

No. 19-5142

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

DONALD J. TRUMP, ET AL.,

Plaintiffs-Appellants,

v.

MAZARS USA, LLP,

Defendant-Appellee,

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

Intervenor-Defendant-Appellee

On Appeal from a Final Order of the U.S. District Court
for the District of Columbia (No. 1:19-cv-01136)
(Hon. Amit P. Mehta, U.S. District Judge)

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

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

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

A. Parties And Amici.

Except for the United States of America and the Constitutional Accountability Center, all parties, intervenors, and amici appearing in this Court or before the district court are listed in the Brief of the Committee on Oversight and Reform of the U.S. House of Representatives, dated July 1, 2019.¹

B. Rulings Under Review.

The rulings under review are the order and opinion of the district court denying a preliminary injunction and granting summary judgment in favor of the Committee on Oversight and Reform of the U.S. House of Representatives and against plaintiffs,

¹ The following additional amici appeared before the Supreme Court in this matter: Foundation for Moral Law, W. Burlette Carter, Eagle Forum Education & Legal Defense Fund, Christian Family Coalition (CFC) Florida, Inc., Victor Williams, Public Citizen, Sean J. Kealy and James J. Wheaton, American Civil Liberties Union and ACLU of the District of Columbia, Thomas E. Mann, Norman J. Ornstein, Morton Rosenberg, Brenda Wineapple, The Lugar Center and the Levin Center at Wayne Law, The Niskanen Center, Republican Women for Progress, Bill Weld, Emil Frankel, R.J. Lyman, Rina Shah, Vivek Paul, Tanveer Kathawalla, Center for Media and Democracy, Citizens for Responsibility and Ethics in Washington, Stefan D. Cassella, Mike Davis, Stefanie Ostfeld, Paul E. Pelletier, Jonathan J. Rusch, Jessica Bulman-Pozen, Martin S. Lederman, William P. Marshall, Gillian Metzger, Peter M. Shane, David A. Strauss, and Former Members of Congress, Federal Ethics Officials, National Security Officials, Senior Department of Justice Officials, House General Counsels and Congressional Staff.

Trump v. Comm. on Oversight & Reform of the U.S. House of Representatives, 380 F. Supp. 3d 76 (D.D.C. 2019) (Amit P. Mehta, J.). See JA267-307 (opinion); Dkt. No. 36 (order).

C. Related Cases.

This case was previously on review before this Court with the same case name and number. This case was consolidated for purposes of review before the Supreme Court of the United States with *Trump v. Deutsche Bank AG*, which is now pending before the Second Circuit. See No. 19-1540 (2d Cir.).

/s/ Douglas N. Letter

Douglas N. Letter

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GLOSSARY

GSA	General Services Administration
JA	Joint Appendix
Oversight Committee	Committee on Oversight and Reform of the U.S. House of Representatives
Supp. Add.	Supplemental Addendum
Trump Plaintiffs	Plaintiffs-appellants Donald J. Trump, Trump Organization, Inc., Trump Organization, LLC, Trump Corporation, DJT Holdings, LLC, Donald J. Trump Revocable Trust, and Trump Old Post Office LLC

INTRODUCTION AND SUMMARY OF ARGUMENT

Until this case, the Supreme Court had “never addressed a congressional subpoena for the President’s information.” *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2026 (2020). Confronted for the first time with a dispute over such a subpoena, the Supreme Court affirmed Congress’s “broad and indispensable” power to investigate and concluded that, because that power “extend[s] to every affair of government,” “[l]egislative inquiries might involve the President in appropriate cases.” *Id.* at 2031, 2033 (quotation marks omitted). The Court then held that Congress has the power to issue “a subpoena directed at the President’s personal information.” *Id.* at 2035.

The Supreme Court instructed that, in determining whether such a subpoena is “related to, and in furtherance of, a legitimate task of the Congress”—and, therefore, valid and enforceable—“courts must perform a careful analysis that takes adequate account of the separation of powers principles at stake,” including the interests of Congress and the President. *Id.* at 2035 (quoting *Watkins v. United States*, 354 U.S. 178, 187 (1957)). The Supreme Court announced four considerations to guide that analysis, but remanded to allow this Court to apply those factors.

The relevant separation-of-powers considerations identified by the Supreme Court confirm that the subpoena issued by the Committee on Oversight and Reform (Oversight Committee) to the accounting firm Mazars USA, LLP for information concerning President Trump and affiliated entities (the Trump Plaintiffs) is a

legitimate exercise of the Oversight Committee's investigative authority. As the Oversight Committee has consistently explained, it is investigating whether President Trump has undisclosed conflicts of interest that may impair his decision-making; whether existing financial disclosure laws should be amended to ensure adequate disclosures; whether President Trump's lease with the General Services Administration (GSA) for the Trump Old Post Office Hotel has been properly managed; whether legislative reform is needed to prevent Presidential self-dealing in government contracting; and whether President Trump has received unconstitutional emoluments that raise conflicts-of-interest and other concerns for Congress.

As former Oversight Committee Chairman Elijah E. Cummings concluded in his April 2019 memorandum explaining the basis for the Mazars subpoena, "[t]he Committee's interest in these matters ... informs its review of multiple laws and legislative proposals under our jurisdiction." *Id.* at 2028 (quoting JA107).

Following the Supreme Court's opinion, on August 26, 2020, Oversight Committee Chairwoman Carolyn B. Maloney issued another memorandum to Committee members explaining the Committee's important legislative and oversight interests in obtaining the subpoenaed information of the President.² Chairwoman

² Memorandum from Chairwoman Carolyn B. Maloney to Members of the Committee on Oversight and Reform (Aug. 26, 2020), <https://perma.cc/RD3V-3SJY> (Supp. Add. 1-58) (attached to this supplemental brief as an addendum). "Supp. Add. XX" refers to pages in that addendum.

Maloney emphasized that Congress is considering “once-in-a-generation ethics reforms, including several provisions specifically applicable to presidents.” Supp. Add. 4. As she explained, the Oversight Committee requires President Trump’s information to advance these legislative interests because, “in the absence of a detailed understanding of this President’s financial holdings and the conflicts they raise,” Congress cannot tailor “bills that seek to prevent presidential conflicts of interest and self-dealing” to “ensure the legislation’s effectiveness and minimize the burden on the President and presidential candidates.” *Id.* The Oversight Committee further requires President Trump’s financial documents to inform legislation that would “address specific harms already caused by the President’s financial holdings and conflicts of interest.” *Id.* Only the President’s information will satisfy these legislative aims, which are driven by the need to address issues arising directly from President Trump’s own financial dealings.

The Oversight Committee’s subpoena easily meets the Supreme Court’s new test.

First, the Oversight Committee’s “legislative purpose warrants the significant step of involving the President and his papers.” *Mazars*, 140 S. Ct. at 2035. As Chairwoman Maloney stressed: “[t]he Committee is investigating *this President’s* ethical challenges and conflicts of interest and how best to mitigate them, *this President’s* financial holdings to illuminate the need for legislative reforms in presidential financial disclosures, and *this President’s* acceptance of Emoluments and whether any

congressional fixes are needed.” Supp. Add. 37. The Oversight Committee is not using the President’s information as a “case study for general legislation,” and there are no non-Presidential “other sources” for the information it seeks. *Mazars*, 140 S. Ct. at 2035-36 (quotation marks omitted).

Second, the subpoena here is “no broader than reasonably necessary to support Congress’s legislative objective.” *Mazars*, 140 S. Ct. at 2036. Indeed, before issuing the subpoena, the Oversight Committee narrowed its initial requests, and it has explained why each of the four categories of documents sought remains necessary to the Committee’s ongoing investigations. Chairwoman Maloney’s memorandum confirms what the record already established: the Oversight Committee “carefully tailored its subpoena to Mazars to include information ‘reasonably necessary’ to its investigative and legislative goals.” Supp. Add. 42; *see also Trump v. Mazars USA, LLP*, 940 F.3d 710, 740-42 (D.C. Cir. 2019) (Panel Op.) (discussing those categories in detail and concluding that each is “reasonably relevant” to the Oversight Committee’s investigations).

Third, the Oversight Committee has “adequately identifie[d] its aims and explain[ed] why the President’s information will advance its consideration of the possible legislation.” *Mazars*, 140 S. Ct. at 2036. Then-Chairman Cummings’s memorandum “laid out the need for the subpoena,” “identifie[d] four questions that the subpoena will help answer,” and directly linked those questions to the Oversight Committee’s “remedial legislative objective.” Panel Op., 940 F.3d at 726-27

(quotation and alteration marks omitted). The Oversight Committee further detailed its objectives in letters sent to the White House, the Trump Organization, and GSA prior to the subpoena's issuance. *See id.* at 727 (discussing requests to the White House); JA 272-74. And in putting “its legislation where its mouth is,” the House had offered “highly probative evidence of the Committee’s legislative purpose.” Panel Op., 940 F.3d at 727, 729; *see also id.* at 734-36 (explaining that legislation requiring the President to “comply[] with financial disclosure laws” would comport with the separation of powers).

This Court correctly concluded in its prior opinion that the Oversight Committee has provided “strong evidence of [its] legislative purpose.” *Id.* at 726. Chairwoman Maloney’s memorandum provides additional, extensive background on the Oversight Committee’s investigations, its concerns about the adequacy of existing law and agency practice, and Congress’s significant legislative interest in those subjects. The Chairwoman’s meticulous examination of the Oversight Committee’s legislative purposes explains “why the President’s information will advance its consideration of the possible legislation.” *Mazars*, 140 S. Ct. at 2036.

Fourth, “carefully scrutiniz[ing]” the Oversight Committee’s subpoena to Mazars makes clear that any burdens imposed on the President “do not cross constitutional lines.” *Id.* As all recognize, this subpoena seeks nonprivileged material from a third-party custodian. The President has never claimed that this subpoena (as opposed to some future, hypothetical subpoena) would interfere with his ability to

carry out his constitutional functions. And the record establishes that the Oversight Committee's subpoena was issued for legitimate legislative purposes and is not being used to obtain an "institutional advantage" over a rival political branch. *Id.*

Given these showings, this Court should now resolve the remaining legal issues presented by the Supreme Court's new legal test and again affirm that the subpoena here is valid and enforceable. A time-consuming remand to the district court is not warranted. This Court frequently resolves legal issues on remand from the Supreme Court. This Court can apply the Supreme Court's legal test to the existing record, as supplemented by Chairwoman Maloney's memorandum—which is the same type of Congressional document that this Court relied on in issuing its prior decision.

As the Supreme Court has instructed, because litigation challenging Congressional subpoenas "halt[s] the functions of a coordinate branch," "courts of appeals have a duty to see that the litigation is swiftly resolved." *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 511 n.17 (1975). If this Court does not resolve this case now, the Trump Plaintiffs will almost certainly have succeeded in blocking the 116th Congress from obtaining *any* documents pursuant to its subpoena. This Court should uphold the subpoena to Mazars for the President's information that the Oversight Committee requires for its pressing investigations.

ARGUMENT

I. THE SUBPOENA IS CONSISTENT WITH THE SEPARATION OF POWERS

The Oversight Committee's legislative purposes justify its subpoena for President Trump's information under the Supreme Court's new test. The Supreme Court reaffirmed Congress's "essential" power to secure the information that it needs to legislative effectively. *Mazars*, 140 S. Ct. at 2031. "Without [that] information, Congress would be shooting in the dark, unable to legislate wisely or effectively." *Id.* (quotation marks omitted). The Supreme Court therefore emphasized that it "unquestionably remains the duty of *all* citizens," including the President, to cooperate "[w]hen Congress seeks information needed for intelligent legislative action." *Id.* at 2036 (quotation marks omitted).

