

[ORAL ARGUMENT SCHEDULED FOR JULY 12, 2019]

No. 19-5142

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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DONALD J. TRUMP, et al.,

*Plaintiffs-Appellants,*

*v.*

MAZARS USA LLP,

*Defendant-Appellee,*

and

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

*Intervenor-Defendant-Appellee.*

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On Appeal from a Final Order of the U.S. District Court for the District of  
Columbia (No. 19-cv-01136-APM) (Hon. Amit P. Mehta, U.S. District Judge)

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**BRIEF OF THE COMMITTEE ON OVERSIGHT AND REFORM  
OF THE U.S. HOUSE OF REPRESENTATIVES**

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## CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

### **A. Parties And Amici**

Plaintiffs-appellants are Donald J. Trump, Trump Organization, Inc., Trump Organization, LLC, Trump Corporation, DJT Holdings, LLC, Donald J. Trump Revocable Trust, and Trump Old Post Office LLC.

Defendant-appellee is Mazars USA, LLP.

Intervenor-defendant-appellee is the Committee on Oversight and Reform of the U.S. House of Representatives. The original defendants in the district court were Elijah E. Cummings, in his official capacity as Chairman of the House Committee on Oversight and Reform, and Peter Kenny, in his official capacity as Chief Investigative Counsel of the House Committee on Oversight and Reform. Chairman Cummings and Mr. Kenny were dismissed as defendants and are not parties to the appeal.

Duane Morley Cox has appeared as an amicus curiae for plaintiffs-appellants.

Homer Douglas Cobb, IV appears on the district court docket as an interested party.

### **B. Rulings Under Review**

The rulings under review are the order and opinion of the district court granting summary judgment in favor of the Committee on Oversight and Reform of the U.S. House of Representatives and against plaintiffs, *Trump v. Comm. on Oversight &*

*Reform of the U.S. House of Representatives*, No. 19-cv-01136 (APM), \_\_\_ F. Supp. 3d \_\_\_, 2019 WL 2171378 (D.D.C. May 20, 2019) (Amit P. Mehta, J.). *See* JA267-307 (opinion); Dkt. No. 36 (order).\*

### **C. Related Cases**

This case has not previously been before this Court or any other. Counsel for the intervenor-defendant-appellee is unaware of any other related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C). Similar legal issues, however, are presented in *Trump v. Deutsche Bank*, No. 19-1540 (2d Cir.).

*/s/ Douglas N. Letter*

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\* References to the joint appendix appear as JA\_\_.

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**GLOSSARY**

Add.	Addendum
Ethics Office	Office of Government Ethics
GSA	General Services Administration
JA	Joint Appendix
Mr. Trump	Plaintiffs-appellants Donald J. Trump (in his individual capacity), Trump Organization, Inc., Trump Organization, LLC, Trump Corporation, DJT Holdings, LLC, Donald J. Trump Revocable Trust, and Trump Old Post Office LLC
Oversight Committee	Committee on Oversight and Reform of the U.S. House of Representatives

## INTRODUCTION

Congress’s power to conduct oversight and investigations is firmly rooted in Congress’s Article I legislative authority and the constitutional separation of powers. This “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’s power to investigate is inherent in the power to legislate because “[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.” *Id.* at 175. “That power is broad.” *Watkins v. United States*, 354 U.S. 178, 187 (1957).

Applying the Supreme Court’s and this Court’s precedent, the district court correctly explained that, “[s]o long as Congress investigates on a subject matter on which ‘legislation could be had,’ Congress acts as contemplated by Article I of the Constitution.” JA269 (quoting *McGrain*, 273 U.S. at 177). The district court held that the subpoena issued to defendant Mazars USA, LLP (Mazars) by the intervenor Committee on Oversight and Reform of the U.S. House of Representatives (Oversight Committee) for financial statements, accounting records, and other documents relating to plaintiffs-appellants President Donald J. Trump and related entities was valid and enforceable.<sup>1</sup>

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<sup>1</sup> Plaintiffs-appellants are Donald J. Trump (in his individual capacity), Trump Organization, Inc., Trump Organization, LLC, Trump Corporation, DJT Holdings, LLC, Donald J. Trump Revocable Trust, and Trump Old Post Office LLC. For ease

The Oversight Committee is investigating issues of national importance concerning ethics and conflicts of interest across the Executive Branch, the accuracy of Mr. Trump’s statutorily mandated federal financial disclosures, the General Services Administration’s (GSA) award and ongoing management of the lease of the Old Post Office Building for the site of the Trump International Hotel in Washington, D.C., and possible violations of the Emoluments Clauses of the U.S. Constitution. The Oversight Committee seeks to ensure that federal officials—including the President—are making decisions in the country’s best interest and not for their own financial gain, and that federal agencies charged with government leasing and ethics are operating in accordance with the law. The district court correctly held that “[t]hese are facially valid legislative purposes, and it is not for the court to question whether the Committee’s actions are truly motivated by political considerations.” JA269.

Rather than respect the Oversight Committee’s legitimate investigations into these serious issues, Mr. Trump and his companies have continually engaged in stonewalling intended to obstruct and undermine these inquiries. This suit is one of Mr. Trump’s many attempts to prevent Congress from obtaining critical information needed to make informed legislative judgments and perform meaningful oversight.

Mr. Trump strains to fit the Oversight Committee’s subpoena into one of the few narrow exceptions to Congress’s broad power to investigate. But as the district

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of reference, this brief generally refers to plaintiffs-appellants collectively as Mr. Trump.

court concluded in rejecting those arguments, none of the exceptions applies here, and the district court's opinion provides convincing grounds for affirmance. Mr. Trump's disdain for the constitutionally based role of Congress in carrying out oversight of the Executive Branch, and for the specific investigations of the Oversight Committee at issue here, is not a basis for this Court to reverse the district court's holding that the subpoena is valid and enforceable. This Court should affirm that decision quickly so that the Oversight Committee's legitimate investigation can proceed. *See Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 511 (1975) (cautioning against "the harm that judicial interference may cause" by enjoining a Congressional subpoena for years during the pendency of the litigation).

### **STATEMENT OF JURISDICTION**

Plaintiffs invoked the district court's subject matter jurisdiction under 28 U.S.C. § 1331. JA11. On May 20, 2019, the district court entered judgment in favor of the Oversight Committee. Order, Dkt. 36. Plaintiffs filed a timely notice of appeal on May 21, 2019. JA308-09. This Court has jurisdiction pursuant to 28 U.S.C § 1291.

### **STATEMENT OF THE ISSUE**

Whether the district court correctly held that the Oversight Committee's subpoena to Mazars is valid and enforceable.

## **PERTINENT CONSTITUTIONAL PROVISIONS AND HOUSE RULES**

Article I, section 1 of the U.S. Constitution provides that “[a]ll legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.”

The Rulemaking Clause, U.S. Const., Art. I, § 5, cl. 2, provides in relevant part: “Each House may determine the Rules of its Proceedings[.]”

The pertinent House and Oversight Committee Rules are set forth in the addendum to this brief.<sup>2</sup>

### **STATEMENT OF THE CASE**

#### **A. Legal Framework**

The Constitution grants Congress the power to enact all federal laws. Article I, section 1 provides that “[a]ll legislative Powers herein granted shall be vested in a Congress of the United States.” U.S. Const., Art. I, § 1.

The Constitution also assigns each house of Congress authority to “determine the Rules of its Proceedings.” U.S. Const., Art. I, § 5, cl. 2. Pursuant to this authority, the 116th Congress adopted the Rules of the House of Representatives, which govern the House during the two-year term. *See* Add. 1-6.<sup>3</sup> House Rule X establishes the

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<sup>2</sup> References to the addendum appear as Add. \_\_\_\_\_. The Rules of the House of Representatives are available at <https://tinyurl.com/HouseRules116thCong>, and the Rules of the Oversight Committee can be found at <https://tinyurl.com/116thOversightCommRules>.

<sup>3</sup> The House Rules were adopted by House resolution on January 9, 2019. *See* H. Res. 6, 116th Cong. (2019).

“standing committees” of the House—which include the Committee on Oversight and Reform—and assigns each committee “jurisdiction and related functions.”

House Rule X.1 (Add. 1).

The Oversight Committee is the House’s principal oversight body. Under House Rule X, the Oversight Committee’s jurisdiction includes certain enumerated matters, including “[f]ederal civil service . . . and the status of officers and employees of the United States, including their compensation,” “[g]overnment management and accounting measures generally,” and the “overall economy, efficiency, and management of government operations and activities, including Federal procurement.” House Rule X.1(n)(1), (4), (6) (Add. 1).

