly different from other Presidents" and raise questions about the program's ability to handle complicated tax situations. Id. at 4a-5a. In the Committee's view, former President Trump's public criticism of his treatment

by the IRS as "extremely unfair", both before and during his term in office, also raised "serious questions" about the IRS's ability "to freely enforce the tax laws against him." Id. at 5a-6a.

4. Following receipt of the Chairman's new request, Treasury again sought OLC's advice. Appl. App. 5. Concluding that the 2019 OLC opinion "failed to give due weight to Congress's status as a co-equal branch of government," OLC conducted a fresh analysis of the 2021 request and found "ample basis to conclude" that it "would further the Committee's principal stated objective of assessing" the Presidential audit program. Office of Legal Counsel, Ways and Means Committee's Request for the Former President's Tax Returns and Related Tax Information Pursuant to 26 U.S.C. § 6103(f)(1), at 4, 19 (July 30, 2021). OLC thus concluded that the Secretary must comply with the request. Id. at 39.

5. Applicants filed counterclaims against the Committee and cross-claims against Treasury and the IRS seeking an injunction barring disclosure of the requested tax information. As relevant here, applicants contended that the 2021 request lacks a legitimate legislative purpose and violates the separation of powers by interfering with Executive Branch functions. Appl. App. 6.

The district court granted the Committee's and the Executive Branch's motions to dismiss. Appl. App. 37-81. The court held that the 2021 request serves a valid legislative purpose because it furthers Congress's study of the Presidential audit program, a

subject on which legislation could be had. Id. at 50-61. The court acknowledged that applicants had pointed to statements by Chairman Neal and others that "plausibly show mixed motives underlying the 2021 request." Id. at 56. But the court emphasized that mixed motives are irrelevant under this Court's precedents, which "analyze whether Congress has a valid legislative purpose, not whether that is the only purpose." Ibid.

The district court also rejected applicants' separation-of-powers challenge. Appl. App. 61-73. The court concluded that because this case involves a former President, it should be resolved under the balancing test enunciated in Nixon v. Administrator of General Services, 433 U.S. 425 (1977) (Nixon v. GSA), rather than under the more searching standard this Court articulated in Trump v. Mazars USA, LLP, 140 S. Ct. 2019 (2020), which involved a request for a sitting President's personal information. Appl. App. 62-69. Applying Nixon v. GSA, the court determined that the request did not violate the separation of powers because "the threat to the Executive Branch from a § 6103(f) request on a former President is minimal" and "the Committee's many reasons for its request overcome that minimal intrusion." Id. at 73.

6. The court of appeals affirmed. Appl. App. 1-33.

a. As relevant here, the court first held that the Chairman's request is supported by a legitimate legislative purpose. Appl. App. 8-13. The court emphasized this Court's instruction

that courts "determining the legitimacy of a legislative act" may not "look to the motives alleged to have prompted it." Id. at 10 (quoting Eastland v. United States Servicemen's Fund, 421 U.S. 491, 508 (1975)). The court recognized that allegedly improper motives cannot "'vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served.'" Ibid. (quoting Watkins v. United States, 354 U.S. 178, 200 (1957)). Rather than looking to evidence of motive from statements of various individual committee members, therefore, the court of appeals relied on the Chairman's written request. Ibid. The court concluded that the 2021 request identified a valid interest in legislation addressing "the administration of the tax laws as they apply to a sitting President." Id. at 11. And the court credited the request's explanation of the Committee's concerns with the functioning of the mandatory audit program and the utility of reviewing applicants' tax returns based on their complexity and the former President's public statements criticizing his audits. Id. at 11-13.

b. The court of appeals further held that the request does not violate the separation of powers. Appl. App. 13-25. The court declined to decide whether Nixon v. GSA provided the governing standard because it held that the 2021 request "passes muster" even under the more demanding standard set forth in Mazars. Id. at 14. Under Mazars, courts must consider four factors:

(1) "[w]hether the asserted legislative purpose warrants the significant step of involving the President and his papers"; (2) "[w]hether the subpoena is no broader than necessary to support Congress's legislative objective"; (3) "[w]hether Congress has offered detailed and substantial evidence to show the subpoena furthers a valid legislative purpose"; and (4) "[w]hether the subpoena burdens the President as Chief Executive." Appl. App. 17-18 (citation and internal quotation marks omitted); see Mazars, 140 S. Ct. at 2035-2036. Here, the court concluded that each of those factors supports the Chairman's request.*

First, the court of appeals noted that "[t]he Committee is evaluating a program that applies only to the President and Vice President." Appl. App. 19. Accordingly, "no other source" could "reasonably provide the Committee with the information it seeks." Id. at 19-20.