The Supreme Court rejected President Trump's argument that Congress may seek a President's information only when it can show a "demonstrated, specific need" for "demonstrably critical" information. *Id.* at 2032. Instead, the Court struck a "balanced approach" calling for a "careful analysis" that accounts for "both the significant legislative interests of Congress and the unique position of the President." *Id.* at 2035 (quotation marks omitted).

The Court identified four considerations that should "inform" the separation-of-powers analysis. *Id.* The subpoena satisfies each of those considerations.

1. Involvement Of The President And His Papers Is Warranted

First, courts should carefully assess whether the asserted legislative purpose warrants the significant step of involving the President and his papers. Occasions for constitutional confrontation between the two branches should be avoided whenever possible. Congress may not rely on the President's information if other sources could reasonably provide Congress the information it needs in light of its particular legislative objective. The President's unique constitutional position means that Congress may not look to him as a "case study" for general legislation.

Mazars, 140 S. Ct. at 2035-36 (quotation and alteration marks and citations omitted).

a. The Oversight Committee's investigations further critical legislative purposes

Upon assuming the Presidency, President Trump became the first President in modern history to refuse to divest his substantial financial holdings or to disclose certain financial information to the American public. His ongoing financial interests raise the specter of conflicts between President Trump's pursuit of the public interest and his private financial interests. The "potential for divided loyalties by a sitting president poses a grave danger to the country and requires extreme vigilance by Congress on behalf of the American public." Supp. Add. 3. President Trump's refusal to divest his complex financial holdings—"consisting of hundreds of interconnected business entities"—has exposed some glaring weaknesses in current law "that threaten the accountability and transparency of our government." *Id.*

The Oversight Committee is pursuing investigations seeking to address these high-priority legislative interests. Early in the 116th Congress, then-Chairman Cummings announced his intention to investigate "the President's business interests,

conflicts of interest, and emoluments.”³ Chairman Cummings wrote letters to the White House and the Office of Government Ethics urging them to provide documents relevant to the Oversight Committee’s investigations, but the response was inadequate. *See* Panel Op., 940 F.3d at 715-16 (discussing Chairman Cummings’s correspondence); JA272-74 (same). Chairwoman Maloney’s memorandum extensively describes the background of these investigations. As Chairwoman Maloney explained, the Oversight Committee’s investigations “have followed three tracks.” Supp. Add. 4.

First, the Oversight Committee is investigating whether existing financial disclosure laws protect against the heightened risk of self-dealing and conflicts of interest implicated by the Trump Presidency.

At the center of the existing disclosure regime is the Ethics in Government Act, 5 U.S.C. app. 4 § 101, *et seq.*, which required President Trump to make certain financial disclosures after announcing his candidacy. These disclosures addressed, among other things, “the date[] and . . . [approximate] value of any purchase, sale or exchange [of real property and securities] during the preceding calendar year.”

5 U.S.C. app. 4 § 102(a). But the Ethics in Government Act requires only limited disclosures: information is required for a relatively short period of time (even for

³ Committee on Oversight and Reform, *Authorization and Oversight Plans for All House Committees* at 156 (Apr. 12, 2019) (H. Rep. No. 116-40), <https://perma.cc/VSA3-L55W>.

Presidents with complex finances); amounts are listed “only in ranges instead of exact numbers”; those ranges cap out at relatively low amounts given the size of the President’s business holdings; and current law does not require disclosure of certain private-business information such as debt unless the President is personally liable for such debt. Supp. Add. 12.⁴

Despite his extensive financial holdings, President Trump opted to break with precedent set by every President dating back to President Carter, all of whom (unlike President Trump) “exceeded statutory disclosure requirements” mandated by the Ethics in Government Act “by releasing their personal federal income tax returns to the public.” Panel Op., 940 F.3d at 735. By eschewing the longstanding norm of voluntary financial disclosure and retaining complex financial holdings when he entered office, President Trump exposed weaknesses in existing law. As Chairwoman Maloney explained, “the financial disclosure laws have never been tested in this way by a president to ensure that they disclose assets and liabilities accurately or completely.” Supp. Add. 38.

To consider whether legislative fixes are necessary, and craft such fixes if appropriate, “Congress needs more information about how the current laws apply or fail to apply to this President’s complex and opaque financial holdings, encompassing

⁴ See Office of Gov’t Ethics, *Public Financial Disclosure Guide: FAQs-Liabilities*, <https://perma.cc/6PMC-XRFW>.

hundreds of entities and holding companies,” so that it can appropriately “define the need for and the scope of any additional information to require as part of federal financial disclosures.” *Id.* at 39.

Second, President Trump’s private business interest as a tenant under a federal GSA lease for the Trump International Hotel building in Washington, D.C. raises additional concerns meriting investigation and possible legislative responses.

President Trump’s GSA lease states that no “elected official of the Government of the United States” shall be entitled to “any benefit that may arise” under the lease. *Id.* at 16. Before President Trump took office, GSA opined “that Mr. Trump [would] be in breach of the lease agreement the moment he takes office,” unless he divested from the lease. *Id.* at 17. But the agency later reversed course, declaring after President Trump took office that he was “in full compliance” with the lease agreement. *Id.* at 18.

According to the GSA Inspector General, the decision-making that led to this agency reversal suffered from “serious shortcomings.” *Id.* The Oversight Committee is therefore investigating whether GSA succumbed to undue influence in blessing an arrangement from which President Trump has reportedly reaped revenues above \$40 million in each of the three years since he assumed office. *Id.* This investigation may inform legislation “remediating the obvious conflicts of interest that arise when the President or his businesses enter into a private contract with the United States or any of its agencies.” *Id.* at 23.

After President Trump’s former lawyer Michael Cohen testified that the President “routinely altered the estimated value of his assets and liabilities,” the Oversight Committee also became concerned that the President may have “provided misleading or incomplete information to GSA,” in both the bidding process and subsequent financial certifications. *Id.* at 10, 23. The Oversight Committee must examine President Trump’s financial records to inform potential legislation to ensure responsible stewardship of taxpayer dollars and GSA’s proper review and management of the President’s lease, and to identify conflicts of interest and breaches of leases. *See id.*

Third, the President’s sprawling international business interests generate unique concerns about compliance with the Constitution’s Foreign and Domestic Emoluments Clauses. *See* U.S. Const. art. I, § 9, cl. 8; *id.* art. II, § 1, cl. 7.

The Foreign Emoluments Clause requires the President to obtain Congress’s consent before accepting foreign emoluments, and the Domestic Emoluments Clause prohibits him from accepting domestic emoluments. *See* Panel Op., 940 F.3d at 734. Congress therefore has a constitutional role in ensuring that the President does not accept impermissible emoluments and in legislating limits on the acceptance of such emoluments. *See, e.g.*, Foreign Gifts and Decorations Act, 5 U.S.C. § 7342(a)(1)(E), (c). But while the Oversight Committee has “obtained piecemeal information about the President’s activities relating to the Emoluments Clauses,” a “full accounting” of

foreign and domestic governmental payments to President Trump is needed to inform possible legislative reforms. Supp. Add. 30.

The Oversight Committee requires a more complete picture of payments to President Trump to determine, among other things, whether additional disclosures are necessary to preserve Congress's constitutional role in determining whether to authorize acceptance of foreign emoluments, require disgorgement of improper emoluments, and seek to undo policies tainted by improper influence. *See id.* at 30-31. The investigations will also inform proposals to “clarify and define incidental or *de minimis* payments that Congress could exempt categorically” from the consent requirement. *Id.* at 31. The investigations would guide proposals considering whether and how to apply the Emoluments Clauses to state-owned enterprises or other actors with close ties to foreign governments. *Id.* Finally, the subpoenaed information is necessary to build “broad coalitions of support in both the House and Senate,” which “is a key part of the lawmaking process.” *Id.* at 4.

* * *

In its prior opinion, this Court concluded that the first track of the Oversight Committee's investigations—its inquiry into financial disclosure laws—alone justified the Committee's subpoena. The Court therefore did not address the additional two tracks of the Oversight Committee's investigations, reasoning that it had no need to

consider “any other potentially fertile grounds from which constitutional legislation could flower.” Panel Op., 940 F.3d at 737.

President Trump’s “problematic arrangements” have not ceased since the Oversight Committee issued its subpoena in April 2019. Supp. Add. 38. Since that time, “new information has emerged about President Trump’s conflicts of interest and self-dealing.” *Id.* at 33. Chairwoman Maloney’s memorandum describes more than a dozen additional “incidents that raise concerns” regarding President Trump’s financial entanglements. *Id.* at 33-36. These ongoing concerns underscore “the urgent need for reform legislation” and make “it even more imperative that Congress determine the extent and scope of the President’s conflicts of interest.” *Id.* at 33.

b. The President’s information is needed to satisfy these legislative purposes

The Oversight Committee’s investigations warrant the involvement of the President’s financial records. The Oversight Committee recognizes that the decision to seek the President’s information is a significant one that should be avoided if possible. But because its investigations relate to legislative interests regarding conflicts of interest and self-dealing in the Presidency itself, no other sources could reasonably provide the Oversight Committee with the information it requires.

As then-Chairman Cummings explained, the Oversight Committee’s investigations seek to determine whether “undisclosed conflicts of interest” are impairing Presidential decision-making. JA107. Chairwoman Maloney has confirmed

that the Oversight Committee’s investigations seek information needed “[t]o legislate effectively” on matters of “presidential conflicts of interest and financial disclosures, presidential contracts with the federal government and potential self-dealing, and presidential adherence to the Emoluments Clauses.” Supp. Add. 4. Indeed, Congress is considering “a once-in-a-generation ethics reform package and other bills that would apply *specifically to the individual occupying the office of the president*.” *Id.* at 37; *see also* Panel Op., 940 F.3d at 741 (noting that Congress might “reasonably wonder whether the Ethics in Government Act needs an update”). The Oversight Committee thus does not seek the President’s information merely to inform general legislation, but rather to inform legislation pertaining directly to the Presidency and for which Presidential information is obviously required.

Indeed, the Oversight Committee’s investigation necessitates information about *this President*. President Trump’s “unique and unprecedented” decision to “maintain his ownership interest in a complex and opaque web of financial holdings”—including a lease with a government agency that he now commands—created previously unforeseen opportunities for Presidential decisions to be improperly influenced by “financial conflicts and unconstitutional emoluments.” Supp. Add. 37-38.

President Trump heightened those concerns when he chose to “defy decades of precedent by concealing his tax returns from the public, so Congress and the

American people cannot fully evaluate his global financial interests.”⁵ Because “*this President* refused upon entering office to divest his complex financial holdings and to release other financial information such as tax returns to the American public, *this President’s* non-public financial information is the best evidence to help Congress develop and enact legislation to promote transparency, enhance public confidence in the integrity of elected officials including the President, and prevent grave conflict of interests for this and any future presidents.” *Id.* at 37.

The Oversight Committee thus does not seek to use President Trump as a case study in an investigation for which the President’s involvement is unnecessary. *See* Panel Op., 940 F.3d at 733 (explaining in upholding the Oversight Committee’s subpoena that the investigations could only be justified if they inform “laws that apply to Presidents (and presidential hopefuls)”). Here, the Oversight Committee requires President Trump’s information to inform legislation specifically applicable to Presidents. In light of the President’s unique role in our constitutional system, these legislative proposals would ensure that current and future Presidents have less opportunity to use the Presidency for their own financial gain.

⁵ Committee on Oversight and Reform, *Authorization and Oversight Plans for All House Committees* at 156 (Apr. 12, 2019) (H. Rep. No. 116-40), <https://perma.cc/VSA3-L55W>.

2. The Subpoena Is “No Broader Than Reasonably Necessary”

Second, to narrow the scope of possible conflict between the branches, courts should insist on a subpoena no broader than reasonably necessary to support Congress’s legislative objective. The specificity of the subpoena’s request serves as an important safeguard against unnecessary intrusion into the operation of the Office of the President.