The Rules also assign the Oversight Committee a special oversight function: “The Committee on Oversight and Reform shall review and study on a continuing basis the operation of Government activities at all levels, including the Executive Office of the President.” House Rule X.3(i) (Add. 4).<sup>4</sup>

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<sup>4</sup> This Rule was amended by the 116th House to “ma[k]e clearer . . . that the Committee has jurisdiction over the White House,” H. Rep. No. 116-40, at 156 (2019), by adding the phrase “including the Executive Office of the President.” *Compare* Rule X.3(i), Rules of the House of Representatives of the One Hundred Fifteenth Congress, <https://rules.house.gov/HouseRulesManual115/rule10.xml>. The 116th House also changed the Committee’s name from the Committee on Oversight and Government Reform to the Committee on Oversight and Reform, dropping “Government” in recognition that the Committee “has been conducting, and will continue to conduct, oversight of both governmental and private sector entities and individuals.” H. Rep. No. 116-40, at 156.



In addition, the Rules authorize the Oversight Committee to “at *any time* conduct investigations of *any matter* without regard to” whether the Rules confer “jurisdiction over the matter to another standing committee.” House Rule X.4(c)(2) (emphases added) (Add. 5). If the Oversight Committee undertakes such an investigation, “[t]he findings and recommendations of the committee . . . shall be made available to any other standing committee having jurisdiction over the matter involved.” *Id.* In other words, the Oversight Committee’s investigative jurisdiction is coextensive with the jurisdiction of the entire House.

The Oversight Committee, like each of the standing committees, has “general oversight responsibilities” to assist the House in “(1) its analysis, appraisal, and evaluation of—(A) the application, administration, execution, and effectiveness of Federal laws; and (B) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and (2) its formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.” House Rule X.2(a) (Add. 2). The Oversight Committee is thus instructed to “review and study on a continuing basis,” among other subjects, the laws and programs within its jurisdiction and “any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not a bill or resolution has been introduced with respect thereto).” House Rule X.2(b)(1) (Add. 2).

To that end, the Oversight Committee is authorized, “[f]or the purpose of carrying out any of its functions and duties” under Rule X, to “hold such hearings as it considers necessary.” House Rule XI.2(m)(1)(A) (Add. 6). The Oversight Committee is also empowered “to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.” House Rule XI.2(m)(1)(B) (Add. 6).

Pursuant to House Rule X, clause 2, the Oversight Committee submitted to the full House its oversight plan for the 116th Congress. H. Rep. No. 116-40 (2019).<sup>5</sup> The Oversight Committee’s oversight plan involves investigations into government ethics and conflicts of interest for senior government officials, including Mr. Trump. For instance, the Oversight Committee stressed that it would investigate “allegations that Executive Branch officials are not acting in the best interest of American taxpayers, including by taking actions to benefit themselves, former employers, or former clients.” *Id.* at 155.

These investigations include whether government officials are violating the Ethics in Government Act of 1978, 5 U.S.C. app. 4 *et seq.*, “obstructing [federal] audits, evaluations, and investigations and refusing to cooperate with agency

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<sup>5</sup> The oversight plans submitted pursuant to the Rules are an initial “blueprint,” H. Rep. No. 116-40, at 8, for the committees’ oversight work. These plans are not intended to be exhaustive or restrictive.

Inspectors General,” and failing to comply with transparency laws. H. Rep. No. 116-40, at 155. In addition, the Oversight Committee explained that it planned to pursue investigations of Mr. Trump’s potential financial conflicts and representations on his statutorily mandated financial disclosure forms. *Id.* at 156-57.

Pursuant to the House Rules, the Oversight Committee has jurisdiction over the Ethics in Government Act. That statute requires that senior government officials—including the President and the Vice President—file detailed financial statements, which are available to the public. *See* 5 U.S.C. app. 4 §§ 101(a), (f)(1)-(2), 102. The statute reflects “Congress’ general belief that public disclosure of conflicts of interest is desirable despite its cost in loss of personal privacy.” *Washington Post Co. v. U.S. Dep’t of Health & Human Servs.*, 690 F.2d 252, 265 (D.C. Cir. 1982). The purpose of these financial disclosures is to identify and prevent conflicts of interest by allowing for a systematic review of an official’s financial holdings. *See* U.S. Office of Government Ethics, Financial Disclosure, <https://tinyurl.com/OGEFinDisclosures>. The financial disclosure requirements are administered by the Office of Government Ethics (Ethics Office), a federal agency created by Congress and overseen by the Oversight Committee. *See* 5 U.S.C. app. 4 § 401(a).

## **B. The Oversight Committee’s Investigations And Subpoena To Mazars**

Consistent with its broad jurisdiction and role as the principal investigative Committee of the House, the Oversight Committee has undertaken a series of

investigations concerning government ethics and conflicts of interest throughout the Executive Branch, the accuracy of Mr. Trump's financial disclosures, GSA's federal lease to the 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 (Foreign Emoluments Clause); U.S. Const., Art. II, § 1, cl. 7 (Domestic Emoluments Clause). Among other issues, the Oversight 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 amendments to the law are needed to ensure these fundamental principles are respected.

A common thread in each of these inquiries is the accuracy of statements made by Mr. Trump on various financial disclosures. Mr. Trump "continues to have financial interests in businesses across the United States and around the world that pose both perceived and actual conflicts of interest" and "raise grave questions" about his receipt of emoluments. H. Rep. No. 116-40, at 156. The subpoena challenged here, which seeks financial documents and records from the longtime accountant of Mr. Trump and his related entities, is intended to shed light on the accuracy of Mr. Trump's disclosures and inform the review by the Oversight Committee of various pressing matters.

1. In investigating these topics, the Oversight Committee identified significant problems with GSA's lease with the Trump Old Post Office LLC. The contractual arrangement between GSA, a federal agency, and one of Mr. Trump's businesses raises potential ethical conflicts and questions regarding the agency's lease management. In fact, the GSA's Office of Inspector General released a report finding "serious shortcomings" in the agency's decisionmaking process in leasing the Old Post Office Building to Mr. Trump's business, notwithstanding requirements in the lease and the strictures of the Emoluments Clauses.<sup>6</sup>

The accuracy of Mr. Trump's and his related entities' financial statements—including those prepared by Mazars—could be relevant to this inquiry, particularly if such statements were used to obtain the lease. These financial statements may also show foreign government relationships and payments to Mr. Trump and his related entities, which would inform the Oversight Committee's investigation of Mr. Trump's potential Emoluments Clause violations.

Concerned about these issues, on April 12, 2019, the Oversight Committee Chairman, Elijah E. Cummings, wrote to the GSA Administrator requesting documents relating to the lease. The Chairman explained that "[t]he Committee is

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<sup>6</sup> Letter from the Honorable Elijah E. Cummings, Chairman, House Comm. on Oversight & Reform, et al., to Timothy Horne, Acting Adm'r, Gen. Servs. Admin., at 1 (Apr. 12, 2019), <https://tinyurl.com/Apr12CummingsHorneLetter> (Apr. 12 Cummings Ltr.) (quoting GSA, Office of the Inspector General, Evaluation of GSA's Management and Administration of the Old Post Office Building Lease (Jan. 16, 2019), *available at* <https://tinyurl.com/GSAOIGreportJan162019>).

investigating the federal lease for the Old Post Office Building . . . in Washington, D.C. with the Trump Organization, which is managed by the General Services Administration.” Apr. 12 Cummings Ltr. at 1. The Chairman noted that the Inspector General’s “report rais[ed] grave questions about the management of this lease,” including “issues under the Constitution’s Emoluments Clauses that might cause a breach of the lease.” *Id.* Chairman Cummings requested documents, including certain documents submitted by Mr. Trump and his related entities “in response to the Request for Proposals for the Redevelopment of the Old Post Office, dated March 24, 2011,” and “all documents referring or relating to Mazars USA LLP or WeiserMazars LLP related to the Old Post Office lease.” Apr. 12 Cummings Ltr at 3.<sup>7</sup>

2. Another key issue in the Oversight Committee’s investigations is whether the President has accurately reported his liabilities on his financial disclosure forms, as required by the Ethics in Government Act. *See* 5 U.S.C. app. 4 § 101(a), (f)(1). As Chairman Cummings has emphasized, the Oversight Committee has jurisdiction over the statute, which “requires all federal officials, including the President, to publicly

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<sup>7</sup> In 2011, GSA required interested bidders—such as the Trump-related entities—to submit statements of financial capability and supporting financial information. *See* GSA, Request for Proposals Redevelopment of Old Post Office 14 (Mar. 24, 2011), <https://tinyurl.com/OPORFP3-24-11>.

disclose financial liabilities that could impact their decision-making.”<sup>8</sup> The accuracy of these financial disclosures is critical to determining whether the President has undisclosed conflicts of interest that may impair or influence his decisionmaking.