Second, the court concluded that the Chairman reasonably "requested one return that would have been filed before President Trump assumed office, the four returns filed while in office, and

* The court of appeals noted that on remand in Mazars, the district court had created a "Mazars lite" test that applied a "somewhat less rigorous" analysis to each of the factors "because the request at issue concerns a former President rather than a sitting President." Appl. App. 18 (citing Trump v. Mazars USA LLP, 560 F. Supp. 3d 47, 65-66 (D.D.C. 2021)). The court of appeals found it unnecessary to determine whether this version of the test should apply because the request survives the more rigorous version applicable to a sitting President. Ibid.

one return filed after President Trump left office." Appl. App. 20. The court explained that returns from multiple presidential years would provide "the ability to compare one year with another" and that returns from the years before and after the presidency would reveal "what effect, if any, Mr. Trump being the sitting President had on how his returns were treated." Id. at 21.

Third, the court of appeals held that the Chairman had offered a sufficiently detailed and specific justification for the request. Appl. App. 22-23. The court noted that the request cited statements by President Trump or his agents that his tax returns were "inordinately large and complex," as well as statements referring to his audits as "extremely unfair." Id. at 22-23. The court concluded that those 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." Id. at 23.

Fourth, the court held that even if Mazars requires an examination of the burden a request imposes on a former President rather than the incumbent, the request "does not impose a burden that would violate separation of powers principles." Appl. App. 23. The court acknowledged that the possibility of public disclosure "is certainly inconvenient" to applicants, "but not to the

extent that it represents an unconstitutional burden violating the separation of powers." Id. at 24. And the court held that the burden on the sitting President is "not substantial": Although "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." Ibid.

c. Judge Henderson concurred in part and concurred in the judgment. Appl. App. 29-33. She agreed that "the Committee has stated a valid legislative purpose," but she viewed the "burdens borne by the Executive Branch" as "more severe" and thus warranting "much closer scrutiny." Id. at 29. Even under that more stringent approach, however, Judge Henderson agreed that "the burdens imposed on the Presidency by the Committee's request do not rise to the level of a separation-of-powers violation." Ibid.

6. The court of appeals denied applicants' petition for rehearing en banc without calling for a response and with no judge requesting a vote. Appl. App. 36. The court also denied applicants' motion to stay the mandate pending the filing and disposition of a petition for a writ of certiorari. Id. at 35.

ARGUMENT

"To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the issue

sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) (per curiam).

Applicants have satisfied the third requirement because in the absence of a stay, Section 6103(f)(1) will compel Treasury to comply with the 2021 request and furnish applicants' information to the Committee, thus mooting the case. See John Doe Agency v. John Doe Corp., 488 U.S. 1306, 1309 (1989) (Marshall, J., in chambers). But this Court should nonetheless deny the application because applicants cannot satisfy either of the other requirements for the extraordinary relief they seek: The court of appeals' decision is correct and does not warrant further review. Alternatively, should the Court prefer to finally resolve this case before the administrative stay expires and Treasury complies with the request, the Court should accept applicants' invitation (Appl. 12) to construe their application as a petition for a writ of certiorari and deny the petition.

I. THE COURT OF APPEALS' DECISION IS CORRECT

The court of appeals correctly concluded that the 2021 request serves a valid legislative purpose, and the court correctly determined that the request does not threaten the separation of powers under the framework this Court articulated in Trump v.