Mazars, 140 S. Ct. at 2036 (quotation marks omitted).

The Oversight Committee’s subpoena to *Mazars* seeks four categories of documents for the years 2011 through 2018: “(1) ‘statements of financial condition, annual statements, periodic financial reports, and independent auditors’ reports,’ (2) ‘underlying, supporting, or source documents and records,’ and (3) related ‘memoranda, notes, and communications;’ and, (4) ‘[w]ithout regard to time,’ all related ‘engagement agreements or contracts.’” *See* Panel Op., 940 F.3d at 740 (alteration in original) (quoting JA26 (Subpoena)); *see also* Supp. Add. 32-33. Each of these requests is “no broader than reasonably necessary,” *Mazars*, 140 S. Ct. at 2036, to support the Oversight Committee’s investigations, *see* Panel Op., 940 F.3d at 740-42 (concluding that these requests were “reasonably relevant” to the investigations relating to financial disclosure laws).

As discussed, the Oversight Committee is investigating whether the current financial disclosure regime adequately captures relevant information about a President’s finances and, if not, what legislative changes should be made; President Trump’s lease arrangement with GSA and the agency’s management of any conflicts of interest; and the President’s compliance with the Emoluments Clauses. The

Mazars financial statements, source documents, communications concerning those records, and engagement contracts are each necessary for each of these investigations.

a. The financial statements and source documents are reasonably necessary

Michael Cohen previously provided the Oversight Committee with President Trump's financial statements for 2011 and 2012, which were prepared by Mazars, and a related document for 2013. Supp. Add. 10; *see* JA42-86 (2011 and 2012 financial statements). Based on its review of these documents, the Oversight Committee realized "that the current disclosure laws were not operating effectively to identify and disclose the President's conflicts of interests, including, for instance, by not requiring the reporting of assets, liabilities, and ownership structure of privately-held businesses." Supp. Add. 45.

Mr. Cohen also testified that the President inflated or deflated his assets as needed to suit his purposes for different occasions. *Id.* at 10. This testimony, as well as "apparent discrepancies between the President's assets and liabilities on the Mazars documents and his self-reporting to federal ethics officials," raised concerns about the accuracy of the President's financial disclosures and the information submitted to GSA to support the lease application, as well as the possibility of ongoing unreported

conflicts of interests and emoluments. *Id.* at 11; *see also id.* at 48-49.⁶ But the existing public record is insufficient to allow the Oversight Committee to assess the “apparent weaknesses in the financial disclosure requirements,” *id.* at 11, or better understand any “conflicts of interest in the lease and GSA’s management of those conflicts as well as emoluments concerns related to the President’s receipt of payments from foreign and domestic governments.” *id.* at 49.

If, for example, the Oversight Committee learns from the Mazars documents that President Trump’s reporting discrepancies “were simply a mistake, the Committee could mandate additional instructions or reporting requirements to assist presidential filers in avoiding those same mistakes.” *Id.* at 45. “Alternatively, if the Committee obtained evidence that the President’s self-reporting on financial disclosures includes intentional inaccuracies,” Congress could amend the “federal financial disclosure laws by requiring the submission of supporting financial information from presidents and presidential candidates,” or “require outside certification or auditing of such financial information.” *Id.* In any event, “[t]he appropriate remedy will depend on the information the Committee obtains from Mazars.” *Id.*

⁶ *See also* Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Pat Cipollone, Counsel to the President, The White House (Feb. 15, 2019), <https://perma.cc/J38M-72H6>.

The Mazars financial statements and source documents are also necessary for crafting appropriate remedial legislation governing federal contracts with elected officials and GSA's management of those contracts. *See id.* at 23 (discussing oversight of GSA and remedial legislative measures). For example, “if the Committee uncovered evidence that the Trump Organization provided misleading or incomplete information to GSA as part of its annual financial statement submissions, then it would better understand how to help GSA identify similar issues in the future to ensure proper stewardship of taxpayer dollars.” *Id.* The Mazars documents “might also support alternative measures, such as independent auditing of contracts that involve the President or requiring GSA to change the reporting relationship of contracting officers to increase their independence and impartiality.” *Id.*

Moreover, it is a “major conflict of interest” if the President, who appoints (and can remove) the head of GSA, is also “the landlord, the tenant, the judge, and the jury” under a federal lease.⁷ To address this and other concerns, Congress is considering H.R. 1, an “historical reform package that would strengthen accountability for executive branch officials, including the President.” *Id.* at 56. As relevant to the GSA lease, provisions of H.R. 1 “would prohibit contracts between

⁷ Supp. Add. 19 (quoting *H.R. 1: Strengthening Ethics Rules for the Executive Branch: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. (2019), <https://perma.cc/NR6V-9AH8>).

the United States or its agencies and the President and would require the President and Vice President to divest from financial holdings that may pose a conflict of interest.” *Id.* at 19 (footnote omitted) (citing H.R. 1 §§ 8012, 8014). Mazars also “conducted audits of the Trump Old Post Office LLC, which were provided to GSA pursuant to the lease and used by the U.S. government to determine how much money President Trump owed on the lease.” *Id.* at 49. Those audited financial statements will aid the Oversight Committee in “craft[ing] more tailored legislative reforms to ensure that proper rents are collected and taxpayer interests are protected.” *Id.*

For similar reasons, the Mazars financial statements and source documents are reasonably necessary to the Oversight Committee’s investigation of President Trump’s receipt of foreign and domestic emoluments. The 2011 and 2012 financial statements provided by Mr. Cohen revealed “a pledge of nearly \$20 million to President[] Trump’s former partner in the Trump World Tower at United Nations Plaza—an unidentified creditor that contemporaneous reports suggest is either the Korean conglomerate Daewoo or German financial institutions.” *Id.* at 45 (quotation marks omitted). Financial statements for subsequent years are similarly likely to “show the tangible and intangible benefits President Trump has received, and how President Trump’s businesses have recorded, or failed to record, payments from these sources.” *Id.* at 49. Such information will inform “legislation regarding the type of expenses that must be reported as foreign emoluments.” *Id.* at 50.

The Oversight Committee also needs information about such payments and debts—whether from foreign or domestic sources—to understand whether “any unlawful benefits or payments to the President have distorted policy in order to effectively remediate and address those negative effects through legislation.” *Id.* at 24. If the Oversight Committee uncovers evidence that a policy decision appears to have been influenced by a payment to President Trump or his businesses, the Oversight Committee can consider recommending legislative action to address it.

Because President Trump has “structured his privately held businesses in a manner that blurs the distinction between personal and business finances,” *id.* at 39, the Oversight Committee’s analysis of President Trump’s finances and disclosures requires both his and his businesses’ financial information. *Cf. id.* at 40-41 (both Mr. Cohen and the New York Attorney General have alleged that President Trump used his foundation as a personal “checkbook”). President Trump appears to recognize as much: his own disclosures under the Ethics in Government Act report some (though not all) of the assets and liabilities of his affiliated business entities.⁸ Because of the concerns prompted by President Trump’s commingling of assets, the Oversight Committee is studying whether to expand current law to require disclosure not only

⁸ See Office of Gov’t Ethics, Financial Disclosure Report for President Donald J. Trump, OGE Form 278e, at 23, 47 (July 15, 2015), <https://perma.cc/Z9RZ-MMKT>; cf. Susanne Craig, *Trump’s Empire: A Maze of Debts and Opaque Ties*, N.Y. TIMES (Aug. 20, 2016), <https://perma.cc/6PWP-UVTY>.

of a President's assets and liabilities, but also those of closely held businesses. *Id.* at 39. The financial statements of President Trump's business entities are reasonably necessary for the Oversight Committee to determine whether such an amendment to existing law is desirable and, if so, "what additional information to require about a President's privately held businesses." *Id.*

The Oversight Committee needs the financial statements and source documents for each year covered by the subpoena. The financial statements and source documents for the years 2014 through 2018 are "highly relevant" to the Oversight Committee's investigation into "whether Candidate and President Trump 'accurately reported his finances to ... federal entities,' and, by extension, 'whether reforms are necessary to address deficiencies with current laws, rules, and regulations.'" Panel Op., 940 F.3d at 740 (quoting Chairman Cummings's correspondence).

Financial statements and source documents for 2011 to 2013 are likewise reasonably necessary for the Oversight Committee to verify the authenticity of the financial statements provided by Mr. Cohen and to "assess the informational benefit that would be gained by reaching farther back in time and requiring additional disclosure." Supp. Add. 43; *see also* Panel Op., 940 F.3d at 741. President Trump was required to submit audited or certified financial statements in 2011 to obtain the GSA lease, and the financial statements provided by Mr. Cohen from around that time appear to have been neither audited nor certified, which raises questions about

whether GSA performed a sufficiently rigorous review. Supp. App. 43. Moreover, the large fluctuations in valuations of assets and liabilities in the financial statements from 2011 to 2013 require the Oversight Committee to review the full set of Mazars records to evaluate “ethics reforms, including whether and how to require reporting of new assets, debts, or income, such as prospective foreign deals (e.g., signed letters of intent with foreign parties) and other monetized relationships given the significant value that President Trump placed on them.” *Id.* at 44.

b. The Mazars communications and engagement contracts are reasonably necessary

The Oversight Committee requires Mazars’s memoranda, notes, and communications—particularly with respect to the key Mazars partner responsible for managing the Trump engagement—to determine the reasons for discrepancies that the Committee has already identified between President Trump’s financial disclosures and his statutory disclosures (as well as any additional discrepancies that might be revealed by the additional financial statements and source documents). *See* Supp. Add. 51-52. As discussed, the appropriate legislative remedies may depend in part on whether the discrepancies were based on confusion, a calculation error, an intentional misstatement, or something else. Of course, “absent foreknowledge of the documents’ contents, congressional investigators have no way to reliably determine before issuing a subpoena which specific communications might reveal relevant information.” Panel Op., 940 F.3d at 742. But the Oversight Committee has limited

its request to communications “related to the preparation, compilation, review, or auditing of” the financial statements, JA26, which are the communications most likely to contain necessary information.

As with the financial statements and source documents, the Oversight Committee “needs a reasonable time span of” these communications. Supp. Add. 42. Further, Mazars’s communications concerning President Trump’s financial statements in 2011 through 2013 should shed light on the “large fluctuations in President Trump’s valuation of assets and liabilities” during that period, as well as President Trump’s representations about those fluctuations. *Id.* at 43-44. The Oversight Committee requires a better understanding of those issues to tailor its legislative response. *See id.*

For similar reasons, the Oversight Committee needs the Mazars engagement contracts (limited to those related to the subpoenaed financial statements)—without regard to date—to “understand the underlying products that it receives in the other subpoena requests.” Supp. Add. 50. These contracts are expected to reveal the universe of documents that Mazars reviewed and the level of rigor that it applied in preparing the financial statements. *See id.* The Oversight Committee’s evaluation of the financial statements may differ if, for example, Mazars “merely was compiling numbers and estimates [that were] self-reported by the President or the Trump Organization” rather than performing a Generally Accepted Accounting Principles-qualified review. *Id.*

The engagement contracts will also address the Oversight Committee’s specific concern about whether the statements submitted to GSA were audited or certified, as required by its lease. *Id.* “Given President Trump’s reportedly longstanding relationship with key partners at Mazars, it is possible that an engagement agreement signed years earlier was still in use for the 2011 financial statement and accounting products, which is why this particular demand contains no time limitation.” *Id.* at 51.