The Oversight Committee’s investigation into the accuracy of Mr. Trump’s financial disclosures initially focused on whether debts and payments to Mr. Trump’s personal lawyer, Michael Cohen, had been accurately recorded. *See generally* JA273-77 (describing investigations). But as the investigation uncovered additional information, the Oversight Committee became concerned about the accuracy of Mr. Trump’s financial disclosures more generally. *Id.* The fact Mr. Trump had not accurately disclosed his liabilities on these forms raised concerns about whether he had other undisclosed debts that created conflicts of interest. And without accurate statements, the Ethics Office would be unable to review and assess these potential conflicts and ensure public transparency and accountability. The Oversight Committee thus seeks financial statements and audits prepared by Mazars for Mr. Trump and his businesses to illuminate the overall accuracy of Mr. Trump’s statutorily mandated disclosures.

In May 2018, the Acting Director of the Ethics Office determined that the President should have—but had not—disclosed “debts and payments to his personal attorney, Michael Cohen, to silence women alleging extramarital affairs with the

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<sup>8</sup> Letter from the Honorable Elijah E. Cummings, Chairman, House Comm. on Oversight & Reform, to Pat Cipollone, Counsel to the President, White House, at 1 (Jan. 8, 2019), <https://tinyurl.com/Jan8CummingsCipolloneLetter>.

President.” JA35 (describing Ethics Office’s finding).<sup>9</sup> The Ethics Office’s report concluded that “the payment made by Mr. Cohen is required to be reported as a liability.” JA35 (quotation marks omitted).

In response, in early 2019, Chairman Cummings requested from the Director of the Ethics Office any materials the agency had “related to the reporting of liabilities or payments made to or by Michael Cohen” on Mr. Trump’s 2017 and 2018 financial disclosure forms. JA35.

Chairman Cummings also wrote to Pat Cipollone, the White House Counsel, seeking documents related to the reporting of liabilities in Mr. Trump’s financial disclosure reports. Chairman Cummings explained that “[t]he Committee’s interest in obtaining these documents is even more critical in light of new documents obtained by the Committee from the Office of Government Ethics . . . that describe false information provided by the lawyers representing President Trump.”<sup>10</sup>

The Chairman’s letter detailed a troubling “timeline of recent events starting with statements made by the President’s lawyers to the Office of Government Ethics and to the public about a supposed purpose of the Cohen payments unrelated to the

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<sup>9</sup> See Letter from David J. Apol, Acting Director, Office of Government Ethics, to Rod J. Rosenstein, Deputy Attorney General, Department of Justice (May 16, 2018), <https://oge.app.box.com/v/OGELettertoDOJ>.

<sup>10</sup> Letter from the Honorable Elijah E. Cummings, Chairman, House Comm. on Oversight & Reform, to Pat Cipollone, Counsel to the President, White House, at 1 (Feb. 15, 2019), <https://tinyurl.com/Feb15CummingsCipolloneLetter> (Feb. 15 Cummings Ltr.).



election.” JA274. These statements were eventually “followed by the President’s disclosure of the Cohen payments on his [calendar year] 2017 Financial Disclosure form as a liability of less than \$250,000.” *Id.* But federal prosecutors later revealed that the payments had “in fact exceeded the \$250,000 reported by the President.” *Id.*

These emerging facts raised new concerns for the Oversight Committee about the accuracy of the President’s financial disclosures. As Chairman Cummings explained, Congress’s power to “investigate[] how existing laws are being implemented and whether changes to the laws are necessary” has for decades included “laws relating to financial disclosures required of the President.” Feb. 15 Cummings Ltr. at 9. The Chairman also highlighted Congress’s “plenary authority to legislate and conduct oversight regarding compliance with ethics laws and regulations” and its authority to “legislate and conduct oversight on issues involving campaign finance.” *Id.* at 7 & n.33. He further explained that the Oversight Committee’s broad jurisdiction includes the Ethics in Government Act, as well as the Ethics Office. *Id.* at 7-8.

**3.** On February 27, 2019, the Oversight Committee convened a hearing as part of its investigations. At the hearing, Mr. Trump’s former attorney Michael Cohen testified that financial statements prepared by Mazars may have included false

statements about President Trump’s assets and liabilities.<sup>11</sup> Mr. Cohen stated 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.” Cohen Testimony at 19. To corroborate his claims, Mr. Cohen produced portions of financial statements from 2011, 2012, and 2013, some of which were prepared by Mazars. *See* JA32-33, JA42-86.

Chairman Cummings wrote to Mazars on March 20, 2019, describing Mr. Cohen’s testimony that President Trump had inflated and deflated his assets on financial statements to suit his purposes and explaining that the financial statements Mr. Cohen had provided “raise questions about the President’s representations of his financial affairs on these forms and on other disclosures, particularly relating to the President’s debts.”<sup>12</sup> The letter identified several specific concerns about Mr. Trump’s financial reporting, including concerns about whether and to whom Mr. Trump owes significant debts. Mar. 20 Cummings Ltr. at 3. For example, the letter raised questions concerning whether Mr. Trump was—and still may be—indebted to the South Korean conglomerate Daewoo. *Id.* The existence of undisclosed debt raises

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<sup>11</sup> *Michael Cohen, Former Attorney to President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 13, 19 (2019), <https://tinyurl.com/CohenHearing> (Cohen Testimony).

<sup>12</sup> 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://tinyurl.com/Mar20CummingsLetter> (Mar. 20 Cummings Ltr.).

potential conflicts of interest issues, while the forgiveness (or a favorable change in the terms) of debt owed to a state-owned entity raises concerns under the Foreign Emoluments Clause.

Chairman Cummings, therefore, requested that Mazars produce four categories of documents relating to Mr. Trump and his entities, including plaintiffs in this suit. The requested documents include statements of financial condition, annual statements, periodic financial reports, independent auditors' reports, engagement agreements, underlying and supporting documents, and communications relating to the audits, from January 1, 2009 to the present. Mar. 20 Cummings Ltr. at 4. Mazars informed the Oversight Committee that it could not provide the requested documents without a Congressional subpoena.<sup>13</sup>

On April 12, 2019, Chairman Cummings issued a memorandum to the members of the Oversight Committee explaining his intent to issue a subpoena to Mazars. JA104-07. In explaining the need for the subpoena, the Chairman noted Mr. Cohen's testimony that the President had "altered the estimated value of his assets and liabilities on financial statements," and Mr. Cohen's submission of financial statements to support those claims. JA104-05. The Chairman also cited the "[r]ecent news reports" raising "additional concerns regarding the President's financial

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<sup>13</sup> 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>.

statements and representations.” *Id.* at 104. The Chairman then explained the Oversight Committee’s purpose in seeking the records from Mazars:

The [Oversight] 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.

JA107. Chairman Cummings emphasized that “[t]he Committee’s interest in these matters informs its review of multiple laws and legislative proposals under our jurisdiction.” *Id.*

The Oversight Committee issued a subpoena to Mazars on April 15, 2019.

JA24-31. The subpoena sought the same four categories of documents requested in the March 20 letter to Mazars relating to financial statements, engagement letters, supporting documents, and related communications for Mr. Trump and his affiliated entities and organizations. JA26. The subpoena, however, narrowed the period for which documents were sought by two years to begin in 2011—the year GSA sought proposals for the refurbishment of the Old Post Office Building and the first year for which Mr. Cohen provided excerpts of Mazars accounting records—through 2018. *Id.*

4. In connection with these ongoing investigations, the 116th House has considered and is still assessing various bills related to government conflicts of

interest, Presidential financial disclosures, Emoluments Clause violations, and other related issues. For example, on January 3, 2019, the House introduced H.R. 1, 116th Cong. (2019), “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.”<sup>14</sup> As Chairman Cummings observed, “[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.”<sup>15</sup>

One of the reforms in H.R. 1 would require the President and the Vice President to file a new financial disclosure report within thirty days of taking office. H.R. 1, 116th Cong., §§ 8012, 8013 (2019) (amending the Ethics in Government Act of 1978, codified as amended at 5 U.S.C. app. 4, *et seq.*). 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. *Id.* §§ 8011-8022. If enacted, H.R. 1 would require, among other things,

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<sup>14</sup> 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>.

<sup>15</sup> Press Release, House Comm. on Oversight & Reform, Chairman Cummings Issues Statement on H.R. 1 (Jan. 4, 2019), <https://tinyurl.com/CummingsHR1PressRelease>.

that the President and Vice President report detailed corporate financial information or “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. *Id.* §§ 8012, 8013. The House passed H.R. 1 on March 8, 2019, and the legislative process is ongoing.<sup>16</sup>

In addition, numerous other bills addressing these and related issues have been introduced and referred to the Oversight Committee. These include:

- A bill to strengthen the Office of Government Ethics, H.R. 745, 116th Cong. (2019);
- A bill to prohibit the President and Vice President from conducting business directly with the Federal Government, H.R. 706, 116th Cong. (2019);
- A bill to extend anti-nepotism laws to the White House Office and Executive Office of the President, H.R. 681, 116th Cong. (2019); and
- A bill to require public reporting of ethics waivers obtained by Executive Branch appointees, H.R. 391, 116th Cong. (2019).

