IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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,

Plaintiffs,

v.

MAZARS USA LLP,

Defendant,

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM OF THE U.S. HOUSE OF REPRESENATIVES,

Intervenor-Defendant.

Case No. 1:19-cv-01136-APM

OPPOSITION OF INTERVENOR-DEFENDANT COMMITTEE ON OVERSIGHT AND REFORM OF THE U.S. HOUSE OF REPRESENTATIVES TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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Intervenor-defendant the Committee on Oversight and Reform of the U.S. House of Representatives (Committee) submits this response in opposition to the motion for a preliminary injunction (Apr. 22, 2019) (ECF No. 11) (Pls.' Mem.) filed by Donald J. Trump (in his individual, not Presidential, capacity), 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 (Trump or plaintiffs). Plaintiffs seek extraordinary relief that, if granted, would directly impede ongoing Congressional investigations of national importance and threaten the Constitutional system that separates and divides power between the branches of government.

INTRODUCTION

Trump's request here for a preliminary injunction betrays a fundamental misunderstanding of the powers of the Legislative Branch under the Constitutional scheme established by the Framers. And Trump's view of the powers of Congress is blatantly inconsistent with many decades of Supreme Court precedent.

Congress's power to conduct oversight and investigations is firmly rooted in the separation of powers that undergirds our Constitutional framework. As one of the Framers explained, they intended Congress to conduct investigations as the British House of Commons had—as "the grand inquest of the state . . . diligently inquir[ing] into grievances, arising from both men and things." 2 James Wilson, *The Works of James Wilson* 29 (James DeWitt Andrews ed., 1896). Congress, therefore, is to "play its part in preserving the balance of powers through its possession and exercise of three vital powers: the power to authorize war; the power of the purse; and *the power of investigation*." 1 *Congress Investigates: A Documented History 1792-1974*, at i (Arthur M. Schlesinger, Jr. & Roger Burns eds., 1983) (emphasis added).

Contrary to Trump's allegation that the Committee here is merely attempting to "expose for the sake of exposure," Pls.' Mem. at 10 (quoting *Watkins v. United States*, 354 U.S. 178, 200

(1957)), the Committee is actually investigating the numerous and serious constitutional, conflict of interest, and ethical questions raised by the personal financial holdings of Trump, even as he serves as President, as well as those of other high-ranking government officials.

The Committee's investigations have already revealed that many of these conflicts of interest have been obscured from the public by inaccurate and incomplete disclosures and, as a result, the Committee is determining what legislation is required to ensure full public confidence in the officials charged with executing the nation's laws. The Committee is exercising its oversight and investigative powers in a manner wholly consistent with Congress's traditional purposes: to consider and enact legislation, oversee the administration of programs, monitor how taxpayer money is being spent, and inform the public. In the words of one well-known Congressional scholar:

> Quite as important as legislation is vigilant oversight of administration. . . . It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. . . . The informing function of Congress should be preferred to its legislative function.

Woodrow Wilson, *Congressional Government* 195, 198 (Dover ed. 2006) (1885).

Rather than afford the Committee's legitimate investigations into these serious issues of national importance the respect and deference to which they are entitled, Trump and his companies have treated Congress as a mere nuisance and continually engaged in stonewalling intended to obstruct and undermine these inquiries in every possible way. This suit is Trump's latest delay tactic and attempt to prevent the Committee from obtaining the critical information it requires to make an informed judgment about matters squarely within its legislative and oversight jurisdiction. By bringing suit against defendant Mazars USA LLP (Mazars), Trump aims to do indirectly what longstanding Supreme Court precedent unambiguously prevents him

from doing directly—namely, quash a valid Congressional subpoena. *See Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 505-06 (1975).

Trump's attacks on the Committee's investigations amount to nothing more than political histrionics and hyperbole. Trump has provided no legally cognizable grounds sufficient to establish any likelihood of success on the merits, much less a substantial one. His disapproval of the Committee's investigations and its efforts to obtain relevant information from Mazars, a third party, does not create a legal basis for this Court to grant the relief sought.

Accordingly, the motion for a preliminary injunction should be denied.

BACKGROUND

I. The Committee's Investigations of Government Ethics and Financial Disclosures

Shortly after commencement of the 116th Congress, the Committee on Oversight and Reform—the principal investigative Committee of the House—began to investigate and conduct oversight regarding the following topics: Presidential financial disclosures and information required to be submitted to the Office of Government Ethics;[1] government ethics throughout the Executive Branch; potential conflicts of interest related to senior Executive Branch officials; possible constitutional violations flowing from the President's continued interest in his financial

[1] *See* Letter from the Honorable Elijah E. Cummings, Chairman, House Comm. on Oversight & Reform, to Emory A. Rounds III, Dir., Office of Gov't Ethics (Jan. 22, 2019) (requesting documents relating to the President's reporting of debts and payments relating to women alleging extramarital affairs) (attached as Exhibit A to Declaration of Greta G. Gao); Letter from the Honorable Elijah E. Cummings, Chairman, House Comm. on Oversight & Reform, to Pat Cipollone, Counsel to the President (Jan. 8, 2019) (same), https://tinyurl.com/Jan8CummingsCipolloneLetter; Letter from the Honorable Elijah E. Cummings, Chairman, House Comm. on Oversight & Reform, to George A. Sorial, Exec. Vice President and Chief Compliance Officer, Trump Org. (Jan. 8, 2019) (same), https://tinyurl.com/Jan8CummingsSorialLetter.

holdings,[2] including President Trump's financial interest in the Trump International Hotel, Washington, D.C., under a federal lease administered by the General Services Administration (GSA); any financial disclosures used to obtain that lease; and GSA's ongoing management of that lease.[3]

Many of these investigations share at their core the principle that senior government officials, including the nation's Chief Executive, should act in the country's best interest, not their own personal financial interest. They stem, in part, from the President's refusal to liquidate his business interests and place the assets in a truly independent trust to insulate himself from even the perception of a conflict of interest. As part of these investigations, the Committee requested documents from, among others, the White House, the Trump Organization, the Office of Government Ethics, and GSA, and requested interviews of officials such as former Deputy White House Counsel for Ethics and Compliance Stefan Passantino and President Trump's personal attorney, Sheri Dillon.