Each of these categories of documents is necessary to inform Congress’s ongoing legislative inquiries into Presidential conflicts of interest, potential self-dealing, and the receipt of Emoluments. “Without [that] information, Congress would be shooting in the dark, unable to legislate ‘wisely or effectively.’” *Mazars*, 140 S. Ct. at 2031. Even as to bills the House has already approved, “[i]nformation revealed by the subpoena could inform the Senate as it considers the bill,” Panel Op., 940 F.3d at 731-32, contribute to Senators’ understanding of the need for reform, *see* Supp. Add. 13 (Senate Majority Leader disputing any need to pass these reform measures), and help build support to pass pieces of broader legislative proposals, such as H.R. 1, as standalone bills targeting specific legislative concerns, *see generally id.* at 4 (addressing the importance of building “broad coalitions of support”). It also may inform “any subsequent conference committee or the House itself, should it reconsider the bill post-conference.” Panel Op., 940 F.3d at 731-32.

3. There Is “Detailed And Substantial” Evidence Of The Oversight Committee’s Legislative Purposes

Third, courts should be attentive to the nature of the evidence offered by Congress to establish that a subpoena advances a valid legislative purpose. The more detailed and substantial the evidence of Congress’s legislative purpose, the better. That is particularly true when Congress contemplates legislation that raises sensitive constitutional issues, such as legislation concerning the Presidency. In such cases, it is impossible to conclude that a subpoena is designed to advance a valid legislative purpose unless Congress adequately identifies its aims and explains why the President’s information will advance its consideration of the possible legislation.

Mazars, 140 S. Ct. at 2036 (quotation marks and citations omitted).

a. The Oversight Committee has provided exceptionally detailed evidence of its legislative purposes

At the outset of the 116th Congress, the Oversight Committee filed with the House an official report describing its intent to investigate the President’s business interests, conflicts of interests, and emoluments. *See* Committee on Oversight and Reform, *Authorization and Oversight Plans for All House Committees* (Apr. 12, 2019) (H. Rep. No. 116-40), <https://perma.cc/VSA3-L55W>. The report noted that the President had failed to separate himself from his business interests and that he had also eschewed the modern norm of tax-return disclosure. *Id.* at 156. The report therefore explained that the Oversight Committee was “conducting robust and independent oversight of the President and his family’s multiple business interests in order to guard against financial conflicts and unconstitutional emoluments.” *Id.*

The Oversight Committee additionally held several hearings relevant to its legislative objectives, including at least one featuring testimony from subject-matter

experts in the field of Presidential ethics. Supp. Add. 53. That hearing focused on H.R. 1, including a legislative proposal that “would require this President and future presidents (and vice presidents) to either divest from their business interests that pose a conflict of interest or disclose significant information on their business interests, including ownership structure and assets and liabilities exceeding \$10,000.” *Id.* This proposal would bear on all three tracks of the Oversight Committee’s investigation—by enhancing disclosure requirements, banning Presidential contracts with the federal government, and creating greater visibility into the receipt of unconstitutional emoluments. *See id.* at 56 (discussing H.R. 1).

In addition, then-Chairman Cummings circulated a memorandum to the Oversight Committee describing his intent to issue this subpoena, the subject matters that the subpoena would address, and that the subpoenaed records would inform the Committee’s “review of multiple laws and legislative proposals under [its] jurisdiction.” Memorandum from Chairman Elijah E. Cummings to Members of the Committee on Oversight and Reform 4 (Apr. 12, 2019), JA104-07.

The Oversight Committee took each of these steps to identify its aims *before* issuing its subpoena to Mazars. Accordingly, this Court in its prior decision emphasized “how much Congress has already revealed about its legislative objectives.” Panel Op., 940 F.3d at 731. The Court observed that then-Chairman Cummings explained that the subpoena related to the Oversight Committee’s review of numerous legislative proposals, such as “whether changes are necessary to laws

relating to financial disclosures required of the President.” *Id.* (quotation and alteration marks omitted). In releasing a supplemental memorandum describing its investigations, the Oversight Committee has now provided an even more detailed explanation of “why the President’s information will advance its consideration of the possible legislation.” *Mazars*, 140 S. Ct. at 2036. The aims and basis of the Oversight Committee’s subpoena are at this point among the most scrupulously documented in history.

b. The Oversight Committee’s investigations further valid legislative purposes

As this Court recognized, the House has “put its legislation where its mouth is” by passing legislation pertaining to “the information sought in the subpoenas.” Panel Op., 940 F.3d at 729. Chairwoman Maloney’s memorandum strengthens the record of pertinent legislation by identifying eighteen bills “introduced in the House that may be aided by the Committee’s investigations.” Supp. Add. 56-58.

This Court’s prior opinion recognized that the financial disclosure legislative reforms being pursued by the Oversight Committee would be constitutionally permissible. Citing Supreme Court precedent, the Court explained that such statutes “require the President to do nothing more than *disclose* financial information,” and thus do not “prevent the President from accomplishing his constitutionally assigned functions.” Panel Op., 940 F.3d at 733-34 (alteration marks omitted) (quoting *Nixon v. Adm’r of Gen. Servs.*, 433 U.S. 425, 443 (1977)). As the Court explained, given that

the Emoluments Clauses prohibit the President from accepting domestic emoluments and require him to “seek Congress’s permission before accepting any foreign emoluments, then surely a statute facilitating the disclosure of such payments lies within constitutional limits.” *Id.* at 734.

The same conclusion applies to legislation pertaining to the second and third tracks of the Oversight Committee’s investigations. As to the GSA lease, the Oversight Committee has explained that the information revealed by the subpoena might support “independent auditing of [GSA] contracts that involve the President” or statutes “requiring GSA to change the reporting relationship of contracting officers to increase their independence and impartiality.” Supp. Add. 23. Such legislation, which would regulate an agency that Congress itself created, could not plausibly be said to impair the President’s performance of his constitutional functions.

As to the emoluments investigation, the Oversight Committee has explained that legislation requiring disclosure of the President’s financial information “may show the tangible and intangible benefits President Trump has received” from foreign entities as a result of his financial ties, which “would aid consideration of legislation regarding the type of expenses that must be reported as foreign emoluments.” *Id.* at 31. Given that the Constitution permits the President to accept foreign emoluments only with Congress’s consent, such legislation supporting Congress’s emoluments power would be an entirely appropriate exercise of Congress’s authority.

4. The “Burdens Imposed On The President” Do Not “Cross Constitutional Lines”

Fourth, courts should be careful to assess the burdens imposed on the President by a subpoena. We have held that burdens on the President’s time and attention stemming from judicial process and litigation, without more, generally do not cross constitutional lines. But burdens imposed by a congressional subpoena should be carefully scrutinized, for they stem from a rival political branch that has an ongoing relationship with the President and incentives to use subpoenas for institutional advantage.

Mazars, 140 S. Ct. at 2036 (citations omitted).

The Oversight Committee’s subpoena imposes no unconstitutional burden on the President. Indeed, neither President Trump nor the Department of Justice has ever asserted any unconstitutional burden imposed by this subpoena. *See* Panel Op., 940 F.3d at 747 (“neither the Trump Plaintiffs nor the Department [of Justice] has argued that compliance with *th[is]* subpoena risks unconstitutionally burdening the President’s core duties,” “[n]or could they”). The Department has expressed concern that Congressional subpoenas *could* “be deployed to harass a President in response to his official policies” or that they *might* “have the effect of subjecting a President to unwarranted burdens, diverting his time, energy, and attention from his public duties.” Brief for United States at 16, *Trump v. Mazars*, 140 S. Ct. 2019 (2020) (No. 19-715), 2020 WL 563912, at *16. But it has never argued that *this* subpoena has such a retaliatory motive or that it would subject the President to such burdens.

After all, as the Supreme Court confirmed, “burdens on the President’s time and attention stemming from judicial process and litigation, without more, generally do not cross constitutional lines.” *Mazars*, 140 S. Ct. at 2036 (citing *Trump v. Vance*,

140 S. Ct. 2412, 2425-27 (2020), and *Clinton v. Jones*, 520 U.S. 681, 704-05 (1997)).

And the Oversight Committee “has taken numerous reasonable steps to minimize the burden on the President during its investigations, including by . . . issuing the subpoena to Mazars, a third-party custodian for non-privileged information.” Supp. Add. 54. Moreover, because “there is no legally recognized privilege for the President to assert regarding these records, the distractions on presidential time should remain minimal.” *Id.* at 55.

Production of the subpoenaed documents would not “cross constitutional lines.” Historically, past Presidents have made their information available to Congress to further its legitimate legislative prerogatives. *See Mazars*, 140 S. Ct. at 2030-31. And “[t]he history of past Presidents’ financial disclosures” suggests that there is nothing inherently problematic about Congressional awareness of a President’s personal finances. Panel Op., 940 F.3d at 734-35; *see id.* at 735 (noting that “Presidents Carter, Reagan, H.W. Bush, Clinton, W. Bush, and Obama . . . releas[ed] their personal federal income tax returns to the public”). Because judicial evaluation of subpoenas should take “a considerable impression from the practice of the government,” that history of disclosure is particularly relevant to assessing whether this subpoena imposes an unconstitutional burden. *Mazars*, 140 S. Ct. at 2035 (quotation marks omitted); *see also* Panel Op., 940 F.3d at 735 (recognizing that four decades of Presidential practice “offers persuasive evidence that such disclosures

neither ‘prevent[]’ nor ‘disrupt[]’” the President’s constitutional duties (alterations in original) (quoting *Nixon*, 433 U.S. at 443)).

The Oversight Committee is not seeking the information of a “rival political branch” to obtain an “institutional advantage.” *Mazars*, 140 S. Ct. at 2036. To the contrary, the Oversight Committee “has already identified several important and urgent bills that Congress is considering that justify the significant step of involving the President’s information in the Committee’s investigations.” Supp. Add. 55. As demonstrated above, this subpoena is necessary to the legitimate legislative tasks of this Congress.

Applying the analysis established by the Supreme Court and taking full account of the “special concerns regarding the separation of powers,” *Mazars*, 140 S. Ct. at 2036, the Oversight Committee’s subpoena to Mazars for the President’s information is a constitutional exercise of its broad investigatory power and should be affirmed.

II. THIS COURT SHOULD APPLY THE MAZARS TEST IN THE FIRST INSTANCE

This Court—not the district court—should apply the Supreme Court’s new legal test to the Oversight Committee’s subpoena.

This Court often resolves legal questions in the first instance on remand from the Supreme Court. *See, e.g., Ass’n of Am. Railroads v. U.S. Dep’t of Transp.*, 821 F.3d 19 (D.C. Cir. 2016); *Legal Assistance for Vietnamese Asylum Seekers v. Dep’t of State*, 104 F.3d 1349 (D.C. Cir. 1997); *Ohio Power Co. v. FERC*, 954 F.2d 779 (D.C. Cir. 1992). Here,

none of the special considerations set forth by the Supreme Court requires a remand to the district court. Indeed, this Court’s prior opinion remarked on “how much Congress has already revealed about its legislative objectives,” Panel Op., 940 F.3d at 731, and addressed many of the same considerations set forth in the Supreme Court’s opinion on the basis of the record before it. *See also* Reply Brief for Petitioners at 19 n.4, *Trump v. Mazars*, 140 S. Ct. 2019 (2020) (No. 19-715), 2020 WL 1643780, at *9 n.4 (arguing that “[t]his case ... presents a question of law”).