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<sup>16</sup> The bill was referred to the Oversight Committee (among others) on January 3, 2019, and discharged from the Committee on March 4. *See* Congress.gov, *Committees: H.R. 1—116th Congress (2019-2020)*, <https://tinyurl.com/HR1Committees>.

### C. Procedural History

Mr. Trump filed this suit seeking to enjoin enforcement of the Oversight Committee's subpoena to Mazars.<sup>17</sup> The district court consolidated Mr. Trump's preliminary injunction hearing with a "trial on the merits" under Federal Rule of Civil Procedure 65(a)(2), and treated the parties' briefs as cross-motions for summary judgment. *See* JA279-81. Following a hearing, the district court entered judgment in favor of the Oversight Committee and against Mr. Trump. JA307; Order, ECF No. 36.

The district court explained that Congress's power to investigate is broad—"the power to secure 'needed information . . . has long been treated as an attribute of the power to legislate.'" JA282 (ellipsis in original) (quoting *McGrain v. Daugherty*, 273 U.S. 135, 161 (1927)). The scope of this power "is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." JA283 (quoting *Barenblatt v. United States*, 360 U.S. 109, 111 (1959)). The court noted that the investigatory power is "not unbounded," and Congress may not exercise "powers of law enforcement," "inquire into private affairs unrelated to a valid legislative purpose," *id.* (quoting *Quinn v. United States*, 349 U.S. 155, 161 (1955)), or "expose for

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<sup>17</sup> Mr. Trump initially sued Chairman Cummings and Peter Kenny, the Chief Investigative Counsel of the Oversight Committee, and sought a temporary restraining order. *See* JA4, JA11. After discussions with the Oversight Committee, Mr. Trump agreed to dismiss Chairman Cummings and Mr. Kenny and consented to the Oversight Committee's intervention in the case. Mot. to Intervene, ECF No. 12; Joint Stip., ECF No. 15.

the sake of exposure,” *id.* (quoting *Watkins v. United States*, 354 U.S. 178 200 (1957)).

The court’s analysis, however, “must be highly deferential to the legislative branch”— “[i]f there is some discernable legislative purpose, courts shall not impede Congress’s investigative actions.” JA284-85.

Applying these principles, the district court found that the Mazars subpoena advanced four areas of investigation, and that each of these inquiries constitutes a valid exercise of legislative power. These areas—identified in Chairman Cummings’s April 12 memorandum to the Oversight Committee—are whether the President may have engaged in illegal conduct before and during his tenure in office, has undisclosed conflicts of interest that may impair or influence his impartial decisionmaking, is complying with the Emoluments Clauses, and accurately disclosed his finances to the Ethics Office. *See* JA287-91. The court found that “[e]ach of these is a subject ‘on which legislation could be had.’” JA287 (quoting *McGrain*, 273 U.S. at 177)).

After concluding that the subpoena had a valid legislative purpose, the district court noted that the Oversight Committee had identified bills that “demonstrate Congress’s intent to legislate, at the very least, in the areas of ethics and accountability for Executive Branch officials, including the President.” JA291.

The district court rejected Mr. Trump’s arguments that the subpoena exceeds Congress’s power. The court explained that “the mere prospect that a congressional inquiry will expose law violations does not,” as Mr. Trump had argued, “transform a permissible legislative investigation” into a law enforcement inquiry. JA293.



Similarly, the court disagreed that the Oversight Committee issued the subpoena merely “to investigate the private affairs of a citizen.” JA296. The district court declined to examine Congressional motives, holding that “as long as there is a facially valid legislative purpose for the investigation, Congress acts within its constitutional authority. That is the case here.” JA300. The court concluded that even if a “pertinency” requirement applied in this context, it was satisfied. JA302. Finally, the court refused Mr. Trump’s invitation to hold proposed or contemplated legislation unconstitutional in advance of enactment and to invalidate the subpoena on that ground. JA302-03.

### **SUMMARY OF THE ARGUMENT**

Congress has broad authority to investigate. This authority is a necessary element of Congress’s Article I power to legislate: effective and wise legislation requires information. The Supreme Court has stressed in numerous rulings over many decades that Congress may compel responses to its subpoenas in furtherance of legitimate legislative purposes. These basic principles are undisputed, and they decide this case, as the district court held.

The district court correctly found that the Oversight Committee is exercising its broad oversight jurisdiction to investigate issues on which legislation “could be had.” JA287; *McGrain v. Daugherty*, 273 U.S. 135, 177 (1927). The Oversight Committee is investigating whether senior government officials, including Mr. Trump,

are complying with government ethics and conflicts of interest laws—laws that exist to ensure impartial government decisionmaking.

These investigations include examining the accuracy of Mr. Trump's statutorily mandated financial disclosures and whether Mr. Trump has undisclosed debts that could result in conflicts of interest. The Oversight Committee is also investigating GSA's award and management of its lease with the Trump Old Post Office LLC, and whether the lease complies with agency requirements and the Constitution. The Oversight Committee sought documents from Mazars—the accountant for Mr. Trump and his entities—that could shed light on the accuracy of Mr. Trump's financial disclosures, his conflicts of interest, and whether he has received any prohibited emoluments. The district court correctly concluded that these were proper subjects for Congressional investigations.

Mr. Trump nevertheless urges that the subpoena is invalid because it exceeds the Oversight Committee's jurisdiction and furthers an impermissible purpose. Mr. Trump's jurisdictional argument largely ignores the relevant House Rules, which afford broad oversight and investigatory jurisdiction to the Oversight Committee, and misapprehends the nature of the underlying investigations. Mr. Trump's attempts to shoehorn this case into one of the narrow exceptions to Congress's broad investigatory authority fare no better. That the investigations may reveal unlawful conduct does not mean they are law enforcement activities. *McGrain*, 273 U.S. at 179-80 (“Nor do we think it a valid objection to the investigation that it might possibly

disclose crime or wrongdoing on [the Attorney General’s] part.”). Nor did the district court err in declining Mr. Trump’s invitation to hold unconstitutional various current or potential pieces of legislation concerning the President. As the district court correctly concluded, “[i]t is not the court’s role in this context to evaluate the constitutionality of proposed or contemplated legislation. Doing so would go beyond its limited powers.” JA303.

This Court should accordingly affirm the district court’s judgment that the Mazars subpoena is valid and enforceable.

### **STANDARD OF REVIEW**

The district court consolidated Mr. Trump’s motion for a preliminary injunction with a final decision on the merits under Rule 65(a)(2) of the Federal Rules of Civil Procedure. JA279. This Court therefore “review[s] the district court’s legal determination de novo.” *Teva Pharm. USA, Inc. v. Food & Drug Admin.*, 441 F.3d 1, 3 (D.C. Cir. 2006).

### **ARGUMENT**

#### **THE DISTRICT COURT CORRECTLY HELD THAT THE OVERSIGHT COMMITTEE’S SUBPOENA TO MAZARS IS VALID AND ENFORCEABLE**

##### **A. Congress’s Power To Investigate Is Broad**

Article I of the Constitution grants Congress “[a]ll legislative Powers.” U.S. Const., Art. I, § 1. Nearly a century ago, in *McGrain v. Daugherty*, 273 U.S. 135 (1927), the Supreme Court unanimously held “that the power of inquiry—with process to

enforce it—is an essential and appropriate auxiliary to the legislative function.” *Id.* at 174. “This power, deeply rooted in American and English institutions, is indeed co-extensive with the power to legislate.” *Quinn v. United States*, 349 U.S. 155, 160 (1955). The Supreme Court has emphasized that, “[w]ithout the power to investigate—including of course the authority to compel testimony, either through its own processes or through judicial trial—Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively.” *Id.* at 160-61.

The law governing Congress’s power to investigate is well settled, but the Supreme Court’s decision in *McGrain* bears emphasis given its resonance with the facts here. *McGrain* involved a Senate committee’s investigation of whether then-Attorney General Harry M. Daugherty had failed to properly prosecute alleged conspirators for the corrupt handling of oil leases in the Teapot Dome scandal. *McGrain*, 273 U.S. at 150-52. The Senate committee subpoenaed testimony from the Attorney General’s brother, who failed to appear. *Id.* at 152-53. The Senate issued a warrant, and the Sergeant at Arms took him into custody, but the district court granted a writ of habeas corpus, holding that the Senate had “exceeded its powers under the Constitution.” *Id.* at 154.

