Nos. 19-715, 19-760

# In the Supreme Court of the United States

DONALD J. TRUMP, et al.,
*Petitioners,*
v.
MAZARS USA, LLP, et al.,
*Respondents.*

DONALD J. TRUMP, et al.,
*Petitioners,*
v.
DEUTSCHE BANK AG, et al.,
*Respondents.*

**ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE DISTRICT OF COLUMBIA AND SECOND CIRCUITS**

## BRIEF OF *AMICI CURIAE* THE LUGAR CENTER AND THE LEVIN CENTER AT WAYNE LAW IN SUPPORT OF RESPONDENTS

WILLIAM PITTARD
*Counsel of Record*
CHRISTOPER C. MUHA
KAISERDILLON PLLC
1099 14th Street NW—
8th Floor West
Washington, D.C. 20005
(202) 640-2850
wpittard@kaiserdillon.com

*Counsel for Amici Curiae*

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## INTEREST OF *AMICI CURIAE*

*Amici* are centers established by former United States senators—one Republican, one Democratic—devoted to advancing bipartisan governance and oversight.[1]

*The Lugar Center* was founded by former United States Senator Richard G. Lugar, the six-term Republican senator for the State of Indiana who previously chaired the Senate Committee on Foreign Relations and the Committee on Agriculture, Nutrition, and Forestry. The Lugar Center's mission is to foster informed debate, enhance bipartisan governance, and bridge ideological divides on important issues.

*The Levin Center at Wayne Law* was founded and is presently chaired by former United States Senator Carl Levin, the six-term Democratic senator for the State of Michigan who previously chaired the Senate Armed Services Committee and the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs. The primary mission of the Levin Center at Wayne Law is

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* certify that no part of this brief was authored by counsel for any party, and that no party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief. No one other than *amici*, their members, and their counsel have made monetary contributions intended to fund the preparation or submission of this brief.

to strengthen bipartisan, fact-based oversight, particularly in Congress.[2]

The Lugar Center and the Levin Center at Wayne Law (the "Centers") work together on several projects to foster bipartisan oversight, including bipartisan training programs for House and Senate investigators.

The Centers appear as *amici* here to defend a narrow but important aspect of Congress' investigative power: the ability to focus on particularized incidents of alleged wrongdoing ("case studies") to carry out its constitutional responsibilities, including with respect to legislation, appropriations, and the checks and balances that all three branches of government must provide. Despite their ideological differences, *amici* agree—informed by their founders' 72 years of combined Senate service—that case studies are a vital informative tool that must be preserved, including when impeachable officials are their subjects.

Case studies are a long-standing and highly effective means by which Congress informs itself of the need for new laws and deficiencies in existing laws. *See infra* nn. 7 & 8. Their discrete, concrete nature makes them ideal starting points for analyzing complex issues and crafting reforms. And because the events suitable for case studies tend to be egregious or high profile in nature, they often serve to generate

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[2] The Levin Center at Wayne Law is affiliated with Wayne State University Law School, but this brief does not purport to present the institutional views, if any, of either the university or the law school.

the public visibility and sustained political will needed to push reforms through the gauntlet of the legislative process.

The viability of congressional case studies is directly implicated by the cases under review. Although the majority opinions allow for the use of case studies in furtherance of Congress' investigative powers, *Trump v. Mazars USA, LLP*, 940 F.3d 710, 729 (D.C. Cir. 2019); *Trump v. Deutsche Bank AG*, 943 F.3d 627, 663 (2d Cir. 2019), the President, the Solicitor General, and the dissenting opinions take a different tack.

In the D.C. Circuit, for example, the President argued that a "'laser-focus[] on the businesses and finances of one person'" in the subpoenas issued to his accounting firm "evinces 'a particularity that is the hallmark of executive and judicial power.'" *Mazars USA, LLP*, 940 F.3d at 729 (quoting Appellants' Brief at 35). The implied principle—that investigations focused on a single individual are law enforcement efforts within the sole province of executive and judicial powers—is unwarranted and, if applied, would bar Congress from any use of case studies in its investigations. *See, e.g.*, *Quinn v. United States*, 349 U.S. 155, 161 (1955) (noting that "powers of law enforcement" are "assigned under our Constitution to the Executive and the Judiciary").

Expanding on the President's D.C. Circuit arguments, the dissenting judge there contended that case studies in one particular context—those investigating potential unlawful conduct by impeachable officials—may never be conducted through Congress' legislative power, but only through

the mechanism of impeachment. *Mazars USA, LLP*, 940 F.3d at 748-84 (Rao, J., dissenting). The partial dissent in the second case under review, *Deutsche Bank AG*, expressed similar sentiments as to the House Financial Services subpoena "[t]argeted at the President of the United States," 943 F.3d at 676 (Livingston, J., dissenting), identifying concerns that such subpoenas could be used to distract or burden the president and even upset the balance of power between the legislative and executive branches, *id.* at 686-88 (Livingston, J., dissenting).

The President continues this line of attack throughout his opening brief here. *See, e.g.*, Pet. Br. at 35, 37-39. So does the *amicus* brief filed by the Solicitor General. Brief for the United States as Amicus Curiae Supporting Petitioners ("DOJ Br."), at 16-17, 19-20, 23.

Those objections to congressional case studies are misguided. First, Congress' use of case studies is not an act of law enforcement, since Congress has no authority to charge a person with a legal violation or penalize someone for unlawful conduct. Instead, Congress uses case studies to analyze problems, inform the public of its government's workings,[3] check abuses,[4] and design evidence-based laws in the public

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[3] *Watkins v. United States*, 354 U.S. 178, 200 n. 33 (1957).

[4] *See, e.g., McGrain v. Daugherty*, 273 U.S. 135, 151 (1927) (upholding congressional investigation of alleged "misfeasance and nonfeasance in the Department of Justice" and "alleged neglect and failure" of the Attorney General "to arrest and prosecute" wrongdoers).

interest.[5] Barring Congress from using case studies would significantly damage its ability to perform those functions. It also would encroach upon Congress' prerogative to determine the best way to carry out its investigations.[6] And it would do all of that with no sound basis in the law. Whatever other limits might be placed upon congressional investigations involving the President or other impeachable officials, a prohibition on using case studies should not be one of them.

Because the rulings below place no such limits on congressional case studies, *amici* urge affirmance. In the alternative, they urge that any decision modifying the rulings below recognize the use of case studies as a legitimate exercise of Congress' legislative power.

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[5] *Id.* at 177-78.