The Court need only look to Chairwoman Maloney’s memorandum (and the materials cited therein)—which summarizes and elaborates on the materials already in the public record—to determine the validity of the Oversight Committee’s subpoena.⁹ Chairwoman Maloney’s memorandum thoroughly describes the Oversight Committee’s aims in pursuing the Mazars subpoena. The memorandum leaves no doubt that the Oversight Committee has given considerable reflection to whether its

⁹ This Court routinely relies on Congressional memoranda, as evidenced by the Court’s reliance on similar memoranda issued by the Oversight Committee’s then-chairman in its earlier opinion. *E.g.*, Panel Op., 940 F.3d at 726, 731 (relying on the Cummings Memorandum to determine legislative objectives). *Cf. Shelton v. United States*, 404 F.2d 1292, 1297 (D.C. Cir. 1968) (discussing consideration of “statements of the members of the committee” to evaluate legislative purpose (citing *Watkins*, 354 U.S. at 209)). More generally, this Court routinely takes notice of such legislative materials to shed light on Congress’s purposes and reasons. *See, e.g., Kaspersky Lab, Inc. v. U.S. Dep’t of Homeland Sec.*, 909 F.3d 446, 464 (D.C. Cir. 2018); *MCI Telecomms. Corp. v. FCC*, 750 F.2d 135, 140 n.25 (D.C. Cir. 1984); *cf. Citizens for Responsibility & Ethics in Washington v. Trump*, 924 F.3d 602, 605, 607 (D.C. Cir. 2019) (taking judicial notice, at DOJ’s request, of “internal memo” of White House Counsel).

legislative purposes “warrant[] the significant step of involving the President and his papers,” *Mazars*, 140 S. Ct. at 2035, and concludes that its subpoena is appropriate in light of the separation-of-powers concerns described by the Supreme Court.

None of the four considerations identified by the Supreme Court requires the development of a new factual record. The first three factors assess the Oversight Committee’s need for Presidential documents to satisfy its legislative purposes. And the Oversight Committee has already provided “detailed and substantial” evidence “identif[y]ing its aims and explain[ing] why the President’s information will advance its consideration of the possible legislation.” *Id.* at 2036. The fourth factor—the extent to which the subpoena impermissibly burdens the Executive—also does not justify a remand because “neither the Trump Plaintiffs nor the Department [of Justice] has argued that compliance with *th[is]* subpoena risks unconstitutionally burdening the President’s core duties.” Panel Op., 940 F.3d at 747.

The Trump Plaintiffs were required to demonstrate irreparable harm in seeking preliminary and permanent injunctions, yet offered no evidence of the burdens imposed by compliance with the subpoena. Nor did they challenge the district court’s decision to treat the preliminary injunction briefing below as briefing on summary judgment because it “raised no disputes of material fact.” *See id.* at 718. And the Justice Department’s argument before this Court hinged only on the possibility of “future subpoenas . . . making far-reaching demands that harry the President,” which

has not come to pass, *id.* (quotation marks omitted), and which does not require development of a new factual record.

Finally, this Court’s “duty to see that th[is] litigation is swiftly resolved,” *Eastland*, 421 U.S. at 511 n.17, counsels in favor of resolving this case without further district court proceedings. Litigation such as this case “halt[s] the functions of a coordinate branch,” *id.*, because, without information, Congress cannot “legislate ‘wisely or effectively,’” *Mazars*, 140 S. Ct. at 2031 (quoting *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927)); *see id.* (describing Congress’s power to obtain information as “indispensable”).

What is more, “the House, unlike the Senate, is not a continuing body.” *Eastland*, 421 U.S. at 512. The Trump Plaintiffs have thus far succeeded in preventing Mazars from providing any documents to the Oversight Committee for more than two-thirds of the current House’s term. The Oversight “Committee fully intends to continue this investigation and ethics reform legislation in the next Congress, regardless of who holds the presidency.” Supp. Add. 55. Even so, years of litigation to stall compliance with a valid subpoena significantly interferes with Congress’s functioning as a coordinate branch. This raises different, but just as serious, separation-of-powers concerns. *See Eastland*, 421 U.S. at 511 n.17 (“[P]rotracted delay” through litigation may “frustrate[] a valid congressional inquiry.”); *cf. Trump v. Vance*, No. 19 Civ. 8694 (VM), 2020 WL 4861980, at *31, *33 (S.D.N.Y. Aug. 20, 2020) (denying President Trump’s request to amend complaint after “nearly a year” of

litigation, and stating that “[j]ustice requires an end to this controversy”). This Court should not permit the Trump Plaintiffs to invoke unnecessary procedural steps to run out the clock on a subpoena whose validity has twice been affirmed.

CONCLUSION

For the foregoing reasons, the Court should affirm the district court’s ruling that the Committee’s subpoena is valid and enforceable.

Respectfully submitted,

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August 31, 2020

CERTIFICATE OF COMPLIANCE

1. This supplemental brief complies with the type-volume limitation of this Court's Order of August 10, 2020, because this response contains 8,380 words excluding the parts of the response exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

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

/s/ Douglas N. Letter
Douglas N. Letter

Dated: August 31, 2020

CERTIFICATE OF SERVICE

I certify that on August 31, 2020, I filed the foregoing Supplemental Brief of the Committee on Oversight and Reform of the U.S. House of Representatives via the CM/ECF system of the United States Court of Appeals for the District of Columbia Circuit, which I understand caused service on all registered parties.

/s/ Douglas N. Letter
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SUPPLEMENTAL ADDENDUM

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MEMORANDUM

August 26, 2020

To: Members of the Committee on Oversight and Reform

Fr: Chairwoman Carolyn B. Maloney

Re: Update on Committee Subpoena to Mazars and Subsequent Litigation

On July 9, 2020, the Supreme Court issued its decision in *Trump v. Mazars USA, LLP*, a case in which the President is seeking to block his longtime accounting firm, Mazars USA LLP, from complying with the Committee's duly authorized subpoena issued 15 months earlier. The Supreme Court's opinion reaffirmed the bedrock principle in our democracy that no one—not even the President—is above the law.

Since the Court remanded the case to the lower court for review under a new standard, many Members have asked what this means for our Committee. This memorandum provides Members with an update on the status of the Committee's investigations and potential legislative reforms that would be advanced by the Mazars subpoena and have been harmed by the President's delays. It also explains why the Committee's subpoena satisfies the Supreme Court's new four-factor analysis for evaluating Congress's need for the President's personal information.

If you have any questions, please contact Committee staff at (202) 225-5051.

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I. INVESTIGATION OVERVIEW AND UPDATES

A. Overview

After the election in 2016—but before Donald Trump was sworn into office—Republican and Democratic ethics experts strongly advised the President-elect to fully divest his business interests, liquidate his assets, and place the proceeds into an independent blind trust. They warned that these steps were critical because legitimate concerns would be raised about the President’s decision-making if he did not sufficiently address potential conflicts of interest stemming from his financial affairs before assuming office.

President Trump failed to heed this advice. Instead of fully divesting from his sprawling business empire, he set up a revocable trust controlled by his son Donald Trump, Jr., and Trump Organization Chief Financial Officer Allen Weisselberg.¹ He never released tax returns or audited financial statements, and claimed publicly that “the president can’t have a conflict of interest” and that “I’m not going to have anything to do with the [Old Post Office] hotel.”² Shortly after taking office, the trust was modified to permit President Trump to withdraw income from it at any time without disclosure.³ Rather than isolate President Trump from his companies as promised, the trust appeared to reinforce President Trump’s continued ownership and control over his business assets while in office.

Given the President’s unique role as the “only person who alone composes a branch of government”⁴ and Congress’s longstanding decision to exempt him from several conflict of interest laws, any potential for divided loyalties by a sitting president poses a grave danger to the country and requires extreme vigilance by Congress on behalf of the American public. President Trump’s complex and opaque financial holdings, consisting of hundreds of interconnected business entities, are unprecedented for a president in the modern era.⁵ So is his refusal to divest those assets, a stark departure from longstanding norms established by past presidents. The President’s actions have exposed glaring weaknesses in current ethics legislation that threaten the accountability and transparency of our government.

The problems have only compounded since the President took office. Although presidents and presidential candidates are required to disclose financial information under landmark ethics laws passed in the wake of the Watergate scandal, those laws have never before

¹ *Revised Trust Allows Donald Trump to Withdraw Funds Without Public Disclosure*, Wall Street Journal (Apr. 3, 2017) (online at www.wsj.com/articles/revised-trust-allows-donald-trump-to-withdraw-funds-without-public-disclosure-1491240970).

² *Donald Trump’s New York Times Interview: Full Transcript*, New York Times (Nov. 23, 2016) (online at www.nytimes.com/2016/11/23/us/politics/trump-new-york-times-interview-transcript.html).

³ *Trump Lawyer Confirms President Can Pull Money from His Businesses Whenever He Wants*, ProPublica (Apr. 4, 2017) (online at www.propublica.org/article/trump-pull-money-his-businesses-whenever-he-wants-without-telling-us).

⁴ *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2034 (2020).

⁵ *What Trump’s Disclosure of His 500 LLCs Can and Can’t Tell Us*, NBC News (May 16, 2018) (online at www.nbcnews.com/business/taxes/what-trump-s-disclosure-his-500-llcs-can-can-t-n874391).

been tested by a president who brings extensive and sprawling financial holdings into office. When he filed his first mandatory disclosure as a candidate for president in 2015, the President's campaign seemed to acknowledge the apparent inadequacy of financial disclosure laws as applied to his finances, stating that financial disclosure forms were "not designed for a man of Mr. Trump's massive wealth." The campaign provided an example: "For instance, they have boxes once a certain number is reached that simply state \$50 million or more. Many of these boxes have been checked. As an example, if a building owned by Mr. Trump is worth \$1.5 billion, the box checked is '\$50,000,000 or more.'"⁶

The House attaches immense importance to addressing these vulnerabilities. Since the beginning of the 116th Congress, Congress has considered once-in-a-generation ethics reforms, including several provisions specifically applicable to presidents. Congress introduced a series of bills that seek to prevent presidential conflicts of interest and self-dealing, and some of those have passed the House, but have not been taken up by the Senate. However, in the absence of a detailed understanding of this President's financial holdings and the conflicts they raise, Congress has been unable to tailor its legislative approaches to detailed facts and evidence, which would ensure the legislation's effectiveness and minimize the burden on the President and presidential candidates.⁷ This includes potential new measures that can be written only after obtaining and analyzing the detailed information sought in the subpoena to Mazars, such as legislation to address specific harms already caused by the President's financial holdings and conflicts of interest.

Furthermore, some lawmakers have challenged the need for additional legislation, arguing that it is unnecessary. They point to the limited steps the President has taken to address his ethics concerns and argue that there is insufficient evidence to demonstrate that the President's financial holdings pose any serious ethical concerns. They have attacked the veracity of those sources of evidence that Congress has relied on to date to draft legislation—press reporting and witnesses like Michael Cohen, who provided the Committee with financial documents prepared by Mazars and testimony about the President's ethical issues, as discussed in detail below. Building broad coalitions of support in both the House and Senate is a key part of the lawmaking process, and to do that here, Congress needs the documents responsive to the Mazars subpoena.

To legislate effectively, the Committee's investigations have followed three tracks relating to presidential conflicts of interest and financial disclosures, presidential contracts with the federal government and potential self-dealing, and presidential adherence to the Emoluments Clauses. The Committee is investigating:

- President Trump's federal financial disclosures to the Office of Government Ethics (OGE), in order to pass legislation to ensure presidential financial disclosures include sufficiently detailed information to assess potential conflicts

⁶ *Trump: My 'Massive' Net Worth Is 'In Excess of TEN BILLION DOLLARS,'* Business Insider (June 16, 2015) (online at www.businessinsider.com/donald-trump-says-hes-worth-ten-billion-2015-7).

⁷ See *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019 (2020).

of interest, close loopholes in the financial disclosure process, and strengthen OGE;

- President Trump's lease agreement with the General Services Administration (GSA) for the Trump Old Post Office Hotel, in order to pass legislation to ensure that GSA administers federal contracts with the President in a fair and transparent manner, prevent future presidents from engaging in and maintaining self-dealing contracts with the U.S. government, and close loopholes in government contracting; and
- President Trump's receipt of funds from foreign governments, federal officials, or state officials through his business holdings, resulting in the receipt of Emoluments. This track is aimed at passing legislation to prohibit taxpayer funds from flowing to the President's businesses, strengthen disclosure requirements to ensure compliance with the Emoluments Clauses, enable Congress to identify noncompliance and conflicts of interest involving foreign governments, and consider other potential remedies for specific conflicts of interests as they are identified.

