No. 19-715

IN THE

Supreme Court of the United States

DONALD J. TRUMP, *et al.*,

Petitioners,

v.

MAZARS USA, LLP AND COMMITTEE ON OVERSIGHT AND REFORM OF THE U.S. HOUSE OF REPRESENTATIVES,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

BRIEF IN OPPOSITION FOR RESPONDENT COMMITTEE ON OVERSIGHT AND REFORM OF THE U.S. HOUSE OF REPRESENTATIVES

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BRIEF IN OPPOSITION FOR RESPONDENT COMMITTEE ON OVERSIGHT AND REFORM OF THE U.S. HOUSE OF REPRESENTATIVES

This case concerns a subpoena for non-privileged documents issued by the respondent Committee on Oversight and Reform of the U.S. House of Representatives (the "Committee") to Mazars USA, LLP, a private accounting firm. The President, who "brings this suit solely in his capacity as a private citizen" (Complaint ¶ 8),[1] and certain of his business entities have asked the courts to prevent Mazars from complying with that Congressional subpoena.

This dispute does not warrant this Court's review. Both courts below applied this Court's well-settled law in holding that the subpoena here was issued in furtherance of a valid legislative purpose and that the subpoena seeks documents relevant to a subject on which Congress could enact legislation. There is no circuit split on those issues. Indeed, another court of appeals has now applied the same precedents and reached the same result as to a different set of Congressional subpoenas. *See Trump v. Deutsche Bank AG*, No. 19-1540-cv, 2019 WL 6482561 (2d Cir. Dec. 3, 2019). Although there were dissents from the panel opinion and from the denial of rehearing en banc, no judge below accepted any of the arguments that Petitioners advance.

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[1] The relevant excerpt of the complaint is included in Respondent's Supplemental Appendix ("Supp. App.").

This case:

- "hardly [involves] the first subpoena Congress has issued," Pet. App. 11a;
- hardly involves the first Congressional subpoena for Presidential documents, *see, e.g.*, *Senate Select Comm. on Presidential Campaign Activities v. Nixon,* 498 F.2d 725, 726 (D.C. Cir. 1974) (en banc); S. Rep. No. 104-280, at 50, 237 (1996) (describing Whitewater third-party subpoenas); and
- does not involve a subpoena directed to the President, but would hardly involve the first such subpoena, even if it did, *see, e.g.*, *United States v. Burr*, 25 F. Cas. 30 (C.C.D. Va. 1807) (No. 14,692d) (Marshall, C.J.); S. Rep. No. 104-204, at 14-15 (1996) (describing Whitewater subpoenas); *United States v. Nixon*, 418 U.S. 683 (1974).

This Court has repeatedly upheld Congress's ability to issue legislative subpoenas (*see infra* pp. 13-14) and has "unequivocally and emphatically endorsed" the view that "a subpoena *duces tecum* could be directed to the President," *Clinton v. Jones*, 520 U.S. 681, 703-04 (1997) (citing *Nixon*, 418 U.S. 683), and that the President may be subject even to process issued by a private citizen, *id.* at 705-06.

The court of appeals broke no new ground in upholding the subpoena at issue here. Though Petitioners object to the subpoena, they do not argue that any privilege would be violated or that they—or anyone at all—would suffer any harm from disclosure other than the disclosure itself. Certiorari should be

denied expeditiously so that the House of Representatives can move forward with its investigation as quickly as possible.

STATEMENT

1. The Constitution vests "[a]ll legislative Powers" in Congress. U.S. Const. art. I, § 1. A legislature's "power to secure needed information" through compulsory process "has long been treated as an attribute of the power to legislate." *McGrain v. Daugherty*, 273 U.S. 135, 161 (1927) (citing practice in British Parliament, Colonial legislatures, and the 1792 House of Representatives, where the use of such a power was supported by "Mr. Madison, who had taken an important part in framing the Constitution only five years before, and four of his associates in that work"). Congress's investigatory "power is broad." *Watkins v. United States*, 354 U.S. 178, 187 (1957).

This Court's consistent recognition of Congress's broad power of inquiry frames this case, which arises out of a subpoena that the Committee issued to Mazars on April 15, 2019. The Committee is the House's principal oversight body. It is charged with "review[ing] and study[ing] on a continuing basis the operation of Government activities at all levels, including the Executive Office of the President." House Rule X.3(i).

The Committee "has for decades exercised jurisdiction over the Ethics in Government Act and served as the authorizing committee for the Office of Government Ethics." Pet. App. 65a; *see* 5 U.S.C. app. 4 §§ 101 *et seq*. The Committee's jurisdiction also "includes financial-disclosure and other ethics-in-

government laws." Pet. App. 64a (citing House Rule X.1(n)). In addition, the Committee has jurisdiction over the U.S. General Services Administration ("GSA") and the "management of government operations and activities" generally. House Rule X.1(n)(6).

Under House Rules, the Committee "may at any time conduct investigations of any matter without regard to" other committees' jurisdiction. House Rule X.4(c)(2). And it may "require, by subpoena or otherwise . . . the production of such . . . documents as it considers necessary." House Rule XI.2(m)(1).

2. The election of a President who has decided to maintain his ties to a broad array of business ventures raises questions about the adequacy of existing legislation concerning financial disclosures, government contracts with federal officeholders, and government ethics, more generally. Whether new legislation on these subjects is needed is a natural subject of Congressional inquiry.

The Committee has therefore undertaken a series of investigations to determine the adequacy of existing legislation on these subjects and to conduct necessary oversight of Executive Branch agencies. The investigations cover, among other subjects, the accuracy of President Trump's own financial disclosures, GSA's management of the federal lease to Trump Old Post Office LLC for the site of the Trump International Hotel, and possible violations of the Emoluments Clauses. *See* U.S. Const. art. I, § 9, cl. 8; U.S. Const. art. II, § 1, cl. 7. The Committee is investigating whether legislative reforms are needed to ensure that federal agencies are operating free from

financial conflicts and with accurate information, and whether senior government officials, including the President, are acting in the country's best interest and not in their own financial interest.

President Trump's extensive financial interests are a common thread in each of the Committee's investigations. Shortly before he became President, President Trump's lawyers stated that he held "interests as the sole or principal owner in approximately 500 separate entities." Letter from Morgan, Lewis & Bockius LLP to Mr. Donald J. Trump regarding Status of U.S. Federal Income Tax Returns (Mar. 7, 2016), https://perma.cc/57WZ-LWPT. As President, Mr. Trump continues to have "financial interests in businesses across the United States and around the world that pose both perceived and actual conflicts of interest." H.R. Rep. No. 116-40, at 156 (2019).

3. The Office of Government Ethics ("OGE") oversees the Executive Branch ethics program. 5 U.S.C. app. 4 §§ 401(a), 402(a). One aspect of the Committee's ongoing investigations was prompted by OGE's identification of an error in the financial disclosures that President Trump had filed with it. Specifically, OGE determined that, in 2017, President Trump had failed to disclose a reportable liability under the Ethics in Government Act. Pet. App. 4a. The liability arose out of a payment made by Michael Cohen, President Trump's former personal lawyer, to a third party. *Id.*

President Trump eventually disclosed the Cohen payments in May 2018 "as a liability of less than $250,000." Pet. App. 4a-5a, 168a. Federal prosecutors

later stated in a sentencing memorandum in Mr. Cohen's case that the liabilities totaled $420,000. Pet. App. 168a.

That series of events led the Committee to request documents from the White House relating to President Trump's payments to Mr. Cohen. Pet. App. 5a.[2] In correspondence with the White House concerning that request, then-Committee Chairman Cummings emphasized "the Oversight Committee's status as 'the authorizing Committee for the Office of Government Ethics,' the President's statutory obligation to 'file . . . public financial disclosure report[s],' and Congress's 'plenary authority to legislate and conduct oversight regarding compliance with ethics laws and regulations.'" Pet. App. 6a. As Chairman Cummings explained, the documents the Committee sought would "help the Committee determine . . . why the President failed to report . . . payments and whether reforms are necessary to address deficiencies with current laws, rules, and regulations." Pet. App. 6a (quotation marks omitted). The White House did not produce the documents requested.

