

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

JOINT APPENDIX

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Committee on Financial Services
of the U.S. House Representatives;
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PETITION FOR CERTIORARI IN NO. 19-715 FILED DECEMBER 4, 2019
PETITION FOR CERTIORARI IN NO. 19-760 FILED DECEMBER 13, 2019
CERTIORARI GRANTED DECEMBER 13, 2019

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<p>The following decision(s), opinion(s) and order(s) have been omitted in printing this Joint Appendix because they appear in the appendix of the <i>Trump v. Mazars</i> 19-715 Petition for a Writ of Certiorari on the following pages:</p>	
APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, DATED OCTOBER 11, 2019	1a
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**APPENDIX A — RELEVANT DOCKET ENTRIES,
*TRUMP V. MAZARS***

**RELEVANT DOCKET ENTRIES FROM THE
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
(WASHINGTON, DC)
CIVIL DOCKET FOR
CASE #: 1:19-cv-01136-APM**

Date Filed	#	Docket Text
04/22/2019	<u>1</u>	COMPLAINT against All Defendants (Filing fee \$ 400 receipt number 0090-6072689) filed by All Plaintiffs (Attachments: # 1 Civil Cover Sheet, # 2 Summons for Elijah E. Cummings, # 3 Summons for Peter Kenny) (Consovoy, William) Modified to add "All Plaintiffs" on 4/22/2019 (zef,). (Entered: 04/22/2019)
04/22/2019	<u>2</u>	REQUEST FOR SUMMONS TO ISSUE to Mazars USA LLP filed by DONALD J. TRUMP REVOCABLE TRUST, TRUMP ORGANIZATION LLC, TRUMP OLD POST OFFICE LLC, TRUMP ORGANIZATION, INC., DONALD J. TRUMP, TRUMP CORPORATION, DJT HOLDINGS LLC.(Consovoy, William) (Entered: 04/22/2019)

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04/22/2019		Case Assigned to Judge Amit P. Mehta. (zef,) (Entered: 04/22/2019)
04/22/2019	<u>3</u>	LCvR 26.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by TRUMP ORGANIZATION, INC. (Consovoy, William) (Entered: 04/22/2019)
04/22/2019	<u>4</u>	LCvR 26.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by TRUMP ORGANIZATION LLC (Consovoy, William) (Entered: 04/22/2019)
04/22/2019	<u>5</u>	LCvR 26.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by TRUMP CORPORATION (Consovoy, William) (Entered: 04/22/2019)
04/22/2019	<u>6</u>	SUMMONS (3) Issued Electronically as to ELIJAH E. CUMMINGS, PETER KENNY, MAZARS USA LLP. (Attachments: # 1 Notice and Consent)(zef,) (Entered: 04/22/2019)
04/22/2019	<u>7</u>	LCvR 26.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests

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by DJT HOLDINGS LLC (Consovoy, William) (Entered: 04/22/2019)

- 04/22/2019 8 LCvR 26.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by TRUMP OLD POST OFFICE LLC (Consovoy, William) (Entered: 04/22/2019)
- 04/22/2019 9 MOTION for Temporary Restraining Order by DJT HOLDINGS LLC, DONALD J. TRUMP REVOCABLE TRUST, DONALD J. TRUMP, TRUMP CORPORATION, TRUMP OLD POST OFFICE LLC, TRUMP ORGANIZATION LLC, TRUMP ORGANIZATION, INC. (Attachments: # 1 Memorandum in Support, # 2 Declaration of William S. Consovoy, # 3 Text of Proposed Order, # 4 Local Rule 65.1(a) Certificate of Counsel)(Consovoy, William) (Entered: 04/22/2019)
- 04/22/2019 10 Emergency MOTION for Order Shortening Defendants' Time to Respond to TRO Application by DJT HOLDINGSLLC,DONALDJ.TRUMP REVOCABLE TRUST, DONALD J. TRUMP, TRUMP CORPORATION, TRUMP OLD POST OFFICE LLC,

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TRUMP ORGANIZATION LLC,
TRUMP ORGANIZATION, INC.
(Attachments: # 1 Text of Proposed
Order)(Consovoy, William) (Entered:
04/22/2019)

04/22/2019 11 MOTION for Preliminary Injunction
by DJT HOLDINGS LLC, DONALD
J. TRUMP REVOCABLE TRUST,
DONALD J. TRUMP, TRUMP
CORPORATION, TRUMP OLD
POST OFFICE LLC, TRUMP
ORGANIZATION LLC, TRUMP
ORGANIZATION, INC. (Attachments:
1 Memorandum in Support, # 2
Declaration of William S. Consovoy,
3 Text of Proposed Order)(Consovoy,
William) (Entered: 04/22/2019)

04/23/2019 MINUTE ORDER. Consistent with the
parties' joint scheduling submission,
the court sets the following schedule
for further proceedings in this matter.
Intervenor-Defendant Committee
on Oversight and Reform agrees
to postpone the return date on its
subpoena to Mazars USA, LLP until
seven days after the court rules on
Plaintiffs' Motion for Preliminary
Injunction. Intervenor-Defendant
Committee on Oversight and Reform's
and Mazars USA LLP's Opposition(s),

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if any, shall be filed by Wednesday, May 1, 2019. Plaintiffs' Replies shall be filed by May 8, 2019. Oral Argument is scheduled for May 14, 2019, at 11:00 a.m. in Courtroom 10. In addition, in light of the parties' agreed-upon schedule, Plaintiffs' Emergency Motion to Shorten Time, ECF No. 10, is denied as moot. Plaintiffs' Application for a Temporary Restraining Order, ECF No. 9, is likewise denied as moot. Signed by Judge Amit P. Mehta on 04/23/2019. (lcapm3) (Entered: 04/23/2019)

- 04/23/2019 Set/Reset Deadlines/Hearings: Oppositions due by 5/1/2019. Replies due by 5/8/2019. Oral Argument for 5/14/2019 at 11:00 AM in Courtroom 10 before Judge Amit P. Mehta. (zjd) (Entered: 04/25/2019)
- 04/26/2019 12 Consent MOTION to Intervene *as Defendant* by COMMITTEE ON OVERSIGHT AND REFORM OF THE U.S. HOUSE OF REPRESENTATIVES (Attachments: # 1 Text of Proposed Order)(Letter, Douglas) (Entered: 04/26/2019)
- 04/29/2019 13 ORDER granting 12 Consent Motion to have Committee on Oversight

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and Reform of the U.S. House of Representatives Intervene as Defendant. See attached Order for additional details. Signed by Judge Amit P. Mehta on 04/29/2019. (lcapm3) (Entered: 04/29/2019)

04/29/2019 14 WAIVER OF SERVICE by DONALD J. TRUMP REVOCABLE TRUST, TRUMP ORGANIZATION LLC, TRUMP OLD POST OFFICE LLC, TRUMP ORGANIZATION, INC., DONALD J. TRUMP, TRUMP CORPORATION, DJT HOLDINGS LLC. MAZARS USA LLP waiver sent on 4/29/2019, answer due 6/28/2019. (Consovoy, William) (Entered: 04/29/2019)

04/29/2019 15 STIPULATION by DJT HOLDINGS LLC, DONALD J. TRUMP REVOCABLE TRUST, DONALD J. TRUMP, TRUMP CORPORATION, TRUMP OLD POST OFFICE LLC, TRUMP ORGANIZATION LLC, TRUMP ORGANIZATION, INC.. (Consovoy, William) (Entered: 04/29/2019)

* * *

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05/01/2019 20 Memorandum in opposition to re 11 MOTION for Preliminary Injunction filed by COMMITTEE ON OVERSIGHT AND REFORM OF THE U.S. HOUSE OF REPRESENTATIVES. (Attachments: # 1 Declaration of Greta G. Gao, # 2 Exhibit A to Declaration of Greta G. Gao, # 3 Exhibit B to Declaration of Greta G. Gao)(Letter, Douglas) (Entered: 05/01/2019)

* * *

05/01/2019 22 LCvR 26.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by MAZARS USA LLP (Schuelke, Henry) (Entered: 05/01/2019)

05/01/2019 23 RESPONSE re 11 MOTION for Preliminary Injunction filed by MAZARS USA LLP. (Schuelke, Henry) (Entered: 05/01/2019)

05/08/2019 24 REPLY to opposition to motion re 11 MOTION for Preliminary Injunction filed by DJT HOLDINGS LLC, DONALD J. TRUMP REVOCABLE TRUST, DONALD J. TRUMP, TRUMP CORPORATION, TRUMP

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OLD POST OFFICE LLC, TRUMP ORGANIZATION LLC, TRUMP ORGANIZATION, INC.. (Consovoy, William) (Entered: 05/08/2019)

05/09/2019 25 ORDER notifying the parties that the court intends to advance 11 Plaintiffs' Motion for Preliminary Injunction to trial on the merits. See attached Order for additional details. Signed by Judge Amit P. Mehta on 05/09/2019. (lcapm3) (Entered: 05/09/2019)

05/09/2019 Set/Reset Deadlines: Objections and/or Supplemental Memoranda due by 5/13/2019 at 5:00 pm. (zjd) (Entered: 05/09/2019)

* * *

05/10/2019 28 MOTION for Leave to File An Amicus Brief by DUANE MORLEY COX (Attachments: # 1 Text of Proposed Order)(jf) (Entered: 05/13/2019)

05/13/2019 29 RESPONSE TO ORDER OF THE COURT re 25 Order filed by DJT HOLDINGS LLC, DONALD J. TRUMP REVOCABLE TRUST, DONALD J. TRUMP, TRUMP

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CORPORATION, TRUMP OLD POST OFFICE LLC, TRUMP ORGANIZATION LLC, TRUMP ORGANIZATION, INC.. (Consovoy, William) (Entered: 05/13/2019)

- 05/13/2019 30 AFFIDAVIT *Supplemental Declaration of William S. Consovoy* by DJT HOLDINGS LLC, DONALD J. TRUMP REVOCABLE TRUST, DONALD J. TRUMP, TRUMP CORPORATION, TRUMP OLD POST OFFICE LLC, TRUMP ORGANIZATION LLC, TRUMP ORGANIZATION, INC.. (Consovoy, William) (Entered: 05/13/2019)
- 05/13/2019 31 RESPONSE TO ORDER OF THE COURT re 25 Order filed by COMMITTEE ON OVERSIGHT AND REFORM OF THE U.S. HOUSE OF REPRESENTATIVES. (Letter, Douglas) (Entered: 05/13/2019)
- 05/13/2019 MINUTE ORDER. The hearing will proceed tomorrow as scheduled. During the hearing, the court will take up the objections to its 25 Consolidation Order made in Plaintiffs' 29 Response to Order of the Court. Signed by Judge Amit

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P. Mehta on 05/13/2019. (lcapm3)
(Entered: 05/13/2019)

* * *

05/14/2019 Minute Entry for proceedings held before Judge Amit P. Mehta: Oral Argument held on 5/14/2019 re 11 Motion for Preliminary Injunction. Oral Motion by Intervenor Defendant for summary judgment on the pleadings. The record will be open until 5/18/2019. Intervenor Defendant's In-Camera Submission due by 5/16/2019. (Court Reporter: William Zaremba) (zjd) (Entered: 05/14/2019)

05/14/2019 33 TRANSCRIPT OF ORAL ARGUMENT PROCEEDINGS before Judge Amit P. Mehta held on May 14, 2019; Page Numbers: 1-93. Date of Issuance: May 14, 2019. Court Reporter/Transcriber: William Zaremba; Telephone number: (202) 354-3249. Transcripts may be ordered by submitting the *Transcript Order Form*

For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal

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or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, PDF or ASCII) may be purchased from the court reporter.

NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov.

Redaction Request due 6/4/2019.
Redacted Transcript Deadline set for 6/14/2019. Release of Transcript Restriction set for 8/12/2019.(wz)
(Entered: 05/14/2019)

05/17/2019 34 AFFIDAVIT *Second Supplemental Declaration of William S. Consovoy* by DJT HOLDINGS LLC, DONALD J. TRUMP REVOCABLE TRUST,

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DONALD J. TRUMP, TRUMP CORPORATION, TRUMP OLD POST OFFICE LLC, TRUMP ORGANIZATION LLC, TRUMP ORGANIZATION, INC.. (Consovoy, William) (Entered: 05/17/2019)

- 05/20/2019 35 MEMORANDUM OPINION entering judgment in favor of the House Oversight Committee and against Plaintiffs. Please see the attached Memorandum Opinion for additional details. Signed by Judge Amit P. Mehta on 05/20/2019. (lcapm3) Modified document type on 5/21/2019 (zjd). (Entered: 05/20/2019)
- 05/20/2019 36 ORDER. For the reasons stated in the 35 Memorandum Opinion, the court enters judgment in favor of the House Oversight Committee and against Plaintiffs. Please see the attached Order for further details. Signed by Judge Amit P. Mehta on 05/20/2019. (lcapm3) (Entered: 05/20/2019)
- 05/21/2019 37 NOTICE OF APPEAL TO DC CIRCUIT COURT as to 35 Order, 36 Order on Motion for Preliminary Injunction, by DJT HOLDINGS LLC, DONALD J. TRUMP

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REVOCABLE TRUST, DONALD J. TRUMP, TRUMP CORPORATION, TRUMP OLD POST OFFICE LLC, TRUMP ORGANIZATION LLC, TRUMP ORGANIZATION, INC.. Filing fee \$ 505, receipt number 0090-6135794. Fee Status: Fee Paid. Parties have been notified. (Consovoy, William) (Entered: 05/21/2019)

- 05/21/2019 38 Transmission of the Notice of Appeal, Order Appealed (Memorandum Opinion), and Docket Sheet to US Court of Appeals. The Court of Appeals fee was paid this date re 37 Notice of Appeal to DC Circuit Court. (jf) (Entered: 05/21/2019)
- 05/21/2019 USCA Case Number 19-5142 for 37 Notice of Appeal to DC Circuit Court, filed by DONALD J. TRUMP REVOCABLE TRUST, DONALD J. TRUMP, TRUMP CORPORATION, TRUMP ORGANIZATION LLC, TRUMP OLD POST OFFICE LLC, TRUMP ORGANIZATION, INC., DJT HOLDINGS LLC. (zrdj) (Entered: 05/22/2019)
- 05/21/2019 40 MOTION to Delay Decision by DUANE MORLEY COX (jf) (Entered: 05/30/2019)

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- 05/28/2019 39 MOTION to Consolidate Related Cases For Trial by HOMER DOUGLAS COBB, IV. "LET THIS BE FILED" signed by Judge Amit P. Mehta on 05/28/2019 (jf) (Entered: 05/30/2019)
- 05/30/2019 MINUTE ORDER denying 39 Motion to Consolidate Related Cases for Trial as moot. Signed by Judge Amit P. Mehta on 05/30/2019. (lcapm3) (Entered: 05/30/2019)
- 05/31/2019 MINUTE ORDER denying 40 Motion to Delay Decision as moot. Signed by Judge Amit P. Mehta on 05/31/2019. (lcapm3) (Entered: 05/31/2019)
- 06/24/2019 41 LEAVE TO FILE DENIED- Notice of Filing submitted by Christophe De La Mar Chapman. This document is unavailable as the Court denied its filing. "Leave to file Denied. Case Closed" Signed by Judge Amit P. Mehta on 6/24/2019. (jf) (Entered: 06/26/2019)

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**RELEVANT DOCKET ENTRIES FROM THE
UNITED STATES COURT OF APPEALS
FOR THE DC CIRCUIT,
NO. 2019-5142**

Date Filed	Docket Text
05/21/2019	US CIVIL CASE docketed. [19-5142] [Entered: 05/21/2019 12:16 PM]
05/21/2019	NOTICE OF APPEAL [1788738] seeking review of a decision by the U.S. District Court in 1:19-cv-01136-APM filed by DJT Holdings, LLC, Donald J. Trump Revocable Trust, Donald J. Trump, Trump Corporation, Trump Old Post Office LLC, Trump Organization, Inc. and Trump Organization, LLC. Appeal assigned USCA Case Number: 19-5142. [19-5142] [Entered: 05/21/2019 12:18 PM]
05/22/2019	<i>JOINT</i> MOTION [1789081] to expedite case filed by DJT Holdings, LLC, Donald J. Trump Revocable Trust, Trump Corporation, Trump Old Post Office LLC, Trump Organization, Inc., Trump Organization, LLC and Donald J. Trump (Service Date: 05/22/2019 by CM/ECF NDA, Email) Length Certification: 281 Words. [19-5142] (Consovoy, William) [Entered: 05/22/2019 06:15 PM]

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- 05/23/2019 PER CURIAM ORDER [1789247] filed considering motion to expedite case [[1789081-2](#)], setting briefing schedule: APPELLANT Brief due 06/10/2019. APPENDIX due 06/10/2019. APPELLEE Brief due on 07/01/2019. APPELLANT Reply Brief due 07/09/2019, scheduling oral argument on Friday, 07/12/2019. Before Judges: Tatel, Millett and Rao. [19-5142] [Entered: 05/23/2019 02:49 PM]
- 05/31/2019 MOTION [1791158] to participate as amicus curiae [Disclosure Listing: Not Applicable to this Party] filed by Duane Morley Cox [Service Date: 05/24/2019] [19-5142] [Entered: 06/05/2019 01:08 PM]
- 05/31/2019 AMICUS FOR APPELLANT BRIEF [1791159] filed by Duane Morley Cox [Service Date: 05/24/2019] Length of Brief: 24 pages. [19-5142] [Entered: 06/05/2019 01:09 PM]
- 06/10/2019 PER CURIAM ORDER [1791939] filed granting motion of Duane Morley Cox to participate as amicus curiae [[1791158-2](#)]; The Clerk is directed to file the lodged amicus brief [[1791159-2](#)] Before Judges: Tatel, Millett and Rao. [19-5142] [Entered: 06/10/2019 04:18 PM]

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- 6/10/2019 PER ABOVE ORDER lodged Amicus brief [1791159-2] is filed [19-5142] [Entered: 06/10/2019 04:27 PM]
- 6/10/2019 *JOINT APPENDIX* [1791951] filed by DJT Holdings, LLC, Donald J. Trump Revocable Trust, Trump Corporation, Trump Old Post Office LLC, Trump Organization, Inc., Trump Organization, LLC and Donald J. Trump. [Volumes: 1] [Service Date: 05/22/2019] [19-5142] (Consovoy, William) [Entered: 06/10/2019 04:52 PM]
- 6/10/2019 APPELLANT BRIEF [1791954] filed by DJT Holdings, LLC, Donald J. Trump Revocable Trust, Trump Corporation, Trump Old Post Office LLC, Trump Organization, Inc., Trump Organization, LLC and Donald J. Trump [Service Date: 06/10/2019] Length of Brief: 12,799 Words. [19-5142] (Consovoy, William) [Entered: 06/10/2019 04:58 PM]
- 6/20/2019 MOTION [1794178] for leave to amend amicus brief filed by Duane Morley Cox (Service Date: 06/17/2019 by US Mail) Length Certification: 4 pages. [19-5142] [Entered: 06/24/2019 02:35 PM]
- 6/20/2019 AMICUS FOR APPELLANT BRIEF [1794179] lodged by Duane Morley Cox

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[Service Date: 06/17/2019] Length of Brief: 5,410 words. [19-5142] [Entered: 06/24/2019 02:37 PM]

- 6/27/2019 PER CURIAM ORDER [1794825] filed granting motion to amend amicus brief [1794178-2]; The Clerk is directed to file the lodged amended brief [1794179-2]. The court will not accept any further amendments to the brief of amicus curiae Cox. Before Judges: Tatel, Millett and Rao. [19-5142] [Entered: 06/27/2019 01:24 PM]
- 6/27/2019 PER ABOVE ORDER lodged amended Amicus brief [1794179-2] is filed. [19-5142] [Entered: 06/27/2019 01:25 PM]
- 07/01/2019 NOTICE [1795219] of intention to participate as amicus curiae [Disclosure Listing: Attached] filed by Constitutional Accountability Center [Service Date: 07/01/2019] [19-5142] (Wydra, Elizabeth) [Entered: 07/01/2019 11:03 AM]
- 07/01/2019 *CONSENT* AMICUS FOR APPELLEE BRIEF [1795248] filed by Constitutional Accountability Center [Service Date: 07/01/2019] Length of Brief: 6,486 words. [19-5142] (Wydra, Elizabeth) [Entered: 07/01/2019 12:05 PM]

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- 07/01/2019 APPELLEE BRIEF [1795251] filed by Committee on Oversight and Reform of the U.S. House of Representatives [Service Date: 07/01/2019] Length of Brief: 10,920 Words. [19-5142] (Letter, Douglas) [Entered: 07/01/2019 12:36 PM]
- 07/01/2019 NOTICE [1795361] advising that a brief will not be filed filed by Mazars USA, LLP [Service Date: 07/01/2019] [19-5142] (Bernstein, Jerry) [Entered: 07/01/2019 06:39 PM]
- 07/03/2019 PER CURIAM ORDER [1795668] filed allocating oral argument time as follows: Appellants - 30 Minutes, Appellee Committee on Oversight and Reform of the U.S. House of Representatives - 30 Minutes; directing party to file Form 72 notice of arguing attorney by 07/05/2019 [19-5142] [Entered: 07/03/2019 11:36 AM]
- * * *
- 07/09/2019 APPELLANT REPLY BRIEF [1796503] filed by DJT Holdings, LLC, Donald J. Trump Revocable Trust, Trump Corporation, Trump Old Post Office LLC, Trump Organization, Inc., Trump Organization, LLC and Donald J. Trump [Service Date: 07/09/2019] Length of Brief: 6,468 Words. [19-5142] (Consovoy, William) [Entered: 07/09/2019 08:16 PM]

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- 07/10/2019 NOTICE [1796602] sent regarding 7/12/19 public advisory. [19-5142] [Entered: 07/10/2019 12:41 PM]
- 07/12/2019 ORAL ARGUMENT HELD before Judges Tatel, Millett and Rao. [19-5142] [Entered: 07/12/2019 09:38 AM]
- 07/15/2019 PER CURIAM ORDER [1797054] ORDERED, on the court's own motion, that the United States Department of Justice be invited to file a brief amicus curiae, not to exceed 5,200 words, by 4:00 p.m. on Tuesday, August 6, 2019, expressing the views of the United States on this case. The parties may file responses, not to exceed 3,000 words each, by 4:00 p.m. on Tuesday, August 20, 2019. Absent extraordinary circumstances, because of the expedited nature of the proceedings, no extensions of time will be granted by the court. In addition to electronic filing, paper copies of the submissions must be delivered to the court by the time and date due. Before Judges: Tatel, Millett and Rao. [19-5142] [Entered: 07/15/2019 09:40 AM]
- 07/16/2019 LETTER [1797542] regarding oral argument matter [Response to Questions as Directed by the Court at Oral Argument] filed by Committee on

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Oversight and Reform of the U.S. House of Representatives [Service Date: 07/16/2019] [19-5142] (Letter, Douglas) [Entered: 07/16/2019 06:04 PM]

- 07/19/2019 MOTION [1798189] for leave to file letter filed by DJT Holdings, LLC, Donald J. Trump Revocable Trust, Trump Corporation, Trump Old Post Office LLC, Trump Organization, Inc., Trump Organization, LLC and Donald J. Trump (Service Date: 07/19/2019 by CM/ECF NDA) Length Certification: 202 Words. [19-5142] (Consovoy, William) [Entered: 07/19/2019 07:08 PM]
- 07/19/2019 LETTER [1798355] filed by Duane Morley Cox [Service Date: 07/15/2019] [19-5142] [Entered: 07/22/2019 03:14 PM]
- 07/22/2019 LETTER [1798286] regarding oral argument matter filed by DJT Holdings, LLC, Donald J. Trump Revocable Trust, Trump Corporation, Trump Old Post Office LLC, Trump Organization, Inc., Trump Organization, LLC and Donald J. Trump [Service Date: 07/19/2019] [19-5142] (Consovoy, William) [Entered: 07/22/2019 01:20 PM]
- 07/23/2019 PER CURIAM ORDER [1798596] filed granting appellants' motion for leave to file

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a responsive letter [1798189-2]; The Clerk is directed to file the lodged responsive letter [1798286-2]. Before Judges: Tatel, Millett and Rao. [19-5142] [Entered: 07/23/2019 04:02 PM]

- 07/26/2019 LETTER [1799323] pursuant to FRAP 28j advising of additional authorities filed by Committee on Oversight and Reform of the U.S. House of Representatives [Service Date: 07/26/2019] [19-5142] (Letter, Douglas) [Entered: 07/26/2019 04:08 PM]
- 07/30/2019 PER CURIAM ORDER [1799846] filed directing response to letter Rule 28j authorities [1799323-2]. Response due by 4:00 p.m. on August 1, 2019. In addition to electronic filing, paper copies of the submission are to be delivered to the court by the time and date due. Before Judges: Tatel, Millett and Rao. [19-5142] [Entered: 07/30/2019 05:18 PM]
- 07/31/2019 RESPONSE [1799866] to letter Rule 28j authorities [1799323-2], letter [1799323-3] filed by DJT Holdings, LLC, Donald J. Trump Revocable Trust, Trump Corporation, Trump Old Post Office LLC, Trump Organization, LLC, Donald J. Trump and Trump Organization, Inc. [Service Date: 07/31/2019 by CM/ECF]

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NDA] Length Certification: 349 Words.
[19-5142] (Consovoy, William) [Entered:
07/31/2019 06:53 AM]

08/06/2019 AMICUS BRIEF [1800932] filed by USA
United States [Service Date: 08/06/2019
] Length of Brief: 5,196 Words. [19-5142]
(Sinzdak, Gerard) [Entered: 08/06/2019
03:02 PM]

08/14/2019 MOTION [1802081] to exceed response filed
by Committee on Oversight and Reform
of the U.S. House of Representatives
(Service Date: 08/14/2019 by CM/ECF
NDA) Length Certification: 505 words.
[19-5142] (Letter, Douglas) [Entered:
08/14/2019 12:50 PM]

08/16/2019 PER CURIAM ORDER [1802536] filed
granting motion to exceed word limits
[1802081-2]. The responses to the brief
amicus curiae of the United States
Department of Justice may not exceed
4,000 words each, and are due by 4:00
p.m. on Tuesday, August 20, 2019. Before
Judges: Tatel, Millett and Rao. [19-5142]
[Entered: 08/16/2019 12:50 PM]

08/20/2019 APPELLANT SUPPLEMENTAL
BRIEF [1802960] filed by DJT Holdings,
LLC, Donald J. Trump Revocable Trust,
Trump Corporation, Trump Old Post

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Office LLC, Trump Organization, Inc., Trump Organization, LLC and Donald J. Trump [Service Date: 08/20/2019] Length of Brief: 2,473 Words. [19-5142] (Consovoy, William) [Entered: 08/20/2019 02:34 PM]

- 08/20/2019 APPELLEE SUPPLEMENTAL BRIEF [1802970] filed by Committee on Oversight and Reform of the U.S. House of Representatives [Service Date: 08/20/2019] Length of Brief: 3997 words. [19-5142] (Letter, Douglas) [Entered: 08/20/2019 03:00 PM]
- 10/11/2019 PER CURIAM JUDGMENT [1810446] filed that the judgment of the District Court appealed from in this cause be affirmed for the reasons in the accompanying opinion. Before Judges: Tatel, Millett and Rao. [19-5142] [Entered: 10/11/2019 09:59 AM]
- 10/11/2019 OPINION [1810450] filed (Pages: 66) for the Court by Judge Tatel, DISSENTING OPINION (Pages: 68) by Judge Rao. [19-5142] [Entered: 10/11/2019 10:06 AM]
- 10/11/2019 CLERK'S ORDER [1810451] filed withholding issuance of the mandate. [19-5142] [Entered: 10/11/2019 10:08 AM]
- 10/16/2019 MOTION [1811186] to issue mandate filed by Committee on Oversight and Reform

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of the U.S. House of Representatives
(Service Date: 10/16/2019 by CM/ECF
NDA) Length Certification: 2,173 Words.
[19-5142] (Letter, Douglas) [Entered:
10/16/2019 07:06 PM]

* * *

10/24/2019 PETITION [1812460] for rehearing, for
rehearing en banc filed by Appellants
Donald J. Trump, Trump Organization,
LLC, Trump Organization, Inc., Trump
Old Post Office LLC, Trump Corporation,
Donald J. Trump Revocable Trust and
DJT Holdings, LLC [Service Date:
10/24/2019 by CM/ECF NDA] Length
Certification: 3,881 Words. [19-5142]
(Consovoy, William) [Entered: 10/24/2019
08:50 PM]

10/24/2019 RESPONSE IN OPPOSITION [1812461]
to motion to issue mandate [1811186-
2] combined with a MOTION to stay
mandate filed by DJT Holdings, LLC,
Donald J. Trump Revocable Trust, Trump
Corporation, Trump Old Post Office
LLC, Trump Organization, Inc., Trump
Organization, LLC and Donald J. Trump
[Service Date: 10/24/2019 by CM/ECF
NDA] Length Certification: 5,189 Words.
[19-5142] (Consovoy, William) [Entered:
10/24/2019 08:55 PM]

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10/25/2019 CLERK'S ORDER [1812640] filed, on the court's own motion, that by 4:00 p.m. on Friday, November 1, 2019, appellee Committee on Oversight and Reform of the U.S. House of Representatives file a response to appellants' petition for rehearing en banc. The response may not exceed 3,900 words. Absent an order of the court, a reply to the response will not be accepted for filing. [19-5142] [Entered: 10/25/2019 03:18 PM]

* * *

10/30/2019 RESPONSE IN OPPOSITION [1813409] to motion to stay mandate [1812461-2] filed by Committee on Oversight and Reform of the U.S. House of Representatives [Service Date: 10/30/2019 by CM/ECF NDA] Length Certification: 3385 words. [19-5142] (Letter, Douglas) [Entered: 10/30/2019 06:03 PM]

11/01/2019 RESPONSE [1813835] to petition for rehearing [1812460-2], petition for rehearing en banc [1812460-3] filed by Committee on Oversight and Reform of the U.S. House of Representatives [Service Date: 11/01/2019 by CM/ECF NDA] Length Certification: 3,881 Words. [19-5142] (Letter, Douglas) [Entered: 11/01/2019 03:57 PM]

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- 11/04/2019 REPLY [1814258] filed by DJT Holdings, LLC, Donald J. Trump Revocable Trust, Trump Corporation, Trump Old Post Office LLC, Trump Organization, Inc., Trump Organization, LLC and Donald J. Trump to response [1813409-2] [Service Date: 11/04/2019 by CM/ECF NDA] Length Certification: 2,592 Words. [19-5142] (Consovoy, William) [Entered: 11/04/2019 07:24 PM]
- 11/07/2019 PER CURIAM ORDER [1814803] filed denying appellee's motion for immediate issuance of the mandate or, in the alternative, to shorten the time to petition for rehearing or rehearing en banc [1811186-2]; denying appellant's motion to stay issuance of the mandate [1812461-2]. On October 24, 2019, the Trump appellants filed a petition for rehearing and/or rehearing en banc, making the Committee's alternative request moot. Should the October 24, 2019 petition be denied, the mandate will issue 7 days from the date of denial. See Fed. R. App. P. 41(b). This decision takes into consideration the Trump appellants' request for a period of at least 7 days to seek relief in the Supreme Court. Before Judges: Tatel, Millett and Rao. [19-5142] [Entered: 11/07/2019 12:48 PM]

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- 11/13/2019 PER CURIAM ORDER [1815679] filed denying appellants' petition for rehearing [1812460-2] Before Judges: Tatel, Millett and Rao. [19-5142] [Entered: 11/13/2019 06:34 PM]
- 11/13/2019 PER CURIAM ORDER, En Banc, [1815681] (in Slip Opinion format) filed denying appellants' petition for rehearing en banc [1812460-3] Before Judges: Garland, Henderson*, Rogers, Tatel, Griffith, Srinivasan, Millett, Pillard, Wilkins, Katsas* and Rao*. [19-5142] (Circuit Judges Henderson, Katsas, and Rao would grant the petition) (A statement by Circuit Judge Katsas, with whom Circuit Judge Henderson joins, dissenting from the denial of rehearing en banc, is attached) (A statement by Circuit Judge Rao, with whom Circuit Judge Henderson joins, dissenting in the denial of rehearing en banc, is attached) [Entered: 11/13/2019 06:38 PM]
- 12/05/2019 LETTER [1819184] received from the Clerk of the Supreme Court of the United States notifying this court of the following activity in the case before it: A petition for writ of certiorari was filed and placed on the docket on 11/05/2019 as No. 19-715. [19-5142] [Entered: 12/06/2019 02:56 PM]

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12/13/2019 LETTER [1820329] received from the Clerk of the Supreme Court of the United States notifying this court of the following activity in case No. 19-715: The petition for writ of certiorari was granted on 12/13/2019. [19-5142][Entered: 12/16/2019 02:59 PM]

**APPENDIX B — COMPLAINT OF THE UNITED
STATES DISTRICT COURT FOR THE DISTRICT
OF COLUMBIA, FILED APRIL 22, 2019**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. _____

DONALD J. TRUMP, 1600 PENNSYLVANIA
AVENUE NW WASHINGTON, D.C. 20500,
THE TRUMP ORGANIZATION, INC.,
TRUMP ORGANIZATION LLC, THE TRUMP
CORPORATION, DJT HOLDINGS LLC, THE
DONALD J. TRUMP REVOCABLE TRUST, 725
FIFTH AVENUE NEW YORK, NY 10022,
TRUMP OLD POST OFFICE LLC, 1100
PENNSYLVANIA AVENUE NW
WASHINGTON, D.C. 20004,

Plaintiffs,

v.

ELIJAH E. CUMMINGS, IN HIS OFFICIAL
CAPACITY AS CHAIRMAN OF THE HOUSE
COMMITTEE ON OVERSIGHT AND REFORM,
PETER KENNY, IN HIS OFFICIAL CAPACITY
AS CHIEF INVESTIGATIVE COUNSEL OF
THE HOUSE COMMITTEE ON OVERSIGHT
AND REFORM, 2157 RAYBURN HOUSE OFFICE
BUILDING WASHINGTON, D.C. 20515,
MAZARS USA LLP, 135 WEST 50TH STREET
NEW YORK, NY 10020,

Defendants.

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COMPLAINT

Plaintiffs bring this action against Defendants for declaratory and injunctive relief and allege as follows:

INTRODUCTION

1. The Democrat Party, with its newfound control of the U.S. House of Representatives, has declared all-out political war against President Donald J. Trump. Subpoenas are their weapon of choice.

2. Democrats are using their new control of congressional committees to investigate every aspect of President Trump's personal finances, businesses, and even his family. Instead of working with the President to pass bipartisan legislation that would actually benefit Americans, House Democrats are singularly obsessed with finding something they can use to damage the President politically. They have issued more than 100 subpoenas and requests to anyone with even the most tangential connection to the President.

3. This case involves one of those subpoenas. Last week, Defendant Elijah E. Cummings invoked his authority as Chairman of the House Oversight Committee to subpoena Mazars USA LLP—the longtime accountant for President Trump and several Trump entities (all Plaintiffs here). Chairman Cummings asked Mazars for financial statements, supporting documents, and communications about Plaintiffs over an eight-year period—mostly predating the President's time in office.

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4. Chairman Cummings requested this information because Michael Cohen—a felon who has pleaded guilty to lying to Congress—told the House Oversight Committee that the President had misrepresented his net worth while he was a private citizen. The Committee, according to Chairman Cummings, now needs to “investigate whether the President may have engaged in illegal conduct.” The Chairman claims he can do so because the Oversight Committee can supposedly investigate “any matter at any time.”

5. Chairman Cummings has ignored the constitutional limits on Congress’ power to investigate. Article I of the Constitution does not contain an “Investigations Clause” or an “Oversight Clause.” It gives Congress the power to enact certain *legislation*. Accordingly, investigations are legitimate only insofar as they further some legitimate legislative purpose. No investigation can be an end in itself. And Congress cannot use investigations to exercise powers that the Constitution assigns to the executive or judicial branch.

6. Chairman Cummings’ subpoena of Mazars lacks a legitimate legislative purpose. There is no possible legislation at the end of this tunnel; indeed, the Chairman does not claim otherwise. With this subpoena, the Oversight Committee is instead assuming the powers of the Department of Justice, investigating (dubious and partisan) allegations of illegal conduct by private individuals outside of government. Its goal is to expose Plaintiffs’ private financial information for the sake of exposure, with the hope that it will turn up something that

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Democrats can use as a political tool against the President now and in the 2020 election.

7. Because Chairman Cummings' subpoena to Mazars threatens to expose Plaintiffs' confidential information and lacks "a legitimate legislative purpose," this Court has the power to declare it invalid and to enjoin its enforcement. *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 501 n.14 (1975) (endorsing *U.S. Servicemen's Fund v. Eastland*, 488 F.2d 1252, 1259-60 (D.C. Cir. 1973)). Plaintiffs are entitled to that relief.

PARTIES

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

9. Plaintiff The Trump Organization, Inc. is a New York corporation with its principal place of business at 725 Fifth Avenue, New York, NY 10022.

10. Plaintiff Trump Organization LLC is a New York limited liability company with its principal place of business at 725 Fifth Avenue, New York, NY 10022.

11. Plaintiff The Trump Corporation is a New York corporation with its principal place of business at 725 Fifth Avenue, New York, NY 10022.

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12. Plaintiff DJT Holdings LLC is a Delaware limited liability company with its principal place of business at 725 Fifth Avenue, New York, NY 10022.

13. Plaintiff The Donald J. Trump Revocable Trust is a trust created and operating under the laws of New York.

14. Plaintiff Trump Old Post Office LLC is a Delaware limited liability company with its principal place of business at 1100 Pennsylvania Avenue NW, Washington, D.C. 20004.

15. Defendant Elijah E. Cummings is the U.S. Representative for Maryland's 7th District and the Chairman of the House Committee on Oversight and Reform. He is a member of the Democrat party. Chairman Cummings issued the subpoena in question and is sued in his official capacity.

16. Defendant Peter Kenny is the Chief Investigative Counsel for the House Committee on Oversight and Reform. He signed and served the subpoena in question and is sued in his official capacity.

17. Defendant Mazars USA LLP is a New York limited liability partnership with its principal executive office at 135 West 50th Street, New York, NY 10020. Mazars is an accounting firm and the recipient of Chairman Cummings' subpoena. Mazars is a defendant to ensure that Plaintiffs can obtain effective relief.

*Appendix B***JURISDICTION & VENUE**

18. This Court has subject-matter jurisdiction because this case arises under the Constitution and laws of the United States. 28 U.S.C. §§1331, 2201.

19. Venue is proper because Chairman Cummings officially resides in the District. 28 U.S.C. §1391.

BACKGROUND**I. Challenges to Congressional Subpoenas**

20. Not infrequently, federal courts adjudicate the legality of congressional subpoenas. Most such cases follow a familiar fact pattern: Congress issues a subpoena, the target does not comply, Congress tries to force compliance in federal court, and the target raises the illegality of the subpoena as a defense.

21. But this defensive posture is not the only way to challenge a congressional subpoena. When Congress “seeks information directly from a party,” that party “can resist and thereby test the subpoena.” *Eastland*, 421 U.S. at 501 n.14. But when Congress “seeks that same information from a third person,” this option is not available; the third party might not have an interest in protecting the information or resisting the subpoena, and its “compliance” with the subpoena “could frustrate any judicial inquiry.” *Id.* For that reason, the law allows the person whose information will be exposed to sue in federal court for an “injunction or declaratory judgment” to block

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the subpoena's "issuance, service on, or enforcement against" the "third party." *Eastland*, 488 F.2d at 1259. The key question in such a case is "whether a legitimate legislative purpose is present." *Eastland*, 421 U.S. at 501.

22. The "legitimate legislative purpose" requirement stems directly from the Constitution. "The powers of Congress ... are dependent solely on the Constitution," and "no express power in that instrument" allows Congress to investigate individuals or to issue compulsory process. *Kilbourn v. Thompson*, 103 U.S. 168, 182-89 (1880). The Constitution instead permits Congress to enact certain kinds of *legislation*. See, e.g., Art. I, §8. Thus, Congress' power to investigate "is justified solely as an adjunct to the legislative process." *Watkins*, 354 U.S. at 197. "Congress is not invested with a general power to inquire into private affairs. The subject of any inquiry always must be one on which legislation could be had." *Eastland*, 421 U.S. at 504 n.15 (cleaned up); see also *Quinn v. United States*, 349 U.S. 155, 161 (1955) ("[T]he power to investigate" does not "extend to an area in which Congress is forbidden to legislate.").

23. "Oversight" and "transparency," in a vacuum, are not legitimate legislative purposes that can justify subpoenaing a private citizen. For more than a century, in fact, the Supreme Court has been quite "sure" that neither the House nor Senate "possesses the general power of making inquiry into the private affairs of the citizen." *Kilbourn*, 103 U.S. at 190. "[T]here is no congressional power to expose for the sake of exposure." *Watkins*, 354 U.S. at 200. "No inquiry is an end in itself; it must be

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related to, and in furtherance of, a legitimate task of the Congress.” *Id.* at 187.

24. Additionally, because Congress must have a legitimate *legislative* purpose, it cannot use subpoenas to exercise “any of the powers of law enforcement.” *Quinn*, 349 U.S. at 161. Those powers “are assigned under our Constitution to the Executive and the Judiciary.” *Id.* Put simply, Congress is not “a law enforcement or trial agency,” and congressional investigations conducted “for the personal aggrandizement of the investigators” or “to ‘punish’ those investigated” are “indefensible.” *Watkins*, 354 U.S. at 187. Our tripartite system of separated powers requires that “any one of the[] branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other.” *Kilbourn*, 103 U.S. at 190-91.

25. Finally, when a subpoena is issued by a single committee, any legislative purpose is not legitimate unless it falls within that committee’s jurisdiction. “The theory of a committee inquiry is that the committee members are serving as the representatives of the parent assembly in collecting information for a legislative purpose.” *Watkins*, 354 U.S. at 200. Congress therefore must “spell out that group’s jurisdiction and purpose with sufficient particularity ... in the authorizing resolution,” which “is the committee’s charter.” *Id.* at 201. The committee “must conform strictly to the resolution.” *Exxon Corp. v. FTC*, 589 F.2d 582, 592 (D.C. Cir. 1978). And when an investigation is “novel” or “expansive,” courts will

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construe the committee's jurisdiction "narrowly." *Tobin v. United States*, 306 F.2d 270, 275 (D.C. Cir. 1962).

II. House Democrats' Campaign of Abusive Investigations

26. After the 2018 midterm elections, the Democrat party won a majority of seats in the House. Every House committee in the current Congress is thus chaired by a Democrat.

27. On the night of the election, soon-to-be Speaker Nancy Pelosi announced that "tomorrow will be a new day in America" because House Democrats will use their new majority to enact "checks and balances to the Trump administration." And "subpoena power," she explained a few days later, is "a great arrow to have in your quiver." Chairman Cummings echoed the Speaker's sentiments, stating that "it's a new day" and that "[President Trump] has to be accountable." He added that "we've got to address this issue of exposing President Trump." "Congress is going to force transparency on this president," another Democrat congressional aide repeated. "Once there is transparency, I am sure there are going to be a lot of questions that flow from that."

28. The Democrats' statements about "checks and balances" and "transparency" were not referring to legislation. Instead, according to news outlets that interviewed party leaders and aides shortly after the election, House Democrats meant that they were going to spend the next two years launching a "fusillade" of

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subpoenas in order to “drown Trump with investigations,” “turn Trump’s life upside down,” and “make Trump’s life a living hell.”

29. Prominent Democrats were quite candid about their party’s mission. Representative John Yarmuth, now chair of the House Budget Committee, stated that the new House majority would be “brutal” for President Trump: “We’re going to have to build an air traffic control tower to keep track of all the subpoenas flying from here to the White House.” Another senior Democrat official revealed that, from November 2018 to January 2019, House Democrats were busy preparing a “subpoena cannon” to fire at President Trump based on a “wish-list” of nearly 100 investigatory topics. Representative Nita Lowey, now chair of the House Appropriations Committee, confirmed a long list of topics that House Democrats planned to investigate and stated, “We have our boxing gloves on. I’m ready. And so is Nancy.”

30. The Democrats’ “focus,” according to then-Minority Whip Steny Hoyer, would be examining “the President in terms of what [business] interests he has” from his time as a private citizen. That focus would include the President’s family. Future Oversight Committee member Alexandria Ocasio-Cortez, for instance, responded to a joke by the President’s son Donald Trump Jr. with an explicit threat: “Please keep it coming Jr – it’s definitely a ‘very, very large brain’ idea to troll a member of a body that will have subpoena power in a month.” The Democrats want this personal information in the hopes they will find something they can use to score political points against the President leading up to the 2020 election.

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31. House Democrats are executing their plan in earnest. Recently, several House committees issued a flurry of subpoenas and requests for information about the President’s family, personal finances, and businesses. Just one request by Chairman Nadler of the House Judiciary Committee, for example, asked 81 different individuals for information about President Trump.

32. A few days ago, House Republicans discovered that Chairman Cummings had executed secret memoranda of understanding with Chairman Adam Schiff of the House Permanent Select Committee on Intelligence and Chairwoman Maxine Waters of the House Financial Services Committee. In the memoranda, the Chairs agreed to coordinate their subpoenas in order to inflict maximum political damage on President Trump. According to one congressional official with knowledge of the memoranda, they are “an agreement to conspire and coordinate their efforts to attack and investigate POTUS” by targeting his business and financial records.

33. Last Monday, Chairman Cummings sent one such subpoena to Mazars—Plaintiffs’ longtime accountant. That subpoena is the subject of this lawsuit.

III. Chairman Cummings’ Subpoena to Mazars

34. The Mazars subpoena is based on one of the worst examples of the House Democrats’ zeal to attack President Trump under the guise of investigations: Michael Cohen’s testimony to the House Oversight Committee on February 27, 2019.

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35. The Cohen hearing was a partisan stunt, not a good-faith effort to obtain accurate testimony from a reliable witness. Cohen is a convicted liar; before his February hearing, he had pleaded guilty to several federal crimes including making false statements to Congress. Cohen's testimony was orchestrated by his lawyer Lanny Davis, a political operative for the Democrat party, and Cohen met extensively with House Democrats about the contents of his testimony before he gave it. The reason that Cohen testified, moreover, is so Chairman Cummings and other Democrats would support his request for leniency during his federal sentencing. And according to Ranking Member Jim Jordan, Cohen told several additional lies to Congress in his February testimony.

36. Nevertheless, Chairman Cummings seized on Cohen's allegation that certain financial statements—which Mazars had prepared for President Trump while he was a private citizen—contained inaccuracies. Citing Cohen's testimony, Chairman Cummings wrote to Mazars on March 20, 2019, asking it to produce the following information about President Trump:

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

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1. All statements of financial condition, annual statements, periodic financial reports and independent auditors' reports prepared, compiled, reviewed, or audited by Mazars USA LLP or its predecessor, WeiserMazars LLP;
2. Without regard to time, all engagement agreements or contracts related to the preparation, compilation, review, or auditing of the items described in Request Number 1;
3. All underlying, supporting, or source documents and records used in the preparation, compilation, review, or auditing of items described in Request Number 1, or any summaries of such documents and records relied upon, or any requests for such documents and records; and
4. All memoranda, notes, and communications related to the preparation, compilation, review, or auditing of the items described in Request Number 1, including, but not limited to:
 - a. all communications between Donald Bender and Donald J. Trump or any employee or representative of the Trump Organization; and
 - b. all communications related to potential concerns that records, documents, explanations, or other information, including significant

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judgments, provided by Donald J. Trump or other individuals from the Trump Organization, were incomplete, inaccurate, or otherwise unsatisfactory.

Unless otherwise noted, the time period covered by this request is from January 1, 2009, to the present.

37. Chairman Cummings did not consult with Committee Republicans before sending his request to Mazars. When they discovered the request, Representatives Jordan and Mark Meadows—the Ranking Member of the Oversight Committee and the Subcommittee on Government Operations, respectively—objected. They wrote Mazars informing it that, because Chairman Cummings’ request seeks “information and material about President Trump’s personal finances ... well before [he] was even a candidate for federal office,” it “does not appear to have a valid legislative purpose and instead seems to seek information to embarrass a private individual.” The Ranking Members repeated their concerns in a letter to Chairman Cummings, explaining that the Chairman’s request “seems to examine facts relating to a transaction that never materialized” and other “information [from] ... well before the President was even a candidate.” This is not an attempt at “legitimate oversight,” they added; its only purpose is “to embarrass President Trump” and to maintain House Democrats’ “repeated partisan attacks on the President.”

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38. Mazars, through its outside counsel, wrote back to Chairman Cummings on March 27. Mazars informed Chairman Cummings that it “cannot voluntarily turn over the documents.”

39. Mazars was correct. Under its contract with Plaintiffs, Mazars must abide by the American Institute of CPAs’ ethical rules, which prohibit accountants from “disclos[ing] any confidential client information without the specific consent of the client.” AICPA Code of Professional Conduct §1.700.001.01. New York law imposes the same duty. *See* 8 N.Y.C.R.R. §29.10(c) (“[U]nprofessional conduct” by accountants includes the “revealing of personally identifiable facts, data or information obtained in a professional capacity without the prior consent of the client.”). A congressional subpoena does not relieve Mazars from these duties, unless the subpoena is “validly issued and enforceable.” AICPA Code §1.700.001.02.

40. Chairman Cummings thus tried to craft a subpoena that would hold up in court. Sensing this would be a tall order, the Chairman waited until the House left for its Easter break to circulate a memorandum about the subpoena and then to issue it. This maneuver allowed him to subpoena Mazars without first conferring with Committee Republicans and having to defend his reasoning at an open meeting of the Oversight Committee.

41. Chairman Cummings’ memorandum, dated April 12, 2019, again cited Cohen’s testimony as the basis for subpoenaing Mazars. The Chairman also suggested that “news reports have raised additional concerns regarding

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the President’s financial statements and representations.” But the first “news report”—a blog post from MSNBC’s Rachel Maddow Show—merely repeated Cohen’s testimony. And the second “news report”—a March 2019 article from the Washington Post—quoted legal experts who explained why the financial statements did not break any laws. The Chairman’s memorandum nonetheless stated that the Committee needed to investigate “whether the President has been accurate in his financial reporting.”

42. Ranking Member Jordan again objected to Chairman Cummings’ planned subpoena. In an April 15 letter and memorandum, the Ranking Member explained that the subpoena “is an unprecedented abuse of the Committee’s subpoena authority to target and expose the private financial information of the President of the United States” for “political gain.” The subpoena is an impermissible attempt to “expose the private affairs of individuals,” the Ranking Member explained, because “Chairman Cummings has cited no specific law or legislative proposal for which he requires eight years of sensitive, personal financial information about President Trump.” Ranking Member Jordan also noted his deep concern that Chairman Cummings would selectively leak whatever information he obtained from Mazars, citing examples where the Chairman had strategically leaked similar sensitive information in the past.

43. Despite the Ranking Members’ objections, Chairman Cummings issued the subpoena to Mazars that same day. The subpoena was identical to the Chairman’s initial request for information, except that it asked for

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information from “2011 through 2018” instead of “2009 to the present.” The subpoena currently orders Mazars to comply by noon on April 29, 2019.

44. Ranking Member Jordan responded to the subpoena in a letter dated April 17. The subpoena, he explained, “is an act of raw partisan politics meant only to further your obsession with attacking the President of the United States.” Chairman Cummings “did not dispute the fact that [his] subpoena to Mazars is part of a coordinated and carefully managed campaign to use congressional oversight for political gain,” the Ranking Member observed, and never “articulated how the sensitive, personal financial information [he] seek[s] will advance a legitimate legislative purpose.”

45. Plaintiffs bring this suit to challenge the validity and enforceability of Chairman Cummings’ subpoena. Now that the subpoena has issued, Mazars faces an unfair choice: ignore the subpoena and risk contempt of Congress, or comply with the subpoena and risk liability to Plaintiffs if the subpoena is invalid or unenforceable. To resolve these conflicting commands, the D.C. Circuit has instructed third-party accountants like Mazars to hold onto the subpoenaed materials until the dispute over the subpoena’s validity is finally resolved in court: “[AICPA] Rule 301 ... explains that it ‘shall not be construed ... to affect in any way the member’s obligation to comply with a validly issued and enforceable subpoena or summons.’ But [the client] challenges the enforceability of a subpoena Thus [the accountant] c[an] refuse to produce the documents, thereby allowing [the client to litigate the

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subpoena], without violating its obligation to comply with enforceable subpoenas.” *United States v. Deloitte LLP*, 610 F.3d 129, 142 (D.C. Cir. 2010). Congress thus cannot take any action against Mazars until this litigation is finally resolved.

CLAIM FOR RELIEF

46. Plaintiffs incorporate all their prior allegations.

47. Chairman Cummings’ subpoena is invalid and unenforceable because it has no legitimate legislative purpose.

48. The subpoena seeks to investigate events that occurred while President Trump was a private citizen, years before he was even a candidate for public office.

49. The subpoena seeks to investigate events that could not possibly lead to legislation within the Oversight Committee’s statutory jurisdiction and constitutional authority.

50. The subpoena is an attempt to investigate and adjudicate possible violations of federal law by private individuals—law-enforcement powers that only the executive and judicial branches can exercise.

