Nos. 19-715, 19-760

IN THE
Supreme Court of the United States

DONALD J. TRUMP, *et al.*,
Petitioners,

v.

MAZARS USA, LLP, *et al.*,
Respondents.

DONALD J. TRUMP, *et al.*,
Petitioners,

v.

DEUTSCHE BANK AG, *et al.*,
Respondents.

On Writs Of Certiorari To The United States Courts Of Appeals For The District Of Columbia And Second Circuits

BRIEF FOR RESPONDENT COMMITTEES OF THE U.S. HOUSE OF REPRESENTATIVES

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QUESTION PRESENTED

Whether this Court should invalidate four subpoenas issued by Committees of the United States House of Representatives to private parties for unprivileged documents relating to the President and affiliated persons and business entities.

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CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

The constitutional provisions involved in these consolidated cases that were not identified in Petitioners' brief are U.S. Const. art. I, § 1 and U.S. Const. art. I, § 9, cl. 7, which are reproduced at page 1a in the appendix to this brief. These consolidated cases also involve the following pertinent Rules of the United States House of Representatives: Rule X clauses 1(h), (n), 2(a), (b)(1), (d)(1)-(3), 3(i), (m), 4(c)(2), 11(b)(1), 11(c)(1), and 11(j)(1); and Rule XI clauses 1(b)(1), and 2(m)(1), and (m)(3)(A)(i), which are reproduced at pages 2a-13a in the appendix to this brief.

BRIEF FOR RESPONDENT COMMITTEES OF THE U.S. HOUSE OF REPRESENTATIVES

Many momentous separation-of-powers disputes have come before this Court. *E.g.*, *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *United States v. Nixon*, 418 U.S. 683 (1974); *Morrison v. Olson*, 487 U.S. 654 (1988). This dispute, regarding four document subpoenas to third parties for records not covered by any privilege, is not one of them.

Contrary to what President Trump and the Solicitor General contend, there is nothing unprecedented about Congressional subpoenas for documents that may shed light on Presidential affairs. What is unprecedented is the extraordinary breadth of the arguments that President Trump and the Solicitor General make about the supposed power of a President to thwart investigations in furtherance of Congress's Article I legislative and oversight

functions. Nothing in the text of the Constitution or this Court's rulings supports the arguments of President Trump or the Solicitor General.

This Court has ruled that Article II does not confer on a President the power to resist compulsory process directed *at* him. Short of "impairment of the Executive's ability to perform its constitutionally mandated functions," no such power exists, even in response to process issued on behalf of a private citizen. *Clinton v. Jones*, 520 U.S. 681, 702 (1997).

Yet President Trump and the Solicitor General urge that the four subpoenas in this case—which are not even directed at the President and impose almost no burden on him—should be invalidated. President Trump asks this Court to invalidate the subpoenas based on a fact-bound argument, rejected by four courts below, that the "true purpose" of the subpoenas was improper law enforcement. Not to be outdone, the Solicitor General asks this Court to inaugurate an era of highly active judicial supervision over Congress's investigatory and oversight practices by inventing an entirely *new* separation-of-powers test. He does so in the face of the explicit constitutional provision that each House of Congress is empowered to create its own rules governing its procedures.

The Court should reject these arguments and affirm the judgments below.

STATEMENT

A. Congressional Investigations

Throughout our Nation's history, Congressional committees have investigated the wide range of issues on which Congress legislates and for which it

appropriates funds. They have often done so by focusing on specific individuals, including sitting Presidents and their families, and by collecting personal financial information.

1. The Constitution vests Congress with "[a]ll legislative Powers herein granted." U.S. Const. art. I, § 1. It also vests Congress with the appropriations power. U.S. Const. art. I, § 9, cl. 7. To exercise those powers, Congress requires information. Congress needs to know how current federal laws are functioning and how Executive Branch agencies are performing, and, at times, it needs information about the President's own actions, both personal and official. Occasional disputes have arisen concerning specific information sought, but until now Presidents have recognized their responsibility to cooperate with Congressional investigations.

Legislatures' need for information—and for compulsory process to obtain it—existed "before and when the Constitution was framed and adopted." *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927); *see id.* at 161 & n.15. "Investigations by colonial legislatures date back at least to 1691[.]" Telford Taylor, *Grand Inquest: The Story of Congressional Investigations* 11 (1955).

In 1742, William Pitt, then a Member of Parliament, characterized the House of Commons as "the Grand Inquest of the Nation." 13 R. Chandler, *History & Proceedings of the House of Commons* 172 (1743). The Framers of our Constitution, too, "referred to the Grand Inquest of the Nation (which had come to identify the entire investigatory function) in the several Ratifying Conventions." Raoul Berger, *Congressional Subpoenas to Executive Officials*, 75

Colum. L. Rev. 865, 886-87 (1975). They used that term to refer in particular to the House of Representatives, which they described as empowered to "diligently inquire into grievances, arising both from men and things." 2 *The Works of the Honourable James Wilson* 146 (1804).

2. From the earliest days of the Republic, Congress has conducted investigations in aid of its constitutional functions.

In 1792, a House committee investigated General Arthur St. Clair's disastrous expedition to the Northwest Territory, with power "to call for such persons, papers and records as may be necessary to assist in their inquiries." Taylor, *supra*, at 22 (quoting 3 Annals of Cong. 493 (1792)); *see id.* at 19. It did so with the support of "Mr. Madison, who had taken an important part in framing the Constitution only five years before, and four of his associates in that work." *McGrain*, 273 U.S. at 161.

The committee requested records from Secretary of War Henry Knox, who referred the matter to President Washington, who in turn consulted his Cabinet. Taylor, *supra*, at 22-23. President Washington and his Cabinet concluded "that the House was an inquest and therefore might institute inquiries"; that as part of its investigations the House "might call for papers generally"; that "the Executive ought to communicate such papers as the public good would permit, and ought to refuse those, the disclosure of which would injure the public"; and that the House should direct requests for Executive Branch information to the President. *The Complete Anas of Thomas Jefferson* 71 (Franklin B. Sawvel ed., 1903). On the recommendation of his Cabinet,

President Washington directed that all the St. Clair records be produced to the committee. Taylor, *supra*, at 24.

The "great bulk" of early Congressional investigations concerned the Executive Branch. Taylor, *supra*, at 33. Such investigations were common in the early Republic and became ever more frequent as time went on. James M. Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 169-91 (1926). Between 1898 and 2014, Congress held more than 4,500 hearings as part of investigations into alleged Executive Branch misconduct. *See* Douglas L. Kriner & Eric Schickler, *Investigating the President: Congressional Checks on Presidential Power* 36 (2016).

But Congressional investigations are not limited to Executive Branch oversight. They have concerned the entire range of subjects on which Congress may legislate. In considering potential taxation laws and financial regulation, for example, Congress has collected sensitive financial information from individuals and businesses.

In 1912, the House commenced the "Money Trust investigation," Taylor, *supra*, at 51, during which a subcommittee "obtain[ed] full and complete information of the banking and currency conditions of the United States for the purpose of determining what legislation is needed." H. Res. 429, 62d Cong. (1912). That subcommittee issued requests for information to approximately 30,000 financial institutions, H. Rep. No. 62-1593, at 13 (1913), and summoned "[p]ractically all of the leading financiers of the time" to provide testimony, Taylor, *supra*, at 63. It

recommended dozens of subjects for legislation, *see* H. Rep. No. 62-1593, at 162-65, and proposed draft bills, *see id.* at 166-73.

Twenty years later, Congress investigated the stock market crash of 1929. *See* Donald A. Ritchie, *The Pecora Wall Street Exposé, 1934*, *in* I *Congress Investigates: A Documented History 1792-1974*, 500, 500-20 (Roger A. Bruns et al. eds., 2011). That investigation led to the enactment of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Public Utility Holding Company Act of 1935. *See* Taylor, *supra*, at 67.

More recently, Congress has investigated tax shelters, focusing on how prominent individuals avoid substantial tax liability. In one such investigation, a Senate subcommittee conducted a detailed inquiry into individuals' tax practices, including those of a prominent producer of children's television programs. *See Tax Haven Abuses: The Enablers, the Tools and Secrecy: Hearing Before the Permanent Subcomm. on Investigations of the S. Comm. on Homeland Sec. & Governmental Affairs*, S. Hrg. No. 109-797, vol. I, at 167, 278-96 (2006).

The same investigation also inquired into the affairs of a prominent businessman. *See id.* at 253-76. It also sought records to determine how two other wealthy individuals established elaborate offshore arrangements to hide assets and earnings. *See id.* at 297 (noting the subcommittee "issued about 40 subpoenas" and "reviewed over 1.5 million pages of documents," including financial records).

The same subcommittee later conducted two case studies of foreign financial institutions' assistance to

U.S. taxpayers in evading taxes. *See* Staff of Permanent Subcomm. on Investigations of the S. Comm. on Homeland Sec. and Governmental Affairs, *Tax Haven Banks and U.S. Tax Compliance* 3-4 (Comm. Print 2008).

3. Congressional investigations of Presidents also "stretch far back in time and broadly across subject matters." Pet. App. 17a. In response to Congressional requests and subpoenas, Presidents, their families, Executive Branch officials, and third parties have provided testimony and documents concerning Presidents' personal and official actions.

Examples include:

- In 1832, a House committee investigated whether President Jackson "had any knowledge of … attempted fraud" by his Secretary of War, John Eaton. H. Rep. No. 22-502, at 1 (1832). The committee was empowered to use compulsory process. *Id.* Witnesses appeared before the committee under subpoena to testify about their conversations with the President, *see, e.g.*, *id.* at 4, 31-32, and produced correspondence with the President, *id.* at 64-67. Petitioners' assertions (at 29) to the contrary are mistaken.
- In 1860, a House committee investigated whether President Buchanan and other government officials corruptly "by money, patronage, or other improper means, sought to influence the action of Congress." Cong. Globe, 36th Cong., 1st Sess. 997-98 (1860). The committee subpoenaed individuals for

testimony and compelled the production of private letters, including letters to and from the President. H. Rep. No. 36-648, at 31-32 (1860).

- In 1867, in an impeachment investigation, the House Judiciary Committee "examined [President] Johnson's private financial dealings and bank accounts." William H. Rehnquist, *Grand Inquests* 214 (1992). The House authorized the committee "to send for persons and papers." *Impeachment Investigation: Testimony Before the H. Judiciary Comm.*, 39th & 40th Cong. 1-2 (1867). A bank representative testified that he informed President Johnson that "I supposed I would be compelled to produce [the President's bank account records], as I would that of any other customer under like circumstances." *Id*. at 182. President Johnson "smiled, and said he had no earthly objection to have any of his transactions looked into; that he had done nothing clandestinely, and desired me to show them anything I had relating to his transactions." *Id.* at 183.
- In 1869, a House committee led by then-Representative James Garfield investigated the so-called "gold panic," seeking to uncover whether "any officers of the national government" were involved in a conspiracy to drive up gold prices. H. Rep. No. 41-31, at 1 (1870). The committee heard testimony about a letter that President Grant had directed his wife to write to her sister urging

that President Grant's brother-in-law distance himself from gold speculators. *Id.* at 10-11, 156-69, 448-49.

- In 1973 and 1974, the Joint Committee on Taxation investigated President Nixon's tax returns and the Internal Revenue Service's audits of those returns. It did so using the committee's statutory authority to compel production of several years of returns that President Nixon had not voluntarily provided for the period before he became President, as well as returns of his daughter and son-in-law. *See* Memorandum from Chairman Richard Neal to the Members of the H. Comm. on Ways and Means 3 & attachments (July 25, 2019), https://perma.cc/UYZ2-QTCU.

- In 1980, a Senate committee investigated President Carter's business and personal relationship with his brother, who was under scrutiny for his dealings with Libya. *See* S. Rep. No. 96-1015, at v (1980); *see, e.g.*, *Inquiry into the Matter of Billy Carter and Libya: Hearings Before the Subcomm. to Investigate Individuals Representing the Interests of Foreign Gov'ts of the S. Comm. on the Judiciary* (*Billy Carter Hearings*), vol. I, 96th Cong. 510, 525 (1980); *id.*, vol. II, at 659; *id.*, vol. III, at 1465, 1503-05. The investigation included an examination of financial arrangements concerning a warehouse owned by the President, his brother, and their mother. S. Rep. No. 96-1015, at 9-10 & n.29. The committee also

obtained, under statutory authority and by subpoena, the President's brother's tax and bank records and records of his telephone conversations. *Billy Carter Hearings*, vol. III, at 1666, 1706.

President Carter acknowledged that "[o]ur political history is full of stories about Presidential relatives whom other people tried to use in order to gain favor with incumbent Administrations." *Billy Carter Hearings*, vol. III, at 1495. While asserting that "[n]o payments or transfers of [Libyan] money have been made to me," *id.* at 1493, he instructed all members of his White House staff to cooperate fully with this Congressional investigation, *White House Statement on the Senate Judiciary Committee Inquiry*, 16 Weekly Comp. Pres. Doc. 1420 (July 24, 1980). He noted that during his Administration his "own personal and business affairs … ha[d] been intensely examined." *Billy Carter Hearings*, vol. III, at 1477.

