No. 19A545

IN THE

Supreme Court of the United States

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

v.

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

On Application for Stay of the Mandate of the United States Court of Appeals for the District of Columbia Circuit

OPPOSITION TO EMERGENCY APPLICATION FOR A STAY OF MANDATE

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OPPOSITION TO
EMERGENCY APPLICATION FOR A STAY OF MANDATE

Applicants ask this Court to halt the functions of a coordinate branch of government by restraining a valid Congressional inquiry and quashing a subpoena issued to a private accounting firm. That request should be denied.

Two hundred twenty days—almost one-third of the 116th Congress's term—have elapsed since the Committee on Oversight and Reform of the United States House of Representatives issued a subpoena to the accounting firm Mazars USA, LLP, seeking non-privileged financial records relating to President Donald J. Trump and certain of his business entities. Faithfully applying this Court's precedents addressing Congressional subpoenas, two levels of the federal judiciary have upheld that subpoena as valid and enforceable. Each concluded that the Committee issued the subpoena in furtherance of a valid legislative purpose and that the subpoena seeks documents relevant to a subject about which Congress could enact legislation. Although there were dissents from the panel opinion and from the denial of rehearing en banc, no one has ever contended that the opinion below conflicts with any decision of another court of appeals.

Applicants have not shown that this case warrants review by this Court or that there is a fair prospect of reversal of the judgment below. The only issues Applicants raise for this Court's consideration are: (1) a fact-bound dispute over the purpose of the subpoena; (2) a claim that *all* laws—enacted and yet unwritten—requiring the President and Presidential candidates to make financial disclosures are and would be unconstitutional; and (3) a moot issue about whether the House's

rules mean what all agree they literally say. None of those issues was decided incorrectly below; and, even if Applicants' extravagant legal claims had any merit, this time-sensitive case would be a poor vehicle to address them. Nor have Applicants demonstrated that any harm they will suffer if Mazars responds to the subpoena outweighs the severe harm that Congress would suffer by being deprived of information it urgently needs to exercise its constitutional functions.

This Court should deny a stay. If it does not, the Committee respectfully requests that the Court condition any stay on a requirement that Applicants file a certiorari petition on or before December 2, 2019, to ensure that this Court may consider this case on an expedited basis this Term, if it does grant certiorari.

BACKGROUND

1. The Constitution vests "[a]ll legislative Powers" in Congress. U.S. Const., art. I, § 1. This Court has long recognized that Congress's power to conduct oversight and investigations—a "power of inquiry[,] with process to enforce it—is an essential and appropriate auxiliary to the legislative function." *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927). Congress "cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change." *Id.* at 175. Accordingly, Congress's power to investigate is "broad." *Watkins v. United States*, 354 U.S. 178, 187 (1957).

2. This case arises out of a subpoena that the Committee on Oversight and Reform (the "Committee") issued to Mazars USA, LLP ("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." Appendix to Emergency Application for Stay ("App.") 56; *see* 5 U.S.C. 4 app. §§ 101 *et seq*. The Committee's jurisdiction also "includes financial-disclosure and other ethics-in-government laws." App. 56 (citing House Rule X.1(n)). In addition, the Committee has jurisdiction over the Government Services Administration ("GSA") and the "management of government operations and activities" generally. House Rule X.1(n)(6).

To fulfill its duties and functions, 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)).

3. Consistent with its broad jurisdiction and principal investigative role, the Committee has undertaken a series of investigations concerning government ethics and conflicts of interest throughout the Executive Branch, the accuracy of President Trump's financial disclosures, GSA's 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. Among other issues, the Committee is investigating whether senior government officials, including the President, are acting in the country's best interest and not in their own financial interest, whether federal agencies are operating free from

financial conflicts and with accurate information, and whether any legislative reforms are needed to ensure that these fundamental principles are respected.

A common thread in each of these inquiries is the accuracy of statements made by President Trump on various financial disclosures. President 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. Rep. No. 116-40, at 156 (2019). The subpoena challenged here, which seeks financial documents and records from the longtime accountant of Applicants, is intended to shed light on the accuracy of President Trump's disclosures, and thereby to inform the Committee's oversight of the Executive Branch and its consideration of remedial legislation.

One of the Committee's investigations was prompted by an error that the Office of Government Ethics identified last year in President Trump's financial disclosures. App. 4. Specifically, the Office determined that, in 2017, President Trump had failed to report a liability that was reportable under the Ethics in Government Act. App. 4. The liability arose out of a payment made by Mr. Michael Cohen, President Trump's former personal lawyer, to a third party. App. 4.