[6] *See, e.g.*, *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 503-04 (1975) ("[O]nce it is determined that Members are acting within the 'legitimate legislative sphere' the Speech or Debate Clause is an absolute bar to interference. . . . The power to investigate and to do so through compulsory process plainly falls within" that sphere.); *McPhaul v. United States*, 364 U.S. 372, 381 (1960) (allowing House information requests that are "not 'plainly incompetent or irrelevant to any lawful purpose [of the Subcommittee] in the discharge of [its] duties'"); *United States v. Rumely*, 345 U.S. 41, 46 (1953) (admonishing courts to "tread warily" "[w]henever constitutional limits upon the investigative power of Congress have to be drawn").

## INTRODUCTION AND BACKGROUND

### I. THE INVESTIGATIVE POWER GENERALLY

Since its founding, Congress has used investigations to inform itself of the facts it needs to fashion legislation, allocate spending, declare war, approve nominations, and perform other functions assigned to it by the Constitution. *McGrain v. Daugherty*, 273 U.S. at 161-174 (recounting congressional investigations dating from 1792). Its power to investigate is an extension of those functions. *Id.* at 175 ("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[.]"). The scope of its investigative power "is as penetrating and far-reaching as" those functions themselves. *Barenblatt v. United States*, 360 U.S. 109, 111 (1959); *see also Watkins*, 354 U.S. at 187.

The power to investigate, like other legislative functions, enjoys the extraordinary protections of the Constitution's Speech or Debate Clause. U.S. Const. art. I, § 6, cl. 1; *Eastland* at 501-02, 504 ("[t]he power to investigate and to do so through compulsory process plainly falls within" the Speech or Debate Clause protections). Those protections exist "to insure that the legislative function the Constitution allocates to Congress may be performed independently" and "serves the additional function of reinforcing the separation of powers so deliberately established by the Founders." *Id.* at 502 (citing *United States v. Johnson,* 383 U.S. 169, 178 (1966)). This Court has instructed that the Clause is to be read

"broadly to effectuate its purposes." *Id.* at 501; *see also id.* at 505.

It is axiomatic, under the protections of the Speech or Debate Clause, that "in determining the legitimacy of a congressional act we do not look to the motives alleged to have prompted it." *Id.* at 508. The same applies to congressional investigations. "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; *see also Watkins*, 354 U.S. at 200. The courts' analysis is framed instead in terms of whether legislation "could be had" on the topic under investigation. *McGrain*, 273 U.S. at 177; *Eastland*, 421 U.S. at 506.

## II. THE INVESTIGATIONS BEHIND THE MAZARS AND BANK SUBPOENAS, AND THE RULINGS BELOW.

### A. Subpoena to Mazars USA, LLP.

On April 15, 2019, the House Committee on Oversight and Reform issued a subpoena to Mazars USA, LLP, "for records related to work performed for President Trump and several of his business entities both before and after he took office." *Mazars USA, LLP*, 940 F.3d at 714.

On April 12, 2019, Committee Chair Elijah Cummings "sent a memorandum to his fellow committee members explaining his intention to issue" a subpoena to the President's accounting firm to obtain documents that would assist the committee's inquiry into four topics related to whether President

Trump had engaged in wrongdoing. *Id.* at 717. "'The Committee's interest in these matters,'" Chair Cummings said, "'informs its review of multiple laws and legislative proposals under [its] jurisdiction.'" *Id.* (citation omitted). The subpoena issued three days later.

President Trump did not wait for Mazars to respond; rather, he filed a third-party suit to block the firm's compliance with the congressional subpoena, in contravention of this Court's decision in *Eastland*. *See* 421 U.S. at 503. The District Court dismissed the suit, and a divided panel of the D.C. Circuit affirmed. The appeals court held, in relevant part, that the subpoena was properly issued because it sought "'information about a subject on which legislation could be had.'" *Id.* at 737.

### B. Subpoenas to Deutsche Bank and Capital One.

On April 11, 2019, the House Committee on Financial Services (HCFS) and the House Permanent Select Committee on Intelligence (HPSCI) issued subpoenas to Deutsche Bank. *Deutsche Bank AG*, 943 F.3d at 633. That same day, HCFS also issued a subpoena to Capital One Financial Corporation. *Id.*

The HCFS subpoenas were issued as part of a broad committee inquiry into possible Russian money laundering through U.S. financial institutions. As part of that inquiry, HCFS had held hearings on money-laundering matters "and considered bills to combat financial crimes[.]" *Id.* at 657. The committee also issued subpoenas to other banks. According to HSFC Chair Maxine Waters, Deutsche Bank and

Capital One were chosen for subpoenas, in part, because of the involvement of both banks in recent money-laundering issues. *Id.* at 657.

The HPSCI subpoena to Deutsche Bank was issued, according to HPSCI Chair Adam Schiff, to advance the committee's investigation into Russian government interference in the U.S. political process. *Id.* at 658. In 2017, Deutsche Bank was fined for participating in an illicit trading scheme involving $10 billion in suspect Russian funds. *Id.* at 657. During the same period, Deutsche Bank extended more than $2 billion in loans to President Trump. *Id.* at 658.

Again despite *Eastland*, 421 U.S. at 503, President Trump filed a third-party suit to block compliance with the congressional subpoenas. A divided panel of the Second Circuit largely affirmed the District Court's denial of President Trump's motion to preliminarily enjoin the banks from complying with the subpoenas. *Id.* at 632. Like the D.C. Circuit, the Second Circuit concluded that the challenged subpoenas were in furtherance of valid legislative purposes. *Id.* at 658-60.

## SUMMARY OF ARGUMENT

Since Congress' earliest days, case studies have allowed it to analyze complex issues, present facts to the public in comprehensible ways, and take corrective action.[7] As attested to in a work about Senator Levin's own congressional activity:

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[7] Roger A. Bruns, et. al,, Robert C. Byrd Center for Legislative Studies, *Congress Investigates: A Critical and Documentary*

> Too many congressional investigations allow witnesses to spout generalities and platitudes when asked about an issue. . . . Detailed case studies, on the other hand, typically expose[] the true nature of the problems in question.[8]

Case studies also serve to galvanize and sustain public attention—which often is critical to Congress' ability to push through needed reforms—in ways that broad-based investigations frequently do not. Any decision by this Court limiting Congress' ability to use case studies to further its legislative function, including as to impeachable officials, would greatly hinder Congress' ability to inform the public about its government's workings, check abuses, and pass evidence-based laws in the public interest.