After the White House declined to produce requested documents—and the Office of Government Ethics provided new information raising questions about the accuracy of President Trump's financial disclosures—the Committee renewed its request for documents from the

[2] *See* Letter from the Honorable Elijah E. Cummings, Ranking Member, House Comm. on Oversight & Reform, to Sheri Dillon, Counsel to Donald Trump, and George A. Sorial, Exec. Vice President and Chief Compliance Officer, Trump Org. (Dec. 19, 2018), https://tinyurl.com/Dec19CummingsDillonLetter.

[3] *See, e.g.*, Letter from the Honorable Elijah E. Cummings, Ranking Member, House Comm. on Oversight & Reform, et al., to Timothy Horne, Acting Adm'r, Gen. Servs. Admin. (June 5, 2017), https://tinyurl.com/June5CummingsHorneLetter; Letter from the Honorable Elijah E. Cummings, Ranking Member, House Comm. on Oversight & Reform, et al., to Timothy Horne, Acting Adm'r, Gen. Servs. Admin. (July 6, 2017), https://tinyurl.com/July6CummingsHorneLetter; Letter from the Honorable Elijah E. Cummings, Chairman, House Comm. on Oversight & Reform, et al., to Timothy Horne, Acting Adm'r, Gen. Servs. Admin. (Apr. 12, 2019), https://tinyurl.com/Apr12CummingsHorneLetter.

White House, citing its "plenary authority to legislate and conduct oversight regarding compliance with ethics laws and regulations."[4] As the Committee explained to the White House, the Committee's legislative jurisdiction covers the Ethics in Government Act of 1978, "which requires federal officials to publicly disclose financial liabilities that could affect their decision-making on behalf of the American people."[5] The Committee made clear that its investigations into "how existing laws are being implemented and whether changes to the laws are necessary . . . includ[ing] [to] laws relating to financial disclosures required of the President."[6]

At the same time the Committee has been investigating the accuracy and completeness of the President's financial disclosures and other related issues, the House introduced H.R. 1, "a historic reform package to restore the promise of our nation's democracy, end the culture of corruption in Washington, and reduce the role of money in politics to return the power back to the American people."[7] As Chairman Cummings stated when H.R. 1 was introduced, "[o]ver the last two years, President Trump set the tone from the top in his Administration that behaving ethically and complying with the law is optional. . . . This bill includes a number of reforms that will strengthen accountability for executive branch officials—including the President."[8] One of

[4] Letter from the Honorable Elijah E. Cummings, Chairman, House Comm. on Oversight & Reform, to Pat Cipollone, Counsel to the President 7 (Feb. 15, 2019), https://tinyurl.com/Feb15CummingsCipolloneLetter.

[5] *Id.*

[6] *Id.* at 9.

[7] Press Release, Speaker of the House Nancy Pelosi, Pelosi Remarks at Press Event on Introduction of H.R. 1, For the People Act (Jan. 4, 2019), https://tinyurl.com/HR1Remarks. The bill was referred to the Committee on Oversight and Reform (among others) on January 3, 2019, and discharged from the Committee on March 4. *See Committees: H.R. 1—116th Congress (2019-2020)*, Congress.gov, https://tinyurl.com/HR1Committees.

[8] Press Release, House Comm. on Oversight & Reform, Chairman Cummings Issues Statement on H.R. 1 (Jan. 4, 2019), https://tinyurl.com/CummingsHR1PressRelease.

those reforms would "[r]equire[] the President and the Vice President to file a new financial disclosure report within 30 days of taking office."[9] Indeed, H.R. 1 includes numerous provisions for reforming the financial disclosures of government officials and candidates for office, including disclosures of potential or actual Presidential conflicts of interest. H.R. 1, 116th Cong., tit. VIII (2019). If enacted, H.R. 1 would require, among other things, that the President and Vice President "divest of all financial interests that pose a conflict of interest" by either converting those interests to cash or investments that satisfy ethics rules or placing those interests in a qualified blind trust or disclosing information about business interests. *Id.* § 8012.

Although the House passed H.R. 1 on March 8, 2019, the legislative process remains ongoing. Following Senate consideration, the bill may either return to the House with amendments, or a conference committee may be established to resolve any differences between the two chambers, before being sent to the President for his signature or veto. *See* U.S. Const. art. I, § 7, cl. 2.

In addition, several other bills have been introduced and referred to the Committee that address these and related issues. These include a bill to strengthen the Office of Government Ethics, *see* H.R. 745, 116th Cong. (2019), and a bill proposing to prohibit the President and Vice President from conducting business directly with the Federal Government, *see* H.R. 706, 116th Cong. (2019). The Committee also continues to examine whether additional measures are necessary to strengthen financial disclosure laws given what one former senior ethics official has described as the law's inadequacies as applied to this Administration: "The financial disclosure

[9] *Id.*

rules are the result of compromises and are antiquated . . . They were built for another day and time—not for the complicated financial entanglements of the Trump administration."[10]