Mazars USA, LLP, 140 S. Ct. 2019 (2020). Rather than "diluting the analysis," Appl. 16, the court of appeals gave applicants its full benefit at every step, repeatedly declining to water down the test despite the lesser intrusion on the separation of powers that occurs where, as here, a congressional request concerns a former President rather than the incumbent. As the court of appeals recognized, none of the Mazars factors favors applicants. And as the court emphasized, this Court's longstanding precedent forecloses applicants' attempt to have the courts look behind the request's stated legislative purpose to the subjective motives of individual legislators. Under the particular circumstances of this case, the Chairman's request for applicants' tax information is both within the Committee's authority and consistent with the separation of powers.

1. In Mazars, then-President Trump contended that in issuing four subpoenas seeking his financial information, Committees of the U.S. House of Representatives "lacked a valid legislative aim and instead sought the[] records to harass him, expose personal matters, and conduct law enforcement activities beyond [the House's] authority." 140 S. Ct. at 2026. This Court recognized that "subpoenas for the President's personal information implicate weighty concerns regarding the separation of powers." Id. at 2035. The Court therefore determined that in assessing whether such a request is "'related to, and in furtherance of, a legitimate task

of the Congress,' courts must perform a careful analysis that takes account of the separation of powers principles at stake." Ibid. (quoting Watkins v. United States, 354 U.S. 178, 187 (1957)). The Court then set out four factors that courts should consider to take "adequate account" of "both the significant legislative interests of Congress and the unique position of the President." Ibid. (citation and internal quotation marks omitted).

The court of appeals correctly applied that framework here. It first concluded that the Chairman's request seeks information that "could inform tax legislation concerning the President," which is a "matter on which legislation could be had." Appl. App. 11-12. The request explains the Committee's concern with the functioning of the IRS's Presidential audit program and the Committee's intention to "explore legislation" that would "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. at 12 (citation omitted); see App., infra, 2a-3a. Applicants' tax returns and return information would inform consideration of such legislation by allowing the Committee to review the program's functioning in practice, to analyze its handling of unusually complex returns, and to assess the program's response to the added pressures of former President Trump's public criticism. Ibid.

After concluding that the request's stated purpose is valid, the court of appeals applied (Appl. App. 17-25) the Mazars factors to determine whether the request is sufficiently "related to, and in furtherance of" that purpose in light of the "separation of powers principles at stake." 140 S. Ct. at 2035. The court correctly concluded that no factor suggested a separation-of-powers violation. Rather, the request's stated legislative purpose warranted involvement of the former President's papers because it implicated a program applicable only to the President and Vice President; the request was not overly broad; the request offered detailed and specific evidence that the requested tax information would further its purpose; and the request would not unduly burden the former President, the incumbent, or the institution of the Presidency. Appl. App. 17-25.

2. Applicants principally contend (Appl. 16-18) that the separation-of-powers concerns presented by a request for a former President's tax information require courts to look behind the request's facially valid legislative purpose. President Trump raised similar pretext arguments in Mazars itself, relying on extrinsic evidence of "[t]he Committees' desire to publicly expose the President's finances" and arguing that the subpoenas had an impermissible law-enforcement purpose. Pet. Br. at 38, Mazars, supra (No. 19-715); see id. at 2-8, 36-45; see also Mazars, 140 S. Ct. at 2026. This Court responded to that concern not by author-

izing an inquiry into legislators' subjective motives, but instead by articulating four objective factors crafted to ensure that a congressional request is justified by its stated legislative purpose and consistent with the separation of powers.

The Court's refusal to inquire into legislators' subjective motives in Mazars is consistent with precedent dating back nearly a century. Throughout our Nation's history, congressional requests for information have been driven by mixed legislative and political motives; indeed, "it is likely rare that an individual member of Congress would work for a legislative purpose without considering the political implications." Appl. App. 13. But time and again, this Court has rejected attempts to invalidate otherwise appropriate legislative requests based on evidence of additional motives. See, e.g., Eastland, 421 U.S. at 506-507; Barenblatt v. United States, 360 U.S. 109, 130-133 (1959); Watkins, 354 U.S. at 199-200; Tenney v. Brandhove, 341 U.S. 367, 378 (1951); McGrain v. Daugherty, 273 U.S. 135, 177-180 (1927).