- In 1987, President Reagan "furnish[ed] 'relevant excerpts of his personal diaries' to Congress" in response to Congress's investigation of the Iran-Contra affair. Pet. App. 18a (quoting Morton Rosenberg, Cong. Research Serv., RL30319, *Presidential Claims of Executive Privilege* 14 (2008)). The President had "pledged his cooperation" with the inquiry, in return for the committees' agreement to proceed by "letter requests, rather than by subpoena." Staff of S. Select

Comm. on Intelligence, *Were Relevant Documents Withheld from the Congressional Committees Investigating the Iran-Contra Affair?* 19 (Comm. Print 1989).

- Beginning in 1995, a Senate committee—with subpoena power, S. Res. 120, 104th Cong. (1995)—investigated, among other matters, the Whitewater Development Corporation, a financial venture in which President Clinton and his wife had been involved long before he took office. *See id.*; Pet. App. 18a. The committee subpoenaed documents from at least one Clinton accountant, *Hearings Before the Special Comm. to Investigate Whitewater Dev. Corp. and Related Matters*, S. Hrg. No. 104-869, vol. II, at 1528 (1995) (subpoena to Yoly Redden), and heard testimony from her and another of the Clintons' long-time personal accountants, *id.*, vol. XIII, at 3103 (1996) (testimony of Gaines Norton, Jr.); *see also id.*, vol. XVII, at 6191 (deposition of Norton); *id.*, vol. XVIII, at 7175-315 (deposition of Redden).

  The committee also subpoenaed documents relating to Mrs. Clinton's law-firm billing records, which were discovered in the White House Residence, *see* S. Rep. No. 104-280, at 155-61 (1996); subpoenaed third-party telephone records for calls from the White House, *see id.* at 49-50; S. Hrg. No. 104-869, vol. II, at 1474; examined telephone records from Mrs. Clinton's mother's home in Arkansas, *see* S. Rep. No. 104-280, at 46; S.

> Hrg. No. 104-869, vol. II, at 1393, 1474; obtained by subpoena notes of a meeting among President Clinton's attorneys, *see* S. Rep. No. 104-204, at 16-18 (1996); received testimony from President Clinton's private counsel, *see* S. Hrg. No. 104-869, vol. XV, at 2439 (deposition of David Kendall); *id.*, vol. XII, at 1474 (testimony of Kendall); examined decades of the Clintons' tax returns, *see* S. Rep. No. 104-280, at 319; and obtained the Clintons' personal financial statement and held hearings on their bank loans, *see* S. Hrg. No. 104-869, vol. XVII, at 5834; *id.*, vol. XIII, at 2891-92; *see also id.* vol. XIII, at 2817-901.

Thus, there is no basis for the repeated claim by Petitioners and the Solicitor General that the subpoenas here "involve the first attempts by [C]ongressional committees to demand the personal records of a sitting President of the United States." DOJ Br. 10; Pet. Br. 19 (similar). Congress has inquired into both the official and personal activities of Presidents and their families throughout the Nation's history.

B. The Committees' Legal Framework

1. The Constitution's Rulemaking Clause vests each House of Congress with authority to "determine the Rules of its Proceedings." U.S. Const. art. I, § 5, cl. 2. Since the Founding, the House has exercised that authority to structure its investigations and Executive Branch oversight in various ways.

In early Congresses, the House designated *ad hoc* bodies, known as "select" committees, to conduct its

business, including investigations. *See* H. Doc. No. 103-324, at 17, 143 (1994); Josh Chafetz, *Congress's Constitution: Legislative Authority and the Separation of Powers* 282-83 (2017). Over time, the House largely moved away from that piecemeal investigatory system. Today, it adopts rules at the outset of each Congress that create "standing" and "permanent select" committees and empower them to conduct investigations and issue subpoenas. *See* H. Doc. No. 103-324, at 165-66; *Jefferson's Manual* §§ 714, 805; *see also* H. Res. 6, 116th Cong. (2019) (adopting the rules for the 116th Congress).[1]

House Rule X establishes the House's "standing committees," which include the Committee on Financial Services (Financial Services Committee) and the Committee on Oversight and Reform (Oversight Committee). House Rule (Rule) X.1. It also establishes the "[s]elect and joint committees," including the Permanent Select Committee on Intelligence (Intelligence Committee). Rule X.10, X.11.

Rule X assigns each committee legislative jurisdiction and oversight responsibilities. *See generally* Rule X. The Rules empower each committee "at any time" to conduct "such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities," Rule XI.1(b)(1), and "to require, by subpoena or otherwise, … the production of such … documents as it considers necessary," Rule XI.2(m)(1)(B), (m)(3)(A)(i).

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[1] Rules of the House of Representatives, 116th Cong. (2019), https://perma.cc/X5ZQ-ZZWD.

2. The Financial Services Committee has jurisdiction over "[b]anks and banking," "[i]nternational finance," "[i]nternational financial and monetary organizations," and "[m]oney and credit." Rule X.1(h)(1), (5)-(7). The Committee thus has legislative jurisdiction over the Nation's banking laws, including anti-money-laundering statutes such as the Bank Secrecy Act, 31 U.S.C. §§ 5311 *et seq*. The Committee is the authorizing committee for federal regulatory bodies that supervise financial institutions and enforce compliance with banking laws. *See* Financial Services Committee Rule 5(a)(1)(B), (D), (F).[2]

As a standing committee, the Financial Services Committee has "general oversight responsibilities" over the subjects within its jurisdiction, including the "application, administration, execution, and effectiveness of laws and programs" and the "organization and operation of Federal agencies" it oversees. Rule X.2(a), (b)(1)(A)-(B). The Committee is charged with reviewing those subjects "on a continuing basis" to determine whether legislative reforms are needed. Rule X.2(b)(1).

To carry out that mandate, the Committee regularly engages in sector-wide examinations of the banking industry and financial regulators. Given the sensitive nature of the information involved, the

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[2] Rules of the Committee on Financial Services, 116th Cong. (2019), https://perma.cc/CB6L-EL9N; *see also Oversight of Prudential Regulators: Ensuring the Safety, Soundness, Diversity, and Accountability of Depository Institutions: Hearing Before the H. Comm. on Fin. Servs.*, 116th Cong. (2019).

Committee largely conducts these investigations in private.

3. The Intelligence Committee has jurisdiction over "matters relating to" the Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program, as well as "[i]ntelligence and intelligence-related activities of all other departments and agencies of the Government." Rule X.11(b)(1).

The House Rules define those activities broadly to encompass any collection or use of information about foreign governments "that relates to the defense, foreign policy, national security, or related policies of the United States"; any "activities taken to counter similar activities directed against the United States"; and any collection or use of information about the "activities of persons within the United States … whose political and related activities pose, or may be considered … to pose, a threat to the internal security of the United States." Rule X.11(j)(1).

Rule X directs the Intelligence Committee to make "regular and periodic reports to the House on the nature and extent of the intelligence and intelligence-related activities of the various departments and agencies of the United States." Rule X.11(c)(1). The Committee is assigned "[s]pecial oversight functions," including "review[ing] and study[ing] on a continuing basis laws, programs, and activities of the intelligence community." Rule X.3(m).

4. The Oversight Committee is the House's principal oversight body. Its jurisdiction includes

"[f]ederal civil service … and the status of officers and employees of the United States," "[g]overnment management and accounting measures generally," and the "[o]verall economy, efficiency, and management of government operations and activities, including Federal procurement." Rule X.1(n)(1), (4), (6).

Under Rule X, the Oversight Committee exercises legislative jurisdiction over government ethics laws, including the Ethics in Government Act of 1978, 5 U.S.C. app. 4 §§ 101 *et seq*., and over government procurement and property management by the General Services Administration.[3] The Ethics in Government Act, enacted in response to the Watergate scandal, requires sitting Presidents, among others, to file periodic financial disclosures with the Office of Government Ethics. 5 U.S.C. app. 4 §§ 101(a), (d), (f); 103(b). The Oversight Committee also serves as the authorizing committee for the Office of Government Ethics.[4]

Like the House's other standing committees, the Oversight Committee has "general oversight responsibilities" for the statutes and agencies within

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[3] *See General Services Administration—Checking in with the Government's Acquisition and Property Manager: Hearing Before the Subcomm. on Gov't Operations of the H. Comm. on Oversight & Gov't Reform*, 115th Cong. (2018) (statement of Emily Murphy, Adm'r, Gen. Servs. Admin.).

[4] *See, e.g.*, *Merit Systems Protection Board, Office of Government Ethics, and Office of Special Counsel Reauthorization: Hearing Before the Subcomm. on Gov't Operations of the H. Comm. on Oversight & Gov't Reform*, 114th Cong. 15-26, 41-55 (2015) (statement of Walter Shaub, Jr., Dir., U.S. Office of Gov't Ethics).

its jurisdiction. Rule X.2(a), (b)(1). In addition, the Oversight Committee "may at any time conduct investigations of any matter without regard to" the jurisdictions of the House's other standing committees; accordingly, the Committee's oversight jurisdiction is coextensive with that of the entire House. Rule X.4(c)(2).

The House also has assigned the Committee a "[s]pecial oversight" function: It "shall review and study on a continuing basis the operation of Government activities at all levels, including the Executive Office of the President." Rule X.3(i). The Oversight Committee, under leadership of both parties, has issued document requests and subpoenas to the White House for information related to the President.[5]

C. The Financial Services Committee's Investigations And Subpoenas

The Financial Services Committee is conducting an industry-wide investigation into financial institutions' compliance with banking laws, including the Bank Secrecy Act, to determine whether current

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[5] *See, e.g.*, *The Electronic Records Preservation at the White House: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 110th Cong. 18, 34, 36 (2008); *White House Compliance with Committee Subpoenas: Hearings Before the H. Comm. on Gov't Reform & Oversight*, 105th Cong. 66-74 (1997). The House added the phrase "including the Executive Office of the President" to the current House Rules to "ma[k]e clearer … that the [Oversight] Committee has jurisdiction over the White House." H. Rep. No. 116-40, at 156 (2019).

law and banking practices adequately guard against foreign money laundering and high-risk loans.

To further that broad investigation, the Committee issued subpoenas to eleven financial institutions, seeking internal bank documentation and account records. Significantly for this case, most of those subpoenas have no connection to President Trump. Petitioners have challenged only the subpoenas to Deutsche Bank and Capital One.

Pursuant to Rule X,[6] the Financial Services Committee submitted its oversight plan to the House. *See* H. Rep. No. 116-40, at 73 (2019). The Committee explained that it would investigate safe banking practices, including "financial regulators' supervision" of the industry. *Id.* at 78. The Committee also would investigate "the implementation, effectiveness, and enforcement of anti-money laundering/counter-financing of terrorism … laws and regulations." *Id.* at 84.[7] The Committee would look for "patterns and trends of money laundering and terrorist finance," including "in the real estate market," and would consider legislative proposals to "address any vulnerabilities identified." H. Rep. No. 116-40, at 84-85.

The Financial Services Committee is also reviewing measures implemented in the wake of the 2008 financial crisis. The Committee is investigating how "enhanced prudential standards are being applied to the largest banks operating in the United

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[6] *See* Rule X.2(d)(1)-(3).

[7] *See, e.g.*, 31 U.S.C. § 5318(h)(1) (requiring "each financial institution … [to] establish anti-money laundering programs").

States" to determine whether further action is needed to ensure the safety and soundness of lending practices. *Id.* at 79. This investigation stems from reports of high-risk lending practices, including the issuance of more than $1 trillion in corporate "leveraged loans," which could increase the severity of an economic downturn.[8]

The full House has adopted a resolution addressing "money laundering and other financial crimes," which "are serious threats to our national and economic security." H. Res. 206, 116th Cong. (2019). Those threats are longstanding: A 2016 study by the Financial Action Task Force (an international standards-setting body) found "significant gaps" in the United States' anti-money-laundering framework. *Id.* Additional studies have identified significant vulnerabilities in "the real estate industry." *Id.*

The resolution recognized that "the influx of illicit money, including from Russian oligarchs, has flowed largely unimpeded into the United States through … anonymous shell companies and into U.S. investments, including luxury high-end real estate." *Id.* As Financial Services Committee Chairwoman Maxine Waters explained on the House floor, "[b]ad actors like Russian oligarchs and kleptocrats often use anonymous shell companies and all-cash schemes to buy and sell commercial and residential real estate to hide and clean their money. Today, these all-cash schemes are exempt from the Bank Secrecy Act." 165

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[8] *See generally* Damian Paletta, *How Regulators, Republicans and Big Banks Fought for a Big Increase in Lucrative But Risky Corporate Loans*, Wash. Post (Apr. 6, 2019), https://perma.cc/FEQ5-AW6N.

Cong. Rec. H2698 (daily ed. Mar. 13, 2019). The House thus resolved to "support[] efforts to close loopholes that allow corruption, terrorism, and money laundering to infiltrate our country's financial system." H. Res. 206.