The Office's identification of this error led the Committee to request documents from the White House related to President Trump's payments to Mr. Cohen. App. 5. In correspondence with the White House concerning that request, then-Committee Chairman Elijah Cummings cited "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.'" App. 6. Importantly, Chairman Cummings explained that 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." App. 6. The White House did not produce the documents requested.

Later, 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. App. 6 (quoting Mr. Cohen's testimony). After Committee members questioned that testimony, Mr. Cohen produced to the Committee several accounting documents, including 2011 and 2012 "Statements of Financial Condition" prepared for Mr. Trump by Mazars. App. 6-7. Therefore, on March 20, 2019, Chairman Cummings wrote to Mazars to request several categories of documents relating to President Trump's accounts, including documents used to prepare the Statements of Financial Condition for President Trump and his related business entities. App. 7-8.[1] Mazars replied that it could not provide the documents voluntarily. App. 8.

4. 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

[1] *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.

President Trump's business. In January 2019, the GSA Office of Inspector General issued a report finding that there were "serious shortcomings" in the GSA's 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 Clauses.[2] In April 2019, Chairman Cummings wrote to the GSA Administrator, explaining that the Committee was "investigating the federal lease for the Old Post Office Building" and requesting that GSA provide the Committee several categories of documents, including documents "referring or relating to Mazars USA LLP."[3]

5. That same day, April 12, 2019, Chairman Cummings wrote a memorandum to Committee members describing his intent to issue a subpoena to Mazars. App. 8. The memorandum identified four subjects that the Committee had authority to investigate: (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." App. 8; *see also* Respondent's Supplemental Appendix ("Supp. App.") 4 (Chairman Cummings's

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

[3] Letter from the Honorable Elijah E. Cummings, Chairman, House Comm. on Oversight & Reform, *et al.*, to the Honorable Emily Murphy, Adm'r, Gen. Servs. Admin., at 1, 3 (Apr. 12, 2019), https://perma.cc/RB7F-XS2H.

April 12 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." App. 8 (quoting Supp. App. 4).

Chairman Cummings issued the subpoena at issue here on April 15, 2019, directing Mazars to comply by April 29, 2019. App. 8-9. Before the subpoena's response date, Applicants 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* App. 144-84.

The parties agreed to an expedited briefing schedule on appeal and "to suspend the time for production set by the subpoena during the pendency of th[e] appeal." Joint Mot. to Expedite Appeal at 2 (D.C. Cir. May 22, 2019). The parties agreed that the "pendency of the appeal" would end when the D.C. Circuit's mandate issued.

6. On October 11, 2019, the court of appeals affirmed the district court by a 2-1 vote. *See* App. 1-134. First, the court rejected Applicants' argument that an impermissible law enforcement purpose invalidated the subpoena. The court "[a]ssum[ed]" for the sake of argument that it "owe[d] Congress no deference" as to

the subpoena's purposes and "[f]ollow[ed]" *Applicants'* suggestion to determine those purposes based on the "available evidence." App. 25 (quoting Appellants' Br. 29-30). Applying well-established precedent from this Court, the court of appeals held that the subpoena had a proper purpose. The court found the repeated "references to specific problems" in Chairman Cummings's April 12 memorandum and in the Committee's other correspondence, "together with actual legislation now pending, . . . more than sufficient to demonstrate the Committee's interest in investigating possible remedial legislation." App. 28 (quotation marks and citation omitted). "At bottom," the court of appeals explained, "this subpoena is a valid exercise of the legislative oversight authority because it seeks information important to determining the fitness of legislation to address potential problems within the Executive Branch." App. 50 (emphasis omitted).

The court also rejected Applicants' other arguments. The court declined to rule that all existing and potential laws requiring financial disclosures by the President and Presidential candidates are unconstitutional, and so concluded that "the challenged subpoena seeks 'information about a subject on which legislation may be had.'" App. 45 (quoting *Eastland*, 421 U.S. at 508). In addition, the court held that the House had authorized the Committee to issue the subpoena with sufficient clarity, App. 60-64, and observed that, even if it had not, "several weeks after oral argument in this case . . . the full House adopted a resolution that in no uncertain terms 'ratified and affirmed'" the subpoena at issue here, App. 63 (quoting H. Res. 507, 116th Cong. (2019)).

Judge Rao dissented, on grounds not advanced by any party or amicus (including the Department of Justice). She reasoned that the House of Representatives may seek "information about the President's wrongdoing," even from third parties, only after taking some formal step to invoke the House's impeachment powers. App. 67. She concluded that it therefore did "not matter whether the [Committee's] investigation also has a legislative purpose." App. 67. *But see* App. 22 ("all parties here agree that 'a permissible legislative investigation does not become impermissible merely because it might expose law violations'" (quoting Appellants' Br. 33)).