It also would be without basis in the law. This Court, in *McGrain v. Daugherty*, upheld the right of Congress to investigate malfeasance in the Department of Justice using a case study focused squarely on that agency's head, then-Attorney General Harry Daugherty. 273 U.S. at 151-52. This Court did not find the investigation criminal in nature simply because of its targeted focus. Nor did it require Congress to proceed through its impeachment power given the status of its target. Rather, the investigation was a proper exercise of Congress'

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*History*, (Rev. ed. 2011) (recounting 29 congressional case studies between 1792 and 2006).

[8] Elise J. Bean, *Financial Exposure: Carl Levin's Senate Investigations into Finance and Tax Abuse* (2018), at 25.

legislative power, this Court held, because the investigation was one on which legislation "could be had." *Id.* at 177.

That nearly hundred-year-old decision has become the polestar for assessing Congress' investigative powers under the Constitution, has been widely relied upon by subsequent courts, and should be reaffirmed. The reasons offered by the President, Solicitor General, and dissenting opinions as to why case studies, especially those targeting impeachable officials, should not be viewed as a proper exercise of the legislative power, lack merit.

## ARGUMENT

The argument proceeds in two parts. Section I analyzes this Court's holding in *McGrain v. Daugherty* and addresses objections to Congress' use of case studies, especially as directed at impeachable officials. Section II presents a number of modern case studies and the legislative reforms they generated, to illustrate the damage to good government that a ruling limiting their use would work.

### I. CASE STUDIES ARE A PROPER EXERCISE OF THE LEGISLATIVE POWER, INCLUDING AS TO IMPEACHABLE OFFICIALS.

#### A. This Court validated congressional use of case studies as to impeachable individuals in *McGrain v. Daugherty*.

This Court's leading case upholding the right of Congress to investigate and compel information,

*McGrain v. Daugherty*, 273 U.S. 135 (1927), centers on a Senate select committee investigation charged primarily with examining whether a single sitting federal Cabinet official, U.S. Attorney General Harry Daugherty, improperly failed to prosecute wrongdoers in several scandals affecting the Harding Administration in the 1920s. The *McGrain* decision, a bedrock of congressional investigative authority, sustained a congressional investigation that was deliberately focused on a single individual and an indisputably impeachable one at that. U.S. Const. art. II, § 4 (rendering impeachable "all civil Officers of the United States"). To be blunt: This Court, nearly a century ago, foreclosed Petitioners' primary argument against case studies.

1. The Senate resolution in *McGrain* authorized a targeted investigation of a sitting Cabinet official. The Senate conducted the investigation through a newly established Senate select committee. Because the Senate chose to use a new committee rather than a standing committee, a resolution detailed its authority to investigate. That resolution leaves no doubt that the investigation focused squarely on the alleged wrongdoing of an impeachable Cabinet official. It instructed the Senate select committee "to investigate" the following matters:

> "the alleged failure of Harry M. Daugherty, Attorney General of the United States, to prosecute properly" certain individuals;
>
> "the alleged neglect and failure of the said Harry M. Daugherty, Attorney

> General of the United States, to arrest and prosecute" certain other individuals;
>
> "the alleged neglect and failure of the said Attorney General to arrest and prosecute many others for violations of federal statutes"; and
>
> "his alleged failure to prosecute properly" actions where "the United States is interested as a party[.]"

*McGrain*, 273 U.S. at 151-152. After those investigative charges, the resolution "further directed" the committee to investigate both "Harry M. Daugherty, Attorney General, and any of his assistants in the Department of Justice" to determine whether anything existed that might "impair their efficiency or influence as representatives of the government of the United States." *Id.* at 152. In short, the resolution repeatedly and unambiguously targeted Attorney General Daugherty for investigation.

Judge Rao, dissenting below, nevertheless contended that the *McGrain* investigation was "not about the wrongdoing of the Attorney General but the administration of the Department of Justice as a whole." *Mazars USA, LLP*, 940 F.3d at 774 n. 16 (Rao, J., dissenting). That contention, however, does not comport with the authorizing language quoted immediately above. It also misses the point: Targeted case studies are natural jumping off points for broader inquiries and reforms. The resolution's directives leave no doubt that the alleged wrongdoing of a single impeachable official was the central

objective of the investigation in *McGrain*. The fact that Justice Department administrative issues were also a subject of inquiry did not make that case study exceptional; it made it typical.

2. *McGrain* approved not only a targeted congressional investigation, but also its use of compulsory process. The Senate select committee issued a subpoena to Mally Daugherty, the brother of the Attorney General. When he failed to appear before the committee, he was taken into custody by order of the Senate. 273 U.S. at 151-52. A lower court granted him a writ of habeas corpus, but this Court reversed, upholding the committee's right to use imprisonment to compel information. *Id.* at 153-154. Under *McGrain*, the targeted nature of the congressional investigations in the cases under review is no basis for quashing the relevant subpoenas.

3. The *McGrain* Court acknowledged that Congress might abuse its investigative powers, but it said that was no basis for restricting those powers. "The same contention," it noted, "might be directed against the power to legislate, and, of course, would be unavailing." *Id.* at 175-76. The better course was to presume "that neither house will be disposed to exert the power beyond its proper bounds," and take action in exceptional cases. *Id.* That presumption proved wise; *McGrain* was not, in fact, followed by a wave of abusive congressional subpoenas.

4. *McGrain* acknowledged the obvious link between investigating an individual officeholder and enacting broad reforms related to the target's wrongdoing. This Court held that, despite its explicit

focus on the Attorney General and the absence of an explicit statement that the investigation was "in aid of legislation," the authorizing resolution "show[ed] that the subject to be investigated was the administration of the Department of Justice . . . and particularly whether the Attorney General and his assistants were performing or neglecting their duties[.]" *Id.* at 177-78. The Court observed that the Department and its officeholders were subject to "congressional legislation" and "appropriations," and so found the investigation was "in aid of legislating." *Id.* at 178. It was no impermissible leap, in other words, to construe an investigation particularly focused on the Attorney General as one that touched broad concerns "on which legislation could be had" and which therefore was a proper exercise of the legislative power. *Id.* at 178. Investigating an individual officeholder was expected to produce information that would assist Congress in carrying out its constitutionally assigned functions. That acknowledgment, again, is not surprising; it is how case studies are used.

5. It was of no moment in *McGrain* that the investigation "might possibly disclose crime or wrongdoing" by the Attorney General, an impeachable official. *Id.* at 179-80. "[T]he resolution and proceedings," the Court held, "give no warrant for thinking the Senate was attempting or intending *to try the Attorney General at its bar or before its committee* for any crime or wrongdoing." *Id.* (emphasis added). The Court determined that the investigation of the Attorney General was not masking a law enforcement effort, but had its own legitimate legislative purpose.