WHEREFORE, Plaintiffs ask this Court to enter judgment in their favor and to provide the following relief:

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- a. A declaratory judgment that Chairman Cummings' subpoena is invalid and unenforceable;
- b. A permanent injunction quashing Chairman Cummings' subpoena;
- c. A permanent injunction prohibiting Chairman Cummings and Mr. Kenny from taking any actions to enforce the subpoena, from imposing sanctions for noncompliance with the subpoena, and from inspecting, using, maintaining, or disclosing any information obtained as a result of the subpoena;
- d. A temporary restraining order and preliminary injunction prohibiting Mazars from producing the requested information, and prohibiting Chairman Cummings and Mr. Kenny from taking any actions to enforce the subpoena, until the subpoena's validity has been finally adjudicated on the merits;
- e. Plaintiffs' reasonable costs and expenses, including attorneys' fees; and
- f. All other preliminary and permanent relief to which Plaintiffs are entitled.

Dated: April 22, 2019

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Appendix B

Respectfully submitted,

s/ William S. Consovoy

William S. Consovoy (D.C. Bar #493423)

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Inc., Trump Organization LLC, The
Trump Corporation, DJT Holdings LLC,
The Donald J. Trump Revocable Trust,
and Trump Old Post Office LLC*

**APPENDIX C — RELEVANT DOCKET ENTRIES,
*TRUMP V. DEUTSCHE BANK***

**RELEVANT DOCKET ENTRIES FROM THE
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(FOLEY SQUARE)
CIVIL DOCKET FOR
CASE #: 1:19-cv-03826-ER**

Date Filed	#	Docket Text
04/29/2019	<u>1</u>	COMPLAINT against Deutsche Bank, AG, Capital One Financial Corp.. (Filing Fee \$ 400.00, Receipt Number ANYSDC-16789203) Document filed by The Trump Organization, Inc., Trump Acquisition, Corp., Eric Trump, Trump Organization LLC, DJT Holdings Managing Member LLC, Donald J. Trump, Jr, DJT Holdings LLC, Donald J. Trump, Ivanka Trump, Trump Acquisition LLC, The Donald J. Trump Revocable Trust.(Strawbridge, Patrick) (Entered: 04/29/2019)
04/29/2019	<u>2</u>	CIVIL COVER SHEET filed. (Strawbridge, Patrick) (Entered: 04/29/2019)
04/29/2019	<u>3</u>	REQUEST FOR ISSUANCE OF SUMMONS as to Deutsche Bank AG, re: 1 Complaint,. Document

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filed by DJT Holdings LLC, DJT Holdings Managing Member LLC, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Donald J. Trump, Jr, Donald J. Trump, Eric Trump, Ivanka Trump, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC. (Strawbridge, Patrick) (Entered: 04/29/2019)

04/29/2019 4 REQUEST FOR ISSUANCE OF SUMMONS as to Capital One Financial Corp., re: 1 Complaint,. Document filed by DJT Holdings LLC, DJT Holdings Managing Member LLC, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., Donald J. Trump, Jr, Donald J. Trump, Eric Trump, Ivanka Trump, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC. (Strawbridge, Patrick) (Entered: 04/29/2019)

04/29/2019 5 RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by DJT Holdings LLC.(Strawbridge, Patrick) (Entered: 04/29/2019)

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- 04/29/2019 6 RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by DJT Holdings Managing Member LLC.(Strawbridge, Patrick) (Entered: 04/29/2019)
- 04/29/2019 7 RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Trump Acquisition, Corp.. (Strawbridge, Patrick) (Entered: 04/29/2019)
- 04/29/2019 8 RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Trump Acquisition LLC.(Strawbridge, Patrick) (Entered: 04/29/2019)
- 04/29/2019 9 RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by The Trump Organization, Inc.. (Strawbridge, Patrick) (Entered: 04/29/2019)
- 04/29/2019 10 RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Trump Organization LLC. (Strawbridge, Patrick) (Entered: 04/29/2019)

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* * *

04/30/2019

*****NOTICE TO ATTORNEY REGARDING CIVIL. CASE OPENING STATISTICAL ERROR CORRECTION: Notice to attorney Patrick Strawbridge. The following case opening statistical information was erroneously selected/entered: Cause of Action code 12:3410. The following correction(s) have been made to your case entry: the Cause of Action code has been modified to 28:2201. (dnh) (Entered: 04/30/2019)**

* * *

04/30/2019

CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Edgardo Ramos. Please download and review the Individual Practices of the assigned District Judge, located at <http://nysd.uscourts.gov/judges/District>. Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at http://nysd.uscourts.gov/ecf_filing.php. (dnh) (Entered: 04/30/2019)

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- 04/30/2019 Magistrate Judge Robert W. Lehrburger is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: <http://nysd.uscourts.gov/forms.php>. (dnh) (Entered: 04/30/2019)
- 04/30/2019 Case Designated ECF. (dnh) (Entered: 04/30/2019)
- 04/30/2019 13 ELECTRONIC SUMMONS ISSUED as to Deutsche Bank, AG. (dnh) (Entered: 04/30/2019)
- 04/30/2019 14 ELECTRONIC SUMMONS ISSUED as to Capital One Financial Corp.. (dnh) (Entered: 04/30/2019)
- 04/30/2019 15 ORDER granting 11 Motion for Patrick Strawbridge to Appear Pro Hac Vice. (HEREBY ORDERED by Judge Edgardo Ramos)(Text Only Order) (jar) Transmission to Attorney Services/Help Desk. (Entered: 04/30/2019)
- 04/30/2019 16 ORDER granting 12 Motion for William S. Consovo to Appear Pro

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Hac Vice. (HEREBY ORDERED by Judge Edgardo Ramos)(Text Only Order) (jar) Transmission to Attorney Services/Help Desk. (Entered: 04/30/2019)

* * *

- 05/01/2019 19 R U L E 7 . 1 C O R P O R A T E
DISCLOSURE STATEMENT. No
Corporate Parent. Document filed by
Capital One Financial Corp..(Feldman,
Steven) (Entered: 05/01/2019)
- 05/01/2019 20 W A I V E R O F S E R V I C E R E T U R N E D
EXECUTED. Capital One Financial
Corp. waiver sent on 4/30/2019,
answer due 7/1/2019. Document filed
by Trump Organization, Inc.; Trump
Acquisition, Corp.; Eric Trump; Trump
Organization LLC; DJT Holdings
Managing Member LLC; Donald
J. Trump, Jr; DJT Holdings LLC;
Donald J. Trump; Ivanka Trump;
Trump Acquisition LLC; Donald J.
Trump Revocable Trust. (Strawbridge,
Patrick) (Entered: 05/01/2019)
- 05/01/2019 21 C O N S E N T M O T I O N to Set Briefing
Schedule for Preliminary-Injunction
Motion. Document filed by DJT
Holdings LLC, DJT Holdings Managing

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Member LLC, Donald J. Trump Revocable Trust, Donald J. Trump, Jr, Donald J. Trump, Eric Trump, Ivanka Trump, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc.. (Attachments: # 1 Text of Proposed Order)(Strawbridge, Patrick) (Entered: 05/01/2019)

05/01/2019 22 ORDER granting 21 motion SETTING BRIEFING SCHEDULE ON MOTION FOR PRELIMINARY INJUNCTION So Ordered. (Signed by Judge Edgardo Ramos on 5/1/2019) (js) Modified on 5/2/2019 (js). (Entered: 05/02/2019)

05/01/2019 Set/Reset Deadlines: (Motions due by 5/3/2019., Responses due by 5/10/2019, Replies due by 5/15/2019.), Set/Reset Hearings:(Oral Argument set for 5/22/2019 at 02:30 PM before Judge Edgardo Ramos.) (js) (Entered: 05/02/2019)

* * *

05/02/2019 24 WAIVER OF SERVICE RETURNED EXECUTED. Deutsche Bank, AG waiver sent on 4/30/2019, answer due

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7/1/2019. Document filed by Trump Organization, Inc.; Trump Acquisition, Corp.; Eric Trump; Trump Organization LLC; DJT Holdings Managing Member LLC; Donald J. Trump, Jr; DJT Holdings LLC; Donald J. Trump; Ivanka Trump; Trump Acquisition LLC; Donald J. Trump Revocable Trust. (Strawbridge, Patrick) (Entered: 05/02/2019)

- 05/03/2019 25 CONSENT LETTER MOTION for Leave to File intervention addressed to Judge Edgardo Ramos from Douglas N. Letter, General Counsel, U.S. House of Representatives dated 5/3/2019. Document filed by Committee on Financial Services of the U.S. House of Representatives, Permanent Select Committee on Intelligence of the U.S. House of Representatives. (Attachments: # 1 Text of Proposed Order)(Letter, Douglas) (Entered: 05/03/2019)
- 05/03/2019 26 MOTION for Preliminary Injunction. Document filed by DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Donald J. Trump, Jr, Donald J. Trump, Eric Trump,

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Ivanka Trump, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc..(Strawbridge, Patrick) (Entered: 05/03/2019)

- 05/03/2019 27 MEMORANDUM OF LAW in Support re: 26 MOTION for Preliminary Injunction . . Document filed by DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Donald J. Trump, Jr, Donald J. Trump, Eric Trump, Ivanka Trump, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc.. (Strawbridge, Patrick) (Entered: 05/03/2019)
- 05/03/2019 28 DECLARATION of Patrick Strawbridge in Support re: 26 MOTION for Preliminary Injunction .. Document filed by DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Donald J. Trump, Jr, Donald J. Trump, Eric Trump, Ivanka Trump, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc.. (Strawbridge, Patrick) (Entered: 05/03/2019)

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- 05/03/2019 29 PROPOSED ORDER. Document filed by DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Donald J. Trump, Jr, Donald J. Trump, Eric Trump, Ivanka Trump, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc.. Related Document Number: 26 . (Strawbridge, Patrick) **Proposed Order to be reviewed by Clerk's Office staff.** (Entered: 05/03/2019)
- 05/03/2019 30 LETTER MOTION for Conference *regarding Limited Expedited Discovery* addressed to Judge Edgardo Ramos from Patrick Strawbridge dated 5/3/2019. Document filed by DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Donald J. Trump, Jr, Donald J. Trump, Eric Trump, Ivanka Trump, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc..(Strawbridge, Patrick) (Entered: 05/03/2019)

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- 05/03/2019 31 ORDER GRANTING MOTION TO INTERVENE OF COMMITTEE ON FINANCIAL SERVICES OF THE U.S. HOUSE OF REPRESENTATIVES AND PERMANENT SELECT COMMITTEE ON INTELLIGENCE OF THE U.S. HOUSE OF REPRESENTATIVES 25 Letter Motion for Leave to File Document. It is SO ORDERED that the motion of the proposed intervenor-defendants Committee on Financial Services and Permanent Select Committee on Intelligence of the U.S. House of Representatives (Committees) is GRANTED.IT IS FURTHER ORDERED THAT the intervenor-defendant Committees shall comply with the deadlines set forth in this Courts May 1, 2019 order setting a briefing schedule (ECF No. 22). (Signed by Judge Edgardo Ramos on 5/3/2019) (jca) (Entered: 05/03/2019)
- 05/03/2019 32 ORDER granting 30 Letter Motion for Conference. A pre-motion conference will be held on Thursday, May 9, 2019, at 2:30 p.m. Defendants are directed to submit a response to Plaintiffs' letter by close of business

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Tuesday, May 7, 2019. It is SO ORDERED. (Pre-Motion Conference set for 5/9/2019 at 02:30 PM before Judge Edgardo Ramos.) (Signed by Judge Edgardo Ramos on 5/3/2019) (jca) (Entered: 05/03/2019)

05/03/2019 Set/Reset Deadlines: Responses due by 5/7/2019 (jca) (Entered: 05/03/2019)

* * *

05/03/2019 34 RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Deutsche Bank, AG.(Moyne, Parvin) (Entered: 05/03/2019)

* * *

05/06/2019 *****NOTICE TO COURT REGARDING PROPOSED ORDER. Document No. 29 Proposed Order was reviewed and approved as to form. (km)** (Entered: 05/06/2019)

05/07/2019 38 LETTER addressed to Judge Edgardo Ramos from Steven R. Ross dated May 7, 2019 re: Statement of Position. Document filed by Deutsche

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Bank, AG.(Ross, Steven) (Entered:
05/07/2019)

* * *

- 05/07/2019 40 LETTER addressed to Judge Edgardo Ramos from James A. Murphy dated May 7, 2019 re: Statement of Position. Document filed by Capital One Financial Corp..(Murphy, James) (Entered: 05/07/2019)
- 05/07/2019 41 CONSENT LETTER MOTION for Extension of Time to File Response/ Reply addressed to Judge Edgardo Ramos from Douglas N. Letter, General Counsel, U.S. House of Representatives dated 05/07/2019. Document filed by Committee on Financial Services of the U.S. House of Representatives, Permanent Select Committee on Intelligence of the U.S. House of Representatives. (Attachments: # 1 Text of Proposed Order)(Letter, Douglas) (Entered: 05/07/2019)
- 05/07/2019 42 ORDER GRANTING INTERVENOR-DEFENDANTS' CONSENT MOTION FOR EXTENSION OF TIME granting 41

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Letter Motion for Extension of Time to File Response/Reply. It is SO ORDERED that the consent motion of intervenor-defendants Committee on Financial Services and Permanent Select Committee on Intelligence of the U.S. House of Representatives for a 24-hour extension of time to respond to plaintiffs' May 3, 2019 letter is GRANTED. (Signed by Judge Edgardo Ramos on 5/7/2019) Copies Mailed By Chambers. (rro) (Entered: 05/08/2019)

- 05/08/2019 43 LETTER addressed to Judge Edgardo Ramos from Patrick Strawbridge dated 05/08/2019 re: Withdrawing Letter Motion for Conference. Document filed by DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Donald J. Trump, Jr, Donald J. Trump, Eric Trump, Ivanka Trump, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc.. (Strawbridge, Patrick) (Entered: 05/08/2019)
- 05/08/2019 44 MEMO ENDORSEMENT on re: 43 Letter, filed by Trump

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Acquisition LLC, DJT Holdings
Managing Member LLC, Ivanka
Trump, Donald J. Trump Revocable
Trust, Trump Organization,
Inc., Trump Acquisition, Corp.,
Eric Trump, Donald J. Trump,
Jr., DJT Holdings LLC, Trump
Organization LLC, Donald J. Trump.
ENDORSEMENT: The conference
previously scheduled for May 9,
2019, is hereby terminated. It is
SO ORDERED. (Signed by Judge
Edgardo Ramos on 5/8/2019) (kv)
(Entered: 05/08/2019)

- 05/10/2019 45 RESPONSE to Motion re: 26
MOTION for Preliminary Injunction.
Defendant *Deutsche Bank AG's*
Statement of Position as to
Plaintiffs' Motion for a Preliminary
Injunction. Document filed by
Deutsche Bank, AG. (Ross, Steven)
(Entered: 05/10/2019)
- 05/10/2019 46 RESPONSE to Motion re: 26
MOTION for Preliminary Injunction
. . Document filed by Capital One
Financial Corp.. (Murphy, James)
(Entered: 05/10/2019)

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- 05/10/2019 51 RESPONSE in Opposition to Motion re: 26 MOTION for Preliminary Injunction . . Document filed by Committee on Financial Services of the U.S. House of Representatives, Permanent Select Committee on Intelligence of the U.S. House of Representatives. (Attachments: # 1 Affidavit Declaration of Todd B. Tatelman, # 2 Exhibit Ex. A to Declaration of Todd B. Tatelman, # 3 Exhibit Ex. B to Declaration of Todd B. Tatelman)(Letter, Douglas) (Entered: 05/10/2019)
- 05/13/2019 52 CONSENT LETTER MOTION for Leave to File Excess Pages addressed to Judge Edgardo Ramos from Patrick Strawbridge dated 5/13/2019. Document filed by DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Donald J. Trump, Jr, Donald J. Trump, Eric Trump, Ivanka Trump, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc.. (Strawbridge, Patrick) (Entered: 05/13/2019)

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- 05/14/2019 53 ORDER granting 52 Letter Motion for Leave to File Excess Pages. Plaintiffs are granted leave to file a 15-page reply brief. (HEREBY ORDERED by Judge Edgardo Ramos)(Text Only Order) (jar) (Entered: 05/14/2019)
- 05/15/2019 54 REPLY MEMORANDUM OF LAW in Support re: 26 MOTION for Preliminary Injunction . . Document filed by DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Donald J. Trump, Jr, Donald J. Trump, Eric Trump, Ivanka Trump, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc.. (Strawbridge, Patrick) (Entered: 05/15/2019)
- 05/20/2019 55 NOTICE of Supplemental Authority. Document filed by Committee on Financial Services of the U.S. House of Representatives, Permanent Select Committee on Intelligence of the U.S. House of Representatives. (Attachments: # 1 Exhibit Opinion, # 2 Exhibit Order)(Letter, Douglas) (Entered: 05/20/2019)

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- 05/21/2019 56 ORDER granting 35 Motion for Steven R. Ross to Appear Pro Hac Vice. (HEREBY ORDERED by Judge Edgardo Ramos)(Text Only Order) (jar) Transmission to Attorney Services/Help Desk. (Entered: 05/21/2019)
- 05/21/2019 57 ORDER granting 36 Motion for Raphael A. Prober to Appear Pro Hac Vice. (HEREBY ORDERED by Judge Edgardo Ramos)(Text Only Order) (jar) Transmission to Attorney Services/Help Desk. (Entered: 05/21/2019)
- 05/21/2019 58 ORDER granting 37 Motion for Thomas C. Moyer to Appear Pro Hac Vice. (HEREBY ORDERED by Judge Edgardo Ramos)(Text Only Order) (jar) Transmission to Attorney Services/Help Desk. (Entered: 05/21/2019)
- 05/22/2019 59 ORDER: denying 26 Motion for Preliminary Injunction. For the reasons set forth on the record in today's hearing, Plaintiffs' motion for a preliminary injunction is DENIED, Plaintiffs' motion for a stay pending appeal is DENIED, and the Committees' application for

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consolidation is DENIED. The Clerk of Court is respectfully directed to terminate the motion, Doc. 26. It is SO ORDERED. (Signed by Judge Edgardo Ramos on 5/22/2019) (ama) (Entered: 05/22/2019)

- 05/24/2019 60 NOTICE OF INTERLOCUTORY APPEAL from 59 Order on Motion for Preliminary Injunction,. Document filed by DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Donald J. Trump, Jr, Donald J. Trump, Eric Trump, Ivanka Trump, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc.. Filing fee \$ 505.00, receipt number ANYSDC-16950902. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Strawbridge, Patrick) (Entered: 05/24/2019)
- 05/24/2019 Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 60 Notice of Interlocutory Appeal. (tp) (Entered: 05/24/2019)

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- 05/24/2019 Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 60 Notice of Interlocutory Appeal, filed by Trump Acquisition LLC, DJT Holdings Managing Member LLC, Ivanka Trump, Donald J. Trump Revocable Trust, Trump Organization, Inc., Trump Acquisition, Corp., Eric Trump, Donald J. Trump, Jr., DJT Holdings LLC, Trump Organization LLC, Donald J. Trump were transmitted to the U.S. Court of Appeals. (tp) (Entered: 05/24/2019)
- 05/25/2019 61 JOINT MOTION to Stay . Document filed by DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Donald J. Trump, Jr, Donald J. Trump, Eric Trump, Ivanka Trump, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc..(Strawbridge, Patrick) (Entered: 05/25/2019)
- 05/28/2019 USCA Case Number 19-1540 from the U.S.C.A. - 2nd Circ. assigned to 60 Notice of Interlocutory Appeal,, filed by Trump Acquisition

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LLC, DJT Holdings Managing Member LLC, Ivanka Trump, Donald J. Trump Revocable Trust, Trump Organization, Inc., Trump Acquisition, Corp., Eric Trump, Donald J. Trump, Jr., DJT Holdings LLC, Trump Organization LLC, Donald J. Trump. (nd) (Entered: 05/28/2019)

- 05/28/2019 62 MEMO ENDORSEMENT granting 61 Motion to Stay. ENDORSEMENT: The application is granted. SO ORDERED. (Signed by Judge Edgardo Ramos on 5/28/2019) (kv) Modified on 8/30/2019 (kv). (Entered: 05/28/2019)
- 10/10/2019 63 OPINION of USCA (Certified Copy) as to 60 Notice of Interlocutory Appeal,, filed by Trump Acquisition LLC, DJT Holdings Managing Member LLC, Ivanka Trump, Donald J. Trump Revocable Trust, Trump Organization, Inc., Trump Acquisition, Corp., Eric Trump, Donald J. Trump, Jr., DJT Holdings LLC, Trump Organization LLC, Donald J. Trump. USCA Case Number 19-1540-cv. This opinion considers motions by several news organizations to intervene in a pending appeal and to unseal an

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unredacted letter filed in this Court on August 27, 2019, under seal in that appeal. See *Trump v. Deutsche Bank, AG*, No. 19. 1540 (2d Cir. argued Aug. 23, 2019). The letter was filed by Deutsche Bank AG in an appeal from an Order denying a preliminary injunction sought by President Donald J. Trump, members of his family, and several affiliated entities (“Appellants”) to prevent compliance with subpoenas issued to Deutsche Bank and Capital One Financial Corporation by two committees of the United States House of Representatives. The subpoenas seek production of numerous documents, including tax returns. The appeal is still pending. Unsealing the letter is sought to learn the redacted names of taxpayers whose income tax returns are in Deutsche Bank’s possession. Appellants in the pending appeal and Deutsche Bank oppose the motion. The motions to intervene are GRANTED; the motions for unsealing are DENIED. Catherine O’Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 10/10/2019. (nd) (Entered: 10/10/2019)

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12/03/2019 64 USCA OPINION (Certified) as to 60 Notice of Interlocutory Appeal,, filed by Trump Acquisition LLC, DJT Holdings Managing Member LLC, Ivanka Trump, Donald J. Trump Revocable Trust, Trump Organization, Inc., Trump Acquisition, Corp., Eric Trump, Donald J. Trump, Jr., DJT Holdings LLC, Trump Organization LLC, Donald J. Trump. USCA Case Number 19-1540-cv. Expedited interlocutory appeal from the May 22, 2019, order of the District Court for the Southern District of New York (Edgardo Ramos, District Judge) denying Plaintiffs-Appellants' motion for a preliminary injunction to prevent the Defendants-Appellees' compliance with subpoenas issued to them by the Intervenor Defendants-Appellees and denying Plaintiffs-Appellants' motion for a stay pending appeal. Affirmed in substantial part and remanded in part. Judge Livingston concurs in part and dissents in part with a separate opinion. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 12/03/2019. (Attachments: # 1 Concurring opinion by Judge Livingston)(nd) (Entered: 12/03/2019)

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- 12/03/2019 Transmission of USCA Opinion to the District Judge re: 64 USCA Opinion. (nd) (Entered: 12/03/2019)
- 12/03/2019 65 MANDATE of USCA (Certified Copy) as to 60 Notice of Interlocutory Appeal,, filed by Trump Acquisition LLC, DJT Holdings Managing Member LLC, Ivanka Trump, Donald J. Trump Revocable Trust, Trump Organization, Inc., Trump Acquisition, Corp., Eric Trump, Donald J. Trump, Jr., DJT Holdings LLC, Trump Organization LLC, Donald J. Trump. USCA Case Number 19-1540-cv. IT IS HEREBY ORDERED, ADJUDGED and DECREED that the district court's order is AFFIRMED in substantial part and REMANDED in part.. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 12/03/2019. (Attachments: # 1 Opinion, # 2 Concurring Opinion)(nd) (Entered: 12/03/2019)
- 12/03/2019 Transmission of USCA Mandate to the District Judge re: 65 USCA Mandate. (nd) (Entered: 12/03/2019)

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12/13/2019 66 ORDER of USCA (Certified Copy) as to 60 Notice of Interlocutory Appeal,, filed by Trump Acquisition LLC, DJT Holdings Managing Member LLC, Ivanka Trump, Donald J. Trump Revocable Trust, Trump Organization, Inc., Trump Acquisition, Corp., Eric Trump, Donald J. Trump, Jr., DJT Holdings LLC, Trump Organization LLC, Donald J. Trump. USCA Case Number 19-1540-cv. The petition for a writ of certiorari in No. 19-715 is granted. The application (19A640) for stay presented to Justice Ginsburg and by her referred to the Court is granted, and it is ordered that the mandate of the United States Court of Appeals for the Second Circuit, case No. 19-1540, is hereby stayed pending further order of the Court. In addition, the application is treated as a petition for a writ of certiorari, and the petition is granted. The cases are consolidated, and a total of one hour is allotted for oral argument. The cases will be set for argument in the March 2020 argument session. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 12/13/2019. (nd) (Entered: 12/16/2019)

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**RELEVANT DOCKET ENTRIES FROM THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT,
NO. 2019-1540**

Date Filed	#	Docket Text
05/24/2019	<u>1</u>	INTERLOCUTORY NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Donald J. Trump, Donald J. Trump, Jr., Eric Trump, Ivanka Trump, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC and Trump Organization, Inc., FILED. [2572546] [19-1540] [Entered: 05/24/2019 04:25 PM]
05/24/2019	<u>2</u>	DISTRICT COURT ORDER, dated 05/22/2019, RECEIVED.[2572571] [19-1540] [Entered: 05/24/2019 04:42 PM]
05/24/2019	<u>3</u>	ELECTRONIC INDEX, in lieu of record, FILED.[2572574] [19-1540] [Entered: 05/24/2019 04:43 PM]
05/24/2019	4	PAYMENT OF DOCKETING FEE, on behalf of Appellant DJT Holdings LLC, DJT Holdings Managing Member LLC,

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Donald J. Trump Revocable Trust, Donald J. Trump, Donald J. Trump, Jr., Eric Trump, Ivanka Trump, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC and Trump Organization, Inc., district court receipt # ANYSDC-16950902, FILED.[2572581] [19-1540] [Entered: 05/24/2019 04:49 PM]

- 05/25/2019 5 MOTION, to expedite appeal, on behalf of Appellant DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC and Trump Organization, Inc., FILED. Service date 05/25/2019 by CM/ECF, email. [2572636] [19-1540] [Entered: 05/25/2019 12:47 PM]
- 05/31/2019 8 MOTION ORDER, granting motion to expedite appeal, Appellant's opening Brief and Appendix will be filed by June 18, 2019; Appellees' response briefs will be filed by July 11, 2019; and Appellants' reply brief will be filed by July 18, 2019, [5] filed by Appellant Donald J. Trump Revocable Trust, Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing

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Member LLC, Trump Acquisition LLC and Trump Acquisition, Corp., by RJL, FILED. [2576240][8] [19-1540] [Entered: 05/31/2019 09:24 AM]

* * *

06/10/2019 14 CASE CALENDARING, for the week of 08/19/2019, PROPOSED.[2583054] [19-1540] [Entered: 06/10/2019 09:53 AM]

* * *

06/18/2019 27 JOINT APPENDIX, volume 1 of 1, (pp. 1-160), on behalf of Appellant Donald J. Trump, Donald Trump, Jr., Eric Trump and Ivanka Trump, FILED. Service date 06/18/2019 by CM/ECF.[2589810] [19-1540] [Entered: 06/18/2019 06:13 PM]

06/18/2019 28 BRIEF, on behalf of Appellant Donald J. Trump, Donald Trump, Jr., Eric Trump and Ivanka Trump, FILED. Service date 06/18/2019 by CM/ECF.[2589811] [19-1540] [Entered: 06/18/2019 06:16 PM]

06/28/2019 30 DEFECTIVE DOCUMENT, brief, joint appendix, [28], [27], on behalf of Appellant Donald Trump, Jr., Donald

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J. Trump, Eric Trump and Ivanka Trump, FILED.[2596671] [19-1540] [Entered: 06/28/2019 08:10 AM]

06/28/2019 31 NEW CASE MANAGER, Tynetta Wilder, ASSIGNED.[2596843] [19-1540] [Entered: 06/28/2019 10:11 AM]

* * *

06/28/2019 34 JOINT APPENDIX, volume 1 of 1, (pp. 1-160), on behalf of Appellant DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc., Donald J. Trump, Donald J. Trump, Jr., Eric Trump and Ivanka Trump, FILED. Service date 06/18/2019 by CM/ECF.[2597202] [19-1540] [Entered: 06/28/2019 01:14 PM]

06/28/2019 35 BRIEF, on behalf of Appellant DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc., Donald J. Trump, Donald J. Trump, Jr., Eric

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Trump and Ivanka Trump, FILED.
Service date 06/18/2019 by CM/
ECF.[2597208] [19-1540] [Entered:
06/28/2019 01:17 PM]

- 07/01/2019 36 DEFECTIVE DOCUMENT, JOINT APPENDIX, volume 1 of 1, (pp. 1-160), [34], on behalf of Appellant DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Donald J. Trump, Donald J. Trump, Jr., Eric Trump, Ivanka Trump, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC and Trump Organization, Inc., FILED.[2598070] [19-1540] [Entered: 07/01/2019 11:47 AM]
- 07/01/2019 37 JOINT APPENDIX, volume 1 of 1, (pp. 1-160), on behalf of Appellant DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc., Donald J. Trump, Donald J. Trump, Jr., Eric Trump and Ivanka Trump, FILED. Service date 06/18/2019 by CM/ ECF.[2598263] [19-1540] [Entered: 07/01/2019 01:31 PM]

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- 07/02/2019 38 CURED DEFECTIVE :
APPENDIX, BRIEF [37] [2597208],
on behalf of Appellant DJT Holdings
LLC, DJT Holdings Managing
Member LLC, Donald J. Trump
Revocable Trust, Donald J. Trump,
Donald J. Trump, Jr., Eric Trump,
Ivanka Trump, Trump Acquisition
LLC, Trump Acquisition, Corp.,
Trump Organization LLC and
Trump Organization, Inc., FILED.
[2599029] [19-1540]--[Edited
07/02/2019 by TW]--[Edited
07/02/2019 by TW] [Entered:
07/02/2019 10:04 AM]
- 07/02/2019 39 CASE CALENDARING, for
argument on 08/23/2019, SET.
[2599034] [19-1540] [Entered:
07/02/2019 10:07 AM]
- * * *
- 07/08/2019 54 ARGUMENT NOTICE, to
attorneys/parties, TRANSMITTED.
[2602202] [19-1540] [Entered:
07/08/2019 03:09 PM]
- 07/09/2019 55 NOTICE OF HEARING DATE
ACKNOWLEDGMENT, on
behalf of Appellant DJT Holdings
LLC, DJT Holdings Managing

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Member LLC, Donald J. Trump Revocable Trust, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc., Donald J. Trump, Donald J. Trump, Jr., Eric Trump and Ivanka Trump, FILED. Service date 07/09/2019 by CM/ECF. [2602618] [19-1540] [Entered: 07/09/2019 03:45 AM]

- 07/09/2019 57 LETTER, dated 07/07/2019, on behalf of Appellee Committee on Financial Services of the United States House of Representatives, request that the Court waive the attorney admission requirements and enter notices of appearances for Todd B. Tatelman, Josephine Morse, additionally request that the Court waive any readmission requirements for Douglas N. Letter, RECEIVED. Service date 07/09/2019 by email. [2603034] [19-1540] [Entered: 07/09/2019 11:33 AM]
- 07/10/2019 59 NOTICE OF HEARING DATE ACKNOWLEDGMENT, on behalf of Appellee Committee on Financial Services of the United States House of Representatives and Permanent Select Committee

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on Intelligence of the United States House of Representatives, FILED. Service date 07/10/2019 by CM/ECF. [2604613] [19-1540] [Entered: 07/10/2019 01:09 PM]

* * *

- 07/11/2019 64 BRIEF, on behalf of Appellee Capital One Financial Corporation, FILED. Service date 07/11/2019 by CM/ECF. [2606333] [19-1540] [Entered: 07/11/2019 04:21 PM]
- 07/11/2019 65 BRIEF, on behalf of Appellee Committee on Financial Services of the United States House of Representatives and Permanent Select Committee on Intelligence of the United States House of Representatives, FILED. Service date 07/11/2019 by CM/ECF. [2606510] [19-1540] [Entered: 07/11/2019 07:19 PM]
- 07/11/2019 66 LETTER, on behalf of Appellee Deutsche Bank AG, states they take no position with respect to Plaintiffs'-Appellants' brief, nor on the legal issues raised by Plaintiffs-Appellants and Intervenor Defendants-Appellees in connection therewith,

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RECEIVED. Service date 07/11/2019
by CM/ECF.[2606511] [19-1540]
[Entered: 07/11/2019 07:28 PM]

- 07/12/2019 68 DEFECTIVE DOCUMENT,
BRIEF, [64], on behalf of Appellee
Capital One Financial Corporation,
FILED.[2606527] [19-1540]
[Entered: 07/12/2019 07:54 AM]
- 07/12/2019 71 LETTER, on behalf of Appellee
Capital One Financial Corporation,
takes no position with respect to
the instant appeal , will not file an
appellate brief, does not request
any time to address the Court at oral
argument, RECEIVED. Service date
07/12/2019 by CM/ECF.[2606672]
[19-1540] [Entered: 07/12/2019 09:53
AM]
- 07/12/2019 72 CURED DEFECTIVE :
LETTER,[71], on behalf of Appellee
Capital One Financial Corporation,
FILED.[2606714] [19-1540] [Entered:
07/12/2019 10:09 AM]
- 07/12/2019 73 BRIEF, on behalf of Appellee
Capital One Financial Corporation,
WAIVED. [2606730] [19-1540]
[Entered: 07/12/2019 10:13 AM]

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- 07/17/2019 76 AMICUS BRIEF, on behalf of Constitutional Accountability Center, FILED. Service date 07/17/2019 by CM/ECF. [2610643] [19-1540] [Entered: 07/17/2019 11:53 AM]
- 07/17/2019 78 ARGUMENT NOTICE, to attorneys/parties, TRANSMITTED. [2610872] [19-1540] [Entered: 07/17/2019 02:31 PM]
- * * *
- 07/17/2019 80 LETTER, to the Solicitor General of the United States asking whether the United States would like to submit its views on the issues raised on appeal, SENT.[2610920] [19-1540] [Entered: 07/17/2019 02:58 PM]
- 07/17/2019 81 LETTER, requesting counsel for Appellee Deutsche Bank AG and Capital One Financial Corporation attend oral argument to be available to respond to questions the panel may have, SENT.[2610937] [19-1540] [Entered: 07/17/2019 03:05 PM]
- 07/18/2019 82 NOTICE OF HEARING DATE ACKNOWLEDGMENT, on behalf of Appellant DJT Holdings LLC, DJT Holdings Managing

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Member LLC, Donald J. Trump Revocable Trust, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc., Donald J. Trump, Donald J. Trump, Jr., Eric Trump and Ivanka Trump, FILED. Service date 07/18/2019 by CM/ECF. [2611195] [19-1540] [Entered: 07/18/2019 02:44 AM]

- 07/18/2019 83 NEW PARTY, Amicus Curiae Constitutional Accountability Center, ADDED.[2611198] [19-1540] [Entered: 07/18/2019 07:53 AM]
- 07/18/2019 84 DEFECTIVE DOCUMENT, AMICUS BRIEF, [76], on behalf of Amicus Curiae Constitutional Accountability Center, FILED. [2611199] [19-1540] [Entered: 07/18/2019 07:56 AM]
- 07/18/2019 85 AMICUS BRIEF, Amicus Curiae Constitutional Accountability Center, FILED. Service date 07/18/2019 by CM/ECF. [2611220] [19-1540] [Entered: 07/18/2019 08:34 AM]
- 07/18/2019 86 NOTICE OF HEARING DATE ACKNOWLEDGMENT, on behalf of Appellee Committee on

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Financial Services of the United States House of Representatives and Permanent Select Committee on Intelligence of the United States House of Representatives, FILED. Service date 07/18/2019 by CM/ECF. [2611330] [19-1540] [Entered: 07/18/2019 09:43 AM]

- 07/18/2019 90 CURED DEFECTIVE : BRIEF, [85], on behalf of Amicus Curiae Constitutional Accountability Center, FILED.[2611610] [19-1540] [Entered: 07/18/2019 11:52 AM]
- 07/18/2019 93 REPLY BRIEF, on behalf of Appellant DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc., Donald J. Trump, Donald J. Trump, Jr., Eric Trump and Ivanka Trump, FILED. Service date 07/18/2019 by CM/ECF. [2612268] [19-1540] [Entered: 07/18/2019 05:43 PM]
- 07/19/2019 95 BRIEF, on behalf of Appellee Deutsche Bank AG , WAIVED. [2612514] [19-1540] [Entered:

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07/19/2019 10:04 AM]

- 07/23/2019 102 MOTION ORDER, granting motion for admission pro hac vice [52] filed by Appellee Deutsche Bank AG, FILED. [2615277][102] [19-1540] [Entered: 07/23/2019 03:14 PM]
- 07/23/2019 103 MOTION ORDER, granting motion for admission pro hac vice [50] filed by Appellee Deutsche Bank AG, FILED. [2615293][103] [19-1540] [Entered: 07/23/2019 03:20 PM]
- 07/23/2019 104 MOTION ORDER, granting motion for admission pro hac vice [51] filed by Appellee Deutsche Bank AG, FILED. [2615343][104] [19-1540] [Entered: 07/23/2019 03:35 PM]
- 07/26/2019 105 LETTER, requesting counsel for Appellee Committee on Financial Services of the United States House of Representatives and Permanent Select Committee on Intelligence of the United States House of Representatives promptly file with the Court, under seal if appropriate, unredacted copies of the subpoena, in paper and digital format, that each Committee served on Deutsche Bank AG, SENT.[2618090] [19-1540] [Entered: 07/26/2019 12:52 PM]

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- 07/26/2019 106 FRAP 28(j) LETTER, dated 07/26/2019, on behalf of Appellee Committee on Financial Services of the United States House of Representatives and Permanent Select Committee on Intelligence of the United States House of Representatives, RECEIVED. Service date 07/26/2019 by CM/ECF.[2618467] [19-1540] [Entered: 07/26/2019 04:20 PM]
- 07/29/2019 109 SEALED, Subpoenas, filed on behalf of Appellee in response to letter dated 07/26/2019, FILED.[2619242] [19-1540] [Entered: 07/29/2019 01:48 PM]
- 08/01/2019 112 FRAP 28(j) LETTER, dated 08/01/2019, on behalf of Appellant DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc., Donald J. Trump, Donald J. Trump, Jr., Eric Trump and Ivanka Trump, RECEIVED. Service date 08/01/2019 by CM/ECF.[2622414] [19-1540] [Entered: 08/01/2019 03:42 PM]

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- 08/09/2019 122 ORAL ARGUMENT STATEMENT
LR 34.1 (a), on behalf of filer
Attorney Patrick Strawbridge,
Esq. for Appellant DJT Holdings
LLC, DJT Holdings Managing
Member LLC, Donald J. Trump
Revocable Trust, Trump Acquisition
LLC, Trump Acquisition, Corp.,
Trump Organization LLC, Trump
Organization, Inc., Donald J.
Trump, Donald J. Trump, Jr., Eric
Trump and Ivanka Trump, FILED.
Service date 08/09/2019 by CM/
ECF. [2628450] [19-1540] [Entered:
08/09/2019 10:49 AM]
- 08/09/2019 124 ORAL ARGUMENT STATEMENT
LR 34.1 (a), on behalf of filer
Attorney Mr. Douglas Neal
Letter for Appellee Committee on
Financial Services of the United
States House of Representatives
and Permanent Select Committee
on Intelligence of the United States
House of Representatives, FILED.
Service date 08/09/2019 by CM/
ECF. [2628695] [19-1540] [Entered:
08/09/2019 12:27 PM]

* * *

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- 08/14/2019 134 MOTION, for leave to respond, on behalf of Appellee Committee on Financial Services of the United States House of Representatives and Permanent Select Committee on Intelligence of the United States House of Representatives, FILED. Service date 08/14/2019 by CM/ECF. [2632240] [19-1540] [Entered: 08/14/2019 02:41 PM]
- 08/16/2019 137 MOTION ORDER, granting motion for leave to respond [134] filed by Appellee Committee on Financial Services of the United States House of Representatives and Permanent Select Committee on Intelligence of the United States House of Representatives, FILED. [2633924] [137] [19-1540] [Entered: 08/16/2019 10:07 AM]
- 08/19/2019 138 MOTION, for leave to respond, on behalf of Appellant DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc., Donald J. Trump, Donald J. Trump, Jr., Eric Trump and Ivanka Trump, FILED.

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Service date 08/19/2019 by CM/
ECF. [2635414] [19-1540] [Entered:
08/19/2019 10:07 AM]

* * *

- 08/19/2019 142 NEW PARTY, Amicus Curiae
United States of America, ADDED.
[2635765] [19-1540] [Entered:
08/19/2019 12:46 PM]
- 08/19/2019 143 AMICUS BRIEF, on behalf of
Amicus Curiae United States of
America, FILED. Service date
08/19/2019 by CM/ECF.[2635768]
[19-1540] [Entered: 08/19/2019 12:49
PM]
- 08/20/2019 145 MOTION ORDER, granting
motion for leave to respond [138]
filed by Appellant Ivanka Trump,
Donald J. Trump, Eric Trump,
Donald J. Trump Revocable Trust,
Trump Organization, Inc., Trump
Organization LLC, DJT Holdings
LLC, DJT Holdings Managing
Member LLC, Trump Acquisition
LLC, Trump Acquisition, Corp.
and Donald J. Trump, Jr., FILED.
[2636414][145] [19-1540] [Entered:
08/20/2019 08:48 AM]

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- 08/21/2019 148 SUPPLEMENTAL BRIEF, on behalf of Appellee Committee on Financial Services of the United States House of Representatives and Permanent Select Committee on Intelligence of the United States House of Representatives, FILED. Service date 08/21/2019 by CM/ECF.[2638525] [19-1540] [Entered: 08/21/2019 04:34 PM]
- 08/21/2019 149 SUPPLEMENTAL BRIEF, on behalf of Appellant DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc., Donald J. Trump, Donald J. Trump, Jr., Eric Trump and Ivanka Trump, FILED. Service date 08/21/2019 by CM/ECF.[2638601] [19-1540] [Entered: 08/21/2019 05:35 PM]
- 08/23/2019 155 CASE, before JON, PWH, DAL, HEARD.[2640051] [19-1540] [Entered: 08/23/2019 01:58 PM]
- 08/26/2019 156 ORDER, dated 08/26/2019, Superseding all previous instructions from the Clerk of the Court, it

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is hereby ORDERED that the Defendants–Appellees Deutsche Bank AG and Capital One Financial Corporation each inform the Court by letter, filed by 4 p.m. Tuesday, August 27, 2019, whether it has in its possession any tax returns of any of the individuals or entities named or referred to (directly or indirectly) in paragraph 1 of the subpoenas the bank has received from the Intervenor Committees., by JON, PWH, DAL, FILED.[2640786] [19-1540] [Entered: 08/26/2019 12:41 PM]

08/27/2019 157 ORDER, dated 08/27/2019, An order issued 08/26/2019 directs that Defendants-Appellees Deutsche Bank AG and Capital One Financial Corporation each file a letter with the Court by 4 p.m. Tuesday, 08/27/2019. It is further ordered that if Defendants-Appellees file an unredacted letter under seal with the Court, the redacted version of the letter served on the Intervenor-Committees also be served on Plaintiffs-Appellants and filed on the public docket, by JON, PWH, DAL, FILED.[2641621] [19-1540] [Entered: 08/27/2019 11:15 AM]

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- 08/27/2019 158 LETTER, on behalf of Appellee Committee on Financial Services of the United States House of Representatives and Permanent Select Committee on Intelligence of the United States House of Representatives, responds to questions raised by the Court during the August 23, 2019 oral argument, RECEIVED. Service date 08/27/2019 by CM/ECF.[2641782] [19-1540] [Entered: 08/27/2019 01:21 PM]
- 08/27/2019 160 LETTER, on behalf of Appellee Deutsche Bank AG, states a non-redacted letter filed under seal has been submitted to the Court, RECEIVED. Service date 08/27/2019 by CM/ECF.[2641956] [19-1540] [Entered: 08/27/2019 03:10 PM]
- 08/27/2019 161 REDACTED LETTER, on behalf of Appellee Deutsche Bank AG, in response to the Court's order directing the Bank to inform the Court "whether it has in its possession any tax returns of any of the individuals or entities named or referred to (directly or indirectly) in paragraph 1 of the subpoenas" served on the Bank on April 15, 2019 by the House Committee on

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Financial Services and Permanent Select Committee on Intelligence (the "Subpoenas"). ECF No. 156 (Aug. 26, 2019). RECEIVED. Service date 08/27/2019 by CM/ECF.[2641969] [19-1540] [Entered: 08/27/2019 03:19 PM]

- 08/27/2019 162 LETTER, on behalf of Appellee Capital One Financial Corporation, in response to the questions raised by the Court at oral argument and its order dated August 26, it does not possess any tax returns responsive to the Capital One Subpeona, RECEIVED. Service date 08/27/2019 by CM/ECF.[2641975] [19-1540] [Entered: 08/27/2019 03:23 PM]
- 08/27/2019 165 SEALED LETTER, dated 08/27/2019, on behalf of Appellee Deutsche Bank AG, RECEIVED. Service date 08/27/2019 by hand delivery.[2642764] [19-1540] [Entered: 08/28/2019 01:03 PM]
- 08/29/2019 166 LETTER, on behalf of Appellant DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc., Donald J.

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Trump, Donald J. Trump, Jr., Eric Trump and Ivanka Trump, response to the Committees August 27, 2019 letter, RECEIVED. Service date 08/29/2019 by CM/ECF.[2644218] [19-1540] [Entered: 08/29/2019 10:06 PM]

- 09/11/2019 168 MOTION FOR LEAVE TO INTERVENE, on behalf of Movants The Associated Press (“AP”), Cable News Network, Inc., The New York Times Company, POLITICO LLC and WP Co. LLC , FILED. Service date 09/11/2019 by CM/ECF.[2652598] [19-1540] [Entered: 09/11/2019 11:59 AM]
- 09/11/2019 170 NEW PARTY, Movants The Associated Press (“AP”), Cable News Network, Inc., The New York Times Company, POLITICO LLC and WP Co. LLC, ADDED.[2652926] [19-1540] [Entered: 09/11/2019 03:28 PM]
- 09/11/2019 171 DEFECTIVE DOCUMENT, motion to intervene, unseal judicial records, [168], on behalf of Movant Cable News Network, Inc., POLITICO LLC, The Associated Press (“AP”), The New York Times Company and WP Co. LLC, FILED.[2652951] [19-

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1540] [Entered: 09/11/2019 03:34 PM]

- 09/11/2019 172 MOTION FOR LEAVE TO INTERVENE, on behalf of Movants Cable News Network, Inc., POLITICO LLC, The Associated Press (“AP”), The New York Times Company and WP Co. LLC, FILED. Service date 09/11/2019 by CM/ ECF.[2653049] [19-1540]--[Edited 09/11/2019 by EM] [Entered: 09/11/2019 03:57 PM]
- 09/11/2019 173 CURED DEFECTIVE Motion for Leave to Intervene, [172], on behalf of Movant Cable News Network, Inc., POLITICO LLC, The Associated Press (“AP”), The New York Times Company and WP Co. LLC, FILED. [2653136] [19-1540] [Entered: 09/11/2019 04:32 PM]
- 09/17/2019 176 MOTION FOR LEAVE TO INTERVENE, on behalf of Movants Dow Jones & Company, Inc., and Reuters News & Media Inc., FILED. Service date 09/17/2019 by CM/ ECF.[2657828] [19-1540]--[Edited 09/18/2019 by EM] [Entered: 09/17/2019 05:02 PM]

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- 09/18/2019 177 NEW PARTY, Movant Dow Jones & Company, Inc., ADDED.[2658462] [19-1540] [Entered: 09/18/2019 12:48 PM]
- 09/18/2019 178 NEW PARTY, Movant Reuters News & Media Inc., ADDED.[2658465] [19-1540] [Entered: 09/18/2019 12:50 PM]
- 09/18/2019 180 ORDER, dated 09/18/2019, directing parties to respond on or before 09/27/2019, to inform the Court of their positions, if any, with respect to the motions for leave to intervene for purposes of unsealing certain records which motions have been filed by proposed intervenors Media Coalition and by proposed intervenors Dow Jones and Reuters, by JON, PWH, DAL, FILED. [2658476] [19-1540] [Entered: 09/18/2019 01:00 PM]
- 09/18/2019 181 MOTION FOR LEAVE TO INTERVENE, on behalf of Movants Dow Jones & Company, Inc., and Reuters News & Media Inc., FILED. Service date 09/18/2019 by CM/ECF.[2658513] [19-1540] [Entered: 09/18/2019 01:34 PM]
- 09/27/2019 184 OPPOSITION TO MOTION, [172], [176], on behalf of Appellee Deutsche

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Bank AG, FILED. Service date 09/27/2019 by CM/ECF. [2666850] [19-1540] [Entered: 09/27/2019 02:43 PM]

- 09/27/2019 186 OPPOSITION TO MOTION, [172], [176], on behalf of Appellant DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc., Donald J. Trump, Donald J. Trump, Jr., Eric Trump and Ivanka Trump, FILED. Service date 09/27/2019 by CM/ECF. [2667030] [19-1540] [Entered: 09/27/2019 03:59 PM]
- 09/27/2019 188 LETTER, on behalf of Appellee Capital One Financial Corporation, stating that it takes no position with respect to the motions for leave to intervene, RECEIVED. Service date 09/27/2019 by CM/ECF.[2667075] [19-1540]--[Edited 09/27/2019 by EM] [Entered: 09/27/2019 04:23 PM]
- 09/27/2019 190 LETTER, on behalf of Appellee Committee on Financial Services of the United States House of Representatives and Permanent Select Committee on Intelligence

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of the United States House of Representatives, advising the Court of their position with respect to the motions for leave to intervene, RECEIVED. Service date 09/27/2019 by CM/ECF.[2667222] [19-1540]--[Edited 09/27/2019 by EM] [Entered: 09/27/2019 05:39 PM]

- 10/04/2019 193 REPLY TO OPPOSITION [186], [184], on behalf of Movant Cable News Network, Inc., Dow Jones & Company, Inc., POLITICO LLC, Reuters News & Media Inc., The Associated Press (“AP”), The New York Times Company and WP Co. LLC, FILED. Service date 10/04/2019 by CM/ECF.[2673270] [193] [19-1540] [Entered: 10/04/2019 04:44 PM]
- 10/10/2019 197 NON- DISPOSITIVE OPINION, granting motions to intervene and denying motions to unseal, by JON, PWH, DAL, FILED.[2676948] [19-1540] [Entered: 10/10/2019 10:13 AM]
- 10/10/2019 199 CERTIFIED NON-DISPOSITIVE OPINION, dated 10/10/2019, to SDNY (NEW YORK CITY), ISSUED.[2677067] [19-1540] [Entered: 10/10/2019 11:22 AM]

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- 10/11/2019 201 FRAP 28(j) LETTER, dated 10/11/2019, on behalf of Appellee Committee on Financial Services of the United States House of Representatives and Permanent Select Committee on Intelligence of the United States House of Representatives, RECEIVED. Service date 10/11/2019 by CM/ECF.[2678867] [19-1540] [Entered: 10/11/2019 05:50 PM]
- 10/14/2019 202 FRAP 28(j) LETTER, dated 10/14/2019, on behalf of Appellant DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc., Donald J. Trump, Donald J. Trump, Jr., Eric Trump and Ivanka Trump, RECEIVED. Service date 10/14/2019 by CM/ECF.[2678963] [19-1540] [Entered: 10/14/2019 08:03 PM]
- 11/14/2019 205 FRAP 28(j) LETTER, dated 11/14/2019, on behalf of Appellee Committee on Financial Services of the United States House of Representatives and Permanent Select Committee on Intelligence

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of the United States House of Representatives, RECEIVED. Service date 11/14/2019 by CM/ECF.[2706259] [19-1540] [Entered: 11/14/2019 12:51 PM]

- 11/26/2019 207 FRAP 28(j) LETTER, dated 11/26/2019, on behalf of Appellant DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc., Donald J. Trump, Donald J. Trump, Jr., Eric Trump and Ivanka Trump, RECEIVED. Service date 11/26/2019 by CM/ECF.[2715980] [19-1540] [Entered: 11/26/2019 09:15 AM]
- 11/27/2019 210 EMERGENCY MOTION, to intervene, on behalf of Movant Duane L. Berry, FILED. Service date 11/22/2019 by Third party mail.[2718496] [19-1540] [Entered: 12/02/2019 10:41 AM]
- 12/02/2019 209 NEW PARTY, Movant Duane L. Berry, ADDED.[2718435] [19-1540] [Entered: 12/02/2019 10:15 AM]
- 12/02/2019 211 DEFECTIVE DOCUMENT, EMERGENCY MOTION , to

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intervene, [210], on behalf of Movant Duane L. Berry, copy to pro se movant, FILED.[2718509] [19-1540] [Entered: 12/02/2019 10:45 AM]

- 12/03/2019 214 OPINION, affirming in part and remanding in part the district court's order, by JON, PWH, DAL (concurring and dissenting), FILED. [2719365] [19-1540] [Entered: 12/03/2019 10:01 AM]
- 12/03/2019 215 OPINION, Concurring & Dissenting, by DAL, FILED.[2719370] [19-1540] [Entered: 12/03/2019 10:04 AM]
- 12/03/2019 216 CERTIFIED ORDER, dated 12/03/2019, to SDNY, ISSUED. [2719375] [19-1540] [Entered: 12/03/2019 10:05 AM]
- 12/03/2019 217 NEW CASE MANAGER, Yenni Liu, ASSIGNED.[2719378] [19-1540] [Entered: 12/03/2019 10:06 AM]
- 12/03/2019 222 JUDGMENT, FILED.[2719473] [19-1540] [Entered: 12/03/2019 10:50 AM]
- 12/03/2019 223 JUDGMENT MANDATE, ISSUED. [2719491] [19-1540] [Entered: 12/03/2019 10:56 AM]

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- 12/04/2019 225 INTERNET CITATION NOTE:
Material from decision with internet
citation, ATTACHED.[2721143] [19-
1540] [Entered: 12/04/2019 02:27 PM]
- 12/04/2019 226 INTERNET CITATION NOTE:
Material from decision with internet
citation, ATTACHED.[2721145] [19-
1540] [Entered: 12/04/2019 02:27 PM]
- 12/04/2019 227 INTERNET CITATION NOTE:
Material from decision with internet
citation, ATTACHED.[2721146] [19-
1540] [Entered: 12/04/2019 02:28 PM]
- 12/04/2019 228 INTERNET CITATION NOTE:
Material from decision with internet
citation, ATTACHED.[2721148] [19-
1540] [Entered: 12/04/2019 02:28 PM]
- 12/04/2019 229 MOTION, to recall mandate, to stay
mandate, on behalf of Appellant
DJT Holdings LLC, DJT Holdings
Managing Member LLC, Donald
J. Trump Revocable Trust, Trump
Acquisition LLC, Trump Acquisition,
Corp., Trump Organization LLC,
Trump Organization, Inc., Donald J.
Trump, Donald J. Trump, Jr., Eric
Trump and Ivanka Trump, FILED.
Service date 12/04/2019 by CM/
ECF. [2721594] [19-1540] [Entered:
12/04/2019 07:42 PM]

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- 12/05/2019 232 LETTER, on behalf of Appellants DJT Holdings LLC, DJT Holdings Managing Member LLC, Donald J. Trump Revocable Trust, Trump Acquisition LLC, Trump Acquisition, Corp., Trump Organization LLC, Trump Organization, Inc., Donald J. Trump, Donald J. Trump, Jr., Eric Trump and Ivanka Trump, on update regarding motion to recall and stay the mandate, RECEIVED. Service date 12/05/2019 by CM/ECF.[2722737] [19-1540]--[Edited 12/06/2019 by YL] [Entered: 12/05/2019 05:46 PM]
- 12/06/2019 234 OPPOSITION TO MOTION, [229], [229], on behalf of Appellee Committee on Financial Services of the United States House of Representatives and Permanent Select Committee on Intelligence of the United States House of Representatives, FILED. Service date 12/06/2019 by CM/ECF. [2723389] [19-1540] [Entered: 12/06/2019 01:12 PM]
- 12/09/2019 237 U.S. SUPREME COURT ORDER, that the mandate of the United States Court of Appeals for the Second Circuit, case No. 19-1540,

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issued December 3, 2019, is hereby recalled and stayed until 5 p.m. on December 13, 2019, RECEIVED. [2724006] [19-1540] [Entered: 12/09/2019 09:50 AM]

- 12/13/2019 239 U.S. SUPREME COURT ORDER, dated 12/13/2019, granting the petition for a writ of certiorari and staying the mandate of the United States Court of Appeals for the Second Circuit. The case will be set for argument in the March 2020 argument session, RECEIVED. [2729482] [19-1540] [Entered: 12/13/2019 04:51 PM]
- 12/13/2019 240 MOTION ORDER, denying as moot motion to recall mandate and stay the mandate [229] [229] filed by Appellant Ivanka Trump, Donald J. Trump, Eric Trump, Donald J. Trump Revocable Trust, Trump Organization, Inc., Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Acquisition LLC, Trump Acquisition, Corp. and Donald J. Trump, Jr., in light of the Supreme Court's order granting the same relief, by JON, PWH, DAL, FILED. [2729500][240] [19-1540] [Entered: 12/13/2019 04:58 PM]

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- 12/13/2019 242 CERTIFIED ORDER of the Supreme Court, dated 12/13/2019, to SDNY (NEW YORK CITY), ISSUED.[2729517] [19-1540] [Entered: 12/13/2019 05:05 PM]
- 12/13/2019 243 ORDER, dated 12/13/2019, denying as moot Appellant's motion to recall and stay of our mandate in light of the Supreme Court's order entered today, by JON, PWH, DAL, FILED. [2729549] [19-1540] [Entered: 12/13/2019 05:29 PM]
- 12/17/2019 244 U.S. SUPREME COURT NOTICE, dated 12/13/2019, U.S. Supreme Court docket # 19-760, stating the petition for writ of certiorari is granted, RECEIVED.[2730999] [19-1540] [Entered: 12/17/2019 08:59 AM]
- 12/17/2019 246 U.S. SUPREME COURT NOTICE of writ of certiorari filing, dated 12/13/2019, U.S. Supreme Court docket # 19-760, RECEIVED. [2731128] [19-1540] [Entered: 12/17/2019 09:52 AM]
- 12/23/2019 247 MOTION, to intervene, on behalf of Movant Duane L. Berry, FILED. Service date 12/13/2019 by US mail.[2739015] [19-1540] [Entered: 12/27/2019 10:56 AM]

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- 01/02/2020 251 MOTION ORDER, denying motion to intervene for lack of jurisdiction. [247] filed by Movant Duane L. Berry, by JON, PWH, DAL, copy sent to pro se, FILED. [2741467][251] [19-1540] [Entered: 01/02/2020 12:53 PM]
- 01/07/2020 252 PAPERS, application for writ of assistance, filed by Movant Duane L. Berry, RECEIVED.[2748195] [19-1540] [Entered: 01/09/2020 02:05 PM]
- 01/09/2020 253 NOTICE, Case Status, SENT. [2748199] [19-1540] [Entered: 01/09/2020 02:07 PM]

**APPENDIX D — COMPLAINT OF THE UNITED
STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK, FILED APRIL 29, 2019**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docket No. _____

DONALD J. TRUMP, DONALD J. TRUMP JR.,
ERIC TRUMP, IVANKA TRUMP,

and

THE DONALD J. TRUMP REVOCABLE TRUST,
THE TRUMP ORGANIZATION, INC., TRUMP
ORGANIZATION LLC, DJT HOLDINGS LLC, DJT
HOLDINGS MANAGING MEMBER LLC, TRUMP
ACQUISITION LLC, and TRUMP
ACQUISITION, CORP.,

Plaintiffs,

- against -

DEUTSCHE BANK AG and CAPITAL
ONE FINANCIAL CORP.,

Defendants.