On November 7, 2019, the court of appeals denied the Committee's motion to expedite the mandate and Applicants' cross-motion to stay the mandate. On November 13, the court denied rehearing en banc over dissents by Judge Katsas (joined by Judge Henderson), *see* App. 138-39, and by Judge Rao (joined by Judge Henderson), *see* App. 140-42.

On November 15, Applicants filed an emergency application with this Court, seeking a stay of the mandate and an administrative stay pending disposition of their application. Thereafter, the Committee notified the Court that it would not oppose a ten-day administrative stay. *See* Letter from Douglas N. Letter to Mr. Scott Harris, Clerk (Nov. 18, 2019). The Chief Justice ordered an administrative stay of the mandate, pending further order by this Court.

ARGUMENT

I. A Stay Should Be Denied

An applicant for a stay "must demonstrate (1) a reasonable probability that this Court will grant certiorari, (2) a fair prospect that the Court will then reverse the decision below, and (3) a likelihood that irreparable harm [will] result from the denial of a stay." *Maryland v. King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers) (quotation marks omitted). These conditions "are *necessary* [but] not necessarily sufficient" to grant a stay. *Barnes v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1304 (1991) (Scalia, J., in chambers). Before granting a stay, this Court also must (4) "balance the equities—[by] explor[ing] the relative harms to applicant and respondent, as well as the interests of the public at large." *Id.* at 1305 (quotation marks omitted). "Where there is doubt, it should inure to the benefit of those who oppose grant of the extraordinary relief which a stay represents." *Williams v. Zbaraz*, 442 U.S. 1309, 1316 (1979) (Stevens, J., in chambers).

A. The D.C. Circuit's opinion is correct, is not in conflict with any decision by another court of appeals, and is unlikely to be reviewed or reversed by this Court.

Subpoenas have "long been held to be a legitimate use by Congress of its power to investigate." *Eastland*, 421 U.S. at 504. "The fact that the subpoena in this case seeks information that concerns the President of the United States adds a twist[.]" App. 65. But the President brought this suit in his individual capacity and the subpoena does not seek information that is subject to any "executive or other recognized evidentiary privilege." App. 21. This case therefore does not raise

"grave" or "serious and difficult" constitutional questions. App. 61 (quotation and alteration marks omitted).

1. None of Applicants' arguments warrants review or is likely to result in reversal.

a. Applicants' first argument presents a fact-bound dispute about the purpose of the Mazars subpoena: starting from the false premise that a subpoena can have only one "purpose," Applicants argue that the Committee's purpose is "law enforcement, not legislating." Stay App. 16; *see* Stay App. 16-19. Both courts below correctly rejected that argument. The court of appeals did so even after "assuming" for the sake of argument that it "owe[d] Congress no deference" as to the subpoena's purposes, and even "[f]ollowing" Applicants' own suggestion to "rely upon available evidence . . . to discern for [itself] what the Committee's *actual* purpose is." App. 25 (quoting in part Appellants' Br. 29-30). The D.C. Circuit identified "more than sufficient" evidence of "the Committee's interest in investigating possible remedial legislation" to support issuance of the subpoena. App. 28.

That evidence included: (1) the Committee's own repeated statements that its inquiry was in pursuit of such legislation, App. 28; (2) "the fact that the House has pending several pieces of legislation related to the Committee's inquiry," App. 27 (describing this as "highly probative evidence of the Committee's legislative purpose"), and (3) the fact that "the House has even put its legislation where its

mouth is" by passing one of those bills, App. 30 (referring to H.R. 1);[4] *accord* App. 27 (also noting that, to justify an investigation, "'[i]t is certainly not necessary' for Congress to identify future legislation 'in advance'" (quoting *In re Chapman*, 166 U.S. 661, 670 (1897)). Thus, the court of appeals found, "this subpoena is a valid exercise of the legislative oversight authority because it seeks information important to determining the fitness of legislation to address potential problems within the Executive Branch." App. 50.

Applicants dismiss all of this evidence as "magic words," Stay App. 17, but they provide no reason to suggest that this Court would evaluate the House's substantial legislative activity and the Committee's repeated statements of its legislative purpose any differently than did the court of appeals. This is a purely fact-bound dispute: the court of appeals determined the subpoena's purposes according to the test Applicants advocated and also recognized that the "mere assertion of a need to consider remedial legislation may not alone justify an investigation." App. 28 (quotation marks omitted). After scrutinizing the record of