Those precedents recognize that the scope of judicial inquiry into legislative purpose is "narrow." Eastland, 421 U.S. at 506. A court may reject a committee's asserted legislative purpose only where it is "obvious" from the face of the request and other objective evidence that the avowed purpose is unworthy of credence, such as where the information sought is inconsistent with or bears little connection to the that purpose. Tenney, 341 U.S. at 378.

Evidence that individual legislators have other motives for seeking the requested information is generally irrelevant to such an inquiry. See Eastland, 421 U.S. at 508.

This Court's decision in McGrain is illustrative. The Senate had formed a select committee to investigate the former Attorney General's alleged malfeasance in the handling of certain antitrust and criminal matters. 273 U.S. at 151-152. The committee subpoenaed the former Attorney General's brother to testify, asserting, in a resolution, that the brother's testimony was "necessary as a basis for * * * legislative and other action." Id. at 153. The brother refused to comply, arguing that the committee sought his testimony for an improper, nonlegislative purpose. Id. at 152-154. The district court agreed. Id. at 176-177. It emphasized "the extreme personal cast" of the resolutions establishing the committee; "the spirit of hostility towards the then Attorney General which [the resolutions] breathe"; the Senate's failure to avow a legislative purpose until its actions had been challenged; and the Senate's express avowal that it sought information for purposes other than legislation. Ibid. The district court concluded that those circumstances showed that the committee's asserted legislative purpose was "an afterthought" and that its true purpose was to "determine the guilt of the Attorney General." Ibid.

This Court reversed, concluding that it "sufficiently ap-

pear[ed]" from the record of the committee's proceedings that "the object of the investigation and of the effort to secure the witness' testimony was to obtain information for legislative purposes." McGrain, 273 U.S. at 177. The Court emphasized that the subject of the committee's investigation -- "the administration of the Department of Justice," including "whether its functions were being properly discharged" -- was "[p]lainly" one "on which legislation could be had." Id. at 177-178. As particularly relevant here, the Court expressly rejected the argument that the committee's acknowledged interest in seeking the brother's testimony for "other," non-legislative purposes invalidated the committee's subpoena. Id. at 180. In the Court's view, the committee's suggestion that it had other, potentially improper objectives in mind took "nothing from the lawful object avowed in the same resolution." Ibid.

This Court applied a similar approach in Barenblatt, when it rejected the petitioner's claim that a congressional committee's inquiry into his association with the Communist Party lacked a valid legislative purpose. 360 U.S. at 130-133. The Court noted that there was evidence that the committee was motivated by a desire to expose the petitioner's political affiliation for the sake of exposure. Id. at 133 n.33. But the Court concluded that "[s]o long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of

the motives which spurred the exercise of that power." Id. at 132.

Under those precedents, applicants fall short of establishing that the Chairman's 2021 request lacks a valid legislative purpose. Applicants do not seriously dispute that the request seeks information that is reasonably related to the Presidential audit program, which is a subject on which "legislation may be had." Eastland, 421 U.S. at 506; see also McGrain, 273 U.S. at 177; Appl. App. 11-12. Nor is it "obvious" from the objective circumstances that the Chairman's asserted purposes are unworthy of credence. Tenney, 341 U.S. at 378. The Chairman explained in some detail why the information sought is "relevan[t]" to the asserted purpose and why the Chairman reasonably believes the former President's tax return information will be "helpful" to the Committee. Barenblatt, 360 U.S. at 134. The temporal scope of the request is also reasonably tailored to the asserted purposes. At a minimum, the Chairman's request and the detailed explanation accompanying that request can "fairly be deemed" to further valid legislative purposes. Tenney, 341 U.S. at 378.

Applicants assert (Appl. 16-19) that the district court should have disregarded the Chairman's explanation of the request's purpose and the objective indications supporting it in favor of a free-ranging inquiry into the public statements of Committee members. But while applicants purport (Appl. 18) to

recognize a distinction between subjective motive and legislative purpose, their suggested inquiry would collapse the two, seeking out indicators of individual legislators' true "purpose," even where the request's stated "legislative purpose is being served." Watkins, 354 U.S. at 200. It is in precisely those circumstances that this Court has admonished against "testing the motives of committee members," because improper motives of committee members alone "would not vitiate an investigation." Ibid.