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COMPLAINT

Plaintiffs, by their attorneys Consovoy McCarthy Park PLLC and Mukasey Frenchman & Sklaroff LLP, bring this complaint against Defendants and allege as follows:

A. INTRODUCTION

1. This case involves Congressional subpoenas that have no legitimate or lawful purpose. The subpoenas were issued to harass President Donald J. Trump, to rummage through every aspect of his personal finances, his businesses, and the private information of the President and his family, and to ferret about for any material that might be used to cause him political damage. No grounds exist to establish any purpose other than a political one.

2. The House Permanent Select Committee on Intelligence and the House Financial Services Committee issued the subpoenas to Defendants Deutsche Bank AG and Capital One Financial Corp. These two financial institutions have long provided business and personal banking services to Plaintiffs.

3. The Chairpersons of the Intelligence and Financial Services Committees (Adam B. Schiff and Maxine M. Waters) have confirmed the issuance of the subpoenas, making public statements to the media that emphasize their intention to probe every aspect of the private lives of the Trump family, their businesses, and even those with only the most tangential connection to Trump entities,

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regardless whether any evidence (credible or otherwise) exists to support such intrusive probes. The Committees have refused to provide copies of the subpoenas to Plaintiffs—preventing them from even knowing, let alone negotiating, the subpoenas’ scope or breadth.

4. Nonetheless, Defendants’ descriptions of the subpoenas confirm their remarkable overbreadth. According to Defendants, the Committees are seeking **all** banking and financial records not just concerning the individual Plaintiffs, but also their own family members. This means the subpoenas request documents about accounts of the Plaintiffs’ children (and in some cases, grandchildren).

5. The subpoenas to the entities are equally intrusive and overbroad. They seek not only the Plaintiffs’ documents, but also the financial records of their parents, subsidiaries, affiliates, branches, divisions, partnerships, properties, groups, special purpose entities, joint ventures, predecessors and successors. As if that were not broad enough, the subpoenas extend further to documents concerning each of the entities’ current or former employees, officers, directors, shareholders, partners, members, consultants, managers, senior associates, staff employees, independent contractors, agents, attorneys, or other representatives.

6. For most of the documents, the Committees demand records from the last ten years. For others, the request is unbounded—meaning the Committees seek records dating back decades, to the individual Plaintiffs’ own childhoods.

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7. The intrusiveness and impropriety of these requests are obvious. The House of Representatives is demanding, among other things, records of every single checking withdrawal, credit-card swipe, or debit-card purchase—no matter how trivial or small—made by each and every member of the Trump family. But the dates and times when these individuals purchased books, groceries and other personal items is not the business of the House of Representatives or anyone else. It is an abuse of power to claim otherwise (particularly since the Committees declined to ask Plaintiffs themselves for the records, or even to discuss the scope of their requests).

8. In an effort to justify their demands, the chairs of the Committees have claimed that the subpoenas are intended to investigate “potential foreign influence on the U.S. political process” or the use of the financial system for “illicit purposes.” But the information they seek long predates the President’s election to office, reaches well beyond transactions associated with foreign parties, and encompasses reams of account records for entities, individuals, children, and spouses who have never even been implicated in any probe.

9. The Committees have ignored the constitutional limits on Congress’ power to investigate. Article I of the Constitution does not contain an “Investigations Clause” or an “Oversight Clause.” It gives Congress the power to enact certain *legislation*. Accordingly, investigations are legitimate only insofar as they further some legitimate legislative purpose. No investigation can be an end in itself. And Congress cannot use investigations to exercise

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powers that the Constitution assigns to the executive or judicial branch.

10. The subpoenas to Deutsche Bank and Capital One lack any legitimate legislative purpose. There is no possible legislation at the end of this tunnel; indeed, the Committee Chairs have not claimed otherwise. With these subpoenas, the Committees are instead assuming the powers of the Department of Justice, investigating (dubious and partisan) rumors of illegal conduct by private individuals, many of whom are outside of government. Their goal is to rummage around Plaintiffs' private financial information in the hope that they will stumble upon something they can expose publicly and use as a political tool against the President.

11. Moreover, the Committees' attempts to obtain Plaintiffs' account records violate the statutory requirements that apply to the federal government under the Right to Financial Privacy Act ("RFPA"). Under the RFPA, federal authorities are required to follow certain steps—including the provision of notice and an opportunity to object—before obtaining private financial records. The Committees have ignored these requirements, and any production of account records by Deutsche Bank or Capital One would violate the law.

12. This Court has the power to declare the subpoenas invalid and enjoin Defendants from complying with them for at least two reasons. First, because the Committees' subpoenas threaten to expose Plaintiffs' confidential account information and lack "a legitimate legislative

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purpose,” and second, because they violate the protections of the RFPA. *See Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 501 n.14 (1975) (endorsing *U.S. Servicemen’s Fund v. Eastland*, 488 F.2d 1252, 1259-60 (D.C. Cir. 1973), which authorized a private right of action for declaratory and injunctive relief); 12 U.S.C. §3418 (authorizing injunctive relief to prevent violations of the RFPA). Plaintiffs are entitled to that relief.

B. PARTIES

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

14. Plaintiff Donald J. Trump Jr. is the son of President Trump.

15. Plaintiff Eric Trump is the son of President Trump.

16. Plaintiff Ivanka Trump is the daughter of President Trump.

17. Plaintiff The Trump Organization, Inc. is a New York corporation with its principal place of business at 725 Fifth Avenue, New York, NY 10022.

18. Plaintiff Trump Organization LLC is a New York limited liability company with its principal place of business at 725 Fifth Avenue, New York, NY 10022.

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19. Plaintiff DJT Holdings LLC is a Delaware limited liability company with its principal place of business at 725 Fifth Avenue, New York, NY 10022.

20. Plaintiff DJT Holdings Managing Member LLC is a Delaware limited liability company with its principal place of business at 725 Fifth Avenue, New York, NY 10022.

21. Plaintiff Trump Acquisition, LLC is a Delaware limited liability company with its principal place of business at 725 Fifth Avenue, New York, NY 10022.

22. Plaintiff Trump Acquisition Corp. is a Delaware corporation with its principal place of business at 725 Fifth Avenue, New York, NY 10022.

23. Plaintiff The Donald J. Trump Revocable Trust is a trust created and operating under the laws of New York.

24. Defendant Deutsche Bank AG is a bank organized under the laws of the Federal Republic of Germany with a branch at 60 Wall Street, New York, NY 10005. Deutsche Bank received one or more subpoenas from the Committees seeking account records and other documents concerning one or more of Plaintiffs.

25. Defendant Capital One Financial Corp. is a bank holding company headquartered in McLean, VA, with numerous branch offices in New York City. Capital One received one or more subpoenas from the Committees seeking account records and other documents concerning one or more of Plaintiffs.

*Appendix D***C. JURISDICTION & VENUE**

26. This Court has subject-matter jurisdiction because this case arises under the Constitution and laws of the United States, 28 U.S.C. §§1331, 2201, and because it is brought to enforce the provisions of the RFPFA, 12 U.S.C. §3416.

27. Venue is proper because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district and a substantial part of the property that is the subject of Plaintiffs' action is situated in this district. 28 U.S.C. §1391(b)(2).

D. BACKGROUND**1. Challenges to Congressional Subpoenas**

28. Not infrequently, federal courts adjudicate the legality of congressional subpoenas. Most such cases follow a familiar pattern: Congress issues a subpoena, the target does not comply, Congress tries to force compliance in federal court, and the target raises the illegality of the subpoena as a defense.

29. But this defensive posture is not the only way to challenge a congressional subpoena. When Congress "seeks information directly from a party," that party "can resist and thereby test the subpoena." *Eastland*, 421 U.S. at 501 n.14. But when Congress "seeks that same information from a third person," this option is not available; the third party might not have an interest in

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protecting the information or resisting the subpoena, and its “compliance” with the subpoena “could frustrate any judicial inquiry.” *Id.* For that reason, the law allows the person whose information will be exposed to sue in federal court for an injunction or declaratory judgment to block the third party from complying. *Eastland*, 488 F.2d at 1259, 1255. The third party cannot comply with the subpoena unless “a legitimate legislative purpose is present.” *Eastland*, 421 U.S. at 501.

30. The “legitimate legislative purpose” requirement stems directly from the Constitution. “The powers of Congress ... are dependent solely on the Constitution,” and “no express power in that instrument” allows Congress to investigate individuals or to issue compulsory process. *Kilbourn v. Thompson*, 103 U.S. 168, 182-89 (1880). The Constitution instead permits Congress to enact certain kinds of *legislation*. *See, e.g.*, Art. I, §8. Thus, Congress’ power to investigate “is justified solely as an adjunct to the legislative process.” *Watkins*, 354 U.S. at 197. “Congress is not invested with a general power to inquire into private affairs. The subject of any inquiry always must be one on which legislation could be had.” *Eastland*, 421 U.S. at 504 n.15 (cleaned up); *see also Quinn v. United States*, 349 U.S. 155, 161 (1955) (“[T]he power to investigate” does not “extend to an area in which Congress is forbidden to legislate.”).

31. “Oversight” and “transparency,” in a vacuum, are not legitimate legislative purposes that can justify subpoenaing a private citizen. For more than a century, in fact, the Supreme Court has been quite “sure” that neither

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the House nor Senate “possesses the general power of making inquiry into the private affairs of the citizen.” *Kilbourn*, 103 U.S. at 190. “[T]here is no congressional power to expose for the sake of exposure.” *Watkins*, 354 U.S. at 200. “No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress.” *Id.* at 187.

32. Additionally, because Congress must have a legitimate *legislative* purpose, it cannot use subpoenas to exercise “any of the powers of law enforcement.” *Quinn*, 349 U.S. at 161. Those powers “are assigned under our Constitution to the Executive and the Judiciary.” *Id.* Put simply, Congress is not “a law enforcement or trial agency,” and congressional investigations conducted “for the personal aggrandizement of the investigators” or “to ‘punish’ those investigated” are “indefensible.” *Watkins*, 354 U.S. at 187. Our tripartite system of separated powers requires that “any one of the[] branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other.” *Kilbourn*, 103 U.S. at 190-91.

33. Finally, when a subpoena is issued by a committee, any legislative purpose is not legitimate unless it falls within that committee’s jurisdiction. “The theory of a committee inquiry is that the committee members are serving as the representatives of the parent assembly in collecting information for a legislative purpose.” *Watkins*, 354 U.S. at 200. Congress therefore must “spell out that group’s jurisdiction and purpose with sufficient

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particularity ... in the authorizing resolution,” which “is the committee’s charter.” *Id.* at 201. The committee “must conform strictly to the resolution.” *Exxon Corp. v. FTC*, 589 F.2d 582, 592 (D.C. Cir. 1978). And when an investigation is “novel” or “expansive,” courts will construe the committee’s jurisdiction “narrowly.” *Tobin v. United States*, 306 F.2d 270, 275 (D.C. Cir. 1962).

2. The Campaign of Abusive Investigations and Harassment of Plaintiffs

34. After the 2018 midterm elections, Democrats won a majority of seats in the House. Every House committee in the current Congress is thus chaired by a Democrat.

35. On the night of the election, soon-to-be House Speaker Nancy Pelosi announced that “tomorrow will be a new day in America” because the new majority would enact “checks and balances to the Trump administration.” And “subpoena power,” she explained a few days later, is “a great arrow to have in your quiver.” “Congress is going to force transparency on this president,” another congressional aide repeated. “Once there is transparency, I am sure there are going to be a lot of questions that flow from that.”

36. The statements about “checks and balances” and “transparency” were not referring to legislation. Instead, according to news outlets that interviewed party leaders and aides shortly after the election, the statements meant that they were going to spend the next two years launching a “fusillade” of subpoenas in order to “drown Trump with

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investigations,” “turn Trump’s life upside down,” and “make Trump’s life a living hell.”

37. Prominent Representatives were quite candid about their mission. Representative John Yarmuth, now chair of the House Budget Committee, stated that the new House majority would be “brutal” for President Trump: “We’re going to have to build an air traffic control tower to keep track of all the subpoenas flying from here to the White House.” Another senior official revealed that, from November 2018 to January 2019, Representatives were busy preparing a “subpoena cannon” to fire at President Trump based on a “wish-list” of nearly 100 investigatory topics. Representative Nita Lowey, now chair of the House Appropriations Committee, confirmed a long list of topics that the House planned to investigate and stated, “We have our boxing gloves on. I’m ready.” Just last month, Chairwoman Waters declared that “I haven’t forgotten about 45”—meaning President Trump. “I have the gavel—and subpoena power—and I am not afraid to use it.”

38. The “focus,” according to then–Minority Whip Steny Hoyer, would be examining “the President in terms of what [business] interests he has” from his time as a private citizen. Chairwoman Waters declared that “[w]e’re going to find out where your money has come from.” The Committees want this personal information in the hopes they will find something to score political points against the President leading up to the 2020 election.

39. The Committee Chairpersons are executing their plan in earnest. Recently, several House committees

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issued a flurry of subpoenas and requests for information about the President's family, personal finances, and businesses. Just one request by Chairman Jerrold Nadler of the House Judiciary Committee, for example, asked 81 different individuals and entities for information about President Trump.

40. A few weeks ago, Chairpersons Schiff, Waters, and Elijah Cummings of the House Oversight Committee agreed to coordinate their subpoenas in order to inflict maximum political damage on President Trump by targeting his business and financial records.

41. Last Monday, Chairman Cummings sent one such subpoena to Mazars USA LLP—Plaintiffs' longtime accountant.

42. The subpoenas at issue in this lawsuit were sent shortly thereafter.

3. The Subpoenas to Deutsche Bank and Capital One.

43. Chairman Schiff and Chairwoman Waters issued statements to the press confirming the existence of the subpoenas to Defendants shortly after they were sent. Chairman Schiff confirmed that Deutsche Bank had received a "friendly" subpoena. Chairman Waters told the press that the subpoenas were sent as part of an alleged inquiry into the "potential use of the U.S. financial system for illicit purposes."

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44. Plaintiffs, through counsel, contacted the Committees and requested copies of the subpoenas to help determine their scope. Notwithstanding their willingness to discuss the subpoenas with the press, the Committees declined to provide copies of the subpoenas (or any information about their contents) to Plaintiffs.

45. On April 17, 2019, counsel for Deutsche Bank confirmed in writing to Plaintiffs that it had received the subpoenas. According to Deutsche Bank, the subpoenas seek “records and/or information related to banking activities, including information regarding accounts, financings, and related financial information” for all of the named Plaintiffs.

46. Moreover, the subpoenas to Deutsche Bank seek production of account records and other financial information for Plaintiffs’ “parents, subsidiaries, affiliates, branches, divisions, partnerships, properties, groups, special purpose entities, joint ventures, predecessors, successors or any other entity in which they have or had a controlling interest.” The subpoenas further extend to all “current or former employees, officers, directors, shareholders, partners, members, consultants, managers, senior associates, staff employees, independent contractors, agents, attorneys or other representatives” of the Plaintiff entities.

47. For the individual Plaintiffs, Deutsche Bank has advised that the subpoenas seek banking and financial records for all “members of their immediate families,” including any accounts for which they are beneficiaries,

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trustees, beneficial owners, or over which they have control. This sweeps in the complete banking and account records of numerous children—including minors—and spouses of the named individuals.

48. Deutsche Bank subsequently confirmed that, in general, the subpoenas call for it to produce responsive documents from January 1, 2010 through the present—although for some documents (including account applications and opening documents), the subpoena requires production without any time limitation.

49. Deutsche Bank informed Plaintiffs that, absent a court order, they intend to begin production of documents in response to the subpoena on May 6.

50. Plaintiffs subsequently contacted Capital One, which confirmed receipt of a subpoena that, upon information and belief, seeks similar documents from the same Plaintiffs. Capital One has informed Plaintiffs that it feels obligated to comply with the subpoena absent court intervention before May 6.

51. Plaintiffs have numerous accounts, including personal, family, and business accounts, at Deutsche Bank and Capital One.

52. The records at issue are protected from disclosure by the federal Right to Financial Privacy Act, 12 U.S.C. §3501 *et seq.*, which imposes strict procedural requirements on federal attempts to obtain account records. The Committees did not follow those procedures

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here and, as a result, the Act prohibits Deutsche Bank and Capital One from producing the account records.

53. Plaintiffs bring this suit to challenge the validity and enforceability of the subpoenas. Now that the subpoenas have issued, Deutsche Bank and Capital One face a difficult choice: ignore the subpoenas and risk contempt of Congress, or comply with the subpoenas and risk liability to Plaintiffs under the RFPA and other laws. To resolve these conflicting commands, courts instruct third-party custodians like Defendants to hold onto the subpoenaed materials until the dispute over the subpoenas' validity is finally resolved in court. *See United States v. AT&T Co.*, 567 F.2d 121, 129 (D.C. Cir. 1977); *United States v. Deloitte LLP*, 610 F.3d 129, 142 (D.C. Cir. 2010). Thus, Congress cannot take any action against Deutsche Bank or Capital One until this litigation is finally resolved.

E. CLAIMS FOR RELIEF**1. The Subpoenas Exceed the Committees' Constitutional Authority**

54. Plaintiffs incorporate all their prior allegations.

55. The subpoenas are invalid and unenforceable because they have no legitimate legislative purpose.

56. The subpoenas seek to investigate events that occurred while President Trump was a private citizen, years before he was even a candidate for public office.

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57. The subpoenas seek to investigate events that could not possibly lead to legislation within the Intelligence or Financial Services Committees' statutory jurisdiction and constitutional authority.

58. The subpoenas are an attempt to investigate and adjudicate possible violations of federal law by private individuals—law-enforcement powers that only the executive and judicial branches can exercise.

2. The Subpoenas Violate the Right to Financial Privacy Act

59. Plaintiffs incorporate all their prior allegations.

60. The RFPA prohibits Deutsche Bank and Capital One from giving a customer's protected account information to the federal government. 12 U.S.C. §3403(a).

61. Financial institutions can turn over a customer's information only if the government certifies that it has complied with the RFPA's procedures. §3403(b). For a subpoena, those procedures include (1) "reason to believe" that the records are "relevant to a legitimate law enforcement inquiry"; (2) giving a copy of the subpoena to the customer; and (3) waiting at least 10 days so the customer has a chance to object. §3405; *see also* §3408 (similar procedures for "written requests").

62. The Committees have not complied with the RFPA's provisions or issued the required certifications.

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63. The RFPA authorizes injunctive relief “to require that the procedures of this chapter are complied with.” §3418.

WHEREFORE, Plaintiffs ask this Court to enter judgment in their favor and to provide the following relief:

a. A declaratory judgment that the subpoenas are invalid and unenforceable;

b. A permanent injunction quashing the subpoenas;

c. A permanent injunction prohibiting Deutsche Bank and Capital One from disclosing, revealing, delivering, or producing the requested information, or otherwise complying with the subpoenas;

d. A temporary restraining order and preliminary injunction prohibiting Deutsche Bank and Capital One from disclosing, revealing, delivering, or producing the requested information, or otherwise complying with the subpoenas, until the subpoena’s validity has been finally adjudicated on the merits;

e. Plaintiffs’ reasonable costs and expenses, including attorneys’ fees; and

f. All other preliminary and permanent relief to which Plaintiffs are entitled.

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Dated: April 29, 2019

Respectfully submitted,

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**APPENDIX E — SDNY DOC. 51-2
(DEUTSCHE BANK SUBPOENA),
FILED MAY 10, 2019**

SCHEDULE A

Custodian of Records

Deutsche Bank AG

The time period applicable to this subpoena is **January 1, 2010 through the present**, except for Items 1(i) and 6(i), for which there is no time limitation.

Please provide **complete and unredacted** copies of the following documents by **May 6, 2019**:

1. With respect to:

- [Redacted]
- Donald J. Trump
- Donald Trump, Jr.
- Eric Trump
- Ivanka Trump
- [Redacted]
- The Donald J. Trump Revocable Trust
- Trump Organization Inc.
- Trump Organization LLC
- DJT Holdings LLC
- DJT Holdings Managing Member LLC
- Trump Acquisition LLC
- Trump Acquisition Corp.
- any other name, alias, code name, code number, or entity used in lieu of any of the individuals

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or entities named above or members of their immediate family

or any account (including, but not limited to, any money market, securities, or trading account or any loan account or structure) in the name of any of the above-named individuals or entities (or any other name, alias, code name, code number, or entity used in lieu of any of the named individuals or entities) or members of their immediate family, individually or with other parties, as well as any account in which any of the above-named individuals or entities are or were, or have been identified as being, a trustee, settlor or grantor, beneficiary, or beneficial owner, or in which any of the individuals or entities have or have had in any way control over, individually or with others:

- i. any document related to account applications, opening documents, KYC, due diligence, and closing documents, including, but not limited to, any document identifying:
 - a. any financial relationship, transactions, or ties between the above-named individuals or entities and any foreign individual, entity, or government;
 - b. any interest held by any foreign individual, entity, or government in the above-named accounts;
 - c. any trustee, settlor, grantor, administrator, controlling party, protector, beneficiary, beneficial owner, or signatory; and
 - d. any relationship manager or account manager;

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ii. any monthly or other periodic account statement, including, but not limited to, any such document showing any incoming or outgoing funds transfers involving the above-named individuals, entities, and accounts and any foreign individual, entity, or government;

iii. any document related to any domestic or international transfer of funds in the amount of \$10,000 or more, including, but not limited to, any wire transfer, check, cash letter, cashier's check, book entry transfer, or other such documents showing the originator, beneficiary, source of funds, and destination of such transfer, including whether any party to such transfer was a foreign individual, entity, or government;

iv. any summary or analysis of domestic or international account deposits, withdrawals, and transfers, including, but not limited to, sources of deposits and the destination of withdrawals/transfers, including any wire transfer, check, cash letter, cashier's check, or other monetary instrument, including, but not limited to, any summary or analysis of financial relationships, transactions, or ties between the above-named individuals, entities, and accounts and any foreign individual, entity, or government;

v. any document related to monitoring for, identifying, or evaluating possible suspicious activity, including suspicious activity identified by Deutsche Bank AG's surveillance/monitoring program or referred by any employee or third-party, including, but not limited

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to, suspicious activity relating to relationships, transactions, or ties between the above-named individuals, entities, and accounts and any foreign individual, entity, or government;

vi. any document related to any investment, bond offering, line of credit, loan, mortgage, syndication, credit or loan restructuring, or any other credit arrangement or arrangement to raise or provide funding, including, but not limited to, those involving any foreign individual, entity, or government, or any other third party, including, but not limited to:

a. application and account opening documents, including, but not limited to, any such document showing any financial relationship, transactions, or ties between the above-named individuals or entities and any foreign individual, entity, or government;

b. KYC and due diligence, including, but not limited to, any such materials showing any financial relationship, transaction, or ties between the above-named individuals or entities and any foreign individual, entity, or government;

c. personal or third-party guarantees, including, but not limited to, any guarantee provided by a foreign individual, entity, or government;

d. collateral and appraisals for any underlying assets, including any asset in which a foreign

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individual, entity, or government has any interest and any asset located in a foreign country or jurisdiction;

e. any financial information provided by the borrower (or prospective borrower) or otherwise obtained by Deutsche Bank AG, including, but not limited to:

1. financial statements (including those showing any revenue, interest, or other income generated from, or payments made to, any foreign individuals, entities, or governments);

2. statements of net worth (including those showing any foreign assets and liabilities);

3. debt schedules (including those showing any debts owed to any foreign individuals, entities, or governments);

4. business operating statements (including, but not limited to, those showing any revenue, interest, or other income generated from, or payments made to, any foreign individuals, entities, or governments);

5. cash flow statements (including, but not limited to, those showing any revenue, interest, or other income generated from, or payments made to, any foreign individuals, entities, or governments);

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6. bank and brokerage account records (including those relating to any such accounts held at foreign banks or other foreign financial institutions);

7. tax returns and schedules (including, but not limited to, those showing all foreign sources of income, all foreign debt payments, all interests held by the taxpayer in any foreign business entity or bank/brokerage account, and all interests held by any foreign individual, entity, or government in any of the taxpayer's business entities); and

8. records of any bankruptcies;

f. offering memoranda, including, but not limited to, any such document that shows any financial relationships, transactions, or ties between the above-named individuals, entities, or accounts and any foreign individual, entity, or government;

g. communications involving the underwriting or credit risk management units, credit risk committee, reputational risk committee, management and supervisory boards, or similar units or bodies, including any such communication relating to any financial relationships, transactions, or ties between the above-named individuals, entities, or accounts and any foreign individual, entity, or government; and

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h. term sheets, including those showing the involvement of any foreign individual, entity, or government in the transaction;

i. risk assessments, risk ratings, and risk upgrades or downgrades, including those relating to any financial relationships, transactions, or ties between the above-named individuals, entities, or accounts and any foreign individual, entity, or government;

j. credit assessment memoranda and credit reports, including, but not limited to, those assessing any financial relationships, transactions, or ties between the above-named individuals, entities, or accounts and any foreign individual, entity, or government;

k. closing documents and loan documentation, including, but not limited to, any such document showing any role that any foreign individual, entity, or government had in the transaction; and

L. periodic loan statements, loan monitoring records, and records relating to any refinancing, restructuring, modification, repayment, forgiveness, foreclosure, or default, including any such document showing any role that any foreign individual, entity, or government had in the refinancing, restructuring, modification, repayment, forgiveness, foreclosure, or default;

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vii. any document related to any request for information issued or received by Deutsche Bank AG pursuant to Sections 314(a) or 314(b) of the USA PATRIOT Act, Pub. L. 107-56, including, but not limited to, any such document relating to any financial relationships, transactions, or ties between the above-named individuals, entities, or accounts and any foreign individual, entity, or government;

viii. any document possessed or generated by, or communications involving, [Selected Deutsche Bank Employees] relating to any of the above-named individuals, entities, accounts, or transactions, particularly, but not limited to, any such document or communication relating to any financial relationships, transactions, or ties between the above-named individuals, entities, or accounts and any foreign individual, entity, or government;

ix. any document not otherwise kept in customary record-keeping systems (including, but not limited to, any document in any personal file or desk file), related to any of the above-named individuals, entities, or accounts and/or any issue or document identified in items i through viii above, including, but not limited to, any such document relating to any financial relationships, transactions, or ties between the above-named individuals, entities, or accounts and any foreign individual, entity, or government; and

x. any document provided to, discussed with, or generated by any member of Deutsche Bank

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AG's Management Board, Supervisory Board, or Reputational Risk Committee related to any of the above-named individuals, entities, or accounts and/or any issue or document identified in items i through ix above, including, but not limited to, any such document relating to any financial relationships, transactions, or ties between the above-named individuals, entities, and accounts and any foreign individual, entity, or government.

2. Any document related to Deutsche Bank AG's [Redacted] program, including, but not limited to, any report or analysis related to the decision to identify an individual or entity as a [Redacted]; any tracking list of [Redacted]; any document related to any charges in the [Redacted] tracking lists; any periodic review of [Redacted]; any internal correspondence, meeting minutes, or notes relating to [Redacted]; any memoranda relating to [Redacted] prepared for Deutsche Bank AG's internal credit and risk committees or management and supervisory boards; and any such document or communication relating to any financial relationship, transaction, or tie between any [Redacted] (or any account held by a [Redacted]) and any foreign individual, entity, or government.

3. Any document related to any review or analysis performed by Deutsche Bank AG entitled [Redacted] or any similar study, review, or analysis, including, but not limited to, any such document relating to any financial relationship, transaction, or tie between the relevant account holders or customers and any foreign individual, entity, or government.

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4. With respect to the following events or activities:

[Redacted]

i. any document related to any review or analysis of those events or activities conducted by or possessed by Deutsche Bank AG or its agents or representatives, including, but not limited to, any document related to any Deutsche Bank AG personnel facilitating or involved in any of those events or activities, the identity of any third-party individual or entity, or the beneficial owner of any third-party entity, involved in any of those events or activities;

ii. any record of any transaction involved in, or related to, any of those events or activities;

iii. any document related to any request for information issued or received pursuant to Sections 314(a) or 314(b) of the USA PATRIOT Act, Pub. L. 107-56; and

iv. any document provided to, discussed with, or generated by any member of Deutsche Bank AG's management board or supervisory board related to any event or activity identified above and/or any issue or document identified in items i through iii above.

5. Any document related to any review, study, analysis, or communication to or from any U.S. federal, state, or local agency regarding any [Redacted] or immediate family member, including, but not limited to, any government official or entity in which such an individual has been

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identified as a trustee, settlor, or grantor, beneficiary, beneficial owner, or has or had in any way control over, individually or with others.

6. With respect to:

[Redacted]

or any account (including, but not limited to, any money market, securities, or trading account or any loan account or structure) in the name of any of the above-named entities, as well as any account in which any of the entities have or have had in any way control over, individually or with others:

i. any document related to account applications, opening documents, KYC, due diligence, and closing documents, including any document identifying:

a. any trustee, settlor, grantor, administrator, controlling party, protector, beneficiary, beneficial owner, or signatory; or

b. any relationship manager or account manager;

ii. any monthly or other periodic account statement;

iii. any document related to any domestic or international transfer of funds in the amount of \$10,000 or more, including, but not limited to, any wire transfer, check, cash letter, cashier's check, book entry transfer, or other document indicating the originator, beneficiary, source of funds, or destination of such transfer;

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iv. any summary or analysis of domestic and international account deposits, withdrawals, and transfers, including, but not limited to, sources of deposits and the destination of withdrawals/transfers, including any wire transfer, check, cash letter, cashier's check, or other monetary instrument;

v. any document related to monitoring for, identifying, or evaluating possible suspicious activity, including suspicious activity identified by Deutsche Bank AG's surveillance/monitoring program or referred by any employee or third-party, including, but not limited to, possible suspicious activity relating to foreign individuals and entities and international funds transfers;

vi. any document related to any agreement, business relationship, or business venture (including, but not limited to, joint underwritings, loans, financings or securitizations such as CDOs) between Deutsche Bank AG and any of the above-named entities;

vii. any document related to any request for information issued or received by Deutsche Bank AG pursuant to Sections 314(a) or 314(b) of the USA PATRIOT Act, Pub. L. 107-56;

viii. any document not otherwise kept in customary record-keeping systems (including, but not limited to, any document in any personal file or desk file), related to any entity identified above and/or any issue or document identified in items i through vii above; and

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ix. any document provided to, discussed with, or generated by any member of Deutsche Bank's Management Board, Supervisory Board, or Group Reputational Risk Committee related to any entity identified above and/or any issue or document identified in items i through viii above.

7. Any document related to any periodic, special, or other review conducted by or for Deutsche Bank AG of any of the individuals, entities, accounts, or transactions identified in items 1 and 6 above, including, but not limited to, any relationship or account history, exposure reports, particular transactions, management and servicing, or any other review associated with Deutsche Bank AG's policies and procedures for loan/credit risk analysis or accounts related to correspondent banking, private banking, public figures, politically prominent persons, or their family members, including, but not limited to, any such document relating to any financial relationships, transactions, or ties between the above-named individuals, entities, and accounts and any foreign individual, entity, or government.

8. Any document related to any communication sent or received by [Selected Deutsche Bank Employees] concerning any individual, entity, or any issue or document identified in items 1 through 7 above, including, but not limited to, any entity in which such an individual has been identified as a trustee, settlor, or grantor, beneficiary, beneficial owner, or has or had in any way control over, individually or with others, or any government official.

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RESPONDING TO COMMITTEE SUBPOENAS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents in unredacted form that are in the possession, custody, or control or otherwise available to Deutsche Bank AG or its agents, employees, or representatives, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files

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and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced. Documents produced on paper (those from paper files that you choose to produce as such) shall not contain any permanent fasteners (i.e., staples), but shall be separated based on the divisions between documents as it is maintained in the custodian's files by non-permanent fasteners (e.g., paper clips, binder clips, rubber bands) or a non-white slip sheet.

7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.

8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.

9. The Committee requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with

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Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. Documents shall be produced in accordance with the attached Data Delivery Standards. Alternatively, all documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable, shall be produced in text searchable PDF format. Spreadsheets shall also be provided in their native form. Audio and video files shall be produced in their native format, although picture files associated with email or word processing programs shall be produced in PDF format along with the document it is contained in or to which it is attached.

11. Other than native files produced along with TIFF images in accordance with the attached Data Delivery Standards, every page of material produced to the Committee, whether from paper files or as a text searchable PDF, must contain a unique Bates number. All files produced in PDF format shall be named according to the Bates range that the file contains (e.g. YourCo-00001 - YourCo-00035.pdf).

12. With respect to the requested wire transfer records, please provide such records in Excel (.xls) format that is enabled (not “read only” format), with separate columns that show each wire transfer field, including, but not limited to, the following fields: “Payment Date,” “Amount,”

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“Ordering Customer” #1 through #4, “Ordering Bank” #1 through #5, “Debiting ID,” “Debiting Address” #1 through #4, “Credit ID,” “Credit Address” #1 through #4, Account Party” #1 through #5, “Ultimate Beneficiary” #1 through #5, “Det_Payment” #1 through #4, and “Bank to Bank” #1 through #6.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

14. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:

- a. how the document was disposed of;
- b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
- c. the date of disposition;
- d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

15. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

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16. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

17. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

18. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.

19. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide a log containing the following information concerning every such document: (i) the reason the document is not being produced; (ii) the type of document; (iii) the general subject matter; (iv) the date, author and addressee; (v) the relationship of the author and addressee to each other; and (vi) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not

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limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

- (a) Any objections or claims of privilege are waived if you fail to provide an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding each withheld document prior to the request compliance date.
- (b) Any assertion by a request recipient of any such non-constitutional legal bases for withholding documents or other materials, for refusing to answer any deposition question, or for refusing to provide hearing testimony, shall be of no legal force and effect and shall not provide a justification for such withholding or refusal, unless and only to the extent that the Committee (or the chair of the Committee, if authorized) has consented to recognize the assertion as valid.

20. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

21. Upon completion of the document production, you must submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive

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documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request; and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a log provided to the Committee, as described in (18) above, or identified as provided in (12), (13) or (14) above.

22. When representing a witness or entity before the Committee in response to a document request or request for transcribed interview, counsel for the witness or entity must promptly submit to the Committee a notice of appearance specifying the following: (a) counsel's name, firm or organization, and contact information; and (b) each client represented by the counsel in connection with the proceeding. Submission of a notice of appearance constitutes acknowledgement that counsel is authorized to accept service of process by the Committee on behalf of such client(s), and that counsel is bound by and agrees to comply with all applicable House and Committee rules and regulations.

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DEFINITIONS

1. The term “Deutsche Bank AG” includes, but is not limited to each of its, subsidiaries, affiliates, branches, divisions, partnerships, properties, groups, special purpose entities, joint ventures, predecessors, successors, or any other entity in which they have or had a controlling interest, and any current or former employee, officer, director, shareholder, partner, member, consultant, senior manager, manager, senior associate, staff employee, independent contractor, agent, attorney or other representative of any of those entities.

2. Each entities listed in items 1 and 6 above includes, but is not limited to, each of its parents, subsidiaries, affiliates, branches, divisions, partnerships, properties, groups, special purpose entities, joint ventures, predecessors, successors, or any other entity in which they have or had a controlling interest, and any current or former employee, officer, director, shareholder, partner, member, consultant, senior manager, manager, senior associate, staff employee, independent contractor, agent, attorney or other representative of any of those entities.

3. The term “documents in your possession, custody or control” means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

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4. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: agreements; papers; memoranda; correspondence; reports; studies; reviews; analyses; graphs; diagrams; photographs; charts; tabulations; presentations; marketing materials; working papers; records; records of interviews; desk files; notes; letters; notices; confirmations; telegrams; faxes, telexes, receipts; appraisals; interoffice and intra office communications; electronic mail (e-mail) and attachments; electronic messages; text messages; contracts; cables; recordings, notations or logs of any type of conversation, telephone call, meeting or other communication; bulletins; printed matter; computer printouts; teletype; invoices; transcripts; audio or video recordings; statistical or informational accumulations; data processing cards or worksheets; computer stored and/or generated documents; computer databases; computer disks and formats; machine readable electronic files, data or records maintained on a computer; instant messages; diaries; questionnaires and responses; data sheets; summaries; minutes; bills; accounts; estimates; projections; comparisons; messages; correspondence; electronically stored information and similar or related materials. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

5. The term “immediate family” means any parent, spouse, child, step child, daughter-in-law, or son-in-law.

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6. The term “administrator or controlling party” means any individual, organization, or entity that established, managed, administered, represented, served as signatory for, or engaged in any transaction on behalf of, or in any way had control over any of, or any account or assets of, the entities identified in or responsive to any of the items above.

7. The term “entity” means a corporation, partnership, limited partnership, limited liability company, joint venture, business trust, or any other form or organization by which business or financial transactions are carried out.

8. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, computer, discussions, releases, delivery, or otherwise.

9. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

10. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal,

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business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

11. The terms “referring” “related” “relating” or “concerning,” with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

12. The term “employee” means agent, borrowed employee, casual employee, consultant, de facto employee, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, contract employee, contractor, or any other type of service provider.

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**APPENDIX F — SDNY DOC. 51-3
(CAPITAL ONE SUBPOENA),
FILED MAY 10, 2019**

SUBPOENA

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

Capital One Financial Corporation

To _____

You are hereby commanded to be and appear before the
Committee on Financial Services

_____ of the House of Representatives of the United States at
the place, date, and time specified below.

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

Place of production: Committee on Financial Services,
Rayburn House Office Building, Room 2129

Date: May 6, 2019

Time: 12:00 PM

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

Place of testimony: _____

Date: _____ Time: _____

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

Place of testimony: _____

Date: _____ Time: _____

To _____
to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, D.C. this ____ day of April, 2019.

/s/ _____
Chairman or Authorized Member

Attest:

Clerk

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PROOF OF SERVICE

Subpoena for Capital One Financial Corporation

Address Capital One Financial Corporation, 1680
Capital One Drive, McLean, VA 22102-3491

before the Committee on Financial Services

*U.S. House of Representatives
116th Congress*

Served by (print name) David Abramowitz

Title General Counsel and Parliamentarian,
House Financial Services Committee

Manner of service Electronic Mail

Date April , 2019

Signature of Server /s/

Address Rayburn House Office Building, Room 2129,
Washington, D.C. 20515

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SCHEDULE A

Custodian of Records
Capital One

The time period applicable to this subpoena is **July 19, 2016 through the present**, except for Item “i.” and “ii.”, for which there is no time limitation.

Please provide **complete and unredacted** copies of the following documents by **May 6, 2019**:

1. With respect to:

The Donald J. Trump Revocable Trust;
The Trump Organization Inc.;
Trump Organization LLC;
The Trump Corporation;
Trump Old Post Office LLC;
Trump Old Post Office Member Corp.;
DJT Holdings LLC;
DJT Holdings Managing Member LLC;
OPO Hotel Manager LLC;
OPO Hotel Manager Member Corp.;
THC DC Restaurant Hospitality LLC;
Trump Acquisition LLC;
Trump Acquisition Corp.;
Trump International Hotels Management LLC;
Trump International Hotels Management Member Corp.;
Any parent, subsidiary, affiliate, joint venture, predecessor, or successor of the foregoing;
or

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Any principal, including directors, shareholders, or officers, or any other representatives of the foregoing;

or any account (including, but not limited to, any securities or trading account) in the name of any of the above-named entities, as well as any account in which such entities are or were a beneficiary, or beneficial owner, or in which such entities have or have had in any way control over, individually or with others:

- i. any document related to account opening, due diligence, or closing;
- ii. any document that identifies, addresses or is related to the identification of any trustee, guarantor, settlor or grantor, administrator or controlling party, protector, beneficiary, beneficial owner or signatory;
- iii. any document that identifies any relationship manager or account manager;
- iv. any monthly or periodic statement showing line item detail for all account activity, including, but not limited to, intrabank transfers between any of the accounts, and images of all cancelled checks in excess of \$5,000;
- v. any summary record or analysis of account deposits and transfers, including, but not limited to, the sources of the deposits into those accounts and the destination of the transfers from those

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accounts, including any wire transfer (showing all wire field information and originator-to-beneficiary and bank-to-bank information), check, cash letter or other monetary instrument involving those accounts;

- vi. any document related to any transfer of funds in excess of \$10,000, including, but not limited to, any wire transfer, check, cash letter, or any document indicating the originator, beneficiary, intermediary, source of funds or destination of such transfer;
- vii. any document related to any possible suspicious activity identified by Capital One Financial Corporation's surveillance or monitoring system or program or referred by any employee or third-party;
- viii. any document relating to any annual, special, or other reviews of the accounts pursuant to Capital One Financial Corporation's policies and procedures related to the Bank Secrecy Act, anti-money-laundering, and compliance with guidance on Politically Exposed Persons and domestic or foreign public figures or their families;
- ix. any document, including, but not limited to, any personal file not otherwise kept in customary record-keeping systems, related to any loan or extension of credit requested by or provided to any of the above-named entities;
- x. any document related to any real estate transaction;
and

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- xi. any document related to, or provided in response to:
 - a. any request, subpoena, inquiry or investigation, by any U.S. federal or state agency;
 - b. any notice of administrative, civil, or criminal legal action;
 - c. any subpoena, search warrant, seizure warrant, summons, or other legal writ, notice, or order or request for information, property, or material, including, but not limited to, those issued pursuant to the USA PATRIOT Act, Pub. L. 107-56; Sections 314(a) or 314(b) of that Act, or any other tax, anti-money laundering or bank statute; and
 - d. any request for information made to or by a third party, including, but not limited to any government agency or financial institution.

RESPONDING TO COMMITTEE SUBPOENAS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents in unredacted form that are in the possession, custody, or control or otherwise available to Capital One Financial Corporation or its agents,

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employees, or representatives, regardless of whether the documents are possessed directly by you.

2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.

3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.

4. Each document should be produced in a form that may be copied by standard copying machines.

5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.

6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced. Documents produced on paper (those from paper files that you choose to produce as such) shall not contain any permanent fasteners (i.e., staples),

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but shall be separated based on the divisions between documents as it is maintained in the custodian's files by non-permanent fasteners (e.g., paper clips, binder clips, rubber bands) or a non-white slip sheet.

7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.

8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.

9. The Committee requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. Documents produced in electronic format should be produced as delimited text with images and native files in accordance with the attached Data Delivery Standards. Alternatively, all documents derived from word processing

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programs, email applications, instant message logs, spreadsheets, and wherever else practicable, shall be produced in text searchable PDF format. Spreadsheets shall also be provided in their native form. Audio and video files shall be produced in their native format, although picture files associated with email or word processing programs shall be produced in PDF format along with the document it is contained in or to which it is attached. The requested wire transfer records should be produced in Excel (.xls) format that is enabled (not “read only” format), with separate columns that show each wire transfer field, including, but not limited to, the following fields: “Payment Date,” “Amount,” “Ordering Customer” #1 through #4, “Ordering Bank” #1 through #5, “Debiting ID,” “Debiting Address” #1 through #4, “Credit ID,” “Credit Address” #1 through #4, Account Party” #1 through #5, “Ultimate Beneficiary” #1 through #5, “Det_Payrment” #1 through #4, and “Bank to Bank” #1 through #6.

11. Other than native files produced along with TIFF images in accordance with the attached Data Delivery Standards, every page of material produced to the Committee, whether from paper files or as a text searchable PDF, must contain a unique Bates number. All files produced in PDF format shall be named according to the Bates range that the file contains (e.g. YourCo-00001 - YourCo- 00035.pdf).

12. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating

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its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

13. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:

- a. how the document was disposed of;
- b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
- c. the date of disposition;
- d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

14. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

15. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

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16. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

17. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.

18. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide a log containing the following information concerning every such document: (i) the reason the document is not being produced; (ii) the type of document; (iii) the general subject matter; (iv) the date, author and addressee; (v) the relationship of the author and addressee to each other; and (vi) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

- (a) Any objections or claims of privilege are waived if you fail to provide an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding

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each withheld document prior to the request compliance date.

- (b) Any assertion by a request recipient of any such non-constitutional legal bases for withholding documents or other materials, for refusing to answer any deposition question, or for refusing to provide hearing testimony, shall be of no legal force and effect and shall not provide a justification for such withholding or refusal, unless and only to the extent that the Committee (or the chair of the Committee, if authorized) has consented to recognize the assertion as valid.

19. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

20. Upon completion of the document production, you must submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request; and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a log provided to the Committee, as described

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in (18) above, or identified as provided in (12), (13) or (14) above.

21. When representing a witness or entity before the Committee in response to a document request or request for transcribed interview, counsel for the witness or entity must promptly submit to the Committee a notice of appearance specifying the following: (a) counsel's name, firm or organization, and contact information; and (b) each client represented by the counsel in connection with the proceeding. Submission of a notice of appearance constitutes acknowledgement that counsel is authorized to accept service of process by the Committee on behalf of such client(s), and that counsel is bound by and agrees to comply with all applicable House and Committee rules and regulations.

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DEFINITIONS

1. The term “Capital One Financial Corporation” includes, but is not limited to Capital One Financial Corporation and each of its subsidiaries, affiliates, branches, divisions, partnerships, properties, groups, special purpose entities, joint ventures, predecessors, successors, or any other entity in which they have or had a controlling interest, and any current or former employee, officer, director, shareholder, partner, member, consultant, senior manager, manager, senior associate, staff employee, independent contractor, agent, attorney or other representative of any of those entities.

2. Each entities listed in items 1 and 6 above includes, but is not limited to, each of its parents, subsidiaries, affiliates, branches, divisions, partnerships, properties, groups, special purpose entities, joint ventures, predecessors, successors, or any other entity in which they have or had a controlling interest, and any current or former employee, officer, director, shareholder, partner, member, consultant, senior manager, manager, senior associate, staff employee, independent contractor, agent, attorney or other representative of any of those entities.

3. The term “documents in your possession, custody or control” means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have

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access; and (c) documents that have been placed in the possession, custody, or control of any third party.

4. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: agreements; papers; memoranda; correspondence; reports; studies; reviews; analyses; graphs; diagrams; photographs; charts; tabulations; presentations; marketing materials; working papers; records; records of interviews; desk files; notes; letters; notices; confirmations; telegrams; faxes; telexes, receipts; appraisals; interoffice and intra office communications; electronic mail (e-mail) and attachments; electronic messages; text messages; contracts; cables; recordings, notations or logs of any type of conversation, telephone call, meeting or other communication; bulletins; printed matter; computer printouts; teletype; invoices; transcripts; audio or video recordings; statistical or informational accumulations; data processing cards or worksheets; computer stored and/or generated documents; computer databases; computer disks and formats; machine readable electronic files, data or records maintained on a computer; instant messages; diaries; questionnaires and responses; data sheets; summaries; minutes; bills; accounts; estimates; projections; comparisons; messages; correspondence; electronically stored information and similar or related materials. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

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5. The term “immediate family” means any parent, spouse, child, step child, daughter-in-law, or son-in-law.
6. The term “administrator or controlling party” means any individual, organization, or entity that established, managed, administered, represented, served as signatory for, or engaged in any transaction on behalf of, or in any way had control over any of, or any account or assets of, the entities identified in or responsive to any of the items above.
7. The term “entity” means a corporation, partnership, limited partnership, limited liability company, joint venture, business trust, or any other form or organization by which business or financial transactions are carried out.
8. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, computer, discussions, releases, delivery, or otherwise.
9. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
10. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, limited liability

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corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

11. The terms or “relating” “concerning” with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

12. The term “employee” means agent, borrowed employee, casual employee, consultant, de facto employee, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, contract employee, contractor, or any other type of service provider.

In responding to the subpoena, please apply the instructions and definitions set forth below:

Instructions

The documents subpoenaed include all those that are in the custody, control or possession, or within the right of custody, control or possession, of Capital One or its agents, employees, or representatives.