[4] 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.'" App. 27 (quoting H.R. 1, 116th Cong. § 8012 (2019)). Other bills related to the Committee's inquiry include H.R. 706, which would prohibit the President and Vice President from conducting business directly with the federal government, H.R. 706, 116th Cong. § 241 (2019); H.R. 745, which "would amend the Ethics in Government Act to make the Director of the Office of Government Ethics removable only for cause," App. 27 (citing H.R. 745, 116th Cong. § 3 (2019)); H.R. 681, which would extend anti-nepotism laws to the White House Office and Executive Office of the President, H.R. 681, 116th Cong. (2019); and H.R. 391, which would require public reporting of ethics waivers obtained by Executive Branch appointees, H.R. 391, 116th Cong. (2019).

legislative materials before it, the court found that the Committee's stated purposes and the House's demonstrated activity amounted to much more than so-called magic words. *See* App. 28 (finding that this case does not involve "an insubstantial, makeweight assertion of remedial purpose"). That determination is not worthy of this Court's review, or likely to be reversed if the Court does grant review.

To convince this Court otherwise, Applicants spend a considerable part of their application quoting the Chairman's and Committee members' statements that they were interested in whether the President had complied with the law. *See* Stay App. 6-7, 16-19. But, as this Court's cases establish, "an interest in past illegality can be wholly consistent with an intent to enact remedial legislation." App. 29; *see* App. 29-31 (discussing *Hutcheson v. United States*, 369 U.S. 599 (1962) and *Sinclair v. United States*, 279 U.S. 263 (1929)). Although the Committee's investigation was prompted, in part, by the Office of Government Ethics' determination that President Trump had failed to comply with existing law, as the district court found, "[h]istory has shown" that Congressional investigations of Executive wrongdoing "can lead to legislation." App. 172; *see* App. 172-73 (describing legislation arising out of Congress's investigations of the Watergate and Teapot Dome scandals).

What is more, this Court's cases have consistently recognized that subpoenas pursue multiple purposes simultaneously and that it is the *presence* of a valid legislative purpose, not the absence of any other purpose, that determines their lawfulness. *See*, *e.g.*, *Hutcheson*, 369 U.S. at 617 (holding subpoena valid even though the "Committee's concern . . . was to discover whether . . . [union] funds . . .

had been used . . . to bribe a state prosecutor"); *Sinclair*, 279 U.S. at 290 (holding subpoena valid even though a committee member had said that, "[i]f we do not examine Mr. Sinclair about th[e] matters [for which he was being prosecuted], there is not anything else to examine him about"). Consistent with these precedents, the court of appeals concluded that "[t]he Committee's interest in alleged misconduct . . . is in direct furtherance of its legislative purpose." App. 31.

In claiming that courts must determine a subpoena's *only* purpose, Applicants misrepresent the cases they quote. According to Applicants (at 18), *McGrain v. Daugherty*, 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 (N.Y. 1885)).

According to Applicants (at 14, 18), *Barenblatt v. United States*, 360 U.S. 109, 133 (1959), establishes that a court must determine a subpoena's "primary purpose[]." All this Court wrote, however, was 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). Contrary to Applicants' misreading of the case, 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 Applicants (at 18), *Kilbourn v. Thompson*, 103 U.S. 168, 195 (1880), establishes that a court must determine a subpoena's "gravamen." But *Kilbourn* held not that a subpoena is invalid whenever its "gravamen" is determined to be one thing or another, but instead that the entire House inquiry there was invalid because it "could result in *no valid legislation* on the subject to which the inquiry referred." *Id.* (emphasis added). That was the case because "the *gravamen* of the whole proceeding" there was a subject for judicial—and not Congressional—inquiry. *Id.*

Applicants' selective quotation of individual words from lengthy opinions and their assertions that those snippets state rules of law does not present a substantial issue for this Court to review. That is especially true because the *holdings* of those cases, as well as others, contradict the propositions for which Applicants cite them. This Court has repeatedly reaffirmed that courts must determine whether a valid legislative purpose is *present*, not whether some other purpose is *absent*. That is

undoubtedly why no judge of the court of appeals—not Judge Rao in either of her dissents or Judge Katsas in his dissent from the denial of rehearing en banc—expressed agreement with Applicants on the primary issue they say this Court should review.

b. Applicants also want this Court to decide whether "laws requiring the President to make financial disclosures [are] constitutional." Stay App. 19. But, as Applicants themselves recognize, a "subpoena-enforcement action" is "not the most practical method of inducing courts to answer broad questions broadly." Stay App. 24 (quotation marks omitted). This case presents a particularly poor vehicle for this Court's sweeping review of that broad question.