6. *McGrain* also made clear that congressional subpoenas targeting individual actors are not subject to heightened scrutiny or special drafting requirements, even when the individuals in question are core executive branch officials. *Contrast with* DOJ Br. at 17 (subpoenas targeting the President "must satisfy a heightened showing"). The Mally Daugherty subpoena sought information related to a sitting Attorney General's official conduct. After acknowledging the gravity of the issues, 273 U.S. at 154, and noting that the subpoena "does not in terms avow that it is intended to be in aid of legislation," *id.* at 177, this Court upheld Congress' right to subpoena information on a core executive function—prosecutorial discretion—at the center of a corruption scandal roiling the Harding administration, *id.* at 182. The Court treated the subpoena's information requests as squarely within the scope of Congress' investigatory powers, despite their targeted focus on an executive branch official and a core executive branch function. What mattered was simply whether the subpoenas sought information on which legislation "could be had." *Id.* at 177.

7. Nowhere in *McGrain* did this Court imply that Congress had to use impeachment proceedings, rather than the legislature's normal mode of inquiry, to investigate possible wrongdoing by an impeachable Cabinet official. Judge Rao's attempt to distinguish *McGrain* on the basis that the Senate was not "'attempting or intending to try the Attorney General at its bar or before its committee for any crime or wrongdoing,'" *Mazars USA, LLP*, 940 F.3d at 773 (Rao, J., dissenting, quoting *McGrain*, 273 U.S. at 179–80), misses the point. The Senate committee quite obviously was investigating him. It is precisely

because it was an investigation, and not a trial, that the subpoena to the Attorney General's brother seeking information about official conduct was a permissible exercise of the legislative power and sustained by the Court.

* * *

*McGrain* makes clear that congressional investigations may focus on a single, impeachable officeholder and inquire into that officeholder's alleged misconduct without transgressing limits on exposing private affairs, engaging in law enforcement, or circumventing the impeachment process. It also makes clear that federal courts may resolve disputes over congressional subpoenas that seek case-study-style information related to the executive branch when those subpoenas have been defied, and may do so without applying a heightened level of scrutiny.

This Court's approach in *McGrain* has been widely cited over the last 90 years; it is a bedrock of federal jurisprudence in matters regarding Congress' investigative powers. Resolving the cases under review in a way that limits Congress' use of case studies would overturn hundreds of years of Congressional practice and nearly a century of Court precedent.

### B. The dissents below offer no basis to bar the use of case studies as to impeachable officials or anyone else.

The President, Solicitor General, and dissenting opinions below all fail to offer valid reasons to revisit the *McGrain* holding.

1. Judge Rao's dissent at times glosses over a critical point—that impeachment is available only to remedy "high crimes and misdemeanors," not all crimes, misdemeanors, or other wrongdoing. *See Mazars USA, LLP*, 940 F.3d at 748 (Rao, J., dissenting) ("Allegations that an impeachable official acted *unlawfully* must be pursued through impeachment.") (emphasis added). As recent events demonstrate, what does and does not amount to an impeachable offense is hotly contested. Not every violation of a criminal statute qualifies for impeachment; and conversely, acts that violate *no* statute may qualify as impeachable offenses. It is far from clear whether the conflict of interest, emolument, or financial disclosure issues being investigated through the Mazars subpoena, *id.* at 768, will uncover evidence of "high crimes and misdemeanors." By necessity, congressional investigations begin and progress without knowing all of the facts, including the extent to which an official's acts may be egregious or impeachable. Requiring the mode of investigation to be determined by the meaning of an indefinite term, and an often-incomplete set of facts, is unworkable.

2. The President argues in this Court that "[t]he 'case study' rationale" is difficult to square "with any 'legislative purpose,'" echoing his arguments below

that inquiries targeting individuals are, instead, hallmarks of law enforcement. Pet. Br. at 41. But legislation itself may target individual persons or cases without losing its legislative character, so long as a rational basis exists for doing so. *See, e.g.*, *Village of Willowbrook v. Olech*, 528 U.S. 562, 565 (2000) (remanding case challenging state action targeted at single household with instruction to determine whether it had rational basis). Congress may even pass statutes effectively resolving individual legal cases without violating the separation of powers, as this Court held just a few years ago. *Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1318-19 (2016); *see also, e.g.*, Note, *Private Bills in Congress*, 79 Harv. L.R. 1684 (1966) (discussing enactment of bills addressing individuals). If Congress may legislate that way—fashioning remedies to address individual cases—it certainly may investigate that way.

In addition, the President ignores the many congressional investigations that have focused on wrongdoing by a single individual yet resulted in legislative reforms. Perhaps the most famous example is the Watergate inquiry, which focused on President Nixon but led to broad campaign finance reform,[9] a stronger Freedom of Information Act,[10] and

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[9] Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (1974) (codified as amended in scattered sections of U.S. Code including 52 U.S.C. § 30106).

[10] 1974 Amendments to the Freedom of Information Act, Pub. L. No. 93-502, 88 Stat. 1561 (1974) (codified at 5 U.S.C. § 552).

new spending constraints,[11] among other legislative accomplishments.

3. For practical reasons, too, the difference between permissible and impermissible congressional investigations cannot turn on the number of individuals being examined. When does a congressional inquiry become acceptably broad—when it concerns two individuals? Five? Seven? Neither the President nor his *amici* offer any standard. Such an approach is, again, unworkable.

4. The President's opening brief in this Court also argues that the Mazars subpoena is invalid as an exercise of legislative power in part because it articulated an allegedly thin, if not pretextual, legislative agenda. Pet. Br. at 41 (noting that committee originally "did not identify *any* legislative agenda"). The Solicitor General similarly argues that "[t]he four subpoenas" at issue here are invalid in part because "neither the House nor the committees clearly identified a specific legitimate legislative purpose behind each subpoena[.]". DOJ Br. at 25-26.

But the validity of a congressional investigation — including one using a case study—in no way turns on the existence or sufficiency of a stated legislative purpose; it turns only on whether legislation "could" be had on the topic under inquiry. *McGrain*, 273 U.S. at 177. The analogy to actual legislation is again instructive. Rational basis review, which ordinarily

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[11] Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (codified as amended in scattered sections of 2 U.S.C. and 31 U.S.C.).

governs challenges to legislation that targets or impacts single individuals ("class of one" claims), "does not demand . . . that a legislature or governing decisionmaker actually articulate at any time the purpose or rationale supporting its classification." *Nordlinger v. Hahn*, 505 U.S. 1, 15 (1992). The challenged legislation survives scrutiny if "there is any reasonably conceivable state of facts that could provide a rational basis for the classification" used in the statute. *Armour v. City of Indianapolis*, 566 U.S. 673, 685 (2012) (citing *FCC v. Beach Commc'ns, Inc.*, 508 U. S. 307, 313 (1993)).