If the subpoena cannot be complied with in full, it shall be complied with to the extent possible, with an explanation of why full compliance is not possible. Any document

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withheld on the basis of privilege shall be identified on a privilege log submitted with the responses to this subpoena. The log shall state the date of the document, its author, his or her occupation and employer, all recipients, the occupation and employer of each recipient, the subject matter, the privilege claimed and a brief explanation of the basis of the claim of privilege. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, identify the document and explain the circumstances by which it ceased to be in your possession, custody, or control.

Documents shall be produced as delimited text with images and native files in accordance with the attached Data Delivery Standards.

Alternatively, all documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable, shall be produced in text searchable PDF format. Spreadsheets shall also be provided in their native form. Audio and video files shall be produced in their native format, although picture files associated with email or word processing programs shall be produced in PDF format along with the document it is contained in or to which it is attached.

Other than native files produced along with TIFF images in accordance with the attached Data Delivery Standards, every page of material produced to the Committee, whether from paper files or as a text searchable PDF, must contain a unique Bates number. All files produced in PDF format shall be named according to the Bates range that the file contains (e.g. YourCo-00001-YourCo-00035.pdf).

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Documents produced on paper (those from paper files that you choose to produce as such) shall not contain any permanent fasteners (i.e., staples), but shall be separated based on the divisions between documents as it is maintained in the custodian's files by non-permanent fasteners (e.g., paper clips, binder clips, rubber bands) or a non-white slip sheet.

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DATA DELIVERY STANDARDS

Record productions shall be prepared according to, and strictly adhere to, the following standards:

1. Records produced shall be organized, identified, and indexed electronically.
2. Only alphanumeric characters and the underscore (“_”) character are permitted in file and folder names. Special characters are not permitted.
3. Two sets of records shall be delivered, one set to the Majority Staff and one set to the Minority Staff. To the extent the Minority Staff does not have an electronic record review platform, records shall be produced to the Minority Staff in searchable PDF format and shall be produced consistent with the instructions specified in this schedule to the maximum extent practicable.
4. Production media and produced records shall not be encrypted, contain any password protections, or have any limitations that restrict access and use.
5. Records shall be produced to the Committee on one or more CDs, memory sticks, thumb drives, or USB hard drives. Production media shall be labeled with the following information: Case Number, Production Date, Producing Party, Bates Range.

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6. Records produced to the Committee shall include an index describing the contents of the production. To the extent that more than one CD, hard drive, memory stick, thumb drive, box, or folder is produced, each CD, hard drive, memory stick, thumb drive, box, or folder shall contain an index describing its contents.
7. All records shall be Bates-stamped sequentially and produced sequentially.
8. When you produce records, you shall identify the paragraph or number in the Committee's Request to which the records respond and add a metadata tag listing that paragraph or number in accordance with **Appendix A**.
9.
 - a. All submissions must be organized by custodian unless otherwise instructed.
 - b. Productions shall include:
 1. A Concordance Data (.DAT) Load File in accordance with metadata fields as defined in **Appendix A**.
 2. A Standard Format Opticon Image Cross-Reference File (.OPT) to link produced images to the records contained in the .DAT file.

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3. A file (can be Microsoft Word, Microsoft Excel, or Adobe PDF) defining the fields and character lengths of the load file.
- c. The production format shall include images, text, and native electronic files. Electronic files must be produced in their native format, i.e., the format in which they are ordinarily used and maintained during the normal course of business. For example, a Microsoft Excel file must be produced as a Microsoft Excel file rather than an image of a spreadsheet. **NOTE:** An Adobe PDF file representing a printed copy of another file format (such as Word Document or Webpage) is NOT considered a native file unless the record was initially created as a PDF.
1. Image Guidelines:
 1. Single or multi page TIFF files.
 2. All TIFF images must have a unique file name, i.e., Bates Number
 3. Images must be endorsed with sequential Bates numbers in the lower right corner of each image.

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2. Text Guidelines:

1. All text shall be produced as separate text files, not inline within the .DAT file.
2. Relative paths shall be used to link the associated text file (FIELD: TEXTPATH) to the record contained in the load file.
3. Associated text files shall be named as the BEGBATES field of each record.

3. Native File Guidelines:

1. Copies of original email and native file records/attachments must be included for all electronic productions.
 2. Native file records must be named per the BEGBATES field.
 3. Relative paths shall be used to link the associated native file (FIELD: NATNEFILELINK) to the record contained in the load file.
 4. Associated native files shall be named as the BEGBATES field of each record.
- d. All record family groups, *i.e.*, email attachments, embedded files, etc., should be

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produced together and children files should follow parent files sequentially in the Bates numbering.

- e. Only 1 load file and one Opticon image reference file shall be produced per production volume.
- f. All extracted text shall be produced as separate text files.
- g. Record numbers in the load file should match record Bates numbers and TIFF file names.
- h. All electronic record produced to the Committee should include the fields of metadata listed in **Appendix A**.

Appendix A**Production Load File Formatting and Delimiters:**

- The first line shall be a header row containing field names.
- Load file delimiters shall be in accordance with the following:
 - Field Separator: ¶(20) Text Qualifier: þ (254)
 - Newline: \n (10) Multi-Value Separator: ; (59)
 - Nested Value Separator: \ (92)
- All Date / Time Data shall be split into two separate fields (see below).
 - Date Format: mm/dd/yyyy—*i.e.*, 05/18/2015
 - Time Format: hh:mm:ss A—*i.e.*, 08:39:12 AM

*Appendix F*Required Metadata Fields

Field Name	Sample Data	Description
FIRSTBATES	EDC0000001	First Bates number of native file record/email
LASTBATES	EDC0000001	Last Bates number of native file record/email **The LASTBATES field should be populated for single page records/emails.
ATTACHRANGE	EDC0000001-EDC0000015	Bates number of the first page of the parent record to the Bates number of the last page of the last attachment "child" record
BEGATTACH	EDC0000001	First Bates number of attachment range
ENDATTACH	EDC0000015	Last Bates number of attachment range

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Field Name	Sample Data	Description
CUSTODIAN	Smith, John	Email: mailbox where the email resided Attachment: Individual from whom the record originated
FROM	John Smith	Email: Sender Native: Author(s) of record **semi-colon should be used to separate multiple entries
TO	Coffman, Janice; LeeW [mailto:LeeW@ MSN.com]	Recipient(s) **semi-colon should be used to separate multiple entries
CC	Frank Thompson [mailto: frank Thompson@ cdt.com]	Carbon copy recipient(s) **semi-colon should be used to separate multiple entries
BCC	John Cain	Blind carbon copy recipient(s) **semi-colon should be used to separate multiple entries
SUBJECT	Board Meeting Minutes	Email: Subject line of the email Native: Title of record (if available)

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Field Name	Sample Data	Description
DATE_SENT	10/12/2010	Email: Date the email was sent Native: (empty)
TIME_SENT/ TIME_ZONE	07:05PM GMT	Email: Time the email was sent/ Time zone in which the emails were standardized during conversion. Native: (empty) **This data must be a separate field and cannot be combined with the DATE_SENT field
TIME_ZONE	GMT	The time zone in which the emails were standardized during conversion. Email: Time zone Native: (empty)
NATIVEFILE LINK	D:\001\ EDC0000001.msg	Hyperlink to the email or native file record **The linked file must be named per the FIRSTBATES number

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Field Name	Sample Data	Description
MIME_TYPE	MSG	The content type of an Email or native file record as identified/extracted from the header
FILE_EXTEN	MSG	The file type extension representing the Email or native file record; will vary depending on the email format
AUTHOR	John Smith	Email: (empty) Native: Author of the record
DATE_CREATED	10/10/2010	Email: (empty) Native: Date the record was created
TIME_CREATED	10:25 AM	Email: (empty) Native: Time the record was created **This data must be a separate field and cannot be combined with the DATE_CREATED field
DATE_MOD	10/12/2010	Email: (empty) Native: Date the record was last modified

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Field Name	Sample Data	Description
TIME_MOD	07:00PM	Email: (empty) Native: Time the record was last modified **This data must be a separate field and cannot be combined with the DATE_MOD field
DATE_ACCESSSD	10/12/2010	Email: (empty) Native: Date the record was last accessed
TIME_ACCESSSD	07:00PM	Email: (empty) Native: Time the record was last accessed **This data must be a separate field and cannot be combined with the DATE_ACCESSSD field
PRINTED_DATE	10/12/2010	Email: (empty) Native: Date the record was last printed
NATIVE_FILESIZE	5,952	Size of native file record/email in KB **Use only whole numbers

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Field Name	Sample Data	Description
PGCOUNT	1	Number of pages in native file record/ email
PATH	J:\Shared\ Smith J\October Agenda.doc	Email: (empty) Native: Path where native file record was stored including original file name
INTFILE PATH	Personal Folders\ Deleted Items\ Board Meeting Minutes.msg	Email: original location of email including original file name Native: (empty)
INTMSGID	<000805c2c71b\$ 75977050\$cb8306 d1@MSN>	Email: Unique Message ID Native: (empty)
MD5HASH	d131dd02c5e6eec 4693d9a0698aff95 c2fcab58712467eab 4004583eb8fb7f89	MD5 Hash value of the record
TEXTPATH	\TEXT\AAA0001. txt	Path to the record's text file that contains extracted text to be used for processing. Every record has a relative path to its text file in this field. Note: These paths may also be fully qualified; and thus do not have to be relative.

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Field Name	Sample Data	Description
NATIVE FILEPATH	\NATIVES\ MESSAGE1.msg; \NATIVES\ATT ACHMENT1.doc	Path to the record's native file. Every record has a relative path to its native file in this field. Note: These paths may also be fully qualified; and thus do not have to be relative.
HAND WRITTEN	YES	Field should be marked "YES" if the record has any handwritten notes or other text that is not contained in the text file
REDACTED	YES	Field should be marked "YES" if the record contains any redactions, "NO" otherwise

*Appendix F*Metadata Fields Required Upon Specific Request

Field Name	Sample Data	Description
TAGS	FirstPass\ Responsive; FirstPass\ForQC	If requested—a list of tags assigned to the record. Multiple tags are separated by the multi-value separator, for example: “A; B; C”, and nested tags are denoted using the nested value separator, for example: “X\Y\Z”. Tags for attachments will appear under the custom field “ATTACHMENT TAGS”.
FOLDERS	JohnDoeDocs\ FirstPass	If requested—a list of folders of which the record is a part. Multiple folders are separated by the multi-value separator, for example: “A; B; C”, and nested folders are denoted using the nested value separator, for example: “X\Y\Z”. Folders for attachments will appear under the custom field “ATTACHMENT FOLDERS”.

**APPENDIX G — ORDER, UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK, DATED MAY 22, 2019**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

19 Civ. 3826 (ER)

DONALD J. TRUMP; DONALD J. TRUMP,
JR.; ERIC TRUMP; IVANKA TRUMP; THE
DONALD J. TRUMP REVOCABLE TRUST;
THE TRUMP ORGANIZATION, INC.; TRUMP
ORGANIZATION LLC; DJT HOLDINGS LLC; DJT
HOLDINGS MANAGING MEMBER LLC; TRUMP
ACQUISITION LLC; AND TRUMP
ACQUISITION, CORP.,

Plaintiffs,

— against —

DEUTSCHE BANK AG AND
CAPITAL ONE FINANCIAL CORP.,

Defendants,

— and —

COMMITTEE ON FINANCIAL SERVICES OF
THE U.S. HOUSE OF REPRESENTATIVES
AND PERMANENT SELECT COMMITTEE
ON INTELLIGENCE OF THE U.S. HOUSE OF
REPRESENTATIVES,

Intervenor-Defendants.

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May 22, 2019, Decided

May 22, 2019, Filed

ORDER

Ramos, D.J.:

For the reasons set forth on the record in today's hearing, Plaintiffs' motion for a preliminary injunction is DENIED, Plaintiffs' motion for a stay pending appeal is DENIED, and the Committees' application for consolidation is DENIED. The Clerk of Court is respectfully directed to terminate the motion, Doc. 26.

It is SO ORDERED.

Dated: May 22, 2019
New York, New York

/s/ Edgardo Ramos
Edgardo Ramos, U.S.D.J.

APPENDIX H — ORAL OPINION, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, EXCERPTED FROM THE MAY 22, 2019 HEARING, DATED MAY 22, 2019

[50]Again, I think his argument is because it's so broad, that shows it's illegitimate.

THE COURT: He said, I think no less than twice, that he was willing to sit down and have a reasonable discussion about limiting the subpoenas.

MR. LETTER: Fine. If you are going to order that, your Honor, I hope you'll order that that be done extremely fast because I'm fairly sure it will be evident immediately that it is not a serious endeavor. Thank you.

THE COURT: Thank you. So we're going to take ten minutes, and then I'll come out and give you my decision.

(Recess)

THE COURT: Everyone, please be seated. Now, I'm going to read this. It's approximately 25 pages, and if history is any guide, it's going to take me about 40, 45 minutes to read or so. I won't chain you to your chairs, but if any of you wish to leave before I finish reading, I would just ask that you do so as unobtrusively as possible.

On April 15, 2019, two subcommittees of the United States House of Representatives issued subpoenas to Deutsche Bank and Capital One Financial Corporation.

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The subpoenas seek financial and account information concerning President Donald J. Trump, his children, members of their immediate family, and several entities associated with his family.

Two weeks later, plaintiffs filed the above-captioned [51]suit, claiming that the subpoenas violate the United States Constitution and the Right to Financial Privacy Act, the “RFPA”. Plaintiffs also moved for a preliminary injunction that would prohibit the Committees from enforcing the subpoenas and prohibit the banks from complying with the subpoenas until the resolution of this lawsuit. This bench ruling addresses that motion.

The question presented in plaintiffs’ motion is straightforward: Does the Committees’ subpoenas violate the Constitution or the RFPA? After reviewing the parties’ briefs and hearing from them today, the Court is convinced that the answer is no. Accordingly, I will not enjoin enforcement of the subpoenas.

The Court begins by addressing two preliminary matters: the applicable standard for a preliminary injunction, and the Committees’ request for consolidation.

The Court begins with the applicable standard of review. “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. National Resources Defense Council, Inc.*, 555 U.S. 7.

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In this circuit, if a plaintiff does not establish a [52]likelihood of success on the merits, a preliminary injunction, nonetheless, may issue if the plaintiff shows that there exists sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the plaintiff. Citing *Citigroup Glob. Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30. It is not enough that the question be substantial, however.

Regardless of whether the plaintiff opts to show likelihood of success on the merits or sufficiently serious question going to the merits, the plaintiff always must demonstrate that irreparable harm is likely, absent the injunction. At all times, the Court remains mindful that preliminary injunction is an extraordinary and drastic remedy, and it is never awarded as of right. *Munaf v. Geren*, 553 U.S. 674.

Next, the Court denies committees' request for consolidation. In their opposing papers, the committees asked the Court to consolidate this hearing with a trial on the merits, pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure. Plaintiffs opposed consolidation on the ground that consolidation would violate their rights to due process. Ultimately, the Court concludes that any decision to consolidate is of little consequence here. The Committees are not prejudiced by the denial of a consolidation, given that the [53]Court will not enjoin them from enforcing their subpoenas.

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Conversely, if the Court chooses to consolidate the preliminary injunction hearing with a trial on the merits, there is a slight risk that plaintiffs will be prejudiced, notwithstanding that Plaintiffs have yet to adequately explain what further discovery, briefing, witnesses, and time is needed before they will be ready for a trial on the merits.

In any event, to ensure that plaintiffs are not prejudiced, the Court will deny the committees' application for consolidation. Should this matter ultimately proceed to the merits, however, the Court appreciates the urgency with which matters concerning two coordinate branches of government should proceed, and the limited universe of facts that may be subject to discovery.

Turning to the merits of plaintiffs' motion. The Court finds that while plaintiffs have shown that they will suffer irreparable harm, absent a preliminary injunction, they are unlikely to succeed on the merits of their claims, that the questions presented in their motion are not sufficiently serious in light of Supreme Court precedent and the plain text of the Right to Financial Privacy Act, the balance of hardships and equities, in conjunction with consideration of the public interest, do not weigh in their favor. Consequently, the Court concludes that a preliminary injunction is inappropriate.

The Court begins with whether Plaintiffs have [54]demonstrated a likelihood of irreparable harm absent an injunction, because if there is not a likelihood of irreparable harm, then the Court need not grapple with the constitutional and statutory issues in this case.

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Plaintiffs allege that if this Court does not intervene to preserve the status quo, there will be no way to unring the bell once the banks give Congress the requested information.

The Court agrees. In this circuit, it is well settled that individuals whose financial records are subpoenaed possess a privacy interest in their personal financial affairs that gives them standing to move to quash a subpoena served on a non-party financial institution, which is why all parties appear to agree that plaintiffs have standing to challenge subpoenas that were issued to them directly. Citing *Arias-Zeballos v. Tan*, reported at 2007 WL 210112.

In this case, the inevitable impingement of the same privacy interests that suffice to confer standing to plaintiffs also suffice to demonstrate a likelihood of irreparable harm. Courts in this circuit have recognized that the disclosure of private, confidential information is the quintessential type of irreparable harm that cannot be compensated or undone by money damages. Citing, *Airbnb, Inc. v. City of New York*, report at 2019 WL 91990.

It is true that some courts outside of this circuit [55] have questioned whether the mere disclosure of information, absent evidence of misuse or unauthorized disclosure by the receiving party automatically constitutes irreparable injury. See, e.g., *Baker DC v. National Labor Relations Bd.*, 102 F. Supp. 3d 194, from the District of D.C. The Court is of the opinion, however, that plaintiffs possess strong privacy interests in their financial

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information such that unwanted disclosure may properly constitute irreparable injury, without an additional showing of likelihood of misuse or unauthorized disclosure by the recipient.

The committees disagree and proffer two arguments why the Court should find that plaintiffs have failed to show a likelihood of irreparable harm. Neither argument is persuasive, and in fact, in oral argument, I understood them to concede that the Trump organization and Trump family members would suffer irreparable harm.

First, the committees contended that plaintiffs have provided no actual evidence of their potential injury, but the very act of disclosure to Congress is itself the injury that is both inevitable, absent an injunction, and irreparable.

The Committees attempt to differentiate between disclosure to Congress and disclosure to the public, arguing that the former is somehow not a cognizable injury. The Court is unpersuaded. Here, plaintiffs have an interest in keeping their records private from everyone, including congresspersons, [56]and that interest necessarily will be impinged by the records' disclosure to the committees. In any event, the committees have not committed one way or the other to keeping plaintiffs' records confidential from the public once received.

Accordingly, the Court finds that plaintiffs have shown a likelihood of irreparable harm absent an injunction.

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The Court begins with the statutory claim, because there is no need to address plaintiffs' constitutional claim if the committees are bound by the RFPA and have, in fact, violated it.

Plaintiffs contend that the committees issued the challenged subpoenas in violation of the requirements of the RFPA. The RFPA provides that no government authority may have access to or obtain copies of information containing the financial records of any customer from a financial institution unless certain notification and certification requirements are met.

Plaintiffs argue that Congress is a government authority for purposes of the RFPA and that, as government authorities, the committees failed to act in accordance with the RFPA before issuing the challenged subpoenas.

The Court disagrees. The Committees have provided sound arguments why the RFPA does not apply to Congress.

First, as mentioned above, the RFPA applies to government authorities. While plaintiffs urge the Court to [57]resort to Black Law's Dictionary to define this statutory term, it is unnecessary. Congress expressly defined the term "government authority" in RFPA. Pursuant to that statute, "government authority" means any agency or department of the United States, or any officer or agent thereof.

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Thus, if Congress is not an agency or department of the United States, then the statute does not apply to Congress. The Court finds the Supreme Court's reasoning in *Hubbard v. United States*, reported at 514 U.S. 695 controlling here. There, the Court explored the reach of 18 U.S.C. 1001, a statute criminalizing knowingly false representations made in any matter within the jurisdiction of any department or agency of the United States.

The question presented was whether 1001 applies to false statements in judicial proceedings. The Court held that it didn't and instead generally only refers to the Executive Branch. The Court held that it didn't unless the context of the statute strongly suggests that the phrase was intended to describe more than just the Executive Branch. In so holding, the Court expressly overruled its prior decision in *United States v. Bramblett*, which held that the phrase "department," as used in 1001, referred to the executive, judicial, and legislative branches of government.

Of course, the RFPFA arises in a different title of the United States Code, but the Supreme Court's interpretation in *Hubbard* wasn't limited to any particular statutory provision. Rather, the Court found that a straightforward interpretation of the phrase "department or agency" leads inexorably to the conclusion that the phrase only covers the Executive Branch.

Moreover, as detailed in the Committees' papers, the structure and context of the RFPFA makes clear that Congress did not believe it was binding itself to the RFPFA.

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More on this point need not be said. Congress is not bound by the RFPA.

Plaintiffs are also unlikely to succeed on the merits of their constitutional claim. Turning to plaintiffs' claim that the committees' subpoenas violate the Constitution, the Court concludes that plaintiffs are unlikely to succeed on the merits.

As today's argument and the parties' moving papers make clear, plaintiffs challenge the committees' subpoenas on four principal grounds: the committees' subpoenas are not supported by a legitimate legislative purpose; the committees' subpoenas are really an unlawful exercise of law-enforcement power; the committees' subpoenas are overly broad; and finally, the committees' motives in issuing the subpoenas render the subpoenas unlawful, as they seek exposure for the sake of exposure.

The Court addresses and rejects, each argument in turn, and begins by setting forth the legal principles guiding its analysis.

[59]A review of the relevant case law makes clear that the Committees' investigative power is broad, yet not unlimited. Article 1 of the United States Constitution vests Congress with all legislative powers. While Article 1 does not expressly refer to Congress' investigative powers, Congress' authority to investigate matters related to contemplated legislation is beyond debate.

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As the Supreme Court has explained, there can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation. This power, deeply rooted in American and English institutions, is indeed co-extensive with the power to legislate. Without the power to investigate, including of course the authority to compel testimony, either through its own processes or through judicial trial, Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively. Citing *Quinn v. United States*, 349 U.S. 155.

So too is the committees' general authority to issue subpoenas well settled, given that committee members serve as the representatives of the parent assembly in collecting information for a legislative purpose and their function is to act as the eyes and ears of the Congress in obtaining facts upon which the full legislature can act. *Watkins v. United States*, 354 U.S. 178.

[60]As alluded to in the quotes recited, congressional investigations must be in furtherance of a legislative purpose. As the Supreme Court has explained, an essential premise in this situation is that the House or Senate shall have instructed the committee members on what they are to do with the power delegated to them. It is the responsibility of the Congress, in the first instance, to ensure that compulsory process is used only in furtherance of a legislative purpose. That requires that the instructions of an investigating committee spell out that group's jurisdiction and purpose with sufficient particularity. Those instructions are embodied in the

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authorizing resolution. That document is the committee's charter. Citing *Watkins* again.

However, that Congress must investigate in furtherance of a legislative purpose does not mean that the Congress is constrained to investigations in furtherance of contemplated legislation in the form of a bill or statute. Congress performs many different functions attendant to its legislative function under the Constitution.

Congress' power also includes a more general informing function, that is, the power of the Congress to inquire into and publicize corruption, maladministration or inefficiency in agencies of the Government. Again citing *Watkins*.

Put simply, the power of the Congress to conduct investigations is inherent in the legislative process. That [61]power is broad. It encompasses inquiries concerning the administration of existing laws, as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste. Citing *Watkins*.

While broad, Congress' investigative powers are not unlimited. Rather, its powers are subject to several limitations, five of which will be mentioned now.

First, the subject of any inquiry must be one on which legislation could be had. Citing *Eastland*, 421 U.S. at 504.

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This means that, in determining the constitutionality of requests for information, pursuant to a congressional investigation, a court must first determine whether an investigation is related to a valid legislative purpose, for Congress may not constitutionally require an individual to disclose his political relationships or other private affairs except in relation to such a purpose. Citing *Barenblatt v. United States*, 360 U.S. 109.

Second, the Bill of Rights is applicable to congressional investigations as to all forms of governmental action, and serves to limit Congress' investigative powers.

Third, while the public is entitled to be informed [62]concerning the workings of its government, the Supreme Court has made clear that this entitlement cannot be inflated into a general power to expose, where the predominant result can only be an invasion of the private rights of individuals.

Fourth, since Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the exclusive province of one of the other branches of the Government. Lacking the judicial power given to the Judiciary, it cannot inquire into matters that are exclusively the concern of the Judiciary. Neither can it supplant the Executive in what exclusively belongs to the Executive. Citing *Barenblatt*.

Fifth, and finally, when analyzing the investigative boundaries of congressional subcommittees, such as

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the committees here, the committees' investigative boundaries are defined by its source. Citing *Eastland*. Thus, with respect to the committees, their powers are further restricted to the missions delegated to them, i.e., to acquire certain data to be used by the House or the Senate in coping with a problem that falls within its legislative sphere and, consequently, no witness can be compelled to make disclosures on matters outside that area.

Among other sources to consider in ascertaining a subcommittee's boundaries in a given investigation, courts may consider the congressional resolutions authorizing the [63]investigation, the committee's jurisdictional statements, and statements of the members of the committee. *Shelton v. United States*, 404 F.2d 1292.

The committees' subpoenas have a legitimate legislative purpose. Plaintiffs argue that the committees' subpoenas lack a legitimate legislative purpose. The Court disagrees.

The Committee of Financial Services and the Permanent Select Committee on Intelligence issued substantively identical subpoenas for records to Deutsche Bank on April 15. That same day, the Committee of Financial Services issued a similar subpoena to Capital One Financial Corporation. The committees, through their subpoenas, seek financial records and account information related to Plaintiffs that mostly date back to 2010. However, with respect to some records, such as, for example, documents related to account applications,

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opening documents, know your customer, due diligence, et cetera, revealing financial relationships between plaintiffs and any foreign individuals, entities, or governments, there is no time limitation.

In analyzing whether the committees acted within their constitutional boundaries, the Court first looks to each committee's respective jurisdiction. With respect to the Committee on Financial Services, according to Rule X of the Rules of the House of Representatives for the [64]116th Congress, the Committee on Financial Services enjoys jurisdiction over matters relating to, among other subjects, banks and banking, including deposit insurance and federal monetary policy, insurance generally, international finance, and international financial and monetary organizations.

According to Rule X, as a standing committee, the Committee on Financial Services is also charged with general oversight responsibilities to assist the House of Representatives in its analysis, appraisal, and evaluation of, among other subjects, the application, administration, execution, and effectiveness of federal laws; and, importantly, conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation.

The Committee on Financial Services contends that it is investigating whether existing policies and programs at financial institutions are adequate to ensure the safety and soundness of lending practices, and the prevention of loan fraud.

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It points the Court to news sources reporting that financial institutions have issued more than \$1 trillion in large corporate loans, called leveraged loans, to heavily indebted companies that may be unable to repay those loans. It contends that it's investigating the lending practices of financial institutions, including Deutsche Bank, for loans issued to the Trump family and companies controlled [65]by President Trump.

Citing news sources reporting that over the years, Deutsche Bank has provided more than \$2 billion in loans to President Trump, despite concerns raised by senior bank officials regarding some of the loans. It contends that it's investigating industry-wide compliance with banking statutes and regulations, particularly anti-money laundering policies.

Importantly, it points to House Resolutions originating in the committee and predating the subpoenas, that support its representations to the Court. For example, House Resolution 206, introduced by Chairwoman Maxine Waters on March 8, 2019, and passed by a floor vote on March 13, 2019, the House expressed that money laundering and other financial crimes are serious threats to our national and economic security, and resolved to acknowledge that the lack of sunlight and transparency in financial transactions poses a threat to our country; to support efforts to close money laundering loopholes; to encourage transparency; to detect and deter financial crimes; and to urge financial institutions to comply with various anti-money laundering laws and regulations.

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The Committee on Financial Services believes that the challenged subpoenas further its investigations bearing upon the integrity of the U.S. financial system and the national security, including bank fraud, money laundering, foreign influence in the U.S. political process, and the [66]counterintelligence risks posed by foreign powers' use of financial leverage.

It maintains that the banks' lending practices, including loans made to plaintiffs, are an important piece to that investigation, as the subpoenas seek records relating to individuals and entities, including plaintiffs, that may have served as conduits for illicit funds or may not have been properly underwritten, and the public record establishes that they serve as a useful case study for the broader problems being examined by the committee.

Based on the aforementioned, the Court concludes that this committee's investigation and attendant subpoenas are in furtherance of a legitimate legislative purpose, plainly related to the subjects on which legislation can be had.

With respect to the Permanent Select Committee on Intelligence, according to Rule X, this committee enjoys jurisdiction over matters relating to, among other subjects, intelligence and intelligence-related activities of all other departments and agencies of the government, and 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.

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The Permanent Select Committee is also charged with special oversight functions. Specifically, the Committee is [67]charged with, among other responsibilities, reviewing and studying on a continuing basis laws, programs, and activities of the intelligence community.

The Intelligence Committee contends that it is currently investigating efforts by Russia and other foreign powers to influence the U.S. political process during and since the 2016 election, including financial leverage that foreign actors may have over President Trump, his family, and his business, and the related counterintelligence, national security, and legislative implications.

Moreover, the Committee contends that it is evaluating whether the structure, legal authorities, policies, and resources of the U.S. Government's intelligence, counterintelligence, and law enforcement elements are adequate to combat such threats to national security. The Intelligence Committee justifies its subpoena on the ground that its investigation requires an understanding of Mr. Trump's complex financial arrangements, including how those arrangements intersect with Russia and other foreign governments and entities.

The Committee further argues that this inquiry is, by definition, not limited to Mr. Trump's time in office and, given the closely held nature of the Trump Organization, must include his close family members. Among other items, the Intelligence Committee points to a press release by its [68]Chairman, dated February 6, 2019, in which Chairman Schiff stated that the Intelligence

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Committee would conduct a rigorous investigation into efforts by Russia and other foreign entities to influence the U.S. political process during and since the 2016 U.S. election; and that the Committee would work to fulfill its responsibility to provide the American people with a comprehensive accounting of what happened, and what the United States must do to protect itself from future interference and malign influence operations.

In this press release, Chairman Schiff further stated that the committee also plans to develop legislation and policy reforms to ensure the U.S. government is better positioned to counter future efforts to undermine our political process and national security.

Based on the aforementioned, the Court concludes that this Committee's investigation and attendant subpoena is in furtherance of a legitimate legislative purpose, plainly related to subjects on which legislation can be had.

Plaintiffs contend that the committees' purported agendas are solely focused on oversight and transparency, which, in a vacuum, are not legitimate legislative purposes that can justify subpoenaing a private citizen. But Congress' investigative power is not judged in a vacuum. As explained in *Barenblatt*, the congressional power of inquiry, its range and scope, and an individual's duty in relation to it, must be [69]viewed in proper perspective. The power and the right of resistance to it are to be judged in the concrete, not on the basis of abstractions.

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And here, the Committees seek financial information pertinent to specific areas of investigation on which legislation could be had. As the D.C. Circuit recognized in *Shelton*, in deciding whether the purpose is within the legislative function, the mere assertion of a need to consider remedial legislation may not alone justify an investigation accompanied with compulsory process, but when the purpose asserted is supported by references to specific problems which in the past have been or which in the future could be the subjects of appropriate legislation, then a court cannot say that a committee of the Congress exceeds its broad power when it seeks information in such areas.

Simply put, the committees' subpoenas all are in furtherance of facially legitimate legislative purposes.

Next, and relatedly, plaintiffs contend that the committees' subpoenas as "outrageously broad," given the information the committees seek long predates the President's election to office, reaches well beyond the transactions associated with foreign parties, and encompasses reams of account records for entities, individuals, children, and spouses, who have never even been implicated in any probe.

Plaintiffs contend that the financial conduct of [70]private citizens years before they were anywhere near public office, has nothing to do with government oversight.

The Court finds Plaintiffs' contention unpersuasive. Based on the cases cited by the parties in their papers,

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they seem to agree that so long as the requested information in the subpoenas are pertinent to legitimate legislative purposes of the committees, the subpoenas are not overly broad, and the Court need not conduct a line-by-line review of the information requested.

The Supreme Court has previously concluded that where the records called for by a subpoena were not plainly incompetent or irrelevant to any lawful purpose of a subcommittee in the discharge of its duties, but, on the contrary, were reasonably relevant to the inquiry, then such records are, in fact, pertinent. Citing *McPhaul v. United States*, reported at 364 U.S. 372.

As noted by Judge Mehta in his opinion earlier this week, the standard adopted by the Supreme Court is a forgiving one. Here, as mentioned earlier, the committees' subpoenas seek plaintiffs' financial information mostly dating back to 2010. The committees contend that this information is necessary to investigate serious and urgent questions concerning the safety of banking practices, money laundering in the financial sector, foreign influence in the U.S. political process, and the threat of foreign financial leverage, [71]including over the President, his family, and his business.

In light of the scope of the committees' investigations, the Court finds the committees' requests for information, while undeniably broad, is clearly pertinent to the committees' legitimate legislative purposes. Consequently, the Court will not engage in a line-by-line review of the subpoenas' requests, merely because some requests may be more pertinent than others.

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As the Supreme Court has made clear, the wisdom of congressional approach or methodology is not open to judicial veto, nor is the legitimacy of a congressional inquiry to be defined by what it produces. The very nature of the investigative function, like any research, is that it takes the searchers up some blind alleys and into nonproductive enterprises. To be a valid legislative inquiry, there need be no predictable end result. Citing *Eastland*.

Next, the plaintiffs challenge the subpoenas on the ground that the committees have never identified a single piece of legislation within their respective jurisdictions that they are considering. While that argument may be true as far as it goes, it is also irrelevant. Congress need not issue proposed legislation prior to the start of an investigation; it need not pass a bill; and it need not have particular legislation in mind when conducting a legitimate, lawful investigation in aid of its legislative function.

[72]As the Supreme Court noted in *Watkins*, most of instances of use of compulsory process by the first Congress concerned matters affecting the qualification or integrity of their members or came about in inquiries dealing with suspected corruption or mismanagement of government officials. There was very little use of the power of compulsory process in early years to enable the Congress to obtain facts pertinent to the enactment of new statutes or the administration of existing laws.

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As explained by the Second Circuit, it is immaterial that in the past a particular committee has proposed but little legislation. Information gained by a committee might well aid Congress in performing its legislative duties, in deciding that the public welfare required the passage of new statutes or changes in existing ones, or that it did not. *United States v. Josephson*, 165 F.2d 82.

Again, as stated earlier, and quoting the Supreme Court in *Eastland*, the subject of the congressional inquiry simply must be one “on which legislation could be had.”

Accordingly, plaintiffs’ argument on this point fails.

Next, the Committees contend that, at best, the Committees seek these documents so they can conduct law-enforcement activities that the Supreme Court has held are reserved to the other branches. The Court disagrees. The Supreme Court has made clear that the power to investigate [73]should not be confused with any of the powers of law enforcement. Those powers are assigned under our Constitution to the Executive and the Judiciary. *Quinn v. United States*, 349 U.S. 155.

However, the Supreme Court has also made clear that a congressional investigation is not transformed into the invalid exercise of law enforcement authority merely because the investigation might possibly disclose crime or wrongdoing. Citing *McGrain*.

Similarly, the Supreme Court has recognized that while it may be conceded that Congress is without

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authority to compel disclosures for the purpose of aiding the prosecution of pending suits, the authority of Congress, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits. Citing *Sinclair*, 279 U.S. at 295.

The Supreme Court has clearly acknowledged that many powers of government overlap. Thus, in determining whether a congressional investigation has morphed into an impermissible law enforcement investigation, the critical inquiry is whether Congress has exercised an exclusive power of the Judiciary or Executive.

For example, in *Barenblatt v. United States*, the Supreme Court affirmed an individual's conviction for contempt [74]of Congress arising from his refusal to answer questions posited to him by a subcommittee of the House of Representatives. In so holding, the Supreme Court noted that whereas "Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the exclusive province of one of the other branches of the Government."

Similarly, in *Kilbourn*, the Supreme Court limited congressional investigative power to situations where "[1] the investigation which the committee was directed to make was judicial in character; and [2] could only be properly and successfully made by a court of justice; and [3] related to a matter wherein relief or redress could be had only by a judicial proceeding."

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Likewise, in *Tenney v. Brandhove*, the Supreme Court stated that in order “to find that a committee’s investigation has exceeded the bounds of legislative power it must be obvious that there was a usurpation of functions exclusively vested in the Judiciary or the Executive.”

Here, however, it is not obvious that the committees usurped any powers exclusively vested in the Judiciary or the Executive when it issued the challenged subpoenas. There is nothing here to suggest that the sole function of the challenged subpoenas is to amass evidence either to prosecute plaintiffs, civilly or criminally. On the contrary, the [75]committees have provided ample justification establishing clear, legitimate legislative purposes for the information requested in the subpoenas.

Accordingly, contrary to plaintiffs’ protestations, the Court finds that the committees’ investigations and attendant subpoenas do not constitute impermissible law enforcement activities.

Finally, plaintiffs contend that regardless of whether the challenged subpoenas further legitimate legislative purposes, this Court should, nonetheless, enjoin the banks from complying with them because the committees really want to collect and expose the financial documents of the President and his children and grandchildren for the sake of exposure.

In response, the committees contend that plaintiffs’ contention is unsupported by anything other than political rhetoric and press statements, and note that even if plaintiffs had provided some basis to question the

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committees' motives, the Court should not look behind the legitimate legislative purpose of the investigations.

The Court agrees with the committees. The committees' alleged ulterior motives, even if such exist, are insufficient to vitiate their subpoena powers. In their papers, plaintiffs quote *Watkins* for the notion that there is no congressional power to expose for the sake of exposure. That much is true.

Had plaintiffs read further, however, they would [76]realize that the propriety of legislative motives is not a question left to the courts. As the Supreme Court explained in the same paragraph relied upon by plaintiffs: We have no doubt that there is no congressional power to expose for the sake of exposure. The public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose, where the predominant result can only be an invasion of the private rights of individuals.

But a solution to our problem is not to be found in testing the motives of committee members for this purpose. Such is not our function. Their motives alone would not vitiate any investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served.

Put simply, even in the face of investigations in which the predominant result is exposure of an individual's privacy, courts generally lack authority to halt an investigation otherwise supported by a facially legitimate legislative purpose.

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The Supreme Court has repeated this over and over again. See, e.g., *Eastland*, at 508 (“Our cases make clear that in determining the legitimacy of a congressional act, we do not look to the motives alleged to have prompted it.”); *Sonzinsky v. United States*, 300 U.S. 506 (“Inquiry into the hidden [77]motives which may move Congress to exercise a power constitutionally conferred upon it is beyond the competency of courts.”); *Smith v. Kansas City Title & Tr. Co.*, 255 U.S. 180, (“Nothing is better settled by the decisions of this court than that, when Congress acts within the limits of its constitutional authority, it is not the province of the judicial branch of the government to question its motives.”); and *United States v. O’Brien*, 391 U.S. 367, (“It is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive.”).

Of course, it is true that abuses of the investigative process may imperceptibly lead to abridgment of protected freedoms. Citing *Watkins*. But this danger, too, has been addressed thoroughly by the Supreme Court in prior decisions. The Supreme Court has detailed the remedy for all left uncomfortable with the idea of a congressional committee probing through the financial history of an individual on grounds, pretextual, even if technically legal.

In *Barenblatt*, the Supreme Court said: “It is, of course, true that if there be no authority in the judiciary to restrain a lawful exercise of power by another department of the government, where a wrong motive or purpose has impelled to the exertion of the power, that abuses of a power conferred may be temporarily effectual. The

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remedy for this, however, [78]lies not in the abuse by the judicial authority of its functions, but in the people upon whom, after all, under our institutions, reliance must be placed for the correction of abuses committed in the exercise of a lawful power.”

In other words, the correction of abuses committed in the exercise of a lawful power is a matter left to voters, not judges. Moreover, the propriety of making plaintiffs’ finances a subject of the committees’ investigation is a subject on which the scope of the Court’s inquiry is narrow. Citing *Eastland*.

The wisdom of this approach is beyond reproach. As explained by the Supreme Court, inquiries into congressional motives or purposes are a hazardous matter. Citing *O’Brien*, 391 U.S. at 383. And in times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed.

Thus, as the Court stated in *Barenblatt*, 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. Accordingly, the Court finds that the committees’ alleged ulterior motives, assuming they exist, do not vitiate the legitimate legislative purposes supporting the challenged subpoenas.

At bottom, the committees’ power to issue and enforce the subpoenas at issue is well settled. What’s more, it is [79]appropriate to observe that just as the Constitution

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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's exercise of its legitimate powers. Citing *Hutcheson*, 369 U.S. at 622.

Having been satisfied that the committees have exercised their legitimate powers in issuing the challenged subpoenas, the Court concludes that plaintiffs are highly unlikely to succeed on the merits of their constitutional claim, a conclusion that weighs against preliminary injunctive relief.

The Court now turns to whether they have, nonetheless, shown sufficiently serious questions going to the merits of their claim, along with a balance of hardships tipped decidedly in their favor.

To begin, the Court notes that, based on the facts of this particular case, it is uncertain whether plaintiffs may show entitlement to injunctive relief merely by showing serious questions going to the merits.

The Second Circuit has explained that where the moving party seeks to stay government action taken in the public interest pursuant to a statutory or regulatory scheme, the district court should not apply the less rigorous "serious questions" standard and should not grant the injunction unless the moving party establishes, along with irreparable injury, a [80]likelihood that he will succeed on the merits of his claim. Citing *Citigroup*, 598 F.3d at 35.

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This exception reflects the idea that governmental policies implemented through legislation or regulations developed through presumptively reasoned democratic processes are entitled to a higher degree of deference and should not be enjoined lightly.

Here, of course -- let me read ahead -- plaintiffs contend that they have identified several serious questions warranting preservation of the status quo because if the Court accepts the committees' view of the law, then Congress can issue a subpoena on any matter, at any time, for any reason, to any person, and there is basically nothing a federal court can do about it.

But, as previously explained, that is not the case. There are several limits to the Committees' power to investigate in aid of its legislative functions.

Plaintiffs similarly point out that the question whether the RFPA applies to Congress is one that this Court will be the first in the country to decide. But, while that may be true, plaintiffs' statutory argument fails to rise to the level of "serious," as the plain text and structure of the RFPA, along with binding Supreme Court precedent interpreting substantively identical language, strongly undercut their proposed interpretation of the statute.

[81]Finally, plaintiffs urge the Court to go the way of the Court of Appeals in *Eastland* by staying this case pending a decision on the merits. In *Eastland*, the Court of Appeals stayed enforcement of a congressional subpoena directing a bank to produce the financial records

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of an organization. While the ultimate question decided in *Eastland* is the same presented here, that is, whether a congressional subpoena issued to a third party was a product of legitimate legislative activity, a question, by the way, answered in the affirmative by the Supreme Court, the procedural postures differ greatly, warranting a different result here.

Central to the Court of Appeals' decision to grant a stay in *Eastland*, aside from its determination that irreparable harm was likely to befall plaintiffs absent intervention, was its determination that serious constitutional questions were presented by this litigation, which require more time than is presently available for proper consideration. Citing 488 F.2d at 1256.

The challenged subpoena in that case was issued on May 28, 1970, with a return date of June 4. The organization sued to enjoin compliance with the subpoena on June 1. The district court denied the injunction on June 1. Thus, while the record is unclear as to when the organization noted an appeal, at most, the Court of Appeals had two days to review the merits of plaintiff's arguments before the return date was [82]to take effect.

Indeed, the Court of Appeals noted that the decisive element in their decision to stay the case was that, absent a stay, the case would be mooted on the same morning that their decision issued. Consequently, with only, at most, two days to have reviewed plaintiff's application, a stay was a prudent move by the Court of Appeals.

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Here, plaintiffs first filed suit on April 29, 2019. So the Court had the case before it for roughly three weeks, as compared with, at most, two days in *Eastland*; and, while the instant motion remains pending, the committees have agreed not to enforce the subpoenas. So the Court had the benefit of the time necessary to thoroughly consider the merits of plaintiffs' motion. As well, I should note, the thorough opinion of Judge Mehta of the D.C. District Court. Consequently, the Court of Appeals' actions in *Eastland* has little bearing here.

Moreover, the biggest difference between the circumstances before this Court and the Court of appeals in *Eastland* is clear. The Court of Appeals in *Eastland* did not have the benefit of the Supreme Court's opinion in *Eastland*, which reversed the Court of Appeals in an eight-to-one decision, laying out the same framework the Court uses today to resolve this case.

So, while the question at the heart of this case [83]concerning the extent congressional power may have been an open and serious one before, it is not nearly so serious today. Of course, use of congressional subpoena power to receive from a third party a sitting President's financial records will always be serious in that the outcome will have serious political ramifications.

In the context of judicial interpretation, however, the word "serious" relates to a question that is both serious and open to reasonable debate. Otherwise, every complaint challenging the power of one of the three coordinate branches of government would result

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in preliminary relief, regardless of whether established law renders the complaint unmeritorious. Indeed, every litigant that comes before the Court seeks relief that is she considers serious. That cannot be the law.

Whereas, here, a subdivision of Congress acts plainly within its constitutional authority, preliminary injunctive relief will not issue simply because the plaintiff challenges that authority. More is required to demonstrate entitlement to extraordinary and drastic relief in the form of a preliminary injunction.

The Court concludes that plaintiffs have not raised any serious questions going to the merits. As the above analysis makes clear, the Supreme Court has likely foreclosed the path plaintiffs ask this Court to travel. It is well settled that the committees possessed the power to issue [84]and enforce subpoenas of the type challenged by Plaintiffs, and it is also plain, based on standard constructions of statutory interpretation and prior Supreme Court cases, that the RFPA is no hurdle to the committees' efforts to obtain the financial information sought.

Accordingly, the Court finds that the statutory questions in this case are not sufficiently serious in light of the governing law. In any event, as explained below, plaintiffs have failed to demonstrate that the balance of the hardships weighs in their favor. Accordingly, even if the questions were sufficiently serious, injunctive relief remains unwarranted.

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The Court finds that Plaintiffs have also failed to establish that the balance of equities and hardships, along with the public interest, favor a preliminary injunction. These factors merge when the Government is the opposing party. Citing *Nken*, 556 U.S. at 435.

The Court has found that the committees' subpoenas are likely lawful. Thus, delaying what is likely lawful legislative activity is inequitable. With respect to the balance of hardships, plaintiffs compare the irreparable harm that they are likely to suffer with what they maintain is the committees' sole potential hardship, namely, some delay before receiving the documents if the committees activities are deemed lawful.

[85]Plaintiffs maintain that courts have consistently held that such harm is given little weight. But here, the committees have alleged a pressing need for the subpoenaed documents to further their investigation, and it is not the role of the Court or plaintiffs to second guess that need, especially in light of the Court's conclusions that the requested documents are pertinent to what is likely a lawful congressional investigation.

What's more, because the House of Representatives is not a "continuing body," see *Eastland*, 421 U.S. at 512, any delay in the proceedings may result in irreparable harm to the committees. Thus, the Court finds that the balance of hardships and equities do not tip in plaintiffs' favor, much less decidedly in their favor, as the standard in this circuit requires.

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Turning to the public interest, plaintiffs contend that this factor weighs strongly in favor of preserving the status quo because applying the law in a way that violates the Constitution is never in the public's interest and no public interest is advanced by allowing the committees to enforce illegal subpoenas. These rationales, of course, presupposes the subpoenas' illegality.

Here, the Court has already determined that there is a strong likelihood that the committees actions are lawful, and courts have long recognized a clear public interest in [86]maximizing the effectiveness of the investigatory powers of Congress. See e.g. *Exxon Corp. v. F.T.C.*, 589 F.2d 582.

And, in the committees' words, "Plaintiffs' contrary argument ignores the clear and compelling public interest in expeditious and unimpeded Congressional investigations into core aspects of the financial and election systems that touch every member of the public."

The Court agrees and, therefore, finds that the public interest weighs strongly against a preliminary injunction.

As the Supreme Court noted in *Watkins*, "it is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for legislative action. It is their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees, and to testify fully with respect to matters within the province of proper investigation."

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Here, the Court finds that the challenged subpoenas fall within the province of proper congressional investigation. Accordingly, the Court will not enjoin the committees' efforts to enforce the subpoenas.

Finally, Plaintiffs contend that the Court should issue an injunction to preserve the status quo because refusing to do so may otherwise moot their right to appeal, a classic form of irreparable harm.

The Court is unpersuaded. Plaintiffs will have ample [87]time to appeal the Court's decision before it takes effect. The committees have already agreed to suspend enforcement of the subpoenas until seven days following resolution of plaintiffs' motion for preliminary injunction.

Once the Court's decision is entered on the docket, plaintiffs may immediately appeal the decision to the Court of Appeals, pursuant to 28 U.S.C. Section 1292(a) (1). Moreover, plaintiffs are free to ask the Court of Appeals for a stay pending review of this Court's decision, which the Court of Appeals will have discretion to grant, if warranted. Plaintiffs need not reinvent the wheel in applying for a stay, given the substantial overlap between factors justifying a stay and preliminary injunction. See e.g. *Nken v. Holder*, 556 U.S. 418.

Plaintiffs simply can, likely will, and almost certainly must, proffer the same arguments raised here. Indeed, the Court takes judicial notice that plaintiffs filed a notice of appeal the following morning after the D.C. district court ruled against them in that case earlier this week.

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Thus, contrary to plaintiffs' arguments, refusal to issue an injunction here would not moot plaintiffs' right to an appeal.

For the reasons set forth above, plaintiffs' motion for a preliminary injunction is denied. That constitutes the opinion of the Court.

And with that, Mr. Strawbridge, is there anything else

**APPENDIX I — OPINION, UNITED STATES
COURT OF APPEALS FOR THE SECOND
CIRCUIT, DATED DECEMBER 3, 2019**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 19-1540 cv

DONALD J. TRUMP, DONALD J. TRUMP, JR., ERIC
TRUMP, IVANKA TRUMP, DONALD J. TRUMP
REVOCABLE TRUST, TRUMP ORGANIZATION,
INC., TRUMP ORGANIZATION LLC, DJT
HOLDINGS LLC, DJT HOLDINGS MANAGING
MEMBER LLC, TRUMP ACQUISITION LLC,
TRUMP ACQUISITION, CORP.,

Plaintiffs - Appellants,

v.

DEUTSCHE BANK AG, CAPITAL ONE
FINANCIAL CORPORATION,

Defendants - Appellees,

COMMITTEE ON FINANCIAL SERVICES
OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, PERMANENT
SELECT COMMITTEE ON INTELLIGENCE
OF THE UNITED STATES HOUSE OF
REPRESENTATIVES,

Intervenor Defendants - Appellees.

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August 23, 2019, Argued
December 3, 2019, Decided

Before: NEWMAN, HALL, and LIVINGSTON, *Circuit Judges*.

Expedited interlocutory appeal from the May 22, 2019, order of the District Court for the Southern District of New York (Edgardo Ramos, District Judge) denying Plaintiffs-Appellants' motion for a preliminary injunction to prevent the Defendants-Appellees' compliance with subpoenas issued to them by the Intervenor Defendants Appellees and denying Plaintiffs-Appellants' motion for a stay pending appeal.

Affirmed in substantial part and remanded in part. Judge Livingston concurs in part and dissents in part with a separate opinion.

JON O. NEWMAN, Circuit Judge:

This appeal raises an important issue concerning the investigative authority of two committees of the United States House of Representatives and the protection of privacy due the President of the United States suing in his individual, not official, capacity with respect to financial records. The specific issue is the lawfulness of three subpoenas issued by the House Committee on Financial Services and the House Permanent Select Committee on Intelligence (collectively, "Committees" or "Intervenors") to two banks, Deutsche Bank AG and Capital One Financial Corporation ("Capital One") (collectively, "Banks"). The subpoenas issued by each of the Committees to Deutsche

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Bank (“Deutsche Bank Subpoenas”) seek identical records of President Donald J. Trump (“Lead Plaintiff”), members of his family, The Trump Organization, Inc. (“Trump Organization”), and several affiliated entities (collectively, “Plaintiffs” or “Appellants”). The subpoena issued by the Committee on Financial Services to Capital One (“Capital One Subpoena”) seeks records of the Trump Organization and several affiliated entities. The Capital One Subpoena does not list the Lead Plaintiff or members of his family by name, but might seek their records in the event they are a principal, director, shareholder, or officer of any of the listed entities.

The issue of the lawfulness of the three subpoenas arises on an expedited interlocutory appeal from the May 22, 2019, Order of the District Court for the Southern District of New York (Edgardo Ramos, District Judge) (“Order”) denying Plaintiffs’ motion for a preliminary injunction to prevent the Banks’ compliance with the subpoenas and denying Plaintiffs’ motion for a stay pending appeal.

We affirm the Order in substantial part to the extent that it denied a preliminary injunction and order prompt compliance with the subpoenas, except that the case is remanded to a limited extent for implementation of the procedure set forth in this opinion concerning the nondisclosure of sensitive personal information and a limited opportunity for Appellants to object to disclosure of other specific documents within the coverage of those paragraphs of the Deutsche Bank Subpoenas listed in this opinion. We dismiss as moot the appeal from the Order to the extent that it denied a stay pending appeal because

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the Committees agreed not to require compliance with the subpoenas pending the appeal, once the appeal was expedited.

In her partial dissent, Judge Livingston prefers a total remand of the case for “creation of a record that is sufficient more closely to examine the serious questions that the Plaintiffs have raised,” Part Diss. Op. at 10-11, and to “afford the parties an opportunity to negotiate,” *id.* at 11. We discuss at pages 69-72 of this opinion not only why such a remand is not warranted but why it would also run counter to the instruction the Supreme Court has given to courts considering attempts to have the Judicial Branch interfere with a lawful exercise of the congressional authority of the Legislative Branch.