To address these concerns, the Financial Services Committee is analyzing banking practices, partly through the lens of specific accounts and transactions. This analysis requires documents showing the sources and flows of funds, as well as the banks' due diligence and internal reports. Because, as discussed below, public reports have raised significant questions about Deutsche Bank's and Capital One's banking practices—and given that both institutions host accounts associated with President Trump—the Committee's industry-wide investigations seek information about those accounts. As the Chairwoman explained, reports of the "movement of illicit funds throughout the global financial system" are "precisely why the Financial Services Committee is investigating the questionable financing provided to President Trump and the Trump Organization by banks like Deutsche Bank to finance its real estate properties." 165 Cong. Rec. H2698.

In early 2017, regulators fined Deutsche Bank for its role in facilitating a $10 billion Russian money-laundering scheme. *See* 165 Cong. Rec. H2698.[9] Deutsche Bank's role in Russian money-laundering,

[9] *In re Deutsche Bank AG*, N.Y. Department of Financial Services, Consent Order Under New York Banking Law §§ 39, 44 and 44-a (Jan. 30, 2017), https://perma.cc/LY7L-FG8X.

including a scheme to launder another $20 billion, has been publicly reported.[10]

Capital One, for its part, entered a consent order with the Office of the Comptroller of the Currency and agreed to pay a fine of $100 million for failing to remediate deficiencies in its Bank Secrecy Act and anti-money-laundering programs.[11]

Deutsche Bank and Capital One "have long provided business and personal banking services" to President Trump and his family. JA110a. Deutsche Bank reportedly is "deeply entwined" with President Trump and extended him and his businesses more than $2 billion in loans at a time when other banks were unwilling to do so.[12] Deutsche Bank reportedly made those loans despite concerns raised by senior executives about a high risk of default[13] and conducted an internal review because the loans were

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[10] *See, e.g.*, Luke Harding & Nick Hopkins, *Bank That Lent $300m to Trump Linked to Russian Money Laundering Scam*, Guardian (Mar. 21, 2017), https://perma.cc/6R8F-35YX; Luke Harding, *Deutsche Bank Faces Action over $20Bn Russian Money-Laundering Scheme*, Guardian (Apr. 17, 2019), https://perma.cc/4M4Z-SBJM.

[11] *In re Capital One, N.A. McLean, Virginia Capital One Bank (U.S.A.), N.A. Glen Allen, Virginia, Enforcement Action*, No. 2018-080, 2018 WL 5384428, at *1-2 (O.C.C. Oct. 23, 2018).

[12] David Enrich, *A Mar-a-Lago Weekend and an Act of God: Trump's History with Deutsche Bank*, N.Y. Times (Mar. 18, 2019), https://perma.cc/P44G-X93M.

[13] *Id.*

made under "highly unusual circumstances."[14] President Trump's financial disclosure forms filed in May 2018 showed liabilities of at least $130 million owed to Deutsche Bank.[15]

President Trump's businesses, in turn, have been publicly linked "to at least 10 wealthy former Soviet businessmen with alleged ties to criminal organizations or money laundering."[16] And it has been reported that Deutsche Bank long had concerns that President Trump's "real estate projects were laundromats for illicit funds from countries like Russia, where oligarchs were trying to get money out of the country," but those "concerns went unheeded."[17] Recent reports have raised even more questions regarding Deutsche Bank's suspicious or high-risk transactions involving Russia, President Trump, or both.[18]

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[14] Luke Harding, et al., Deutsche *Bank Examined Donald Trump's Account for Russia Links*, Guardian (Feb. 16, 2017), https://perma.cc/PSH9-95F6.

[15] U.S. Office of Gov't Ethics, Form 278e, 2017 Exec. Branch Personnel Public Fin. Disclosure Report of Donald J. Trump, President 45 (signed May 15, 2018), https://perma.cc/S8ZY-B8YL.

[16] Oren Dorell, *Trump's Business Network Reached Alleged Russian Mobsters*, USA Today (Mar. 28, 2017), https://perma.cc/7UY2-4VCM.

[17] David Enrich, *The Money Behind Trump's Money: The Inside Story of the President and Deutsche Bank, His Lender of Last Resort*, N.Y. Times Mag. (Feb. 4, 2020), https://perma.cc/XTW7-EE5Q.

[18] *See* David Enrich, *Dark Towers: Deutsche Bank, Donald Trump & An Epic Trail of Destruction* (2020).

On April 15, 2019, the Financial Services Committee issued a subpoena to Deutsche Bank, requesting eight categories of documents. Three are for "documents belonging to, or likely to reveal information, concerning" President Trump, his family, and his businesses. JA300a. Because President Trump's businesses involve complicated relationships among President Trump's family members, the subpoena named President Trump's adult children and sought their account information, as well as account information for "members of the[] immediate family" of the named individuals. JA128a-129a.

The same day, the Committee issued a subpoena to Capital One seeking information about various Trump business entities—including businesses affiliated with the Trump International Hotel in Washington, D.C., which opened in Fall 2016—and their "principal[s], including directors shareholders, or officers, or … other representatives." JA155a-156a.

The Deutsche Bank subpoena seeks documents from January 1, 2010 to the present, and the Capital One subpoena from July 19, 2016 to the present, except that there is no date limitation for account opening, closing, and due diligence documents. JA128a, JA155a.

The subpoenaed documents include periodic account statements showing incoming and outgoing transfers and documents relating to transfers over $10,000, JA130a, JA157a; suspicious activity reports, JA130a-131a, JA157a; internal bank analyses or reviews of the relevant accounts, JA135a-136a, JA157a; and loan and credit-related documents,

JA131a-134a, JA157a. The "less extensive," JA301a-302a, Capital One subpoena seeks documents relating to Bank Secrecy Act and anti-money-laundering compliance and "any real estate transaction." JA157a. The Deutsche Bank subpoena also seeks information concerning accounts unrelated to President Trump. JA138a (list redacted).

As part of the Financial Services Committee's extensive industry-wide investigations, the Committee has also held several hearings on lending and anti-money-laundering practices.[19] The Committee has also recently considered, and approved, bills to address the threat of foreign money laundering.

The Committee reported out, and the House now has passed, H.R. 2513, which would require small corporations and limited liability companies, which are often used for international money laundering, to disclose their beneficial owners. H.R. 2513, § 3, 116th Cong. (2019). The House also passed H.R. 2514, which would, among other things, expand the scope of the Bank Secrecy Act and create a pilot program allowing financial institutions to share suspicious activity reports with their foreign branches and affiliates. H.R. 2514, § 201, 116th Cong. (2019). In addition, H.R. 1404, which has passed the House, would require the Director of National Intelligence to submit an

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[19] *See, e.g.*, *Emerging Threats to Stability: Considering the Systemic Risk of Leveraged Lending, Hearing Before the Subcomm. on Consumer Prot. and Fin. Insts. of the H. Comm. on Fin. Servs.*, 116th Cong. (2019); *Examining the BSA/AML Regulatory Compliance Regime: Hearing Before the Subcomm. on Fin. Insts. & Consumer Credit of the H. Comm. on Fin. Servs.*, 115th Cong. (2017).

assessment to Congress regarding the financial holdings of Russian President Vladimir Putin and top Kremlin-connected oligarchs. H.R. 1404, § 3, 116th Cong. (2019).

D. The Intelligence Committee's Investigations And Subpoena

The Intelligence Committee is investigating "efforts by Russia and other foreign actors to influence our political process before, during, and since the 2016 election." 165 Cong. Rec. H3481 (daily ed. May 8, 2019) (statement of Committee Chairman Adam Schiff). The Committee is analyzing "what the United States must do to protect itself from future interference and malign influence operations."[20] Its investigation includes evaluating whether foreign actors have financial leverage over President Trump, whether legislative reforms are necessary to address these risks, and whether our Nation's intelligence agencies have the resources and authorities needed to combat such threats.

The Committee's investigation includes: (1) "[t]he extent of any links and/or coordination between the Russian government, or related foreign actors, and individuals associated with Donald Trump's campaign, transition, administration, or business interests, in furtherance of the Russian government's interests"; (2) "[w]hether any foreign actor has sought to compromise or holds leverage, financial or otherwise, over Donald Trump, his family, his business, or his

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[20] Press Release, U.S. House of Representatives Permanent Select Comm. on Intelligence, Chairman Schiff Statement on House Intelligence Committee Investigation (Feb. 6, 2019), https://perma.cc/RNA8-M8L8.

associates"; and (3) "[w]hether President Trump, his family, or his associates are or were at any time at heightened risk of, or vulnerable to, foreign exploitation, inducement, manipulation, pressure, or coercion, or have sought to influence U.S. government policy in service of foreign interests."[21]

The Intelligence Committee's foreign-influence and financial-leverage investigation intersects in important respects with the Financial Services Committee's investigation of the banking industry. Public reports have connected President Trump's business interests with Russia-linked entities and individuals, including oligarchs with ties to President Putin.[22] Wealthy Russians and other foreign individuals reportedly used Trump-branded real estate to park—and in some cases launder—large sums of money for more than a decade.[23] In addition, around 2006, President Trump embarked on a multi-year real estate spending spree, ultimately spending more than $400 million in cash on various properties.[24]

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[21] *Id.*

[22] Prior investigations have also catalogued some of these connections. *See, e.g.*, House Permanent Select Comm. on Intelligence Minority Members, *Minority Views to the Majority-Produced "Report on Russian Active Measures*" (Mar. 26, 2018), https://perma.cc/TN2S-3VKV.

[23] Michael Hirsch, *How Russian Money Helped Save Trump's Business*, Foreign Pol'y (Dec. 21, 2018), https://perma.cc/83RV-Q5YV.

[24] Jonathan O'Connell et al., *As the 'King of Debt,' Trump Borrowed to Build His Empire. Then He Began Spending Hundreds of Millions in Cash.*, Wash. Post (May 5, 2018), https://perma.cc/P7HT-LGPS.

These cash outlays occurred while the Trump Organization was reportedly receiving significant cash inflows from Russian sources.[25] President Trump reportedly pursued a lucrative licensing deal for Trump Tower Moscow—which would have required Kremlin approval—through at least June 2016, while he was campaigning.[26] At the same time, President Trump was advocating policies favored by Russia and repeatedly praised President Putin.[27] It remains unclear whether President Trump or his affiliates will pursue the Trump Tower Moscow deal in the future.[28]

To further its investigation, the Intelligence Committee issued a subpoena to Deutsche Bank. Because of the substantial overlap with the information sought by the Financial Services Committee, and to ease the administrative burden on Deutsche Bank, the Intelligence Committee issued a subpoena identical to the Financial Services Committee subpoena.

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[25] *See* Hirsch, *supra*.

[26] *See* Mark Mazzetti et al., *Moscow Skyscraper Talks Continued Through 'the Day I Won,' Trump Is Said to Acknowledge*, N.Y. Times (Jan. 20, 2019), https://perma.cc/FX3X-GEX8.

[27] *Putin's Playbook: The Kremlin's Use of Oligarchs, Money and Intelligence in 2016 and Beyond: Hearing Before the H. Permanent Select Comm. of Intelligence*, 116th Cong. (2019) (Committee on Intelligence Hearing: Putin's Playbook) (prepared statement of Michael McFaul, Former U.S. Ambassador to Russia), at 9-10, https://perma.cc/4EZF-XRN3.

[28] *See, e.g.*, *Remarks by President Trump Before Marine One Departure*, White House (Nov. 29, 2018, 10:23 AM), https://perma.cc/W84W-94TJ (suggesting deal would have been resumed if President Trump had not won election).

That subpoena sought information relevant to determining President Trump's foreign financial entanglements, including documents identifying any "financial relationship, transactions, or ties … [with] any foreign individual, entity, or government." JA129a. It also requested any internal bank reviews, reports, communications, and similar documents identifying foreign involvement, highlighting suspicious foreign transactions, or otherwise discussing connections between the President's businesses and foreign individuals, entities, or governments. *See generally* JA128a-138a.

As Chairman Adam Schiff explained, the Committee's investigation will "inform a wide range of legislation and appropriations decisions." H3482 (daily ed. May 8, 2019). Those legislative initiatives include strengthening "legal authorities and capabilities for our intelligence and law enforcement agencies to better track illicit financial flows"; amending foreign agent registration requirements to "prohibit tactics used by our adversaries' unofficial surrogates"; and regulating "presidential transitions and inaugurations to prevent foreign powers from exercising undue influence." *Id.*

The Intelligence Committee's investigation informs several bills already introduced in the House, including H.R. 2424, which would require federal campaign officials to notify law enforcement if offered or provided foreign assistance, and H.R. 1474, which would require an intelligence election-interference threat assessment before every federal general election. H.R. 2424, § 3, 116th Cong. (2019); H.R. 1474, § 2, 116th Cong. (2019). The House has also passed H.R. 1617, which would require the Director of

National Intelligence to submit to Congress intelligence assessments of certain Russian intentions, and H.R. 1, which would improve election security and enforcement to combat foreign interference. H.R. 1617, § 4, 116th Cong. (2019); H.R. 1, §§ 4001-05, 116th Cong. (2019).