It would be anomalous to require more of investigations that likewise target individuals, given that investigations, by their "very nature . . . take[] the searchers up some 'blind alleys' and into nonproductive enterprises." *Eastland*, 421 U.S. at 509; *see also In re Chapman*, 166 U.S. 661, 670 (1897) ("[I]t was certainly not necessary that the resolutions should declare in advance what the Senate meditated doing when the investigation was concluded."). Requiring congressional investigations to identify a legislative agenda before fact-finding even begins would defy common sense and years of precedent.

## II. BANNING CASE STUDIES WOULD ROB CONGRESS OF A HIGHLY EFFECTIVE INVESTIGATIVE TOOL.

Case studies continue to be an important and effective investigative tool used by Congress. The modern examples highlighted below illustrate their continued importance.

### A. Congressional investigations focused on individual officeholders continue to expose wrongdoing and generate meaningful reforms.

The Senate investigation upheld in *McGrain* has been followed by many more congressional inquiries that, likewise, have focused on a single officeholder, exposed that official's wrongdoing or shortcomings, and used the information to fulfill Congress' constitutional functions, including informing the public about its government's workings, checking abuses, halting improper spending, or enacting legislation. Three examples follow.

#### 1. Lois Lerner, Director, Exempt Organizations, Internal Revenue Service.

In 2013, the House Committee on Ways and Means (W&M) and House Committee on Oversight and Government Reform (HOGR) initiated separate multi-year investigations into the role of Lois Lerner, Director of Exempt Organizations at the Internal Revenue Service (IRS), in the mishandling of applications for tax exempt status under Internal Revenue Code Section 501(c)(4).[12]

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[12] *See*, *e.g.*, "Hearing on Internal Revenue Service Targeting Conservative Groups," W&M (5/17/2013), https://docs.house.gov/meetings/WM/WM00/20130517/100864/HHRG-113-WM00-Transcript-20130517.pdf; "The IRS: Targeting Americans for Their Political Beliefs," hearing before HOGR (5/22/2013), https://www.govinfo.gov/content/pkg/CHRG-113hhrg81742/pdf/CHRG-113hhrg81742.pdf; "The IRS: Targeting Americans for Their Political Beliefs," HOGR (3/5/2014), https://www.govinfo.gov/content/pkg/CHRG-

Among other matters, the committees explored allegations that Ms. Lerner had permitted IRS employees within her division to use inappropriate criteria to select tax exempt applicants for extra scrutiny, singling out in particular conservative-leaning organizations whose names included such terms as "Tea Party." Other congressional committees conducted their own inquiries, some of which determined that the IRS had used similar inappropriate criteria for liberal-leaning organizations whose names included such terms as "Progressive."[13] Ms. Lerner's failure to disclose key information to Congress on these and other matters drew bipartisan condemnation.[14]

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113hhrg87500/pdf/CHRG-113hhrg87500.pdf; "IRS Commissioner John Koskinen," W&M (6/20/2014), https://www.govinfo.gov/content/pkg/CHRG-113hhrg21117/pdf/CHRG-113hhrg21117.pdf; "The IRS Targeting Scandal: Changing Stories of the Missing E-mails," HOGR Subcommittee on Economic Growth, Job Creation and Regulatory Affairs, (9/17/2014), https://docs.house.gov/meetings/GO/GO28/20140917/102696/HHRG-113-GO28-Transcript-20140917.pdf; "IRS: TIGTA Update," HOGR (2/26/2015), https://archive.org/details/gov.gpo.fdsys.CHRG-114hhrg95249/page/n5/mode/2up.

[13] *See, e.g.*, "The Internal Revenue Service's Processing of 501(c)(3) and 501(c)(4) Applications for Tax Exempt Status Submitted by 'Political Advocacy' Organizations from 2010–2013," report, Senate Finance Committee (8/5/2015), https://www.finance.senate.gov/release/finance-committee-releases-bipartisan-irs-report.

[14] *See, e.g.*, letter from Senators John McCain and Carl Levin to IRS (May 23, 2013), *in* "IRS and TIGTA Management Failures Related to 501(c)(4) Applicants Engaged in Campaign Activity," staff report, Senate Permanent Subcommittee on Investigations,

In response to the investigation, the IRS placed Ms. Lerner on leave, produced tens of thousands of her emails to Congress, and revamped the criteria used to review 501(c)(4) applicants.[15] Congress also took action by reducing IRS appropriations to penalize the agency for improper conduct[16] and by enacting legislation that made it easier for entities denied tax exempt status to appeal adverse

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(9/5/2014), 1675 (urging Ms. Lerner's immediate suspension), https://www.govinfo.gov/content/pkg/CPRT-113SPRT89800/pdf/CPRT-113SPRT89800.pdf.

[15] *See, e.g.*, "Charting a Path Forward at the IRS: Initial Assessment and Plan of Action," report, IRS (6/24/2013) (describing remedial actions taken by IRS), https://www.irs.gov/pub/newsroom/Initial%20Assessment%20and%20Plan%20of%20Action.pdf. *See also, e.g.*, Stephanie Condon and Walt Cronkite, "IRS official Lois Lerner placed on leave," CBS News (5/23/2013), https://www.cbsnews.com/news/irs-official-lois-lerner-placed-on-leave/. The House also voted to hold Ms. Lerner in contempt of Congress, but the Justice Department declined to prosecute. H. Res. 574, 113th Cong. (2013-14), https://www.congress.gov/bill/113th-congress/house-resolution/574.

[16] *See, e.g.*, "Written Testimony of John A. Koskinen Before The Senate Appropriations Committee Subcommittee on Financial Services and General Government," IRS (undated but likely in 2015), https://www.irs.gov/es/newsroom/written-testimony-of-john-a-koskinen-before-the-senate-appropriations-committee-subcommittee-on-financial-services-and-general-government; Gabrielle Levy, "House will slash IRS budget over Lois Lerner targeting scandal," United Press International (7/15/2014), https://www.upi.com/Top_News/US/2014/07/15/House-will-slash-IRS-budget-over-Lois-Lerner-targeting-scandal/8831405443094/.

decisions[17] and for the IRS to terminate any employee acting to advance a "political purpose."[18]

The hearings featuring Lois Lerner were part of a larger congressional inquiry into how the IRS mishandled 501(c)(4) applications. Intense scrutiny of her actions is emblematic of a congressional oversight approach that deliberately focuses on a single agency official as a way to investigate the federal agency being led by that official, stop executive branch abuses, and reform agency practices on which legislation could be had.