On February 27, 2019, while H.R. 1 was under consideration in the House, the Committee convened a hearing as part of its investigations into President Trump's compliance with financial disclosure requirements and potential conflicts of interest.[11] At the hearing, the President's former attorney Michael Cohen testified that financial statements allegedly prepared by Mazars may have included false statements about President Trump's assets and liabilities.[12] In particular, Cohen testified that it was his "experience that Mr. Trump inflated his total assets when it served his purposes . . . and deflated his assets to reduce his real estate taxes."[13] To corroborate his claims, Cohen produced to the Committee portions of financial statements from 2011, 2012, and 2013, some of which were prepared by Mazars.[14]

Given that the Committee had already obtained substantial evidence that President Trump had improperly omitted other liabilities from his federal financial disclosures—namely, hundreds of thousands of dollars in expenditures made by Cohen on Trump's behalf during the 2016

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[10] Chase Peterson-Withorn, *What You (Don't) Know About Trump: The Huge Holes in Disclosure Rules and How They Could Be Fixed*, Forbes (Oct. 24, 2018, 12:07 PM), https://tinyurl.com/ForbesDisclosureRules (quoting Ambassador Norm Eisen, former Special Counsel for Ethics and Government Reform at the White House).

[11] *See Michael Cohen, Former Attorney to President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. (2019) (Cohen Testimony), https://tinyurl.com/CohenHearing.

[12] *See id.* 13, 19.

[13] *See id.* (noting that Cohen was providing three years of the President's personal financial statements in which the President inflated his assets in requesting a loan to buy a professional football team and *Forbes* magazine).

[14] WeiserMazars LLP, Donald J. Trump: Statement of Financial Condition (June 30, 2011); WeiserMazars LLP, Donald J. Trump: Statement of Financial Condition (June 30, 2012); Donald J. Trump: Summary of Net Worth as of March 31, 2013. These documents are collectively attached as Exhibit B to Declaration of Greta G. Gao.

presidential campaign[15]—the allegation that Trump altered his assets and liabilities even before assuming office raised grave questions about his potential conflicts of interest after being elected, whether they are adequately captured by and reflected in his financial disclosures submitted during the campaign or while in office, and whether it would be effective and appropriate to reform financial disclosure or other laws in order to ensure transparency and prevent conflicts of interest.

II. The Committee Issues a Subpoena to Mazars

Following Cohen's testimony and as part of the investigations described above, the Committee wrote to Mazars on March 20, 2019, seeking information on how certain financial statements and other financial disclosures were prepared for Trump and various of his business entities in this suit.[16] As the letter explained, the Committee had reviewed the information provided by Cohen and identified several specific concerns about the President's reporting of his assets and liabilities, including concerns about whether and to whom the President owes significant debts identified in the financial statements.[17] The letter also identified potential differences between the Mazars financial statements and the President's financial disclosures. For example, the 2012 financial statement prepared by Mazars did not include assets or liabilities relating to the Trump International Hotel and Tower in Chicago and Trump International Hotel in Las Vegas, but then-candidate Trump's 2015 financial disclosure form and subsequent disclosures listed more than $75 million in debt connected to the Chicago property and assets of

[15] *See* Cohen Testimony 13-14.

[16] Letter from the Honorable Elijah E. Cummings, Chairman, House Comm. on Oversight & Reform, to Victor Wahba, Chairman and Chief Exec. Officer, Mazars USA LLP (Mar. 20, 2019), https://tinyurl.com/Mar20CummingsLetter.

[17] *Id.* at 3.

more than $50 million for the Las Vegas property during the same period (but no debts).[18] Accordingly, the Committee requested from Mazars documents and information relating to the firm's preparation, review, and auditing of financial statements for Trump and his business entities.

Mazars informed the Committee that it could not voluntarily provide the requested documents without a Congressional subpoena.[19] After discussions between the Committee and Mazars, the Committee issued a subpoena to Mazars on April 15, 2019, seeking financial statements, supporting documents, and related communications.[20] The same day, Trump's counsel requested that Mazars provide notice of its intent to comply with the subpoena in time to allow a challenge to the subpoena in court.

III. Trump Files Suit to Prevent Mazars from Complying with the Subpoena

On April 22, 2019, five business days before the subpoena return date, counsel for Trump notified the Committee that he had filed this suit challenging the subpoena to Mazars. After being contacted by the Court, counsel for all parties reached agreement on an accelerated briefing schedule, which the Court entered, with a hearing set for May 14, 2019.

ARGUMENT

PLAINTIFFS ARE NOT ENTITLED TO A PRELIMINARY INJUNCTION

Plaintiffs' motion for a preliminary injunction should be denied because the Committee's subpoena to Mazars seeks information squarely within the Committee's legislative and oversight

[18] *Id.* at 2.

[19] Letter from Jerry D. Bernstein, BlankRome LLP, Outside Counsel to Mazars USA LLP, to the Honorable Elijah E. Cummings, Chairman, House Comm. on Oversight & Reform (Mar. 27, 2019), https://tinyurl.com/Mar27MazarsLetter.

[20] Subpoena from House Comm. on Oversight & Reform to Mazars USA LLP (Apr. 15, 2019) (Pl. Ex. A to Application for TRO (Apr. 22, 2019) (ECF No. 9-1)).

jurisdiction, and compliance with the subpoena would not injure any of the interested parties. "A preliminary injunction is 'an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.'" *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)).