Applicants emphasize that Watkins and other pre-Mazars cases did not "involve the President's papers." Appl. 19. Applicants are quite right that Mazars emphasized the special separation-of-powers concerns raised by such a request. See 140 S. Ct. at 2033-2035. But even in the face of similar allegations of pretext, Mazars did not authorize an otherwise-off-limits inquiry into subjective motives. Instead, the Court articulated additional objective factors to ensure that courts "take adequate account of the separation of powers principles at stake." Id. at 2035. Applicants provide no reason to depart from that approach here.

3. Applicants next quibble with the court of appeals' application of the Mazars factors. But even assuming those factors apply with full force in this case, the court correctly assessed each factor with due care for the separation of powers.

Mazars first requires courts to consider whether "other sources could reasonably provide Congress the information it

needs." 140 S. Ct. 2035-2036. The court of appeals correctly determined that because Presidents and Vice Presidents are the only taxpayers subject to a Presidential audit, Congress could not reasonably and completely review the IRS's Presidential audit program without access to the tax return information of a Presidential taxpayer. Appl. App. 19. Unlike Mazars, this is not a situation where Congress is seeking to use the President "as a 'case study' for general legislation." 140 S. Ct. at 2036.

Applicants contend (Appl. 20) that the Committee should have sought the returns of other Presidents, but the Chairman explained that the Committee had particular concerns about the functioning, capacity, and resilience of the Presidential audit program in light of former President Trump's uniquely complex business dealings and his public criticism of the audit process. App., infra, 4a-6a. Nor is it relevant whether the Committee sought "information from the IRS about budgeting, staffing, and testimony from personnel" at the same time. Appl. 20. The Chairman's request reasonably explained the value in viewing the functioning of the audit program in practice, and separation-of-power principles do not require courts to micromanage the timing and order of a congressional committee's legislative investigations.

The second Mazars factor asks whether the congressional request for information is "no broader than reasonably necessary to support Congress's legislative objective." 140 S. Ct. at 2036.

The court of appeals correctly determined that the Chairman's request is not overbroad. As the court explained, the request's six-year timeframe allowed the Committee to compare returns with one another both during the presidency and "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." Appl. App. 21. Applicants criticize (Appl. 19) the court of appeals as being too deferential to the terms of the Chairman's request, but Mazars requires only a "reasonabl[e]" fit -- not a perfect one. 140 S. Ct. 2036.

Turning to the third factor, Mazars instructs courts to consider "the nature of the evidence offered by Congress to establish that a [request for information] advances a valid legislative purpose." 140 S. Ct. at 2036. The 2021 request outlines in detail the basis for the request and why it seeks the former President's information in particular. App., infra, 4a-6a. And, as the court of appeals noted, much of the evidence cited as a basis for the investigation consists of "statements by President Trump or his agents" that raised complaints about the Presidential audit and increased the Committee's concerns with its functioning. Appl. App. 22. The court of appeals correctly concluded that such "public statements directly relate" to the subject of the Committee's intended investigation and confirm that the request serves its stated legislative purpose. Id. at 23. And contrary to appli-

cants' suggestion (Appl. 21), this factor is not an invitation for courts to smuggle in the same consideration of Committee members' motives that the Court has refused to consider elsewhere. See pp. 17-22, supra.

Finally, the court of appeals correctly determined that the request does not impose undue "burdens on the President's time and attention" under the fourth Mazars factor. 140 S. Ct. at 2036. Applicants are wrong in asserting (Appl. 21-22) that the court of appeals ignored the institutional dynamics at issue in requests involving a former President. To the contrary, the court of appeals assessed the burden on the former and current President, recognizing that the availability of such requests could affect both. Appl. App. 23. The court of appeals simply determined that in this case -- where statutory authority expressly authorizes the tax committees to obtain tax returns and related information and where Presidents frequently disclose such information voluntarily -- the burden does not endanger the separation of powers. Id. at 16, 23-24. And even if applicants were correct that the court of appeals gave too little weight to those concerns, it would not change the outcome: Judge Henderson, for example, concluded that the separation-of-powers concerns warranted "much closer scrutiny," yet she agreed that those burdens "do not rise to the level of a separation-of-powers violation." Id. at 29.