E. The Oversight Committee's Investigations And Subpoena

The Oversight Committee is investigating Executive Branch ethics and conflicts of interest, Presidential financial disclosures, federal-lease management, and possible violations of the Emoluments Clauses, U.S. Const. art. I, § 9, cl. 8; U.S. Const. art. II, § 1, cl. 7, to determine the adequacy of existing laws and perform related agency oversight. To further those investigations, the Oversight Committee issued a subpoena to Mazars USA, LLP, for documents relating to accounting work performed for President Trump and several of his business entities.

As the Committee explained in its oversight plan, it would investigate "a wide range of laws and regulations regarding Executive Branch ethics." H. Rep. No. 116-40, at 154; *see also id.* at 156-57 (describing scope of investigations). A key factor driving the Oversight Committee's investigations is President Trump's decision to maintain ties to his complex private business interests while in office—a stark departure from "decades of precedent set by previous Presidents," who divested their financial holdings or used blind trusts. *Id.* at 156. The former director of the Office of Government Ethics testified before the Committee that President Trump's "refusal

to divest his conflicting financial interests" has been the "trigger" for "an ethics crisis," leaving "the public with no way of knowing how personal interests are affecting public policy."[29]

As the Committee explained, "financial interests in businesses across the United States and around the world" still owned by President Trump "pose both perceived and actual conflicts of interest," which require "robust and independent oversight of the President and his family's multiple business interests in order to guard against financial conflicts and unconstitutional emoluments." H. Rep. No. 116-40, at 156. To determine whether and how to update ethics and conflict-of-interest laws to account for these changed circumstances, the Committee must obtain information about President Trump's financial arrangements and the completeness of his disclosures.

In investigating these issues, the Oversight Committee has identified significant concerns with GSA's ongoing management of the lease of the federal Old Post Office Building for the Trump International Hotel in Washington, D.C.[30] The 2013 lease prohibits any "elected official of the Government of the United

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[29] *H.R. 1: Strengthening Ethics Rules for the Executive Branch: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 125 (2019) (testimony of Walter Shaub, Jr.); *see also id.* at 130 (explaining that current "requirements do not require [President Trump] to disclose needed information about his privately held companies").

[30] *See* GSA, Office of Inspector General, Evaluation of GSA's Management and Administration of the Old Post Office Building Lease, at 2-3 (Jan. 16, 2019), https://perma.cc/V7YE-H93H.

States" from benefiting from the lease.[31] Shortly after President Trump's inauguration, GSA concluded that the lease remained "valid."[32] In January 2019, however, GSA's Office of Inspector General issued a report finding "serious shortcomings" in GSA's decisionmaking, among them that GSA attorneys' analysis had "improperly ignored" the Emoluments Clauses.[33] The report concluded that "the constitutional issues surrounding the President's business interests in the lease remain unresolved."[34]

The Oversight Committee requested documents from GSA, explaining that the Inspector General's "report rais[ed] grave questions about the management of this lease."[35] The request sought documents submitted by President Trump and related entities in response to the "Request for Proposals for the Redevelopment of the Old Post Office, dated March 24, 2011," as well as "all documents referring or relating to Mazars USA LLP or WeiserMazars LLP related to the Old Post Office lease." *Id.* at 3. The documentation used to obtain the lease—including any financial statements prepared by Mazars—is necessary to the Committee's analysis of emoluments issues and oversight of GSA. The agency has not provided the requested materials.

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[31] *Id.* at 3

[32] *Id.* at 10.

[33] *Id.* at 23.

[34] *Id.* at 23-24.

[35] Letter from Rep. Elijah Cummings, Chairman, House Comm. on Oversight & Reform, et al., to Emily Murphy, Adm'r, Gen. Servs. Admin. (Apr. 12, 2019), https://perma.cc/R3K7-EFS7.

The Oversight Committee is also examining the accuracy of President Trump's financial disclosures and the adequacy of existing ethics laws and agency implementation. This investigation was prompted by the Office of Government Ethics' identification of an error on President Trump's 2017 financial disclosure report: the omission of a sum paid by the President's former personal attorney, Michael Cohen, to a third party that should have been listed as "a reportable liability under the Ethics in Government Act."[36] After the Office of Government Ethics identified the error, President Trump filed another form disclosing the payment to Mr. Cohen as a liability of less than $250,000; federal prosecutors subsequently revealed that the payments to Mr. Cohen had exceeded $250,000. *See* Pet. App. 4a-5a, 168a.

After these events became known, the Committee requested documents from the Office of Government Ethics and the White House concerning President Trump's financial disclosures and reporting of debts.[37] In correspondence with the White House, then-Chairman Elijah Cummings explained that, "[f]or decades," Congress has investigated how "laws

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[36] *See* Letter from David Apol, Acting Director, Office of Gov't Ethics, to Rod Rosenstein, Deputy Attorney General, Dep't of Justice (May 16, 2018), https://perma.cc/HPJ3-ZKQU.

[37] *See, e.g.*, Letter from Rep. Elijah Cummings, Chairman, House Comm. on Oversight & Reform, to Pat Cipollone, White House Counsel (Feb. 15, 2019), https://perma.cc/J38M-72H6 (Feb. 15 Cummings Letter); Letter from Rep. Elijah Cummings, Chairman, House Comm. on Oversight & Reform, to Emory Rounds III, Dir., Office of Gov't Ethics (Jan. 22, 2019), CADC Dkt. No. 1791951, at JA35.

relating to financial disclosures required of the President" are "being implemented and whether changes to the laws are necessary."[38] The Chairman explained that these documents would "help the Committee determine why the President failed to report … payments and whether reforms are necessary to address deficiencies with current laws, rules, and regulations."[39] The White House has not produced the requested material.

On February 27, 2019, Mr. Cohen testified that President Trump "inflated his total assets when it served his purposes" but, at other times, "deflated his assets."[40] As corroboration, Mr. Cohen produced several accounting documents, including 2011 and 2012 statements prepared by Mazars. Following this testimony, the Chairman wrote to Mazars on March 20, 2019, explaining that the statements provided by Mr. Cohen "raise questions about the President's representations of his financial affairs on these forms and on other disclosures."[41] The Chairman requested that Mazars produce accounting documents relating to President Trump and certain of his entities, dating from January 1, 2009, to the present.[42] Mazars

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[38] Feb. 15 Cummings Letter at 9.

[39] *Id.* at 7-9.

[40] *See Michael Cohen, Former Attorney to President Donald Trump: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. 13, 19 (2019), https://perma.cc/2VSJ-BEFB.

[41] Letter from Rep. Elijah Cummings, Chairman, House Comm. on Oversight & Reform, to Victor Wahba, Chairman and CEO, Mazars USA LLP 1 (Mar. 20, 2019), https://perma.cc/SA9R-LWQ6.

[42] *Id.* at 2-4.

declined to produce the requested documents voluntarily.

On April 12, 2019, the Chairman sent a memorandum to Committee members explaining the need for a subpoena to Mazars. *See* 19-715 Br. in Opp. App. 6a-15a. The memorandum identified four subjects that the Oversight Committee had "full authority to investigate": (1) "whether the President may have engaged in illegal conduct before and during his tenure in office," (2) "whether [the President] has undisclosed conflicts of interest that may impair his ability to make impartial policy decisions," (3) "whether [the President] is complying with the Emoluments Clauses of the Constitution," and (4) "whether [the President] has accurately reported his finances to the Office of Government Ethics and other federal entities." *Id.* at 11a. The Chairman again emphasized that the Committee's "interest in these matters informs its review of multiple laws and legislative proposals under our jurisdiction." *Id.* at 11a-12a.

The Mazars subpoena sought four categories of documents relating to financial statements, engagement letters, supporting documents, and related communications for President Trump and certain of his business entities. Pet. App. 230a-231a. The subpoena sought documents from 2011—the year GSA sought proposals for the Old Post Office Building and the first year for which Mr. Cohen produced Mazars accounting records—through 2018, for most categories, narrowing the period by two years from the request to Mazars. *Id.* at 231a.

The Committee has engaged in substantial legislative activity on these subjects. The Committee

held a hearing on H.R. 1, which would strengthen existing ethics laws in numerous respects by, among other things, requiring additional financial disclosures to be filed with the Office of Government Ethics. *See, e.g.*, H.R. 1, §§ 8012-13, 8022. H.R. 1, which has been passed by the full House, would also amend current law to prohibit contracts between the United States or its agencies and the President. *See id.* § 8014. There is bipartisan support for legislation on several of these subjects. *See, e.g.*, H.R. 1612, §§ 7014, 7022, 9001(b)(1)(A), 116th Cong. (2019) (bill introduced by minority House Member containing several such provisions). Other pending bills likewise would reform ethics and conflicts-of-interest laws to adapt to present circumstances. *See, e.g.*, H.R. 745, § 3, 116th Cong. (2019) (amending Ethics in Government Act to make the Director of the Office of Government Ethics removable only for cause).[43]

* * *

After Petitioners initiated litigation challenging the four subpoenas, the House adopted House Resolution 507, 116th Cong. (2019). House Resolution 507 recognized that the Committees had "undertaken investigations and issued related subpoenas seeking personal, financial, banking, and tax information related to the President, his

[43] *See, e.g.*, H.R. 706, 116th Cong. (2019) (prohibiting President from engaging in certain transactions with the federal government); H.R. 1626, 116th Cong. (2019) (similar); H.R. 681, 116th Cong. (2019) (extending anti-nepotism laws to the White House and Executive Office of the President); H.R. 1481, § 2, 116th Cong. (2019) (requiring President to disclose or divest certain financial interests); H.R. 391, 116th Cong. (2019) (requiring public reporting of certain ethics waivers obtained by Executive Branch appointees).

immediate family, and his business entities and organizations." *Id.* To "avoid any doubt," the House "ratifie[d] and affirm[ed]" the Committees' authority under House Rules to issue subpoenas concerning "the President in his personal or official capacity; []his immediate family, business entities, or organizations;" or "any third party" that had related information. *Id.*

F. Procedural History

Before the subpoenas' response dates, Petitioners—President Trump "solely in his capacity as a private citizen" and other related individuals and entities—sued to prevent the banks and Mazars from complying. *See* JA109a-127a, 114a (April 29, 2019 Complaint in *Deutsche Bank*); JA30a-49a, 33a (April 22, 2019 Complaint in *Mazars*). The Committees intervened as defendants. JA227a; Pet. App. 174a. In both cases, the district courts declined to enjoin the subpoenas and the courts of appeals affirmed.

The recipients of the subpoenas—Mazars, Deutsche Bank, and Capital One—took no position on the merits of these cases in the lower courts and likewise take no position here.

1. The district court in *Deutsche Bank* denied a preliminary injunction. JA185a-186a, JA187a-222a. The Second Circuit affirmed in substantial part by a 2-1 vote. JA224a-226a.

The Second Circuit held that the Committees had issued the Deutsche Bank and Capital One subpoenas to further "valid legislative purposes": "national security and the integrity of elections, and, more specifically, enforcement of anti-money-laundering/counter-financing of terrorism laws,

terrorist financing, the movement of illicit funds through the global financial system including the real estate market, the scope of the Russian government's operations to influence the U.S. political process, and [understanding] whether [President Trump] was vulnerable to foreign exploitation." JA284a.

The Second Circuit rejected Petitioners' arguments that the subpoenas were an inappropriate exercise in law enforcement, JA286a, JA297a, JA293a n.67, improperly motivated, JA294a-296a, and overly intrusive, JA297a-300a. It concluded that the subpoenas "easily pass" this Court's standards for valid Congressional subpoenas and were "reasonably framed to aid the Committees in fulfilling their responsibilities to conduct oversight as to the effectiveness of agencies administering statutes within the Committees' jurisdiction and to obtain information appropriate for consideration of the need for new legislation." JA307a. It ordered prompt compliance by the banks in the main but directed a "limited" remand procedure for the district court to address certain "sensitive" and other documents. JA225a, 305a-306a. Judge Livingston dissented in part and would have remanded for "further review." JA323a-375a.[44]

Treating Petitioners' stay application as a petition for certiorari, this Court granted certiorari.

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[44] Consistent with the parties' agreement to stay certain portions of the subpoena pending appeal, the Financial Services and Intelligence Committees have entered into an agreement with a non-party to this litigation for Deutsche Bank to produce certain records (previously subject to that stay) related to that non-party. *See* Joint Mot. to Expedite Appeal, *Trump v. Deutsche Bank*, No. 19-1540 (2d Cir. May 25, 2019).

2. The district court in *Mazars* consolidated preliminary-injunction proceedings with a final hearing on the merits and entered summary judgment for the Oversight Committee. *See* Pet. App. 158a-212a. The D.C. Circuit affirmed by a 2-1 vote the Committee's "authority under both the House Rules and the Constitution to issue the subpoena." Pet. App. 2a; *see also* Pet. App. 77a. The D.C. Circuit held that the legislative materials in the record were "more than sufficient to demonstrate the Committee's interest in investigating possible remedial legislation" on government ethics and financial disclosures. Pet. App. 32a.