To demonstrate entitlement to a preliminary injunction, a litigant must show "(1) a substantial likelihood of success on the merits, (2) that it would suffer irreparable injury if the injunction is not granted, (3) that an injunction would not substantially injure other interested parties, and (4) that the public interest would be furthered by the injunction." *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 746 (D.C. Cir. 1995). "When seeking a preliminary injunction, the movant has the burden to show that all four factors, taken together, weigh in favor of the injunction." *Abdullah v. Obama*, 753 F.3d 193, 197 (D.C. Cir. 2014) (quotation marks omitted).[21]

I. Plaintiffs Cannot Demonstrate a Substantial Likelihood of Success on the Merits

The best argument for denial of plaintiff's request for an injunction here is provided by a series of Supreme Court decisions, which themselves draw on historical practice stretching back to the earliest days of our Republic. We therefore cite liberally from these Supreme Court rulings, which demonstrate what we said at the outset: Trump's suit reflects a seriously uninformed and mistaken view of the powers of Congress. An injunction in Trump's favor here

[21] The D.C. Circuit has traditionally evaluated the four injunction factors on a sliding scale, but several Circuit Judges have correctly read the Supreme Court's decision in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008), "at least to suggest, if not to hold, 'that a likelihood of success is an independent, free-standing requirement for a preliminary injunction.'" *Sherley*, 644 F.3d at 393 (quoting *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1296 (D.C. Cir. 2009) (Kavanaugh, J., concurring, joined by Henderson, J.)). In light of *Winter*, the sliding-scale approach is no longer valid, and likelihood of success is an indispensable prerequisite to injunctive relief. Regardless of the approach this Court applies, however, plaintiffs here cannot satisfy the factors necessary to obtain a preliminary injunction.

would constitute a radical departure from many decades of law established by the Supreme Court.

A. The Constitution Confers Broad Investigatory Powers on Congress

The Supreme Court has consistently recognized that Congress's authority to obtain information necessary to conduct oversight and investigations is extremely broad. *See, e.g.*, *Eastland*, 421 U.S. at 504 n.15 ("[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." (quotation marks omitted)). The Supreme Court has stated that Congress's "power to secure needed information by [compulsory process] has long been treated as an attribute of the power to legislate . . . [and] is an essential and appropriate auxiliary to the legislative function." *McGrain v. Daugherty*, 273 U.S. 135, 161, 174 (1927); *see also, e.g.*, *Barenblatt v. United States*, 360 U.S. 109, 111 (1959) ("The power of inquiry has been employed by Congress throughout our history, over the whole range of the national interests concerning which Congress might legislate or decide upon due investigation not to legislate[.]"); *Bean LLC v. John Doe Bank*, 291 F. Supp. 3d 34, 43 (D.D.C. 2018) (similar).

As an essential aspect of Congress's constitutionally based oversight and investigative authority, the Supreme Court has made clear that the "[i]ssuance of subpoenas . . . has long been held to be a legitimate use by Congress of its power to investigate." *Eastland*, 421 U.S. at 504. The Court has further explained:

> 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; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and

> when the Constitution was framed and adopted. In that period the power of inquiry, with enforcing process, was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed, was treated as inhering in it.

McGrain, 273 U.S. at 175; *see also Buckley v. Valeo*, 424 U.S. 1, 138 (1976) (same), *superseded on other grounds by statute as recognized by McConnell v. FEC*, 540 U.S. 93 (2003); *Eastland*, 421 U.S. at 504-05 (same). In upholding Congress's broad power to investigate, the Supreme Court has pointed out that James Madison and others "who had taken an important part in framing the Constitution" were Members of the House of Representatives who, in recognition of Congress's power to investigate, voted in favor of an inquiry into the Executive Branch. *McGrain*, 273 U.S. at 161.

Pursuant to the Constitution's Rulemaking Clause, U.S. Const. art. I, § 5, cl. 2, which provides that "[e]ach House [of Congress] may determine the Rules of its Proceedings," the House of Representatives has delegated extensive oversight and investigative authority to its Committees. *See* Rule XI.1(b)(1), Rules of the House of Representatives (116th Cong.) (House Rules)[22] ("Each committee may conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities under rule X [providing for Committees' jurisdiction].").

B. The Committee's Power to Investigate

The Committee on Oversight and Reform is the House's primary investigative Committee. Unlike other standing Committees of the House, the Committee on Oversight and Reform is expressly authorized to investigate and conduct oversight into matters beyond the specific subjects within its legislative jurisdiction, including "the operation of Government

[22] *Available at* https://tinyurl.com/HouseRules116thCong.

activities at all levels, including the Executive Office of the President." House Rule X.3(i). Further, of critical importance here, House Rule X empowers the Committee to "at *any time* conduct investigations of *any matter* without regard to [the] clause conferring jurisdiction over the matter to another standing committee," and it authorizes the Committee to conduct these investigations to make "findings and recommendations" to other House committees of jurisdiction. House Rule X.4(c)(2) (emphases added). In other words, the Committee's investigative jurisdiction is conterminous with the jurisdiction of the entire House of Representatives and is intended to inform not only its own legislative function, but the legislative functions of all the other House Committees.

To carry out its extensive legislative, investigative, and oversight responsibilities, the Committee is empowered to issue subpoenas for testimony and documents. *See* House Rule XI.2(m)(1)(B); Rule 12(g), Rules of the House Comm. on Oversight and Reform (116th Cong.) (Committee Rules).[23]

The Supreme Court has instructed that the role of the courts in reviewing the Committee's investigations is narrow and limited. *Barenblatt*, 360 U.S. at 132 ("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."). Unlike in disputes regarding civil discovery, where "a rational legislative purpose is present for investigating a particular person, organization, or institution[,] [t]here is no requirement that every piece of information gathered in such an investigation be justified before the judiciary." *McSurely v. McClellan*, 521 F.2d 1024, 1041 (D.C. Cir. 1975), *vacated on other grounds by McSurely v. McClellan*, 553 F.2d 1277, 1280 (D.C. Cir. 1976) (en banc) (per curiam); *see also Townsend v.*

[23] *Available at* https://tinyurl.com/CORRules116thCong.