### 2. Katherine Archuleta, Director, Office of Personnel Management.

In 2015, House and Senate committees examined the role of Katherine Archuleta, Director of the Office of Personnel Management (OPM), in failing to prevent cyber intrusions of OPM databases affecting an estimated 22 million people.[19]

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[17] Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242 (2015), §§ 404, 406.

[18] *Id.* at § 407.

[19] *See, e.g.*, "OPM Data Breach," HOGR (6/16/2015), https://www.govinfo.gov/content/pkg/CHRG-114hhrg99659/pdf/CHRG-114hhrg99659.pdf; "A Review of IT Spending and Data Security at OPM," Senate Appropriations Subcommittee on Financial Services and General Government (6/23/2015), https://www.appropriations.senate.gov/hearings/fsgg-subcommittee-hearing-opm-information-technology-spending-and-data-security.

A hearing held by the House Committee on Oversight and Government Reform, in particular, sought to investigate Ms. Archuleta for suspected leadership and management failures that allowed cyberattacks to steal millions of Social Security numbers and other private information in OPM databases.[20] A staff report released later by the same House committee dug more deeply into the facts, detailing the multiple security lapses over time that enabled the data breaches to occur and recommending reforms to reduce cybersecurity vulnerabilities, not only at OPM but across the federal government.[21]

Congressional hearings on the OPM data breach led to Ms. Archuleta's resignation in 2015, along with other OPM leadership changes and steps to reduce OPM's cybersecurity weaknesses. In addition, in response to the OPM incident and other cybersecurity incidents around the same time, Congress enacted the Cybersecurity Information Sharing Act of 2015, to "improve cybersecurity in the United States through enhanced sharing of information about cybersecurity threats," including cyberattacks.[22] The OPM incident

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[20] *See, e.g.*, "OPM Data Breach: Part II," HOGR (6/24/2015), https://docs.house.gov/meetings/GO/GO00/20150624/103684/HHRG-114-GO00-Transcript-20150624.pdf.

[21] "The OPM Data Breach: How the Government Jeopardized Our National Security for More than a Generation," staff report, HOGR (9/7/2016), https://republicans-oversight.house.gov/report/opm-data-breach-government-jeopardized-national-security-generation/.

[22] Consolidated Appropriations Act of 2016, Pub. L. No. 114-113, 129 Stat. 2936, Division N (Cybersecurity Act of 2015), Title I

also sparked investigations by Congress into cybersecurity vulnerabilities at other agencies.[23]

### 3. Teodoro Obiang Nguema Mbasogo, President, Equatorial Guinea.

From 2003 to 2004, the Senate Permanent Subcommittee on Investigations conducted an inquiry into anti-money-laundering problems at Riggs Bank, a relatively small Washington, D.C. bank. It examined accounts opened for Teodoro Obiang Nguema Mbasogo, President of Equatorial Guinea.[24] Using subpoenas requiring Riggs to produce a wide range of information, including for accounts associated with President Obiang, his wife, children, shell entities, and businesses, the Subcommittee uncovered multiple accounts, transactions, and arrangements raising anti-money-laundering concerns.[25]

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(Cybersecurity Information Sharing Act of 2015), (codified at 6 U.S.C. §§ 1501-1510).

[23] *See, e.g.*, "Federal Cybersecurity: America's Data at Risk," staff report, Senate Permanent Subcommittee on Investigations (6/25/2019) (examining cybersecurity vulnerabilities at eight federal agencies), https://www.hsgac.senate.gov/imo/media/doc/2019-06-25%20PSI%20Staff%20Report%20-%20Federal%20Cybersecurity%20Updated.pdf.

[24] *See* "Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act," PSI, (7/15/2004), https://www.gpo.gov/fdsys/pkg/CHRG108shrg95501/pdf/CHRG-108shrg95501.pdf (hereinafter "2004 Senate Hearing Record").

[25] *Id.* at 128, 155, 157-161.

A report, issued after a bipartisan Subcommittee investigation, led by the then-minority staff, determined that Riggs Bank had acted:

> with little or no attention to the bank's anti-money-laundering obligations, turned a blind eye to evidence suggesting the bank was handling the proceeds of foreign corruption, and allowed numerous suspicious transactions to take place without notifying law enforcement.[26]

The investigation disclosed, for example, that while Riggs Bank had not opened any account in the name of President Obiang, it had formed an offshore shell corporation under his control, Otong S.A.; opened an account in the name of Otong; and accepted multiple cash deposits to the Otong account totaling $11.5 million.[27] The Senate subpoena also resulted in the production of documents disclosing millions of dollars deposited into accounts opened for the president's wife and her brother, and for corporations controlled by the president's eldest son.[28]

The Riggs Bank investigation had been undertaken, in part, to gauge the extent to which federal banking regulators were implementing an

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[26] *Id.* at 133, 155.

[27] *Id.* at 159, 164-165.

[28] *Id.* at 159-160, 165-166.

anti-money-laundering law enacted in 2001.[29] In response, the Treasury Department ended a multi-year delay and issued a final rule implementing key provisions of the 2001 law,[30] including a requirement that financial institutions exercise enhanced due diligence when opening accounts for senior foreign political figures, their family members, or close associates.[31] In addition, after the Senate investigation disclosed that the federal bank "examiner-in-charge" at Riggs had left his federal job and immediately taken a position with the bank,[32] Congress enacted a law requiring that senior federal bank examiners wait a year before working for financial institutions they supervised.[33]

The Riggs Bank investigation offers a concrete example of how Congress used a case study featuring an individual (in this case, a foreign head of state) to

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[29] *See, e.g.*, *id.* at 8, 128; *see also* Patriot Act of 2001, Pub. L. No. 107-56, 115 Stat. 273 (2001), Title III (codified at scattered sections in 31 U.S.C.) (hereinafter "Title III").

[30] Financial Crimes Enforcement Network; Anti-Money-Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts, Part III, final rule, Department of Treasury, 71 Fed. Reg. 496 (1/4/2006) (codified at 31 C.F.R. § 1010.620).