The D.C. Circuit rejected Petitioners' arguments that the subpoenas had an illegitimate law-enforcement purpose, Pet. App. 32a-40a, could not result in valid legislation, Pet. App. 41a-52a, did not seek relevant information, Pet. App. 57a-62a, and fell outside the Committee's jurisdiction, Pet. App. 63a-75a. It "conclude[d] that the subpoena issued by the Committee to Mazars is valid and enforceable." Pet. App. 76a. Judge Rao dissented on a novel theory not raised (and not now defended) by any party. Pet. App. 77a-157a.

The court denied rehearing en banc over dissents by Judge Katsas (joined by Judge Henderson), Pet. App. 215a-217a, and by Judge Rao (joined by Judge Henderson), Pet. App. 218a-221a. This Court then granted certiorari.

SUMMARY OF ARGUMENT

I. A. Legislative subpoena power is deeply rooted in American and English institutions. Although Congress's subpoena power, like judicial

review, is not explicit in the Constitution, its historical pedigree is too strong for it to be narrowed by the arguments Petitioners and the Solicitor General raise here.

This Court has emphasized that its review of Congressional subpoenas is deferential. It has held that Congress has constitutional power to issue a subpoena if the subpoena is related to a valid legislative purpose. A subpoena relates to such a purpose if it seeks information that will inform Congress on a subject on which legislation could be had.

B. As the courts below found, multiple legislative purposes support the Committees' subpoenas. The subpoenas seek documents that will inform the Committees' consideration of several bills and their related agency oversight.

This Court has long recognized that Congress may investigate potential wrongdoing if the investigation relates to a valid legislative purpose. It therefore makes no difference that the Committees are investigating potential wrongdoing in furtherance of legislation. This Court has held, time and again, that doing so is consistent with Congress's Article I authority.

Moreover, Petitioners misrepresent this Court's opinions in arguing for a "real object," "primary purpose," or "gravamen" test. This Court has disclaimed the power to intervene based on legislators' alleged motives and has sensibly recognized that a subpoena issued for a valid reason should not be quashed just because of an alleged illegitimate purpose.

Petitioners do not dispute that the documents subpoenaed by the Financial Services and Intelligence Committees will inform constitutionally permissible legislation now under consideration. As for Petitioners' contention that the Oversight Committee's subpoena has no valid purpose—because all existing and future legislation pertaining to the President's personal finances is unconstitutional—that argument is contrary to both history and this Court's precedent.

The President does have one special protection. He may object that a subpoena impairs the ability of the Executive Branch to perform its constitutionally mandated functions. But no one argues that these third-party subpoenas cause such impairment. Nor does that special protection justify imposing any heightened relevancy standard on these subpoenas.

C. The Solicitor General, taking what may at first blush appear to be a middle position, would grant the President a qualified immunity for his purely personal actions and papers. He proposes three new atextual rules that would purportedly invalidate the subpoenas here.

But each of these suggested rules conflicts with the Constitution and this Court's interpretations of it. A requirement that the full chamber authorize subpoenas concerning the President disregards the House's constitutional power to "determine the Rules of its Proceedings." U.S. Const. art. I, § 5, cl. 2. The suggestion that courts scrutinize the "legitimacy" of Congress's stated purposes would invite inappropriate judicial micromanagement of Congressional oversight. And providing the President power to block subpoenaed information unless it is

"demonstrably critical" to Congress's purposes brazenly stacks the deck in favor of one Branch over another. Moreover, even if some version of the Solicitor General's rules were adopted, these subpoenas would meet that test.

II. The House authorized these Committees to conduct these investigations. The Rules of the House permit each Committee to issue any subpoena it "considers necessary" to carry out "any of its functions and duties." Rule XI.2(m)(1). Furthermore, House Resolution 507 ratified and affirmed the subpoenas at issue here. The House clearly has taken political responsibility for investigating this President.

A rule authorizing a subpoena to the President need not expressly mention the President by name. *See United States v. Nixon*, 418 U.S. 683 (1974) (applying Fed. R. Crim. P. 17(c)). And constitutional avoidance applies only in cases of ambiguity. There is no ambiguity about the House's authorization of these subpoenas.

ARGUMENT

I. The Challenged Subpoenas Are Well Within The Constitutional Authority Of The House Of Representatives

Congress has the power to issue subpoenas "related to a valid legislative purpose." *Barenblatt v. United States*, 360 U.S. 109, 127 (1959). Such subpoenas are valid if they are "intended to inform Congress in an area where legislation may be had." *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 506 (1975). As all four courts below found, the challenged subpoenas meet this standard.

A. Congress's Investigatory Powers Are Broad And Deeply Rooted, And Judicial Superintendence Of The Exercise Of Those Powers Is Limited

1. Congress's power to investigate—"including of course the authority to compel"—is "deeply rooted in American and English institutions." *Quinn v. United States*, 349 U.S. 155, 160-61 (1955); *see supra* pp. 2-12. The Framers viewed "the power of inquiry, with enforcing process, … as a necessary and appropriate attribute of the power to legislate." *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927). They intended "the constitutional provisions which commit the legislative function to the two houses" to "include this attribute." *Id.*; *see* U.S. Const. art. I, § 1.

"This Court," therefore, "has often noted that the power to investigate is inherent in the power to make laws." *Eastland*, 421 U.S. at 504; *Watkins v. United States*, 354 U.S. 178, 187 (1957). It also has repeatedly held that Congress's "power to investigate is necessarily broad," *Eastland*, 421 U.S. at 504 n.15; *see McGrain*, 273 U.S. at 173-74; *Quinn*, 349 U.S.at 160-61; *Watkins*, 354 U.S. at 187; *Barenblatt*, 360 U.S. at 111, and "co-extensive with the power to legislate," *Quinn*, 349 U.S. at 160.

Congress's investigative power "encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes." *Watkins*, 354 U.S. at 187. "It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them." *Id.* And "[i]t comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste." *Id.*

Petitioners argue (at 24-27) that, because Congress's investigative powers are not textually explicit, they must be narrowly construed. This Court's precedent commands otherwise.[45] "[T]his is precisely the type of ahistorical literalism that [this Court] ha[s] rejected[.]" *Franchise Tax Bd. of Cal. v. Hyatt*, 139 S. Ct. 1485, 1498 (2019) (quotation marks omitted). "There are many other constitutional doctrines that are not spelled out in the Constitution but are nevertheless implicit in its structure and supported by historical practice—including, for example, judicial review[.]" *Id.* at 1498-99.

And it misreads history to claim, as Petitioners do (at 32), that the record somehow "casts doubt" on legislative investigations of the President. Both "practice by the Founders themselves," *Mistretta v. United States*, 488 U.S. 361, 399 (1989), and "traditional ways of conducting government … give meaning to the Constitution," *id.* at 401 (alteration in original); *see also NLRB v. Noel Canning*, 573 U.S. 513, 526 (2014). The history of Presidential cooperation with Congressional investigations confirms Congress's robust power to investigate myriad subjects of national interest, including the President. *See supra* pp. 4-5, 8-12.

2. "[J]ust as the Constitution forbids the Congress to enter fields reserved to the Executive and Judiciary, it imposes on the Judiciary the reciprocal duty of not lightly interfering with Congress' exercise

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[45] Petitioners are also mistaken to suggest (at 58 n.6) that those powers derive from the Necessary and Proper Clause, U.S. Const. art. I, § 8, cl. 18, or 2 U.S.C. § 192, the statute making contempt of Congress a criminal offense. *See McGrain*, 273 U.S. at 175 (locating them in U.S. Const. art. I, § 1).

of its legitimate powers." *Hutcheson v. United States*, 369 U.S. 599, 622 (1962) (lead opinion of Harlan, J.). For a court "[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 other branches. *Tenney v. Brandhove*, 341 U.S. 367, 378 (1951) (emphasis added).

"So long as Congress acts in pursuance of its constitutional power," moreover, "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 (emphasis added). After all, "[i]n times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed," but "*[c]ourts are not the place for such controversies*." *Tenney*, 341 U.S. at 378 (emphasis added).

In more than twenty cases concerning the scope of Congress's power to investigate, this Court has only *once* held that a Congressional inquiry exceeded its constitutional limits. *Kilbourn v. Thompson*, 103 U.S. 168 (1880). And, "[i]n all the argument of th[at] case," there was "no suggestion" of legislation that Congress might pursue. *Id.* at 194-95.

"At most, *Kilbourn* is authority for the proposition that Congress cannot constitutionally inquire 'into the private affairs of individuals who hold no office under the government' when the investigation 'could result in no valid legislation on the subject to which the inquiry referred.'" *Hutcheson*, 369 U.S. at 613 n.16 (lead opinion of Harlan, J.) (quoting *Kilbourn*, 103 U.S. at 195); *see Watkins*, 354 U.S. at 198 (same).

Moreover, this Court has *never* invalidated a Congressional subpoena that was part of an ongoing Congressional inquiry. Based on grounds *other than* diminishing the subpoena power itself, this Court has occasionally approved the reversal of convictions for contempt of Congress under 2 U.S.C. § 192. *E.g.*, *Watkins*, 354 U.S. 178; *United States v. Rumely*, 345 U.S. 41 (1953). But "[a]ny interference with congressional action had already occurred when th[ose] cases reached" this Court. *Eastland*, 421 U.S. at 509 n.16.

Where, as here, litigation "interfere[s] with an ongoing activity by Congress," this Court has emphatically held that, if the inquiry is "within the legitimate legislative sphere," even "[c]ollateral harm" caused "in the course of … [the] inquiry *does not allow* [the courts] to force the inquiry to grind to a halt." *Id.* (quotation marks omitted and emphasis added).

3. Congress's investigatory power is "not unlimited." *Eastland*, 421 U.S. at 504 n.15. But "[i]ts boundaries are defined by its source." *Id.*

"The subject of any inquiry always must be one 'on which legislation could be had.'" *Id.* (quoting *McGrain*, 273 U.S. at 177). Thus, Congress cannot "inquire into private affairs unrelated to a valid legislative purpose." *Quinn*, 349 U.S. at 161. "Nor is the Congress a law enforcement or trial agency." *Watkins*, 354 U.S. at 187. And "[s]till further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights." *Quinn*, 349 U.S. at 161.

Nevertheless, as this Court has made clear, Congress is constitutionally authorized to issue a

subpoena if the subpoena is "related to a valid legislative purpose." *Barenblatt*, 360 U.S. at 127. Again, a subpoena satisfies that test if it "concern[s] a subject on which 'legislation could be had.'" *Eastland*, 421 U.S. at 506 (quoting *McGrain*, 273 U.S. at 177).

B. Under These Well-Settled Principles, The Challenged Subpoenas Are Valid

The courts below correctly found that the subpoenas challenged here are related to a valid legislative purpose because the documents sought relate to legislation that could be had.

The Financial Services Committee subpoenaed documents that will inform Congress about the use of banks in the United States to carry out international money-laundering as well as unsafe lending practices. The subpoenas will also assist its oversight of regulatory agencies' activities in these areas. JA278a-282a, 199a-202a. The Intelligence Committee subpoenaed documents that will inform Congress about the adequacy of existing intelligence community resources and authorities to address the risks posed by foreign interference in the U.S. political process. JA282a-284a, 202a-204a. The Oversight Committee subpoenaed documents that will inform Congress about financial disclosure and conflict-of-interest laws and will help it conduct agency oversight. Pet. App. 28a-31a, 165a.

Not only *could* legislation be had on these subjects, but the Committees have introduced or reported out several bills related to their inquiries and have conducted significant oversight of the relevant agencies. *See supra* pp. 17-19, 24-25, 28-29, 30-31, 34-35 & n.43; *see also McGrain*, 273 U.S. at 177-78

(because agencies are created by Congress, agency oversight "plainly" relates to a subject on which legislation may be had).

These subpoenas, moreover, "seek[] non-confidential records in which [Petitioners] ha[ve] asserted no proprietary or evidentiary protections." Pet. App. 23a, 75a; JA230a. They are issued to private third parties—who have asserted no burden objection, Pet. Br. 9 n.2; JA227a-228a—and do not require the President to do anything at all. This is therefore not a difficult case.

1. Petitioners ask this Court to look beyond the Committees' stated legislative or oversight purposes and find that the subpoenas are part of an impermissible "avowed law-enforcement investigation." Pet. Br. 37-38.

The premise of Petitioners' law-enforcement argument is wrong: Congressional interest in past illegality or wrongdoing does not suggest—much less establish—an impermissible law-enforcement purpose. This Court's cases recognize that often Congress can legislate effectively only by probing past illegality to determine whether and why it occurred, how it could be better prevented, whether more resources should be allocated to prevention, and whether existing laws should be changed. An "interest in alleged misconduct" can be "in direct furtherance of [a] legislative purpose." Pet. App. 34a.