The court of appeals discussed the constitutionality of disclosure laws in the context of determining that the Mazars subpoena concerned a subject on which legislation "may be had." App. 45 (quoting *Eastland*, 421 U.S. at 508). In conducting this inquiry, the court recognized that it must "tread carefully," because courts' "limited judicial role gives [them] no authority to reach out and strike down a statute before it is even enacted." App. 36 (quotation marks omitted). Addressing potential laws that "would require the president to do nothing more than *disclose* financial information," App. 38, the court rejected Applicants' claim "that the Constitution prohibits even these," App. 39. After carefully assessing the Constitution's text, this Court's precedents, statutes, and historical practice, *see* App. 39-44, the court concluded that "Congress can require the President to make reasonable financial disclosures without upsetting" the balance of powers, App. 44.

The court further observed that such financial disclosure laws were only one of the many "potentially fertile grounds from which constitutional legislation" relevant to the subpoena "could flower." App. 45.

Rejecting the court of appeals' caution, Applicants want this Court to strike down all Presidential disclosure laws, both existing laws and all hypothetical laws that could ever be written. *See* Stay App. 19-22; *see also* App. 40-41 (citing certain existing laws, including the Foreign Gifts and Decorations Act, 5 U.S.C. § 7342(c), and the Ethics in Government Act, 5 U.S.C. app. 4 § 102(a)).

But there is no reason to think that the court of appeals decided this question incorrectly. Applicants' argument that Presidential financial disclosure laws unconstitutionally alter or expand the qualifications to serve as President under *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), is incorrect. In *Thornton*, the Court held that a law prohibiting long-term incumbents from appearing on the ballot was unconstitutional because it (1) had "the likely effect of handicapping a class of candidates and [(2)] ha[d] the sole purpose of creating additional qualifications indirectly." *Id*. at 836. Financial disclosure laws suffer from neither of those flaws, as they require only disclosure of information.

Even if there were valid grounds for challenging the court of appeals' conclusion, this is the wrong case for this Court to review this issue. This Court avoids "abstract determination[s]" of the constitutionality of hypothetical, unenacted statutes "on an uncertain or hypothetical state of facts." *Nashville, C. & St. L. Ry. v. Wallace*, 288 U.S. 249, 262 (1933). And making such an abstract

determination as to the constitutionality of all conceivable Presidential financial disclosure laws in a time-sensitive challenge to the constitutionality of a Congressional subpoena would be particularly unwarranted. If the President believes financial disclosure laws are unconstitutional as applied to him, he could challenge those existing laws or veto new bills passed by Congress.

c. Finally, Applicants' argument that the House Rules "do not authorize" the subpoena concerns an issue that is neither important enough for this Court's review nor relevant any longer to this case. Stay App. 22; *see* Stay App. 22-26. As Applicants have acknowledged, "literally read, the [House] Rules permit the Committee to issue the challenged subpoena." App. 58 (citing Appellants' Reply Br. 49); *see* App. 55 (noting same concession at oral argument). Applicants intend to ask this Court to invent a super-clear-statement rule that would require the House to amend its Rules to expressly authorize subpoenas concerning the President (in a case where the subpoena was issued to a third-party records custodian). Stay App. 22-23. 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. After all, "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." App. 62 (quotation marks omitted).

But even if Applicants' request had any basis, it is no longer relevant. 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." App. 64 (quotation marks omitted). There is no reason for this Court to take up this moot issue.

2. In dissenting from the court of appeals' decision denying rehearing en banc, Judge Katsas suggested that this case "presents exceptionally important questions regarding the separation of powers," App. 138, but he did not say what those questions are. It has long been "settled that the President is subject to judicial process in appropriate circumstances." *Clinton v. Jones*, 520 U.S. 681, 703-04 (1997) (citing *United* States *v. Burr*, 25 F. Cas. 30 (No. 14,692d) (C.C. Va. 1807) (Marshall, C.J.)). Here, as in *Clinton v. Jones*, the President does not claim that the information sought concerns his "action[s] taken in an official capacity." *Id.* at 694. The subpoena at issue here is not directed to the President; in any event, this Court has "unequivocally and emphatically endorsed" the view that "a subpoena *duces tecum* could be directed to the President." *Id.* at 703-04 (citing *United States v. Nixon*, 418 U.S. 683 (1974)).

This Court therefore has established that even a private citizen may invoke the courts' subpoena power against the President in appropriate cases. In light of

that settled law, it would hardly make sense to say that Congress, a coordinate branch, cannot use its own subpoena power in a matter involving the President.