United States, 95 F.2d 352, 361 (D.C. Cir. 1938) ("A legislative inquiry anticipates all possible cases which may arise thereunder and the evidence admissible must be responsive to the scope of the inquiry, which generally is very broad.").

The Supreme Court, moreover, has recognized that a Congressional investigation may lead "up some 'blind alleys' and into nonproductive enterprises. To be a valid legislative inquiry there need be no predictable end result." *Eastland*, 421 U.S. at 509.

Given that the Committee's inquiry here involves serious constitutional questions and legitimate concerns about government ethics, there can be no question about its public importance. Despite what Trump argues, the Supreme Court has established that it is not the function of this Court to adjudicate the motivations of the Committee or second-guess the Committee's reasonable determinations regarding the need for this information. *Id.* at 508 (instructing that when "determining the legitimacy of a congressional act, [courts] do not look to the motives alleged to have prompted it"); *see also, e.g.*, *Bean LLC*, 291 F. Supp. 3d at 44 (holding that courts "lack[] the authority to restrict the scope of the Committee's investigation" and stating that they "*may not* [] engage in a line-by-line review of . . . Committee[] requests" (emphasis added)).

C. The Committee Has a Valid Legislative Purpose

Trump asserts that Mazars should be enjoined from compliance with the Committee's subpoena because it "is not supported by a legitimate legislative purpose." Pls.' Mem. at 11. Quite the opposite is true. As the Supreme Court has made clear, this Court's examination should be limited to whether the Committee's inquiry is authorized under House Rules (which it is), and whether plaintiffs can demonstrate that the subpoena is "plainly incompetent or irrelevant to any lawful purpose," *McPhaul v. United States*, 364 U.S. 372, 381 (1960), which they cannot. As explained above, the Committee's subpoena to Mazars expressly relates to

numerous investigations consistent not only with the Committee's legislative jurisdiction, but also its broad oversight and investigative mandate. *See supra* pp. 8-9.

In an attempt to satisfy their burden, plaintiffs advance several arguments to support their claim that the Committee's subpoena is invalid. Each is unavailing.

1. Supreme Court Precedent Does Not Require the Committee to Identify Any Particular Legislation Being Considered

Plaintiffs contend that the subpoena is invalid because "Chairman Cummings has *never* identified a single piece of legislation he is considering." Pls.' Mem. at 11 (emphasis in original). The Committee, however, has no obligation—legal or otherwise—to identify a specific piece of legislation it is considering. The Supreme Court requires only that the subject matter of the legislative inquiry be "one on which legislation *could* be had." *McGrain*, 273 U.S. at 177 (emphasis added).

The Supreme Court has consistently confirmed that the legislative power of inquiry "has been employed by Congress throughout our history, over the whole range of the national interests concerning which Congress *might legislate or decide upon due investigation not to legislate*[.]" *Barenblatt*, 360 U.S. at 111 (emphasis added). For example, in *McGrain v. Daugherty*, the Court recognized that the original resolution authorizing the Senate's investigation into the Teapot Dome Affair made no mention of a legislative purpose. 273 U.S. at 177 ("It is quite true that the resolution directing the investigation does not in terms avow that it is intended to be in aid of legislation[.]"). Nevertheless, the Court upheld the investigation, noting that "[p]lainly the subject was one on which legislation could be had and would be materially aided by the information which the investigation was calculated to elicit." *Id.* Moreover, the Court in *McGrain* concluded that it was "bound to presume that the action of the

legislative body was with a legitimate object, if it is capable of being so construed, and we have no right to assume that the contrary was intended." *Id.* at 178 (quotation marks omitted).

Thus, the proper legal standard requires only that the subject matter of a legislative inquiry be "one on which legislation *could be* had." *Id.* at 177 (emphasis added); *Bean LLC*, 291 F. Supp. 3d at 43 (D.D.C. 2018). Were the law that Congress could only investigate matters upon which legislation already exists or is actively being considered—as plaintiffs suggest—Congress would be in the untenable position of being required to draft legislation before conducting inquiries or investigations, and would "be seriously handicapped in its efforts to exercise its constitutional function." *Quinn v. United States*, 349 U.S. 155, 160-61 (1955); *see also McGrain*, 273 U.S. at 178. Such a requirement would effectively constrain the legislative process and would deprive Congress of the ability to obtain the very information necessary to fully inform itself about whether legislation is necessary or not, *see, e.g.*, *Barenblatt*, 360 U.S. at 111, and, when legislation is determined to be necessary, to "legislate wisely and effectively." *McGrain*, 273 U.S. at 175.

Although the Committee is not required to identify specific pending legislation to justify either the legitimate legislative purpose of its investigations or the subpoena at issue, here, multiple bills related to Executive Branch conflicts of interests and senior official financial disclosures have been introduced in the House and referred to the Committee for its consideration. In addition to the provisions of H.R. 1 discussed above, these bills include proposals to strengthen the investigative and enforcement authority of the Office of Government Ethics, *see* H.R. 745, 116th Cong. (2019); prohibit the President and Vice President and related entities from conducting business with the federal government, *see* H.R. 706, 116th Cong. (2019); extend anti-nepotism laws to the Executive Office of the President, *see* H.R. 681, 116th

Cong. (2019); and require public reporting of ethics waivers obtained by Executive Branch appointees, *see* H.R. 391, 116th Cong. (2019).

Plaintiffs have offered no legitimate reason to suggest that the subpoena to Mazars was not designed and is not expected to elicit information that will inform and aid the Committee, as well as the full House, in its advancement of pending legislation. The information being sought will assist the Committee and the full House with considering the need for other legislation, including the potential for bills regarding whether and how to expand the scope, penalties, and periods covered by financial disclosure laws, and the adequacy of criminal laws governing the reporting of financial information to financial institutions.