The *McGrain* district court’s reasoning deserves close attention because the Supreme Court rejected it:

The extreme personal cast of the original resolutions; the spirit of hostility towards the then Attorney General which they breathe; that it was not avowed that legislative action

was had in view until after the action of the Senate had been challenged; and that the avowal then was coupled with an avowal that other action was had in view—are calculated to create the impression that the idea of legislative action being in contemplation was an afterthought.

*McGrain*, 273 U.S. at 176 (quoting *Ex parte Daugherty*, 299 F. 620, 638 (S.D. Ohio 1924)). Significantly, the *McGrain* district court concluded that the Senate was not investigating “the Attorney General’s office,” but rather “the former attorney general,” and by “put[ting] him on trial before it,” the Senate was “exercising the judicial function,” which “it has no power to do.” *Id.* at 177.

The Supreme Court held that the district “court’s ruling on this question was wrong.” *McGrain*, 273 U.S. at 177. The Court acknowledged that the Senate’s resolution authorizing the investigation “does not in terms avow that it is intended to be in aid of legislation.” *Id.* But even in the absence of an express statement of legislative purpose, the Court concluded that the investigation was legitimate because “the subject was one on which legislation *could be had*.” *Id.* (emphasis added). Because “[t]he only legitimate object the Senate could have in ordering the investigation was to aid it in legislating,” the Court stressed that “the presumption should be indulged that this was the real object.” *Id.* at 178.

In upholding the subpoena as a valid exercise of the Senate’s authority, the Supreme Court rejected Mr. Daugherty’s argument that “this power of inquiry, if sustained, may be abusively and oppressively exerted.” *McGrain*, 273 U.S. at 175. The Court explained that “[t]he same contention might be directed against the power to

legislate, and of course would be unavailing.” *Id.* The Court similarly dismissed the contention that the Senate was improperly attempting to try the Attorney General, stressing that it was not a “valid objection to the investigation that it might possibly disclose crime or wrongdoing on his part.” *Id.* at 179-80.

The Supreme Court in *McGrain* distinguished its earlier decision in *Kilbourn v. Thompson*, 103 U.S. 168 (1880), which had held that the House exceeded its authority in investigating a bankruptcy settlement where the United States was a dissatisfied creditor and the settlement was “subject to examination and approval or disapproval by the bankruptcy court.” *McGrain*, 273 U.S. at 170. The Court explained that the bankruptcy settlement was a matter “in respect to which no valid legislation could be had” because the case was “still pending in the bankruptcy court” and “the United States and other creditors were free to press their claims in that proceeding.” *Id.* at 171. In these narrow and unusual circumstances, the Supreme Court held that the House had exceeded the limits of its authority and “assumed a power which could only be properly exercised by another branch of the government, because it was in its nature clearly judicial.” *Kilbourn*, 103 U.S. at 192; *see also United States v. Rumely*, 345 U.S. 41, 46 (1953) (noting that *Kilbourn* has been subject to “weighty criticism” and “inroads . . . have been made upon [*Kilbourn*] by later cases”).

The Supreme Court’s subsequent decisions have reaffirmed the broad scope of Congress’s power to investigate. That power “encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It

includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them.” *Watkins v. United States*, 354 U.S. 178, 187 (1957). “It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste.” *Id.* The scope of Congress’s “power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.” *Barenblatt v. United States*, 360 U.S. 109, 111 (1959); *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 504 n.15 (1975) (same).

The Supreme Court has made clear that the “legitimacy of a congressional inquiry” is not “to be defined by what it produces.” *Eastland*, 421 U.S. at 509. “The very nature of the investigative function—like any research—is that it takes the searchers up some ‘blind alleys’ and into nonproductive enterprises. To be a valid legislative inquiry there need be no predictable end result.” *Id.*

In determining whether a Congressional inquiry is legitimate, courts “do not look to the motives alleged to have prompted it.” *Eastland*, 421 U.S. at 508. Instead, courts presume—as the district court did here—“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). Thus, “[s]o long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power.” *Barenblatt*, 360 U.S. at 132. As the district court here explained, “it is not the court’s role to decipher whether Congress’s true purpose in pursuing an investigation is to aid

legislation or something more sinister such as exacting political retribution.” JA284-85. “If there is some discernible legislative purpose, courts shall not impede Congress’s investigative action.” JA285; *see also Watkins*, 354 U.S. at 200 (“Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly’s legislative purpose is being served.”).

While Congress’s power to investigate is “broad,” *Watkins*, 354 U.S. at 187, it is not unlimited. The Supreme Court has recognized that Congress lacks the “general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress.” *Id.* Moreover, while Congress has legitimate authority to inform the American people about how federal officials are administering the government, *see Rumely*, 345 U.S. at 43, and the “workings of [their] government,” this power “cannot be inflated into a general power to expose where *the predominant result can only be* an invasion of the private rights of individuals.” *Watkins*, 354 U.S. at 200 (emphasis added).

In addition, Congress may not exercise “the powers of law enforcement,” which are assigned “to the Executive and the Judiciary.” *Quinn*, 349 U.S. at 161. But “[t]o find that a committee’s investigation has exceeded the bounds of legislative power it *must be obvious* that there was a usurpation of functions exclusively vested in the Judiciary or the Executive.” *Tenney v. Brandhove*, 341 U.S. 367, 378 (1951) (emphasis added). Finally, the Supreme Court has stated that Congress cannot



investigate “an area in which Congress is forbidden to legislate.” *Quinn*, 349 U.S. at 161 & n.23 (citing *Rumely*, 345 U.S. at 46).

Mr. Trump argues (Br. 19, 31-32) that “pertinency” is a further limitation on Congress’s power to subpoena records. He admits, however—as the district court explained (JA300)—that pertinency “has arisen most often in the contempt setting.” Br. 31. In any event, even if pertinency applies, the standard is low and readily “satisfied here.” JA301; *see McPhaul v. United States*, 364 U.S. 372, 381 (1960) (records may not be “plainly incompetent or irrelevant to any lawful purpose (of the Subcommittee) in the discharge of (its) duties”). Mr. Trump does not meaningfully contend otherwise.

As discussed below, the Oversight Committee’s investigations have a legitimate legislative purpose, as its Chairman has made clear and the district court correctly found. None of the limitations on Congress’s broad investigatory authority applies here.

### **B. The Oversight Committee’s Subpoena To Mazars Has A Legitimate Legislative Purpose**

The district court correctly held that the Oversight Committee had a legitimate legislative purpose in issuing the Mazars subpoena. As described earlier in some detail, the Oversight Committee—the principal investigative Committee of the House—is looking into serious issues concerning government ethics and conflicts of interest affecting Executive Branch officials and agencies. These investigations

include, as the Chairman made clear in his correspondence and his April 12 memorandum to the Oversight Committee, whether Mr. Trump has engaged in improper conduct, submitted inaccurate financial disclosure forms to the Ethics Office and other federal entities, improperly benefited from GSA's management of the Trump International Hotel lease, and violated the Emoluments Clauses. *See, e.g.*, JA107. The district court correctly concluded that “[e]ach of these is a subject ‘on which legislation could be had.’” JA287 (quoting *McGrain*, 273 U.S. at 177).

The President is required to make financial disclosures under the Ethics in Government Act of 1978, 5 U.S.C. app. 4 § 101(a), (f)(1)—which requires “even the President . . . [to] file a public financial disclosure report containing detailed financial information, including on personal debts.” Feb. 15 Cummings Ltr. at 7; *see also* Jan. 8 Cummings Ltr. As Chairman Cummings explained in his letter to the White House Counsel, that statute is “[s]quarely within the Committee’s jurisdiction” and “requires federal officials to publicly disclose financial liabilities that could affect their decision-making on behalf of the American people.” Feb. 15 Cummings Ltr. at 7.

Accordingly, the Oversight Committee requested that the White House produce documents relating to Mr. Trump’s payments to Mr. Cohen and the reporting of liabilities in the President’s June 2017 and May 2018 financial disclosure reports. Jan. 8 Cummings Ltr. at 1. “These documents will help the Committee determine why the President failed to report these payments and whether reforms are

necessary to address deficiencies with current laws, rules, and regulations.” Feb. 15 Cummings Ltr. at 9.

The district court correctly determined that “Congress reasonably might consider” the financial records requested from Mazars “in connection with deciding whether to legislate on federal ethics laws and regulation.” JA288. The Mazars subpoena requests statements and reports prepared by Mazars for Mr. Trump and related entities, including the Trump Old Post Office LLC, as well as the underlying and supporting documents used in those reports. JA26. These documents may illuminate whether and to what extent Mr. Trump misrepresented his liabilities on federal disclosure forms and has undisclosed conflicts of interest. This information, in turn, “could influence whether Congress strengthens public reporting requirements or enhances penalties for non-compliance.” JA288.