The subpoena here is directed to an accounting firm. "This is hardly the first subpoena Congress has issued[;] legislative subpoenas are older than our country itself[.]" App. 11. This Court has repeatedly upheld Congress's ability to issue such subpoenas. *See*, *e.g.*, *Eastland*, 421 U.S. 491 (1975); *Barenblatt*, 360 U.S. 109 (1959); *Sinclair*, 279 U.S. 263 (1929). This Court has upheld such subpoenas issued to third parties close to Executive officials. *E.g.*, *McGrain v. Daugherty*, 273 U.S. at 152, 179-80 (upholding subpoena to brother of Attorney General and rejecting "objection to the investigation that it might possibly disclose crime or wrongdoing on [the Attorney General's] part"). What is more, Congress has long issued process to obtain documents from Presidents and persons close to them, so that "such interactions . . . can scarcely be thought a novelty." *Jones*, 520 U.S. at 704; *see* Appellee's Response to Amicus Curiae Br. for the United States, at 4-7 (describing, among other things, Congress's subpoena of law firm billing records discovered in the White House Residence during the Whitewater investigation and its use of statutory process to obtain President Nixon's tax records).

Judge Katsas suggested that greater judicial superintendence of Congress's interactions with the President and parties close to him is required, but Judge Katsas did not suggest any line that would distinguish between constitutionally permissible oversight and impermissible Congressional harassment. The lack of any sharpened legal positions, and the absence of any party advancing such

positions, counsel against any attempt by this Court to draw such lines in the first instance. Finally, Judge Katsas's suggestion that the subpoena should be reviewed and quashed because it seeks *unprivileged* materials gets things backward. App. 138-39. That factor counts *in favor* of prompt production, not against it.

As Judge Katsas's dissent from rehearing en banc reflects, this case was litigated in both courts below on the premise that the subpoenaed accounting records are unprivileged. *See* App. 138 ("this case involves personal records and no privilege assertion"); *see also* App. 20-21 ("Nor do the Trump Plaintiffs assert any property rights in, or executive or other recognized evidentiary privilege over, the subpoenaed information."). Applicants' privilege assertion in this Court (at 28 n.2) was not raised in merits briefing below and is forfeited. Moreover, it reinforces that this case—in which Applicants advance arguments accepted by *no* judge below as well as arguments not even raised below—is not suitable for review by this Court.

3. Applicants do not ask this Court to adopt the reasoning advanced by Judge Rao's panel dissent, and this Court should not do so. No party or amicus below advanced Judge Rao's novel theory that investigations concerning potential wrongdoing by an impeachable official may be pursued only through formal impeachment proceedings. *See* App. 22 ("all parties here agree that 'a permissible legislative investigation does not become impermissible merely because it might expose law violations[]'" (quoting Appellants' Br. 33)). Judge Rao's arguments have not been vetted by adversarial briefing in any court. *See Dep't of Transp. v. Ass'n of Am. R.Rs.*, 135 S. Ct. 1225, 1234 (2015) (This Court is "a court of final review and

not first view."). And, as the majority observed, "no case law supports the dissent." App. 49.

Further, Judge Rao's sweeping rationale, if adopted, would force the House at a very early stage of an investigation to pursue the impeachment of any impeachable officer without first informing itself about the scope or significance of the conduct at issue, and without gathering sufficient information to determine whether new legislation would serve the country better than an impeachment inquiry. As the majority below observed, that approach would force "Congress to abandon its legislative role at the first scent of potential illegality and confine itself exclusively to the impeachment process." App. 46.

4. Finally, there is an additional reason that the case is not fit for this Court's review: the House is now engaged in an impeachment inquiry, which would, under both Applicants' and Judge Rao's theory, justify the subpoena issued here. *See, e.g.*, Appellants' Br. 45 ("While Congress could presumably use subpoenas to advance [its] nonlegislative [impeachment] powers, the Committee has not invoked them."); App. 70. Thus, even if the Court were to grant review and reverse, the House could quickly issue a new subpoena that should satisfy their objections.

This is not an argument on the merits that "a defective subpoena can be revived by after-the-fact approval," as Judge Rao incorrectly characterized it in her dissent from denial of rehearing en banc. App. 141. Instead, it is a reason that this Court should deny discretionary review. There is no need for this Court to make

definitive pronouncements on the scope of Congress's powers in a case in which its ruling will be so limited in application and consequence.

B. The irreparable harm that a stay would cause Congress and the public outweighs whatever harm enforcement of the subpoena would cause Applicants.

"Before issuing a stay, it is ultimately necessary to balance the equities—to explore the relative harms to applicant and respondent, as well as the interests of the public at large." *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017). Contrary to Applicants' suggestion (at 13), the Court considers the balance of equities in *all* cases, not just in the subset of cases thought to be "close" ones. *See id.*; *Barnes*, 501 U.S. at 1304-05; *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (balance of equities must be considered "[i]n each case" before awarding the "extraordinary remedy" of a preliminary injunction).

Here, each day of delay harms Congress by depriving it of important information it needs to carry out its constitutional responsibilities. That harm outweighs any harm Applicants might suffer from Mazars' compliance with the subpoena.