[31] *See* Title III, § 312 (codified at 31 U.S.C. § 5318(i)(3)(B)); 2004 Hearing Record at 133, 209.

[32] 2004 Senate Hearing Record, at 192-193.

[33] Bank Examiner Postemployment Protection Act, S. 2814, *in* Intelligence Reform and Terrorism Prevention Act, Pub. L. No. 108-458, 118 Stat. 3638, § 6303(b) (2004) (codified at 12 U.S.C. § 1820(k)).

understand a complex problem (U.S. anti-money-laundering vulnerabilities) and press for remedial reforms.

President Trump's legal counsel casts doubt on the proposition that a case study involving the President could lead to legislation on money laundering,[34] but the case study involving President Obiang shows how Congress used an investigation of a political leader to produce more effective anti-money-laundering safeguards at U.S. financial institutions.[35] The House subpoenas to Deutsche Bank and Capital One may likewise lead to new anti-money-laundering safeguards for accounts opened by domestic officeholders, their family members, shell entities, or businesses.

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[34] *Trump v. Mazars USA*, Brief for Petitioners (1/27/2020), 51-52.

[35] *See also* "Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities," PSI (11/9–10/1999) (examining Omar Bongo, President of Gabon; Raul Salinas, brother to the President of Mexico; Asif Ali Zardari, husband to Benazir Bhutto, prime minister of Pakistan, and others), https://www.gpo.gov/fdsys/pkg/CHRG-106shrg61699/pdf/CHRG- 106shrg61699.pdf; "Keeping Foreign Corruption Out of the United States: Four Case Histories," PSI (2/4/2010) (examining Atiku Abubakar, Vice President of Nigeria; Omar Bongo, President of Gabon; Teodoro Nguema Obiang Mangue, son of the President of Equatorial Guinea; and others), https:// www.gpo.gov/fdsys/pkg/CHRG-111shrg56840/pdf/CHRG-111shrg56840. pdf (vol. 1); https://www.gpo.gov/fdsys/pkg/CHRG-111shrg57734/ pdf/CHRG-111shrg57734.pdf (vol. 2).

## B. Congressional investigations focused on private sector individuals also have exposed wrongdoing and generated meaningful reforms in recent times.

Congress has also used case studies to investigate suspected wrongdoing by private sector individuals, in order to understand problems and develop remedial legislation or other policy reforms. Two examples follow.

### 1. Carl Ferrer, Chief Executive Officer, Backpage.com.

In a multi-year inquiry beginning in 2015, the Senate Permanent Subcommittee on Investigations (PSI) investigated and exposed the role of Carl Ferrer, chief executive officer (CEO) of a privately held corporation, Backpage.com, in the facilitation of sex trafficking on the Internet.[36]

As part of its investigation, PSI filed a 2016 lawsuit to enforce a Senate subpoena seeking documents from Mr. Ferrer. *Senate Permanent Subcomm. v. Ferrer*, 199 F. Supp. 3d 125 (D.D.C. 2016), *vacated as moot sub nom. Senate Permanent Subcomm. on Investigations v. Ferrer*, 856 F.3d 1080 (D.C. Cir. 2017). As a result of a court order stemming from that lawsuit, Mr. Ferrer produced more than

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[36] *See, e.g.*, "Human Trafficking Investigation," PSI (11/19/2015), https://www.govinfo.gov/content/pkg/CHRG-114shrg98445/pdf/CHRG-114shrg98445.pdf; "Backpage.com's Knowing Facilitation of Online Sex Trafficking," PSI (1/10/2017), https://www.govinfo.gov/content/pkg/CHRG-115shrg24401/pdf/CHRG-115shrg24401.pdf.

100,000 pages of documents to the Subcommittee. *Id.*

In 2017, a PSI hearing and report disclosed how Backpage.com and CEO Ferrer had knowingly created a lucrative online marketplace that, among other matters, advertised sex trafficking opportunities.[37] The investigation disclosed that Backpage.com was then hosting online adult advertisements in 97 countries and, in 2013, had attracted to its website eight out of every ten dollars spent on online commercial sex advertising in the United States. *Id.* at 1. The investigation also released documentation showing how Backpage.com had concealed evidence of crimes by systematically deleting words and images suggestive of illegal conduct from the advertisements submitted for posting to its website, including sanitizing ads suggestive of child sex trafficking. *Id.* at 2.

By singling out Mr. Ferrer and undertaking a multi-year effort to obtain his documents, the Senate investigation was able to expose how his corporation had become a major contributor to sex trafficking in the United States and globally. The investigation led to multiple congressional proposals to deter websites from hosting sex-trafficking ads. In 2018, Congress enacted the Allow States and Victims to Fight Online Sex Trafficking Act,[38] designed to make it easier to file

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[37] "Backpage.com's Knowing Facilitation of Online Sex Trafficking," PSI (1/10/2017), S. Hrg. 115-6, report reprinted at 56, https://www.govinfo.gov/content/pkg/CHRG-115shrg24401/pdf/CHRG-115shrg24401.pdf.

[38] Pub. L. No. 115-164, 132 Stat. 1253 (2018).

state and federal civil and criminal actions against websites hosting sex-trafficking ads.

### 2. Martin Shkreli, Chief Executive Officer, Turing Pharmaceuticals.

In 2016, the House Oversight and Government Reform Committee and the Senate Special Committee on Aging held separate hearings on allegations that Martin Shkreli, CEO of Turing Pharmaceuticals, was involved in abusive drug pricing practices.[39] In particular, the House and Senate hearings disclosed that, in 2015, Turing increased the cost of a lifesaving drug by 5,000 percent, causing its per-pill price to skyrocket from $13.50 to $750. *Id.*

While other congressional hearings, both before and after the Shkreli hearings,[40] addressed the same pricing issues, it was Mr. Shkreli's brazen defense of his company's price hike that sparked a wave of intense media coverage and galvanized public outrage

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[39] "Developments In The Prescription Drug Market: Oversight," HOGR (2/4/2016), https://www.govinfo.gov/content/pkg/CHRG-114hhrg25500/pdf/CHRG-114hhrg25500.pdf; "Sudden Price Spikes in Decades-Old Rx Drugs: Inside the Monopoly Business Model," Senate Special Committee on Aging (3/17/2016), https://www.aging.senate.gov/hearings/sudden-price-spikes-in-decades-old-rx-drugs-inside-the-monopoly-business-model.