Background

The subpoenas. The case concerns three subpoenas issued by committees of the United States House of Representatives. On April 11 of this year, the Committee on Financial Services and the Permanent Select Committee on Intelligence each issued identical subpoenas to Deutsche Bank, seeking a broad range of financial records of Donald J. Trump, members of his family, and affiliated entities. On the same date, the Committee on Financial Services issued a subpoena of narrower scope to Capital One Financial Corporation.¹ We detail the scope of the subpoenas in Part II(C).

1. The subpoenas issued by the Committee on Financial Services are not dated, but we were informed at oral argument that they were issued on April 11.

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Litigation procedure. On April 29, Donald J. Trump, his three oldest children, the Trump Organization, and six entities affiliated with either the Lead Plaintiff or the Trump Organization² filed a complaint in the District Court seeking a declaratory judgment that the subpoenas are invalid and an injunction “quashing” the subpoenas and enjoining compliance with them.³ On May 3, the Plaintiffs filed a motion for a preliminary injunction,⁴ and the District Court granted the Committees’ joint motion to intervene.⁵ The Plaintiffs and the Committees then agreed to an expedited briefing schedule for the motion for a preliminary injunction.⁶ Deutsche Bank notified the District Court that it took no position on the Plaintiffs’ request for limited expedited discovery,⁷ and Capital One notified the District Court that it took no position on the Plaintiffs’ request for an order requiring the Committees to provide Plaintiffs with copies of the subpoenas.⁸

2. They are Donald J. Trump Revocable Trust, Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member LLC, Trump Acquisition LLC, and Trump Acquisition, Corp.

3. *Trump v. Deutsche Bank*, No. 19-cv-3826 (S.D.N.Y. 2019), Dkt. No. 1 (Apr. 29, 2019).

4. *Id.*, Dkt. No. 26 (May 3, 2019).

5. *Id.*, Dkt. No. 31 (May 3, 2019).

6. *Id.*, Dkt. No. 21 (May 1, 2019).

7. *Id.*, Dkt. No. 38 (May 7, 2019).

8. *Id.*, Dkt. No. 40 (May 7, 2019).

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On May 22, the District Court held a hearing on the Plaintiffs' motion for a preliminary injunction and denied it, reading into the record an extensive opinion.⁹ On May 24, the Plaintiffs filed a notice of an interlocutory appeal. On May 25, the parties submitted a joint motion to stay proceedings in the District Court pending the appeal,¹⁰ which the District Court granted on May 28.¹¹

On May 25, the parties jointly moved in this Court for an expedited appeal,¹² which was granted on May 31.¹³ Thereafter, the Banks informed us that they take no position with respect to the appeal.¹⁴ Nevertheless, we requested counsel for the Banks to attend the oral argument to be available to respond to any questions

9. *Id.*, Dkt. No. 59 (May 22, 2019).

10. *Id.*, Dkt. No. 61 (May 25, 2019).

11. *Id.*, Dkt. No. 62 (May 28, 2019).

12. *Trump v. Deutsche Bank*, No. 19-1540 (2d Cir. 2019), Dkt. No. 5 (May 25, 2019).

13. *Id.*, Dkt. No. 8 (May 31, 2019). In the parties' joint motion to expedite the appeal, the Committees agreed that if the appeal were expedited, they would suspend compliance with the subpoenas during the pendency of the appeal "except to the extent the subpoenas call for the production of documents unrelated to any person or entity affiliated with Plaintiff-Appellants." J. Mot. to Expedite at 2, *id.*, Dkt. No. 5 (May 25, 2019). Granting the motion to expedite the appeal has therefore rendered moot the appeal from the District Court's order to the extent that it denied a stay pending appeal.

14. *Id.*, Dkt. Nos. 66 (July 11, 2019), 71 (July 12, 2019).

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the panel might have.¹⁵ We requested the Committees to provide unredacted copies of the Deutsche Bank subpoenas, which we have received under seal. We also inquired of the United States Solicitor General whether the United States would like to submit its view on the issues raised on this appeal.¹⁶ On August 19, the United States submitted a brief as amicus curiae, urging reversal of the District Court's order denying a preliminary injunction,¹⁷ to which the Committees and Appellants responded on August 21.¹⁸ On August 23, we heard oral argument.

The oral argument precipitated letters from the parties to this Court concerning tax returns sought pursuant to the subpoenas. These letters and subsequent procedural developments are discussed in Part II(B).

Discussion

We emphasize at the outset that the issues raised by this litigation do not concern a dispute between the Legislative and Executive Branches. As to such a dispute, as occurs where the Justice Department, suing on behalf of the United States, seeks an injunction to prevent a third party from responding to a congressional committee's subpoena seeking documents of a department or agency

15. *Id.*, Dkt. No. 81 (July 17, 2019).

16. *Id.*, Dkt. No. 80 (July 17, 2019).

17. *Id.*, Dkt. No. 143 (Aug. 19, 2019).

18. *Id.*, Dkt. Nos. 148, 149 (Aug. 21, 2019).

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of the Executive Branch, *see, e.g., United States v. AT & T*, 567 F.2d 121, 122, 185 U.S. App. D.C. 254 (D.C. Cir. 1977) (“*AT&T II*”), the Judicial Branch proceeds with caution, *see id.* at 123 (seeking to “avoid a resolution that might disturb the balance of power between the two branches”), sometimes encountering issues of justiciability in advance of the merits, *see United States v. AT&T*, 551 F.2d 384, 390, 179 U.S. App. D.C. 198 (D.C. Cir. 1976) (“*AT&T I*”). Although the challenged subpoenas seek financial records of the person who is the President, no documents are sought reflecting any actions taken by Donald J. Trump acting in his official capacity as President. Indeed, the Complaint explicitly states that “President Trump brings this suit solely in his capacity as a private citizen.” Complaint ¶ 13. Appellants underscore this point by declining in this Court to assert as barriers to compliance with the subpoenas any privilege that might be available to the President in his official capacity, such as executive privilege. *See Franchise Tax Board v. Hyatt*, 139 S. Ct. 1485, 1499, 203 L. Ed. 2d 768 (2019) (citing *United States v. Nixon*, 418 U.S. 683, 705-06, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974)). The protection sought is the protection from compelled disclosure alleged to be beyond the constitutional authority of the Committees, a protection that, if validly asserted, would be available to any private individual. *See Barenblatt v. United States*, 360 U.S. 109, 79 S. Ct. 1081, 3 L. Ed. 2d 1115 (1959); *Watkins v. United States*, 354 U.S. 178, 77 S. Ct. 1173, 1 L. Ed. 2d 1273, 76 Ohio Law Abs. 225 (1957). For this reason, in the remainder of this opinion we will refer to President Trump as the “Lead Plaintiff”; the formal title “President Trump” might mislead some to think that his official records are

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sought, and the locution “Mr. Trump,” sometimes used in this litigation, might seem to some disrespectful.

Also at the outset, we note that there is no dispute that Plaintiffs had standing in the District Court to challenge the lawfulness of the Committees’ subpoenas by seeking injunctive relief against the Banks as custodians of the documents. *See United States Servicemen’s Fund v. Eastland*, 488 F.2d 1252, 1260, 159 U.S. App. D.C. 352 (D.C. Cir. 1973) (“[T]he plaintiffs have no alternative means to vindicate their rights.”) (italics omitted), *rev’d on other grounds without questioning plaintiffs’ standing*, 421 U.S. 491, 95 S. Ct. 1813, 44 L. Ed. 2d 324 (1975).

We review denial of a preliminary injunction for abuse of discretion, *see, e.g., Ragbir v. Homan*, 923 F.3d 53, 62 (2d Cir. 2019), but our review is appropriately more exacting where the action sought to be enjoined concerns the President, even though he is suing in his individual, not official, capacity, in view of “[t]he high respect that is owed to the office of the Chief Executive” that “should inform the conduct of [an] entire proceeding,” *Cheney v. United States District Court*, 542 U.S. 367, 385, 124 S. Ct. 2576, 159 L. Ed. 2d 459 (2004) (first brackets in original) (quoting *Clinton v. Jones*, 520 U.S. 681, 707, 117 S. Ct. 1636, 137 L. Ed. 2d 945 (1997)).

I. Preliminary Injunction Standard

In this Circuit, we have repeatedly said that district courts may grant a preliminary injunction where a plaintiff demonstrates irreparable harm and meets either

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of two standards: “(a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation, and a balance of hardships tipping decidedly in the movant’s favor.”¹⁹ *Kelly*

19. The first component of the “serious-questions” standard has sometimes been phrased as requiring a party seeking a preliminary injunction to show “sufficiently serious questions going to the merits of its claims to make them fair ground for litigation.” *Otoe-Missouria Tribe of Indians v. New York State Dept of Financial Services*, 769 F.3d 105, 110 (2d Cir. 2014). That formulation raises the question whether the referent of “them” is “claims” or “serious questions.” Normally, the referent of a pronoun is the word or phrase immediately preceding it. That would mean that a plaintiff’s “claims” must be sufficiently serious to make them a fair ground for litigation. But the *Otoe-Missouria Tribe* formulation could also be read to mean that the “serious questions” must be sufficiently serious to make them a fair ground for litigation.

The origin and evolution of the serious questions standard indicate that what must be sufficiently serious to be a fair ground of litigation are the questions that the plaintiff’s claims raise, not the claims themselves (although the distinction probably makes little, if any, difference in practice). The first version of what has become the first component of the serious-questions standard appears in *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738 (2d Cir. 1953), where we referred to “questions going to the merits so serious, substantial, difficult and doubtful, as to make *them* a fair ground for litigation,” *id.* at 740 (emphasis added). This formulation was repeated verbatim later the same year in *Unicon Management Corp. v. Koppers Co.*, 366 F.2d 199, 205 (2d Cir. 1966), and *Dino Delaurentiis Cinematografica, S. P. A. v. D-150, Inc.*, 366 F.2d 373, 376 (2d Cir. 1966). This formulation was substantially repeated three years later in *Checker Motors Corp. v. Chrysler Corp.*, 405 F.2d 319 (2d Cir. 1969), but with omission of the word “doubtful,” *id.* at 323. Three years later, in *Stark v. New York Stock Exchange*, 466 F.2d 743 (2d Cir. 1972), we shortened the formulation to just “serious questions

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going to the merits.” *Id.* at 744. The following year, in *Gulf & Western Industries, Inc. v. Great Atlantic & Pacific Tea Co.*, 476 F.2d 687 (2d Cir. 1973), we expanded that short version to “serious questions going to the merits which warrant further investigation for trial.” *Id.* at 692. Later that year, in *Sonesta International Hotels Corp. v. Wellington Associates*, 483 F.2d 247 (2d Cir. 1973), there first appeared the current version of the formulation, “sufficiently serious questions going to the merits to make *them* a fair ground for litigation.” *Id.* at 250 (emphasis added). This formulation was repeated verbatim in a series of cases. See *Triebwasser & Katz v. American Telephone & Telegraph Co.*, 535 F.2d 1356, 1358 (2d Cir. 1976); *New York v. Nuclear Regulatory Commission*, 550 F.2d 745, 750 (2d Cir. 1977); *Selchow & Righter Co. v. McGraw-Hill Book Co.*, 580 F.2d 25, 27 (2d Cir. 1978); *Caulfield v. Board of Education*, 583 F.2d 605, 610 (2d Cir. 1978); *Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc.*, 596 F.2d 70, 72 (2d Cir. 1979); see also William H. Mulligan, *Foreword—Preliminary Injunction in the Second Circuit*, 43 Brook. L. Rev. 831 (primarily considering requirement of irreparable injury).

Thereafter, this Court and district courts in this Circuit cited *Jackson Dairy* and its formulation of the serious questions standard innumerable times, as the citing references collected by Westlaw indicate, until in *Plaza Health Laboratories, Inc. v. Perales*, 878 F.2d 577 (2d Cir. 1989), the formulation was rephrased to “sufficiently serious questions going to the merits of its claims to make them fair ground for litigation.” *Id.* at 580. *Plaza Health Laboratories* added the phrase “of its claims,” thereby creating the grammatical query considered in this footnote. *Plaza Health Laboratories* cited only *Sperry International Trade, Inc. v. Government of Israel*, 670 F.2d 8 (2d Cir. 1982), and *Jackson Dairy*, but both of those opinions had used the traditional formulation without the phrase “of its claims.” See *Sperry International Trade*, 670 F. 2d at 10; *Jackson Dairy*, 596 F.2d at 71. A Westlaw search reveals that the *Plaza Health Laboratories* formulation has been used by this Court just fifteen times, and the *Jackson Dairy* formulation has been used 226 times.

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v. Honeywell International, Inc., 933 F.3d 173, 184 (2d Cir. 2019) (quotation marks deleted); *Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc.*, 596 F.2d 70, 72 (2d Cir. 1979). The Committees contend that the likelihood-of-success standard applies; Appellants contend that the serious-questions standard applies.²⁰

In view of the evolution of, and this Court’s clear preference for, the *Jackson Dairy* formulation, we will use it in this opinion, thereby avoiding the grammatical query posed by the *Plaza Health Laboratories* formulation. We will also use the article “a” before “fair ground for litigation,” which *Plaza Health Laboratories* and some of the opinions citing it omitted, but which is always included in the opinions using the *Jackson Dairy* formulation.

20. In their reply brief, Appellants contend that “the Committees conceded [in the District Court] that the serious-questions standard applies.” Reply Br. for Appellants at 2. They cite footnote 28 of the Committees’ memorandum in opposition to the motion for a preliminary injunction. We normally do not consider an issue raised for the first time in a reply brief. See *McBride v. BIC Consumer Products Manufacturing Co.*, 583 F.3d 92, 96 (2d Cir. 2009). In any event, Appellants’ claim is without merit.

The Committees’ footnote states, “To the extent there is any meaningful distinction between the *Winter [v. Natural Resources Defense Council, Inc.]*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008)] standard and the ‘serious questions’ formulation, that has also been used by the Second Circuit in post-*Winter* cases, see *Citigroup Global Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 36-38 (2d Cir. 2010), this Court need not consider that nuance here because Mr. Trump has failed to meet the heavy burden required under either standard.” Dist. Ct. Dkt. No. 51, at 10 n.28 (citation omitted) (May 10, 2019). Stating that the Lead Plaintiff had not met either the likelihood-of-success standard or the serious questions standard is not a concession that the lesser standard applies. Moreover, in the sentence of text to which the footnote is appended, the Committees explicitly contend

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With respect to irreparable harm, a factor required under either standard, Appellants contend that compliance with the subpoenas will cause them such harm. In the District Court, the Committees took the position that whether compliance would cause Appellants irreparable harm would depend on whether the Committees would make public the documents obtained.²¹ The District Court ruled that compliance would cause irreparable harm because “plaintiffs have an interest in keeping their records private from everyone, including congresspersons,” and “the committees have not committed one way or the other to keeping plaintiffs’ records confidential from the public once received.” J. App’x 122-23. We agree.

The issue therefore becomes whether Appellants seeking a preliminary injunction had to meet (1) the more rigorous standard of a likelihood of success on the merits or (2) the less rigorous standard of sufficiently serious questions going to the merits to make them a fair ground for litigation plus a balance of hardships tipping decidedly in their favor.²²

that the higher standard applies, stating that to obtain a preliminary injunction “a plaintiff ‘must establish that he is likely to succeed on the merits.’” *Id.* at 10 (quoting *New York Progress & Protection PAC v. Walsh*, 733 F.3d 483, 486 (2d Cir. 2003)).

21. Counsel for the Committees said to the District Court, “[J]ust because documents are turned over to Congress, that itself is not irreparable injury. The question is if Congress was going to disclose them. So just turning it over to Congress is not irreparable injury.” J. App’x 111.

22. One opinion of this Court noted that “[b]ecause the moving party must not only show that there are ‘serious questions’ going to the merits, but must additionally establish that ‘the balance of

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With slightly different formulations, we have repeatedly stated that the serious-questions standard cannot be used to preliminarily enjoin governmental action. See *Plaza Health Laboratories, Inc. v. Perales*, 878 F.2d 577, 580 (2d Cir. 1989) (applying more rigorous likelihood-of-success standard in affirming denial of preliminary injunction against “governmental action taken in the public interest pursuant to a statutory or regulatory scheme”); *Union Carbide Agricultural Products Co. v. Costle*, 632 F.2d 1014, 1018 (2d Cir. 1980) (same, with respect to “governmental action that is in the public interest”); *Medical Society of State of New York v. Toia*, 560 F.2d 535, 538 (2d Cir. 1977) (same, where “interim relief [enjoining governmental action] may adversely affect the public interest”); see also *Able v. United States*, 44 F.3d 128, 131 (2d Cir. 1995) (“As long as the action to be enjoined is taken pursuant to a statutory or regulatory scheme, even government action with respect to one litigant requires application of the ‘likelihood of success’ standard.”).

hardships tips *decidedly* in its favor, its overall burden is no lighter than the one it bears under the ‘likelihood of success’ standard.” *Citigroup Global Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010) (citation omitted) (emphasis in original). Although that might have been the situation on the facts of that case, there can be no doubt, as we have repeatedly said, that the likelihood-of-success standard is more rigorous than the serious-questions standard. See, e.g., *Central Rabbinical Congress of U.S. & Canada v. New York City Dep’t of Health & Mental Hygiene*, 763 F.3d 183, 192 (2d Cir. 2014) (likelihood-of-success standard “more rigorous”); *Red Earth LLC v. United States*, 657 F.3d 138, 143 (2d Cir. 2011) (same); *Metropolitan Taxicab Board of Trade v. City of New York*, 615 F.3d 152, 156 (2d Cir. 2010) (same); *County of Nassau v. Leavitt*, 524 F.3d 408, 414 (2d Cir. 2008) (same).

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Nevertheless, in two decisions, we have affirmed preliminary injunctions against government action issued using the less rigorous serious-questions standard. See *Haitian Centers Council, Inc. v. McNary*, 969 F.2d 1326, 1342 (2d Cir. 1992) (officials of the Immigration and Naturalization Service enjoined), *judgment vacated as moot sub nom. Sale v. Haitian Centers Council, Inc.*, 509 U.S. 918, 113 S. Ct. 3028, 125 L. Ed. 2d 716 (1993); *Mitchell v. Cuomo*, 748 F.2d 804, 806-08 (2d Cir. 1984) (state prison officials enjoined). We have sometimes affirmed decisions that issued or denied preliminary injunctions against government action using both standards. See *Hudson River Sloop Clearwater, Inc. v. Dep't of Navy*, 836 F.2d 760, 763 (2d Cir. 1988) (preliminary injunction denied under both standards); *Patton v. Dole*, 806 F.2d 24, 28-30 (2d Cir. 1986) (preliminary injunction granted under both standards); *Patchogue Nursing Center v. Bowen*, 797 F.2d 1137, 1141-42 (2d Cir. 1986) (preliminary injunction denied under both standards).

Haitian Centers noted that “the ‘likelihood of success’ prong need not *always* be followed merely because a movant seeks to enjoin government action.” 969 F.2d at 1339 (emphasis added). Then, building on the statement in *Plaza Health Laboratories* that the less rigorous standard may not be used to enjoin “governmental action *taken in the public interest* pursuant to a statutory or regulatory scheme,” 878 F.2d at 580 (emphasis added), *Haitian Centers* noted that “no party has an exclusive claim on the public interest,” 969 F.2d at 1339. That point influenced our later decision in *Time Warner Cable of New York City L.P. v. Bloomberg L.P.*, 118 F.3d 917 (2d Cir. 1997),

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where, noting that “there are public interest concerns on both sides” of the litigation, *id.* at 923, we said that the serious questions standard “would be applicable,” *id.* at 924, even though we ultimately decided the case under the likelihood of success standard, *see id.*

In *Able*, we noted that the government action exception to the use of the serious-questions standard “reflects the idea that governmental policies implemented through legislation or regulations developed through presumptively reasoned democratic processes are entitled to a higher degree of deference and should not be enjoined lightly,” 44 F.3d at 131, and that the likelihood-of-success standard was appropriate in that case “where the full play of the democratic process involving both the legislative and executive branches has produced a policy in the name of the public interest embodied in a statute and implementing regulations,” *id.* We also pointed out that *Haitian Centers* had approved use of the serious-questions standard to challenge action taken pursuant to a “policy formulated solely by the executive branch.” *Id.* Based on these statements, Appellants contend that only the serious-questions standard applies to challenge any action “taken pursuant to a policy formulated by one branch.” Reply Br. for Appellants at 3 (quotation marks and brackets omitted).

We think that argument fails by endeavoring to make a requirement out of the sentences we have quoted from *Able*. The fact that legislation developed by both branches of the federal government is entitled to a higher degree of deference does not mean that *only* such action is entitled

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to the deference reflected in the likelihood of success standard. The Supreme Court has said that a high degree of deference should be accorded to actions taken solely by Congress, *see United States v. Rumely*, 345 U.S. 41, 46, 73 S. Ct. 543, 97 L. Ed. 770 (1953) (admonishing courts to “tread warily” “[w]henver constitutional limits upon the investigative power of Congress have to be drawn”), and we have often approved application of the more rigorous likelihood-of-success standard to enjoin action taken by units of government with far less authority than the combined force of the national Legislative and Executive Branches. For example, we have ruled that the more rigorous likelihood-of-success standard was applicable when a preliminary injunction was sought to prohibit a municipal agency from enforcing a regulation, *see Central Rabbinical Congress of U.S. and Canada v. New York City Dep’t of Health & Mental Hygiene*, 763 F.3d 183, 192 (2d Cir. 2014); to prohibit New York City’s Taxi & Limousine Commission from enforcing changes to lease rates, *Metropolitan Taxicab Board of Trade v. City of New York*, 615 F.3d 152, 156 (2d Cir. 2010); to require one branch of a state legislature to undo its expulsion of a state senator, *see Monserrate v. New York State Senate*, 599 F.3d 148, 154 (2d Cir. 2010); to prohibit a town from hiring police officers and firefighters, *see NAACP v. Town of East Haven*, 70 F.3d 219, 223 (2d Cir. 1995); to prohibit the Metropolitan Transit Authority from implementing a staff reduction plan, *see Molloy v. Metropolitan Transportation Authority*, 94 F.3d 808, 811 (2d Cir. 1996); to prohibit the New York City Transit Authority from increasing subway and bus fares, *see New York Urban League, Inc. v. State of New York*, 71 F.3d 1031, 1036 n.7

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(2d Cir. 1995); to prohibit New York State’s Department of Social Services from suspending a health-care services provider from participating in the State’s medical assistance program, *see Plaza Health Laboratories*, 878 F.2d at 580, and to prohibit two commissioners of New York state agencies from enforcing provisions of state law, *see Medical Society*, 560 F.2d at 538.

In dissent, Judge Livingston questions the significance of decisions such as these on two grounds. First, she suggests that some of them lacked sufficient analysis. *See* Part. Diss. Op. at 44. However, with exceptions not relevant here, panels of this Court are bound by the holdings of prior panels, *see, e.g., Lotes Co. v. Hon Hai Precision Industry Co.*, 753 F.3d 395, 405 (2d Cir. 2014); *Gelman v. Ashcroft*, 372 F.3d 495, 499 (2d Cir. 2004), and those holdings are not to be disregarded by any claimed insufficiency of an opinion’s analysis. Second, she suggests that we might have used the more rigorous likelihood-of-success standard in these cases because of federalism concerns. *See* Part. Diss. Op. at 45, n.28. However, none of the eight decisions even hints that federalism concerns influenced the use of the likelihood-of-success standard.

We have not previously had occasion to consider whether enforcement of a congressional committee’s subpoena qualifies as, or is sufficiently analogous to, “governmental action taken in the public interest pursuant to a statutory or regulatory scheme,” *Plaza Health Laboratories*, 878 F.2d at 580, so as to preclude application of the less rigorous serious questions standard. Facing that issue, we conclude that those seeking to preliminarily enjoin compliance with subpoenas issued by

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congressional committees exercising, as we conclude in Part II(C), their constitutional and duly authorized power to subpoena documents in aid of both regulatory oversight and consideration of potential legislation must satisfy the more rigorous likelihood-of-success standard. Surely such committees should not be enjoined from accomplishing their tasks under a less rigorous standard than we applied to plaintiffs seeking to preliminarily enjoin state and local units of government in *Central Rabbinical Congress*, *Metropolitan Taxicab Board of Trade*, *Monserate*, *Town of East Haven*, *Molloy*, *New York Urban League*, *Plaza Health Medical Society*, discussed above. None of those cases involved implementation of a policy developed through presumptively reasoned democratic processes and resulting from the full play of the democratic process involving both the legislative and executive branches, which were the elements present in *Able*, 44 F.3d at 131. Yet in all eight cases, we applied the likelihood of success standard. Indeed, in *Monserate* we applied the more rigorous standard to a plaintiff seeking to preliminarily enjoin action taken by just one body of a state legislature. We will therefore apply the likelihood-of-success standard to Appellants' motion for a preliminary injunction in this case.

Before leaving the issue of the applicable preliminary injunction standard, we should reckon with the preliminary injunction standard formulated in 2008 by the Supreme Court in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008): "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary

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relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Id.* at 20. This formulation incorporates both the irreparable injury requirement and the likelihood-of-success requirement from the more rigorous standard we have been using, includes from our less rigorous serious-questions standard a balance of equities (similar to hardships) that tips in favor of the plaintiff (although not including the requirement of sufficiently serious questions going to the merits to make them a fair ground for litigation nor the requirement that the balance of hardships tips *decidedly* in the plaintiff’s favor), and adds as a fourth requirement that the injunction is in the public interest.

It is not clear whether the Supreme Court intended courts to require these four components of the *Winter* standard in all preliminary injunction cases. *Winter* concerned military operations affecting the national security, testing for submarine detection, and two of the three cases cited to support the *Winter* formulation also concerned national security issues, *Munaf v. Geren*, 553 U.S. 674, 128 S. Ct. 2207, 171 L. Ed. 2d 1 (2008) (transferring U.S. military prisoners in a foreign country to that country’s government), and *Weinberger v. Romero Barcelo*, 456 U.S. 305, 102 S. Ct. 1798, 72 L. Ed. 2d 91 (1982) (training the Navy’s bomber pilots). The third case, *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 107 S. Ct. 1396, 94 L. Ed. 2d 542 (1987), concerned a matter unrelated to national security—drilling for oil and natural gas.²³

23. Uncertainty as to use of the *Winter* formulation for all preliminary injunctions remained after the Supreme Court’s decision

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In any event, two years after the Supreme Court’s decision in *Winter*, our Court explained why we did not believe that the Supreme Court had precluded our use of the two preliminary injunction standards that we had used for five decades. *See Citigroup Global Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35-38 (2d Cir. 2010). However, *Citigroup* shed no light on which of those standards was applicable to plaintiffs seeking to preliminarily enjoin governmental action. That case involved a motion by a brokerage firm to preliminarily enjoin a hedge fund from pursuing an arbitration. *See id.* at 32.

the next year in *Nken v. Holder*, 556 U.S. 418, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009). In language similar to that used in *Winter*, the Court identified the four factors applicable to the grant of a stay pending appeal—“(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Id.* at 434 (quotation marks omitted). The Court then stated that “[t]here is substantial overlap between these [four factors] and the factors governing preliminary injunctions,” although the two are not “one and the same.” *Id.*

In *Winter*, the first factor did not include the words “strong showing,” 555 U.S. at 20; the second factor used the word “likely” to modify “suffer irreparable harm, *id.*”; the third factor was “the balance of equities tips in [the plaintiff’s] favor,” *id.*; and the fourth factor was that an injunction “is in the public interest,” *id.* Unlike *Winter*, which had set out four factors that an applicant for a preliminary injunction “must establish,” *id.*, *Nken* said that the applicable legal principles “have been distilled into *consideration* of four factors.” 556 U.S. at 434 (emphasis added).

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Although we have concluded that the likelihood-of-success standard applies in this case and have determined that Appellants have established irreparable injury, a requirement common to both of our preliminary injunction standards and the Supreme Court’s *Winter* formulation, we will proceed to consider not only whether Appellants have met the governing likelihood-of-success standard but also whether they have satisfied the other requirements in one or more of these three standards: sufficiently serious questions going to the merits of their claims to make them fair ground for litigation, a balance of hardships tipping decidedly in their favor, and the public interest favoring an injunction. We turn first to the merits of their statutory and constitutional claims in order to determine what we regard as the critical issue: likelihood of success.

II. Likelihood of Success**A. Statutory Claim—RFPA**

Appellants contend that the subpoenas are invalid for failure of the Committees to comply with the Right to Financial Privacy Act (“RFPA” or “Act”), 12 U.S.C. §§ 3401-3423. RFPA prohibits a financial institution’s disclosure of a customer’s financial records to “any Government authority” except in accordance with the Act’s procedural requirements. § 3403(a). The Committees acknowledge noncompliance with those requirements, but contend that RFPA does not apply to them because they are not a “Government authority” within the meaning of section 3403(a). Because the Act defines “Government authority” to mean “any agency or department of the

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United States, or any officer, employee, or agent thereof,” § 3401(3), the precise statutory issue is whether Congress or one of its committees is an “agency or department of the United States.”

We begin with the plain meaning of “agency or department” at the time RFPA was enacted in 1978. Appellants do not argue that “agency” could possibly refer to Congress; the sole dispute is over the word “department.” Appellants contend that “department” is used in RFPA to mean any of the three branches of government. The Committees, on the other hand, contend that the word is used to mean some component of the Executive Branch.

Contemporary dictionaries support the Committees’ interpretation. *See* Webster’s Third New International Dictionary (1971) (defining “department” as “an *administrative* division or branch of a national or municipal government”) (emphasis added); Black’s Law Dictionary (5th ed. 1979) (defining “department” as “[o]ne of the major *administrative* divisions of the executive branch of the government usually headed by an officer of cabinet rank; *e.g.*, Department of State”) (emphasis added).

Moreover, other contextual clues in RFPA indicate that neither Congress nor its committees are an “agency or department of the United States” within the meaning of RFPA, and therefore Congress did not subject itself or its committees to the Act. Section 3408 permits a “Government authority” to request financial records

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“pursuant to a formal written request only if . . . the request is authorized by regulations promulgated by the head of the agency or department.” § 3408(2). Congress does not promulgate regulations, and its leadership and that of its committees are not considered the “head” of an “agency or department.” The Supreme Court has stated that “[t]he term ‘head of a Department’ means . . . the Secretary in charge of a great division of the [E]xecutive [B]ranch of the government, like the State, Treasury, and War, who is a member of the Cabinet.” *Burnap v. United States*, 252 U.S. 512, 515, 40 S. Ct. 374, 64 L. Ed. 692, 55 Ct. Cl. 516 (1920); *accord Freytag v. Commissioner of Internal Revenue*, 501 U.S. 868, 886, 111 S. Ct. 2631, 115 L. Ed. 2d 764 (1991).

The several mechanisms for obtaining financial records all require that the records sought are “relevant to a legitimate law enforcement inquiry,”²⁴ § 3405(1) (administrative summons or subpoena), § 3407(1) (judicial subpoena), § 3408(3) (formal written request), but, as Appellants correctly point out and the Committees agree, Congress cannot exercise “any of the powers of law enforcement” because “those powers are assigned under our Constitution to the Executive and the Judiciary,” *Quinn v. United States*, 349 U.S. 155, 161, 75 S. Ct. 668, 99 L. Ed. 964 (1955).

24. RFPFA defines “law enforcement inquiry” as “a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.” 12 U.S.C. § 3401(8).

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RFPA directs the Office of Personnel Management (“OPM”) to determine whether “disciplinary action is warranted against [an] agent or employee” of “any agency or department” found to have willfully violated the Act. § 3417(b). However, OPM is “the lead personnel agency for civilian employees in the [E]xecutive [B]ranch.” *United States Dep’t of Air Force v. Federal Labor Relations Authority*, 952 F.2d 446, 448, 293 U.S. App. D.C. 90 (D.C. Cir. 1991). It is highly unlikely that Congress would have directed OPM to take disciplinary action against congressional staff.

RFPA provides civil penalties, including punitive damages, for any “agency or department” that violates the Act’s requirements. § 3417(a). It is also highly unlikely that Congress would have subjected itself to such penalties, especially in the absence of a clear indication of an intent to do so.

Although no one of these provisions alone conclusively establishes that RFPA does not apply to Congress, in the aggregate they provide persuasive textual support for that reading of the Act. This conclusion is strongly reinforced by the Act’s legislative history. A draft bill submitted by the Departments of Justice and the Treasury would have explicitly covered access to financial records by Congress, and distinguished Congress from “any agency or department of the United States.”²⁵

25. *Electronic Funds Transfer & Financial Privacy: Hearings on S. 2096, S. 2293, & S. 1460 Before the Subcomm. on Financial Institutions of the S. Comm. on Banking, Housing, & Urban Affairs*, 95th Cong. 397 (1978) (hereinafter “*Hearings*”).

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Hearings includes a draft bill, dated May 17, 1978, and referred to as “Title XI—Right to Financial Privacy,” which is identified by a note stating, “This Draft represents the combined views of the Departments of Justice and the Treasury, subject to further revision.” *Hearings* at 397 n.*. The definition section of that bill provides:

“[G]overnment authority’ means *the Congress of the United States*, or any agency or department of the United States or of a State or political subdivision, or any officer, employee or agent of any of the foregoing.”

Hearings at 397 (emphasis added) (explaining definitional provision, § 1101(3)). This provision not only explicitly made the bill applicable to Congress, but it also reflected the view of Justice and the Treasury that “agency or department of the United States” did not include Congress.

Hearings also contains a section by section analysis of the Justice Treasury draft bill submitted on May 17, 1978. *See Hearings* at 365 & n.*. That analysis includes the following explanation of the coverage of the draft bill:

“The ‘government authorities’ whose actions are restricted by the bill include any agency or department of the United States or any State or political subdivision, or any of their officers, employees, or agents. *The Congress is also covered*, since it may use financial records in its investigations to which the same privacy rights should adhere.”

Hearings at 366 (emphasis added) (explaining definitional provision).

As explained by then Deputy Attorney General Benjamin R. Civiletti, “[O]ur proposal would extend these important procedures and privacy rights to cover investigations by the Legislative as well as the Executive Branch.” *Hearings* at 189, 194.

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The rejection of this provision of the Justice Treasury proposal by omitting Congress from the enacted definition of “government authority” is strong evidence of a deliberate decision by Congress not to apply the Act to itself. Although the failure of Congress to enact is often an unreliable indication of congressional intent, *see Brecht v. Abrahamson*, 507 U.S. 619, 632, 113 S. Ct. 1710, 123 L. Ed. 2d 353 (1993) (“As a general matter, we are reluctant to draw inferences from Congress’ failure to act.”) (quotation marks omitted), the omission of pertinent language from a bill being considered by Congress is far more probative of such intent, especially when the omission is from a draft bill submitted by the Department of Justice, a principal source of proposed legislation.

Appellants present two arguments that Congress and its committees are covered by RFPA’s definitional

Hearings also includes an analysis prepared by the Congressional Research Service of the Library of Congress, comparing what is called “Draft Proposed by Justice Dept.” with S. 14 and S. 2096. *Hearings* at 161. That analysis points out that the scope of the Justice Department draft protects financial records from unauthorized access “by Congress, Federal or State agents and agencies,” whereas S. 14 and S. 2096 protect such records from unauthorized access “by Federal agents or agencies.” *Id.*

The draft Justice-Treasury bill, along with its section-by-section analysis, are also in the record of a hearing held by a House of Representatives subcommittee the following week, where Civiletti gave similar testimony. *See Right to Privacy Proposals of the Privacy Protection Study Commission: Hearings on H.R. 10076 Before the Subcomm. on Government Information & Individual Rights of the H. Comm. on Government Operations*, 95th Cong. 256, 274 (1978).

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phrase “agency or department.” First, they point out that in 1955 the Supreme Court ruled a false statement made by a former member of Congress to the Disbursing Office of the House of Representatives was a violation of 18 U.S.C. § 1001 because “department,” as used in section 1001, “was meant to describe the executive, *legislative* and judicial branches of the Government.” *United States v. Bramblett*, 348 U.S. 503, 509, 75 S. Ct. 504, 99 L. Ed. 594 (1955) (emphasis added).

The Committees respond that an interpretation of “department” in section 1001 is not an authoritative basis for interpreting “department” in RFPA and that the Supreme Court overruled *Bramblett* in *Hubbard v. United States*, 514 U.S. 695, 715, 115 S. Ct. 1754, 131 L. Ed. 2d 779 (1995), after characterizing its reading of “department” as “seriously flawed,” *id.* at 702. To this latter point, Appellants point out that courts “assume that Congress is aware of existing law when it passes legislation,” *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32, 111 S. Ct. 317, 112 L. Ed. 2d 275 (1990), and “was aware of . . . the judicial background against which it was legislating,” *DeKalb County Pension Fund v. Transocean Ltd.*, 817 F.3d 393, 409-10 (2d Cir. 2016) (“*DeKalb*”) (brackets and quotation marks omitted), and that the Congress that enacted RFPA in 1978 is assumed to be aware of *Bramblett* and obviously did not legislate in light of *Hubbard*, decided in 1995.

We acknowledge the assumption that Congress legislates with awareness of “existing law,” *Miles*, 498 U.S. at 32, and the relevant “judicial background,” *DeKalb*, 817 F.3d at 409. The validity of that assumption, however,

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depends in large part on the context in which it is invoked. *Miles* applied the assumption interpreting the damages provision of the Jones Act, 46 U.S.C. app. § 688. Noting that the Jones Act incorporated the recovery provisions of the older Federal Employers' Liability Act ("FELA"), the Supreme Court was willing to assume that Congress likely intended to adopt for the Jones Act the judicial gloss that the Court had placed on the damages provision of FELA, limiting it to pecuniary loss. *See Miles*, 498 U.S. at 32. "When Congress passed the Jones Act, the [Court's] gloss on FELA, and the hoary tradition behind it, were well established. Incorporating FELA unaltered into the Jones Act, Congress must have intended to incorporate the pecuniary limitation on damages as well." *Id.*

DeKalb applied the assumption more elaborately in determining which statute of repose applied to a suit under section 14(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78n(a). We had previously applied a three year limitations period in *Ceres Partners v. GEL Associates*, 918 F.2d 349 (2d Cir. 1990). Thereafter, Congress enacted the Sarbanes Oxley Act of 2002, extending to five years the limitations period for some implied private causes of action, but not the sort of action implied by section 14(a). *See DeKalb*, 817 F.3d at 398. We concluded:

Congress must have known that, by extending only the statute of repose applicable to private rights of action that involve a claim of fraud, deceit, manipulation, or contrivance, the statutes of repose applicable to Section 14(a) would remain intact. And from this knowledge,

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we conclude that Congress affirmatively intended to preserve them. We therefore hold that the same three-year statutes of repose that we applied to Section 14 in *Ceres* . . . still apply to Section 14(a) today.

Id. at 409-10 (quotation marks, brackets, and footnotes omitted).

We encounter no circumstances comparable to *Miles* or *DeKalb* in the pending appeal. Whatever force might be given to the assumption that Congress enacted RFPA with awareness of *Bramblett* is thoroughly undermined by the clear indicators to the contrary from the text and legislative history we have recounted.²⁶

The second argument of Appellants reminds us that in an earlier time, the word “department” was famously used to refer to what is now called a “branch” of the federal government. “It is emphatically the province and duty of the judicial department to say what the law is.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803) (Little, Brown & Co. 1855);²⁷ *see also* James

26. Even if Congress had *Bramblett* in mind, that decision based its interpretation of “department” on the “development, scope and purpose of” the statute at issue in that case. 348 U.S. at 509. RFPA does not share any of the same historical development as section 1001, and because the Court’s decision was not based on the text of that section, there is no reason to think that Congress, when enacting RFPA, believed that *Bramblett*’s interpretation would extend to other uses of the word “department.”

27. I include the publisher in citations to decisions in the nominative reports because of slight variations among the versions

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Madison, Speech in the First Congress (June 17, 1789), in 5 *The Writings of James Madison* 395, 398 (Gaillard Hunt ed., 1904) (referring to the “three great departments of Government”). *Hubbard*, although not known to the Congress enacting RFPA, provides important guidance for us when the Supreme Court states that “while we have occasionally spoken of the three branches of our Government, including the Judiciary, as ‘departments,’” *Hubbard*, 514 U.S. at 699 (brackets omitted) (citing *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475, 500, 18 L. Ed. 437 (1867)), “that locution is not an ordinary one. Far more common is the use of ‘department’ to refer to a component of the Executive Branch,” *id.*

Considering all of the parties’ arguments,²⁸ we conclude that RFPA does not apply to Congress.

of 19th century publishers. See Jon O. Newman, *Citators Beware: Stylistic Variations in Different Publishers’ Versions of Early Supreme Court Opinions*, 26 J. Sup. Ct. Hist. 1 (2001).

28. Each side makes opposing arguments based on section 3412(d) of RFPA, which provides: “Nothing in this chapter shall authorize the withholding of information by any officer or employee of a supervisory agency [defined at section 3401(7)] from a duly authorized committee or subcommittee of the Congress.” Appellants contend that “[i]f congressional subpoenas were never intended to come within the statute’s scope, there would be no reason to include this provision.” Br. for Appellants at 42. The Committees respond that this provision concerns transfers of documents pursuant to section 3412(a), that it makes clear that the requirements applicable when an agency or department obtains documents from a financial institution also apply to transfers to another agency or department, and that “Congress emphasized, however, that these transfer provisions—like RFPA’s other requirements—did not apply to Congress.” Br. for Committees at 53.

*Appendix I***B. Statutory Claim—26 U.S.C. § 6103**

The request for tax returns of named individuals and entities in the Deutsche Bank Subpoenas encounters a possible statutory claim under 26 U.S.C. § 6103. *See* Deutsche Bank Subpoenas ¶ 1(vi)(e)(7), J. App’x 39. Because of that request and because the parties had not said anything about tax returns in their briefs, we asked the Banks at oral argument whether they had in their possession tax returns within the coverage of the subpoenas. The Banks offered reasons why they could not then respond to the question.

On August 26, we ordered the Banks to inform the Court whether either one has in its possession any tax returns of the individuals or entities named in paragraph

Each side also makes opposing arguments based on section 3413(j) of RFPFA, which provides: “This chapter shall not apply when financial records are sought by the Government Accountability Office [‘GAO’] pursuant to an authorized proceeding, investigation, examination or audit directed at a government authority.” Appellants contend that, because GAO is within the Legislative Branch, “if . . . RFPFA is limited to the [E]xecutive [B]ranch, then there was no need to provide any exemption for the GAO.” Br. for Appellants at 43. The Committees respond that this provision “differentiates GAO from ‘a government authority’ and thus supports the opposite conclusion: GAO may obtain financial records in its proceedings or investigations that are ‘*directed at a government authority.*’” Br. for Committees at 53 n.24 (emphasis in original).

We deem none of these arguments persuasive, especially in light of the textual and legislative history support for our conclusion, explained above, that RFPFA does not apply to Congress.

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1 of the subpoenas received from the Committees.²⁹ On August 27, Deutsche Bank submitted a redacted letter stating that it has in its possession some tax returns responsive to the subpoenas, with the names of the taxpayers redacted,³⁰ and submitted under seal an unredacted letter identifying the taxpayers.³¹ On the same day, Capital One submitted a letter stating that it did not possess any tax returns responsive to the subpoena it received.³²

Deutsche Bank's filing of an unredacted letter under seal precipitated motions by various news organizations for leave to intervene and to seek unsealing of the unredacted letter.³³ On Sept. 18, we ordered the parties to respond to those motions.³⁴ On Sept. 27, the parties filed

29. No. 19-1540, Dkt. No. 156 (Aug. 26, 2019). On August 27, we entered an Order informing the Banks that if they filed an unredacted letter under seal, a redacted version of the letter served on the Committees should be served on Appellants and filed on the public docket. *Id.*, Dkt. No. 157 (Aug. 27, 2019).

30. *Id.*, Dkt. No. 161 (Aug. 27, 2019).

31. *See* Letter from Raphael A. Prober, counsel for Deutsche Bank, to Clerk of Court, Second Circuit Court of Appeals, No. 19-1540, Dkt. No. 160 (Aug. 27, 2019).

32. *See* Letter from James A. Murphy, counsel for Capital One, to Clerk of Court, Second Circuit Court of Appeals, No. 19-1540, Dkt. No. 165 (Aug. 27, 2019).

33. No. 19-1540, Dkt. Nos. 168 (Sept. 11, 2019), 181 (Sept. 18, 2019).

34. *Id.*, Dkt. No. 180 (Sept. 18, 2019).

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their responses.³⁵ On Oct. 4, the Media Coalition filed a reply memorandum.³⁶ On Oct. 10, we granted the motions to intervene and denied the motions to unseal. *See Trump v. Deutsche Bank*, 940 F.3d 146, 2019 WL 5075948 (2d Cir. 2019).

Also at oral argument, we asked the Committees whether their subpoenas were in compliance with 26 U.S.C. § 6103(f), which imposes some limits on disclosure of tax returns. The Committees partially responded and offered to submit a fuller explanation by letter. On August 27, the Committees submitted a letter stating that the application of section 6103 depends on how the Banks obtained the returns.³⁷ On August 29, Appellants submitted a letter stating, among other things, that the Committees have no authority to request the tax returns.³⁸

Section 6103(a) of the Internal Revenue Code provides: “**(a) General rule.**—Returns and return information shall be confidential” Sections 6103(c)-(o) provide several exceptions to the general requirement of confidentiality. Subsection 6103(f)(3) makes a specific exception for committees of Congress. It provides:

35. *Id.*, Dkt. Nos. 184, 186, 188, 190 (Sept. 27, 2019).

36. *Id.*, Dkt. No. 193 (Oct. 4, 2019).

37. *See* Letter from Douglas N. Letter, General Counsel, U.S. House of Representatives, to Clerk of Court, Second Circuit Court of Appeals, No. 19-1540, Dkt. No. 158 (Aug. 27, 2019).

38. *See* Letter from Patrick Strawbridge, counsel for President Donald J. Trump, to Clerk of Court, Second Circuit Court of Appeals, No. 19-1540, Dkt. No. 166 (Aug. 29, 2019).

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“(3) Other committees.—Pursuant to an action by, and upon written request by the chairman of, a committee of the Senate or the House of Representatives (other than a committee specified in paragraph (1)) specially authorized to inspect any return or return information by a resolution of the Senate or the House of Representatives . . . the Secretary shall furnish such committee, or a duly authorized and designated subcommittee thereof, sitting in closed executive session, with any return or return information which such resolution authorizes the committee or subcommittee to inspect. Any resolution described in this paragraph shall specify the purpose for which the return or return information is to be furnished and that such information cannot reasonably be obtained from any other source.”

26 U.S.C. § 6103(f)(3).³⁹

Thus, Congress has protected the confidentiality of income tax returns, subject to several exceptions, and specified how such returns may be obtained by a committee of Congress.

39. The committees specified in paragraph (1) of section 6103(f) are the House Committee on Ways and Means, the Senate Committee on Finance, and the Joint Committee on Taxation. § 6103(f)(1). The Code defines “Secretary” as “the Secretary of the Treasury or his delegate.” § 7701(a)(11)(B).

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Appellants contend that disclosure is prohibited (or, as they phrase it, that the Committees “have no jurisdiction to request tax returns”⁴⁰) because the requirements of the subsection have not been met. They point out that the House has not passed a resolution specifically authorizing the Committees to inspect tax returns, specifying the purpose for which the returns are sought, or specifying that the information cannot reasonably be obtained from other sources. They also suggest that we need not resolve the issue now, but should leave it for resolution on remand.

Because the Deutsche Bank Subpoenas require production of tax returns and the motion for a preliminary injunction to prohibit compliance has been denied by the District Court, the absence of a ruling on production of the returns risks their disclosure to the Committees. We therefore believe that some ruling must be made.

The Committees do not dispute that they have not met the requirements of section 6103(f), but they contend that the provision does not apply to any tax returns in the possession of Deutsche Bank unless the bank obtained them from the IRS.

The text of section 6103 does not unambiguously resolve the dispute. In addition to citing the requirements of section 6103(f), Appellants rely on section 6103(a). It states that tax returns “shall be confidential,” and that “except as authorized by [the Internal Revenue Code]”

40. *See* Letter from Patrick Strawbridge, counsel for President Donald J. Trump, to Clerk of Court, Second Circuit Court of Appeals at 2, No. 19-1540, Dkt. No. 166 (Aug. 29, 2019).

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no person within three specified categories “shall disclose any return . . . obtained by him . . . in connection with his service” within any of the three categories. These include employees of the United States, employees of a state or various local agencies, and those who obtained access to a return pursuant to various subsections of section 6103(a). § 6103(a)(1)-(3).

If the introductory clause of section 6103(a) is a blanket protection of the confidentiality of tax returns, then it prohibits disclosure of the returns in the possession of Deutsche Bank. But if that clause is to be read in conjunction with the rest of section 6103(a), then the clause means only that the returns are protected from disclosure by anyone within the three categories, and it does not prohibit disclosure in the pending appeal because Deutsche Bank is not within any of those categories. Arguably limiting the coverage of section 6103(a) is section 6103(b). It defines “return” “[f]or purposes of this section” as a return “which is filed with the Secretary.” § 6103(b) (1). That provision could mean either the document or digital file in the possession of the Secretary (including the IRS), which Deutsche Bank does not have, or a copy of a paper or digitized return that has been submitted to the Secretary, which Deutsche Bank does have.

Another provision of section 6103 also creates ambiguity as to its meaning. Section 6103(f) states that a congressional committee may obtain a tax return “from the Secretary” pursuant to a House resolution meeting specified requirements, as set forth above. This provision could mean either that the only way a committee may

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obtain a tax return is to seek it from the Secretary and comply with the requirements of section 6103(f), or it could mean that those requirements apply only when a committee seeks a return from the Secretary and do not apply when a committee seeks a return from anyone else, such as Deutsche Bank.

Case law on these possible interpretations has evoked various rulings and statements. The Seventh Circuit has ruled that the introductory clause of section 6103(a) is not a blanket protection of confidentiality, but protects only against disclosure by those described in subsections 6103(a) (1)-(3). *Hrubec v. National Railroad Passenger Corp.*, 49 F.3d 1269 (7th Cir. 1995). “The ban on disclosure appears in the last, dangling, unnumbered portion of § 6103(a), not in the introductory phrase, and the ban is linked to the scope of identified subsections.” *Id.* at 1270-71. *Hrubec* found no violation of section 6103 by Amtrak employees who obtained copies of other employees’ tax returns from the IRS, but not as a result of a request covered by any of the categories identified in section 6103(a).⁴¹ The Ninth Circuit has also given a narrow interpretation to section 6103. In *Stokwitz v. United States*, 831 F.2d 893 (9th Cir. 1987), it ruled that “Section 6103 establishes a comprehensive scheme for controlling the release *by the IRS* of information received from taxpayers to discrete identified parties.” *Id.* at 895 (emphasis in original); accord *Lomont v. O’Neill*, 285 F.3d 9, 14-15, 350 U.S. App. D.C. 357 (D.C. Cir. 2002); *Baskin v. United States*, 135 F.3d

41. The returns had been obtained by someone’s forgery of an application for them. See *Hrubec v. National Railroad Passenger Corp.*, 778 F. Supp. 1431, 1433 (N.D. Ill. 1991).

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338, 342 (5th Cir. 1998); *Ryan v. United States*, 74 F.3d 1161, 1163 (11th Cir. 1996). *Stokwitz* found no violation of section 6103 where employees of the United States Navy seized from a taxpayer's files copies of tax returns, even though the employees were covered by subsection 6103(a)(1). The Court relied on the definition of "tax return" in section 6103(b), *see id.* at 895-96 ("[T]he statutory definitions of 'return' and 'return information' to which the entire statute relates, confine the statute's coverage to information that is passed through the IRS."), and noted that implementing "Treasury regulations . . . are exclusively concerned with disclosure by the IRS," *id.* at 896 (citing Treas. Regs. §§ 301.6103(a)-1 to (p)(7)-1 (1986)).

Other courts have expressed different views. In *National Treasury Employees Union v. Federal Labor Relations Authority*, 791 F.2d 183, 253 U.S. App. D.C. 12 (D.C. Cir. 1986), the D.C. Circuit referred to section 6103(a) as a "general rule that 'returns and return information shall be confidential.'" *Id.* at 183 (brackets omitted) (quoting § 6103(a)). The Court's main point, however, was that the disclosure, which had been made by IRS employees, had not been made in compliance with subsection 6103(l)(4)(A), and even that point, as well as the "general rule" statement, were dicta because the Court's holding was that the employees should not have been disciplined.

A district court in our Circuit has stated that a board licensing plumbers violated section 6103 by making disclosure of a license applicant's tax forms a condition of obtaining a license. *See Russell v. Board of Plumbing*

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Examiners, 74 F. Supp. 2d 339 (S.D.N.Y. 1999) (“The Board being unable to get the copies directly from the Treasury should not be permitted to do so indirectly by coercion . . .”), *aff’d*, 1 F. App’x 38 (2d Cir. 2001). The District Court’s view, however, was at most an alternate holding on an issue that the Court acknowledged had not been briefed, *see id.* at 348, and our affirmance in a non-precedential summary order made no reference to the issue, which had not been asserted as a ground for review, *see Br. & Reply Br. for Appellants, Russell v. Board of Plumbing Examiners*, 1 F. App’x 38 (2d Cir. 2001) (No. 99-9532).