While the Oversight Committee need not identify any specific legislative proposals it is contemplating, there are in any event several bills that relate directly to Presidential financial disclosure requirements and the Ethics Office. *See, e.g.*, H.R. 1, §§ 8012, 8013 (amending the Ethics in Government Act to add requirements for Presidential assets and financial disclosures); H.R. 745, §§ 3, 4 (amending the Ethics in Government Act to strengthen removal protections for the Director of the Ethics Office and increasing duties of the Office).

Relatedly, the Oversight Committee has a valid legislative purpose in investigating whether the President has conflicts of interest that may improperly

influence his decisionmaking. As the district court observed, “exposing conflicts of interest is one of the core objectives of the Ethics in Government Act.” JA289. This Court has described the statute as “show[ing] Congress’ general belief that public disclosure of conflicts of interest is desirable despite its cost in loss of personal privacy.” *Washington Post Co. v. U.S. Dep’t of Health & Human Servs.*, 690 F.2d 252, 265 (D.C. Cir. 1982).

The records sought from Mazars may provide additional information on whether the President misstated his assets and liabilities on his financial statements. JA104-05. The subpoena seeks Mazars records dating to 2011—the first year for which Mr. Cohen provided excerpts of accounting records prepared by Mazars—to obtain a full picture of the scope of any such misrepresentations. These records could “shed light on whether the President has undisclosed conflicts of interest” (JA289) and will inform the Oversight Committee’s legislative judgments about government conflicts of interest laws.

The Oversight Committee is also investigating GSA’s ongoing management of its lease for the Trump International Hotel, and any financial statements used to obtain that lease—investigations with a valid legislative purpose. The GSA’s Office of Inspector General released a report finding “serious shortcomings” in the agency’s decisionmaking process in leasing the Old Post Office Building to Mr. Trump’s business, notwithstanding requirements in the lease and the strictures of the Emoluments Clauses. Apr. 12 Cummings Ltr. at 1 (quotation marks omitted). The

Inspector General's report noted that "the constitutional issues surrounding the President's business interests in the lease remain unresolved." *Id.*

The Oversight Committee is continuing to investigate those issues. In addition to seeking relevant information from Mazars, the Oversight Committee requested related documents from GSA, including all documents relating to the "Developer's Financial Capacity and Capability" submitted "in response to the Request for Proposals for the Redevelopment of the Old Post Office, dated March 24, 2011," and "all documents referring or relating to Mazars USA LLP or WeiserMazars LLP related to the Old Post Office lease." Apr. 12 Cummings Ltr. at 3.

This investigation not only relates to potential conflicts of interest, management of GSA's lease, and constitutional violations, it is also squarely within the Oversight Committee's jurisdiction over the "[o]verall economy, efficiency, and management of government operations and activities." House Rule X.1(n)(6) (Add. 1). Among other related legislation, the Oversight Committee is currently considering a bill that would prohibit the President and Vice President from conducting business directly with the Federal Government, H.R. 706, 116th Cong., § 241 (2019), as Mr. Trump's business has done with GSA.

The Oversight Committee's related investigations into Mr. Trump's potential violations of the Emoluments Clauses (*see* JA107) is also—as the district court correctly concluded—"a subject on which legislation, or similar congressional action, could be had" (JA288). The Foreign Emoluments Clause provides in relevant part:

“[N]o Person holding any Office of Profit or Trust under [the United States], shall, *without the Consent of the Congress*, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.” U.S. Const., Art. I, § 9, cl. 8 (emphasis added). Congress thus has express constitutional authority to consent to the President’s acceptance of foreign emoluments. And “incident to Congress’s authority to consent to the President’s receipt of Emoluments is the power to investigate the President’s compliance with the Clause.” JA289. Mr. Trump’s suggestion (Br. 41) that the Committee “abandon[ed]” this legislative purpose is incorrect. *See* ECF No. 20, at 3-4 (Oversight Committee opposition brief explaining that investigations include “possible constitutional violations flowing from the President’s continued interest in his financial holdings, including President Trump’s financial interest in the Trump International Hotel”).

Facts uncovered in one of the Oversight Committee’s investigations have already shown that Mr. Trump failed to disclose some liabilities and debts. *See* Cohen Testimony at 19. The Mazars financial records might illuminate others—for example, whether any foreign state-owned entities forgave debt previously owed by Mr. Trump—or show whether any state-owned entities made payments to the Hotel, which might appear in the subpoenaed auditors’ reports and underlying documents for the Trump Old Post Office LLC. *See* JA26. Review of accounting records over a period of years is necessary to determine whether any such transactions have occurred.

### **C. Mr. Trump's Challenges To The Oversight Committee's Subpoena Fail**

Mr. Trump raises various challenges to the Oversight Committee's subpoena, but none of his arguments withstands scrutiny. The subpoena is squarely within the Oversight Committee's jurisdiction and, as discussed above, it was issued in furtherance of legitimate legislative tasks. The fact that Mr. Trump dislikes the Oversight Committee's investigations is no basis for this Court to reverse the district court's well-reasoned judgment.

1. Mr. Trump first argues that the subpoena exceeds the Oversight Committee's statutory jurisdiction. Br. 15-16. Mr. Trump's argument misunderstands both the scope of the Oversight Committee's jurisdiction and the nature of the investigations.

Mr. Trump's argument largely assumes that the Oversight Committee's jurisdiction is limited to "review and study . . . [of] the Executive Office of the President." Br. 15 (quoting House Rule X.3(i)). That understanding is wrong. The Oversight Committee has broad jurisdiction, including over "the status of officers . . . of the United States," "[g]overnment management," and "economy, efficiency, and management of government operations and activities." House Rule X.1(n)(1), (4), (6) (Add. 1). The applicable House Rules also provide the Oversight Committee with "general oversight responsibilities" to assist the House with its analysis of "the

application, administration, execution, and effectiveness of Federal laws” and consideration of “new or additional legislation.” House Rule X.2(a) (Add. 2).

In addition, the Oversight Committee has been granted “[s]pecial oversight functions” to “review and study on a continuing basis the operation of Government activities at all levels, *including* the Executive Office of the President.” House Rule X.3(i) (emphasis added) (Add. 4). The Rules further authorize the Oversight Committee to “at any time conduct investigations of any matter without regard to clause . . . 3”—the clause that Mr. Trump relies on in contending that the Committee’s jurisdiction does not extend to the President—and without regard to whether the Rules confer “jurisdiction over the matter to another Committee.” House Rule X.4(c)(2) (Add. 4-5).

Mr. Trump largely ignores these jurisdictional provisions, focusing almost exclusively on the “including” clause of Rule X.3(i). That Rule provides the Oversight Committee with “special” jurisdiction, in addition to its broad general jurisdiction. The fact that the Oversight Committee’s special jurisdiction to review “the operation of Government activities at all levels” *includes* the Executive Office of the President does not limit the otherwise broad jurisdictional grant to the Oversight Committee *only* to that office. *See, e.g., Fed. Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 99-100 (1941) (explaining that “the term ‘including’ is not one of all-embracing definition, but connotes simply an illustrative application of the general principle”). In fact, the 116th House amended the Rule to add the phrase “including the



Executive Office of the President” to “ma[k]e clearer . . . that the Committee has jurisdiction over the White House.” H. Rep. No. 116-40, at 156 (2019).

Mr. Trump relies (Br. 16) on *Nixon v. Fitzgerald*, 457 U.S. 731 (1982), to argue that the Committee lacks “jurisdiction over the President.” But this is not a lawsuit against the President. Nor does this subpoena enforcement case present the concern in *Nixon* that exposing a former President to damages liability predicated on official acts could hamper future Presidents in “fearless[] and impartial[]” decisionmaking. *Id.* at 751 (quotation marks omitted). Instead, these investigations follow from Mr. Trump’s unprecedented decision to maintain his complex financial interests while holding office. *See* H. Rep. No. 116-40, at 156. Moreover, Mr. Trump’s contention (Br. 16) that the Oversight Committee’s jurisdiction over “the operation of Government activities at all levels” does not include the President cannot be squared with the Ethics in Government Act and its longstanding regulation of Presidential financial disclosures.

2. Mr. Trump contends (Br. 22-25) that the district court erred by failing to determine the constitutionality of any legislation—whether currently proposed or a future possibility—that the House might consider in connection with the Oversight Committee’s investigations. This is an astounding argument. The district court correctly concluded that it was “not the court’s role in this context to evaluate the constitutionality of proposed or contemplated legislation. Doing so would go beyond its limited powers.” JA303. Whatever Mr. Trump’s disagreements may be with

legislative proposals—whether actual or hypothetical—this suit is no place to adjudicate them.