The Committee also is investigating the General Services Administration's management of the lease of the Old Post Office Building in Washington, D.C., to President Trump's business. In January 2019, the GSA Office of Inspector General issued a report finding "serious shortcomings" in the GSA's

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[2] *See* Letter from the Honorable Elijah E. Cummings, Chairman, House Comm. on Oversight & Reform, to Pat Cipollone, White House Counsel (Feb. 15, 2019), https://perma.cc/W6YP-J7BW.

management of that lease, and raised concerns as to whether President Trump's inauguration caused a breach of the lease or led to violations of the Emoluments Clause. [3] On several occasions, the Committee and Committee members have requested documents from GSA, which GSA has not provided. Pet. App. 165a-166a & n.8.

On February 27, 2019, Mr. Cohen appeared at a hearing before the Committee. Mr. Cohen testified that the President had "inflated his total assets" in some circumstances and had "deflated his assets" in others. Pet. App. 6a. Mr. Cohen produced to the Committee several accounting documents, including 2011 and 2012 "Statements of Financial Condition" prepared for Mr. Trump by Mazars. Pet. App. 6a-7a.

On March 20, 2019, Chairman Cummings wrote to Mazars to request several categories of documents relating to President Trump's personal and business accounts, including documents used to prepare the Statements of Financial Condition for President Trump and his related business entities. Pet. App. 7a-8a. [4] Mazars declined to produce the requested documents voluntarily. Pet. App. 8a.

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[3] *See* GSA, Office of Inspector General, Evaluation of GSA's Management and Administration of the Old Post Office Building Lease, at 23 (Jan. 16, 2019), https://perma.cc/V7YE-H93H.

[4] *See* Letter from the Honorable Elijah E. Cummings, Chairman, House Comm. on Oversight & Reform, to Victor Wahba, Chairman and Chief Exec. Officer, Mazars USA LLP, at 1 (Mar. 20, 2019), https://perma.cc/A6VU-URH5.

Though its investigations remain ongoing, the Committee, and the House more broadly, have already engaged in substantial related legislative activity. For instance, in March 2019, the House passed H.R. 1. Broadening current law, which requires disclosure of the value of an interest in a business, but not the business's assets and liabilities,[5] H.R. 1 would "require[] Presidents to list on their financial disclosures the liabilities and assets of any 'corporation, company, firm, partnership, or other business enterprise in which' they or their immediate family have 'a significant financial interest.'" Pet. App. 30a (quoting H.R. 1, 116th Cong. § 8012 (2019)). H.R. 1 also would amend 18 U.S.C. § 431 to declare void any contracts that the United States or its agencies enter into with the President. *See* H.R. 1, § 8014. The bill also would require Presidential candidates to disclose ten years of tax returns. *See* H.R. 1, § 10001(b)(1)(A). There is bipartisan agreement as to the desirability of legislation on several of these subjects. *See*, *e.g.*, H.R. 1612, 116th Cong. §§ 7014, 9001(b)(1)(A) (2019) (bill introduced by minority House Member containing several such provisions).

Other pending bills related to the Committee's inquiries include H.R. 706, which would prohibit the President and Vice President and affiliated "significant business interest[s]" from engaging in certain commercial transactions with the federal government, H.R. 706, 116th Cong. § 241 (2019), and H.R. 681, which would extend anti-nepotism laws to

[5] 5 U.S.C. app. 4 § 102(a)(3), (d)(2).

the White House Office and Executive Office of the President, H.R. 681, 116th Cong. (2019). *See also* H.R. 1481, 116th Cong. § 2 (2019) (requiring President to disclose or divest certain financial interests); H.R. 745, 116th Cong. § 3 (2019) (amending Ethics in Government Act to make the Director of the Office of Government Ethics removable only for cause); H.R. 391, 116th Cong. (2019) (requiring public reporting of certain ethics waivers obtained by Executive Branch appointees).

On April 12, 2019, Chairman Cummings sent a memorandum to Committee members describing his intent to issue a subpoena to Mazars. Pet. App. 8a. The memorandum identified four subjects for investigation: (1) "whether the President may have engaged in illegal conduct before and during his tenure in office," (2) "whether [the President] has undisclosed conflicts of interest that may impair his ability to make impartial policy decisions," (3) "whether [the President] is complying with the Emoluments Clauses of the Constitution," and (4) "whether [the President] has accurately reported his finances to the Office of Government Ethics and other federal entities." Pet. App. 8a-9a; *see also* Supp. App. 6a-15a (Chairman Cummings's memorandum). Significantly, in the memorandum's next sentence, the Chairman explained that "[t]he Committee's interest in these matters informs its review of multiple laws and legislative proposals under our jurisdiction." Supp. App. 11a-12a; Pet. App. 9a.

4. Chairman Cummings issued the instant subpoena to Mazars on April 15, 2019, directing the firm to comply by April 29, 2019. Pet. App. 9a-10a.

Before the subpoena's response date, Petitioners President Trump, in his individual capacity, and his related business entities sued to enjoin Mazars's compliance. Following this Court's direction to give cases such as this "the most expeditious treatment," *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 511 n.17 (1975), the district court consolidated the preliminary injunction hearing with a final hearing on the merits, *see* Fed. R. Civ. P. 65(a)(2), and entered summary judgment in favor of the Committee on May 20, 2019, *see* Pet. App. 158a-212a.

The court of appeals affirmed by a 2-1 vote. Pet. App. 1a-157a. The court denied rehearing en banc over dissents by Judge Katsas (joined by Judge Henderson), Pet. App. 215a-217a, and by Judge Rao (joined by Judge Henderson), Pet. App. 218a-221a.

REASONS FOR DENYING THE PETITION

This case meets none of the ordinary criteria for this Court's review. There is no conflict among the lower courts. Petitioners instead assert that the court below "decided an important question" that "has not been, but should be, settled by this Court." Pet. 13 (quoting S. Ct. Rule 10(c)). Yet Petitioners ask only "whether the Committee has . . . authority to issue *this* subpoena." Pet. i (emphasis added).

As that formulation suggests, Petitioners' primary argument raises a case-specific dispute about the supposed illegitimate purpose of *one* subpoena—the very sort of fact-bound issue this Court "rarely" reviews. S. Ct. Rule 10. Moreover, that argument is one that *any* private litigant could raise. *See* Pet. 25 (apparently conceding this point). Petitioners' two

other arguments are an extravagant claim about the unconstitutionality of *all* enacted and hypothetical laws concerning Presidential financial disclosures and a claim that the House's Rules do not mean what all agree they say. Those issues are just as unfit for this Court's review.

Petitioners' assertion (at 16) that "[w]hen the President seeks review, this Court grants certiorari," is demonstrably false. On several occasions, this Court has denied a President's requests for certiorari in cases ordering the disclosure of information about the President. The Court, for example, denied President Clinton's request for a writ of certiorari to review a divided decision directing the disclosure of information that he asserted was protected by his "personal-attorney-client privilege." *In re Lindsey*, 158 F.3d 1263, 1267 (D.C. Cir. 1998) (per curiam). *See Office of President v. Office of Indep. Counsel*, 119 S. Ct. 466 (1998). It did so despite a question presented that both parties agreed was "important" and that lacked a "clear legal answer." *Id.* at 466 (Breyer, J., dissenting).