We agree with the Seventh Circuit that section 6103(a) limits its prohibition against disclosure of tax returns to returns requested from the three categories of persons identified in subsections 6103(a)(1)-(3). There remains the possibility, however, that subsection 6103(f)(3), applicable to requests for tax returns by congressional committees other than those concerned explicitly with taxes, provides the exclusive means for such committees to obtain returns. The text of subsection 6103(f)(3) refers to committee requests “to the Secretary.” We agree with the Ninth Circuit that the plain language of the provision reflects Congress’s purpose in enacting section 6103, which “was to curtail loose disclosure practices by the IRS.” *Stokwitz*, 831 F.2d at 894. Because there is no claim by Appellants that Deutsche Bank obtained from the IRS any returns requested by the Committees, neither subsection 6103(f)(3), nor section 6103 as a whole, precludes their production to the Committees.

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Appellants also contend that production of tax returns is prohibited by the RFPFA and the Gramm Leach Bliley Act, Pub. L. No. 106-102, 113 Stat. 1338 (1999). As we have ruled, however, RFPFA does not apply to Congress. Gramm-Leach-Bliley is also no bar to production of tax returns because it explicitly permits disclosure of personal information “to comply with a . . . subpoena . . . by Federal . . . authorities.” 15 U.S.C. § 6802(e)(8).

With respect to tax returns, the oral argument of this appeal precipitated further procedural developments, detailed in *Trump v. Deutsche Bank*, 940 F.3d 146, 2019 WL 5075948 (2d Cir. 2019) (order granting news organizations’ motions to intervene and denying their motions to unseal). Ultimately, Deutsche Bank informed us in an August 27, 2019, letter⁴² that it had two tax returns within the coverage of the Committees’ subpoenas and submitted the names of the two taxpayers under seal.

If any tax returns in the possession of Deutsche Bank were those of the Lead Plaintiff, we would have to consider whether their production to the Committees might encounter the objection that it would distract the Chief Executive in the performance of official duties. That issue need not be resolved, however, because Deutsche Bank informed us, in its response to the motions of news organizations to unseal Deutsche Bank’s letter of August 27, that the only tax returns in its possession within the

42. See Letter from Letter from Raphael A. Prober to Clerk of Court, Second Circuit Court of Appeals, No. 19-1540, Dkt. No. 161 (redacted version) (Aug. 27, 2019); *id.*, Dkt. No. 165 (unredacted version filed under seal) (Aug. 27, 2019).

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coverage of the subpoenas are not those of the Lead Plaintiff.

Disclosure of tax returns in the possession of Deutsche Bank in response to the Committees' subpoenas will not violate section 6103, and the fact that, when requested by news organizations, we did not unseal the names of the taxpayers whose returns are in the possession of Deutsche Bank is not a reason to exclude those returns from Deutsche Bank's compliance with the subpoenas.

C. Constitutional Claim

Appellants' constitutional claim does not assert any constitutionally based privilege that might protect their financial records from production by the Banks to the Committees, such as the privileges secured in the Bill of Rights. *See Watkins*, 354 U.S. at 198 (recognizing "the restraints of the Bill of Rights upon congressional investigations"). Instead, Appellants contend that the Constitution places limits on the power of Congress to investigate, that the Committees' subpoenas to the Banks exceed those limits, and that they have a right to prevent disclosure of documents in response to subpoenas beyond Congress's power of investigation.

The subpoenas are surely broad in scope. Illustrating the scope, Appellants specifically call our attention to the following requests in the Committees' subpoenas to Deutsche Bank for the following:

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“any document related to account applications, opening documents, KYC [know your customer], due diligence, and closing documents”;

“any monthly or other periodic account statement”;

“any document related to any domestic or international transfer of funds in the amount of \$10,000 or more”;

“any summary or analysis of domestic or international account deposits, withdrawals, and transfers”;

“any document related to monitoring for, identifying, or evaluating possible suspicious activity”;

“any document related to any investment, bond offering, line of credit, loan, mortgage, syndication, credit or loan restructuring, or any other credit arrangement.”

Deutsche Bank Subpoenas ¶¶ 1(i)-(vi), J. App’x 37-38.

The documents sought are those of the Lead Plaintiff and his three oldest children, and “members of their immediate family,” defined to include child, daughter-in-law, and son-in-law, among others, and a number of entities affiliated with the Lead Plaintiff and the Trump Organization. *Id.* at 37 ¶ 1, 47 ¶ 5. The documents concern

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financial transactions of the named individuals and their affiliated entities. The time frame for which most of the documents are sought is July 19, 2016, to the present for the Capital One subpoena and January 1, 2010, to the present for the Deutsche Bank subpoenas, but there is no time limit for two categories of documents sought by all three subpoenas. *See id.* at 37, intro., 52, intro. These categories include documents related to account openings, the names of those with interests in identified accounts, and financial ties between the named individuals and entities and any foreign individual, entity, or government. *See id.* at 37 ¶ 1(i), 41-42 ¶ 6(i), 52 ¶¶ 1(i), (ii).

Constitutional investigative authority of Congress. An important line of Supreme Court decisions, usually tracing back to *McGrain v. Daugherty*, 273 U.S. 135, 47 S. Ct. 319, 71 L. Ed. 580 (1927), has recognized a broad power of Congress and its committees to obtain information in aid of its legislative authority under Article I of the Constitution. *See Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 504, 95 S. Ct. 1813, 44 L. Ed. 2d 324 (1975); *Barenblatt*, 360 U.S. at 111; *Watkins*, 354 U.S. at 187; *Quinn*, 349 U.S. at 160; *Sinclair v. United States*, 279 U.S. 263, 297, 49 S. Ct. 268, 73 L. Ed. 692 (1929), *overruled on other grounds by United States v. Gaudin*, 515 U.S. 506, 519, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995). “[T]he power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.” *McGrain*, 273 U.S. at 174. “The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.” *Barenblatt*, 360 U.S. at 111. “[T]

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he power to investigate is inherent in the power to make laws because ‘a legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change.’” *Eastland*, 421 U.S. at 504 (brackets omitted) (quoting *McGrain*, 273 U.S. at 175). “The power of the Congress to conduct investigations . . . encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.” *Watkins*, 354 U.S. at 187.⁴³

As the Committees recognize, however, Congress’s constitutional power to investigate is not unlimited. The Supreme Court has identified several limitations. One concerns intrusion into the authority of the other branches of the government. In *Kilbourn v. Thompson*, 103 U.S. 168, 26 L. Ed. 377 (1880), which the Supreme

43. Courts have recognized an additional, though less clearly delineated, source of Congress’s investigative authority, namely, Congress’s “informing function.” The Supreme Court has explained that although Congress cannot “expose for the sake of exposure,” it has the power “to inquire into and publicize corruption, maladministration or inefficiency in agencies of the Government” in order to inform the public “concerning the workings of its government.” *Watkins*, 354 U.S. at 200 & n.33; see *Rumely*, 345 U.S. at 43 (“It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. . . . The informing function of Congress should be preferred even to its legislative function.”) (quoting Woodrow Wilson, *Congressional Government: A Study in American Politics* 303 (1913)). We need not consider this potential source of investigative authority because we conclude that the Committees issued the subpoenas to advance valid legislative purposes.

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Court has identified as the first case in which the Court considered a challenge to “the use of compulsory process as a legislative device,” *Watkins*, 354 U.S. at 193, the Court ruled that Congress’s power to compel testimony was unconstitutionally used because the House of Representatives had “assumed a power which could only be properly exercised by another branch of the government,” in that case, the Judicial Branch, *Kilbourn*, 103 U.S. at 192.⁴⁴

In *Quinn*, the Supreme Court identified other limits. The power to investigate “must not be confused with any of the powers of law enforcement.” 349 U.S. at 161. “Nor does it extend to an area in which Congress is forbidden to legislate.” *Id.* “Still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights . . .” *Id.* And, most pertinent to the pending appeal, the power to investigate “cannot be used to inquire into private affairs unrelated to a valid legislative purpose.” *Id.*

The principal argument of Appellants is that compliance with the Committees’ subpoenas should

44. *Kilbourn* had been imprisoned by the sergeant-at-arms of the House of Representatives for contempt by refusing to respond to a House committee’s inquiries concerning matters that were then pending in a federal bankruptcy court. As the Supreme Court later explained in *McGrain*, the bankruptcy was a matter “in respect to which no valid legislation could be had” because the case was “still pending in the bankruptcy court” and “the United States and other creditors were free to press their claims in that proceeding.” 273 U.S. at 171.

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be preliminarily enjoined because the subpoenas seek information concerning their private affairs. Unquestionably, disclosure of the financial records sought by the Committees will subject Appellants' private business affairs to the Committees' scrutiny. However, inquiry into private affairs is not always beyond the investigative power of Congress. In *Quinn*, the Court was careful to state that the power to investigate "cannot be used to inquire into private affairs *unrelated to a valid legislative purpose.*" *Id.* (emphasis added). In *Barenblatt*, the Court stated a similar qualification: "Congress may not constitutionally require an individual to disclose . . . private affairs except in relation to [a valid legislative] purpose." 360 U.S. at 127.

So, although the Court had made clear before *Barenblatt* that there is "no congressional power to expose for the sake of exposure," *Watkins*, 354 U.S. at 200, it has also stated that inquiry into private affairs is permitted as long as the inquiry is related "to a valid legislative purpose," *Quinn*, 349 U.S. at 161; *see Barenblatt*, 360 U.S. at 127. This potential tension between a permissible legislative purpose and an impermissible inquiry for the sake of exposure requires consideration of the role of motive and purpose in assessing the validity of a congressional inquiry.

The Supreme Court has spoken clearly as to motive with respect to a congressional inquiry. Referring to congressional committee members questioning a witness, the Court said, "[T]heir motives alone would not vitiate an investigation which had been instituted by a House of

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Congress if that assembly's legislative purpose is being served." *Watkins*, 354 U.S. at 200 (emphasis added).⁴⁵

More than 50 years ago, the Supreme Court candidly recognized the difficulty a court faces in considering how a legislative purpose is to be assessed when a privacy interest is asserted to prevent a legislative inquiry:

"Accommodation of the congressional need for particular information with the individual and personal interest in privacy is an arduous and delicate task for any court. We do not underestimate the difficulties that would attend such an undertaking."

45. *Watkins* cites, 354 U.S. at 200 n.34, among other cases, *Eisler v. United States*, 170 F.2d 273, 83 U.S. App. D.C. 315 (D.C. Cir. 1948), in which the D.C. Circuit stated, "[D]efense counsel sought to introduce evidence to show that the Committee's real purpose in summoning appellant was to harass and punish him for his political beliefs and that the Committee acted for ulterior motives not within the scope of its or Congress' powers. The lower court properly refused to admit such evidence, on the ground that the court had no authority to scrutinize the motives of Congress or one of its committees." *Id.* at 278-79 (quotation marks and ellipsis omitted).

In *Tenney v. Brandhove*, 341 U.S. 367, 71 S. Ct. 783, 95 L. Ed. 1019 (1951), the Supreme Court provided this caution to courts asked to consider legislators' motives: "In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed. Courts are not the place for such controversies. Self discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses. The courts should not go beyond the narrow confines of determining that a committee's inquiry may fairly be deemed within its province." *Id.* at 378 (footnote omitted).

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Id. at 198.

Requirement of identifying legislative purpose. The first task for courts undertaking this “accommodation” is identification of the legislative purpose to which a congressional investigation is asserted to be related.

“It is manifest that despite the adverse effects which follow upon compelled disclosure of private matters, not all such inquiries are barred. *Kilbourn v. Thompson* teaches that such an investigation into individual affairs is invalid if unrelated to any legislative purpose.”

Id. *Watkins* provided further guidance as to how that inquiry as to legislative purpose should at least begin:

“An essential premise in this situation is that the House or Senate shall have instructed the committee members on what they are to do with the power delegated to them. It is the responsibility of the Congress, in the first instance, to insure that compulsory process is used only in furtherance of a legislative purpose. That requires that the instructions to an investigating committee spell out that group’s jurisdiction and purpose with sufficient particularity. Those instructions are embodied in the authorizing resolution. That document is the committee’s charter.”

Id. at 201.

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It is not clear whether this passage can be satisfied only by the instruction that the House gives to a committee pursuant to a House rule defining a standing committee's continuing jurisdiction, or whether a specific "authorizing resolution" is required for a committee to undertake an investigation on a particular subject within its jurisdiction. During an argument on July 12 of this year in the Court of Appeals for the District of Columbia Circuit in *Trump v. Mazars USA, LLP*, 940 F.3d 710 (D.C. Cir.), *reh'g en banc denied*, 941 F.3d (D.C. Cir.), *mandate stayed*, No. 19A545, 2019 U.S. LEXIS 7240, 2019 WL 6328115 (U.S. Nov. 25, 2019) ("*Trump v. Mazars*"), a challenge to a subpoena issued by the House Committee on Oversight and Reform,⁴⁶ the *Mazars* appellants, many of whom are Appellants here, contended that a clear statement from the House authorizing a standing committee to investigate not just a particular *subject* but the particular *subpoena* being challenged was required, at least where the subpoena seeks papers of the President. *See* Oral Arg.

46. The subpoena challenged in *Mazars* seeks four categories of documents somewhat different from those sought by the subpoenas challenged on this appeal, and seeks the documents for purposes significantly different from the Committees' purposes, as we point out *infra*. The categories are: various financial statements and reports compiled by Mazars USA, LLP, engagement agreements for preparation of such statements and reports, supporting documents used in the preparation of such statements and reports, and memoranda, notes, and communication related to the compilation and auditing of such statements and reports. *See* Decl. of William S. Consovoy, Ex. A at 3, *Trump v. Committee on Oversight and Reform of the United States House of Representatives*, 380 F. Supp. 3d 76 (D.D.C. 2019) (No.-19-cv-01136 (APM)), ECF No. 9-2, *aff'd*, *Trump v. Mazars USA, LLP*, 940 F.3d 710 (D.C. Cir. 2019).

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at 8:35, 1:32:15, 2:03:15, *Trump v. Mazars USA, LLP*, No. 19-5142 (D.C. Cir. July 12, 2019).⁴⁷

Apparently responding to that contention, the House of Representatives on July 24 adopted a resolution that includes the following language:

“Resolved, That the House of Representatives ratifies and affirms all current and future investigations, as well as all subpoenas previously issued or to be issued in the future, by any standing or permanent select committee of the House, pursuant to its jurisdiction as established by the Constitution of the United States and rules X and XI of the Rules of the House of Representatives, concerning or issued directly or indirectly to—

(1) the President in his personal or official capacity;

(2) his immediate family, business entities, or organizations;

...

(9) any third party seeking information involving, referring, or related to any individual or entity described in paragraphs (1) through (7).”

47. Appellants have not made that “clear statement” argument in their briefs in this case.

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H.R. Res. 507, 116th Cong. (2019); *see* H.R. Res. 509, 116th Cong. § 3 (2019) (“House Resolution 507 is hereby adopted.”).⁴⁸ On July 26, the Committees informed us of this resolution.⁴⁹

On July 31, counsel for the *Mazars* appellants made two related arguments to the D.C. Circuit rejecting the significance of Resolution 507.⁵⁰ First, he read the passage

48. H.R. Res. 507 disclaims the need for its adoption, stating:

“Whereas the validity of some of [the pending] investigations and subpoenas [relating to the President] has been incorrectly challenged in Federal court on the grounds that the investigations and subpoenas were not authorized by the full House and lacked a ‘clear statement’ of intent to include the President, which the President’s personal attorneys have argued in Federal court is necessary before the committees may seek information related to the President; and

“Whereas while these arguments are plainly incorrect as a matter of law, it is nevertheless in the interest of the institution of the House of Representatives to avoid any doubt on this matter and to unequivocally reject these challenges presented in ongoing or future litigation.”

H.R. Res. 507.

49. *See* Letter from Douglas N. Letter, General Counsel, U.S. House of Representatives, to Clerk of Court, Second Circuit Court of Appeals, No. 19-1540, Dkt. No. 106 (July 26, 2019).

50. *See* Letter from William S. Consovoy, counsel for President Donald J. Trump, to Mark Langer, Clerk of Court, D.C. Circuit

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from *Watkins*, quoted above, to mean that only the House Rules initially outlining a committee's jurisdiction can provide a valid source of authority for a legislative investigation. Second, he contended that two decisions, *United States v. Rumely*, 345 U.S. 41, 73 S. Ct. 543, 97 L. Ed. 770 (1953), and *Shelton v. United States*, 327 F.2d 601, 117 U.S. App. D.C. 155 (D.C. Cir. 1963), establish that Resolution 507 came "too late." On August 1, counsel for Appellants in our appeal made the same arguments to our Court.⁵¹

Although we agree that there must be sufficient evidence of legislative authorization and purposes to enable meaningful judicial review, Appellants' arguments that seek to limit evidence we may consider are not persuasive. Although *Watkins* examined the authorizing resolutions of the committee whose authority to compel answers to its inquiry was being challenged, *see* 354 U.S. at 201-02 & nn. 35-36, the Supreme Court's opinion reveals that these resolutions are not the only sources

Court of Appeals, *Trump v. Mazars USA, LLP*, No. 19-5142, Doc. No. 1799866 (D.C. Cir. July 31, 2019).

51. *See* Letter from Patrick Strawbridge, counsel for President Donald J. Trump, to Clerk of Court, Second Circuit Court of Appeals, No. 19-1540, Dkt. No. 112 (Aug. 1, 2019).

On August 6, the United States filed in the *Mazars* appeal an amicus curiae brief, making additional arguments concerning the alleged deficiency of Resolution 507. We need not set forth those arguments because on August 19 the United States filed an amicus curiae brief in the pending appeal, making additional arguments concerning Resolution 507 as it relates to the subpoenas in the pending litigation. We consider those arguments *infra*.

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to be considered in determining whether a committee's investigation has been validly authorized. As the Court noted, "There are several sources that can outline the 'question under inquiry.'" *Id.* at 209. Among these, the Court mentioned "the remarks of the [committee] chairman or members of the committee, or even the nature of the proceedings themselves." *Id.* Indeed, the Court considered the opening statement of the chairman of the committee before whom the defendant in a criminal contempt proceeding had refused to answer, *see id.* at 209-10, although finding the statement impermissibly vague, *see id.* at 210; *see also Shelton v. United States*, 404 F.2d 1292, 1297, 131 U.S. App. D.C. 315 (D.C. Cir. 1968) (statements of committee members relevant to identification of purposes of congressional investigations).

Rumely does not confine the search for authorization of a valid legislative purpose to a committee's jurisdictional resolution. The Court concluded that the witness's "duty to answer must be judged as of the time of his refusal." *Rumely*, 345 U.S. at 48. Because we regard the time of the Banks' compliance with the subpoenas challenged in this case as the equivalent of the time of the witness's refusal in *Rumely*, that decision is no bar to examining legislative materials existing before such compliance.

Furthermore, the Court's point in *Rumely* was that the scope of the resolution authorizing the committee's investigation could not "be enlarged by subsequent action of Congress." 345 U.S. at 48. In the pending case, the issue with respect to House Resolution 507 is whether this Court, in ascertaining House authorization of the

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Committees' investigations, can consider evidence that comes after the issuance of the subpoenas. Including House Resolution 507 in our consideration results in no unfairness to the Banks, which have not refused to produce the information requested. Moreover, House Resolution 507 does not suffer from the same "infirmity of *post litem motam*, self-serving declarations" that tainted the *post hoc* debate in *Rumely*, 345 U.S. at 48, because the resolution does not purport to alter either the interpretation of the Committees' jurisdiction or the stated purposes of the Committees' investigations that existed at the time the subpoenas were issued. Rather, the resolution was passed to eliminate any doubt regarding the support of the House for the Committees' investigations.

The D.C. Circuit's decision in *Shelton* states that the time a contempt witness is entitled to know the purpose of a challenged legislative inquiry is "before the subpoena issued." 327 F.2d at 607. Preliminarily, we note that this assertion is dictum; the holding is that the committee's subpoena was invalid because of procedural irregularity in its issuance.⁵² *See id.* More important, that dictum conflicts with what the Supreme Court said in *Watkins*. The Court there made clear that to satisfy the due process objection arising from a contempt imposed for refusing to answer a committee's question insufficiently shown to be related to a valid legislative purpose, the purpose could be

52. The D.C. Circuit explained that the relevant Senate resolution "imposes on the Subcommittee itself" the "function of calling witnesses," and that "the whole function of determining who the witnesses would be was de facto delegated to the Subcommittee counsel." *Shelton*, 327 F.2d at 606.

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identified as late as immediately before the witness was required to answer. “Unless the subject matter has been made to appear with undisputable clarity, it is the duty of the investigative body, upon objection of the witness on grounds of pertinency, to state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto.” *Watkins*, 354 U.S. at 214-15.

We therefore do not confine our search for the Committees’ purposes to the House Rules alone, nor do we exclude Resolution 507 from our inquiry.

Identifying the Committees’ legislative purpose. We next consider the “legislative purpose” to which the Committees assert their investigations are “related” and “the weight to be ascribed to[] the interest of the Congress in demanding disclosures” in order to determine whether “a public need” for such investigation “overbalances any private rights affected.” *Id.* at 198.

Our consideration begins with the Constitution, which assigns to each house of Congress authority to “determine the Rules of its Proceedings.” U.S. Const. art. I, § 5, cl. 2. In 2019, Congress adopted the Rules of the House of Representatives. *See* H.R. Res. 6, 116th Cong. (2019); Rules of the House of Representatives, 116th Cong. (prepared by Karen L. Haas, Clerk of the House of Representatives, Jan. 11, 2019) (hereinafter “H. Rules”). House Rule X establishes the standing committees of the House, including the Financial Services Committee and the Permanent Select Committee on Intelligence. *See*

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H. Rules X(2)(h), X(11). Rule X assigns to the Financial Services Committee jurisdiction over bills concerning, among other things, banks and banking, international finance, and money and credit, *see* H. Rule X (1)(h)(1), (h)(5), (h)(7), and assigns to the Intelligence Committee jurisdiction over bills concerning, among other things, the Nation's intelligence agencies and their intelligence and intelligence-related activities, *see* H. Rule X(11)(b)(1)(A), (B).

Rule X also assigns to all of the standing committees “general oversight responsibilities . . . to assist the House in 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.” H. Rule X(2)(a)(1). In addition, Rule X assigns to the Intelligence Committee “[s]pecial oversight functions” to “review and study on a continuing basis laws, programs, and activities of the intelligence community.” H. Rule X(3)(m).

House Rule XI provides: “Each committee may conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities under [R]ule X.” H. Rule XI(1)(b)(1). Rule XI also provides:

“For the purpose of carrying out any of its functions and duties under this rule and [R]ule X . . . a committee or subcommittee is authorized . . . to require, by subpoena . . . the

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production of such . . . records . . . as it considers necessary.”

H. Rule XI(2)(m)(1)(B).

On March 13, 2019, the House of Representatives adopted a resolution stating, among other things, that the House “supports efforts to close loopholes that allow corruption, terrorism, and money laundering to infiltrate our country’s financial system.” H.R. Res. 206, 116th Cong. (Mar. 13, 2019).

On April 12, 2019, the House Committee on Oversight and Reform issued a report summarizing the subjects that several committees planned to investigate during the 116th Congress. *See* H.R. Rep. No. 116-40 (2019). Because the date of this report is one day after issuance of the subpoenas challenged in this case, we note that the text of the report makes clear that the plans submitted by the committees had been received prior to the date the report was issued.⁵³

53. The report explains that under House Rule X, the Oversight Committee “is to review the various plans and, in consultation with the Speaker, the Majority Leader, and the Minority Leader, report to the House the oversight plans along with any recommendations that the House leadership and the Committee may have to ensure effective coordination. Pursuant to this rule, the Committee on Oversight and Reform has reviewed and consulted with House leadership about the oversight plans of the standing House committees for the 116th Congress.” H.R. Rep. No. 116-40 at 2.

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The plan submitted by the Financial Services Committee includes as its purposes: “examining financial regulators’ supervision of the banking, thrift and credit union industries for safety and soundness and compliance with laws and regulations,” *id.* at 78; “the implementation, effectiveness, and enforcement of anti-money laundering/ counter-financing of terrorism laws and regulations,” *id.* at 84 (abbreviation omitted); and “the risks of money laundering and terrorist financing in the real estate market,” *id.* at 85.

The Chair of the Financial Services Committee, Representative Maxine Waters, has identified a principal purpose of that committee’s investigation. “The movement of illicit funds throughout the global financial system raises numerous questions regarding the actors who are involved in these money laundering schemes and where the money is going.” 165 Cong. Rec. H2697, H2698 (daily ed. Mar. 13, 2019) (statement of Rep. Waters in support of H.R. Res. 206). Linking the Committee’s inquiries to Appellants, she explained that her concerns are “precisely why the Financial Services Committee is investigating the questionable financing provided to President Trump and [t]he Trump Organization by banks like Deutsche Bank to finance its real estate properties.” *Id.* In her statement, Rep. Waters noted that Deutsche Bank was fined for its role in a \$10 billion money-laundering scheme, 165 Cong. Rec. at H2698, and the Committees note in their brief, Br. for Intervenor at 11, that Capital One agreed to pay a fine of \$100 million for failing to correct deficiencies in its Bank Secrecy Act and anti-money-laundering programs, *see Capital One, N.A., Enforcement Action No. 2018-080, 2018 WL 5384428, at *1-2 (O.C.C. Oct. 23, 2018).*

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The Financial Services Committee has held hearings on these matters,⁵⁴ and considered bills to combat financial crimes, such as money laundering.⁵⁵

The Chair of the Intelligence Committee has identified several purposes of that committee’s investigation. The committee is investigating “[t]he scope and scale of the Russian government’s operations to influence the U.S. political process”; “[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”; “[w]hether any foreign actor has sought to compromise or holds leverage, financial or otherwise, over Donald Trump, his family, his business, or his associates”; and “[w]hether President Trump, his family, or his associates are or were at any time at heightened

54. *Implementation of FinCEN’s Customer Due Diligence Rule—Regulator Perspective: Hearing Before the Subcomm. on Terrorism & Illicit Finance of the H. Comm. on Financial Services*, 115th Cong. (2018); *Examining the BSA/AML Regulatory Compliance Regime: Hearing Before the Subcomm. on Financial Institutions & Consumer Credit of the H. Comm. on Financial Services*, 115th Cong. (2017).

55. See Corporate Transparency Act of 2019, H.R. 2513, 116th Cong. (bill to reform corporate beneficial ownership disclosures and increase transparency); COUNTER Act of 2019, H.R. 2514, 116th Cong. (bill to strengthen the Bank Secrecy Act and anti-money-laundering laws); Vladimir Putin Transparency Act, H.R. 1404, 116th Cong. (as passed by House, Mar. 12, 2019) (bill to require Executive Branch agencies to submit assessment to Congress regarding financial holdings of Russian President Vladimir Putin and top Kremlin-connected oligarchs).

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risk of, or vulnerable to, foreign exploitation, inducement, manipulation, pressure, or coercion.” Press Release, House Permanent Select Committee on Intelligence, Chairman Schiff Statement on House Intelligence Committee Investigation (Feb. 6, 2019).⁵⁶

Linking these investigations to Appellants, the Committees cite public reports indicating that Deutsche Bank has extended loans to the Lead Plaintiff totaling more than \$2 billion⁵⁷ and that his 2017 financial disclosure report showed a liability of at least \$130 million to Deutsche Bank.⁵⁸ At oral argument, counsel for the Committees represented, without contradiction by Appellants, that Deutsche Bank is the only bank willing to lend to the Lead Plaintiff. *See* Oral Arg. Tr. at p. 36, ll. 5-18.

On this appeal, the Committees contend that the Intelligence Committee’s investigations “will inform numerous legislative proposals to protect the U.S. political process from the threat of foreign influence and strengthen national security.” Br. for Committees at 18.⁵⁹

56. <https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=447>.

57. David Enrich, *Deutsche Bank and Trump: \$2 Billion in Loans and a Wary Board*, N.Y. Times, Mar. 18, 2019, <https://www.nytimes.com/2019/03/18/business/deutsche-bank-donaldtrump/html>.

58. Donald J. Trump, President, Executive Branch Personnel Public Financial Disclosure Report for 2017 (Office of Government Ethics Form 278e) at 45 (May 15, 2018).

59. The Committees cite as examples the following bills: Duty to Report Act, H.R. 2424, 116th Cong. (2019) (bill to require

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All of the foregoing fully identifies “the interest[s] of the Congress in demanding disclosures,” as *Watkins* requires. 354 U.S. at 198. The Committees’ interests concern 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 whether the Lead Plaintiff was vulnerable to foreign exploitation. *Watkins* also requires that a legislative inquiry must in fact be related to a legislative purpose.⁶⁰ *See id.* The Committees have fully satisfied the requirements of *Watkins*.

We conclude our consideration of the Committees’ identification of valid legislative purposes by noting the significantly different purposes that were identified by the

campaign officials to notify law enforcement if offered assistance by foreign nationals and to report all meetings with foreign agents); KREMLIN Act, H.R. 1617, 116th Cong. (as passed by House, Mar. 12, 2019) (bill to require Director of National Intelligence to submit to Congress intelligence assessments of Russian intentions relating to North Atlantic Treaty Organization and Western allies); Strengthening Elections Through Intelligence Act, H.R. 1474, 116th Cong. (2019) (bill to require an intelligence threat assessment prior to every federal general election); For the People Act of 2019, H.R. 1, 116th Cong. (as passed by House, Mar. 8, 2019) (bill to improve election security and oversight and provide for national strategy and enforcement to combat foreign interference).

60. The Court had previously said in *Quinn* that the power to investigate “cannot be used to inquire into private affairs *unrelated to a valid legislative purpose*.” 349 U.S. at 161 (emphasis added).

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House Committee on Oversight and Reform in the *Trump v. Mazars* case in the District of Columbia,⁶¹ to which we previously alluded.⁶² The four subject matters being investigated by that committee, set out in the margin,⁶³

61. After the D.C. Circuit’s decision in *Mazars*, Appellants and the Committees sent letters to this Court, reporting and commenting on that decision. *See* Letter from Patrick Strawbridge, counsel for President Donald J. Trump, to Clerk of Court, Second Circuit Court of Appeals, No. 19-1540, Dkt. No. 202 (Oct. 14, 2019); Letter from Douglas N. Letter, General Counsel, U.S. House of Representatives, to Clerk of Court, Second Circuit Court of Appeals, No. 19-1540, Dkt. No. 201 (Oct. 11, 2019). In view of the D.C. Circuit’s ruling affirming the denial of an injunction to prohibit compliance with the subpoena there challenged, Appellants’ letter stating that “the *Mazars* majority agreed that the subpoenas here are unconstitutional” presses the limits of advocacy. The Committees’ letter states, “This Court should join the D.C. Circuit in upholding the validity of the subpoenas at issue here.”

62. *See* footnote 46, p. 52.

63. As stated by Chairman Cummings:

“The Committee has full authority to investigate [1] whether the President may have engaged in illegal conduct before and during his tenure in office, [2] to determine whether he has undisclosed conflicts of interest that may impair his ability to make impartial policy decisions, [3] to assess whether he is complying with the Emoluments Clauses of the Constitution, and [4] to review whether he has accurately reported his finances to the Office of Government Ethics and other federal entities. The Committee’s interest in these matters informs its review of multiple laws and legislative proposals under our jurisdiction, and to suggest otherwise is both inaccurate and contrary

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all explicitly concerned whether the President was in compliance with legal requirements. Nevertheless, Judge Tatel's opinion for the *Mazars* majority concluded that the Oversight Committee, in issuing the challenged subpoena, "was engaged in a 'legitimate legislative investigation,' rather than an impermissible law-enforcement inquiry." *Mazars*, 940 F.3d at 732 (quoting *Hutcheson v. United States*, 369 U.S. 599, 618, 82 S. Ct. 1005, 8 L. Ed. 2d 137 (1962)) (citation omitted). On the other hand, Judge Rao's dissent contended that because the Oversight Committee was investigating whether the President violated various laws, its "investigations may be pursued exclusively through impeachment."⁶⁴ *Id.* at 751.

In the pending appeal, the Committees are not investigating whether the Lead Plaintiff has violated any law. To the extent that the Committees are looking into unlawful activity such as money laundering, their focus is not on any alleged misconduct of the Lead Plaintiff (they have made no allegation of his misconduct); instead, it is on the existence of such activity in the banking industry, the adequacy of regulation by relevant agencies, and the need for legislation.

to the core mission of the Committee to serve as an independent check on the Executive Branch."

Memorandum from Elijah E. Cummings, Chairman, House Comm. on Oversight & Reform, to Members of the Comm. on Oversight & Reform 4 (Apr. 12, 2019).

64. We note that neither the principal nor the reply brief of Appellants mentions the word "impeachment."

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Whether legislative purpose “overbalances” private rights. The Supreme Court can be understood in *Watkins* to have set out a second requirement for courts considering challenges to legislative inquiries.

“The critical element is the existence of, and the weight to be ascribed to, the interest of the Congress in demanding disclosures from an unwilling witness. We cannot simply assume, however, that every congressional investigation is justified by *a public need that overbalances any private rights affected*. To do so would be to abdicate the responsibility placed by the Constitution upon the judiciary to insure that the Congress does not unjustifiably encroach upon an individual’s right to privacy”

354 U.S. at 198-99 (emphasis added).

When the Court said that it “cannot simply assume, however, that every congressional investigation is justified by a public need that overbalances any private rights affected,” *id.* at 198, the inference is available that courts are to determine whether the importance of the legislative interest outweighs an individual’s privacy interests.

Three considerations diminish the force of this possible inference. First, we should be hesitant to conclude that the Supreme Court, always sensitive to separation-of-powers concerns, would want courts to make this sort of balancing determination, the outcome of which might impede the Legislative Branch in pursuing its valid

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legislative purposes. Second, the Court might simply have meant that courts should not “assume” the existence of a legislative purpose, but that the judicial task is at an end once courts find in congressional materials sufficient identification of the valid legislative purposes that Congress or a committee is pursuing. Third, the Court later cautioned that “courts should not go beyond the narrow confines of determining that a committee’s inquiry may fairly be deemed within its province.” *Eastland*, 421 U.S. at 506 (quotation marks omitted). On the other hand, it is not likely that the Court would have described such a minimalist approach as “an arduous and delicate task.” *Watkins*, 354 U.S. at 198.

Encountering this uncertainty as to the task that *Watkins* has required courts to undertake, we will assume, for the argument, that we should make at least some inquiry as to whether the “public need” to investigate for the valid legislative purposes we have identified “overbalances any private rights affected.” That balancing is similar to the comparison of hardships we make in Part IV, one of the factors relevant to two of the preliminary injunction standards.

We conclude that, even if *Watkins* requires balancing after valid legislative purposes have been identified, the interests of Congress in pursuing the investigations for which the challenged subpoenas were issued substantially “overbalance” the privacy interests invaded by disclosure of financial documents, including the non-official documents of the Lead Plaintiff. “[T]he weight to be ascribed to” the public need for the investigations the

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Committees are pursuing is of the highest order. The legislative purposes of the investigations concern national security and the integrity of elections, as detailed above. By contrast, the privacy interests concern private financial documents related to businesses, possibly enhanced by the risk that disclosure might distract the President in the performance of his official duties.

Whether the subpoenas seek information related to legislative purposes. The remaining issue is whether the information sought by the subpoenas is sufficiently related to the identified legislative purposes supporting the Committees' investigations, or whether the subpoenas are overbroad, as Appellants contend. Their challenge proceeds along three lines: (1) a procedural objection concerning the District Court, (2) several general substantive objections to the entire scope of the subpoenas, and (3) a more focused substantive objection to several specific categories of information sought by the subpoenas.

Procedural objection—District Court's not requiring negotiation. Appellants contend that the District Court erred procedurally by not "send[ing] the parties back to the negotiating table" to attempt to narrow the scope of the subpoenas. Br. for Appellants at 29. Judge Livingston favors that disposition. Part. Diss. Op. at 11, 56. Indeed, that is an additional point of her partial dissent, which takes no position on the merits of any of Appellants' claims, deferring decision until such negotiation occurs. Judge Livingston also favors a total remand for further development of the record.

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Appellants cite two instances where courts have had at least partial success in encouraging such negotiation. *See AT&T II*, 567 F.2d at 124-25; *Bean LLC v. John Doe Bank*, 291 F. Supp. 3d 34, 39-40 (D.D.C. 2018). Both cases arose in significantly different circumstances, and neither one requires a total remand here. The *AT&T* litigation involved what the D.C. Circuit characterized as “a portentous clash between the [E]xecutive and [L]egislative [B]ranches,” *AT&T I*, 551 F.2d at 385. In the pending appeal, as we have noted, the Lead Plaintiff is suing only in his individual capacity, not as President, and no official documents are sought. The only Executive Branch interest implicated is the possible distraction of the President in the performance of his duties, which we consider at pages 90-91. Furthermore, *AT&T I* concerned national security wiretaps, Executive Branch official documents of obvious sensitivity. Finally, the D.C. Circuit’s advice in *AT&T I* was offered after the parties had already “negotiated extensively and came close to agreement.” *Id.* at 394. The Court simply urged the parties to continue the process they had successfully begun and “requested” the parties “to attempt to negotiate a settlement,” *id.* at 395, because the “precise details of the [earlier] negotiations . . . demonstrate[d] the proximity of the parties to a workable compromise,” *id.* at 386. The *Bean* litigation concerned a subpoena challenged as violative of the First Amendment. *See* 291 F. Supp. 3d at 37.

To the extent that the request for judicial assistance in narrowing the scope of the subpoenas is analogous to the role of district court judges managing pretrial discovery, they have broad discretion to determine the extent to

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which they should intervene, *see, e.g., In re Fitch, Inc.*, 330 F.3d 104, 108 (2d Cir. 2003), and Judge Ramos did not exceed such discretion in this case by leaving any negotiation in the hands of experienced counsel prior to his ruling. In favoring a total remand, Judge Livingston does not consider our limited standard of review of the District Court's decision not to require the parties to negotiate, nor does she suggest that the District Court's discretion was exceeded. Moreover, Appellants have not identified a single category of documents sought or even a single document within a category that they might be willing to have the Banks produce if a negotiation had been required. Finally, we note the likely futility of ordering a total remand for negotiation, as Judge Livingston prefers,⁶⁵ in view of

65. Judge Livingston reports that at oral argument the Committees “affirmed a willingness to negotiate on an expedited basis, if requested by this Court.” Part. Diss. Op. at 11. The colloquy to which Judge Livingston refers arose in response to a hypothetical inquiry from the Court as to whether certain sensitive documents such as a check for medical services should be excluded from disclosure. Counsel for the Committees responded that as to any documents “that have nothing to do with Mr. Trump and his family and these other businesses, his various businesses, have nothing to do with their real financial activities, we will direct Deutsche Bank not to produce those.” Oral Arg. Tr. at p. 41, ll. 11-15. When the Court inquired further about the Committees’ position if the Court were to insist on exclusion of such documents, counsel for the Committees responded, “[I]f this Court orders ‘these subpoenas are enforceable but’ —and drew this exception, consistent with the hypothetical your Honor has raised, we would have no problem with that.” *Id.* at p. 41, ll. 22-25. Obviously, the Committees’ willingness to comply with an order from this Court concerning exclusion of sensitive documents like a check for payment of medical expenses does not affirm the Committees’ willingness to engage in negotiation.

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the fact that the White House has prohibited members of the Administration from even appearing in response to congressional subpoenas and has informed Congress that “President Trump and his Administration cannot participate” in congressional inquiries.⁶⁶

Judge Livingston suggests that a total remand would be useful to afford the parties an opportunity for further development of the record. However, Appellants have given no indication of what additional materials they would seek to add to the record, and the existing record fully suffices for disposition of this appeal.

A total remand would simply further delay production of documents in response to subpoenas that were issued seven months ago and would run directly counter to

Later, the Committees said that “[i]f this court thinks there should be negotiation, . . . make it really, really fast,” *id* at p. 46, ll. 8-10, and added, “Mr. Trump and the various other people have given no indication whatsoever that they actually would be willing to negotiate over-in any way that is serious.” *Id.* at p. 46, ll. 17-19. Again, there is no expression of a willingness to negotiate.

In any event, the limited remand we order provides an opportunity for exemption from disclosure of more documents than even those we have labeled “sensitive.”

66. *See* Letter from Pat A. Cippolone, Counsel to the President, the Speaker of the House of Representatives, and three House committee chairmen (Oct. 8, 2019), <https://www.nytimes.com/interactive/2019/10/08/us/politics/white-house-letter-impeachment.html>. One recipient of this letter, Congressman Adam Schiff, is the chairman of one of the committees that issued subpoenas in this litigation.

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the Supreme Court's instruction that motions to enjoin a congressional subpoena should "be given the most expeditious treatment by district courts because one branch of Government is being asked to halt the functions of a coordinate branch." *Eastland*, 421 U.S. at 511 n.17.

General substantive objections to scope of subpoenas. One broad substantive challenge to the scope of the subpoenas is that they focus on the Lead Plaintiff.⁶⁷

67. In the District Court, the Committees stated, "Because of his prominence, much is already known about Mr. Trump, his family, and his business, and this public record establishes that they serve as a useful case study for the broader problems being examined by the Committee." Opposition of Intervenors to Plaintiffs' Motion for a Preliminary Injunction at 16, Dist. Ct. Dkt. No. 51 (May 10, 2019). Appellants repeatedly point to the phrase "case study" to argue that the Committees are not only focusing on the Lead Plaintiff but also doing so for law enforcement purposes. Br. for Appellants at 5, 11, 15, 31, 33, 50. However, as long as valid legislative purposes are duly authorized and being pursued by use of the challenged subpoenas, the fact that relevant information obtained also serves as a useful "case study" does not detract from the lawfulness of the subpoenas. Furthermore, congressional examination of whether regulatory agencies are properly monitoring a bank's practices does not convert an inquiry into impermissible law enforcement, and neither committee has made any allegation that the Lead Plaintiff or any of the Appellants has violated the law.

Moreover, when a borrower can obtain loans from only one bank, that bank has already lent the borrower \$130 million, and that bank has been fined in connection with a \$10 billion money laundering scheme, that situation is appropriate for a case study of such circumstances by a congressional committee authorized to monitor how well banking regulators are discharging their responsibilities and whether new legislation is needed.

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This point is made in support of the broader argument that the subpoenas were issued with the expectation that some of the documents sought would embarrass the President, rather than advance a legitimate legislative purpose. One answer to the complaint about targeting the Lead Plaintiff and his family is that the Committees have represented that the three subpoenas at issue in this litigation are among a group of subpoenas “to seven other financial institutions, the majority of which do not request documents specific to” the Lead Plaintiff. Br. for Committees at 9.⁶⁸ In fact, the Deutsche Bank Subpoenas themselves seek documents from entities not related to Appellants. *See* Deutsche Bank Subpoenas ¶¶ 2-6, J. App’x 40-42. Another answer to the targeting objection is the significant relationship between Deutsche Bank and the Lead Plaintiff. The Committees have relied on information (not disputed by Appellants) indicating that when no other bank would extend credit to the Lead Plaintiff, Deutsche Bank loaned him or his affiliated entities at least \$130 million dollars. That unusual circumstance adequately

68. Replying to this assertion by the Committees, the amicus brief of the United States says, “The bare fact that a ‘majority’ of *other* subpoenas may not be confined to the President’s information hardly suggests that the *present* subpoenas are part of a general inquiry into reforms of the financial system, in which the President and his family have been caught up merely by chance” Br. for Amicus United States at 21 (emphases in original). The Committees make no claim that the subpoenas seek financial records of the Lead Plaintiff, his family, and his business entities “by chance.” As we have recounted, the Committees have explicitly set out the circumstances that make the financial records of the Lead Plaintiff and affiliated persons and business entities appropriate subjects for legislative inquiry.

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supports requests for information to determine whether proper banking procedures have been followed.

To whatever extent the targeting objection is really a claim that part of the motive of some members of the Committees for issuing the three subpoenas was to embarrass the Lead Plaintiff, the Supreme Court has made it clear that in determining the lawfulness of a congressional inquiry, courts “do not look to the motives alleged to have prompted it.” *Eastland*, 421 U.S. at 508. The Court had earlier said, “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.” *Barenblatt*, 360 U.S. at 132 (citations omitted).

In this respect, the guiding principle is the same as that applicable when an arrest supported by probable cause is ruled valid despite the arresting officer’s motive to retaliate against a suspect for exercising a First Amendment right. *See Nieves v. Bartlett*, 139 S. Ct. 1715, 1725, 204 L. Ed. 2d 1 (2019); *see also Hartman v. Moore*, 547 U.S. 250, 265-66, 126 S. Ct. 1695, 164 L. Ed. 2d 441 (2006) (absence of probable cause required for valid claim of initiating prosecution to retaliate against a defendant for exercising a First Amendment right).

But Appellants disclaim any objection based on inquiry into motive. “No aspect of this inquiry involves a search for Congress’s hidden ‘motives.’” Br. for Appellants at 26. Their point is that various statements of some members of Congress reveal that the *purpose*

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of the investigations is to embarrass the President, not merely that such embarrassment was the *motive* for the investigations. In this context (as in some others⁶⁹), the distinction between motive, *i.e.*, the reason for acting, and purpose, *i.e.*, the result sought, becomes somewhat blurred. We do not doubt that some members of the Committees, even as they pursued investigations for valid legislative purposes, hoped that the results of their inquiries would embarrass the President.⁷⁰ But as long as the valid legislative purposes that the Committees have identified are being pursued and are not artificial pretexts for ill-motivated maneuvers, the Committees have not exceeded their constitutional authority. The Supreme

69. See, e.g., *Mobile v. Bolden*, 446 U.S. 55, 62, 100 S. Ct. 1490, 64 L. Ed. 2d 47 (1980) (“Our decisions, moreover, have made clear that action by a State that is racially neutral on its face violates the Fifteenth Amendment only if motivated by a discriminatory purpose.”); see generally Andrew Verstein, *The Jurisprudence of Mixed Motives*, 127 Yale L.J. 1106 (2018).

70. The Complaint in this case alleges the following remarks of some members of Congress. Rep. Waters, Chair of the Financial Services Committee, said, “I have the gavel—and subpoena power—and I am not afraid to use it.” Complaint ¶ 37. Another member of Congress “stated that the new House majority would be ‘brutal’ for President Trump” and that “[w]e’re going to have to build an air traffic control tower to keep track of all the subpoenas flying from here to the White House.” *Id.* Others “were busy preparing a ‘subpoena cannon’ to fire at President Trump.” *Id.* Others, “according to news outlets that interviewed party leaders,” issued statements that “meant that they were going to spend the next two years launching a ‘fusillade’ of subpoenas in order to ‘drown Trump with investigations,’ ‘turn Trump’s life upside down,’ and ‘make Trump’s life a living hell.’” *Id.* ¶ 36.

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Court has stated that there is a “presumption” that the stated legislative purposes are the “real object” of the Committees’ investigation. *McGrain*, 273 U.S. at 178. We need not rely on that presumption where we have evidence that valid legislative purposes are being pursued and “the purpose[s] asserted [are] supported by references to specific problems which in the past have been or which in the future could be the subjects of appropriate legislation.” *Shelton*, 404 F.2d at 1297.

Appellants object to the extensive time frame covered by the subpoenas, especially the absence of any time limitations on requests relating to account applications and the identity of those holding interests in accounts. Appellants also object to disclosure of financial records in the names of family members, including the Lead Plaintiff’s grandchildren. However, such information, including documents dating back to when accounts were opened, is reasonably related to an investigation about money laundering.

Appellants contend that the subpoenas exceed any valid legislative purpose because, in their view, the subpoenas are intended to discover evidence of crimes, thereby indicating that the Committees are pursuing a law enforcement objective, which is beyond the power of Congress. *See Quinn*, 349 U.S. at 161. But, as Appellants themselves recognize, “a permissible legislative investigation does not become impermissible because it might reveal evidence of a crime.” Br. for Appellants at 22. Any investigation into the effectiveness of the relevant agencies’ existing efforts to combat money

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laundering or the need for new legislation to render such efforts more effective can be expected to discover evidence of crimes, and such discovery would not detract from the legitimacy of the legislative purpose in undertaking the investigation. The Supreme Court long ago rejected Appellants' argument: "Nor do we think it a valid objection to the investigation that it might possibly disclose crime or wrongdoing on [an executive branch official's] part." *McGrain*, 273 U.S. at 179-80. See *Sinclair*, 279 U.S. at 295 ("[T]he authority of [Congress], directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in [criminal prosecutions].").

Appellants fault Judge Ramos, who, they contend, "asserted that Congress has an independent 'informing function' that allows it to . . . 'publicize corruption . . . in agencies of the Government,' even absent a connection to 'contemplated legislation in the form of a bill or statute.'" Br. for Appellants at 23 (quoting District Court opinion, J. App'x 127). Although the phrases quoted from the Court's opinion are accurate, the brief's addition of the words "independent" and "absent a connection" is a mischaracterization of what Judge Ramos said. He was not asserting an independent informing function or investigative power *absent* a connection to a legislative purpose. He was careful to state that Congress's legislative authority "*includes* a more general informing function." J. App'x 127 (emphasis added). This reflected the Supreme Court's statement in *Hutchinson v. Proxmire*, 443 U.S. 111, 132-33, 99 S. Ct. 2675, 61 L. Ed. 2d 411 (1979), that

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“congressional efforts to inform itself through committee hearings are part of the legislative function.”⁷¹

However, some of the Court’s statements in *Watkins* create uncertainty as to whether, and in what circumstances, an informing function permits public disclosure of information obtained as part of a valid legislative inquiry. On the one hand, the Court said, “We have no doubt that there is no congressional power to expose for the sake of exposure.” 354 U.S. at 200. On the other hand, the Court also said, “The public is, of course, entitled to be informed concerning the workings of its government.”⁷² *Id.* And, in cautioning that the public’s right to be informed about its government “cannot be inflated into a general power to expose,” *id.*, the Court added in the same sentence, “where the *predominant result* can *only* be an invasion of the private rights of individuals,” *id.* (emphases added). The Court also noted that it was “not concerned with the power of the Congress to inquire into and publicize corruption, maladministration or inefficiency

71. To whatever extent Judge Ramos might be understood as treating the informing function as an additional source of Congress’s power, he did not rely on that source of authority, mentioning it only as part of a general overview of Congress’s powers.

72. In *Hutchinson*, the Supreme Court arguably contradicted this statement when it said, “[T]he transmittal of . . . information by individual Members in order to inform the public [about their activities in Congress] is not a part of the legislative function or the deliberations that make up the legislative process.” 443 U.S. at 133. However, the Court’s next sentence makes the limited context clear: “As a result, transmittal of such information by press releases and newsletters is not protected by the Speech or Debate Clause.” *Id.*

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in agencies of the Government.” *Id.* at 200 n.33. These latter statements make clear that Congress can obtain information in an investigation as long as the information is collected in furtherance of valid legislative purposes. In the pending appeal, the high significance of the valid legislative purposes demonstrates that the “predominant purpose” of the Committees’ inquiries cannot be said to be “only” to invade private rights.

Specific substantive objections to scope of subpoenas. We next consider Appellants’ specific challenges to the scope of the subpoenas. Of the three subpoenas, the two identical subpoenas to Deutsche Bank have the broadest scope. These subpoenas fill six single-spaced pages describing eight categories of documents, subdivided into 52 paragraphs, many of which request several types of items. If such extensive document requests were made during discovery in ordinary civil litigation, an initial response would likely be that the requests are too burdensome. In this case, however, the Banks have made no claim that compiling the requested documents imposes an excessive burden on them. It is Appellants whose privacy is claimed to be unlawfully impaired by the Banks’ compliance with the subpoenas who challenge the breadth of the requests. To consider that challenge we examine the subpoenas in detail.

We note that of the eight categories of documents sought by the two Deutsche Bank Subpoenas, only categories 1, 7, and 8 request documents belonging to, or likely to reveal information concerning, Appellants or entities they control or in which they are alleged to have interests. The

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Committees confirmed this fact during oral argument, without dispute from Appellants. The first category of documents includes, with respect to the individuals (including members of their immediate families) and entities named: documents reflecting applications to open accounts, due diligence, and related items, ¶ 1(i); account statements, ¶ 1(ii); transfers of amounts in excess of \$10,000, ¶ 1(iii); summaries or analyses of account activity including the destination of checks (without limitation as to amount), ¶ 1(iv); suspicious activity, ¶ 1(v); investment, mortgage, and credit arrangements and related items, ¶ 1(vi), including appraisals of assets, ¶ 1(vi)(d), and financial information provided by borrowers, ¶ 1(vi)(e), such as tax returns, ¶ 1(vi)(e)(7), and bankruptcy records, ¶ 1(vi)(e)(8); information supplied pursuant to §§ 314(a) or 314(b) of the PATRIOT Act, Pub. L. No. 107-56, ¶ 1(vii); records generated by named bank employees, ¶ 1(viii); documents not kept in customary record-keeping systems related to the named individuals and entities, ¶ 1(ix); and matters discussed with Deutsche Bank's boards, ¶ 1(x).

The seventh category covers documents reflecting periodic reviews of the identified individuals and entities. ¶ 7. The eighth category covers any communications by named employees of the Banks concerning the identified individuals and entities. ¶ 8. Many of the paragraphs in categories 1, 7, and 8 seek documents "including, but not limited to, those involving any foreign individual, entity, or government" or similar language. *E.g.*, ¶ 1(vi), ¶ 1(vi)(k).