At their core, all three investigations are aimed at defining, understanding, and mitigating presidential conflicts of interest and self-dealing and enabling the Committee to develop and pass necessary and effective reforms in presidential ethics and related agency oversight.

As the Committee's investigations progressed, President Trump's longtime accounting firm, Mazars, emerged as a crucial custodian of documents relevant to all three investigative tracks. Based on testimony and financial statements obtained during the Committee's investigations, the Committee has determined that Mazars is in possession of documents and information necessary to help the Committee define areas that require remedial measures and undertake the necessary legislative reforms.

B. Presidential Conflicts of Interest and Financial Disclosures

The Committee is charged by the House of Representatives with legislative and oversight jurisdiction over OGE, the federal civil service, and government operations generally.⁸ It also has investigative authority coextensive with the jurisdiction of other committees of the House.⁹ Pursuant to these authorities, the Committee has been examining the adequacy of existing ethics and financial disclosure laws and agency implementation to inform Congress's consideration of major ethics reforms, including reforms specifically applicable to the President. The Committee's focus is on obtaining information about the way that President Trump has acted in order to develop legislation to prevent not only President Trump but future presidents from being plagued by similar nondisclosure, ethics, and conflicts of interest issues.

⁸ House Rule X.1(n) (online at <https://rules.house.gov/sites/democrats.rules.house.gov/files/116-1/116-House-Rules-Clerk.pdf>).

⁹ *Id.*; House Rule X.4(c)(2).

History

Under the Ethics in Government Act of 1978, President Trump is required to file an annual financial disclosure form that details his debts and liabilities greater than \$10,000.¹⁰ As explained on OGE's website, "reportable liability" is defined broadly and includes a wide variety of debts, such as "loans from non-commercial sources (e.g., loan from a friend)."¹¹

In January 2018, media reports surfaced regarding a \$130,000 payment made by President Trump's longtime personal attorney Michael Cohen to adult film actress Stormy Daniels shortly before the 2016 presidential election.¹² The President initially denied knowing about the payment.¹³ In his 2017 financial disclosure form, filed on June 14, 2017—the first he filed after taking office—President Trump did not disclose any debt owed to Mr. Cohen.¹⁴

In May 2018, President Trump admitted for the first time that he had, in fact, reimbursed Mr. Cohen, stating that Mr. Cohen "received a monthly retainer."¹⁵ In a carefully worded tweet, Mr. Trump stated that Mr. Cohen had "entered into, through reimbursement, a private contract between two parties, known as a non-disclosure agreement, or NDA."¹⁶

On May 15, 2018, President Trump disclosed payments to Mr. Cohen of "\$100,001-\$250,000" in his financial disclosure form for the calendar year 2017.¹⁷ However, on May 16, 2018, the Acting Director of OGE determined that the President should have—but had not—disclosed "a payment made by Mr. Michael Cohen to a third party" which "constituted a loan to President Trump that should have been reported as a liability on his public financial disclosure report signed on June 14, 2017."¹⁸

¹⁰ 5 U.S.C. app. § 101; 5 C.F.R. § 2634.202; Office of Government Ethics, *Public Financial Disclosure Guide, Liabilities* (online at www.oge.gov/Web/278eGuide.nsf/Chapters/Liabilities?opendocument).

¹¹ Office of Government Ethics, *Public Financial Disclosure Guide* (online at www.oge.gov/Web/278eGuide.nsf/Chapters/Liabilities?opendocument).

¹² *Trump Lawyer Used Private Company, Pseudonyms to Pay Porn Star 'Stormy Daniels,'* Wall Street Journal (Jan. 18, 2018) (online at www.wsj.com/articles/trump-lawyer-used-private-company-pseudonyms-to-pay-porn-star-stormy-daniels-1516315731).

¹³ *Stormy Daniels and Trump: The Conflicting Statements*, British Broadcasting Corporation (Apr. 5, 2018) (online at www.bbc.com/news/world-us-canada-43988586).

¹⁴ Office of Government Ethics, *OGE Form 278e for President Donald J. Trump* (June 14, 2017) (online at <https://oge.app.box.com/s/kz4qvbdbsbcrzq16msuo4zmth6rerh1c>).

¹⁵ Donald J. Trump (@realdonaldtrump), *Twitter* (May 3, 2018) (online at <https://twitter.com/realdonaldtrump/status/991992302267785216?lang=en>).

¹⁶ *Id.*

¹⁷ Office of Government Ethics, *OGE Form 278e for President Donald J. Trump* (May 15, 2018) (online at www.documentcloud.org/documents/4464412-Trump-Donald-J-2018Annual278.html).

¹⁸ Letter from David J. Apol, Acting Director, Office of Government Ethics, to Rod J. Rosenstein, Deputy Attorney General, Department of Justice (May 16, 2018) (online at [www.oge.gov/web/OGE.nsf/0/D323FD5ABB1FD2358525828F005F4888/\\$FILE/OGE%20Letter%20to%20DOJ%20\(posting\).pdf](http://www.oge.gov/web/OGE.nsf/0/D323FD5ABB1FD2358525828F005F4888/$FILE/OGE%20Letter%20to%20DOJ%20(posting).pdf)).

In August 2018, federal prosecutors in the Southern District of New York revealed that there was no “retainer agreement” in place between President Trump and Mr. Cohen covering the payments to silence two women alleging extramarital affairs during the 2016 presidential campaign.¹⁹ Court filings also indicated that, “with the intent to influence the 2016 presidential election,” Mr. Cohen arranged payments for Ms. Daniels and former model Karen McDougal, who both alleged affairs with President Trump. In making both payments, Mr. Cohen “acted in coordination with and at the direction of” President Trump.²⁰

In addition, court documents revealed that Mr. Cohen was actually paid \$420,000—not \$250,000 or less, as President Trump had personally certified in writing to OGE.²¹ According to court documents, the Trump Organization “falsely accounted for these payments as ‘legal expenses.’”²²

Shortly after Mr. Cohen admitted his role in arranging the payments in federal court, on September 12, 2018, then-Ranking-Member Elijah E. Cummings requested documents from the White House, seeking information regarding President Trump’s financial disclosures and clarifications regarding the discrepancies.²³ The White House did not produce any documents in response to this request.

Investigation in the 116th Congress

On January 8, 2019, Rep. Cummings, who had just become Chairman, wrote to the White House and the Trump Organization on behalf of the Committee to renew his previous requests for documents.²⁴

¹⁹ Department of Justice, Southern District of New York, Government’s Information, 17 (Aug. 21, 2018), *United States v. Cohen*, S.D.N.Y. (No. 1:18 CR 00602) (online at www.justice.gov/usao-sdny/press-release/file/1088966/download).

²⁰ Department of Justice, Southern District of New York, Government’s Sentencing Memorandum, 11 (Dec. 7, 2018), *United States v. Cohen*, S.D.N.Y. (No. 1:18 CR 602) (online at www.politico.com/f/?id=00000167-a496-df35-adeb-fdf76fa30001).

²¹ This amount included \$130,000 for the hush-money payment, \$50,000 for “tech services,” which were “‘gross[ed] up’ to \$360,000 for tax purposes,” and a \$60,000 “bonus.” *Id.* at 14.

²² *Id.*

²³ Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Donald F. McGahn, II, Counsel to the President, The White House, and George A. Sorial, Executive Vice President and Chief Compliance Counsel, The Trump Organization (Sept. 12, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-09-12.EEC%20to%20McGahn-WH%20Sorial-TrumpOrg%20re%20Financial%20Disclosures%20Cohen%20Payments.pdf>).

²⁴ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Pat Cipollone, Counsel to the President, The White House (Jan. 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-01-08.EEC%20to%20Cipollone-WH%20re%20Cohen%20Payments.pdf>); Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to George A. Sorial, Executive Vice President and Chief Compliance Counsel, The Trump Organization (Jan. 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-01-08.EEC%20to%20Sorial-Trump%20Org%20re%20Cohen%20Payments.pdf>).

On January 22, 2019, the Trump Organization responded and declined to provide the Committee with any documents, citing “ongoing inquiries concerning the subject.”²⁵

On the same day, the Committee requested documents from OGE.²⁶ Subsequently, the Committee obtained internal notes taken by OGE officials that appear to show President Trump’s lawyers, Sheri Dillon and then-Deputy White House Counsel Stefan Passantino, repeatedly stating to OGE officials that the President never owed any money to Mr. Cohen in 2016 and 2017. The notes also appear to show that Ms. Dillon told OGE officials that the payments to Mr. Cohen were in connection with legal services pursuant to a retainer agreement.²⁷

When pressed by OGE officials, Ms. Dillon refused to allow federal officials to review the retainer agreement.²⁸ As court documents in the Southern District of New York later revealed, no retainer agreement existed, and the payments were “reimbursement for election-related expenses” rather than “legal expenses.”²⁹

On February 1, 2019, the White House responded to the Committee’s January 8, 2019, letter, stating that it was “prepared to consider” providing Committee staff with the ability to review limited portions of two of the six categories of requested documents *in camera*.³⁰

On February 15, 2019, the Committee wrote to the White House and Trump Organization and renewed the request for documents in light of the documents the Committee obtained from

²⁵ Letter from Alan S. Futerfas, Counsel for the Trump Organization, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Jan. 22, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/REDACTED%202019.01.22%20Futerfas%20Response%20to%20EEC%20re%20Cohen%20Payments.pdf>).

²⁶ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Emory A. Rounds, Director, Office of Government Ethics (Jan. 22, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.01.22.EEC%20to%20Rounds-OGE%20re%20Cohen%20Payments.pdf>).

²⁷ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Pat Cipollone, Counsel to the President (Feb. 15, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-15.EEC%20to%20Cipollone-WH%20re%20Cohen%20Payments_0.pdf); Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Alan S. Futerfas, Counsel for the Trump Organization (Feb. 15, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-15.EEC%20to%20Futerfas-Trump%20Org%20re%20Cohen%20Payments.pdf>).

²⁸ Office of Government Ethics, *Notes to File* (received Jan. 31, 2019) (0029) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/OGE%20Docs_RESCANNED%20Redactions-compressed.pdf).

²⁹ Department of Justice, U.S. Attorney’s Office for the Southern District of New York, Government’s Sentencing Memorandum, 14 (Dec. 7, 2018), *United States v. Cohen*, S.D.N.Y. (No. 1:18 CR 00602) (online at www.politico.com/f/?id=00000167-a496-df35-adeb-fdf76fa30001).

³⁰ Letter from Pat Cipollone, Counsel to the President, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Feb. 1, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.02.01%20WH%20Response%20to%20EEC%20re%20Cohen%20Payments.pdf>).

OGE.³¹ Chairman Cummings wrote that Article I, Section 8 of the Constitution gives Congress “plenary authority to legislate and conduct oversight regarding compliance with ethics laws and regulations, which it has exercised numerous times in the past 30 years. Congress also has broad authority to legislate and conduct oversight on issues involving campaign finance.”³²

On February 22, 2019, the Trump Organization responded to Chairman Cummings and declined to produce any documents.³³

On the same day, the White House permitted Committee staff to review 30 pages of documents *in camera*. However, half of these documents were either publicly available or entirely redacted, so they were of little informational value to the Committee. On March 8, White House Counsel Pat Cipollone wrote: “My hope was that this accommodation would resolve the Committee’s concerns.”³⁴ To date, the White House has failed to produce any documents in response to the Committee’s requests for documents related to payments of hush money.