Similarly, in *Rubin v. United States*, 119 S. Ct. 461 (1998), this Court declined to review an order requiring Secret Service agents to provide assertedly privileged information about President Clinton. It did so despite representations by the Secret Service and former President George H.W. Bush that the decision below could jeopardize the physical safety of the President. *See id.* at 464. And in *Office of President v. Office of Independent Counsel*, 117 S. Ct. 2482 (1997), this Court denied a request by the Office of the President that it review an order requiring disclosure

of notes that "Mrs. Clinton, her personal counsel, and the White House lawyers all considered . . . to involve confidential attorney-client communications." Pet. for Certiorari, No. 96-1783, 1997 WL 33556978, at *6-7 (quoting district court opinion). Certiorari was denied despite the Solicitor General's contention in an amicus brief that the decision "would impair the ability of the President . . . to obtain frank, fully informed, and confidential legal advice." Br. of United States Supporting Certiorari, No. 96-1783, 1997 WL 33549617, at *8.

Here, by contrast, there is no substantial legal question presented, no question of privilege, and no threat of any harm beyond disclosure itself that would flow from compliance with the subpoena. Furthermore, what there *is* here is a subpoena issued by a Committee of a House of Congress, the 116th House of Representatives, which the people elected to enact legislation and oversee the workings of the Government for a two-year term. But one-third of that term has now elapsed since the Committee issued the subpoena. *Cf. Eastland*, 421 U.S. at 512 ("[T]he House, unlike the Senate, is not a continuing body[.]"). Granting review would prolong the stay that this Court has imposed on the Committee's subpoena and prevent the people's representatives from carrying out their constitutional duties in the limited remaining time they possess. *Cf. id.* at 511 & n.17 (recognizing "the harm that judicial interference" may cause and instructing courts to give litigation such as this "the most expeditious treatment").

For all these reasons, certiorari should be denied.

I. The Court of Appeals Correctly Applied This Court's Precedents To Hold That The Committee's Subpoena Is Valid And Enforceable

As the court of appeals correctly held, "Congress's centuries-long experience issuing legislative subpoenas" and the extensive case law reviewing such subpoenas establish "principles that control [the] resolution of this case." Pet. App. 20a.

1. This Court's cases establish that "[t]he scope of [Congress's] power of inquiry . . . is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." *Barenblatt v. United States*, 360 U.S. 109, 111 (1959), *quoted at* Pet. App. 22a. "[T]he power of Congress . . . to investigate" is "co-extensive with [its] power to legislate." *Quinn v. United States*, 349 U.S. 155, 160 (1955), *quoted at* Pet. App. 21a. After all, "a legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change." *McGrain*, 273 U.S. at 175; *see also Watkins*, 354 U.S. at 200 n.33; *United States v. Rumely*, 345 U.S. 41, 43 (1953).

The court of appeals surveyed those and other decisions of this Court and distilled the controlling principles. First, Congressional committees have only the investigative powers "confer[red] upon" them by their respective Houses of Congress. Pet. App. 20a. Once a committee has been delegated the power of the Congress to conduct investigations, "that constitutional authority 'is broad.'" Pet. App. 20a-21a (quoting *Watkins*, 354 U.S. at 187, and citing four other decisions of this Court stating the same principle). "Expansive as it is, however, Congress's subpoena

power is subject to several key constraints." Pet. App. 21a. "Congress may in exercising its investigative power neither usurp the other branches' constitutionally designated functions nor violate individuals' constitutionally protected rights." *Id.* "Congress may investigate only those topics on which it could legislate." Pet. App. 22a. "[F]inally, congressional committees may subpoena only information 'calculated to' 'materially aid[]' their investigations." *Id.* (quoting *McGrain*, 273 U.S. at 177).

In addition to surveying the relevant decisions of this Court, the court of appeals surveyed the history of Congressional investigations of Presidents. Pet. App. 17a-20a. "Historical examples stretch far back in time and broadly across subject matters." Pet. App. 17a (citing examples from 1832, 1946, 1987, and the 1990s).

The court of appeals then closely scrutinized its own decision in *Senate Select Committee on Presidential Campaign Activities v. Nixon*, 498 F.2d 725 (D.C. Cir. 1974) (en banc). The court noted that, although the relevant committee there failed to make a sufficient showing to overcome a claim of executive privilege, President Nixon "apparently t[ook] no issue with the general power of congressional committees to subpoena sitting Presidents" and that, if Presidents enjoyed blanket immunity from Congressional subpoenas, "it would have been wholly unnecessary for the court to explore the subpoena's particulars." Pet. App. 19a-20a.

In any event, the power of Congress to subpoena a sitting President "is not presented here because, quite simply, the Oversight Committee has *not*

subpoenaed President Trump. Rather, the Committee has issued its subpoena to Mazars, a private accounting firm[.]" Pet. App. 22a-23a. And Petitioners did not "assert any property rights in, or executive or other recognized evidentiary privilege over, the subpoenaed information." Pet. App. 23a.

2. To evaluate Petitioners' argument that the subpoena had an unconstitutional purpose, the court of appeals "assum[ed]" that it "owe[d] Congress no deference" as to the subpoena's purpose. Pet. App. 28a. This was a conservative assumption, given this Court's repeated statements that such deference is appropriate. *E.g.*, *Watkins*, 354 U.S. at 204 ("every reasonable indulgence of legality must be accorded to the actions of a coordinate branch of our Government"); *McGrain*, 273 U.S. at 178 ("the presumption should be indulged that [legislation] was the real object" of a Congressional inquiry); *Tenney v. Brandhove*, 341 U.S. 367, 378 (1951) (an investigation is valid unless it is "obvious" that it exceeds legislative power). The court of appeals instead "[f]ollow[ed]" Petitioners' own suggestion to "rely upon 'available evidence'—that is, 'what the Committee is doing and what it has stated publicly'—to 'discern for [itself] what the Committee's *actual* purpose is.'" Pet. App. 28a (quoting in part Appellants' Br. 29-30).

Then, applying the "*actual* purpose" inquiry that Petitioners had advocated, the court below found "more than sufficient" evidence of "the Committee's interest in investigating possible remedial legislation" to support issuance of the subpoena. Pet. App. 32a.

Just as Petitioners had done in their briefing, the court of appeals attributed particular significance to

Chairman Cummings's April 12 memorandum, "in which he laid out the 'need for [the] subpoena' issued to Mazars." Pet. App. 28a (quoting the memorandum, included as Supp. App. 6a-15a); *see also Wilkinson v. United States*, 365 U.S. 399, 410 (1961) (finding legislative purpose based on Committee's authorizing resolution and statements of Committee chair). That memorandum identified the four questions (described above) that the subpoena will help answer. *See supra* p. 9. "But even more important than th[at] list, the Chairman's very next sentence explain[ed] that 'the Committee's interest in these matters informs the Committee's review of multiple laws and legislative proposals under its jurisdiction.'" Pet. App. 29a (quoting the memorandum). Such an "'express avowal of the Committee's object,'" the court of appeals held, "offers strong evidence of the Committee's legislative purpose." Pet. App. 29a (quoting *McGrain*, 273 U.S. at 178). And, "[j]ust two months earlier, Chairman Cummings articulated the same remedial legislative objective in his letter to White House Counsel." Pet. App. 29a-30a.

Further, the court of appeals noted, "the fact that the House has pending several pieces of legislation related to the Committee's inquiry" was "highly probative evidence of the Committee's legislative purpose." Pet. App. 30a; *see supra* pp. 8-9 (describing the legislation). As the court of appeals recognized, this Court has repeatedly held that, to justify an investigation, it is "certainly not necessary" that Congress "declare in advance what [it] meditate[s] doing when the investigation [i]s concluded." *In re Chapman*, 166 U.S. 661, 670 (1897); *see McGrain*, 273 U.S. at 172; *Eastland*, 421 U.S. at 509 ("To be a valid

legislative inquiry there need be no predictable end result."). Thus, the substantial legislative activity that the House *has* undertaken relevant to the subpoena—it has "even put its legislation where its mouth is" by passing one of those bills, Pet. App. 34a (referring to H.R. 1)—was compelling evidence that a "legislative purpose is being served" by the subpoena. Pet. App. 16a (quoting *Watkins*, 354 U.S. at 200).