2. The Committee's Subpoena Seeks Information in Furtherance of a Valid Legislative Purpose

Trump also asserts that the subpoena is unenforceable because it seeks information about the "conduct of a private citizen years before he was even a candidate for public office," a purpose that "has nothing to do with government oversight." Pls.' Mem. at 11. Trump's reasoning appears to be that the documents sought from Mazars are not pertinent to any legitimate Committee inquiry. This argument is far off target. Simply put, the Committee does not bear the burden of demonstrating the "pertinence" of the records it seeks. That is not how investigations work—whether by Congressional Committees or by any other organ of government.

Any suggestion that this Court conduct a searching inquiry into the "pertinence" of the documents sought by the Committee's subpoena finds no support in law. Even in the context of a subpoena enforcement action brought by a Congressional Committee against an unwilling subpoena recipient, no such requirement exists. *Senate Select Comm. v. Packwood*, 845 F. Supp. 17, 20-21 (D.D.C. 1994) ("In determining the proper scope of a legislative subpoena [in such an

enforcement action], this Court may only inquire as to whether the documents sought by the subpoena are 'not plainly incompetent or irrelevant to any lawful purpose [of the Subcommittee] in the discharge of [its] duties.'" (quoting *McPhaul*, 364 U.S. at 381)). And when, in such a case, "an investigative subpoena is challenged on relevancy grounds, the Supreme Court has stated that the subpoena is to be enforced 'unless the district court determines that there is no reasonable possibility that the category of materials the Government seeks will produce information relevant to the general subject of the . . . investigation.'" *Id*. (quoting *United States v. R. Enterps., Inc.*, 498 U.S. 292, 301 (1991)).

Moreover, "[t]here is no requirement that every piece of information gathered in [a Congressional] investigation be justified before the judiciary." *McSurely*, 521 F.2d at 1041. "This is particularly true in light of the fact that, at this stage of the proceedings, the Committee is acting as the 'legislative branch equivalent of a grand jury, in furtherance of an express constitutional grant of authority.'" *Bean LLC*, 291 F. Supp. 3d at 45 (quoting *Packwood*, 845 F. Supp. at 21). In fact, the Supreme Court has made clear that Congressional investigations may lead "up some 'blind alleys' and into nonproductive enterprises. To be a valid legislative inquiry there need be no predictable end result." *Eastland*, 421 U.S. at 509. Indeed, as Judge Leon recognized just last year in a case presenting similar legal questions, "this Court will not—and indeed, may not—engage in a line-by-line review of the Committee's requests." *Bean LLC*, 291 F. Supp. 3d at 44.

Even if "pertinency" were the relevant standard (which it is not), plaintiffs cannot clear the high bar of establishing that the records compelled by the subpoena to Mazars are not pertinent to the Committee's investigations. The Supreme Court has made clear that

"pertinency" is not an onerous requirement.[24] In *McPhaul v. United States*, for example, the Court held that pertinency was "clearly shown" when it was "reasonable to suppose" that the requested records would reveal whether an entity under investigation was engaged in activities within the scope of the Committee's investigation. 364 U.S. at 381. In those circumstances, even though the Committee could not know in advance whether the requested records would establish any connection, "the records called for by the subpoena were not 'plainly incompetent or irrelevant to any lawful purpose [of the Subcommittee] in the discharge of [its] duties,' but, on the contrary, were reasonably 'relevant to the inquiry,'" and thus pertinency was established. *McPhaul*, 364 U.S. at 381-82 (quoting first *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943), then *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 209 (1946)).[25]

Here, based on its review of the information provided by Cohen, the Committee is aware of several specific instances where President Trump's reporting of assets and liabilities materially differs from what was subsequently reported in his required financial disclosure filings submitted as a candidate for office and as a federal official. Those discrepancies justify the Committee's effort to obtain more detailed financial information from Mazars and satisfy the minimal showing for pertinency required by law. The Committee took a reasonable approach to deciding which records to request.

To the extent there is any question about why the Committee seeks records from before Trump was a candidate for public office, that reason is simple: Financial statements cannot

[24] This remains true even in the criminal context where the pertinency standard most properly applies. *See, e.g.*, *McPhaul*, 364 U.S. at 380-81; *McSurely*, 521 F.2d at 1041.

[25] Notably, the two cases quoted by the *McPhaul* Court, in describing the test for pertinency in a prosecution for criminal contempt, both involved *administrative* subpoenas, confirming that even in the context of a criminal prosecution, the standard applicable to Congressional subpoenas is no less broad and flexible than that governing the sweeping investigative subpoenas typically issued by administrative agencies.

properly be reviewed in a vacuum, but rather require a basis for comparison and the ability to track funds from year to year. Given the nature of the Committee's legitimate inquiries, to fully understand the President's financial disclosures from 2015 to present, the Committee needs information about the President's relevant financial circumstances from previous years. In light of the overall complexities of the President's vast financial holdings, and since the Committee is already aware of issues related to reporting about the Trump properties in Chicago and Las Vegas, the ability to conduct thorough and complete investigations requires the Committee to seek records going back to at least 2011. Congress's investigative powers unquestionably include the ability to follow up on reasonable leads in areas within its legislative purview.

Furthermore, it is reasonable for the Committee to presume that the information contained in the financial statements sought from Mazars will illuminate other areas of inquiry for the Committee and aid the Committee's understanding, drafting, and consideration of legislation related to various matters within the House's legislative power. Accordingly, there can be no doubt that, to the extent pertinency even cabins the Committee's ability to seek information, the material sought by the subpoena to Mazars is pertinent to the Committee's investigations.