[40] *See, e.g.*, "Sudden Price Spikes in Off-Patent Prescription Drugs: The Monopoly Business Model that Harms Patients, Taxpayers, and the U.S. Health Care System," report, Senate Special Committee on Aging (12/2016), https://www.aging.senate.gov/imo/media/doc/Drug%20Pricing%20Report.pdf.

against excessive drug prices.[41] Two years later, one biotech executive provided the following comment about Mr. Shkreli:

> He was, in the great scheme of things, a drop in the bucket. But he created such a massive impression and blowback that it forced entire industries, government, patient advocacy groups, the media and political entities all to focus on these issues in a way that I don't know that they would have absent that event.[42]

Congress' decision to feature Mr. Shkreli in its hearings put a face on the problem of skyrocketing drug prices. It increased public awareness of the problem and built momentum for change. In one response to the Shkreli hearings, for example, the Food and Drug Administration announced policy changes to make it easier to approve new generic drugs and more difficult to hike prices on older generics.[43] Congress enacted legislation that also

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[41] *See, e.g.*, Meg Tirrell, "Martin Shkreli's legacy: Putting a 'fine point' on the drug pricing debate," CNBC News (3/9/2018), https://www.cnbc.com/2018/03/09/martin-shkrelis-legacy-shaping-the-drug-pricing-debate.html.

[42] *Id.*

[43] Prioritization of the Review of Original ANDAs, Amendments, and Supplements, Manual of Policies and Procedures, MAPP 5240.3 Rev. 3, Office of Generic Drugs, Center for Drug Evaluations and Research, Food and Drug Administration (3/11/2016). *See also, e.g.*, Ed Silverman, "FDA changes policy to prevent the next Martin Shkreli," STAT News (3/15/2016),

targeted the approval and pricing of generic drugs.[44] In 2019, Mr. Shkreli's name continued to be invoked in connection with high drug prices, indicating the ongoing power that his case study had in dramatizing the issue.[45]

### C. Recent investigations of individual corporations have done the same.

Congressional investigations have also featured case studies focused on discrete legal entities, such as corporations, whose misconduct helped generate remedial legislation or other policy reforms. Two examples follow.

#### 1. Enron Corporation.

In 2001, Enron Corporation, then the seventh largest publicly traded corporation in America, suddenly collapsed into bankruptcy, harming its employees, creditors, business partners, investors, and the American economy as a whole. Multiple

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https://www.statnews.com/pharmalot/2016/03/15/martin-shkreli-fda-drug-prices/.

[44] FDA Reauthorization Act of 2017, Pub. L. No. 115-52, 131 Stat. 1069, Title 8 (Improving Generic Drug Access) (2017).

[45] *See, e.g.*, Sydney Lupkin, "A Decade Marked By Outrage Over Drug Prices," National Public Radio (12/31/2019), https://www.npr.org/sections/health-shots/2019/12/31/792617538/a-decade-marked-by-outrage-over-drug-prices (describing Mr. Shkreli as "the poster boy for pharmaceutical greed that helped define the past decade").

House and Senate committees launched inquiries into what went wrong at that specific corporation.[46]

Subsequent congressional hearings and reports detailed numerous abusive financial, accounting, and tax practices at Enron, including misleading financial reporting of profits and debts, high-risk accounting, and commodity price manipulation.[47]

The congressional investigation of Enron prompted numerous legislative proposals to prevent Enron-style misconduct, leading to enactment of a landmark law, the bipartisan Sarbanes-Oxley Act.[48]

**2. Wells Fargo.**

In 2016, the House Committee on Financial Services and the Senate Committee on Banking and Urban Affairs held separate hearings on allegations of abusive banking practices at Wells Fargo, one of the largest financial institutions in the United States. The committees examined alleged banking misconduct from 2011 to 2015, including the opening of 1.5 million unauthorized consumer deposit accounts and over 565,000 unauthorized credit-card accounts; and the imposition of inappropriate fees on unsuspecting customers. The hearings also examined

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[46] *See, e.g.*, Library of Congress, "Enron Hearings," https://www.loc.gov/law/help/guide/federal/enronhrgs.php (providing partial list of Enron-related hearings by three House and seven Senate committees).

[47] *Id.*

[48] Pub. L. No. 107-204, 116 Stat. 745 (2002).

the apparent failure of bank regulators to prevent, detect, and halt years of abusive practices by Wells Fargo.[49]

By raising the visibility of both the bank's misconduct and the regulators' lack of supervision, the congressional inquiries led to the closure of millions of unauthorized deposit and credit card accounts; changes in Wells Fargo's sales, compensation, and banking practices; changes in Wells Fargo's leadership; and increased supervisory and enforcement actions.[50] Congress is continuing to investigate and consider legislation.[51]

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[49] *See, e.g.*, "Holding Wall Street Accountable: Investigating Wells Fargo's Opening of Unauthorized Customer Accounts," House Committee on Financial Services (9/29/2016), https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=401082; "An Examination of Wells Fargo's Unauthorized Accounts and the Regulatory Response," Senate Committee on Banking, Housing, and Urban Affairs (9/20/2016), https://www.banking.senate.gov/hearings/an-examination-of-wells-fargos-unauthorized-accounts-and-the-regulatory-response.

[50] *See, e.g.,* U.S. Department of Justice, "Wells Fargo Agrees to Pay $3 Billion to Resolve Criminal and Civil Investigations into Sales Practices Involving the Opening of Millions of Accounts without Customer Authorization," (2/21/2020), https://www.justice.gov/opa/pr/wells-fargo-agrees-pay-3-billion-resolve-criminal-and-civil-investigations-sales-practices.

[51] *See, e.g.,* House Committee on Financial Services, "Waters Blasts Disappointing Wells Fargo Settlement; Reveals Ongoing Committee Investigation into Wells Fargo," (2/21/2020), https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=406262.

## CONCLUSION

At times, the President, the Solicitor General, and the dissents in the cases under review question the authority of Congress to investigate individuals, compel information about them from third parties, and pursue case studies centered on those individuals. But Congress has been investigating individuals, in both the public and private spheres, for more than a century, and it has been using those case studies to inform the public about the workings of its government, check abuses, restrain spending, identify problems, and develop remedial legislation.

The Centers respectfully urge the Court to reaffirm Congress' ability to investigate by means of case study, even as to impeachable individuals.

Respectfully submitted,

WILLIAM PITTARD
*Counsel of Record*
CHRISTOPER C. MUHA
KAISERDILLON PLLC
1099 14th Street NW—
8th Floor West
Washington, D.C. 20005
(202) 640-2850
wpittard@kaiserdillon.com

*Counsel for Amici Curiae*
*The Lugar Center and*
*the Levin Center at Wayne Law*

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