The court of appeals rejected Petitioners' contention that the Committee's interest in whether and why President Trump had failed to comply with existing law established an illegitimate purpose. Pet. App. 32a. "[E]ven if" the presence of some other purpose could "spoil[] the Committee's otherwise valid legislative inquiry," an "interest in past illegality" is consistent with the Committee's "intent to enact remedial legislation." *Id*. After all, as the district court observed, "[h]istory has shown" that Congressional investigations of Executive wrongdoing have often "le[]d to legislation." Pet. App. 196a; *see* Pet. App. 196a-198a (describing legislation arising out of Congress's investigations of the Watergate and Teapot Dome scandals).

"Based on all the foregoing," the court of appeals correctly concluded, "in issuing the challenged subpoena, the Committee was engaged in a legitimate legislative investigation, rather than an impermissible law-enforcement inquiry." Pet. App. 40a (quotation marks and citation omitted).

3. The decision below also correctly held that the subpoena seeks information relevant to a "subject on which legislation may be had," rejecting Petitioners'

arguments to the contrary. Pet. App. 41a (quoting *Eastland*, 421 U.S. 508).

The court of appeals observed that there were several "potentially fertile grounds from which constitutional legislation" relevant to the subpoena "could flower." Pet. App. 51a. But it focused on one as a "litmus test": laws that would require the President and Presidential candidates "to do nothing more than *disclose* financial information." Pet. App. 44a.

Several such laws already exist. *See* Ethics in Government Act, 5 U.S.C. app. 4 §§ 101(a), (f)(1), 102; Foreign Gifts and Decorations Act, 5 U.S.C. § 7342(a), (c); Federal Election Campaign Act, 52 U.S.C. § 30104(a)(3)(A-B). The court below properly rejected Petitioners' argument that *all* of them—both enacted and yet unwritten—are and would be unconstitutional. Pet. App. 41a-52a; *see also* Pet. App. 41a (noting that courts must "tread carefully," because their "limited judicial role gives [them] no authority to reach out and strike down a statute before it is even enacted." (quotation and alteration marks omitted)).

Petitioners did not cite any holding of this Court or any other court for their argument that all such disclosure laws are unconstitutional. *See* Appellants' Br. 44. Instead, they relied only on Chief Justice Burger's statement in a concurrence that "*private damages actions*" against the President "impinge[] on and hence interfere[] with the independence that is imperative to the functioning of the office of a President." *Nixon v. Fitzgerald*, 457 U.S. 731, 761 (1982) (Burger, C.J., concurring) (emphasis added); *see* Appellants' Br. 44.

Even if a concurring opinion addressing damages actions stated the correct test for determining whether a *statute* violates separation-of-powers principles, there would be no reason to think that laws that require the President to merely *disclose* financial information interfere with his "efforts to 'take Care that the Laws be faithfully executed.'" Pet. App. 49a (quoting U.S. Const. art. II, § 3). "[T]he fact that every President during the last four decades," including President Trump, has filed financial disclosures under the Ethics in Government Act "offers persuasive evidence that such disclosures" impose no such burden. *Id.* What is more, the Constitution itself provides "persuasive evidence on this score." Pet. App. 45a. "[I]f the President may accept no domestic emoluments and must seek Congress's permission before accepting any foreign emoluments, then surely a statute facilitating the disclosure of such payments lies within constitutional limits." Pet. App. 45a-46a (citing U.S. Const. art. II, § 1, cl. 7; *id.* art. I, § 9, cl. 8).

"To be sure," the court below noted, "it is possible that some hypothetical [disclosure] statute could go too far" and impose unconstitutional burdens on the President. Pet. App. 49a. But, upon a searching inquiry, the court could "detect no inherent constitutional flaw" in *all* such disclosure laws—written or unwritten. Pet. App. 51a. "And that is enough" to sustain the subpoena. Pet. App. 51a.

4. Finally, the court below correctly rejected Petitioners' request that it "interpret the House Rules narrowly to deny the Committee the authority it claims" to issue the subpoena. Pet. App. 63a.

As Petitioners have repeatedly conceded, under a "literal[]" or "normal reading," the Rules authorize the subpoena. Pet. App. 63a, 66a. The Rules authorize the Committee—or its chair—"to require, by subpoena or otherwise, . . . the production of such books, records, correspondence, memoranda, papers, and documents as [they] consider[] necessary" "[f]or the purpose of carrying out any of [their] functions and duties under . . . rule X." House Rule XI.2(m)(1). Rule X, in turn, directs the Committee to "review and study on a continuing basis the operation of Government activities at all levels, including the Executive Office of the President." House Rule X.3(i). It also assigns the Committee jurisdiction over the "[f]ederal civil service . . . and the status of officers and employees of the United States," and "[g]overnment management and accounting measures generally." House Rule X.1(n). "Pursuant to this clause, the Oversight Committee has for decades exercised jurisdiction over the Ethics in Government Act," Pet. App. 64a-65a, which itself expressly applies to "the President," 5 U.S.C. app. 4 § 101(f).

As the court below observed, these grants of authority to investigate "any matter" and to study the Government "at all levels, including the Executive Office of the President," gave the Committee authority to issue the subpoena. Pet. App. 65a.

Faced with this clear language, Petitioners were forced to argue in the court of appeals that "a literal reading" of the House Rules "is not enough." Pet. App. 66a-67a. But the court of appeals quite properly rejected Petitioners' argument that a super-clear-statement rule applies to "statutes that significantly

alter the balance between Congress and the President," Pet. App. 67a (quoting Appellants' Br. 16), because the House's rules did not alter that balance: they "deal exclusively with the allocation of authority *within* the legislative branch," Pet. App. 68a. And no "grave" or "serious and difficult" constitutional questions warranted invocation of the canon of constitutional avoidance. Pet. App. 69a-70a. What is more, as the court observed, "interpreting a congressional rule differently than would the Congress itself[] is tantamount to *making* the Rules—a power that the Rulemaking Clause reserves to each House alone." Pet. App. 72a (quotation marks omitted).

Even if Petitioners' argument ever had any basis, it no longer does: After oral argument in the court of appeals, the House enacted a resolution ratifying "all subpoenas previously issued . . . concerning . . . the President in his personal or official capacity . . . [and] his . . . business entities." H. Res. 507, 116th Cong. (2019). That resolution "confirms what the Trump Plaintiffs admit—that the plain text of the House Rules authorizes the subpoena," and "provides what the Trump Plaintiffs request—that the House spell out its intention by adopting a resolution which in express terms authorizes the challenged subpoena." Pet. App. 74a (quotation marks omitted). Thus, "Congress has demonstrated its full awareness of what is at stake," *Rumely*, 345 U.S. at 46, and the court of appeals properly held that it had no justification, or authority, to require the House to provide an even clearer statement of the Committee's authority to issue the subpoena.

II. Petitioners' Contrary Arguments In This Court Present No Basis For Certiorari

Petitioners claim that this is a case of "firsts," involving "the first time that Congress has subpoenaed personal records of a sitting President" and "the first time that [it] has issued a subpoena, under the guise of its legislative powers, to investigate the President for illegal conduct." Pet. 2. Not so.

There is a long history of Congressional subpoenas for testimony and documents relating to the President, including subpoenas to third parties. *See* Ronald D. Rotunda, *Presidents and Ex-Presidents As Witnesses*, 1975 U. Ill. L.F. 1, 7 ("[H]istory furnishes several . . . instances of compelled presidential disclosures."). President Washington recognized that production of some papers "could be required of him by either House of Congress as a right." 5 Annals of Cong. 400-01, 759-60 (1796); *see also* 3 Annals of Cong. 536 (1792) (resolving "[t]hat the President of the United States" cause production of papers).