In *Sinclair v. United States*, 279 U.S. 263 (1929), for example, Congress had "passed a joint resolution 'reciting that [oil tycoon Harry Sinclair's] leases were executed under circumstances indicating fraud and corruption' and 'directing the President to prosecute

such [cases], as were warranted by the facts.'" Pet. App. 33a-34a (alteration marks omitted) (quoting *Sinclair*, 279 U.S. at 289). When a Senate committee then subpoenaed Sinclair to testify—for the *sixth* time—it considered a motion not to inquire about "questions [that] would involve [Sinclair's] defense" in cases "in which Mr. Sinclair [was] a defendant." *Sinclair*, 279 U.S. at 290. "[O]ne of the [M]embers said: 'Of course we will vote it (the motion) down. If we do not examine Mr. Sinclair about those matters, there is not anything else to examine him about.'" *Id.* (alteration marks omitted). Despite a professed Congressional interest in obtaining information about illegality, this Court upheld the subpoena because the Committee's inquiry "might directly aid in respect of legislative action." *Id.* at 295.

Hutcheson v. United States, 369 U.S. 599 (1962), confirms the point. There, a Senate committee's authorizing resolution "directed [it] to investigate 'criminal or other improper practices in the field of labor-management relations.'" *Id.* at 616 (lead opinion of Harlan, J.) (alteration marks omitted); *see also id.* at 602-03 n.4, 606-07 n.12. The specific "concern" of the committee's inquiry "was to discover whether … [union] funds … had been used … to bribe a state prosecutor." *Id.* at 616-17.

Yet not one Justice—including the two dissenters—thought the committee had an improper purpose: Despite a laser focus on past criminal activity, the Committee's inquiry into these matters was legitimate because it "supported remedial federal legislation for the future." *Id.* at 617; *see id.* at 623 (Brennan, J., concurring in judgment); *id.* at 638 (Douglas, J., dissenting); *id.* at 635 n.9, 636 (Warren,

C.J., dissenting). Nor does Justice Brennan's concurrence or any other opinion in *Hutcheson* support Petitioners' assertion that Congressional exposure of "individual wrongdoing is a form of law enforcement." Pet. Br. 37 (citing *Hutcheson*, 369 U.S. at 624 (Brennan, J., concurring in judgment)). The *holding* of the case contradicts that assertion.

Likewise, in *McGrain*, this Court rejected as "wrong" the argument that "[t]he extreme personal cast of the [Senate] resolutions; the spirit of hostility towards the then Attorney General which they breathe; [and] that it was not avowed that legislative action was had in view until after the action of the Senate had been challenged" showed that the Senate had improperly put the Attorney General "on trial before it." *McGrain*, 273 U.S. at 176-77. It was, this Court held, no "valid objection to the investigation that it might possibly disclose crime or wrongdoing on [the Attorney General's] part." *Id.* at 180. Rather, "the subject to be investigated" was "whether the Attorney General and his assistants were performing or neglecting their duties[,] … specific instances of alleged neglect being recited," which was "[p]lainly [a] subject … on which legislation could be had." *Id.* at 177-78.

As these cases show, Congress may investigate activities that are the subject of existing grand jury investigations or indictments of the very witnesses providing testimony without engaging in an impermissible law-enforcement inquiry.

2. For these reasons and others, each of the four courts below correctly found that the subpoenas here did not have an impermissible law-enforcement purpose. Without "a very obvious and exceptional

showing of error," this Court does not review such "concurrent findings." *Glossip v. Gross*, 135 S. Ct. 2726, 2740 (2015).

No such error exists. This Court will accord a Congressional subpoena "every reasonable indulgence of legality," *Watkins*, 354 U.S. at 204, including the "presumption" that legislation is the subpoena's "real object," *McGrain*, 273 U.S. at 178. But the courts below did not "rely on that presumption," JA297a, because they would "reach the same conclusion absent any deference [to Congress] at all," Pet. App. 28a. Instead, "[f]ollowing" Petitioners' suggestion to discern "the Committee[s'] *actual* purpose[s]"—a suggestion *far* more favorable to Petitioners than this Court's cases support—they found "highly probative evidence" that the Committees acted on valid legislative purposes. Pet. App. 28a, 30a; JA297a.

The Committees repeatedly described those purposes, even though it was "certainly not necessary" that they declare those purposes "in advance." *In re Chapman*, 166 U.S. 661, 670 (1897); *see Eastland*, 421 U.S. at 509 ("To be a valid legislative inquiry there need be no predictable end result."); *supra* pp. 17-20, 25-28, 29-34 (describing each of the Committees' legislative purposes). Further, the Committees considered several bills relevant to the inquiries in which the subpoenas were issued, and the full House has "put its legislation where its mouth is [by] pass[ing] [now more than] one bill pertaining to the information sought in the subpoenas." Pet. App. 30a,

34a; JA282a-284a, 297a; *see supra* pp. 24-25, 28-29, 34-35 & n.43.[46]

Petitioners nonetheless dismiss the Committees' legislative activity as "makeweight" and argue that legislation did not truly motivate the subpoenas. Pet. Br. 41, 39-43. This Court has rejected similar attempts to look beyond committees' legislative and oversight purposes. *E.g.*, *Eastland*, 421 U.S. at 508; *Wilkinson v. United States*, 365 U.S. 399, 412 (1961); *Barenblatt*, 360 U.S. at 132; *Watkins*, 354 U.S. at 199-200.

In *Watkins*, for instance, the petitioner had "marshalled an impressive array of evidence" that the true purpose of the committee's inquiry "was to bring down upon [the petitioner] and others the violence of public reaction." 354 U.S. at 199. But this Court was unimpressed because "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*." *Id.* at 200 (emphasis added).

Actions—particularly those of collective bodies—may have multiple purposes. Thus, in evaluating a Congressional subpoena, all this Court has required is the presence of a valid purpose, not the absence of an allegedly improper one.

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[46] The Oversight Committee is investigating President Trump's compliance with the Ethics in Government Act and the Emoluments Clauses, but its "interest in these matters informs [the Committee's] review of multiple laws and legislative proposals under [its] jurisdiction." Pet. App. 29a (quoting Cummings memorandum). The Financial Services and Intelligence Committees "are not investigating whether [President Trump] has violated any law." JA286a.

Petitioners' contrary argument rests on a misreading of this Court's cases. Petitioners say (at 41), for example, that *McGrain*, 273 U.S. at 178, establishes that a court must determine a subpoena's "real object." What the Court actually said, however, was that "the subject-matter" of the subpoena "was such that the presumption should be indulged that [legislating] was the real object." *Id.* Far from suggesting that a court must go beyond that presumption and *inquire into* the "real object" of a Congressional subpoena, this Court then quoted with approval a state-court decision saying that "[w]e are bound to presume that the action of the legislative body was with *a* legitimate object, if it is *capable of* being so construed." *Id.* (emphasis added) (quoting *People ex rel. McDonald v. Keeler*, 99 N.Y. 463, 487 (1885)).

Petitioners likewise say (at 41) that *Barenblatt*, 360 U.S. at 133, establishes that a court must determine a subpoena's "primary purpose[]." But this Court observed there that "we cannot say that the unanimous panel of the Court of Appeals which first considered this case was wrong in concluding that 'the primary purposes of the inquiry were in aid of legislative processes.'" *Id.*

Far from suggesting that a court must divine the "primary purpose" allegedly camouflaged by Congress's stated purpose, the Court rejected the "contention that this investigation should not be deemed to have been in furtherance of a legislative purpose because [its] *true objective*" was something else. *Id.* at 132 (emphasis added). "So long as Congress acts in pursuance of its constitutional power, the Judiciary

lacks authority to intervene on the basis of the motives which spurred the exercise of that power." *Id.*

Petitioners also assert (at 41) that *Kilbourn*, 103 U.S. at 195, establishes that a court must determine a subpoena's "gravamen." But *Kilbourn* held that "the *gravamen* of the whole proceeding"—that is, the entire House inquiry—was not a proper subject of Congressional investigation, because the inquiry "could result in *no valid legislation* on the subject to which [it] referred." *Id.* 194-95 (second emphasis added). "In all the argument of the case no suggestion ha[d] been made of what" legislation Congress might enact. *Id.* at 194. Neither *Kilbourn* nor any of this Court's cases invite judges to second-guess Congress's professed purposes in a search for the "gravamen" lurking elsewhere. *See Hutcheson*, 369 U.S. at 613 n.16 (lead opinion of Harlan, J.).

Petitioners insist (at 40), however, that the scope of the subpoenas demonstrates that the Committees are engaged in "law enforcement investigations—not legislative inquiries." Wrong. It is scarcely surprising that investigators need to conduct a thorough investigation when seeking to determine whether money-laundering, election- and national-security, disclosure, and conflict-of-interest laws are sufficient. It is, moreover, "[t]he very nature" of legislative investigation "that it takes the searchers up some 'blind alleys' and into nonproductive enterprises." *Eastland*, 421 U.S. at 509.

Explaining that "[o]ne simply cannot know in advance whether information sought during the investigation will be relevant," this Court has rejected relevancy challenges to grand jury investigations unless "there is no reasonable possibility that the

category of materials [sought] will produce information relevant to the general subject of the … investigation." *United States v. R. Enters., Inc.*, 498 U.S. 292, 300-01 (1991). That applies equally to legislative investigations.

Nor does the fact that the Financial Services Committee's subpoena to Capital One seeks records starting from the date President Trump became the Republican nominee "make[] obvious" (Pet. Br. 39) any law-enforcement purpose. As explained above, the Committee has jurisdiction over anti-money-laundering laws. President Trump's nomination increased his and his businesses' profile and exposure, both generally and as potential avenues for illicit funds through the types of accounts held by Capital One.

3. Petitioners have not disputed that the Financial Services and Intelligence Committees may enact constitutional legislation on the subjects of their investigations. Petitioners contend, however, that the Oversight Committee's subpoena will not inform Congress "about a subject on which legislation may be had," *Eastland*, 421 U.S. at 508, because laws pertaining to the President's personal finances are "all unconstitutional," Pet. Br. 36.

Congress already has enacted laws requiring the President to make financial disclosures. *E.g.*, Ethics in Government Act, 5 U.S.C. app. 4 §§ 101(a), (f)(1), 102 (requiring "the President" to file periodic financial disclosures); Foreign Gifts and Decorations Act, 5 U.S.C. § 7342(a)(1)(E), (c)(3) (requiring "the President" to report foreign gifts). The Committee is considering amending and/or supplementing existing legislation. *See, e.g.*, H.R. 1. But Petitioners say these

existing laws—and all possible amendments—are unconstitutional because they "exercise dominion and control over the Office of the President." Pet. Br. 47.

That remarkable contention—which would have this Court invalidate several existing statutes *and* issue an advisory opinion about every imaginable future statute—lacks any support. "Every President to have served since the Ethics in Government Act became law in 1978—Presidents Carter, Reagan, H.W. Bush, Clinton, W. Bush, Obama, and now Trump—has complied with [its] disclosure requirements," Pet. App. 47a, without any apparent "impair[ment]" of his ability to perform his "constitutional duties," *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 500 (2010); *Morrison v. Olson*, 487 U.S. 654, 691 (1988); *Nixon v. Adm'r of General Services* (*Nixon II*), 433 U.S. 425, 443 (1977).

If laws requiring mere disclosure violated Article II, so too would the many other laws that apply to actual "presidential *decisionmaking*." Michael A. Fitts, *The Legalization of the Presidency: A Twenty-Five Year Watergate Retrospective*, 43 St. Louis U. L. J. 725, 726 (1999) (emphasis added); *see, e.g.*, Impoundment Control Act of 1974 §§ 1011-1017, 2 U.S.C. §§ 682-688; Russia Sanctions Review Act of 2017 § 216, 22 U.S.C. § 9511.

But it was not the Framers' intent that the branches would "have no partial agency in, or no controul over the acts of each other." *Nixon II*, 433 U.S. at 442 n.5 (quoting *The Federalist* No. 47, at 325-26 (J. Cooke ed., 1961)); *see id.* (quoting 1 J. Story, *Commentaries on the Constitution* § 525 (M. Bigelow, 5th ed. 1905)). Nor do this Court's cases reflect any

such principle. *See Clinton v. Jones*, 520 U.S. 681, 702-03 (1997); *Nixon II*, 433 U.S. at 443.

The Constitution itself confirms that Congress may enact laws concerning the President. *See, e.g.*, U.S. Const. amend. XXV, § 4 (allowing Congress to designate "by law" the body able to decide whether the President can "discharge the powers and duties of his office"). It also assigns Congress a role regarding the finances of persons who hold a federal "office of profit or trust." U.S. Const. art. I, § 9, cl. 8. "The President surely" holds such an office. *Applicability of the Emoluments Clause & the Foreign Gifts and Decorations Act to the President's Receipt of the Nobel Peace Prize*, 2009 WL 6365082, at *4 (O.L.C. Dec. 7, 2009).

Even if existing disclosure laws had some constitutional defect, Congress could design a new law around it. For example, not only could "screening" and "custody" of Presidential disclosures be left with "the Executive Branch itself," *Nixon II*, 433 U.S. at 443-44, as existing law provides, *see* 5 U.S.C. app. 4 § 401(a), but the disclosures themselves could remain confidential within the Executive Branch (*e.g.*, for use only by Executive Branch agencies to avoid conflicted transactions).