Finally, Congress is not required to defer to material witnesses when making determinations regarding the relevance of requested materials. This is simply not how investigations work—whether by Congress or any other investigative body. "[I]t goes without saying that the scope of the Committee's authority was for the House, not a witness, to determine[.]" *Barenblatt*, 360 U.S. at 124. As courts have noted, "it is manifestly impracticable to leave to the subject of the investigation alone the determination of what information may or may not be probative of the matters being investigated." *Packwood*, 845 F. Supp. at 21; *see also*

Bean LLC, 291 F. Supp. 3d at 44 (same). This is particularly true here, where the Committee's investigations focus on understanding the details about the President's numerous financial dealings and his ongoing relationship with his private business enterprises.

Accordingly, as discussed above, the Court's examination on likelihood of success should be limited to whether the Committee's inquiry is authorized under House Rules, and whether plaintiffs have established that the Committee's subpoena is "plainly incompetent or irrelevant to any lawful purpose," *McPhaul*, 364 U.S. at 381, and that there is "no reasonable possibility that the category of materials the [Committee] seeks will produce information relevant to the general subject of the . . . investigation," *R. Enterps.*, 498 U.S. at 301; *see also, e.g.*, *McSurely*, 521 F.2d at 1041; *Packwood*, 845 F. Supp. at 20-21; *Bean LLC*, 291 F. Supp. 3d at 44. Because plaintiffs have failed to meet this heavy burden, the motion for preliminary injunction should be denied.

3. The Committee Is Not Engaged in a Law-Enforcement Investigation

Plaintiffs assert that "an investigation into the accuracy of a private citizen's past financial statements is a quintessential law-enforcement task reserved to the executive and judicial branches." Pls.' Mem. at 11. The Committee's power to investigate is in many respects broader than that of law enforcement; it "is as penetrating and far-reaching as the potential power to enact and appropriate." *Eastland*, 421 U.S. at 504 n.15 (quotation marks omitted). Because Congress's power to investigate, which is "deeply rooted in American and English institutions, is indeed co-extensive with the power to legislate," *Quinn*, 349 U.S. at 160, there is no basis for Trump's implicit assertion that the Committee lacks the power to investigate matters within its jurisdiction to obtain the financial records sought here. *See generally R. Enterps.*, 498 U.S. at 299 (cautioning against "[r]equiring the Government to explain in too much detail the particular reasons underlying a subpoena").

As explained above, the Committee is investigating to determine, among other things, if there are deficiencies in the general legislative framework governing ethics and financial disclosure requirements in the Executive Branch and, specifically, how those laws relate and apply to the President and Vice President. Those inquiries have the distinct purpose of assessing whether existing laws and regulations are adequate; if amendment, via legislation, is necessary; or if entirely new legislation is required. Although the Committee's inquiries have already discovered discrepancies in President Trump's financial disclosure forms, its interest is not in prosecuting any individual involved. While the Committee has, at times in the past, referred suspected criminal matters discovered in the course of its inquiries to the proper Executive Branch officials, the possibility that the Committee could find criminal activity here does not convert the Committee's inquiry into a law-enforcement task, nor does it invalidate the legitimate legislative purpose for the Committee's subpoena to Mazars. *See Hutcheson v. United States*, 369 U.S. 599, 618 (1962) ("[S]urely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding, or when crime or wrongdoing is disclosed." (citation omitted)).

As Supreme Court and D.C. Circuit precedent makes clear, this Court is to presume not only "that the action of the legislative body was with a legitimate object, if it is capable of being so construed, and we have no right to assume that the contrary was intended," *McGrain*, 273 U.S. at 178 (quotation marks omitted), but also "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).

In the absence of any evidence to the contrary—and plaintiffs have provided none—these presumptions further underscore that the Committee's investigations are valid and that the subpoena to Mazars should be enforced.

4. Trump's Assertion That the Committee Is Exposing for Exposure's Sake Lacks Merit

Trump's last attempt to undermine the subpoena here is an argument that it is merely "a transparent attempt to 'expose' the President's finances 'for the sake of exposure.'" Pls.' Mem. at 11 (quoting *Watkins*, 354 U.S. at 200). Trump has provided nothing beyond political rhetoric and press statements to suggest that the Committee's subpoena to Mazars is intended for any other purpose than legitimate legislative inquiry. But even if Trump had provided some basis to question the Committee's motive, the Court should not look behind the Committee's legitimate legislative purpose. *Cf. Trump v. Hawaii*, 138 S. Ct. 2392, 2418-20, 2423 (2018) (upholding President Trump's "travel ban" and explaining that the issue "is not whether to denounce the [President's] statements," but rather to "review[] a Presidential directive, neutral on its face, addressing a matter within the core of executive responsibility").

Based on the voluminous evidence in the public sphere, there is no foundation to question the legitimacy of the Committee's legislative purpose. Supreme Court case law establishes that Congress's power to investigate is "broad" and "encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes." *Watkins*, 354 U.S. at 187; *see also Barenblatt*, 360 U.S. at 152 ("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.").

Indeed, the Supreme Court has consistently noted that the motivations underlying Congressional action are not to be second-guessed, even by the courts. *Eastland*, 421 U.S. at

509 ("The wisdom of congressional approach or methodology is not open to judicial veto."); *Watkins*, 354 U.S. at 200 ("But a solution to our problem is not to be found in testing the motives of committee members for this purpose. Such is not our function."); *McGrain*, 273 U.S. at 178 ("We are bound to presume not only that the action of the legislative body was with a legitimate object, if it is capable of being so construed, and we have no right to assume that the contrary was intended." (quotation marks omitted)).

Accordingly, plaintiffs' motion for a preliminary injunction should be denied and this Court should issue an order that the subpoena to Mazars is valid and enforceable.