In 1846, Congress subpoenaed and took deposition testimony from several parties, including former Presidents John Tyler and John Quincy Adams, as part of an investigation into the misappropriation of government funds "placed under the special direction of the President." H.R. Rep. No. 29-686, at 9, 22-25, 27-29 (1846); H.R. Rep. No. 29-684, 8-11 (1846); *see* Rotunda, *supra*, at 7 ("The House . . . conducted the thorough investigation [President] Polk had unsuccessfully sought to prevent[.]").

In the modern era, a Senate committee subpoenaed President Nixon for the tapes of his

conversations with his former counsel John Dean. *See Senate Select Comm.*, 498 F.2d 725. More recently, the Senate Whitewater Committee issued third-party subpoenas to Sprint for White House call records, S. Rep. No. 104-280, at 49-50 (1996), and to the Rose Law Firm for billing records from the First Lady's time in private practice, *id.* at 11, 155; it also subpoenaed a White House lawyer's notes of a meeting with the President's personal lawyers, *id.* at 237, all as part of its mission to conduct oversight and make "recommendations for legislative . . . actions," S. Res. 120, 104th Cong. § 1(b)(5) (1995).

Accordingly, this is not the unprecedented case that Petitioners claim. And their specific arguments for review likewise lack merit.

1. As noted above, Petitioners here present merely a fact-bound dispute about the purpose of one subpoena. *See* Pet. 19-25.

This Court has only once in its history invalidated a Congressional subpoena because it exceeded Congress's legislative powers and usurped the functions of another branch. *Kilbourn v. Thompson*, 103 U.S. 168 (1880). "In all the argument of th[at] case no suggestion ha[d] been made of" legislation that Congress might pursue, and the resolution authorizing the investigation likewise contained "no hint of any intention" to legislate. *Id.* at 194-95. Thus "*Kilbourn* v. *Thompson* teaches that . . . an investigation into individual affairs is invalid if unrelated to any legislative purpose." *Watkins*, 354 U.S. at 198.

Here, by contrast, the court of appeals found "more than sufficient" and "highly probative evidence"

of the Committee's legislative purpose. Pet. App. 32a, 30a. Petitioners relitigate that evidence, dismissing it as "makeweight," and accusing the court below of having "refuse[d] to see what all others can see." Pet. 21 (quotation marks omitted). But none of their challenges is a basis for certiorari.

First, Petitioners cite the supposed "dragnet" nature of the requests, without specifying which requests they find unreasonable. Pet. 20. There is no need for this Court to grant certiorari to resolve a discovery dispute of this nature. This Court has upheld broadly worded Congressional subpoenas before, recognizing that their authors cannot know in advance "precisely what books and records" a respondent has. *McPhaul v. United States*, 364 U.S. 372, 382 (1960). And "[t]he very nature" of legislative investigation is "that it takes the searchers up some 'blind alleys' and into nonproductive enterprises." *Eastland*, 421 U.S. at 509.

Second, Petitioners say that the Committee has "admi[tted]" an illicit law enforcement purpose by expressing interest in the President's past compliance with law. Pet. 19-20. The very premise of this argument is wrong: to legislate effectively, Congress often needs to probe past wrongdoing or non-compliance to determine whether and why it occurred, how it could be better prevented, or whether existing law should be amended to remove prohibitions on activities currently deemed noncompliant.

This Court's cases recognize as much. The misleading nature of some of Petitioners' quotations aside, the cases teach that an avowed legislative interest in past illegality is often entirely consistent

with an intent to legislate and does not invalidate a legislative subpoena.

In *Sinclair v. United States*, 279 U.S. 263 (1929), for example, Congress had "passed a joint resolution 'reciting that [oil tycoon Harry Sinclair's] leases were executed under circumstances indicating fraud and corruption' and 'directing the President to prosecute such [cases], as were warranted by the facts.'" Pet. App. 33a-34a (quoting *Sinclair*, 279 U.S. at 289 (alteration marks omitted)). When a Senate committee then subpoenaed Sinclair to testify—for the *sixth* time—it considered a motion not to inquire about "questions [that] would involve [Sinclair's] defense" in cases "in which Mr. Sinclair [was] a defendant." *Sinclair*, 279 U.S. at 290. "[O]ne of the members said: 'Of course we will vote it (the motion) down. If we do not examine Mr. Sinclair about those matters, there is not anything else to examine him about.'" *Id.* (alteration marks omitted). "The motion was voted down." *Id.* Despite that professed interest in illegality, this Court held the subpoena a valid exercise of Congress's legislative powers because the Committee's inquiry "might directly aid in respect of legislative action." *Id. at* 295.

Hutcheson v. United States, 369 U.S. 599 (1962), makes even clearer that Congress can investigate potential illegality without engaging in impermissible law enforcement. There, a committee's authorizing resolution "directed [it] to investigate 'criminal or other improper practices in the field of labor-management relations.'" *Id.* at 616 (lead opinion of Harlan, J.); *see also id.* at 602-603 n.4, 606-607 n.12 (both quoting key statements detailing inquiries about past

illegality). And the specific "concern" of the committee's inquiry "was to discover whether . . . [union] funds . . . had been used . . . to bribe a state prosecutor." *Id.* at 616-17. Yet not one Justice—including the two in dissent—thought the committee had an improper purpose.

Justice Brennan, concurring in the result, emphasized that "[t]he congressional inquiry before us here is in sharp contrast to that in *Kilbourn*. The Select Committee was seeking factual material to aid in the drafting and adopting of remedial legislation to curb misuse by union officials of union funds—unquestionably a proper legislative purpose." *Id.* at 623. Justice Douglas, dissenting, expressly "agree[d] with the Court that the questions asked petitioner by the Committee were within its competence and were pertinent to the legislative inquiry." *Id.* at 638. Chief Justice Warren dissented on due process grounds (not lack of legislative authority) only because of a pending state indictment based on the same events. *Id.* at 635 n.9, 636 (Warren, C.J., dissenting). Despite a laser focus on past criminal activity, the Committee's inquiry into these matters was legitimate because it "supported remedial federal legislation for the future." *Id.* at 617 (opinion of Harlan, J.).

In contrast to these precedents in which the Court has allowed Congressional questioning into activities that are the subject of existing grand jury investigations or indictments of the very witnesses subjected to compulsory process, here the Committee's investigation has been especially solicitous *not* to usurp or disturb the Executive's law-enforcement functions. Chairman Cummings opened

the hearing at which Michael Cohen testified by admonishing Committee members to be "mindful of those areas where there are ongoing Department of Justice investigations," *Hearing with Michael Cohen, Former Attorney to President Donald Trump: Hearing Before the House Committee on Oversight and Reform*, 116th Cong. 7 (Feb. 27, 2019), and the Committee did not require Cohen to respond to questions that "could be part of [a law enforcement] investigation," *id.* at 151.

Third, Petitioners criticize the court of appeals for not having looked to the subpoena's "real object," "primary purpose," or "gravamen." Pet. 21. But it did. The court of appeals applied the very "*actual* purpose" test that Petitioners had advocated. *See* Pet. App. 28a, 31a. Petitioners just disagree with the fact-bound conclusion the court reached under that test.

In any event, this Court's cases have consistently recognized that subpoenas pursue multiple purposes simultaneously and that a subpoena is valid so long as a "legislative purpose is being served." *Watkins*, 354 U.S. at 200; *see Eastland*, 421 U.S. at 505 (investigation must be "related to and in furtherance of a legitimate task of Congress"); *Barenblatt*, 360 U.S. at 127 (the "question is whether this investigation was related to a valid legislative purpose"). At the same time, this Court has recognized that, "[i]n times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed." *Tenney*, 341 U.S. at 378. It has therefore disclaimed willingness to "test[] the motives of committee members," *Watkins*, 354 U.S. at 200, or the "authority to intervene" based on them,

Barenblatt, 360 U.S. at 132; *see Tenney*, 341 U.S. at 378 ("Courts are not the place for such controversies."); *see also* Pet. App. 25a-26a (noting Petitioners' agreement on this point).