The subpoena to Mazars is also relevant to conflict-of-interest legislation that has been referred to the Oversight Committee. Current law prohibits contracts that a Member of Congress "holds, or enjoys, in whole or in part" with "the United States or any agency thereof." 18 U.S.C. § 431. The Committee is reviewing whether some version of that prohibition should extend to contracts held or enjoyed by the President. *E.g.*, H.R. 1, § 8014; H.R. 1626; H.R. 706,

§ 241. The subpoenaed information would inform the scope of any extension.

Congress can restrict government agencies' ability to contract with the President and entities with which he is affiliated. Petitioners offer no argument to the contrary.

Misleadingly quoting *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), Petitioners contend (at 49) that all possible financial-disclosure or conflict-of-interest laws would violate the Qualifications Clause, U.S. Const. art. II, § 1, cl. 5, because they would produce "the likely effect of handicapping a class of candidates," Pet. Br. 49 (quoting *Thornton*, 514 U.S. at 836). *Thornton* held that a law is unconstitutional if "it has the likely effect of handicapping a class of candidates *and has the sole purpose of creating additional qualifications indirectly*." *Thornton*, 514 U.S. at 836 (emphasis added). There is no basis here to imagine that Congress will enact a law with such an improper purpose.

Nor are Petitioners' concerns (at 49-50) about the remedy for Presidential non-compliance relevant: Congress may "impose[] a legal obligation" without making that obligation "enforceable by the judiciary." *Chicago & N. W. Ry. Co. v. United Transp. Union*, 402 U.S. 570, 578 (1971). One point of the Oversight Committee's investigation is to help Congress determine what the proper remedy (if any) should be.

"[I]t is possible that some hypothetical statute could go too far." Pet. App. 49a. But there is "no inherent constitutional flaw" in *all* laws relevant to the Oversight Committee's subpoena. Pet. App. 51a. "And that is enough" to sustain the subpoena. *Id.*

4. The Court should also reject Petitioners' argument that the Committees must make "a greater showing of need than mere relevance." Pet. Br. 52. Petitioners rely on this Court's observation that a "court [should not] proceed against the president as against an ordinary individual." Pet. Br. 53 (quoting *United States v. Nixon* (*Nixon I*), 418 U.S. 683, 708 (1974)). Yet no one here, much less a "court," is proceeding "against" the President. And, even when a court is, no heightened relevance standard applies. *See, e.g., Nixon I*, 418 U.S. at 702 (reviewing whether the ordinary "standards of Rule 17(c)" were satisfied).

If a Congressional subpoena ever did "impair[] … the Executive's ability to perform its constitutionally mandated functions," *Clinton*, 520 U.S. at 702; *Nixon II*, 433 U.S. at 443 (citing *Nixon I*, 418 U.S. at 711-12), then this Court could determine whether to intervene. But that is no basis to invent a judicially managed heightened relevancy standard for *all* subpoenas concerning the President, much less ones to third parties for non-privileged financial records.

C. The Solicitor General Has Not Justified Special Protections—Based On Hypothetical Circumstances Not Present Here—Against Subpoenas Seeking Materials Relating To The President

The Solicitor General asks the Court to invent a set of rules effectively granting the President qualified "immunities … with respect to his purely personal conduct and papers." DOJ Br. 16. He would impose three heretofore-unknown requirements on Congressional subpoenas "aimed at the President's personal records" (*id.* at 17):

(1) that, notwithstanding the Rulemaking Clause, the full "chamber" must "set[] forth with particularity [its] legislative purpose" before issuing the subpoena, *id.* at 21;

(2) that, notwithstanding the separation of powers, the stated purpose be "subject to heightened scrutiny of its legitimacy," presumably by the Judiciary, *id.* at 22; and

(3) that, even when the President's own possible wrongdoing is being investigated with an eye toward corrective legislation, as has been done since the Founding, the President now be permitted to block transmission of information unless Congress shows that the information is "demonstrably critical" to its purpose, *id.* at 23.

There is no support in the text of the Constitution or this Court's cases for those novel assertions of Article II and III powers to interfere with Congress's long-recognized and long-used Article I powers.

1. This Court has "never suggested that the President, or any other official, has an immunity that extends beyond the scope of any action taken in an official capacity." *Clinton*, 520 U.S. at 694. "President[s], like Members of Congress, judges, prosecutors, or congressional aides … are not immune for acts outside official duties." *Id.* (quoting *Nixon v. Fitzgerald* (*Nixon III*), 457 U.S. 731, 759 (1982) (Burger, C.J. concurring)). Even then, this Court has "[f]requently … held that an official's … immunity should extend only to acts in performance of particular functions of his office." *Id.*; *e.g.*, *Forrester v. White*, 484 U.S. 219, 227-30 (1988) (judicial immunity extends only to judges' judicial acts, not their administrative functions). This Court has never recognized a privilege for "purely personal conduct and papers." DOJ Br. 16.

The Solicitor General repeatedly trumpets (at 10, 11, 13, 17, 19) the absence in the Constitution of an express grant of investigatory powers to Congress, even though the Framers and this Court have recognized such powers repeatedly. *See supra* pp. 4-5, 42-43. When it comes to his own novel immunity idea, by contrast, the Solicitor General sees no significance in its absence from the Constitution. And the Framers *did* expressly grant other privileges and immunities. *E.g.*, U.S. Const. art. I, § 6, cl. 1 (Members' immunity "for any Speech or Debate in either House").

Oddly, the Solicitor General suggests (at 16) that the Constitution's *express* grant to legislators of immunity from civil arrest during, going to, and returning from sessions of Congress supports the judicial *invention* of a different and broader privilege

for the President. U.S. Const. art. I, § 6, cl. 1. Yet Charles Pinckney, a decade after the Convention at which he participated, endorsed the *opposite* inference. As he noted, the discrepancy between the Constitution's explicit enumeration of Congressional privileges, and silence as to Presidential privileges, reflected a deliberate judgment "to set the example, in merely limiting privilege to what was necessary, and no more." 10 Annals of Cong. 74 (1800).

As James Wilson explained, the President "is placed high … yet not a *single privilege* is annexed to his character." 2 *The Debates of the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787* 480 (Jonathan Elliot ed., 2d ed., 1836).

The Solicitor General warns (at 25) of the "risk[]" that Congressional subpoenas might "divert [the President's] attention." But neither he nor anyone else claims that the actual subpoenas at issue, which request records in the hands of third parties, "impair" the President "in the performance of [his] constitutional duties." *Free Enter. Fund*, 561 U.S. at 500; *Nixon II*, 433 U.S. at 443 (citing *Nixon I*, 418 U.S. at 711-12). "Presidents and other officials face a variety of demands on their time"; "[w]hile such distractions may be vexing to those subjected to them, they do not ordinarily implicate constitutional separation-of-powers concerns." *Clinton*, 520 U.S. at 705 n.40.

This Court has "unequivocally and emphatically endorsed" the view that "a subpoena *duces tecum* could be directed to the President," even for official records. *Clinton*, 520 U.S. at 703-04 (citing *Nixon I*,

418 U.S. 683); *see United States v. Burr*, 25 F. Cas. 30 (No. 14,692d) (C.C.D. Va. 1807) (Marshall, C.J.). It has also held that a President must comply with compulsory process, even in service of "a private citizen [who] seeks to recover damages." *Clinton*, 520 U.S. at 684. And it has rejected rules requiring or presuming that private litigation against the President be stayed. *Id.* at 706. If the President can be sued, and subject to deposition and document discovery by a private citizen, *see Clinton*, 520 U.S. at 691-92, he cannot have an implicit immunity that prevents a *third party* from producing unofficial, non-privileged records to a coordinate branch of government.

2. The specifics of the Solicitor General's proposal are also unsupported and unworkable.

First, the Constitution assigns the House the authority to "determine the Rules of its Proceedings." U.S. Const. art. I, § 5, cl. 2. The Solicitor General's insistence (at 21, 31) that the "full" House "set[] forth with particularity [its] legislative purpose" would violate that express textual commitment to the House of "all matters of method." *Noel Canning*, 573 U.S. at 551. It is "not the function of this Court to prescribe rigid rules for the Congress to follow" in delegating investigative power to committees. *Watkins*, 354 U.S. at 205.

Second, it is "certainly not necessary that … resolutions should declare in advance what the [Congress] meditate[s] doing when [an] investigation [i]s concluded." *Chapman*, 166 U.S. at 670; *McGrain*, 273 U.S. at 172; *Eastland*, 421 U.S. at 509. Yet the Solicitor General would have this Court require Congress to do exactly that (and then have

courts scrutinize Congress's declared purpose for "legitimacy"). DOJ Br. 21-22. That would "turn the legislative process on its head," because "Congress's decision whether, and if so how, to legislate in a particular area will necessarily depend on what information it discovers in the course of an investigation." Pet. App. 38a.

Finally, the Solicitor General's requirement (at 23) that Congress establish that subpoenaed information is "demonstrably critical" to a legislative purpose before it obtains the information makes no sense. Nor can that requirement be squared with Congress's established role in overseeing existing laws and "decid[ing] upon due investigation *not to legislate*." *Barenblatt*, 360 U.S. at 111 (emphasis added). The Solicitor General's proposal would—flying in the face of history—disable Congressional investigations concerning the President in all but the most extreme circumstances.

Even worse, the Solicitor General's test would require judicial micromanagement of every Congressional subpoena to which the President objects. It would "place[] courts in the awkward position of evaluating the Executive's claims" of harassment against Congress's claims of legitimate oversight—surely, a position to be "avoided whenever possible." *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 389-90 (2004).

The kind of judicial "balancing" the Solicitor General proposes has no role in protecting private parties from "[c]ollateral harm which may occur in the course of a legitimate legislative inquiry." *Eastland*, 421 U.S. at 509 n.16. It should have even less role in protecting the President, who "has resources available

to protect and assert [his] interests, resources not available to private litigants outside the judicial forum." *Goldwater v. Carter*, 444 U.S. 996, 1004 (1979) (Rehnquist, J., concurring in judgment); *accord Noel Canning*, 573 U.S. at 542.

3. The Solicitor General claims (at 22) that harassment of the President poses an "irresistible temptation" to Congress, but he points to no evidence that, in its 230-year history, Congress has been so abusive that the President could not carry out his constitutional responsibilities. The mere *possibility* that power might one day "be abusively and oppressively exerted … affords no ground for denying the power." *McGrain*, 273 U.S. at 175. Instead, this Court "*must assume* … that neither house[] will be disposed to exert the power beyond its proper bounds." *Id.* (emphasis added). Hypothetical fears cannot justify impairing the "[v]igilant oversight by Congress" that can "deter Presidential abuses of office." *Nixon III*, 457 U.S. at 757.

4. Even if the Solicitor General's novel test applied, the subpoenas at issue here would pass muster under any reasonable formulation of that test.

The Solicitor General proposes his new standard for any Congressional subpoena "aimed at the President's personal records." DOJ Br. 17. But the records sought here are a far cry from subpoenas seeking "college transcripts, job applications, health records, birth certificates, private emails, [and] cellphone logs." *Id.* at 20. Instead, they are non-privileged financial records, mostly concerning business entities, that do not "fall within a protected zone of privacy." *United States v. Miller*, 425 U.S. 435, 440 (1976). Bank records are not "private papers," but

"business records of the banks." *Id.*; *see United States v. Centennial Builders, Inc.*, 747 F.2d 678, 683 (11th Cir. 1984) (same for records held by an accountant).

Many of the subpoenaed documents are internal bank records that the President may never have seen or even known about. *See, e.g.*, JA136a (requesting Deutsche Bank AG "internal correspondence" and "review[s] or analys[e]s performed by Deutsche Bank AG"); *compare* JA130a-131a (requesting documents related to "suspicious activity" reporting), *with* 31 U.S.C. § 5318(g)(2)(A)(i) (barring notice to "any person involved in the transaction" being reported as suspicious). Banks must retain many of these records because of their utility in "investigations" related to compliance and "intelligence or counterintelligence activities." 12 U.S.C. § 1829b(a). They are not the kinds of personal records the Solicitor General's novel test might cover.

Nor are the President's records "the primary target" of the Financial Services Committee's subpoenas. DOJ Br. 31. These subpoenas are part of the Committee's broad-based, industry-wide inquiry into money laundering and lending practices, which includes subpoenas to eleven financial institutions, the majority of which have nothing to do with President Trump. The fact that the President is the principal owner of the Trump Organization cannot provide it immunity from Congressional investigation. *See Nixon II*, 433 U.S. at 455 (The President "voluntarily surrender[s] the privacy secured by law for those who elect not to place themselves in the public spotlight.").

The subpoenas here satisfy each requirement the Solicitor General would have this Court invent. First,

the whole "chamber" *has* "demonstrated its full awareness of what is at stake" (DOJ Br. 21) by "ratif[ying] and affirm[ing]" the very subpoenas at issue here. H. Res. 507. The Solicitor General (at 32) challenges that ratification because it extends to future subpoenas and does not expressly adopt the Committees' stated purposes for the subpoenas they had already issued. Whatever force those objections might have as to *future* subpoenas, however, the Solicitor General provides no reason to doubt that the House was apprised of the subpoenas the Committees had *already* issued and the purposes the Committees had *already* expressed.