II. Plaintiffs Have Failed to Establish a Likelihood of Irreparable Injury

Plaintiffs' interests in confidentiality over documents shared with Mazars does not outweigh Congress's constitutionally based authority to employ compulsory process to obtain information within its legislative and oversight purview. Plaintiffs' other argument for irreparable injury—that this Court must "urgently" intervene "because the due date for compliance with the subpoena is only days away," Pls.' Mem. at 12—has been obviated by the parties' agreement to postpone the return date on the Committee's subpoena until seven days after this Court rules on the motion for preliminary injunction. *See* Docket, Minute Order (Apr. 23, 2019).

Plaintiffs' failure to satisfy the stringent irreparable-injury requirement is a separate and independent ground requiring denial of their motion, even leaving aside their inability to satisfy the other three requirements for injunctive relief. As the Supreme Court has emphasized, regardless of a plaintiff's showing with respect to the other factors, "[o]ur frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is likely in the absence of an injunction." *Winter*, 555 U.S. at 22 (emphasis omitted); *see also Abdullah*, 753 F.3d at 197 ("When seeking a preliminary injunction, the movant has the burden

to show that all four factors, taken together, weigh in favor of the injunction." (quotation marks omitted)).

The D.C. Circuit has consistently "set a high standard for irreparable injury." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). In particular, "the injury 'must be both certain and great; it must be actual and not theoretical.'" *Id*. (quoting *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam)). This Circuit has also emphasized,

> the further requirement that the movant substantiate the claim that irreparable injury is "likely" to occur. *Bare allegations of what is likely to occur are of no value* since the court must decide whether the harm will *in fact* occur. *The movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future*.

Wis. Gas, 758 F.2d at 674 (first and third emphases added).

Plaintiffs fall short of meeting this demanding burden. Any contractually based interest in the confidentiality of documents in Mazars's possession cannot and does not override the Committee's constitutionally based interest in obtaining information within its legislative and oversight jurisdiction. To the extent that plaintiffs assert any irreparable harm from the disclosure of the subpoenaed financial documents at all, it is predicated on their inability to obtain meaningful judicial review of their constitutional claims regarding the subpoena's validity. *See* Pls.' Mem. at 11-12 ("Plaintiffs have raised important constitutional claims. Yet denying them interim relief may 'entirely destroy [their] rights to secure meaningful review.'" (citation omitted)).

Accordingly, plaintiffs' failure to assert any irreparable harm is fatal to their quest for a preliminary injunction.

III. The Balance of Equities Tips Heavily in Favor of the Committee

The balance of the equities overwhelmingly favors the Committee. Trump summarily asserts that he would be injured by Mazars's compliance with the subpoena. But there is no basis for assuming such injury if Mazars produces financial records to the Committee in the same manner that countless entities—including accounting firms, banks, and other financial institutions—routinely produce financial records in response to civil discovery subpoenas, government administrative subpoenas or civil investigative demands, grand jury subpoenas, and the like.

By contrast, the Committee's interest in prompt compliance with its subpoena is of the highest order. As the Supreme Court has held, Congress's "power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function." *McGrain*, 273 U.S. at 174. "The power of inquiry" extends "over the whole range of the national interests concerning which Congress might legislate." *Barenblatt*, 360 U.S. at 111. "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; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it." *McGrain*, 273 U.S. at 175. Trump's argument that the Committee has "no urgent need for the subpoenaed documents," Pls.' Mem. at 13, is not only wrong—because an undue delay would inflict the legally protectable harms of loss of information and institutional diminution of the Committee's subpoena power, *see Committee on the Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53, 71 (D.D.C. 2008)—it is also an improper usurpation of the House's constitutional power to investigate and conduct oversight. No outside entity, whether a subpoena recipient like Mazars or the subject of the records being sought, is permitted to micromanage the Committee's investigations or dictate what is or is not

urgent. *See Eastland*, 421 U.S. at 509 ("The wisdom of congressional approach or methodology is not open to judicial veto.").

Here, the Committee is investigating matters of immense national importance, and the information contained in Mazars's documents appears to be a key part of those investigations. The Committee's interest in obtaining information relevant to its investigations would be harmed by any injunctive relief in this case. That the Committee's overarching investigations are within its legislative power should be the end of the inquiry. *Cf. McSurely*, 521 F.2d at 1041 ("There is no requirement that every piece of information gathered in [a Congressional] investigation be justified before the judiciary."). The balance of the equities thus favors denial of the motion for a preliminary injunction.

IV. The Public Interest Supports Enforcement of the Subpoena

For the same reasons, the public interest supports denial of relief. There is a "clear public interest in maximizing the effectiveness of the investigatory powers of Congress," and "the investigatory power is one that the courts have long perceived as essential to the successful discharge of the legislative responsibilities of Congress." *Exxon Corp.*, 589 F.2d at 594. Plaintiffs' contrary argument rests on the same flawed arguments refuted above and ignores the clear and compelling public interest in the speedy and efficient conduct of the Committee's investigations. Even in the less-pressing context of administrative investigations, the D.C. Circuit has "recognized a strong public interest in having [such] investigations proceed expeditiously and without impediment." *Linde Thomson Langworthy Kohn & Van Dyke, P.C. v. Resolution Trust Corp.*, 5 F.3d 1508, 1514 (D.C. Cir. 1993) (quotation marks omitted). Likewise, the public interest in expeditious and unimpeded Congressional investigations is compelling.

CONCLUSION

For the foregoing reasons, plaintiffs' request for a preliminary injunction should be denied, the Court should issue an order holding the subpoena valid and enforceable, and the case should be dismissed with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 1, 2019, I caused the foregoing document to be filed via this Court's CM/ECF system, which I understand caused service on all registered parties. I further certify that I served a copy of the foregoing document by email on counsel for defendant Mazars USA LLP:

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