On February 27, 2019, the Committee requested transcribed interviews with Ms. Dillon and Mr. Passantino in order to obtain information related to the hush money payments and their representations of those payments to OGE. The White House and the Trump Organization both declined to allow either individual to appear before the Committee.³⁵

³¹ Committee on Oversight and Reform, *Press Release: President’s Lawyers Provided False Information to Government Officials on Stormy Daniels Payment, New Documents Show* (Feb. 15, 2019) (online at <https://oversight.house.gov/news/press-releases/president-s-lawyers-provided-false-information-to-government-officials-on-stormy>).

³² Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Pat Cipollone, Counsel to the President (Feb. 15, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-15.EEC%20to%20Cipollone-WH%20re%20Cohen%20Payments_0.pdf).

³³ Letter from Alan S. Futerfas, Counsel for the Trump Organization, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Feb. 22, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/REDACTED%202019.02.22%20Futerfas%20Response%20to%20EEC%20re%20Cohen%20Payments.pdf>).

³⁴ Letter from Pat A. Cipollone, Counsel to the President, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.03.08%20Cipollone%20Response%20to%20EEC%20re%20Cohen%20Payments.pdf>).

³⁵ Letter from Alan S. Futerfas, Counsel for the Trump Organization, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 6, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/REDACTED%202019.03.06%20Futerfas%20Response%20to%20EEC%20re%20Sheri%20Dillon%20Cohen%20Payments.pdf>); Letter from Pat A. Cipollone, Counsel to the President, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.03.08%20Cipollone%20Response%20to%20EEC%20re%20Cohen%20Payments.pdf>); Letter from Alan S. Futerfas, Counsel for the Trump Organization, to Chairman Jerrold L. Nadler, Committee on the Judiciary, and Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 18, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/REDACTED%202019.03.18%20Futerfas%20Response%20to%20Nadler%20re%20Trump%20Organization.pdf>).

Expansion of Investigation Following New Documents and Information

On February 27, 2019, Mr. Cohen publicly testified before the Committee regarding the hush money payments and other issues. At the hearing, Mr. Cohen testified that he arranged hush money payments to Ms. Daniels and Ms. McDougal at the direction of President Trump. To corroborate his testimony, Mr. Cohen provided the Committee copies of numerous reimbursement checks signed after the President took office by President Trump, Donald Trump, Jr., and Allen Weisselberg, including checks issued prior to the President's 2017 financial disclosure omitting the liability.³⁶

Mr. Cohen also testified that the President routinely altered the estimated value of his assets and liabilities on financial statements—including inflating or deflating the value of assets depending on the purpose for which he intended to use the statements.³⁷ For example, Mr. Cohen testified that President Trump provided inflated financial statements “to Deutsche Bank on one occasion where I was with them in our attempt to obtain money so that we can put a bid on the Buffalo Bills.” Mr. Cohen also testified that the President provided financial statements with inflated assets to an insurance company. Mr. Cohen further testified that President Trump may have deflated certain assets to “reduce his real estate taxes.” He explained: “What you do is you deflate the value of the asset, and then you put in a request to the tax department for a deduction.”³⁸

To corroborate these claims, Mr. Cohen produced to the Committee President Trump's “Statements of Financial Condition” from 2011 and 2012, as well as a one-page “Summary of Net Worth” from 2013 (collectively referred to as “financial statements”). At least two of the documents were prepared by the Mazars accounting firm, which was reported to have a longstanding relationship with the Trump Organization.³⁹ These financial statements revealed that the President's personal and business financial affairs were more complex and opaque than previously understood, leading to expanded concerns that the closely-held nature of the President's businesses and the interrelated nature of his personal and business assets and liabilities were not being adequately reported under existing law. The financial statements and Mr. Cohen's testimony also raised new questions about how President Trump valued his assets and liabilities, both in these financial statements and in his financial disclosures filed with OGE.

³⁶ Committee on Oversight and Reform, *Hearing with Michael Cohen, Former Attorney to President Trump* (Feb. 27, 2019), Documents Produced to the Committee (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Cohen%20Hearing%20Exhs_full.pdf).

³⁷ Committee on Oversight and Reform, *Hearing with Michael Cohen, Former Attorney to President Donald Trump* (Feb. 27, 2019) (online at <https://oversight.house.gov/legislation/hearings/with-michael-cohen-former-attorney-to-president-donald-trump>).

³⁸ *Id.*

³⁹ *Donald Trump's Unlikely Accountant*, Crain's New York Business (Mar. 14, 2016) (online at www.craigslist.com/article/20160314/BLOGS02/160319975/donald-trump-s-unlikely-accountant-is-manhattan-based-weisermazars).

When the Committee compared the information from the Mazars financial statements to the President's first federal financial disclosures in 2015, the Committee identified numerous apparent discrepancies between the President's assets and liabilities on the Mazars documents and his self-reporting to federal ethics officials. After the hearing, news reports raised additional concerns about the President's representations on his financial statements.⁴⁰

However, the financial statements produced by Mr. Cohen provided an incomplete record of the President's financial holdings. On their own, they provided the Committee with insufficient information about how to remedy the apparent weaknesses in the financial disclosure requirements. While the Committee had evidence that the President's federal financial disclosures did not reveal the extent and complexity of his financial holdings—and therefore his conflicts of interest—it needed significantly more information about the President's financial holdings to tailor legislation to ensure that presidential filers provide that information.

Furthermore, Mr. Cohen had previously pleaded guilty to lying to Congress to conceal President Trump's relationship with a foreign country during the 2016 presidential campaign. Referencing that, President Trump and numerous lawmakers attacked Mr. Cohen's veracity, claiming that any information that he subsequently provided the Committee—even if substantiated through documents—was false. In an op-ed published the day before the hearing, then-Ranking Member Jim Jordan and then-Representative Mark Meadows called Michael Cohen a “liar” and wrote: “Giving Cohen a congressional platform is ... flatout offensive to anyone who seeks the truth.”⁴¹ At the hearing, Members repeatedly questioned Mr. Cohen's truthfulness. Rep. Paul Gosar “berated Michael Cohen ... calling him a ‘disgraced lawyer’ and a ‘pathological liar.’”⁴² President Trump tweeted on the same day of Mr. Cohen's hearing: “He is lying in order to reduce his prison time.”⁴³

In order to accurately identify the specific weaknesses in the financial disclosure regime and develop and obtain support for legislation to correct those vulnerabilities, it became clear following Mr. Cohen's testimony that the Committee needed a more complete record of the President's financial holdings from a more direct and reliable source—the President's accounting firm.

⁴⁰ *Trump's Alleged Financial Fraud Creates an Important New Vulnerability*, MSNBC (Mar. 1, 2019) (online at www.msnbc.com/rachel-maddow-show/trumps-alleged-financial-fraud-creates-important-new-vulnerability); *How Donald Trump Inflated His Net Worth to Lenders and Investors*, Washington Post (Mar. 28, 2019) (online at www.washingtonpost.com/graphics/2019/politics/trump-statements-of-financial-condition/).

⁴¹ *Democrats Put Out Welcome Mat for A Liar. We Can't Trust Michael Cohen*, USA Today (Feb. 26, 2019) (online at www.usatoday.com/story/opinion/2019/02/26/michael-cohen-testimony-democrats-platform-destroy-donald-trump-column/2978144002/).

⁴² *Rep. Gosar Scolds Cohen: 'Liar, Liar, Pants On Fire,'* CNN (February 27, 2019) (online at: www.cnn.com/videos/politics/2019/02/27/pathological-liar-paul-gosar-michael-cohen-testimony-sot-vpx.cnn/video/playlists/michael-cohen-testimony/).

⁴³ Donald Trump (@realdonaldtrump), *Twitter* (Feb. 27, 2019) (online at <https://twitter.com/realdonaldtrump/status/1100683974899363840?lang=en>).

Consideration of Remedial Legislation

The Committee's investigative activities, including its correspondence with the White House and the Trump Organization and the hearing with Michael Cohen, all took place against the backdrop of Congress's consideration of once-in-a-generation ethics reform legislation. Since the beginning of this Congress, the Committee has been examining whether amendments to the Ethics in Government Act are appropriate, whether additional legislation is necessary, and if so, what mechanism or processes would best accomplish that public interest. The Committee's investigation into President Trump's interactions with OGE and the accuracy of his financial disclosures would inform these important considerations.

The Committee is the authorizing committee for OGE, which is charged with implementing the Ethics in Government Act within the Executive Branch, and the Committee's legislative jurisdiction encompasses reforms to government ethics, including the Ethics in Government Act, a landmark law that passed in 1978. The Ethics in Government Act requires high-level elected and appointed federal officials, including the President, to publicly disclose financial liabilities that could affect their decision-making on behalf of the American people.⁴⁴ The Act also requires presidential candidates to file initial financial disclosures after declaring their candidacy, and annually for each successive year of candidacy. The Act requires the President to file a public financial disclosure report containing detailed financial information, including personal debts. However, the level of detail required for many crucial categories of disclosure provides values only in broad ranges instead of exact numbers. For example, for nearly twenty years, the highest range category for investment income has been \$5 million, and the highest range category for assets and liabilities has been \$50 million.⁴⁵ The President is also not required to disclose who is paying his businesses and how much.

On January 3, 2019, the first day of the 116th Congress, Committee Member John Sarbanes (D-MD) introduced H.R. 1, a sweeping bill that "includes a number of reforms that will strengthen accountability for executive branch officials—including the President."⁴⁶ Just over a month later and less than a week after OGE produced internal notes regarding the misleading statements made by President Trump's lawyers, the Committee held a hearing on H.R. 1. The relevant provisions in H.R. 1 would amend the Ethics in Government Act to require additional financial disclosures to be filed with OGE,⁴⁷ require the President and Vice President to divest from financial holdings that may pose a conflict of interest or else disclose significant financial information on their business interests, including ownership structure and assets and liabilities

⁴⁴ Ethics in Government Act of 1978, Pub. L. No. 95-521 (online at [www.oge.gov/Web/OGE.nsf/Authorizing%20Legislation%20and%20Oversight/35980EC40B3050BE85257F01006B3320/\\$FILE/Ethics_in_Government_Act_1978.pdf?open](http://www.oge.gov/Web/OGE.nsf/Authorizing%20Legislation%20and%20Oversight/35980EC40B3050BE85257F01006B3320/$FILE/Ethics_in_Government_Act_1978.pdf?open)).

⁴⁵ 5 C.F.R. §§ 2634.301, 302, 305.

⁴⁶ Committee on Oversight and Reform, *Press Release: Chairman Cummings Issues Statement on H.R. 1* (Jan. 4, 2019) (online at <https://oversight.house.gov/news/press-releases/chairman-cummings-issues-statement-on-hr-1>).

⁴⁷ H.R. 1, §§ 8012-13, 8022.

exceeding \$10,000,⁴⁸ and require candidates for President and Vice President to disclose ten years of federal tax returns with the Federal Election Commission.⁴⁹

Republican lawmakers, however, vowed to block the passage of H.R. 1, disputing any need to pass these reform measures. Senate Majority Leader Mitch McConnell declared the bill a “power grab”⁵⁰ and “a terrible proposal” and vowed to never bring it to the Senate floor.⁵¹ The Trump Administration stated that “if H.R. 1 were presented to the President, his advisors would recommend he veto the bill.”⁵²

On March 8, 2019, H.R. 1 was passed by the full House. The bill has been introduced in the Senate but has not been brought to the Senate floor. While the House has continued to press for the full adoption of H.R. 1 by the Senate, individual components of H.R. 1, such as the Executive Branch Comprehensive Ethics Enforcement Act of 2019 (H.R. 745), the White House Ethics Transparency Act of 2019 (H.R. 391), and the Presidential Accountability Act (H.R. 1481) have been separately introduced in the House for independent consideration and remain pending. H.R. 1481, in particular, would require presidents (and vice presidents) to either divest from any business interest that poses a conflict of interest or disclose information about the business’s underlying financial affairs, such as assets and liabilities exceeding \$10,000. This disclosure provision also applies to business interests held by spouses and dependent children.⁵³ This bill was referred to the Committee, and information from the subpoenaed Mazars documents is necessary for the Committee to determine whether its provisions are over- or under-inclusive.