Consistent with those precedents, the court of appeals concluded that "[t]he Committee's interest in alleged misconduct . . . is in direct furtherance of its legislative purpose." Pet. App. 34a.

In claiming that courts must determine a subpoena's *primary* purpose, Petitioners misrepresent the cases they quote. According to Petitioners (at 21), *McGrain*, 273 U.S. at 178, establishes that a court must determine a subpoena's "real object." What the Court actually said, however, was merely that "the subject-matter" of the subpoena "was such that the presumption should be indulged that [legislating] was the real object." *Id.* Far from suggesting that a court must go beyond that presumption and *inquire into* the "real object" of a Congressional subpoena, this Court later, on the same page, quoted with approval a state-court decision saying that "[w]e are bound to presume that the action of the legislative body was with *a* legitimate object, if it is *capable of* being so construed." *Id.* (emphasis added) (quoting *People v. Keeler*, 99 N.Y. 463, 487 (1885)).

According to Petitioners (at 14, 21, 23), *Barenblatt*, 360 U.S. at 133, establishes that a court must determine a subpoena's "primary purpose[]." But this Court merely observed that "we cannot say that the unanimous panel of the Court of Appeals which first considered this case was wrong in concluding that 'the primary purposes of the inquiry were in aid of legislative processes.'" *Id.* Far from

suggesting that a court must in every case determine a subpoena's "primary purpose[]," the Court one page earlier rejected the "contention that this investigation should not be deemed to have been in furtherance of a legislative purpose because [its] *true objective*" was something else. *Id.* at 132 (emphasis added). The Court stated in the next sentence: "So 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.*

According to Petitioners (at 21), *Kilbourn v. Thompson*, 103 U.S. 168, 195 (1880), establishes that a court must determine a subpoena's "gravamen." But *Kilbourn* did not hold that a subpoena is invalid whenever its "gravamen" is determined to be one thing or another, but instead that the entire House inquiry was invalid because it "could result in *no valid legislation* on the subject to which the inquiry referred." *Id.* (emphasis added). That was correct because "the *gravamen* of the whole proceeding" was a subject for judicial—and not Congressional—inquiry. *Id.*

Petitioners' selective quotation of individual words from lengthy opinions and their assertions that those snippets state rules of law do not present a substantial issue for this Court to review. The *holdings* of those cases, as well as others, contradict the propositions for which Petitioners cite them. And, to repeat, the court of appeals nevertheless *applied* the legal standard Petitioners urged, and reached the fact-bound conclusion that there were "legitimate legislative pursuits, not an impermissible law-

enforcement purpose, behind the Committee's subpoena." Pet. 28a; *see* Pet. App. 28a-37a, 40a.

Finally, Petitioners try to lend credibility to their argument by implying that Judge Rao accepted it below. *See* Pet. 10-11 (stating Judge Rao would "invalidate the subpoena on law-enforcement grounds"). This is not the first time Petitioners have "presse[d] the limits of advocacy." *Deutsche Bank AG*, 2019 WL 6482561, at *24 n.61. Judge Rao's dissent was premised on the distinct and novel theory that "[a]llegations that an impeachable official acted unlawfully must be pursued through impeachment," not a legislative investigation. Pet. App. 78a. As she said in the first paragraph of her dissent, "*it does not matter*" under her theory "whether the investigation also has a legislative purpose." Pet. App. 77a (emphasis added). Nowhere do Petitioners advance that contention.

2. Petitioners also ask this Court to hear this case to rule that *all* laws—enacted and yet unwritten—that "require presidents to disclose personal financial information . . . [are and] would be unconstitutional." Pet. 25-26. To accept that argument, this Court would have to strike down several existing federal statutes, *see* Ethics in Government Act, 5 U.S.C. app. 4 §§ 101(a), (f)(1), 102; Foreign Gifts and Decorations Act, 5 U.S.C. § 7342(a), (c), in addition to numerous hypothetical ones.

Disclosure laws are not the only "fertile grounds from which constitutional legislation" relevant to this subpoena "could flower." Pet. App. 51a. To invalidate this subpoena, the Court would also have to fell all such enacted and hypothetical legislation. *E.g.*,

STOCK Act, Pub. L. No. 112-105, § 9, 126 Stat. 291, 297 (2012); H.R. 1, § 8014 (prohibiting Government from entering into contracts with President).

This Court usually avoids "abstract determination[s]" of the constitutionality of statutes "on an uncertain or hypothetical state of facts," *Nashville, Chattanooga & St. Louis Ry. v. Wallace*, 288 U.S. 249, 262 (1933), and dismisses as improvidently granted writs of certiorari when a case involves "a constitutional question that may be entirely hypothetical," *Ticor Title Ins. Co. v. Brown*, 511 U.S. 117, 118 (1994). There is no reason to *grant* certiorari to address such hypothetical questions, and certainly not in a time-sensitive challenge to a Congressional subpoena. As Petitioners previously told this Court, a "subpoena . . . action [is] not the most practical [vehicle] . . . to answer broad questions broadly." Emergency App. for Stay 24 (quotation marks omitted). If the President believes financial disclosure laws are unconstitutional as applied to him, he could challenge the existing laws or veto new bills passed by Congress.

Petitioners' argument lacks merit regardless. Petitioners appear to accept that Congress can constitutionally require Presidents to disclose documents, so long as they are left in "'the custody of . . . the Executive Branch' and 'screening of the materials' . . . [is] tasked to 'the Executive Branch itself.'" Pet. 27 (quoting *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 433-34 (1977)). But Congress *could* enact financial disclosure requirements that meet those criteria. Indeed, existing law already does. *See*

5 U.S.C. app. 4 § 401(a) (Office of Government Ethics is "an executive agency").

Petitioners now also insist that all Presidential financial disclosure laws violate the Qualifications Clause. U.S. Const. art. II, § 1, cl. 5. Petitioners did not develop any such argument below. *See* Appellants' Br. 43-44. Instead, Petitioners conceded that not every law requiring the President to take (or not take) some action constitutes a "qualification." Appellants' Br. 39 ("[t]he Presidential Records Act does not add or alter the qualifications for office"); *cf. Adm'r of Gen. Servs.*, 433 U.S. 425 (upholding the constitutionality of Presidential Recordings and Materials Preservation Act).

That concession forecloses the argument Petitioners advance now. Just as the Presidential Records Act constitutionally mandates that "the President shall" preserve and maintain certain records, 44 U.S.C. § 2203(a), Congress can constitutionally require the President to disclose certain financial information without impermissibly adding to "the exclusive qualifications set forth in the text of the Constitution." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 827 (1995). No one says that Congress ever has made, or will make, compliance "a condition of holding office," Pet. 28, or appearing on the ballot, *see* Pet. 28-29.

3. Petitioners ask this Court to review whether the Rules of the 116th House of Representatives "authorize the Committee to issue this subpoena," Pet. 31, even though Petitioners have conceded that the Rules do authorize the Committee's subpoena on

a "normal" or "literal[]" reading. Pet. App. 63a, 66a. This issue plainly does not merit certiorari either.