II. THE COURT OF APPEALS' DECISION DOES NOT WARRANT FURTHER REVIEW

Applicants assert that this Court is likely to grant certiorari because this case presents an "important question" with "far-reaching implications" that is "similar" to the one the Court considered in Mazars. Appl. 12-13. Although questions implicating the separation of powers often warrant this Court's consideration, further review is not warranted here. The court of appeals went out of its way to avoid deciding broad legal questions. Instead, after assuming that Mazars governs, the court had no difficulty determining that the Chairman's request survives scrutiny under that framework. In reaching that conclusion, moreover, the court was not required to extend Mazars to a materially different context: Like Mazars itself, this case involves a request for now-former President Trump's personal financial information that was assertedly motivated by improper political considerations. The court's factbound application of Mazars does not warrant further review.

1. Applicants contend (Appl. 13) that this case presents "unsettled" questions that are "in need of this Court's review." There may well be unresolved issues regarding the application of Mazars, but the resolution of this case does not hinge on any of them. The court of appeals broke no new ground and instead expressly narrowed the scope of its decision. In first determining that the legitimacy of the Chairman's request should be guided by the request itself rather than by evidence of subjective motive,

the court of appeals relied on nearly a century of consistent precedent. Appl. App. 10; see pp. 18-20, supra. In turning to the separation-of-powers analysis, the court of appeals declined to rule broadly and unnecessarily on the scope of the various tests and instead concluded that the request at issue "passes muster under all suggested variations of the separation of powers analysis." Appl. App. 14. Applying Mazars itself, the court of appeals declined to decide whether the analysis should be tempered to account for the former President's departure from office. Id. at 18. And in setting out Mazars' fourth factor -- the burdens imposed on the President by the request -- the court of appeals likewise declined to determine whether the focus of the burden analysis should be on the current or former President, concluding that neither burden violates separation-of-powers principles here. Id. at 23. In other words, at every turn the court of appeals ruled narrowly and avoided resolving legal questions with broader effect.

2. The questions that the court of appeals did decide are closely tied to the particular -- and unusual -- circumstances of this case. In concluding that the request serves a legitimate legislative purpose, the court carefully assessed the details of the request, including the history of the Presidential audit program, the Committee's concerns with its functioning, and the particular relevance of applicants' tax information given former

President Trump's uniquely complicated tax obligations and public comments about the audit process. Appl. App. 11-13.

The court of appeals' weighing of the Mazars factors was likewise closely tied to the particular facts of this case. Its assessment of the first factor, for example, turned on the particular need to review presidential tax returns in order to assess the functioning of the Presidential audit program, which applies "only to the President and Vice President." Appl. App. 19-20. The court's treatment of the second factor considered the specific scope of the Chairman's request and the Committee's desire to "compare returns filed during the presidency with those filed in the years before and after." Id. at 21. The court's analysis of the third factor focused on "statements by President Trump or his agents" and their relation to the areas of the Committee's concern. Id. at 22-23. And the court's treatment of the fourth factor assessed the particular burdens involved in requesting tax information from a former President, including its potential effect on the current President, taking into account the common practices of candidates and Presidents with respect to the documents at issue. Id. at 16, 23-25.

The court of appeals' factbound application of the Mazars factors does not warrant further review. And this case would be a particularly poor vehicle for elaborating on the Mazars analysis because the opinions below make clear that the details of the

analysis would not affect the outcome: The district court, the court of appeals, and Judge Henderson each took somewhat different approaches to the separation-of-powers questions presented here, but all of them reached the same conclusion -- and none of them regarded the case as particularly close.

CONCLUSION

The application should be denied.

Respectfully submitted.

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