The subpoena from the Financial Services Committee to Capital One is less extensive, filling one and one-half

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single-spaced pages describing one category of documents, subdivided into fifteen paragraphs, two of which request several items. This category includes, with respect to accounts held by the entities named and their principals, directors, etc.: documents related to applications to open accounts and due diligence, ¶ 1(i); documents identifying those with interests in the accounts, ¶ 1(ii); documents identifying any account manager, ¶ 1(iii); monthly statements and cancelled checks in excess of \$5,000, ¶ 1(iv); summaries or analyses of account activity including the destination of checks (without limitation as to amount), ¶ 1(v); transfers in excess of \$10,000, ¶ 1(vi); documents concerning suspicious activity, ¶ 1(vii); reviews of accounts pursuant to Capital One's procedures related to Bank Secrecy Act, anti-money-laundering, and compliance with guidance on "Politically Exposed Persons," ¶ 1(viii); documents not kept in customary record-keeping systems related to any loan provided to the named entities, ¶ 1(ix); documents related to real estate transactions, ¶ 1(x); documents provided in response to any subpoena or request from any U.S. Federal or state agency, ¶ 1(xi)(a); notices of administrative, civil, or criminal actions, ¶ 1(xi)(b); requests pursuant to §§ 314(a) or 314(b) of the PATRIOT Act, ¶ 1(xi)(c); and requests for information to or from a third party, ¶ 1(xi)(d).

Sensitive personal information. A specific item in the subpoenas that raises serious concerns as to whether even valid legislative purposes permit exposure of matters entitled to privacy protection is the request for "analyses of . . . transfers, including . . . the destination of the transfers . . ., including *any . . . check . . .*" Deutsche

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Bank Subpoenas, ¶ 1(iv); Capital One Subpoena, ¶ 1(v) (emphasis added). These items have no dollar limitations, even though other provisions limit transfer information to checks above specified amounts. Deutsche Bank Subpoenas, ¶ 1(iii) (\$10,000); Capital One Subpoena, ¶ 1(iv) (\$5,000). In addition to “analyses” of all checks, the Deutsche Bank Subpoenas seek “monthly or other periodic account statements” including “outgoing funds transfers,” ¶ 1(ii), which might reveal the recipients of at least some checks.

These provisions create a risk that some of the checks sought might reveal sensitive personal details having no relationship to the Committees’ legislative purposes. For example, if one of the entities decided to pay for medical services rendered to an employee, the check, and any similar document disclosing sensitive personal information unrelated to business transactions, should not be disclosed. The same would be true of any check reflecting payment for anyone’s medical services. The Committees have advanced no reason why the legislative purposes they are pursuing require disclosure of such sensitive personal information. Indeed, counsel for the Committees at oral argument appeared to recognize that such sensitive personal information need not be disclosed. Oral Arg. Tr. at p. 41, ll. 8-18. We have not located any decision that has considered whether Congress is entitled to require disclosure of sensitive personal information that might be swept up in a collection of business-related financial documents legitimately sought in aid of legislative purposes. At least in the absence of a compelling reason for such disclosure, we decline to permit it in this case.

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Other possibly excludable documents. In addition to what we have described as “sensitive documents,” we recognize that there might be a few documents within the coverage of the subpoenas that have such an attenuated relationship to the Committees’ legislative purposes that they need not be disclosed.

We have concluded that the coverage of the following paragraphs of the Deutsche Bank Subpoenas might include some documents warranting exclusion: paragraphs 1(ii), 1(iv), 1(vi)(e), 1(viii), and 8. We reach the same conclusion as to the following paragraphs of the Capital One subpoena: paragraphs 1(iv), 1(v), 1(x), and 1(xi)(d). We have no such concerns with the coverage of any of the other paragraphs of the subpoenas. All the documents within the coverage of these other paragraphs are sufficiently likely to be relevant to legislative purposes.⁷³ Even if within the coverage of these other paragraphs are some documents that turn out not to advance the Committees’ investigations, that would not be a valid reason for excluding such documents from production. As the Supreme Court has observed with reference to another challenge to a congressional subpoena seeking private banking records, “The very nature of the investigative function—like any research—is that it takes the searchers up some ‘blind alleys’ and into

73. For example, paragraph 1(v) of the Deutsche Bank subpoenas calls for production of “any document related to monitoring for . . . possible suspicious activity,” and paragraph 1(vii) calls for production of “any document related to any request for information issued or received by Deutsche Bank AG pursuant to Sections 314(a) or 314(b) of the USA PATRIOT Act,” provisions that concern money laundering.

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nonproductive enterprises. To be a valid legislative inquiry there need be no predictable end result.” *Eastland*, 421 U.S. at 509.

Any attempt to identify for exclusion from disclosure documents within the listed paragraphs must be done with awareness that a principal legislative purpose of the Committees is to seek information about the adequacy of banking regulators’ steps to prevent money laundering, a practice that typically disguises illegal transactions to appear lawful. Many documents facially appearing to reflect normal business dealings will therefore warrant disclosure for examination and analysis by skilled investigators assisting the Committees to determine the effectiveness of current regulation and the possible need for improved legislation.

Procedure for exclusion of specific documents. To facilitate exclusion of sensitive documents and those few documents that should be excluded from the coverage of the listed paragraphs, we instruct the District Court on remand to implement the following procedure:⁷⁴ (1) after each of the Banks has promptly, and in no event beyond 30 days, assembled all documents within the coverage of paragraphs 1(ii), 1(iv), 1(vi)(e), 1(viii), and 8 of the Deutsche Bank Subpoenas and paragraphs 1(iv), 1(v), 1(x), and 1(xi) (d) of the Capital One Subpoena, counsel for Appellants shall have 14 days to identify to the District Court all sensitive documents and any documents (or portions of

74. *See* 28 U.S.C. § 2106 (appellate court “may remand the cause and . . . require such further proceedings to be had as may be just under the circumstances.”).

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documents) within the coverage of the listed paragraphs that they contend should be withheld from disclosure, under the limited standard discussed above; (2) counsel for the Committees shall have seven days to object to the nondisclosure of such documents; (3) the District Court shall rule promptly on the Committees' objections; (4) Appellants and the Committees shall have seven days to seek review in this Court of the District Court's ruling with respect to disclosure or nondisclosure of documents pursuant to this procedure.⁷⁵ Any appeal of such a ruling will be referred to this panel.

The abbreviated timetable of this procedure is set in recognition of the Supreme Court's instruction that motions to enjoin a congressional subpoena should "be given the most expeditious treatment by district courts because one branch of Government is being asked to halt the functions of a coordinate branch." *Eastland*, 421 U.S. at 511 n.17.

All other documents. All documents within the coverage of the paragraphs not listed and those documents not excluded pursuant to the procedure outlined above shall be promptly transmitted to the Committees in daily batches as they are assembled, beginning seven days from the date of this opinion.

Except as provided above, all three subpoenas seek documents that the Committees are entitled to believe

75. Review may be initiated by a letter to the Clerk of this Court, referencing the existing docket number, without the need to file a notice of appeal.

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will disclose information pertinent to legitimate topics within the Committees' authorized investigative authority, especially money laundering, inappropriate foreign financial relationships with the named individuals and entities, and Russian operations to influence the U.S. political process. As the Supreme Court has observed, documents subpoenaed by a congressional committee need only be "not plainly incompetent or irrelevant to any lawful purpose [of a committee] in the discharge of its duties." *McPhaul v. United States*, 364 U.S. 372, 381, 81 S. Ct. 138, 5 L. Ed. 2d 136 (1960) (quotation marks and brackets omitted). The documents sought by the three subpoenas easily pass that test. The subpoenas are 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.

Objections of the United States as amicus curiae. The United States makes several additional arguments in its amicus curiae brief. The amicus brief contends that "the possibility that a subpoena might transgress separation-of-powers limits . . . mandates that the House clearly authorize a subpoena directed at [the President's] records." Br. for Amicus United States at 10 (citing *Franklin v. Massachusetts*, 505 U.S. 788, 800-01, 112 S. Ct. 2767, 120 L. Ed. 2d 636 (1992), and *Armstrong v. Bush*, 924 F.2d 282, 289, 288 U.S. App. D.C. 38 (D.C. Cir. 1991)). First, this case does not concern separation of powers. The Lead Plaintiff is not suing in his official capacity, no action is sought against him in his official capacity, no

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official documents of the Executive Branch are at issue, Congress has not arrogated to itself any authority of the Executive Branch, and Congress has not sought to limit any authority of the Executive Branch.

Second, the cited cases, *Franklin* and *Armstrong*, do not concern congressional requests for information. Both require a clear statement from Congress when a statute is claimed to limit presidential power. In all of the numerous decisions concerning congressional subpoenas for information from Executive Branch officials, including the President, there is not even a hint, much less a ruling, that the House (or Senate) is required to authorize a specific subpoena issued by one of its committees. In any event, the materials cited above provide sufficient clarity, in light of Supreme Court decisions concerning congressional investigations, to authorize subpoenas for the Lead Plaintiff's unofficial business records in aid of valid legislative purposes.

The amicus brief argues that a President is "entitled to special solicitude in discovery," Br. for Amicus United States at 6 (citing *Cheney*, 542 U.S. at 385, and *In re Trump*, 928 F.3d 360, 371-72 (4th Cir. 2019)), "even in suits solely related to his private conduct," *id.* (citing *Jones*, 520 U.S. at 707). As a general proposition, we agree and have endeavored to recognize that point in the special procedure we have directed the District Court to follow on a limited remand. We note, however, that in *Cheney* the Supreme Court was careful to point out that "special considerations control when the Executive Branch's interests in maintaining the autonomy of its office and

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safeguarding the confidentiality of its communications are implicated.” *Cheney*, 542 U.S. at 385. In the pending appeal, the Lead Plaintiff is suing in his individual capacity, no confidentiality of any official documents is asserted, and any concern arising from the risk of distraction in the performance of the Lead Plaintiff’s official duties is minimal in light of the Supreme Court’s decision in *Clinton v. Jones*, and, in any event, far less substantial than the importance of achieving the legislative purposes identified by Congress. In *Jones*, the claimed distraction was that attending a deposition and being subjected to a civil trial would divert some of the President’s time from performance of his official duties; in the pending case, there is no claim of any diversion of any time from official duties. *Jones*, although expressing concern with “the high respect that is owed to the office of the Chief Executive,” not only permitted discovery directed to the President but also obliged him to be subjected to a civil trial. 520 U.S. at 707.⁷⁶ *In re Trump*, 928 F.3d at 379-80, concerned

76. Judge Livingston seeks to minimize the significance of *Clinton v. Jones* on several grounds. First, she attempts to refute our point that this case does not involve separation-of-powers concerns, Part. Diss. Op. at 15-16, but in doing so, she accords little significance to the major reason for that point: the Lead Plaintiff is suing in his individual, not his official, capacity. She then seeks to relegate *Jones* to near insignificance by referring to “longstanding interbranch practice,” *id.* at 17, again ignoring the fact that this litigation is not a conflict between branches of the Government. The fact that the United States filed only an amicus curiae brief, rather than intervene to assert the interests of the United States or those of the office of the President, underscores the absence of a true interbranch conflict. The point that compliance with the subpoenas will not have an impact on the Lead Plaintiff’s time sufficient to bar compliance arises from

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a petition for mandamus directing a District Court to dismiss for lack of standing a complaint alleging violation of the Foreign and Domestic Emoluments Clauses, U.S. Const. art I, § 9, cl. 8, art II, § 1, cl. 7.

The amicus brief not only repeats Appellants' argument that the House must identify a legitimate legislative purpose for seeking the President's information, but adds that it must do so "with sufficient particularity that courts can concretely review the validity of any potential legislation and determine whether the information requested is pertinent and necessary to Congress's consideration of such legislation." Br. for Amicus United States at 11. The meaning of this sentence is not clear. If it means that legislative purpose must be sufficiently identified to enable a court now to consider the validity of any legislation that might be enacted in the future, it would encounter the prohibition on advisory opinions. *See Flast v. Cohen*, 392 U.S. 83, 96, 88 S. Ct. 1942, 20 L. Ed. 2d 947 (1968) ("[T]he rule against advisory opinions implements the separation of powers prescribed by the Constitution and confines federal courts to the role assigned them by Article III."). On the other hand, if the sentence means that legislative purpose must be

a comparison with *Clinton v. Jones*, in which the Supreme Court required a President to be available for a deposition and be subject to a civil trial. The so-called distraction of the Lead Plaintiff is of far less significance than what the Supreme Court permitted with respect to President Clinton. In sum, Judge Livingston offers no reason to think that compliance with the subpoenas will distract the Lead Plaintiff from the performance of official duties to a greater extent than the Supreme Court permitted in *Clinton v. Jones*.

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sufficiently identified so that it will serve as an aid in interpreting legislation that might be enacted in the future, there is no requirement that legislative purpose sufficient to support a congressional subpoena must also suffice to aid a court in interpreting some statute yet to be enacted. In any event, the legislative purposes of the Committees' subpoenas have been sufficiently identified.

Refining Appellants' argument that the Committees' valid legislative purposes have not been adequately identified, the amicus brief argues that "courts must assess 'the connective reasoning whereby the precise questions asked relate to' the legitimate legislative purpose." Br. for Amicus United States at 14 (quoting *Watkins*, 354 U.S. at 215). This quotation from *Watkins* is difficult to square with the Supreme Court's later statement in *McPhaul* that subpoenaed documents need only be "not plainly incompetent or irrelevant to any lawful purpose [of a committee] in the discharge of its duties." *McPhaul*, 364 U.S. at 381 (quotation marks and brackets omitted). It would appear that the "connective reasoning" phrase of *Watkins*, if still valid at all, is limited to the context in which it was said—a committee witness's objection to a specific question—and not to a subpoena for adequately described categories of documents that are relevant to adequately identified valid legislative purposes of investigation.

The amicus brief argues that subpoenaed information "not 'demonstrably critical' should be deemed insufficiently pertinent when directed at the President's records." Br. for Amicus United States at 15 (quoting *Senate Select*

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Committee on Presidential Campaign Activities v. Nixon, 498 F.2d 725, 731, 162 U.S. App. D.C. 183 (D.C. Cir. 1974) (in banc)). The D.C. Circuit used the phrase “demonstrably critical” as a standard for overcoming a claim of executive privilege. *See Nixon*, 498 F.2d at 727. President Nixon had asserted that tape recordings of his conversations with senior staff “cannot be made public consistent with the confidentiality essential to the functioning of the Office of the President.” *Id.* (internal quotation marks omitted). In the pending appeal, no claim of executive privilege has been made, much less a claim that withholding the subpoenaed documents is “essential to the functioning of the Office of the President.” *Id.*

The amicus brief asserts that “[c]ourts may require the Committees first ‘to narrow the scope of the subpoenas’ to first seek critical information in light of the President’s constitutional interests,” Br. for Amicus United States at 17 (ellipsis omitted) (quoting *Cheney*, 542 U.S. at 390), and that “[c]ourts may require Congress first to determine whether records relevant to a legitimate legislative purpose are not, in fact, available from other sources that would not impinge on constitutional interests,” *id.* (citing *Watkins*, 354 U.S. at 206). That argument has no application to the many documents that were generated by the Banks. Moreover, the District Court was not required to do what it “may” do,⁷⁷ and the President’s “constitutional

77. The amicus brief asserts that the District Court “assumed that it had no authority to deal with the overbroad character of the congressional subpoenas here.” Br. for Amicus United States at 25 (citing J. App’x 138). We see no indication that the District Court made such an assumption, either at the cited reference to the District Court’s opinion or elsewhere in that opinion.

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interests” are implicated when *official* documents are sought, as in *Cheney*, precipitating “a conflict between the [L]egislative and [E]xecutive [B]ranches,” *AT&T I*, 551 F.2d at 390.

The amicus brief contends that H.R. 507 is insufficient authorization for the subpoenas to the extent that it authorizes not only current subpoenas to the named persons and entities but also future subpoenas to them. Br. for Amicus United States at 18. Because the pending appeal concerns denial of a preliminary injunction to prevent compliance with issued subpoenas, we make no determination with respect to future subpoenas.

In an overarching argument endeavoring to strengthen and make decisive many of the arguments just considered, the amicus brief urges the principle of constitutional avoidance. Confronting a constitutional challenge to a statute of uncertain meaning, courts sometimes interpret the statute so that it clearly comports with the Constitution. *See, e.g., Crowell v. Benson*, 285 U.S. 22, 62, 52 S. Ct. 285, 76 L. Ed. 598 (1932). Enlisting the principle of constitutional avoidance in the pending appeal, the amicus brief contends that the principle should persuade this Court to require the Committees to “explore other avenues” for obtaining the information, Br. for Amicus United States at 3 (quoting *Cheney*, 542 U.S. at 390); to require the District Court “to proceed in a more tailored manner,” *id.* at 5; to approach “with the utmost caution” the task of “balanc[ing] Congress’s interest in the information against any constitutional interests of the party withholding it,” *id.* at 16; and to require the District

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Court “to attempt to avoid a conflict between constitutional interests before it can ‘intervene responsibly,’” *id.* at 17-18 (quoting *AT&T II*, 567 F.2d at 131). The amicus brief also reminds us of the Supreme Court’s statement in *Rumely* suggesting “abstention from adjudication unless no choice is left.” 345 U.S. at 46.

In the circumstances of this case, we do not believe that constitutional avoidance adds persuasive force to the arguments in the amicus brief. First, we question whether constitutional avoidance applies beyond the context of interpreting ambiguous statutes that are challenged as unconstitutional. The Supreme Court considered that question in an analogous situation in *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 129 S. Ct. 1800, 173 L. Ed. 2d 738 (2009). Broadcasters urged the Court to apply to the FCC a more stringent arbitrary-and-capricious standard of review of agency actions that implicate constitutional liberties. *See id.* at 516. In declining to do so, the Court said, “We know of no precedent for applying [the principle of constitutional avoidance] to limit the scope of authorized executive action.” *Id.* Similarly, it is at least doubtful whether the principle should be enlisted to limit the scope of authorized congressional action.

Second, to the extent that decisions like *Cheney* and *Rumely* advised courts to proceed with caution, they did so in contexts quite different from the pending appeal. *Cheney* involved a real confrontation between the Legislative and Executive Branches; *Rumely* involved a “limitation imposed by the First Amendment,” 345 U.S. at 44. By contrast, the pending appeal involves solely

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private financial documents, and the Lead Plaintiff sues only in his individual capacity. The only defense even implicating the office of the presidency is the possibility that document disclosure might distract the Lead Plaintiff in the performance of his official duties, a risk we have concluded, in light of Supreme Court precedent, *Clinton v. Jones*, is minimal at best. Appellants make no claim that Congress or its committees are purporting to curb in any way the powers of the Executive Branch.

For all of these reasons, we see no reason to permit constitutional avoidance to provide added strength to the arguments of the amicus or Appellants themselves.

Having considered Appellants' statutory and constitutional claims, we conclude that they have not shown a likelihood of success on any of them. In reaching this conclusion, we recognize that we are essentially ruling on the ultimate merits of Appellants' claims. But, as the Supreme Court has pointed out, "Adjudication of the merits is most appropriate if the injunction rests on a question of law and it is plain that the plaintiff cannot prevail." *Munaf v. Geren*, 553 U.S. 674, 691, 128 S. Ct. 2207, 171 L. Ed. 2d 1 (2008). That is the situation here.

III. Sufficiently Serious Questions to Make Them a Fair Ground for Litigation

In considering the less rigorous serious-questions standard for a preliminary injunction, it is important to recognize that the first component of this standard, in addition to a balance of hardships tipping decidedly

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in favor of the moving party, is “sufficiently serious questions going to the merits *to make them a fair ground for litigation.*” *Kelly*, 933 F.3d at 184 (emphasis added); *Jackson Dairy*, 596 F.2d at 72. The meaning of this emphasized phrase rarely receives explicit consideration. Two interpretations are possible.

The phrase could mean that the questions raised have sufficiently serious *legal* merit to be open to reasonable debate. That view of the phrase would be especially appropriate in those cases where the need for preliminary relief precipitously arose just prior to some impending event and the party seeking temporary relief has not had an adequate opportunity to fully develop its legal arguments. Alternatively, or in addition, the phrase could mean that the questions raised have sufficiently serious *factual* merit to warrant further investigation in discovery and, if summary judgment is not warranted, at trial.

In the pending appeal, the District Court stated, “The word ‘serious’ relates to a question that is both serious and open to reasonable debate.” J. App’x 150. But Judge Ramos declined to accept Appellants’ claim that just raising a constitutional objection to the subpoenas sufficed to render the claim serious. As he observed, if that sufficed, “every complaint challenging the power of one of the three coordinate branches of government would result in preliminary relief, regardless of whether established law renders the complaint unmeritorious.” *Id.*

Our case law indicates that the phrase “make them fair ground for litigation” often refers to those *factual* disputes

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that can be resolved at trial only after investigation of the facts. We have stated that the questions raised by a plaintiff's claims must be "so serious, substantial, difficult and doubtful as to make them a fair ground for litigation *and thus for more deliberate investigation.*" *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d Cir. 1953) (emphasis added). The emphasized words appear to have originated in *Hamilton Watch*, but have been frequently repeated by this Court. *See Gulf & Western Industries, Inc. v. Great Atlantic & Pacific Tea Co.*, 476 F.2d 687, 692, 693 (2d Cir. 1973); *Checker Motors Corp. v. Chrysler Corp.*, 405 F.2d 319, 323 (2d Cir. 1969); *Unicon Management Corp. v. Koppers Co.*, 366 F.2d 199, 205 (2d Cir. 1966). More recently, we pointed out in *Citigroup Global Markets* that a virtue of the serious-questions standard is "that it permits the entry of an injunction in cases where a *factual dispute* renders a fully reliable assessment of the merits impossible." 598 F.3d at 36 (emphasis added). For example, in *Jacobson & Co. v. Armstrong Cork Co.*, 548 F.2d 438 (2d Cir. 1977), we affirmed a preliminary injunction under the serious-questions standard because the plaintiff had presented affidavits, depositions, and exhibits sufficient to contest the factual issue of the reason for an employee's termination, *see id.* at 444.

We need not choose between these meanings of "fair ground for litigation." Appellants are not entitled to a preliminary injunction under the serious-questions standard because (1) that standard, as we have discussed, *see* Part I, does not apply to preliminary injunctive relief sought to prevent governmental action, and (2) even if

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applicable, the standard requires a balance of hardships that tips decidedly to the plaintiff, a requirement not met in this case, *see* Point IV. We also point out that, to the extent that the serious-questions standard furnishes an opportunity to develop legal arguments concerning a reasonably debatable question, Appellants have fully developed their positions in the 95 pages of briefs they have submitted. To the extent that the serious-questions standard is available for factual development of an issue, Appellants have not identified a single factual issue that might warrant a trial or a single witness or document that might add substance to their claims at a trial.

Furthermore, both their statutory and constitutional claims, though serious in at least some sense, lack merit, and, because they both involve solely issues of law, are properly rejected at this stage of the litigation, *see Munaf*, 553 U.S. at 691-92, except for the limited remand we have ordered.

IV. Balance of Hardships/Equities

The hardship for Appellants if a preliminary injunction is denied would result from the loss of privacy for their financial documents. We have recognized that this loss of privacy is irreparable. In assessing the seriousness of that loss for purposes of determining the balance of hardships, we note that the loss will be somewhat mitigated to the extent that sensitive personal information and some documents will not be disclosed pursuant to the procedure we have ordered upon remand. The seriousness of the hardship arising from disclosure of the information called

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for by the subpoenas should be assessed in light of the fact that the Lead Plaintiff is already required to expose for public scrutiny a considerable amount of personal financial information pursuant to the financial disclosure requirement of the Ethics in Government Act, 5 U.S.C. app. §§ 101-111, although considerably more financial information is required to be disclosed by the subpoenas.

The hardship for the Committees if a preliminary injunction is granted would result from the loss of time to consider and act upon the material disclosed pursuant to their subpoenas, which will expire at the end of the 116th Congress. This loss is also irreparable. In assessing the seriousness of that loss for purposes of determining the balance of hardships, we note that the Committees have already been delayed in the receipt of the subpoenaed material since April 11 when the subpoenas were issued. They need the remaining time to analyze the material, hold hearings, and draft bills for possible enactment.

Even if the balance of these hardships/equities tips in favor of Appellants, which is debatable, it does not do so “decidedly,” *Kelly*, 933 F.3d at 184; *Jackson Dairy*, 596 F.2d at 72, as our serious-questions standard requires.

V. Public Interest

The public interest in vindicating the Committees’ constitutional authority is clear and substantial. It is the interest of two congressional committees, functioning under the authority of a resolution of the House of Representatives authorizing the subpoenas at issue,

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to obtain information on 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 whether the Lead Plaintiff was vulnerable to foreign exploitation. The opposing interests of Appellants, suing only in their private capacity, are primarily their private interests in nondisclosure of financial documents concerning their businesses, rather than intimate details of someone's personal life or information the disclosure of which might, as in *Watkins*, 354 U.S. at 197-99, chill someone's freedom of expression.

We recognize, however, that the privacy interests supporting nondisclosure of documents reflecting financial transactions of the Lead Plaintiff should be accorded more significance than those of an ordinary citizen because the Lead Plaintiff is the President. Although the documents are not official records of the Executive Branch, the Lead Plaintiff is not suing in his official capacity, and no executive privilege has been asserted, disclosure of the subpoenaed documents can be expected to risk at least some distraction of the Nation's Chief Executive in the performance of his official duties. *See Nixon v. Fitzgerald*, 457 U.S. 731, 753, 102 S. Ct. 2690, 73 L. Ed. 2d 349 (1982) (noting risk of distraction as one reason for establishing immunity of President from civil liability for official actions). That concern, we note, did not dissuade the Supreme Court from requiring President Nixon to comply with a district court's subpoena to produce tape

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recordings of conversations with senior staff, *see United States v. Nixon*, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974), or requiring President Clinton to submit to discovery, including a deposition, in civil litigation involving pre-presidential conduct, *see Jones*, 520 U.S. at 697-706.⁷⁸ *See also Trump v. Vance*, 941 F.3d 631, 641 n. 12 (2d Cir. 2019) (concluding that “the disclosure of personal financial information, standing alone, is unlikely to impair the President in performing the duties of his office”), *petition for cert. filed*, No. 19-635 (U.S. Nov. 14, 2019).

The Committees’ interests in pursuing their constitutional legislative function is a far more significant public interest than whatever public interest inheres in avoiding the risk of a Chief Executive’s distraction arising from disclosure of documents reflecting his private financial transactions.

78. In *Jones*, the Supreme Court stated, “The fact that a federal court’s exercise of its traditional Article III jurisdiction may significantly burden the time and attention of the Chief Executive is not sufficient to establish a violation of the Constitution.” 520 U.S. at 703. The same can be said as to Congress’s exercise of its traditional Article I jurisdiction. One court has discounted concern that compliance with document requests might distract the President in the performance of official duties by noting that “the President himself appears to have had little reluctance to pursue personal litigation despite the supposed distractions it imposes upon his office.” *District of Columbia v. Trump*, 344 F. Supp. 3d 828, 843 (D. Md. 2018) (collecting examples), *rev’d on other grounds (lack of standing)*, *In re Trump*, 928 F.3d 360 (4th Cir. 2019).

*Appendix I***CONCLUSION**

For all of these reasons, we conclude that under the applicable likelihood-of-success standard, Appellants' motion for a preliminary injunction was properly denied, except as to disclosure of any documents that might be determined to be appropriate for withholding from disclosure pursuant to our limited remand. The serious-questions standard is inapplicable, the balance of hardships does not tip decidedly in favor of Appellants, and the public interest favors denial of a preliminary injunction.

We affirm the District Court's order in substantial part to the extent that it denied a preliminary injunction and order prompt compliance with the subpoenas, except that the case is remanded to a limited extent for implementation of the procedure set forth in this opinion concerning the nondisclosure of sensitive personal information and a limited opportunity for Appellants to object to disclosure of other specific documents within the coverage of those paragraphs of the subpoenas listed in this opinion. The mandate shall issue forthwith, but compliance with the three subpoenas and the procedure to be implemented on remand is stayed for seven days to afford Appellants an opportunity to apply to the Supreme Court or a Justice thereof for an extension of the stay.

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DEBRA ANN LIVINGSTON, *Circuit Judge*, concurring in part and dissenting in part:

Although not expressly provided for in the Constitution, Congress's power to conduct investigations for the purpose of legislating is substantial, "as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 504 n.15, 95 S. Ct. 1813, 44 L. Ed. 2d 324v (1975) (quoting *Barenblatt v. United States*, 360 U.S. 109, 111, 79 S. Ct. 1081, 3 L. Ed. 2d 1115 (1959)). Yet this power is not unlimited. When Congress conducts investigations in aid of legislation, its authority derives from its *responsibility to legislate*—to consider the enactment of new laws or the improvement of existing ones for the public good.¹ Congress has no power to expose personal information for the sake of exposure, *see Watkins v. United States*, 354 U.S. 178, 200, 77 S. Ct. 1173, 1 L.

1. None of these subpoenas issued in connection with an impeachment proceeding, in which Congress's investigatory powers are at their peak, but rather, as stated, "in aid of legislation." *See Kilbourn v. Thompson*, 103 U.S. 168, 190, 26 L. Ed. 377 (1880) (noting that "[w]here the question of . . . impeachment is before [the House or the Senate] acting in its appropriate sphere on that subject, we see no reason to doubt the right to compel the attendance of witnesses, and their answer to proper questions, in the same manner and by the use of the same means that courts of justice can in like cases"); *Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 732, 162 U.S. App. D.C. 183 (D.C. Cir. 1974) (citing to Article I, Section 2 of the Constitution when noting that impeachment investigations in the House have "an express constitutional source" which differentiates them from Congress's general oversight or legislative power).

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Ed. 2d 1273, 76 Ohio Law Abs. 225 (1957) (expressing “*no doubt* that there is no congressional power to expose for the sake of exposure” (emphasis added)), nor may it seek information to enforce laws or punish for their infraction—responsibilities which belong to the executive and judicial branches respectively, and not to it. *Id.* at 187 (noting that Congress is neither “a law enforcement [n]or trial agency,” as “[t]hese are functions of the executive and judicial departments of government”). As the Supreme Court has put it: “No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to ‘punish’ those investigated are indefensible.” *Id.*

The legislative subpoenas here are deeply troubling. Targeted at the President of the United States but issued to third parties, they seek voluminous financial information not only about the President personally, but his wife, his children, his grandchildren, his business organizations, and his business associates.² Collectively, the subpoenas seek personal and business banking records stretching back nearly a decade (and with regard to several categories of information, *with no time limitation*

2. The Plaintiff entities here are defined to include not only parents, subsidiaries, related joint ventures and the like, but any “current or former employee, officer, director, shareholder, partner, member, consultant, senior manager, manager, senior associate, staff employee, independent contractor, agent, attorney or other representative of any of those entities,” so that the banking records of numerous individuals beyond the President’s immediate family are potentially included in this dragnet. J.A. at 47, 58.

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whatsoever) and they make no distinction between business and personal affairs, nor consistently between large and small receipts and expenditures. To be sure, breadth may be necessary in legislative subpoenas so that Congress can learn about a proposed subject of legislation sufficiently to enact new laws or improve the old ones: such learning is “an indispensable ingredient of lawmaking.”³ *Eastland*, 421 U.S. at 505. Still, the district court was of the view that in a routine civil case, it would have sent the parties into a room with the instruction that “you don’t come out until you come back with a reasonable subpoena.” J.A. at 94. The majority doesn’t disagree. It, too, characterizes the subpoenas as “surely broad in scope.” Maj. Op. at 45. It acknowledges that compliance will “subject [the President’s] private business affairs to the Committees’ scrutiny,” *id.* at 48, and impose irreparable harm, *id.* at 13. It could have added that *personal* banking records of the President and his family are not excluded, and that neither House committee seeking this information will commit to treating any portion of it as confidential, irrespective of any public interest in disclosure. J.A. at 122-23.

The majority and I are in agreement on several points. First, we agree that the Right to Financial Privacy Act (“RFPA”), 12 U.S.C. §§ 3401-3423, does not apply to Congress because, as the majority correctly concludes, Congress is not a “Government authority” within the

3. That said, “legislative judgments normally depend more on the predicted consequences of proposed legislative actions and their political acceptability, than on precise reconstruction of past events,” which appears to be the focus of the present subpoenas. *Nixon*, 498 F.2d at 732.

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meaning of that statute. Maj. Op. at 24-33. We likewise agree that 26 U.S.C. § 6103 of the Internal Revenue Code does not pose an obstacle to Deutsche Bank AG’s disclosure of tax returns in its possession in response to the Committees’ subpoenas. *Id.* at 34-44. Accordingly, I concur that, as to the statutory arguments presented by the Plaintiffs, they have raised no serious question suggesting that the House subpoenas may not be enforced.

The statutory arguments, however, are not the only arguments presented. The majority and I agree that this appeal raises an important issue regarding the investigative authority of two committees of the United States House of Representatives—the House Committee on Financial Services and the House Permanent Select Committee on Intelligence (collectively, “Committees”)—in the context of their efforts to obtain voluminous personal and business banking records of the President of the United States, members of his immediate family, his primary business organization and affiliated entities, and his business associates. Maj. Op. at 4. In fact, the question before us appears not only important (as the majority acknowledges) but of first impression: the parties are unaware of *any* Congress before this one in which a standing or permanent select committee of the House has issued a third-party subpoena for documents targeting a President’s personal information solely on the rationale that this information is “in aid of legislation.” Trump Br. at 14; Tr. of Oral Arg. at 34:24-35:3-4. But this House has now authorized *all* such House committees to issue legislative subpoenas of this sort, so long as directed at information involving this President, his immediate

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family, business entities, or organizations. H.R. Res. 507, 116th Cong. (2019); *see also* H.R. Res. 509, 116th Cong. § 3 (2019) (“House Resolution 507 is hereby adopted.”).

In such a context, “experience admonishes us to tread warily.” *United States v. Rumely*, 345 U.S. 41, 46, 73 S. Ct. 543, 97 L. Ed. 770 (1953). I agree with the majority that our review of the denial of a preliminary injunction is “appropriately more exacting where the action sought to be enjoined concerns the President . . . in view of [t]he high respect that is owed to the office of the Chief Executive,” Maj. Op. at 11 (quoting *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 385, 124 S. Ct. 2576, 159 L. Ed. 2d 459 (2004)). We disagree, however, as to the preliminary injunction standard to be applied. In my view, a preliminary injunction may issue in a case of this sort when a movant has demonstrated sufficiently serious questions going to the merits to make them a fair ground for litigation, plus a balance of hardships tipping decidedly in that party’s favor, that the public interest favors an injunction, and that the movant, as here, will otherwise suffer irreparable harm. *See Citigroup Glob. Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35, 38 (2d Cir. 2010).

And as to the merits showing, I respectfully disagree with the majority’s determination that the Plaintiffs’ constitutional arguments and those raised by the United States as *amicus curiae* are *insubstantial*—not sufficiently serious for closer review.⁴ Maj. Op. at 89-98.

4. Given my determination herein that the Plaintiffs have made a showing of “serious questions” as to the merits and that this case

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I cannot accept the majority’s conclusions that “this case does not concern separation of powers,” *id.* at 89, and that there is “minimal at best” risk of distraction to this and future Presidents from legislative subpoenas of this sort, *id.* at 97. Instead, I conclude that the Plaintiffs have raised serious questions on the merits, implicating not only Congress’s lawmaking powers, but also the ability of this and future Presidents to discharge the duties of the Office of the President free of myriad inquiries instigated “more casually and less responsibly” than contemplated in our constitutional framework. *Rumely*, 345 U.S. at 46.

Nor do I agree with the majority’s determination substantially to affirm the judgment and order compliance with these subpoenas. The majority itself recognizes that these broad subpoenas cannot be enforced *precisely* as drafted because they call for the production of material that may either bear “an attenuated relationship” to *any* legislative purpose or that “might [even] reveal sensitive personal details having *no* relationship to the Committees’ legislative purposes.” Maj. Op. at 84 (emphasis added). The majority remands for a culling process pursuant to which information disclosing, for instance, the payment of medical expenses would be exempt from disclosure.

must be remanded, I need not now address whether the Plaintiffs have also satisfied the “likelihood of success” standard—and I do not do so, given the obligation in this context to avoid unnecessary judicial determinations on constitutional questions implicating Congress’s investigative powers. *See Rumely*, 345 U.S. at 46. I note, however, that I do not concur in the majority’s determination that as to the *present* reach of these subpoenas, the Plaintiffs have shown no likelihood of success.

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Id. The majority’s limited culling, however, is tightly restricted to specified categories of information, leaving out almost all “business-related financial documents” from *any* review by the district court, *id.*, irrespective of any threatened harm from disclosure, and potentially leaving out substantial *personal* information as well. Indeed, given the tight limitations imposed by the majority on the district court’s review, even sensitive records reflecting personal matters unrelated to any conceivable legislative purpose could potentially be disclosed.

I agree with the majority that remand is necessary. But we *disagree* as to the reasons why. I conclude that the present record is insufficient to support the majority’s determination that the voluminous records of Plaintiffs sought from Deutsche Bank AG (“Deutsche Bank”) and Capital One Financial Corporation (“Capital One”) should at this time be produced.⁵ The majority concludes in advance—before these records have been assembled—that only a select “*few documents*” will implicate privacy concerns or bear “such an attenuated relationship” to any legislative purpose that “they need not be disclosed.” Maj. Op. at 85 (emphasis added). I disagree that the present record is sufficient to make that determination or to conclude, more fundamentally, where the balance of hardships lies with regard to the preliminary relief

5. The Plaintiffs challenge the subpoenas as they relate to the banking records of President Donald J. Trump, his family, and his businesses—the Plaintiffs here. Trump Br. at 1. To the extent the subpoenas seek other information related to parties who are not Plaintiffs, the subpoenas have not been challenged and are not part of this appeal.

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that the Plaintiffs seek. In this sensitive separation-of-powers context, serious questions have been raised as to the historical precedent for these subpoenas; whether Congress has employed procedures sufficient to “prevent the separation of power from responsibility,” *Watkins*, 354 U.S. at 215, in seeking this President’s personal information; and whether the subpoenas are supported by valid legislative purposes and seek information reasonably pertinent to those purposes, *see Quinn v. United States*, 349 U.S. 155, 161, 75 S. Ct. 668, 99 L. Ed. 964 (1955) (noting that Congress’s power to investigate “cannot be used to inquire into private affairs unrelated to a valid legislative purpose”). These questions, like the balance of hardship question, also require further review.

As set forth herein, I would remand, directing the district court promptly to implement a procedure by which the Plaintiffs may lodge their objections to disclosure with regard to specific portions of the assembled material and so that the Committees can clearly articulate, also with regard to specific categories of information, the legislative purpose that supports disclosure *and* the pertinence of such information to that purpose. The objective of this remand is the creation of a record that is sufficient more closely to examine the serious questions that the Plaintiffs have raised and to determine where the balance of hardships lies with regard to an injunction in this case, and concerning particular categories of information. The district court acknowledged that in a routine civil case, it would not have ordered the disclosures here. The majority errs in implicitly concluding that a President has *less* protection from the unreasonable disclosure of

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his personal and business affairs than would be afforded any litigant in a civil case.

Only on the basis of this fuller record would I determine the question whether a preliminary injunction should have issued, and with regard to what portions of the records sought. In reaching this conclusion, I am guided by the Supreme Court's counsel in *Rumely* that in the context of delicate constitutional issues involving limits on the investigative power of Congress, our duty is to avoid pronouncement "unless no choice is left." *Rumely*, 345 U.S. at 46; *cf. Cheney*, 542 U.S. at 389-90 (suggesting that courts should "explore other avenues" to avoid adjudicating "overly broad discovery requests" and "unnecessarily broad subpoenas" that present "collision course" conflicts between coequal branches). Indeed, *Rumely* affirms that the duty of constitutional avoidance is "even more applicable" in the context of congressional investigations "than to formal legislation." *Rumely*, 345 U.S. at 46; *see also Tobin v. United States*, 306 F.2d 270, 275, 113 U.S. App. D.C. 110 (D.C. Cir. 1962) (recognizing duty of courts in appropriate circumstances to avoid "passing on serious constitutional questions" presented by Congress's exercise of its investigative power). Decision here may be required, but is premature on the present record.

Remand will also afford the parties an opportunity to negotiate. This is not the essential point of the remand I propose, but efforts at negotiation in this context *are* to be encouraged, since they may narrow the scope of these subpoenas, and thus avoid judicial pronouncement on

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the “broad confrontation now tendered.” *United States v. Am. Tel. & Tel. Co (AT&T I)*, 551 F.2d 384, 395, 179 U.S. App. D.C. 198 (D.C. Cir. 1976). The Plaintiffs have repeatedly sought the opportunity to negotiate. Reply Br. at 6-7; Tr. of Oral Arg. at 17:18-19, 18:3-20, 66:7-67:2. And the Committees, while preferring the more immediate disposition that the majority affords them, have expressed a willingness to attempt negotiation on an expedited basis if requested by this Court.⁶ Tr. of Oral Arg. at 46:8-19.

6. Before this Court, counsel for the Committees stated that “[i]f this court thinks there should be negotiation . . . [p]lease make it really, really fast, because we think that Mr. Trump’s statements make clear this is absolutely insincere . . . [b]ut fine, give us a day.” Tr. of Oral Arg. at 46:8-15. Counsel for the Plaintiffs specifically affirmed in response that “I don’t think there is any basis to determine that we are being insincere, and I certainly welcome, I think that we have made clear, sending this case back down for judicially refereed negotiations on whatever timeline the court thinks is appropriate is absolutely something we are willing to participate in in good faith.” Tr. of Oral Arg. at 66:21-67:2.

Referencing an October 8, 2019 letter from Pat A. Cippolone, Counsel to the President, to the Speaker of the House of Representatives and three House committee chairs (a letter that is not part of the record before us), the majority concludes that a remand for negotiation is futile because the President has prohibited certain members of the Administration from appearing in connection with the ongoing impeachment inquiry. Maj. Op. at 71-72, 72 n.66. With respect, however, this letter references only the “impeachment inquiry” and not the legislative investigations at issue here. This letter thus provides no basis for this Court to disregard the express representations of the Plaintiffs’ attorney that the Plaintiffs, including the President, seek to negotiate in good faith.

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To be clear, and as set forth herein, the Plaintiffs have raised serious questions on the merits as to these subpoenas, which implicate profound separation-of-powers concerns.⁷ But pending the full remand that I outline herein, I defer for now the question whether they have also

7. The majority suggests that these subpoenas do not implicate separation of powers because, *inter alia*, President Trump is not suing in his official capacity. Maj. Op. at 70. I disagree. As in *Rumely*, “we would have to be that ‘blind’ Court . . . that does not see what ‘(a)ll others can see and understand,’” not to recognize that these subpoenas target the *President* in seeking personal and business financial records of not only the President himself, but his three oldest children and members of their immediate family, plus the records of the Trump Organization and a litany of organizations with which the President is affiliated. *Rumely*, 345 U.S. at 44 (quoting *Child Labor Tax Case*, 259 U.S. 20, 37, 42 S. Ct. 449, 66 L. Ed. 817, 1922-2 C.B. 337, T.D. 3346 (1922)); *see also id.* (acknowledging “wide concern, both in and out of Congress, over some aspects of the exercise of the congressional power of investigation”); *cf. Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2575, 204 L. Ed. 2d 978 (2019) (noting that courts are “not required to exhibit a naiveté from which ordinary citizens are free” (quoting *United States v. Stanchich*, 550 F.2d 1294, 1300 (2d Cir. 1977) (Friendly, J.))). Indeed, the Committees themselves acknowledge that “President Trump and the Trump Organization” are the focus of their investigations, *see* 165 Cong. Rec. H2698 (daily ed. Mar. 13, 2019) (statement of Rep. Waters), and that “given the closely held nature of the Trump Organization,” investigation must “include [the President’s] close family members,” District Court Doc. No. 51 at 25-26. To be sure, Presidents are not immune from legislative subpoenas. But as I explain below, this dragnet around the President implicates separation-of-powers concerns for this and future Presidents, supporting a remand as to all the Plaintiffs here. To the extent that certain of the requested records may ultimately be found not to implicate separation-of-powers concerns, such a determination can only properly be made following a remand for development of the record.

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shown a balance of hardships tipping decidedly in their favor. The remainder of this opinion sets out the reasons for my conclusions: (1) that the Plaintiffs have raised serious constitutional questions as to these legislative subpoenas; and (2) that the serious question formulation of the preliminary injunction standard is applicable, contrary to the majority's position.

I

A

To reiterate, the subpoenas here are very troubling. Congress “cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change.” *Eastland*, 421 U.S. at 504. At the same time, ill-conceived inquiries by congressional committees “can lead to ruthless exposure of private lives in order to gather data” that is unrelated and unhelpful to the performance of legislative tasks. *Watkins*, 354 U.S. at 205. And the “arduous and delicate task” of courts seeking to accommodate “the congressional need for particular information” with the individual’s “personal interest in privacy,” *id.* at 198, does not grow *easier* when Congress seeks a *President’s* personal information. Indeed, given the “unique constitutional position of the President” in our scheme of government, *see Franklin v. Massachusetts*, 505 U.S. 788, 800, 112 S. Ct. 2767, 120 L. Ed. 2d 636 (1992), and the grave importance of diligent and fearless discharge of the President’s public duties, our task grows more difficult. *See Nixon v. Fitzgerald*, 457 U.S. 731, 753, 102 S. Ct. 2690, 73 L. Ed. 2d 349 (1982)

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(recognizing that distraction from public duties is “to the detriment of not only the President and his office but also the Nation that the Presidency was designed to serve”).

The majority disagrees. It concludes that this case “does not concern separation of powers” because the sought-after records are personal, not official, and because Congress “has not arrogated to itself any authority of the Executive Branch,” nor “sought to limit any authority of the Executive Branch.” Maj. Op. at 89. With respect, however, this conclusion gives too short shrift to the Supreme Court’s analysis in *Clinton v. Jones*, 520 U.S. 681, 117 S. Ct. 1636, 137 L. Ed. 2d 945 (1997), on which the majority principally relies. There, the Supreme Court concluded that permitting a civil case to go forward “relat[ing] entirely to the unofficial conduct of the individual who happens to be the President” did not represent a *per se* impermissible intrusion by the federal judiciary on executive power and that the doctrine of separation of powers did not impose a *categorical rule* that all such private actions must be stayed against the President while in office. *Id.* at 701, 705-06. At the same time, however, the Court recognized that it is insufficient that a branch “not arrogate power to itself”: “the separation-of-powers doctrine [also] requires that a branch *not impair another in the performance of its constitutional duties.*” *Id.* at 701 (emphasis added) (quoting *Loving v. United States*, 517 U.S. 748, 757, 116 S. Ct. 1737, 135 L. Ed. 2d 36 (1996)); see also *Nixon v. Adm’r of Gen. Servs.*, 433 U.S. 425, 443-45, 97 S. Ct. 2777, 53 L. Ed. 2d 867 (1977). And as for the judiciary in the context of private litigation against a sitting President, “[t]he high respect that is owed to the office of the Chief Executive,”

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the Court recognized, “though not justifying a rule of categorical immunity, is a matter that should inform the conduct of the entire proceeding, including the timing and scope of discovery.” *Id.* at 707; *see also Fitzgerald*, 457 U.S. at 751-56 (noting that the “special nature of the President’s constitutional office and functions,” *id.* at 756, and the “singular importance,” *id.* at 751, of her duties require particular “deference and restraint,” *id.* at 753, in the conduct of litigation involving the President).

The majority concludes that legislative subpoenas to third parties targeting a President’s personal or financial information, however broad and tangentially connected to any legislative purpose, do not seriously implicate separation of powers on the theory that “any concern arising from the risk of distraction in the performance of the [President’s] official duties is minimal,” *Maj. Op.* at 90, perhaps less than that, *id.* at 103-05, at least as compared to the potential burden of standing trial in a civil case while President, which *Jones* held is not categorically prohibited by separation-of-powers concerns.⁸ But this analysis is flawed in two key respects.

8. The majority also relies on the fact that President Trump seeks a preliminary injunction in his individual capacity, not his official capacity, and that the United States has filed an amicus curiae brief rather than a motion to intervene in asserting its view that this case presents “thorny constitutional questions involving separation of powers” and that the district court’s order should be reversed. Brief of United States as Amicus Curiae at 27; *see Maj. Op.* at 91 n.76. In *Jones* itself, however, President Clinton proceeded in his individual capacity and the United States filed an amicus brief addressing its separation-of-powers concerns. The Court nonetheless noted that “[t]he representations made on behalf of the Executive

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First, the *Jones* Court concluded that the burden in that case—namely, a civil suit against the President while in office—did not categorically constitute a “constitutionally forbidden impairment of the Executive’s ability to perform its constitutionally mandated functions” in light of the long history of judicial review of executive action and of presidential amenability to judicial process. 520 U.S. at 702; *see also id.* at 701-06. In assessing the separation-of-powers issue, the Court heavily weighed the pragmatic accommodation between the judiciary and the executive demonstrated by longstanding interbranch practice. *See id.* at 704-05 (discussing historical practice and the manner in which the judiciary has permissibly burdened the Executive Branch). It directed inferior courts that even as it rejected a rule of categorical immunity, the President’s unique role in the constitutional framework should inform the entire conduct of any civil action, *id.* at 707, and that “the availability of sanctions” would “provide[] a significant deterrent to litigation directed at the President in his unofficial capacity for purposes of political gain or harassment,” *id.* at 708-09. The *Jones* Court was thus solicitous of separation-of-powers concerns in the context of litigation over a President’s personal conduct; moreover, it continued a long tradition of placing “great weight” on historical practice in

Branch as to the potential impact” of a rule permitting private litigation to proceed against a sitting President “merit . . . respectful and deliberate consideration,” 520 U.S. at 689-90, and concluded, as already observed, that as to any civil action regarding personal conduct permitted to proceed, “the conduct of the entire proceeding, including the timing and scope of discovery,” should be informed by respect for the Office of Chief Executive, *id.* at 707.

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addressing questions “concern[ing] the allocation of power between two . . . branches of Government,” *NLRB v. Noel Canning*, 573 U.S. 513, 524, 134 S. Ct. 2550, 189 L. Ed. 2d 538 (2014) (quoting *The Pocket Veto Case*, 279 U.S. 655, 689, 49 S. Ct. 463, 73 L. Ed. 894, 68 Ct. Cl. 786 (1929)).⁹

Here, the parties have not identified, and my own search has failed to unearth, *any* previous example, in any previous Congress, of a standing or permanent select committee of the House of Representatives or the Senate using compulsory process to obtain documents containing a President’s personal information from a third party in aid of legislation. Trump Br. at 14; Tr. of Oral Arg. at 34:24-35:4. Historical practice instead suggests that, on the few past occasions on which a President’s personal documents have been subpoenaed from third parties, such requests have emanated either from a special committee established and authorized to pursue a specific, limited investigation or from a committee proceeding under the impeachment power.¹⁰ It is possible that a contrary

9. The high value placed on historical practice “is neither new nor controversial.” *Noel Canning*, 573 U.S. at 525. James Madison observed that a “regular course of practice” could “liquidate & settle” constitutional meaning in the face of “difficulties and differences of opinion” involved in the practice of government under the Constitution. James Madison, Letter to Spencer Roane (Sept. 2, 1819), in 8 *Writings of James Madison* 450 (Gaillard Hunt ed., 1908)); see also *Noel Canning*, 573 U.S. at 525 (collecting cases stating the relevance of past practice to separation-of-powers issues).

10. President Andrew Johnson had his personal bank records examined as part of his impeachment, but those records appear to have been relevant because of personal loans made to him by

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example exists. But the historical precedent for the congressional subpoenas here, in contrast to the judicial processes assessed in *Jones*, is sparse at best, and perhaps nonexistent.¹¹ And this paucity of historical practice alone

the Treasury Department. See Stephen W. Stathis, *Executive Cooperation: Presidential Recognition of the Investigative Authority of Congress and the Courts*, 3 J.L. & Pol. 183, 219 (1986); see also Michael Les Benedict, *The Impeachment of President Andrew Johnson, 1867-68*, in 1 *Congress Investigates: A Critical and Documentary History* 254, 264-68 (Roger A. Bruns et al. eds., rev. ed. 2011). President Clinton may have had some financial information, or at the very least some financial information of then—First Lady Hillary Clinton, examined by the Whitewater Special Committee, though it appears to have been turned over voluntarily. See S. Rep. No. 104-280, at 155-61 (1996). The House and Senate Banking Committees also appear to have subpoenaed witnesses to testify regarding Whitewater and the death of Vince Foster; however, they do not appear to have subpoenaed the President's personal financial information. See Stephen Labaton, *The Whitewater Affair: The Hearing; House Committee Told of Contacts Over Whitewater*, N.Y. Times, July 27, 1994, at A1 (describing testimony); Raymond W. Smock, *The Whitewater Investigation and Impeachment of President Bill Clinton, 1992-98*, in 2 *Congress Investigates: A Critical and Documentary History*, supra, at 1041, 1044-45. President Nixon voluntarily disclosed several years of tax returns to a House Committee; that same Committee used statutory authority not at issue here to procure additional information from the IRS. See S. Rep. No. 93-768, at 1-3 (1974); Memorandum from Richard E. Neal, Chairman, to the Members of the H. Comm. on Ways and Means 3 (July 25, 2019), <https://perma.cc/UYZ2-QTCU>. Other investigations do not appear to have involved either subpoenas of the President's personal financial information or subpoenas to third parties to obtain documents concerning the President in a personal capacity. See generally Stathis, supra.