The clear-statement rule and avoidance canon Petitioners ask the Court to apply are means of "giving effect to congressional intent, not of subverting it." *Clark v. Martinez*, 543 U.S. 371, 382 (2005); *see Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989). Here, there can be no doubt about what that intent is: If the House's literal authorization in its Rules were not enough, the entire 116th House has resolved that the Rules it adopted at the beginning of its session delegate to the Committee "power to conduct oversight into and to investigate . . . the President," and that Petitioners' contrary reading is "plainly incorrect." H. Res. 507, 116th Cong. (2019). The full House then "ratifie[d]" and "affirm[ed]" the subpoena at issue here. *Id*. Thus, far from having "insulate[d]" itself from a committee investigation, *Watkins*, 354 U.S. at 205, "Congress has demonstrated its full awareness of what is at stake," *Rumely*, 345 U.S. at 46, and that it "intended to bring into issue[] the . . . matters involved in the judicial decision," Pet. 33 (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 461 (1991)). For a court to avoid such decision—and invalidate a Congressional subpoena in the process—would be to subvert, not further, Congressional intent.

But, putting H. Res. 507 aside, the literal authorization in the House Rules *was* sufficient. "Spotting a constitutional issue does not give a court the authority to rewrite a statute as it pleases." *Jennings v. Rodriguez*, 138 S. Ct. 830, 843 (2018). Rather, the canon of constitutional avoidance "has no application

absent ambiguity," *Nielsen v. Preap*, 139 S. Ct. 954, 972 (2019) (quotation marks omitted), which, as Petitioners have conceded, does not exist here. Further, as the court of appeals held, Petitioners' challenges to the Committee's authority to issue the subpoena raise neither "grave" nor "serious and difficult" constitutional problems. Pet. App. 69a-70a; *cf. Rumely*, 345 U.S. at 42 (subpoena implicated respondent's First Amendment rights).

Nor should this Court grant certiorari to invent a super-clear-statement rule for subpoenas to parties near the President: It is "not the function of this Court to prescribe rigid rules for the Congress to follow in drafting resolutions establishing investigating committees. That is a matter peculiarly within the realm of the legislature, and its decisions will be accepted by the courts," unless the "constitutionally protected rights of individuals [are] affected" (which no one has ever asserted here). *Watkins*, 354 U.S. at 205. After all, "interpreting a congressional rule differently than would the Congress itself[] is tant-amount to *making* the Rules—a power that the Rule-making Clause reserves to each House alone." Pet. App. 72a (quotation marks omitted). Such a judicial invasion of the House's prerogative to "determine the Rules of its Proceedings," U.S. Const. art. I, § 5, cl. 2, would *create*, not avoid, constitutional concerns.

4. Finally, Petitioners ask the Court to grant certiorari to issue a "categorical" ruling not just as to this subpoena, but as to many others as well. Pet. 35. But it is not clear what "category" of subpoenas they wish the Court to review. It cannot be subpoenas that will "distract the President from his official duties,"

Pet. 35, because this subpoena is to an accounting firm and requires the President to do nothing at all. Just as Judge Katsas (in his dissent below) suggested no line separating permissible oversight from what he thought impermissible harassment, *see* Pet. App. 215a-217a, Petitioners' inability to present any sharpened legal positions counsels against an attempt by this Court to draw lines in the first instance.

In any event "[t]he remedy" for Petitioners' concerns "lies[] not in the . . . judicial authority . . . but in the people." *Barenblatt*, 360 U.S. at 132-33; *accord Tenney*, 341 U.S. at 378 ("Self-discipline and the voters must be the ultimate reliance for discouraging or correcting . . . abuses."); *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204, 226 (1821).

Two levels of the federal judiciary have reviewed and upheld the Committee's subpoena. There is no reason for this Court to provide further review. But, whatever action the Court takes, we respectfully request that it act expeditiously. *See Eastland*, 421 U.S. at 511 n.17.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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December 11, 2019

APPENDIX

APPENDIX A

RULES

of the

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

PREPARED BY

Karen L. Haas

Clerk of the House of Representatives

JANUARY 11, 2019

Rule X, clause 1

Committees and their legislative jurisdictions

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned by this clause and clauses 2, 3, and 4. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance with clause 2 of rule XII, as follows:

* * * *

(n) **Committee on Oversight and Reform.**

(1) Federal civil service, including intergovernmental personnel; and the status of officers and employees of the United States, including their compensation, classification, and retirement.

(2) Municipal affairs of the District of Columbia in general (other than appropriations).

(3) Federal paperwork reduction.

(4) Government management and accounting measures generally.

(5) Holidays and celebrations.

(6) Overall economy, efficiency, and management of government operations and activities, including Federal procurement.

(7) National archives.

(8) Population and demography generally, including the Census.

(9) Postal service generally, including transportation of the mails.

(10) Public information and records.

(11) Relationship of the Federal Government to the States and municipalities generally.

(12) Reorganizations in the executive branch of the Government.

* * * *

Rule X, clause 3

* * * *

(i) The Committee on Oversight and Reform shall review and study on a continuing basis the operation of Government activities at all levels, including the Executive Office of the President.

* * * *

Rule X, clause 4

* * * *

(c)(1) The Committee on Oversight and Reform shall—

* * * *

(B) evaluate the effects of laws enacted to reorganize the legislative and executive branches of the Government; and

* * * *

(2) In addition to its duties under subparagraph (1), the Committee on Oversight and Reform may at any time conduct investigations of any matter without

regard to clause 1, 2, 3, or this clause conferring jurisdiction over the matter to another standing committee. . . .

* * * *

Rule XI, clause 2

* * * *

Power to sit and act; subpoena power

(m)(1) For the purpose of carrying out any of its functions and duties under this rule and rule X (including any matters referred to it under clause 2 of rule XII), a committee or subcommittee is authorized (subject to subparagraph (3)(A))—

(A) to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings as it considers necessary; and

(B) to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.

* * * *

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. _____

DONALD J. TRUMP, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, THE TRUMP CORPORATION, DJT HOLDINGS LLC, THE DONALD J. TRUMP REVOCABLE TRUST, TRUMP OLD POST OFFICE LLC, PLAINTIFFS

v.

ELIJAH E. CUMMINGS, PETER KENNY, MAZARS USA LLP, DEFENDANTS

Filed: April 22, 2019

COMPLAINT

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* * * *

8. Plaintiff Donald J. Trump is the 45th President of the United States. President Trump brings this suit solely in his capacity as a private citizen.

* * * *

APPENDIX C

ONE HUNDRED SIXTEENTH CONGRESS

CONGRESS OF THE UNTED STATES
HOUSE OF REPRESENTATIVES

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074
http://oversight.house.gov

MEMORANDUM

April 12, 2019

To: Members of the Committee on Oversight and Reform

Fr: Chairman Elijah E. Cummings

Re: Notice of Intent to Issue Subpoena to Mazars USA LLP

This memorandum provides Committee Members with notice of my intent to issue a subpoena to Mazars USA LLP for documents the company has informed the Committee it cannot produce without a subpoena. Consistent with the bipartisan agreement reached at the Committee's organizational meeting on January 29, 2019, I am attaching a copy of the subpoena and providing 48 hours for Members to convey their views. Also consistent with the agreement, I am informing Committee Members that we will not have a business meeting to consider this subpoena. We will be in recess for the next several

weeks, and the calendar does not permit scheduling a mark-up without causing undue delay to the investigation. Nevertheless, I am seeking feedback through a poll of individual Member offices, which are requested to provide any information they would like to be considered on their positions with respect to this subpoena.

I. NEED FOR SUBPOENA

On February 27, 2019, President Trump's longtime former attorney, Michael Cohen, testified before the Committee that the President altered the estimated value of his assets and liabilities on financial statements—including inflating or deflating the value of assets depending on the purpose for which he intended to use the statements.[1]

Recent news reports have raised additional concerns regarding the President's financial statements and representations.[2]

To corroborate these claims, Mr. Cohen produced to the Committee financial statements from 2011, 2012, and 2013, that raise serious questions about the

---

[1] Committee on Oversight and Reform, *Hearing with Michael Cohen, Former Attorney to President Donald Trump* (Feb. 27, 2019) (online at https://oversight.house.gov/legislation/hearings/with-michael-cohen-former-attorney-to-president-donald-trump).