In support of his novel theory, Mr. Trump relies principally on *Tobin v. United States*, 306 F.2d 270 (D.C. Cir. 1962). But *Tobin* provides no support for Mr. Trump. The case involved a House Judiciary Committee investigation with “the stated purpose” of “determin[ing] whether Congress should ‘alter, amend, or repeal,’ its consent to” the interstate compact that established the Port of New York Authority. 306 F.2d at 271; *see also id.* at 274 & n.7. The Port Authority “cooperated with the Committee investigators except as to disclosing certain documents alleged to relate exclusively to the internal administration of the authority.” *Id.* at 271. Mr. Tobin, the executive director of the port authority, was held in criminal contempt for failing to produce those documents. *Id.* at 271-72. Challenging his criminal conviction, Mr. Tobin argued that Congress lacked “the power, under the compact clause of the Constitution, to ‘alter, amend or repeal’ its consent to an interstate compact, which was the stated purpose of the Subcommittee’s investigation.” *Id.* at 272.

On appeal, this Court “decide[d] th[e] case as [it] would any other criminal appeal.” *Tobin*, 306 F.2d at 274; *id.* at 274 n.7 (explaining that Congress’s authority over interstate compacts “is an essential dividing line between [Mr. Tobin’s] guilt or innocence of criminal conduct”). The Court narrowly construed the subcommittee’s investigative authority “to obviate the necessity of passing on serious constitutional questions.” *Id.* at 275. Against this backdrop, the Court held that the scope of the

subcommittee's investigative authority had been "exhausted by the information actually tendered . . . in compliance with the subpoena, for such information adequately disclosed all that the Authority had done in the areas under inquiry." *Id.* at 276. *Tobin*, therefore, stands at most for the proposition that courts will narrowly construe a committee's investigative authority if that is the only way to avoid a difficult constitutional question presented as a defense in a criminal case.

Mr. Trump's reliance (Br. 23-25) on *Rumely* is similarly misplaced. *Rumely* involved a Congressional subpoena for the names of bulk purchasers of "books of a particular political tendentiousness." 345 U.S. at 42. Mr. Rumely was convicted of criminal contempt for refusing to provide the purchasers' names and he defended on First Amendment grounds. *Id.* The Supreme Court noted that Mr. Rumely was questioned in connection with a House investigation into "lobbying activities." *Id.* at 44. The Court expressed concern that reading the resolution authorizing this investigation to allow inquiry "into all efforts of private individuals to influence public opinion through books and periodicals," no matter how remote from the legislative process, "raises doubts of constitutionality in view of the prohibition of the First Amendment." *Id.* at 46. Faced with the question whether Mr. Rumely should be held in criminal contempt on these facts, the Court construed the House's authorizing resolution narrowly to avoid a confrontation with the First Amendment. *Id.* at 47.

These constitutional avoidance principles have no part in the analysis here. Mr. Trump is not asking the Court to avoid a constitutional question, but rather to reach

out and decide constitutional issues that are not presented. For example, Mr. Trump argues at length (Br. 37-40) that any application of conflicts-of-interest laws to the President would be unconstitutional. Mr. Trump is therefore asking the Court to render an advisory opinion that *any* legislation that “could be had,” *McGrain*, 273 U.S. at 177, in connection with these investigations is unconstitutional. But the Oversight Committee subpoenaed records from Mazars to inform its investigations into government ethics, conflicts of interest in the Executive Branch, the administration and management of GSA’s lease, and violations of the Emoluments Clauses. These investigations, in turn, inform any number of valid legislative topics. *See, e.g., McGrain*, 273 U.S. at 177 (explaining that the “administration of the Department of Justice—whether its functions were being properly discharged or were being neglected or misdirected” is “[p]lainly” a subject “on which legislation could be had”). If Congress enacted a statute on any one of these topics, that statute would be presumed valid and entitled to deference by the courts. *See, e.g., United States v. Nat’l Dairy Prod. Corp.*, 372 U.S. 29, 32 (1963) (noting “[t]he strong presumptive validity that attaches to an Act of Congress”). Striking down a statute before it is even enacted is thus doubly wrong.

In addition, the President is subject to the provisions of the Presidential Records Act and the STOCK Act, which, as Mr. Trump notes, “seeks to keep the President from personally profiting from his office.” Br. 39-40; *see also* JA302-03. Mr. Trump nevertheless insists (Br. 40) that any Presidential conflicts-of-interest laws would be unconstitutional because they would “influence and control who can serve

as President” and interfere with the President’s duties. This argument is wrong; it has no support in the Constitution or the case law interpreting it. But, in any event, the question for the Court is not whether any particular legislative proposal, or an entire class of currently enacted law, will pass constitutional muster—a subpoena is invalid only if “the matter [i]s one in respect to which *no valid legislation could be had.*” *McGrain*, 273 U.S. at 171 (emphasis added) (describing *Kilbourn*). Even if some potential legislation might raise difficult constitutional questions, other legislation—such as regulating officers or agencies other than the President to mitigate the effects of Presidential conflicts of interest—undoubtedly “could be had,” and that is sufficient for the subpoena to be upheld. Moreover, the investigative and legislative process itself allows Congress to address constitutional issues that might arise with any potential legislation.

As discussed, the Oversight Committee’s investigations into government ethics and conflicts of interest in the Executive Branch, including whether Mr. Trump has undisclosed conflicts of interest or has benefited from prohibited Emoluments, fall squarely within the scope of permissible legislative inquiries that courts have long upheld as valid exercises of Congress’s investigative function.

**3.** Mr. Trump acknowledges that Congress has an “informing function” that “is an application of” its legislative function. Br. 25 (emphasis omitted). As the Supreme Court has observed: “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. . . .

Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served[.]” *Rumely*, 345 U.S. at 43 (quoting Woodrow Wilson, *Congressional Government: A Study in American Politics* 303 (1913)).

Mr. Trump argues (Br. 26) that the informing function is limited to Congressional oversight of federal agencies. Even if Congress’s informing function were limited to agency oversight, that would not invalidate the investigations here because one of the purposes for requesting the Mazars records is to investigate GSA’s management of its lease for the Trump International Hotel.

The investigations also concern the Office of Government Ethics, “an executive agency” created by Congress. 5 U.S.C. app. 4 § 401(a). Even under Mr. Trump’s restrictive view, investigating and apprising the public of whether current law enables the agency to perform its statutory function of preventing conflicts of interest, *e.g., id.* § 402, and determining whether additional legislative reforms are required to strengthen the agency, *see* H.R. 745, §§ 3, 4, are proper exercises of the Oversight Committee’s informing function. *See Watkins*, 354 U.S. at 200 n.33.

4. Mr. Trump recognizes (Br. 29-30) that courts cannot examine Congress’s motives to determine the validity of a subpoena. *See Barenblatt*, 360 U.S. at 132. He contends, however, that this Court may determine “what the Committee’s *actual* purpose is through the available evidence.” Br. 29 (emphasis in original). But the only purportedly improper purpose Mr. Trump identifies is whether the Oversight

Committee “is inappropriately engaging in law enforcement instead of legislating.”

Br. 30.

The Oversight Committee is not doing so: The mere fact that criminal conduct by Mr. Trump might both inform the Oversight Committee’s legislative judgments and be unlawful does not mean the Oversight Committee is engaged in a law enforcement investigation. As the Supreme Court has explained, “[w]hether [respondent’s] activities violated any statute is not relevant; the inquiry was intended to inform Congress in an area where legislation may be had.” *Eastland*, 421 U.S. at 506 (explaining that “[t]he courts should not go beyond the narrow confines of determining that a committee’s inquiry may fairly be deemed within its province” (quotation marks omitted)).

The Oversight Committee is investigating whether Mr. Trump inaccurately represented liabilities on his statutorily mandated financial disclosures, impermissibly benefited from a lease with a government agency, and violated the Constitution. The results of these investigations will inform Congress’s consideration of legislation. The fact that the same underlying conduct might also be unlawful, or that this investigation might share some parallels with a law enforcement investigation, does not invalidate the inquiry. 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); *McGrain*, 273 U.S. at 179-80 (“Nor do we think it a valid objection to the investigation that it might possibly disclose crime or wrongdoing on [the Attorney General’s] part.”).