11. Notably, the dearth of historical practice here may be partially attributable to the fact that “[t]he authority to issue a

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is reason for courts to pause in assessing this dispute between a President and two House committees.¹²

subpoena was once delegated from the full House to its committees very sparingly because the power appears long to have been deemed too serious a matter for general delegation.” Todd David Peterson, *Contempt of Congress v. Executive Privilege*, 14 U. Pa. J. Const. L. 77, 106 (2011) (internal quotation marks and citation omitted). It appears that the House did not authorize standing committees to issue subpoenas until 1975. *Id.* at 107. Moreover (and more generally), it should also be noted that disputes between the two elected branches over congressional subpoenas have historically been resolved through a process of direct negotiation and accommodation between these two branches, undertaken *outside* the supervision of the federal courts. *See, e.g., Comm. on Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53, 56-57 (D.D.C. 2008) (noting that “negotiation and accommodation . . . most often leads to resolution of disputes between the political branches” and “strongly encourag[ing] the political branches to resume their discourse and negotiations in an effort to resolve their differences constructively”). The majority rejects this approach due to its view that this case does not involve separation of powers, *Maj. Op.* at 69-73; however, given the expressed willingness of the parties to negotiate and my view that separation-of-powers concerns are present here, the traditional practice of further negotiation is a viable resolution.

12. This Court’s recent decision in *Trump v. Vance*, 941 F.3d 631 (2d. Cir. 2019), is not to the contrary. The *Vance* panel explicitly relied on the “long-settled” amenability of presidents to judicial process, and in particular to subpoenas issued as part of a criminal prosecution, to inform its holding that the state grand jury subpoena to a third-party custodian of the President’s tax returns at issue in that case was lawful. *See id.* at 640 (discussing the historical practice of ordering presidents to comply with grand jury subpoenas). Here, there is no such longstanding practice, and the subpoenas in question were not issued by a grand jury as part of a criminal investigation.

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The second flaw in the majority’s analysis lies in its assumption that third-party subpoenas of this sort pose, at best, “minimal” risk of distraction to this and future Presidents. Maj. Op. at 90. Contrary to the majority’s suggestion, it is not at all difficult to conceive how standing committees exercising the authority to issue third-party subpoenas in aid of legislation might significantly burden presidents with myriad inquiries into their business, personal, and family affairs. *See Watkins*, 354 U.S. at 205 (recognizing potential for “ruthless exposure of private lives” by committees seeking information “neither desired by the Congress nor useful to it”); *cf. Jones*, 520 U.S. at 701-02 (considering the likelihood that frivolous civil litigation against the President could overly burden the Executive Branch). *Jones* relied on the relative rarity of civil litigation against past presidents to discount concerns of distraction, *see* 520 U.S. at 702, but the subjects on which legislation might be had are vast.¹³ And the risk of undue distraction from ill-conceived

13. To be clear, while civil litigation against sitting presidents is unusual, presidents are routinely the subjects of congressional investigation while in office—as they must be, and for appropriate reasons. But there is no substantial historical precedent for the use of subpoena power to obtain a President’s personal information from a third party in aid of legislation. And as to such subpoenas, there is no analogue for the possibility of sanctions in the civil litigation context, which the *Jones* Court relied on as “provid[ing] a significant deterrent to litigation directed at the President in his unofficial capacity for purposes of political gain or harassment.” 520 U.S. at 708-09. Nor do established rules of procedure provide a mechanism for narrowing congressional subpoenas so as to avoid “embarrassment, oppression, or undue burden.” Fed. R. Civ. P. 26(c)(1). Historically, in those few instances in which investigators

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inquiries might be particularly acute today, in an era in which (as the Supreme Court and individual Justices have repeatedly acknowledged) digital technologies have lodged an increasingly large fraction of even our most intimate information in third-party hands. *See, e.g., Riley v. California*, 573 U.S. 373, 395, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014) (discussing how “Internet search and browsing history” can “reveal an individual’s private interests or concerns”); *Carpenter v. United States*, 138 S. Ct. 2206, 2261, 201 L. Ed. 2d 507 (2018) (acknowledging “powerful private companies” collecting “vast quantities of data about the lives of ordinary Americans”) (Alito, J., dissenting); *United States v. Jones*, 565 U.S. 400, 417, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012) (noting that in the digital age, “people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks”) (Sotomayor, J., concurring).

To be clear, this is not to suggest that a President is immune from legislative subpoenas into personal matters—not at all. But as the D.C. Circuit recognized in *Trump v. Mazars* (while concluding that the House Committee on Oversight and Reform possessed authority to issue a legislative subpoena to President Trump’s accounting firm), “separation-of-powers concerns still linger in the air” with regard to such subpoenas. *Trump v. Mazars USA, LLP*, 940 F.3d 710, 726 (D.C. Cir. 2019). And in such a circumstance, there is reason to conclude that

have sought a President’s personal documents, Congress has instead typically proceeded pursuant to the *political* checks inherent in the invocation of impeachment authority or the narrow authorization afforded to a special committee.

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courts must not only undertake the “arduous and delicate task” of “[a]ccommodat[ing] . . . the congressional need for particular information with the individual and personal interest in privacy,” Maj. Op. at 51 (quoting *Watkins*, 354 U.S. at 198). They must also take on the equally sensitive task of ensuring that *Congress*, in seeking the President’s personal information in aid of legislation, has employed “procedures which prevent the separation of power from responsibility,” *Watkins*, 354 U.S. at 215 (discussing such procedures in the context of a threat to individual rights from congressional investigations), and which ensure due consideration to the separation-of-powers concerns that the Supreme Court identified and deemed essential for *judicial* respect in *Jones*. See *Jones*, 520 U.S. at 707 (noting that “high respect that is owed to the office of the Chief Executive,” while not mandating categorical immunity from suit for private conduct while in office, should “inform the conduct of the entire proceeding, including the timing and scope of discovery”); *Cheney*, 542 U.S. at 385 (noting that President’s “constitutional responsibilities and status [are] factors counseling judicial deference and restraint” in conduct of litigation) (quoting *Fitzgerald*, 457 U.S. at 753 (alteration in *Cheney*)).

B

These subpoenas are deeply problematic when considered against the backdrop of these separation-of-powers concerns. In fact, this much is evident from even cursory consideration of the differences between the present case and *Mazars*, the only other precedent directly addressing a legislative subpoena served on a third party and seeking a President’s personal financial

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information.¹⁴ In *Mazars*, the D.C. Circuit recently upheld a legislative subpoena directed at the President's accounting firm, concluding that it had properly issued in connection with the consideration of changes to laws relating to financial disclosures required of Presidents.¹⁵ *Mazars*, 940 F.3d at 748. At the same time, the *Mazars* Court pointedly suggested that the articulation of just *any* rationale for concluding that a sitting President's personal information might inform a committee in considering potential legislation is not enough to state a valid legislative purpose:

14. As noted at the outset, *see supra* page 5, the parties are unable to cite any Congress before this one in which a standing committee of the House of Representatives has issued a third-party subpoena for documents targeting a President's personal information solely in aid of legislation. The practice appears to have begun with the committees of *this* House of Representatives, which has issued such subpoenas repeatedly, thus raising the separation-of-powers concerns discussed herein.

15. Judge Rao dissented, concluding that even assuming the Committee on Oversight and Reform had a legislative purpose, it had also asserted an intent to determine "whether the President broke the law," an inquiry that "must be pursued through impeachment," and not via Congress's authority to investigate for legislative purposes. *Mazars*, 940 F.3d at 748 (Rao, J., dissenting). In the instant case, given the need for remand here, I need not now determine whether the House Committees have avowed such an intent, so I have no occasion to consider the arguments raised in Judge Rao's thorough analysis. However, it is worth noting that nowhere in the *Mazars* majority or Judge Rao's extensive discussion of historical practice, *id.* at 718-24 (majority opinion), 757-67 (Rao, J., dissenting), is there any hint of a prior occasion on which a standing or permanent select committee has used compulsory process to obtain documents targeting a President's personal information from a third party justified solely on the basis of future legislation.

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Just as a congressional committee could not subpoena the President's high school transcripts in service of an investigation into K-12 education, nor subpoena his medical records as part of an investigation into public health, it may not subpoena his financial information except to facilitate an investigation into *presidential* finances.

Id. at 733. Key to the result in *Mazars*, then (and assuming, *arguendo*, that it was correctly decided) was the majority's conclusion that there was "no inherent constitutional flaw in laws requiring Presidents to publicly disclose financial information" and that the subpoena on its face thus properly sought relevant information "about a subject on which legislation may be had." *Id.* at 737 (quoting *Eastland*, 421 U.S. at 508).

This case is significantly different, at least as to the subpoenas issued by the Committee on Financial Services. This Committee seeks a universe of financial records sufficient to reconstruct over a decade of the President's business and personal affairs, not in connection with the consideration of legislation involving the Chief Executive, but because the President, his family, and his businesses present a "*useful case study*," according to the Committee, for an inquiry into the lending practices of *institutions such as Deutsche Bank and Capital One*.¹⁶ District Court

16. The Capital One subpoena, moreover, seeks the President's personal and business financial records starting from the exact date on which he became the Republican nominee for President—an unusual date, to be sure, for specifying the precise moment at

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Doc. No. 51 at 25. More specifically, the Committee is investigating “whether existing policies and programs at financial institutions are adequate to ensure the safety and soundness of lending practices and the prevention of loan fraud,” *id.* at 12, as well as “industry-wide compliance with banking statutes and regulations, particularly anti-money laundering policies,” *id.* at 13. The Committee urges that “[b]ecause of his prominence, much is already known about Mr. Trump, his family, and his business, and this public record establishes that they serve as a useful case study for the broader problems” under its consideration.¹⁷ *Id.* at 25. The majority endorses this statement of legislative purpose and intimates (albeit with no evidence in the record before us) that past transactions between Deutsche Bank and the President in his pre-presidential business life may have violated banking regulations and that “no other bank would extend credit” to President Trump. Maj. Op. at 73 n.67, 74.

which his banking records became a useful point of inquiry into the possibility of tightening up the regulation of lending practices with potentially “broad effects on the national economy.” District Court Doc. No. 51 at 25.

17. The House Financial Services Committee asserts that the subpoenas’ objective can be derived in part from House Resolution 206, which affirms that the House “supports efforts to close loopholes that allow corruption, terrorism, and money laundering to infiltrate our country’s financial system.” H.R. Res. 206, 116th Cong. (2019). House Resolution 206, however, does not materially aid in defining more clearly the reasons for the Committee’s “case study” approach, as it does not call for a congressional investigation, much less one by a designated committee, nor does it reference the President and his family.

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To be sure, legislative subpoenas issue not when all is known, but on the reasonable theory that “[a] legislative body cannot legislate wisely or effectively” without obtaining “information respecting the conditions which the legislation is intended to affect or change.” *Eastland*, 421 U.S. at 504 (quoting *McGrain v. Daugherty*, 273 U.S. 135, 175, 47 S. Ct. 319, 71 L. Ed. 580 (1927) (alteration in *Eastland*)). But the rationale proffered for these subpoenas of the House Financial Services Committee falls far short of demonstrating a clear reason why a congressional investigation aimed generally at closing regulatory loopholes in the banking system need focus on over a decade of financial information regarding this President, his family, and his business affairs.¹⁸ Nor does the proffered rationale reveal how the broad purposes pursued by the Committee are consistent with the granular detail that these subpoenas seek. *See Watkins*, 354 U.S. at 204 (noting the troubling tendency of some legislative investigations to “probe for a depth of detail . . . removed from any basis of legislative action” and to “turn their attention to the past to collect minutiae on remote topics”).

18. Thus, the majority references the fact that Deutsche Bank “has been fined in connection with a \$10 billion money laundering scheme.” Maj. Op. at 73 n.67. But the record is devoid of any *claim*, much less any evidence, that this fine had anything at all to do with the President, his children, his business organizations, or his business associates, all of whom will be irreparably harmed by the majority’s endorsement of the “case study” approach of the House Financial Services Committee.

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This is a reason for pause. As suggested by Judge Katsas in his dissent from the denial of rehearing en banc in *Mazars*, the “uncompromising extension of *McGrain v. Daugherty*” to this new context raises the serious question whether future Presidents will be *routinely* subject to the distraction of third-party subpoenas emanating from standing committees in aid of legislation—a practice for which there is scant historical precedent, as already discussed. *Trump v. Mazars USA, LLP*, No. 19-5142, 2019 U.S. App. LEXIS 33932, 2019 WL 5991603, at *1 (D.C. Cir. Nov. 13, 2019) (Katsas, J., dissenting from the denial of rehearing en banc). Some case study rationale (in this instance, to learn whether regulators were adequately equipped to scrutinize Deutsche Bank’s and Capital One’s lending practices in relation to the President before he obtained the Office of Chief Executive) will *always* be present. But the regular issuance of third-party legislative subpoenas by single committees of one House of Congress targeting a President’s personal information would be something new, potentially impairing public perceptions of the legislative branch by fueling perceptions that standing committees are engaged, not in legislating, but in opposition research.¹⁹ More relevant here, such investigative practices by Congress, undertaken “more casually and less responsibly” than is the constitutional ideal, *see Rumely*, 345 U.S. at 46, pose a *serious* threat to “presidential autonomy and independence,” *Mazars*, 2019 U.S. App. LEXIS 33932, 2019 WL 5991603, at *1 (Katsas, J., dissenting from the denial of rehearing en banc). And

19. Such subpoenas, moreover, will inevitably result, as here, in recourse to the courts, potentially embroiling them, as well, in political battles between committees of Congress and the President.

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this is a substantial concern in our constitutional scheme, which relies on the proposition that the occupant of the Office of Chief Executive is positioned to “deal fearlessly and impartially with’ [its] duties,” even as Presidents may be “easily identifiable target[s]” of legal process, personally vulnerable by virtue of the “visibility of [the] office and the effect of [their] actions on countless people.” *Fitzgerald*, 457 U.S. at 752-53 (quoting *Ferri v. Ackerman*, 444 U.S. 193, 203, 100 S. Ct. 402, 62 L. Ed. 2d 355 (1979)).

To be sure, the third subpoena to Deutsche Bank, which is identical to the Deutsche Bank subpoena issued by the Committee on Financial Services, emanates from the Permanent Select Committee on Intelligence and is more closely linked to the consideration of legislation related to the Office of the Chief Executive and to this President’s affairs, as a recent candidate.²⁰ The majority

20. As the majority states, the Chair of the Intelligence Committee has publicly affirmed that the Committee is investigating matters related to interference by the Russian government in the U.S. political process and that the information sought from Deutsche Bank will inform legislative proposals to protect this process from foreign influence. Maj. Op at 62-64. The House Intelligence Committee, moreover, has an oversight function to which its subpoena could conceivably relate. At the same time, however, no House resolution appears specifically to reference this investigation, at least as it relates to efforts to seek the President’s financial information, nor is such a legislative purpose easy to square with the extraordinary breadth of the Deutsche Bank subpoenas. The Chair, moreover, has also affirmed that the Committee’s investigation is in furtherance of Congress’s duty to “ensure that U.S. officials—including the President—are serving the national interest and, if not, are held accountable.” Press Release, Permanent Select Comm. on Intelligence, Chairman Schiff Statement on House Intelligence

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is correct, moreover, that once presented with adequate evidence of legislative authorization and purposes, it is not the province of courts to inquire into legislators' motives, *see* Maj. Op. at 50-51, and that "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." *Watkins*, 354 U.S. at 200.

At the same time, as the majority also affirms, the record must provide "sufficient evidence of legislative authorization and purposes to enable meaningful judicial review." Maj. Op. at 55. And this is particularly the case when a congressional investigation even *potentially* trenches upon constitutional limits on Congress's investigative power. *See Rumely*, 345 U.S. at 46 (noting that such limits should be identified by courts only after "Congress has . . . unequivocally authoriz[ed] an inquiry of dubious limits"). Indeed, in such circumstances, the Supreme Court has made clear that courts are to look to the "instructions to an investigating committee," as "embodied in the authorizing resolution," to ascertain

Committee Investigation (Feb. 6, 2019), bit.ly/2UMzwTE. The Plaintiffs argue that the subpoena is thus not in furtherance of legislative purposes, but represents an effort by the Committee to itself conduct intelligence and law enforcement activities. Trump Br. at 35-36. Indeed, at oral argument, the Committees' lawyer appeared explicitly to equate these subpoenas to those issued in connection with federal criminal investigations. Tr. of Oral Arg. at 59:14-60:2. While I do not decide whether the Intelligence Committee has affirmatively avowed an improper purpose, the amorphous nature of the Committee's legislative purpose would be clarified by my proposed remand, as would the connection between this purpose and the particular disclosures that are sought.

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whether the legislative assembly has “assay[ed] the relative necessity of specific disclosures.” *Watkins*, 354 U.S. at 201, 206. Considered in light of the separation-of-powers concerns that persist with regard to these subpoenas, the Plaintiffs have raised a serious question on this front as well.

As to both the House Financial Services *and* Intelligence Committee subpoenas, there is an open question as to whether these subpoenas have been authorized by the House of Representatives in a manner permitting this Court to determine whether they are “in furtherance of . . . a legitimate task of the Congress.” *Watkins*, 354 U.S. at 187. As the *Watkins* Court explained, “[t]he theory of a committee inquiry is that the committee members are serving as the representatives of the parent assembly in collecting information for a legislative purpose” and that “the House or Senate shall have instructed the committee members on what they are to do with the power delegated to them.” *Id.* at 200-01. The majority acknowledges *Watkins*’s requirement that an authorizing resolution “spell out [an investigating committee’s] jurisdiction and purpose with sufficient particularity” as to ensure that “compulsory process is used only in furtherance of a legislative purpose.” *Id.* at 201; *see* Maj. Op. at 51, 79-80. Critically, moreover, the majority itself recognizes that “[i]t is not clear whether this passage can be satisfied” with regard to these subpoenas by the principal instruction in place here, at the time the subpoenas issued: namely, the instruction “that the House gives to a committee pursuant to a House rule defining a standing committee’s continuing jurisdiction.” Maj. Op. at 52-53.

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The majority treats House Resolution 507 as the cure-all solution to this key uncertainty, rejecting the Plaintiffs' argument that it is not properly considered on the subject of legislative authorization and purposes because it issued after the subpoenas themselves.²¹ But House Resolution 507 falls far short of a specific "authorizing resolution" issued to make clear that a designated committee is to undertake an investigation on a particular subject within its domain. To be sure, *McGrain* found sufficient a resolution that did not "in terms avow that it [was] intended to be in aid of legislation," on the theory that "the subject-matter was such that [a] presumption should be indulged" that legislating "was the real object." 273 U.S. at 177-78. But in a context like this, presenting serious constitutional concerns, courts "have adopted the policy

21. The majority's support for this conclusion derives solely from cases discussing, in the contempt prosecution context, what evidence may be considered in evaluating whether a question posed to a witness before a congressional committee was pertinent to an investigation's inquiry. *See Watkins*, 354 U.S. at 201-02; *Rumely*, 345 U.S. at 48; *Shelton v. United States*, 327 F.2d 601, 607, 117 U.S. App. D.C. 155 (D.C. Cir. 1963); *see also* Maj. Op. at 54-58. This issue is distinct from the threshold question of whether a committee is adequately authorized, so that the majority must necessarily reason by analogy, and its conclusion is far from inevitable, particularly in the context of third-party subpoenas aimed at a President's personal information, where the President must be able efficiently (and without undue distraction) to determine what, if any, steps she should take, either to assist the inquiry or, as here, to litigate. I need not address this question, however, because, even assuming that Resolution 507 is properly considered, a serious question remains as to whether it constitutes what the majority acknowledges is required: "sufficient evidence of legislative authorization and purposes to enable meaningful judicial review." Maj. Op. at 55.

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of construing . . . resolutions . . . narrowly, in order to obviate the necessity of passing on serious constitutional questions.” *Tobin*, 306 F.2d at 274-75. And this resolution on its face discusses none of the subpoenas here, nor even the work of the committees from which they issued. Instead, House Resolution 507 authorizes *any* subpoena, by any standing or permanent select committee, already issued *or in the future to be issued*, so long as it concerns the President, his family, or his business entities and organizations:

Resolved, That the House of Representatives ratifies and affirms all current and future investigations, as well as all subpoenas previously issued or to be issued in the future, by any standing or permanent select committee of the House, pursuant to its jurisdiction as established by the Constitution of the United States and rules X and XI of the Rules of the House of Representatives, concerning or issued directly or indirectly to —

(1) the President in his personal or official capacity;

(2) his immediate family, business entities, or organizations;

...

(9) any third party seeking information involving, referring, or related to any

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individual or entity described in paragraphs (1) through (7).

H.R. Res. 507, 116th Cong. (2019); *see also* H.R. Res. 509, 116th Cong. § 3 (2019) (“House Resolution 507 is hereby adopted”).

By purporting to authorize third-party subpoenas for any and all past and future investigations into the President’s personal and official business, Resolution 507 would appear to run directly into the primary concern in *Watkins* that “[b]roadly drafted and loosely worded” resolutions can “leave tremendous latitude to the discretion of investigators,” 354 U.S. at 201, and thus permit committees “in essence, to define [their] own authority,” *id.* at 205. As *Watkins* emphasized, “[a]n essential premise” underlying the investigatory powers of a congressional committee to compel the production of documents or attendance by an individual “is that the House or Senate shall have instructed the committee members on what they are to do with the power delegated to them.” *Id.* at 201. Absent that instruction, such subpoenas defy judicial review, the *Watkins* Court understood, because “it is impossible . . . to declare that [a committee] has ranged beyond the area committed to it by its parent assembly.” *Id.* at 205.

To be clear, *Watkins* addressed this problem in the context of a House proceeding implicating a private citizen’s constitutional liberties, and not separation of powers. But its caution is still relevant: that “excessively broad charter[s]” to investigating committees make

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it difficult, if not impossible, for courts “to ascertain whether any legislative purpose justifies the disclosures sought and, if so, the importance of that information to the Congress in furtherance of its legislative function.” *Id.* at 205-06. With respect, the majority thus errs in dismissing the Department of Justice’s concern that the blank-check approach adopted here to authorizing third-party subpoenas seeking personal information about the President and his family represents “a failure of the House to exercise ‘preliminary control of the Committee[s],’” *see* Brief of United States as Amicus Curiae at 19 (quoting *Watkins*, 354 U.S. at 203)—a failure which not only throws into question the adequacy of authorization in this case, but which also raises significant issues for the future regarding interbranch balance and the ability of this and future Presidents to perform their duties without undue distraction, *id.* at 5-7; *see Jones*, 520 U.S. at 690 (noting that “representations made on behalf of the Executive Branch as to the potential impact” of inquiries on the Office of the President “merit our respectful and deliberate consideration”).²² In short, Resolution 507

22. The Department of Justice argues that a clear statement rule should apply to the authorization of legislative subpoenas seeking a President’s personal information. Brief of United States as Amicus Curiae at 10. The majority dismisses this argument, noting that neither *Franklin v. Massachusetts*, 505 U.S. 788, 112 S. Ct. 2767, 120 L. Ed. 2d 636, nor *Armstrong v. Bush*, 924 F.2d 282, 288 U.S. App. D.C. 38 (D.C. Cir. 1991), on which the Department relies, concern congressional subpoenas, but *statutes* “claimed to limit presidential power.” Maj. Op. at 89. But *Rumely* makes clear that the duty of constitutional avoidance (implemented, in part, through mechanisms such as clear statement rules) “is even more applicable” in the context of congressional investigations than in the interpretation of statutes.

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itself, given its retrospective and prospective nature, and its purported authorization of any and all third-party committee subpoenas seeking not only official, but personal information about the President, his family, and his businesses, presents a serious question as to whether the House has discharged its “responsibility . . . in the first instance, to insure that compulsory process is used only in furtherance of a legislative purpose.” *Watkins*, 354 U.S. at 201.

II

These third-party legislative subpoenas thus raise serious questions on the merits, implicating substantial separation-of-powers concerns. In such a context, *Rumely*’s caution kicks in, which “counsel[s] abstention from adjudication unless no choice is left.” 345 U.S. at 46. The majority disagrees, asserting that even assuming serious questions regarding the separation of powers have been raised, affirmance here is still required because our “serious questions” approach to whether a

345 U.S. at 46. It also affirms that “[w]henver constitutional limits upon the investigative power of Congress have to be drawn . . . , it ought only to be done after Congress has demonstrated its full awareness of what is at stake by unequivocally authorizing an inquiry of dubious limits.” *Id.* In short, while I need not at this time reach the question, the Department’s clear statement argument merits serious consideration, as does its assertion that the House’s “blank-check” approach to use of compulsory process directed at the President, his family, and his businesses runs afoul of *Watkins*’s caution that “[a] measure of added care on the part of the House and the Senate in authorizing the use of compulsory process” would help “prevent the separation of power from responsibility.” 354 U.S. at 215.

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preliminary injunction should issue is unavailable in the context of these third-party legislative subpoenas.²³ I have already outlined my disagreement with the majority's determination that "this case does not concern separation of powers," Maj. Op. at 89, and that the questions raised, even if "serious in at least some sense, lack merit," *id.* at 101. I also disagree as to the supposed unavailability of our traditional preliminary injunction approach. Indeed, I conclude, with respect, that the majority badly errs in deciding that this approach is unavailable in the sensitive context of challenges to congressional subpoenas.

As the Supreme Court made clear in *Winter v. Natural Resources Defense Council, Inc.*, "[a] plaintiff seeking a

23. The majority also argues that any serious questions presented here "are properly rejected at this stage of the litigation" because they "involve solely issues of law." Maj. Op. at 101. I disagree. As an initial matter, our case law has recognized that, in appropriate circumstances, purely legal issues can present sufficiently serious questions to warrant a preliminary injunction. *See, e.g., Haitian Centers Council, Inc. v. McNary*, 969 F.2d 1326, 1339-40 (2d Cir. 1993) (finding sufficiently serious questions going to the merits based on the novel questions of law presented by plaintiffs' claims), *judgment vacated as moot by Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 918, 113 S. Ct. 3028, 125 L. Ed. 2d 716 (1993); *see also, e.g.,* 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.3 (3d ed.) (Westlaw) (database updated August 2019) (referring to "the existence of a factual conflict, or of difficult questions of law," as components of the merits showing in the preliminary injunction context (emphasis added)). Moreover, the majority itself is remanding for some development of the factual record. As set forth herein, I conclude that the majority's limited remand is inadequate, and that the record needs further factual development *before* the legal issues here can be adequately assessed.

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preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008). The majority acknowledges that, as to the required merits showing, we have repeatedly said in this Circuit that “district courts may grant a preliminary injunction where a plaintiff . . . meets either of two standards: ‘(a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation.’” Maj. Op. at 11-12 (quoting *Kelly v. Honeywell Int’l, Inc.*, 933 F.3d 173, 184 (2d Cir. 2019)). When a plaintiff has demonstrated only “serious questions” as to the merits, however, the plaintiff has a higher burden as to the third element: he must show that the balance of hardships tips *decidedly* in his favor. *See Kelly*, 933 F.3d at 184; Maj. Op. at 11-12. The majority also acknowledges that we have reaffirmed our traditional approach in the wake of the Supreme Court’s decision in *Winter*. *See Citigroup*, 598 F.3d at 38 (“hold[ing] that our venerable standard for assessing a movant’s probability of success on the merits remains valid”).²⁴ Irreparable

24. *Citigroup* carefully assessed *Winter*’s import and concluded that our traditional approach is wholly consistent with that precedent and is properly retained, given “[t]he value of this circuit’s approach to assessing the merits of a claim at the preliminary injunction stage,” which “lies in its flexibility in the face of varying factual scenarios and the greater uncertainties inherent at the outset of particularly complex litigation.” *Citigroup*, 598 F.3d at 35. Moreover, *Citigroup* made clear that, under either the “serious questions” or the “likelihood of success” formulation, courts in this Circuit consider all four elements articulated by the Supreme Court in *Winter*. *See id.* at 34, 38 (citing *Winter*, 555 U.S. at 20).

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harm is not in question in this case, moreover, because, *inter alia*, the Plaintiffs have an interest in keeping their banking records private from Congress and neither House committee will commit to treating any portion of the voluminous personal and business records that they seek as confidential. J.A. at 122-23. In such circumstances, the majority and I are in agreement that compliance with these subpoenas will cause irreparable harm to the President, his family, his businesses, and his business associates. Maj. Op. at 13-14.

The majority asserts that a preliminary injunction is nonetheless unavailable based on our “serious questions” formulation of the merits inquiry because of the so-called “government action exception” to this formulation, as expressed by this Court’s decision in *Plaza Health Laboratories, Inc. v. Perales*, 878 F.2d 577, 580 (2d Cir. 1989). I disagree. To be sure, our case law has recognized three narrowly defined situations in which a movant *cannot* obtain a preliminary injunction under the “serious questions” formulation. *See id.*; *Tom Doherty Assocs., Inc. v. Saban Entm’t, Inc.*, 60 F.3d 27, 33-34 (2d Cir. 1995); *Abdul Wali v. Coughlin*, 754 F.2d 1015, 1025 (2d Cir. 1985). But *Plaza Health*, on which the majority relies, is not applicable.

To explain my conclusion requires a step back from our traditional formulation, to set forth *why* this Circuit was correct to reaffirm our serious question approach—and, indeed, why we err today in expanding a formulaic exception to it. While sometimes styled in our case law as its own “standard,” *see, e.g., Otoe-Missouria Tribe of*

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Indians v. N.Y. State Dep't of Fin. Servs., 769 F.3d 105, 110 (2d Cir. 2014), the “sufficiently serious questions, plus a balance of hardships tipping decidedly in favor of the moving party” approach is not actually a *separate* test at all, but rather a way of articulating one point on a single sliding scale that balances likelihood of success against hardship in determining whether a preliminary injunction should issue. See 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.3 (3d ed.) (Westlaw) (database updated August 2019) (hereinafter “Wright & Miller”) (referring to the Second Circuit’s “serious questions” formulation as “[p]robably the most often-quoted statement” of the sliding scale principle). Likelihood of success, while of “particular importance” in this inquiry, is not determinative, but must be considered and balanced with the relative hardship *each* side is likely to face from the determination whether an injunction issues, with the so-called “serious questions” standard emerging as simply one point on the sliding scale at which an injunction may be warranted.²⁵ *Id.* This flexible approach is particularly well-suited to the preliminary injunction context, where courts act pursuant to equitable principles.²⁶ See, e.g., *Holland v. Florida*,

25. As Judge Frank articulated decades ago, when “the balance of hardships tips decidedly toward plaintiff,” it should “ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation.” *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d Cir. 1953).

26. Indeed, confining preliminary injunctions to circumstances in which a plaintiff has shown there is no difficult question of law

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560 U.S. 631, 649-50, 130 S. Ct. 2549, 177 L. Ed. 2d 130 (2010) (“In emphasizing the need for flexibility . . . we have followed a tradition in which courts of equity have sought to relieve hardships which, from time to time, arise from a hard and fast adherence to more absolute legal rules, which, if strictly applied, threaten the evils of archaic rigidity.” (internal quotation marks, alterations, and citations omitted)).

Against this backdrop, our so-called “exceptions” to the serious questions formulation are best understood not in prescriptive terms, but as the articulation of principles guiding the application of the sliding scale calculus in particular scenarios. As relevant here, the *Plaza Health* “exception” thus reflects a considered judgment, drawing on equitable ideas, that “[w]here the moving party seeks to stay government action taken in the public interest pursuant to a statutory or regulatory scheme,” the serious questions formulation should be generally unavailable precisely because the balance of hardships is so unlikely to tip *decidedly* in that party’s favor. *Able v. United States*, 44 F.3d 128, 131 (2d Cir. 1995) (quoting *Plaza Health*, 878 F.2d at 580). In issuing a preliminary injunction based on the conclusion that it *does*, a court impermissibly “substitute[s] its own determination of the public interest” for the one reflected in the statutory or regulatory scheme. *Id.* at 132.

that could ultimately go against him would “deprive the remedy of much of its utility.” Wright & Miller § 2948.3; *see also Citigroup*, 598 F.3d at 35 (noting that “[p]reliminary injunctions should not be mechanically confined to cases that are simple or easy,” as happens when the likelihood-of-success standard is formulaically employed).

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Accordingly, where government action has been fairly characterized as taken pursuant to a statutory or regulatory scheme, we have generally applied the likelihood-of-success standard. *See Citigroup*, 598 F.3d at 35 n.4 (articulating the exception as limited to situations in which “a moving party seeks to stay government action taken in the public interest pursuant to a statutory or regulatory scheme”). And where movants have sought preliminarily to enjoin government action pursuant to a *federal* statutory or regulatory scheme, we have explained that in the context of such action, “developed through presumptively reasoned democratic processes” and resulting from “the full play of the democratic process involving both the legislative and executive branches,” it is difficult to envision *any* circumstance in which a movant could demonstrate that the balance of hardships tips decidedly in his favor. *Able*, 44 F.3d at 131.

The majority argues that the *Plaza Health* exception sweeps more broadly, relying for this proposition on cases involving action taken by state and local governments.²⁷

27. *See, e.g., Cent. Rabbinical Cong. of U.S. & Canada v. N.Y.C. Dep’t of Health & Mental Hygiene*, 763 F.3d 183, 192 (2d Cir. 2014) (likelihood-of-success standard applied to preliminary injunction sought by religious organizations against a city ordinance based on the court’s conclusion, without further analysis, that the ordinance constituted “government action taken in the public interest pursuant to a statutory or regulatory scheme” (citation omitted)); *Monserate v. N.Y. State Senate*, 599 F.3d 148, 154 (2d Cir. 2010) (same, as to a preliminary injunction seeking to unwind the expulsion of a state senator); *NAACP v. Town of East Haven*, 70 F.3d 219, 223 (2d Cir. 1995) (likelihood-of-success standard applied to a preliminary injunction seeking to enjoin a town from hiring police officers or

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See Maj. Op. at 15-16. While certain of these cases did not analyze why the *Plaza Health* exception was applicable, and appear simply to have assumed that the government action in question was taken pursuant to a statutory or regulatory scheme, see, e.g., *Cent. Rabbinical Cong.*, 763 F.3d at 192; *Monserate*, 599 F.3d at 154, those that did engage with this analysis explicitly identified a statutory or regulatory scheme and accordingly concluded that the presumptive public interest weighed against the movant, see, e.g., *NAACP*, 70 F.3d at 223; see also, e.g., *Otoe-Missouria Tribe of Indians*, 769 F.3d at 110 (determining that New York’s ban on certain loans was “a paradigmatic example of governmental action taken in the public interest, one that vindicated proven policies implemented through legislation or regulations” and therefore applying the likelihood-of-success standard (internal quotation marks and citations omitted)).²⁸

firefighters, based on the court’s conclusion that the town acted “in the public interest” and “pursuant to established municipal regulations and state civil service laws”); *N.Y. Urban League, Inc. v. State of New York*, 71 F.3d 1031, 1036 n.7 (2d Cir. 1995) (applying likelihood-of-success standard to a preliminary injunction seeking to bar transit authority from implementing a proposed fare increase on the basis that the action in question “was to be implemented in accordance with the special powers” of the transit authority board as set forth in a state statute); see also *Molloy v. Metro. Transp. Auth.*, 94 F.3d 808, 811 (2d Cir. 1996) (relying on *New York Urban League* in applying the likelihood-of-success standard to a preliminary injunction sought against transit authority’s implementation of a staff reduction plan).

28. Such cases may also exhibit an especial hesitancy on the part of federal courts to substitute their own view of the public interest for that reached by local and state governments in light of principles of comity and federalism.

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Where, by contrast, government action has *not* been taken pursuant to a specific statutory or regulatory scheme, the narrow *Plaza Health* exception has *not* been applied, precisely because the public interest has not been presumed to rest with a single party. This explains why this Court recently upheld the denial of a preliminary injunction sought by President Trump to restrain the enforcement of a grand jury subpoena issued by the New York County District Attorney without applying the *Plaza Health* exception in determining the applicable preliminary injunction standard. *See Trump v. Vance*, 941 F.3d 631, 639-40 (2d Cir. 2019). It explains our decision in *Haitian Centers Council, Inc. v. McNary*, 969 F.2d 1326 (2d Cir. 1993), *judgment vacated as moot by Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 918, 113 S. Ct. 3028, 125 L. Ed. 2d 716 (1993), in which we applied the serious questions standard to an injunction sought against the actions of the Immigration and Naturalization Service only after rejecting the government’s argument that the action was taken “pursuant to Congress’[s] broad grant of authority in the [Immigration and Nationality Act],” and reasoning that “in litigation such as is presented herein, no party has an exclusive claim on the public interest,” *id.*; *see also, e.g., Patton v. Dole*, 806 F.2d 24, 29-30 (2d Cir. 1986); *Hudson River Sloop Clearwater, Inc. v. Dep’t of Navy*, 836 F.2d 760, 763 (2d Cir. 1988); *Mitchell v. Cuomo*, 748 F.2d 804, 806-07 (2d Cir. 1984); *cf. Carey v. Klutznick*, 637 F.2d 834, 839 (2d Cir. 1980) (rejecting the Census Bureau’s argument that “the public interest [rests] solely with it”).

The government action at issue in the instant case plainly falls outside the current confines of the narrow *Plaza Health* exception. Here, far from a situation in

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which a movant seeks to enjoin action that is the product of “the full play of the democratic process,” *Able*, 44 F.3d at 131, these legislative subpoenas, with due respect, do *not* constitute governmental action pursuant to a statutory or regulatory scheme and do not reflect the presumptively public-interested actions of both the legislative and executive branches. Rather, each subpoena is the product of a sub-component of a single chamber of one branch of the federal government and, critically, implicates the interests of another branch.²⁹

The majority’s approach, which concludes that, because the Committees act pursuant to powers under the Constitution, such action should “[s]urely . . . not” be evaluated under a “less rigorous standard” than that “applied to plaintiffs seeking to preliminary enjoin state and local units of government” in cases such as *Central Rabbinical Congress* and *Monserate*, Maj. Op. at 20-21, is misguided for two reasons. First, by deeming the “serious questions” standard to be less rigorous, the majority ignores the fact that the *ultimate* burden is equivalent under both standards.³⁰ More fundamentally,

29. Indeed, precisely because subpoenas of this sort implicate separation of powers so that neither Congress *nor* the Plaintiffs can be taken to represent the public interest with regard to their enforcement, the D.C. Circuit in *Mazars* declined to determine, in an analogous context, what deference it owed to the congressional subpoena reviewed in that case. *Mazars*, 940 F.3d at 726.

30. As is the nature of a sliding scale, the variables move in tandem and the Plaintiffs’ ultimate burden is equivalent either way. The majority perceives tension between this Court’s observation in *Citigroup* that the “overall burden” of the serious questions

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the majority errs by categorically extending the *Plaza Health* exception to a situation in which “no party has an exclusive claim on the public interest,” *Time Warner Cable of N.Y.C. v. Bloomberg L.P.*, 118 F.3d 917, 923 (2d Cir. 1997) (quoting *Haitian Centers*, 969 F.2d at 1339), when the so-called “government action exception” is premised entirely on the assumption that the public interest weighs decidedly *against* the movant.

To be clear, preliminary injunctions constitute an extraordinary form of relief and should not issue lightly. *See, e.g., Mazurek v. Armstrong*, 520 U.S. 968, 972, 117 S. Ct. 1865, 138 L. Ed. 2d 162 (1997) (quoting Wright & Miller § 2948). The majority’s expansion of our so-called “government action exception” into the delicate arena of congressional investigations, however, is unwise, precisely because this is a context in which flexible application

standard is “no lighter than the one it bears under the ‘likelihood of success’ standard,” *Citigroup*, 598 F.3d at 35, and language in our other opinions that refers to the likelihood-of-success standard as “more rigorous,” *see, e.g., Cent. Rabbinical Cong.*, 763 F.3d at 192. *See* Maj. Op. at 14 n.22. I disagree. Because one standard requires a more demanding showing as to the merits and a correspondingly less demanding showing as to hardship, while the other standard requires the reverse, the overall burdens are clearly equivalent. Deeming the likelihood-of-success standard to be “more rigorous” refers only to its increased rigor as to the required merits showing. It was for this reason, among others, that we concluded in *Citigroup* that the Supreme Court’s decision in *Winter* revealed “no command . . . that would foreclose the application of our established ‘serious questions’ standard as a means of assessing a movant’s likelihood of success on the merits” against the other components required to obtain preliminary relief. 598 F.3d at 38.

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of equitable principles is vital. Historically, federal courts have undertaken some of their most difficult assignments in the context of reviewing the actions of congressional committees. The Supreme Court has thus been required to take on the “arduous and delicate task” of “[a]ccommodat[ing] . . . the congressional need for particular information with the individual and personal interest in privacy.” *Watkins*, 354 U.S. at 198. It has been called upon to address the “[g]rave constitutional questions” presented when “the power of Congress to investigate” appears to encroach on the limits on that power imposed by the Bill of Rights and, in particular, the First Amendment. *Rumely*, 345 U.S. at 44, 48. Disputes between congressional committees and Presidents arising from subpoenas, as here, also not uncommonly require courts to “search for accommodation between the two branches”—a task for which this Circuit’s flexible approach to making the difficult judgment whether a preliminary injunction should issue is particularly well-suited. *United States v. Am. Tel. & Tel. Co* (“AT&T II”), 567 F.2d 121, 131, 185 U.S. App. D.C. 254 (D.C. Cir. 1977).

In short, we should not deprive ourselves of our traditional approach in such a sensitive context. As we affirmed in *Citigroup*, “[r]equiring in every case a showing that ultimate success on the merits is more likely than not is ‘unacceptable as a general rule,’” and also “deprive[s] the remedy of much of its utility.” 598 F.3d at 35-36 (quoting Wright & Miller § 2948.3). Because this case is not squarely covered by *Plaza Health* or any other previously-articulated “exception,” I conclude we are bound to (and should) undertake our usual approach:

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namely, to consider the Plaintiffs' showing as to the merits, balance of hardships (merged here with the public interest inquiry, *see Nken v. Holder*, 556 U.S. 418, 435, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009)), and irreparable harm and determine whether an injunction is warranted under *either* the likelihood of success *or* serious questions standard. As set forth already, moreover, these subpoenas do, in fact, present serious questions implicating not only the investigative authority of these two House committees, but the separation of powers between Congress and the Presidency.

* * *

Having determined that Plaintiffs have raised serious questions as to the merits, in the usual case, the next step would be to assess the balance of hardships. But this leads to my final point of departure from the majority. The majority orders immediate compliance with these subpoenas save for a "few documents that should be excluded" pursuant to its call for a restricted culling of certain records assembled under specific subpoena categories. Maj. Op. at 86. In contrast, I would not remand for the limited culling ordered by the majority, but would instead remand in full, directing that the district court assist in the development of the record regarding the legislative purposes, pertinence, privacy, and separation-of-powers issues at stake in this case.

I would request the district court on remand promptly to implement a procedure by which the Plaintiffs identify on privacy or pertinency grounds specific portions of the

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material assembled in response to these subpoenas for nondisclosure. Like the majority, I would then provide counsel for the Committees with an opportunity to object, but I would also require counsel, provided with a general description of such material, to articulate clearly the legislative purpose that disclosure serves and to specify how the material sought is pertinent to that purpose. Even assuming, *arguendo*, that the Committees act pursuant to adequate authorization from the House as a whole, serious questions persist as to the ends the Committees are pursuing and whether these ends are adequate to justify the sought-after disclosures.³¹ A fuller record would permit a more informed calculus regarding balance of hardships and would further clarify the stakes as to the serious questions that the Plaintiffs have already raised. This full remand is superior to the majority's approach for at least three reasons.

First and most fundamentally, remand is necessary here because the present record does not permit a full assessment of either the serious questions raised by these novel subpoenas or the balance of hardships with regard to specific disclosures. The present record is wholly insufficient to support the conclusion that the voluminous material sought pursuant to these subpoenas should at this time be produced. Serious questions arising from the lack of historical precedent for these subpoenas, their

31. As to the "case study" rationale proffered by the House Financial Services Committee, for instance, if that Committee is unable more clearly to articulate the pertinence of its subpoenas to the legislative purposes it pursues, *see Watkins*, 354 U.S. at 214-15, the balance of hardships may well lie with the Plaintiffs, who will suffer irreparable harm from the disclosure of their private and business affairs.

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questionable authorization, their legislative purposes, and the pertinence of particular disclosures remain. The record as to hardship, moreover, is sparse, and does not reflect *either* parties' concerns as to the disclosure or nondisclosure of particular categories of information sought by these extraordinarily broad subpoenas. The majority disagrees on both counts, concluding that while the questions here may be "serious," they are without merit, Maj. Op. at 100-01, and that even if the balance of hardships tips in Plaintiffs' favor, it does not do so "decidedly," Maj. Op. at 102. For the reasons already expressed, however, I cannot join in this assessment.

Next (and notably), a broader remand is necessary here, even taking the majority on its own terms—even assuming (incorrectly) that the district court's judgment could be substantially affirmed on the present record. This is because the majority's remand is inadequate to address the privacy and pertinency concerns that the majority *itself* identifies and deems important. As to sensitive personal information and an unspecified category of "nonpertinent" material, the majority concludes that the Plaintiffs should be afforded an opportunity to object to disclosure on privacy and pertinency grounds. It notes that "[t]he Committees have advanced no reason why the legislative purposes they are pursuing require disclosure" of "payment for anyone's medical expenses," for instance, and the majority thus forbids it. Maj. Op. at 84. But by providing the Plaintiffs with an opportunity to object only as to limited, specific categories of information sought pursuant to these subpoenas, the majority creates the very potential for unwarranted disclosure of sensitive information that it purports to disallow. The majority thus orders compliance with, for instance, the Deutsche

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Bank subpoena's demand for "any document related to any domestic or international transfer of funds in the amount of \$10,000 or more," including any "check," J.A. at 38, providing *no* opportunity for Plaintiffs to object that the sought-after material is sensitive and related to no legislative purpose at all.

Perhaps there is no material responsive to this category that would trigger Rule 26(c)(1)'s protections against "embarrassment, oppression, or undue burden" in a routine civil case. Fed. R. Civ. P. 26(c)(1). Perhaps such material *does* exist. We cannot know until the documents are assembled and objections are made. The privacy and pertinency concerns that the majority *purports* to address simply *cannot* be addressed in the abstract. And by declining a full remand to permit a record to be made, the majority affords *less* protection against the unwarranted disclosure of personal information regarding a sitting President and his family than would be afforded to any litigant in a civil case.

Finally, I also disagree with the majority's implicit assessment that the Plaintiffs have demonstrated no stake in the privacy of their business-related information that merits further review. Indeed, to the extent that the majority *does* show a reasonable concern for the needless disclosure of Plaintiffs' private and nonpertinent information, this concern does not generally extend to private *business* information at all, even though such information may implicate the same issues of privacy and (non)pertinence. To be sure, the majority is correct that Congress must have the ability to investigate businesses (even closely-held ones) in aid of legislation. And such investigations, serving a public good, will sometimes cause

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competitive harm.³² But particularly in light of the very broad disclosure sought by these subpoenas (which, with regard to many transactions, could require the production of information from both this year and from *decades* ago), the majority has proffered no clear reason for denying the Plaintiffs an opportunity to object more generally to the disclosure of such material.

The majority argues that any hardship from business disclosures is offset in this case by the fact that Presidents already “expose for public scrutiny a considerable amount of personal financial information pursuant to the financial disclosure requirement of the Ethics in Government Act, 5 U.S.C. app. §§ 101-111.” Maj. Op. at 102. But this is beside the point—or perhaps makes the point that the majority’s approach is problematic.

Public disclosures made pursuant to the Ethics in Government Act are required by law, pursuant to a statute that has run the gantlet of bicameralism and presentment. In making disclosures pursuant to this Act, a President complies with a statute that presumptively reflects a democratically enacted consensus regarding

32. Federal Rule of Civil Procedure 26(c)(1)(G) permits a district court to issue protective orders to prevent public disclosure of “confidential . . . commercial information,” a protection not afforded or offered to the Plaintiffs by the Committees here. The majority does not include these competitive harms as “irreparable injuries” in its analysis, restricting its focus only to “loss of privacy.” *See* Maj. Op. at 101-02. The irreversible nature of the competitive harm risked by immediate and unconditional disclosure, and the lack of safeguards common to typical discovery procedures in civil litigation, further buttress my view that these subpoenas, as drafted, raise serious questions which a remand would aid in resolving.

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the financial disclosures that a Chief Executive should be required to make. These House subpoenas, by contrast, require “considerably more financial information,” as the majority concedes, but themselves raise substantial questions as to whether they are supported by “sufficient evidence of legislative authorization and purposes to enable meaningful judicial review.” Maj. Op. at 55, 102. And as Judge Katsas suggested in dissent from the denial of rehearing in banc in *Mazars*, the scope of required disclosure “is determined . . . by the whim of Congress—the President’s constitutional rival for political power—or even, as in this case, by one committee of one House of Congress.” *Mazars*, 2019 U.S. App. LEXIS 33932, 2019 WL 5991603, at *1 (Katsas, J., dissenting from the denial of rehearing en banc). In such circumstances, and taking the majority’s analysis on its own terms, it is not clear why the majority limits its remand to the particular categories of information that it has selected, as opposed to permitting a more general opportunity to object regarding nonpertinent business information and the irreparable injury that will attend its disclosure.

For all the reasons that I have laid out here, this matter should be returned to the district court. The remand that I have outlined would clarify the issues at stake so that a reasoned determination could be made as to whether serious questions persist, and where the balance of hardships lies. Indeed, given the lack of historical precedent for these subpoenas; their extraordinary breadth; and the persistent questions here regarding authorization, legislative purposes, and pertinence, a remand for development of the record with regard to specific categories of information is far preferable to the majority’s approach.

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Such a procedure would also encourage negotiation between the parties and potentially narrow the scope of this dispute. Because I conclude, contrary to the majority, that this case implicates the Supreme Court's caution to "tread warily" in matters pitting the power of Congress to investigate against other substantial constitutional concerns, *Rumely*, 345 U.S. at 46, and because the "serious questions" delineated above sound in separation of powers, see *Pub. Citizen v. Dep't of Justice*, 491 U.S. 440, 466, 109 S. Ct. 2558, 105 L. Ed. 2d 377 (1989) (noting that the Supreme Court's "reluctance to decide constitutional issues is especially great where . . . they concern the relative powers of coordinate branches of government"), this matter falls within a range of cases in which we *should* attempt, if possible, to "avoid a resolution that might disturb the balance of power between the two branches," *AT&T II*, 567 F.2d at 123. Perhaps that is not possible here. But as the D.C. Circuit has recognized in the past, congressional committees and the Chief Executive "have a long history of settlement of disputes that seemed irreconcilable" and such resolutions, where possible, are to be preferred, since "[a] court decision selects a victor, and tends thereafter to tilt the scales." *AT&T I*, 551 F.2d at 394; see also *id.* at 391 (noting possibility of "better balance . . . in the constitutional sense" from "political struggle and compromise," rather than court decision); *Rumely*, 345 U.S. at 45-46 (noting that a "[c]ourt's duty to avoid a constitutional issue, if possible, applies not merely to legislation . . . but also to congressional action by way of resolution"—indeed, *most especially* in this context).

Accordingly, I would withhold decision as to balance of hardships and remand to permit the district court and the parties the opportunity to provide this Court with

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an adequate record regarding the legislative purpose, pertinence, privacy and separation of powers issues in this case. Such a procedure, as in *AT&T I*, 551 F.2d at 394-95, and *AT&T II*, 567 F.2d at 128-32, could narrow the scope of the present dispute. But it is required in any event, because the record simply does not support the majority's decision to order immediate compliance with these subpoenas, but for a "few documents," Maj. Op. at 85, falling within its preselected categories. To be clear, I reach this resolution guided by the Supreme Court's admonition in *Rumely* that the outer reaches of Congress's investigative power are to be identified reluctantly, and only after Congress "has demonstrated its full awareness of what is at stake by unequivocally authorizing an inquiry of dubious limits." 345 U.S. at 46. Serious questions persist with regard to these subpoenas—questions demanding close review lest such novel subpoenas prove a threat to presidential autonomy not only now but in the future, and "to the detriment of not only the President and his office but also the Nation that the Presidency was designed to serve." *Fitzgerald*, 457 U.S. at 753. Once the parties have provided this Court with the information that I would seek on remand, we would at that point have a sufficient record on which to make a prompt and reasoned determination as to where the balance of hardships lies and whether the Plaintiffs, having raised serious questions on the merits, are entitled to preliminary relief.

**APPENDIX J — JUDGMENT OF THE UNITED
STATES COURT OF APPEALS FOR THE SECOND
CIRCUIT, DATED DECEMBER 3, 2019**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 19-1540

DONALD J. TRUMP, DONALD J. TRUMP, JR., ERIC
TRUMP, IVANKA TRUMP, DONALD J. TRUMP
REVOCABLE TRUST, TRUMP ORGANIZATION,
INC., TRUMP ORGANIZATION LLC, DJT
HOLDINGS LLC, DJT HOLDINGS MANAGING
MEMBER LLC, TRUMP ACQUISITION LLC,
TRUMP ACQUISITION, CORP.,

Plaintiffs-Appellants,

v.

DEUTSCHE BANK AG, CAPITAL ONE
FINANCIAL CORPORATION,

Defendants-Appellees,

COMMITTEE ON FINANCIAL SERVICES
OF THE UNITED STATES HOUSE OF
REPRESENTATIVES, PERMANENT
SELECT COMMITTEE ON INTELLIGENCE
OF THE UNITED STATES HOUSE OF
REPRESENTATIVES,

Intervenor Defendants-Appellees.

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At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of December, two thousand nineteen.

Before: Jon O. Newman,
 Peter W. Hall,
 Debra Ann Livingston,
 Circuit Judges.

JUDGMENT

The appeal in the above captioned case from an order of the United States District Court for the Southern District of New York was argued on the district court's record and the parties' briefs. Upon consideration thereof,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the district court's order is AFFIRMED in substantial part and REMANDED in part.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court

/s/ Catherine O'Hagan Wolfe