[2] *Trump's Alleged Financial Fraud Creates an Important New Vulnerability,* MSNBC (Mar. 1, 2019) (online at www.msnbc.com/rachel-maddow-show/trumps-alleged-financial-fraud-creates-important-new-vulnerability); *How Donald Trump Inflated His Net Worth to Lenders and Investors*, Washington Post (Mar. 28, 2019) (online at www.washingtonpost.com/graphics/2019/politics/trump-statements-of-financial-condition/).

President's representations, particularly relating to his debts. Several statements were prepared by Mazars.

On March 20, 2019, the Committee sent a letter to Mazars requesting information on how these financial statements and other financial disclosures were prepared, including the financial statements themselves and communications relating to their preparation.[3]

On March 27, 2019, counsel to Mazars sent a response letter explaining that, pursuant to the company's legal obligations, Mazars cannot voluntarily turn over the documents "unless disclosure is made pursuant to, among other things, a Congressional subpoena."[4]

II. INTENT TO SEEK VIEWS OF MEMBERS

Based on this clear-cut record, I intend to issue a subpoena on Monday to obtain the documents sought by the Committee, and I intend to do so consistent with the bipartisan agreement reached during the Committee's organizational meeting on January 29, 2019.

---

[3] Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Victor Wahba, Chairman and Chief Executive Officer, Mazars USA LLP (Mar. 20, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-03-20.EEC%20to%20Wahba-Mazars.pdf).

[4] Letter form Jerry D. Bernstein, Counsel for Mazars USA LLP, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 27, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/docurnents/Mazars%20response%20letter%2003-27-2019_Redacted.pdf).

According to that agreement, a subpoena "should be used only when attempts to reach an accommodation with a witness have reached an impasse or when necessary to obtain certain sensitive information, such as financial information, or through a so-called 'friendly' subpoena to protect a witness." That condition has been met.

The agreement also states: "The Chair intends to consult with the Ranking Member by providing his office with a physical copy of the subpoena at least two days (48 hours) before it is issued." This condition will be met by Monday.

The agreement also states: "when the Ranking Member objects, the Committee will have an open proceeding and a vote when feasible." It also states that "[t]here will be exceptions to this policy," such as when "the calendar does not permit the Committee to schedule a markup." It also states: "But even in this case, the Chair intends to be open with the Ranking Member and give him every opportunity to voice his opinion on the matter."

Consistent with this condition, I am providing this memorandum to all Members with background on the subpoena, and I encourage the Ranking Member and all other Committee Members to inform my office of their views and positions on this subpoena. This is a courtesy I was never extended in the previous eight years during which I served as Ranking Member.

III. THE RANKING MEMBER'S UNPRECEDENTED ACTIONS

Finally, I want to address troubling actions taken by Ranking Member Jordan relating to this and other Committee investigations. On March 27, 2019,

Ranking Member Jordan sent a letter directly to Mazars—a custodian of records being sought by the Committee—as part of an effort to urge the company not to comply with the Committee's legitimate request or cooperate with the Committee's duly authorized investigation.[5]

It is not an understatement to call the Ranking Member's action unprecedented. In my entire tenure in Congress, regard less of how much I and my Democratic colleagues may have disagreed with the Committee's actions, I never would have publicly encouraged noncompliance by a custodian of records. Obviously, such actions undermine the authority of the Committee and impair its investigations.

In his letter to Mazars, Ranking Member Jordan wrote: "We write to express to you our concerns with the Chairman's inquiry as exceeding the Committee's legislative authority under House Rule X." He also wrote: "his inquiry does not appear to have a valid legislative purpose and instead seems to seek information to embarrass a private individual."

However, the Ranking Member's letter to Mazars omitted the fact—cited repeatedly by Republican Chairmen—that under House Rule X, the Committee has broad latitude to investigate "any matter at any time." His letter also omitted the fact that documents already obtained by the Committee—on their face—

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[5] Letter from Ranking Member Jim Jordan, Committee on Oversight and Reform, and Ranking Member Mark Meadows, Subcommittee on Government Operations, to Victor Wahba, Chairman and Chief Executive Officer, Mazars USA LLP (Mar. 27, 2019) (online at https://republicans-oversight.house.gov/wp-content/uploads/2019/03/2019-03-27-JDJ-MM-to-Wahba-Mazars-re-EEC-Letter-to-Mazars.pdf).

raise grave questions about whether the President has been accurate in his financial reporting.

The Ranking Member's letter also omitted multiple instances in which Republicans investigated the finances of "private individuals." For example, Ranking Member Jordan personally attended the deposition of Sidney Blumenthal as part of the Benghazi investigation, during which Mr. Blumenthal was forced to answer questions about his salary and compensation from private sources—topics that had nothing to do with the attacks in Benghazi.[6]

Unfortunately, the Ranking Member's letter to Mazars is not an isolated incident. He has written similarly troubling—and baseless—letters to recipients of other legitimate Committee requests, including on skyrocketing drug prices and agency compliance with the Freedom of Information Act.

IV. CONCLUSION

The Committee has full authority to investigate whether the President may have engaged in illegal conduct before and during his tenure in office, to determine whether he has undisclosed conflicts of interest that may impair his ability to make impartial policy decisions, to assess whether he is complying with the Emoluments Clauses of the Constitution, and to review whether he has accurately reported his finances to the Office of Government Ethics and other federal entities. The Committee's interest in these matters informs its review of multiple laws and

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[6] Select Committee on Benghazi, *Interview of Witnesses, Volume 4 of 11, Deposition of Sidney Blumenthal*, 114th Cong. (June 16, 2015) (online at www.govinfo.gov/content/pkg/CHRG-l14hhrg 22298/pdf/CHRG-114hhrg22298.pdf).

legislative proposals under our jurisdiction, and to suggest otherwise is both inaccurate and contrary to the core mission of the Committee to serve as an independent check on the Executive Branch.

Members who wish to provide information relating to their views on this subpoena may email them by 11 a.m. on Monday, April 15, 2019, to the Clerk's office.

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Mazars USA LLP

You are hereby commanded to be and appear before the Committee on Oversight and Reform of the House of Representatives of the United States at the place, date, and time specified below.

☑ **to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2157 Rayburn House Office Building, Washington DC 20515

Date: April 29, 2019 Time: 12:00 (noon)

☐ **to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____ Time: _____

□ **to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____ Time: _____

To any authorized staff member or the U.S . Marshals Service to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, D.C. this ___ day of _____, 20___.

_____

Chairman or Authorized Member

Attest:

_____

Clerk

SCHEDULE A

With respect to Donald J. Trump, Donald J. Trump Revocable Trust, the Trump Organization Inc., the Trump Organization LLC, the Trump Corporation, DJT Holdings LLC, the Trump Old Post Office LLC, the Trump Foundation, and any parent, subsidiary, affiliate, joint venture, predecessor, or successor of the foregoing:

1. All statements of financial condition, annual statements, periodic financial reports, and independent auditors' reports prepared, compiled, reviewed, or audited by Mazars USA LLP or its predecessor, WeiserMazars LLP;

2. Without regard to time, all engagement agreements or contracts related to the preparation, compilation, review, or auditing of the documents described in Item Number 1;

3. All underlying, supporting, or source documents and records used in the preparation, compilation, review, or auditing of documents described in Item Number 1, or any summaries of such documents and records relied upon, or any requests for such documents and records; and

4. All memoranda, notes, and communications related to the preparation, compilation, review, or auditing of the documents described in Item Number 1, including, but not limited to:

    a. all communications between Donald Bender and Donald J. Trump or any employee or representative of the Trump Organization; and

b. all communications related to potential concerns that records, documents, explanations, or other in formation, including significant judgments, provided by Donald J. Trump or other individuals from the Trump Organization, were incomplete, inaccurate, or otherwise unsatisfactory.

Unless otherwise noted, the time period covered by this subpoena includes calendar years 2011 through 2018.