The Solicitor General asserts that his second requirement—"heightened scrutiny"—boils down to a rule that (despite *Watkins* and *McGrain*) "there should be no presumption either way" as to the legitimacy of a Congressional investigation. DOJ Br. 23. Neither court of appeals relied on any such presumption, yet both found the investigations legitimate. JA297a; Pet. App. 28a.

Finally, the Committees have a "demonstrated, specific need" for the President's financial records. *Nixon I*, 418 U.S. at 713. For the Oversight Committee to understand whether existing financial disclosure and conflict-of-interest legislation is adequate to the challenges posed by this President's unique financial arrangements, it must understand those arrangements. The Intelligence Committee must make similar inquiries to determine whether the President is subject to foreign financial leverage. And it is hard to imagine a more thorough and specific demonstration of need than exists for the Financial Services Committee's investigation. Given the ocean

of independent, investigative reporting connecting President Trump's entities with possible illicit funding, *see supra* pp. 21-22, 26-27, it would be irresponsible for any Congressional investigation into those subjects *not* to examine those businesses.

The Solicitor General urges this Court to adopt the "demonstrably critical" standard that the D.C. Circuit once said was necessary to overcome executive privilege (which is not at issue here). DOJ Br. 23 (citing *Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731 (D.C. Cir. 1974) (en banc)). But, even in the context of executive privilege, that standard is not the one *this* Court or subsequent decisions of the D.C. Circuit have used. *See Nixon I*, 418 U.S. at 713 ("demonstrated, specific need"); *Dellums v. Powell*, 561 F.2d 242, 249 (D.C. Cir. 1977) (requested information must be "substantially material").

In sum, the Committees' subpoenas satisfy every constitutional requirement ever articulated by this Court and would also satisfy any reasonable version of the new requirements the Solicitor General asks it to invent.

II. The House Has Sufficiently Authorized The Committees To Issue The Subpoenas

Petitioners insist (at 61) that the House did not "intend[] for any of these Committees to conduct [this] investigation." The Solicitor General (at 31-34) advances a similar argument. They are mistaken.

1. To be sure, "[n]o committee of either the House or Senate … is free on its … own to conduct investigations unless authorized" by the full chamber. *Gojack v. United States*, 384 U.S. 702, 716 (1966). But

the Houses of Congress can, and do, delegate to their "committees and subcommittees, sometimes [to] one Congressman, … the full power of the Congress to compel." *Watkins*, 354 U.S. at 200-01.

To date, this Court has considered the issue of committee authorization for subpoenas only in the context of criminal prosecutions, where "a clear chain of authority from the House to the questioning body is an essential element of the offense" of contempt of Congress under 2 U.S.C. § 192. *Gojack*, 384 U.S. at 716; *e.g.*, *Rumely*, 345 U.S. at 42-43. This Court has also "emphasiz[ed]" that in such cases it "must consider" questions of authorization "from the viewpoint not of the legislative process, but of the administration of criminal justice." *Gojack*, 384 U.S. at 714.

Even if this criminal-prosecution standard applied, the House *has* provided the clear authorization that would be required. At the beginning of its session, and following the practice of the modern House, the House adopted rules allowing each committee "to require, by subpoena[,] … the production of such … documents as it considers necessary" "[f]or the purpose of carrying out any of its functions and duties." Rule XI.2(m)(1). Each Committee issued its subpoenas under that authority because each deemed them necessary to carry out its functions and duties. The Court could end its analysis there.

If more were required, however, the House, in its Rules, also made clear the breadth of the Committees' functions and duties. There is no dispute that these investigations of financial services or intelligence matters fall within the Financial Services and

Intelligence Committees' respective jurisdictions. *See* Rule X.1(h), X.3(m), X.11(b), X.11(j). And the Rules allow the Oversight Committee to "conduct investigations" "at any time … *of any matter*," Rule X.4(c)(2) (emphasis added), and charge it with studying "the operation of Government activities *at all levels*," Rule X.3(i) (emphasis added).

"Any matter" and "all levels" surely include the President. This Court has previously noted that "[r]ead naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting Webster's Third New International Dictionary 97 (1976)); *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008). Petitioners *conceded* below that the Rules authorize the Oversight Committee's subpoena on a "normal" or "literal[]" reading. Pet. App. 63a, 66a.

Petitioners insist, however, that the House must provide an "express" or "clear" statement to authorize its committees to issue subpoenas concerning the President.[47] But this Court did not doubt that Federal Rule of Criminal Procedure 17(c) could be "correctly applied" to issue a subpoena *to* President Nixon, despite the absence of any reference to the President in that rule. *Nixon I*, 418 U.S. at 702.

Furthermore, unlike the subpoena in *Nixon* and the statutes at issue in the cases on which Petitioners rely, the House Rules do not "direct[]" the President to take any action, *Franklin v. Massachusetts*, 505 U.S. 788, 791 (1992), nor do they "regulat[e]" the

[47] Petitioners did not make and the court of appeals did not pass on this argument in the *Deutsche Bank* case. *See* JA273a n.47.

President's exercise of his official duties, *Armstrong v. Bush*, 924 F.2d 282, 289 (D.C. Cir. 1991). The statutory holdings of *Franklin* and *Armstrong* have no application to rules authorizing a subpoena to a third party that merely *concerns* the President.

Nor are the House Rules a statute; they are the product of the House's prerogative to "determine the Rules of its Proceedings." U.S. Const. art. I, § 5, cl. 2. Again, it is "not the function of this Court to prescribe rigid rules for the Congress to follow in drafting resolutions establishing investigating committees." *Watkins*, 354 U.S. at 205.

Besides, the House *provided* the very clear statement Petitioners (wrongly) demand by adopting House Resolution 507, which "ratifie[d] and affirm[ed]" the subpoenas challenged here. H. Res. 507. The House explained that any argument that the "subpoenas were not authorized by the full House and lacked a 'clear statement' of intent to include the President" is "plainly incorrect." *Id.*

As Petitioners have conceded, "[t]he Resolution does not expand the Committee's jurisdiction," but instead "merely confirms what [they] admit—that the plain text of the House Rules authorizes the subpoena[s]." Pet. App. 73a-74a; *see also* Pet. Br. 61-62. Thus, Petitioners' argument (at 62) that the Committees' authority cannot be "enlarged" after the subpoenas are issued is irrelevant: The Resolution simply confirms what was already true.

Petitioners' argument is also wrong. The scope of committees' authority must be "ascertained as of" the time the witness must comply. *Rumely*, 345 U.S. at 48; *cf. House Comms.' Auth. to Investigate for*

Impeachment, 2020 WL 502936, at *31 & n.37 (O.L.C. Jan. 19, 2020) (discussing H. Res. 507 and acknowledging that post-issuance ratification may give a subpoena "prospective effect," *i.e.*, require future compliance). Because the resolution resolves any question of the subpoenas' validity, they must be complied with now.

In sum, any contention that the House has "insulate[d]" itself from, *Watkins*, 354 U.S. at 205, or not "take[n] responsibility for," the Committees' inquiries, Pet. Br. 61 (quotation marks omitted), is unavailing.

2. The Solicitor General advocates invalidation of the subpoenas on constitutional-avoidance grounds "similar" to those in *Rumely*. DOJ Br. 33; *see id.* at 31-34. In *Rumely*, this Court interpreted the word "lobbying" in a House resolution as having its "commonly accepted sense" to hold that the House had not sufficiently authorized a committee's inquiry to sustain a criminal conviction. *Rumely*, 345 U.S. at 47; *cf. Gojack*, 384 U.S. at 716 ("a clear chain of authority from the House to the questioning body is an essential element of the offense" of contempt of Congress). By adopting the commonly accepted meaning of the resolution's language, this Court also "avoid[ed] a serious constitutional doubt" about the committee's attempt to compel the disclosure of the names of sellers "of books of a particular political tendentiousness." *Rumely*, 345 U.S. at 47, 42.

Here, the Solicitor General does not identify *any* ambiguity in the language of the House Rules authorizing the Committees to issue "subpoena[s] … [for] the production of … such documents as it considers necessary," Rule

XI.2(m)(1)(B), or to conduct investigations within their jurisdictions, *see* Rules X.2(a), (b)(1) (general oversight responsibilities); X.1(n), X.3(i), X.4(c) (Oversight Committee); X.1(h) (Financial Services Committee); X.3(m), X.11(b), X.11(j) (Intelligence Committee). The Solicitor General does not discuss those Rules. Instead, he complains (at 31-32) of *House Resolution 507*'s alleged "vagueness" in authorizing "all existing and future investigations" concerning the President.

First, the word "all" is not vague. The Department of Justice seemed to understand that below, when it conceded that Resolution 507 "clearly authorizes" all four of the subpoenas. Pet. App. 74a (quoting DOJ Brief below); CA2 Dkt. No. 143, at 19. Second, it matters not at all whether House Resolution 507 is vague if the House Rules themselves authorize the Committees' investigations, as they indisputably do.

The canon of constitutional avoidance "has no application absent ambiguity." *Nielsen v. Preap*, 139 S. Ct. 954, 972 (2019) (quotation marks omitted). No ambiguity has been identified in either the House Rules authorizing the Committees to issue these subpoenas, or the House's subsequent ratification of them in Resolution 507. Besides, there are no "[g]rave constitutional" problems (*Rumely*, 345 U.S. at 48) in allowing third parties to respond to subpoenas with information concerning the President.

In 230 years, this Court has never invalidated a Congressional subpoena that was part of an ongoing Congressional inquiry. Petitioners and the Solicitor General give this Court no valid reason to do so for the first time here.

CONCLUSION

This Court should affirm the rulings below.

Respectfully submitted.

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APPENDIX A

CONSTITUTIONAL PROVISIONS

U.S. Const. art. I, § 1

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

U.S. Const. art. I, § 5, cl. 2

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

U.S. Const. art. I, § 9, cl. 7

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time

APPENDIX B

RULES

of the

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

PREPARED BY

Karen L. Haas

Clerk of the House of Representatives

JANUARY 11, 2019

Rule X, clause 1

Committees and their legislative jurisdictions

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

* * * *

(h) **Committee on Financial Services.**

(1) Banks and banking, including deposit insurance and Federal monetary policy.

(2) Economic stabilization, defense production, renegotiation, and control of the price of commodities, rents, and services.

(3) Financial aid to commerce and industry (other than transportation).

(4) Insurance generally.

(5) International finance.

(6) International financial and monetary organizations.

(7) Money and credit, including currency and the issuance of notes and redemption thereof; gold and silver, including the coinage thereof; valuation and revaluation of the dollar.

(8) Public and private housing.

(9) Securities and exchanges.

(10) Urban development.

* * * *

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

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

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

(3) Federal paperwork reduction.

(4) Government management and accounting measures generally.

(5) Holidays and celebrations.

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

(7) National archives.

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

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

(10) Public information and records.

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

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

* * * *

Rule X, clause 2

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;

* * * *

(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.

* * * *

Rule X, clause 3

Special oversight functions

* * * *

(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.

* * * *

(m) The Permanent Select Committee on Intelligence shall review and study on a continuing basis laws, programs, and activities of the intelligence community and shall review and study on an exclusive basis the sources and methods of entities described in clause 11(b)(1)(A).

* * * *

Rule X, clause 4

Additional functions of committees

(c)(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.

* * * *

Rule X, clause 11

Permanent Select Committee on Intelligence

* * * *

(b)(1) There shall be referred to the select committee proposed legislation, messages, petitions,

memorials, and other matters relating to the following:

(A) The Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(B) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(C) The organization or reorganization of a department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence or intelligence-related activities.

(D) Authorizations for appropriations, both direct and indirect, for the following:

(i) The Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(ii) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(iii) A department, agency, subdivision, or program that is a successor to an agency or program named or referred to in (i) or (ii).

* * * *

(c)(1) For purposes of accountability to the House, the select committee shall make regular and periodic reports to the House on the nature and extent of the intelligence and intelligence-related activities of the various departments and agencies of the United States. The select committee shall promptly call to the attention of the House, or to any other appropriate committee, a matter requiring the attention of the House or another committee. In making such report, the select committee shall proceed in a manner consistent with paragraph (g) to protect national security.

* * * *

(j)(1) In this clause the term "intelligence and intelligence-related activities" includes—

(A) the collection, analysis, production, dissemination, or use of information that relates to a foreign country, or a government, political group, party, military force, movement, or other association in a foreign country, and that relates to the defense, foreign policy, national security, or related policies of the United States and other activity in support of the collection, analysis, production, dissemination, or use of such information;

(B) activities taken to counter similar activities directed against the United States;

(C) covert or clandestine activities affecting the relations of the United States with a foreign government, political group, party, military force, movement, or other association;

(D) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by a department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States; and

(E) covert or clandestine activities directed against persons described in subdivision (D)

* * * *

Rule XI, clause 1

PROCEDURES OF COMMITTEES AND UNFINISHED BUSINESS

In general

* * * *

(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.

* * * *

Rule XI, clause 2

Power to sit and act; subpoena power

* * * *

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

> (A) to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings as it considers necessary; and
>
> (B) to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.

* * * *

(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.