1. "[T]he House, unlike the Senate, is not a continuing body." *Eastland*, 421 U.S. at 512. Its current term ends on January 3, 2021. The House has "pending several pieces of legislation related to the Committee's inquiry." App. 27. But Congress "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. Legislation cannot be enacted overnight; the opportunity

for the Committee to receive the information sought by the subpoena, evaluate its relevance to potential legislation, incorporate that information into a bill or bills, and push that legislation through the entire bicameral process diminishes by the day and may be lost well before January 3, 2021.

Applicants' response is to argue that the information the Committee seeks would not be all that useful to the House's legislative agenda and that none of the House's proposed legislation will be enacted. *See* Stay App. 30. But courts correctly refuse to second-guess "[t]he wisdom of congressional approach or methodology" or to judge "the legitimacy of a congressional inquiry" by whether it has a "predictable end result." *Eastland*, 421 U.S. at 509 (citing *Doe v. McMillan*, 412 U.S. 306, 313 (1973)); *see id.* at 506 ("The courts should not go beyond the narrow confines of determining that a committee's inquiry may fairly be deemed within its province."). After all, even if Applicants were correct that agreement with the Senate is at present unlikely, the information the House seeks could, once obtained, change legislators' minds and make what once seemed unlikely inevitable. *See* App. 34 (Congress's "preferred path forward may shift as members educate themselves on the relevant facts and circumstances.").

The subpoenaed documents are also essential to the Committee's oversight of the Executive Branch. Congress requires the "necessary constitutional means" to preserve the "distribution of . . . powers" and to "control the abuses of government." FEDERALIST NO. 51; *see also United States v. Rumely*, 345 U.S. 41, 43 (1953) ("It is the proper duty of a representative body to look diligently into every affair of

government[.]"). The Committee is examining whether federal officials—including the President—are making decisions in the Nation's best interest and not for their own gain.

The House's rapidly advancing impeachment inquiry also makes it particularly important that Congress not be deprived of the information sought by the subpoena. It matters little that the Committee did not originally seek the information in question pursuant to the House's impeachment power. Now that the House is exercising its grave constitutional responsibilities under that power, it should be fully informed with all the information to which it is entitled—including information it had previously sought for legislative purposes. There is no requirement that this Court, in balancing the equities, be blind to all the harms that depriving Congress of information would cause simply because some of the harms were not present at the beginning of the case. *See*, *e.g.*, *United States v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953) ("The chancellor's decision is based on all the circumstances.").

For substantially similar reasons, "the interests of the public at large," *Barnes*, 501 U.S. at 1305, are furthered, not harmed, by an informed Congress.

2. Applicants do not articulate any valid reason why any harm they would suffer without a stay would outweigh the harms to Congress and the public if a stay were granted. *See id*.

Their primary argument is that, without a stay, they may be deprived of the opportunity for this Court's review. Stay App. 26-29. But the President has no

right to this Court's review of every case in which he seeks it. *See*, *e.g.*, *Office of President v. Office of Indep. Counsel*, 525 U.S. 996 (1998); *Rubin v. United States*, 525 U.S. 990 (1998), and *Office of President v. Office of Indep. Counsel*, 521 U.S. 1105 (1997) (each denying certiorari in cases in which information concerning the President was ordered to be disclosed).

This Court also should reject Applicants' argument that they are at least entitled to a stay pending certiorari: it cannot be the case that the President has the right to stall any Congressional subpoena to which he objects through the months or years that it takes for a challenge to work its way through the lower courts and for this Court then to grant or deny certiorari. If that were the case, the House—which has only a two-year term—would be radically constrained in its ability to conduct oversight or to collect information about the Executive Branch. *Cf. Office of President v. Office of Indep. Counsel*, No. A-108, 1998 WL 438524, at *1 (U.S. Aug. 4, 1998) (Rehnquist, C.J., in chambers) (denying stay pending certiorari in case concerning information about the President); *Rubin v. United States*, 524 U.S. 1301, 1302 (1998) (Rehnquist, C.J., in chambers) (same); *Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319 (1994) (Rehnquist, C.J., in chambers) (denying Senator's request for stay of Congressional subpoena pending certiorari).

Applicants' suggestion is even less appropriate now, as the House is conducting an impeachment inquiry. The President certainly has no right to dictate the timetable by which third parties provide information that could potentially be

relevant to that inquiry, or to enlist this Court's aid in doing so on the basis of arguments that have been rejected by each court to have considered them.