Mr. Trump quotes (Br. 34) *Shelton v. United States*, 404 F.2d 1292, 1297 (D.C. Cir. 1968), for the proposition that Congress cannot engage in a law enforcement investigation based on “the mere assertion of a need to consider ‘remedial legislation.’” But Mr. Trump omits the rest of the quoted sentence in *Shelton*, which applies here: “but when the purpose asserted is supported by references to specific problems which in the past have been or which in the future could be the subjects of appropriate legislation, then we cannot say that a committee of the Congress exceeds its broad power when it seeks information in such areas.” *Id.*

Mr. Trump’s reliance (Br. 34-35) on the district court’s decision in *United States v. Icardi*, 140 F. Supp. 383 (D.D.C. 1956), fares no better. In *Icardi*, the court found that the subcommittee investigating the murder and robbery of a servicemember overseas was “functioning . . . as a committing magistrate” to adjudicate “the guilt or innocence” of Mr. Icardi. *Id.* at 387. The court held that, while Congress “has the right to inquire whether there is a likelihood that a crime has been committed touching upon a field within its general jurisdiction . . . this authority cannot be extended to sanction a legislative trial and conviction of the individual toward whom the evidence points the finger of suspicion.” *Id.* at 388. There is no respect in which the Oversight Committee’s investigation here is the equivalent of a criminal trial.



\* \* \*

The district court correctly observed that the “binding principle that emerges from the[] judicial decisions is that courts must presume Congress is acting in furtherance of its constitutional responsibility to legislate and must defer to congressional judgments about what Congress needs to carry out that purpose.” JA269. The Oversight Committee issued the subpoena to Mazars to further its legitimate legislative purposes. Applying the Supreme Court’s and this Court’s precedent thus “compels the conclusion that President Trump cannot block the subpoena to Mazars.” *Id.*

### CONCLUSION

For the foregoing reasons, the Court should speedily affirm the district court’s order entering judgment in favor of the Oversight Committee and against Mr. Trump.

Respectfully submitted,

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July 1, 2019

### CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 10,920 words excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word Professional Plus 2016 in 14-point Garamond type.

*/s/ Douglas N. Letter*

\_\_\_\_\_  
Douglas N. Letter

**CERTIFICATE OF SERVICE**

I certify that on July 1, 2019, I filed one copy of the foregoing Brief of the Committee on Oversight and Reform of the U.S. House of Representatives via the CM/ECF system of the United States Court of Appeals for the District of Columbia Circuit, which I understand caused service on all registered parties.

*/s/ Douglas N. Letter*

Douglas N. Letter

**ADDENDUM**

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**RULES OF THE U.S. HOUSE OF REPRESENTATIVES, ONE  
HUNDRED SIXTEENTH CONGRESS**

**Rule X (excerpts)  
ORGANIZATION OF COMMITTEES**

***Committees and their legislative jurisdictions***

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

\* \* \*

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

- (1) Federal civil service, including intergovernmental personnel; and the status of officers and employees of the United States, including their compensation, classification, and retirement.
- (2) Municipal affairs of the District of Columbia in general (other than appropriations).
- (3) Federal paperwork reduction.
- (4) Government management and accounting measures generally.
- (5) Holidays and celebrations.
- (6) Overall economy, efficiency, and management of government operations and activities, including Federal procurement.
- (7) National archives.
- (8) Population and demography generally, including the Census.
- (9) Postal service generally, including transportation of the mails.
- (10) Public information and records.

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

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

\* \* \*

### ***General Oversight Responsibilities***

2. (a) The various standing committees shall have general oversight responsibilities as provided in paragraph (b) in order to assist the House in—

(1) its analysis, appraisal, and evaluation of—

(A) the application, administration, execution, and effectiveness of Federal laws; and

(B) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and

(2) its formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.

(b)(1) In order to determine whether laws and programs addressing subjects within the jurisdiction of a committee are being implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated, each standing committee (other than the Committee on Appropriations) shall review and study on a continuing basis—

(A) the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction;

(B) the organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction;

(C) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not a bill or resolution has been introduced with respect thereto); and



(D) future research and forecasting on subjects within its jurisdiction.

\* \* \*

(d)(1) Not later than March 1 of the first session of a Congress, the chair of each standing committee (other than the Committee on Appropriations, the Committee on Ethics, and the Committee on Rules) shall—

- (A) prepare, in consultation with the ranking minority member, an oversight plan for that Congress;
- (B) provide a copy of that plan to each member of the committee for at least seven calendar days before its submission; and
- (C) submit that plan (including any supplemental, minority, additional, or dissenting views submitted by a member of the committee) simultaneously to the Committee on Oversight and Reform and the Committee on House Administration.

(2) In developing the plan, the chair of each committee shall, to the maximum extent feasible—

- (A) consult with other committees that have jurisdiction over the same or related laws, programs, or agencies with the objective of ensuring maximum coordination and cooperation among committees when conducting reviews of such laws, programs, or agencies and include in the plan an explanation of steps that have been or will be taken to ensure such coordination and cooperation;
- (B) review specific problems with Federal rules, regulations, statutes, and court decisions that are ambiguous, arbitrary, or nonsensical, or that impose severe financial burdens on individuals;
- (C) give priority consideration to including in the plan the review of those laws, programs, or agencies operating under permanent budget authority or permanent statutory authority;
- (D) have a view toward ensuring that all significant laws, programs, or agencies within the committee's jurisdiction are subject to review every 10 years; and

(E) have a view toward insuring against duplication of Federal programs.

- (3) Not later than April 15 in the first session of a Congress, after consultation with the Speaker, the Majority Leader, and the Minority Leader, the Committee on Oversight and Reform shall report to the House the oversight plans submitted under subparagraph (1) together with any recommendations that it, or the House leadership group described above, may make to ensure the most effective coordination of oversight plans and otherwise to achieve the objectives of this clause.

\* \* \*

### ***Special oversight functions***

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

\* \* \*

### ***Additional functions of committees***

4. (c)(1) The Committee on Oversight and Reform shall—
- (A) receive and examine reports of the Comptroller General of the United States and submit to the House such recommendations as it considers necessary or desirable in connection with the subject matter of the reports;
  - (B) evaluate the effects of laws enacted to reorganize the legislative and executive branches of the Government; and
  - (C) study intergovernmental relationships between the United States and the States and municipalities and between the United States and international organizations of which the United States is a member.
- (2) In addition to its duties under subparagraph (1), the Committee on Oversight and Reform may at any time conduct investigations of any matter without regard to clause 1, 2, 3, or this clause conferring jurisdiction over the matter to another standing committee. The findings and recommendations of the committee in such an investigation shall be made

available to any other standing committee having jurisdiction over the matter involved.

- (3) (A) The Committee on Oversight and Reform may adopt a rule authorizing and regulating the taking of depositions by a member or counsel of the committee, including pursuant to subpoena under clause 2(m) of rule XI (which hereby is made applicable for such purpose).
- (B) A rule adopted by the committee pursuant to this subparagraph—
- (i) may provide that a deponent be directed to subscribe an oath or affirmation before a person authorized by law to administer the same; and
  - (ii) shall ensure that the minority members and staff of the committee are accorded equitable treatment with respect to notice of and a reasonable opportunity to participate in any proceeding conducted thereunder.
- (C) Information secured pursuant to the authority described in subdivision (A) shall retain the character of discovery until offered for admission in evidence before the committee, at which time any proper objection shall be timely.

\* \* \*

## **Rule XI (excerpts)**

### ***In general***

1. (b)(1) 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. Subject to the adoption of expense resolutions as required by clause 6 of rule X, each committee may incur expenses, including travel expenses, in connection with such investigations and studies.

\* \* \*

***Power to sit and act; subpoena power***

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

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

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

(2) The chair of the committee, or a member designated by the chair, may administer oaths to witnesses.

(3)(A)(i) Except as provided in subdivision (A)(ii), a subpoena may be authorized and issued by a committee or subcommittee under subparagraph (1)(B) in the conduct of an investigation or series of investigations or activities only when authorized by the committee or subcommittee, a majority being present. The power to authorize and issue subpoenas under subparagraph (1)(B) may be delegated to the chair of the committee under such rules and under such limitations as the committee may prescribe. Authorized subpoenas shall be signed by the chair of the committee or by a member designated by the committee.

(ii) In the case of a subcommittee of the Committee on Ethics, a subpoena may be authorized and issued only by an affirmative vote of a majority of its members.

(B) A subpoena duces tecum may specify terms of return other than at a meeting or hearing of the committee or subcommittee authorizing the subpoena.

(C) Compliance with a subpoena issued by a committee or subcommittee under subparagraph (1)(B) may be enforced only as authorized or directed by the House.

**RULES OF THE COMMITTEE ON OVERSIGHT AND REFORM  
116TH CONGRESS**

**Rule 12 — Additional Duties of the Chair of the Committee (excerpts)**

The Chair of the Committee shall:

(a) Make available to other committees the findings and recommendations resulting from the investigations of the Committee, as required by House Rule X, clause 4(c)(2);

(b) Direct such review and studies on—

\* \* \*

(2) the operation of Government activities at all levels, including the Executive Office of the President, as required by House Rule X, clause 3(i);

\* \* \*

(g) Authorize and issue subpoenas as provided in House Rule XI, clause 2(m), in the conduct of any investigation or activity or series of investigations or activities within the jurisdiction of the Committee[.]