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. 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

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.

In this circuit, if a plaintiff does not establish a

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

Court will not enjoin them from enforcing their subpoenas.

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

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.

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

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 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,

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.

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

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.

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 RFPA 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 RFPA makes clear that Congress did not believe it was binding itself to the RFPA. 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.

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.

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.

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 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 may 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

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. 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

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 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

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, 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

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.

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

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.

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

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.

The Permanent Select Committee is also charged with special oversight functions. Specifically, the Committee is

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

Chairman, dated February 6, 2019, in which Chairman Schiff stated that the Intelligence 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

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.

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

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, 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,

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.

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.

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.

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

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 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

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."

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

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 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

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.

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

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 remedy for this, however,

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

appropriate to observe that just as the Constitution forbids the Congress to enter fields reserved to the Executive and Judiciary, it imposes on the Judiciary the reciprocal duty of not lightly interfering with Congress'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

likelihood that he will succeed on the merits of his claim. Citing *Citigroup*, 598 F.3d at 35.

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.

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 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

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.

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

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 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

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.

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.

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.

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 in 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

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."

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

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. 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