Further, the documents the Committee seeks from Mazars do not contain trade secrets, privileged information, or other highly sensitive information (such as law enforcement information). That distinguishes this case from all the cases they cite.[5] That the information is "confidential," according to Applicants, and that they do not want Mazars to produce it, Stay App. 27-28, does not establish any more irreparable harm than exists in routine civil discovery disputes.

Nor does the fact that the subpoena to Mazars seeks the personal financial records of the President change the calculus, particularly given "[t]he history of past Presidents' financial disclosures." App. 41; *see* App. 40-42. "In fact, Presidents Carter, Reagan, H.W. Bush, Clinton, W. Bush, and Obama . . . release[ed] their personal federal income tax returns to the public." App. 42. Although the political consequences of the release of the information sought here might differ from past

[5] *See* Stay App. 27-31 (citing *Eastland*, 421 U.S. at 492-93 (concerning "records of an organization which claims a First Amendment privilege status for those records"); *John Doe Agency v. John Doe Corp.*, 488 U.S. 1306 (1989) (Marshall, J., in chambers) (apprising targets of a law enforcement investigation); *Mikutaitis v. United States*, 478 U.S. 1306, 1307 (1986) (Stevens, J., in chambers) (information subject to Fifth Amendment privilege that may be "used by the Soviet Union in a criminal proceeding against" applicant); *Araneta v. United States*, 478 U.S. 1301, 1305 (1986) (information subject to Fifth Amendment privilege); *Maness* v. *Meyers*, 419 U.S. 449, 460 (1975) (same); *Providence Journal Co. v. Fed. Bureau of Investigation*, 595 F.2d 889, 889 (1st Cir. 1979) (the "results of an unauthorized and illegal wiretap"); *Airbnb, Inc. v. City of New York*, 373 F. Supp. 3d 467, 499-500 (S.D.N.Y. 2019) (the "names and addresses of hosts" and other "sensitive information" the seizure of which would likely violate the Fourth Amendment); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bishop*, 839 F. Supp. 68, 71 (D. Me. 1993) ("trade secrets, customer lists, and other confidential information")).

administrations, "[t]o expect judges to take account of political consequences—and to assess the high or low degree of them—is to ask judges to do precisely what they should not do." *Cheney v. U.S. Dist. Court for D.C.*, 541 U.S. 913, 920 (2004) (Scalia, J., in chambers). If anything, any heightened significance of the information underscores the importance that the information be promptly provided to Congress. And, further, "[t]he courts must presume that the committees of Congress will exercise their powers responsibly and with due regard for the rights of affected parties." *Exxon Corp. v. FTC*, 589 F.2d 582, 589 (D.C. Cir. 1978).

For these reasons, the "likelihood that denying the stay will permit irreparable harm to the applicant [does] not clearly exceed the likelihood that granting it will cause irreparable harm to others." *Barnes*, 501 U.S. at 1305. Any harm Applicants might suffer, even if "likely," would be "vastly less severe," *id.*, than the harm in depriving the peoples' representatives of information they need to exercise their constitutional responsibilities wisely before their time for doing so expires. Accordingly, the stay request should be denied.

II. If The Court Nevertheless Grants a Stay, It Should Order Expedited Briefing On Applicants' Forthcoming Petition For Certiorari

If the Court grants the stay, the Committee requests that the Court order expedited briefing of Applicants' forthcoming petition for certiorari.[6] Applicants should be required to file their petition for certiorari by December 2, 2019, and the Committee will then file its brief in opposition by December 11, so that the Court

[6] Alternatively, the Court could treat the stay application as a petition for certiorari. *See, e.g.*, *Nken v. Mukasey*, 555 U.S. 1042, 1042 (2008); *Purcell v. Gonzalez*, 549 U.S. 1, 2 (2006).

may consider the petition at its conference of December 13. *See, e.g.*, *Int'l Refugee Assistance Project*, 137 S. Ct. at 2085 (at Solicitor General's request, response to certiorari petition ordered to be filed within 12 days of petition). Such "expeditious treatment," *Eastland*, 421 U.S. at 511 n.17, would reduce, at least to some extent, the serious harms a stay would cause to Congress.

CONCLUSION

For the foregoing reasons, the application for a stay should be denied.

Respectfully submitted,

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November 21, 2019

RESPONDENT'S SUPPLEMENTAL APPENDIX

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ELIJAH E. CUMMINGS, MARYLAND
CHAIRMAN

ONE HUNDRED SIXTEENTH CONGRESS

JIM JORDAN, OHIO
RANKING MINORITY MEMBER

Congress of the United 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]

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[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/).

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

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.

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[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/documents/Mazars%20response%20letter%2003-27-2019_Redacted.pdf).

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, regardless 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—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.

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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).

[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-114hhrg22298/pdf/CHRG-114hhrg22298.pdf).

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 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 information, 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.