The House is also weighing other bills and potential legislative ideas aimed at increasing transparency and preventing self-dealing by presidents. Chief among the questions Congress is considering is what additional information Congress should require presidents and presidential candidates to disclose about their financial holdings, whether those disclosures should cover a longer period of time, and if so, what time period would be sufficient. President Trump’s personal financial records, including financial statements, are crucial to help Congress make these decisions. For example, if Congress learned from President Trump’s records that important information exists—such as assets, debts, or income—that is not adequately captured by the current financial disclosure requirements, the Committee may recommend amending the Ethics in Government Act to require presidents and presidential candidates to reveal more details about their financial holdings or require submission of supporting material such as tax returns,

⁴⁸ *Id.*, § 8012.

⁴⁹ *Id.*, § 10001.

⁵⁰ *Mitch McConnell: Behold the Democrat Politician Protection Act*, Washington Post (Jan. 17, 2019) (online at www.washingtonpost.com/opinions/call-hr-1-what-it-is-the-democrat-politician-protection-act/2019/01/17/dcc957be-19cb-11e9-9ebf-c5fed1b7a081_story.html).

⁵¹ *Senate Democrats Unveiled an Anti-Corruption Companion Bill. Mitch McConnell Is Already Blocking It*, Vox (Mar. 27, 2019) (online at www.vox.com/2019/3/27/18284171/senate-democrats-anti-corruption-hr1-schumer-mcconnell).

⁵² Office of Management and Budget, *Statement of Administration Policy* (Mar. 5, 2019) (online at www.whitehouse.gov/wp-content/uploads/2019/03/saphr1hr_20190305.pdf).

⁵³ H.R. 1481.

bank statements, or other supporting documents. If the Committee's investigation uncovers that the omission of that information was due to mistake, the Committee may recommend changes to clarify requirements or enhance instructions or guidance. The same records also may help Congress determine what additional time period, if any, would be important and necessary for a candidate to disclose.

Public reports have suggested that President Trump's businesses are exceptionally complex, consisting of a web of hundreds of interlocking entities spanning multiple jurisdictions.⁵⁴ The Committee expects that President Trump's records held by Mazars will show connections among these entities by revealing their legal and financial structures, which are not currently required to be disclosed in financial disclosures. Such information will aid Congress in determining how to update the financial disclosure requirements in order to reflect the true ownership structure of businesses held by this president and future presidents.

Furthermore, if additional discrepancies are found in the financial disclosures based on a review of President Trump's financial records, Congress may determine that other remedial measures are needed. For example, Congress could decide that OGE's review of financial disclosures should be conducted with a much higher level of scrutiny and investigation, examining underlying information for accuracy rather than screening for technical correctness. The information that the Committee obtains may support the introduction of legislation that grants additional investigative and enforcement authority to OGE, provides OGE with additional resources to undertake investigations and audits, or insulates OGE from undue influence by the President.

Aside from disclosure laws, Congress is also considering ethics reform measures aimed at preventing presidential self-dealing and profiteering. For example, H.R. 4454, the Disclosing Official Spending at Presidential Businesses Act, was introduced in September 2019. The bill would require the disclosure of any executive branch or federal agency spending at any privately-held company owned by President, either in full or in part.⁵⁵ If records from the President reveal a wide variety of payments by federal agencies to properties owned by the President, Congress may find it necessary to clarify the type of expenses that must be reported, institute a reporting threshold, and create exemptions for incidental expenses to minimize the reporting burden on the President and his businesses.

C. Oversight of GSA's Management of Trump Hotel Lease

The Committee is investigating GSA's award and management of its federal lease for the Old Post Office Building to President Trump and his hotel holding company, Trump Old Post Office LLC. President Trump continues to receive financial benefits from the lease despite an explicit prohibition on elected officials benefiting from the lease. Since the Administrator of GSA is a political official who reports to him, President Trump effectively sits on both sides of the contract as both the landlord and the tenant, a relationship that violates

⁵⁴ *Trump's Complex Web of Business Interests, Visualized*, Washington Post (May 21, 2019) (online at www.washingtonpost.com/politics/2019/05/21/trumps-complex-web-business-interests-visualized/).

⁵⁵ H.R. 4454.

the terms of the lease and raises serious concerns about presidential conflicts of interest and undue influence over GSA, an agency tasked with managing the contract in the interests of American taxpayers.

History

The Committee has legislative and oversight jurisdiction over both government ethics and GSA, including jurisdiction over “Government management and accounting measures generally” and “Overall economy, efficiency, and management of government operations and activities, including Federal procurement.”⁵⁶

On March 24, 2011, GSA began soliciting proposals for the redevelopment of the Old Post Office Building to address the building’s needed repairs and in response to congressional instruction.⁵⁷ Trump Old Post Office LLC submitted its proposal on July 20, 2011, as well as a supplement on December 19, 2011.⁵⁸

GSA’s solicitation required that bid submissions demonstrate the “Developer’s Financial Capability and Capacity.”⁵⁹ To show this capability, the Request for Proposals (RFP) requested:

- Two bank references for the developer and the financial equity partner, if any;
- Audited or certified financial statements prepared in accordance with Generally Accepted Accounting Principles for the past three years prior to the RFP issuance date from developer and each participating principal, partner or co-venturer, that includes the value of the assets each participant would contribute to the proposing entity and verifications that such assets are available. The financial statement may also include any additional information that will be useful in evaluating the developer’s financial reliability and past ability to finance projects;
- For developer and development team, a statement regarding any debarments, suspensions, bankruptcy or loan defaults on real estate development projects and/or government contracts;

⁵⁶ House rule X (c)(1) (2019) (online at <https://rules.house.gov/sites/democrats.rules.house.gov/files/documents/116-House-Rules-Clerk.pdf>).

⁵⁷ Congresswoman Eleanor Norton, *Press Release: Norton Gets GSA to Move Forward on Old Post Office Redevelopment* (Mar. 24, 2011) (online at <https://norton.house.gov/media-center/press-releases/norton-gets-gsa-to-move-forward-on-old-post-office-redevelopment>).

⁵⁸ General Services Administration, *Ground Lease by and between the United States of America (as “Landlord”) and Trump Old Post Office LLC (as “Tenant”)* (GS-LS-11-1307) (Aug. 5, 2013) (online at www.gsa.gov/reference/freedom-of-information-act-foia/electronic-reading-room).

⁵⁹ General Services Administration, *Request for Proposals: Redevelopment of Old Post Office, Washington, D.C.* (Mar. 24, 2011) (online at <https://govtribe.com/opportunity/federal-contract-opportunity/request-for-proposals-redevelopment-of-the-old-post-office-building-1100-pennsylvania-avenue-nw-washington-dc-nr73002105>).

- A statement describing the expected equity requirements and sources, the anticipated sources of working capital, and the anticipated sources for financing the project, including its source of construction financing; and
- For developer, financial/equity partners include all projects underway, indicating for each project, the status (% completed to date), size and scope, cost, developer equity, financial guarantees and role of developer or financial equity partner.⁶⁰

The following year, GSA announced its selection of the Trump Organization to convert the Old Post Office into a hotel,⁶¹ despite Donald Trump's widely publicized bankruptcies.⁶² GSA's selection was dictated by the "small team" assigned "to oversee the OPO redevelopment issues."⁶³

After two years of negotiations, on August 5, 2013, GSA and President Trump's newly created Trump Old Post Office LLC entered into a lease agreement for the Old Post Office Building.⁶⁴

One provision in the lease between GSA and Trump Old Post Office LLC bars all elected officials from receiving any benefit. Article 37.19 of the Lease states:

No member or delegate to Congress, or *elected official of the Government of the United States* or the Government of the District of Columbia, shall be admitted to any share or part of this Lease, *or to any benefit that may arise therefrom*; provided, however, that this provision shall not be construed as extending to any Person who may be a shareholder or other beneficial owner of any publicly held corporation or other entity, if this Lease is for the general benefit of such corporation or other entity.⁶⁵

The Committee's investigation initially focused on President Trump's apparent breach of the GSA lease and concerns about the President's influence over GSA's ongoing lease with

⁶⁰ *Id.*

⁶¹ *Trump to Turn Old Post Office into Luxury Hotel*, Washington Post (Feb. 7, 2012) (online at www.washingtonpost.com/business/capitalbusiness/trump-to-turn-old-post-office-into-luxury-hotel/2012/02/07/gIQAIS9gxQ_story.html).

⁶² *Trump Bankruptcy Math Doesn't Add Up*, NBC News (June 24, 2016) (online at www.nbcnews.com/news/us-news/trump-bankruptcy-math-doesn-t-add-n598376).

⁶³ General Services Administration, Office of Inspector General, *Evaluation of GSA's Management and Administration of the Old Post Office Building Lease* (Jan. 16, 2019) (online at www.gsaig.gov/sites/default/files/ipa-reports/JEI9-002%20OIG%20EVALUATION%20REPORTGSA%27s%20Management%20%26%20Administration%20of%20OPO%20Building%20Lease_January%2016%202019_Redacted.pdf).

⁶⁴ General Services Administration, *Ground Lease by and between the United States of America (as "Landlord") and Trump Old Post Office LLC (as "Tenant")* (GS-LS-11-1307) (Aug. 5, 2013) (online at www.gsa.gov/reference/freedom-of-information-act-foia/electronic-reading-room).

⁶⁵ *Id.* (emphasis added).

him. The Committee's investigation expanded over time as the Committee learned additional information.

Immediately after President Trump's election in November 2016, then-Ranking Member Cummings became concerned about the apparent conflict of interest and GSA's lease management. On November 30, 2016, he sent a letter requesting a briefing from GSA and the submission of several documents relating to the lease. The letter requested information relating to "how the General Services Administration (GSA) plans to address the imminent breach-of-lease and conflict of interest issues created by President-elect Donald Trump's lease with the U.S. Government for the Trump International Hotel building in Washington, D.C."⁶⁶

In response to the letter request, the Deputy Commissioner of GSA's Public Buildings Service briefed congressional staff on December 8, 2016. As then-Ranking Member Cummings detailed in a letter, the Deputy Commissioner told congressional staff that:

GSA assesses that Mr. Trump will be in breach of the lease agreement the moment he takes office on January 20, 2017, unless he fully divests himself of all financial interests in the lease for the Washington D.C., hotel. The Deputy Commissioner made clear that Mr. Trump must divest himself not only of managerial control, but of all ownership interest as well.⁶⁷

The Deputy Commissioner also confirmed the understanding of congressional members that the provision was "a categorical ban on the President of the United States or any other elected official having any financial interest in this lease, or taking any financial benefit from it."⁶⁸ However, GSA subsequently took the position that it would be "premature" to reach a determination on breach-of-law before the President took office and his "business arrangements have been finalized."⁶⁹

On December 14, 2016, Ranking Member Cummings sent another letter to GSA with requests for additional information.⁷⁰

⁶⁶ Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, Rep. Gerald E. Connolly et al., to Administrator Denise Turner Roth, General Services Administration (Nov. 30, 2016) (online at <https://oversight.house.gov/news/press-releases/top-oversight-and-transportation-committee-dems-request-briefing-and-documents>).

⁶⁷ Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, Rep. Gerald E. Connolly et al., to Denise Turner Roth, Administrator, General Services Administration (Dec. 14, 2016) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2016-12-14.EEC%20DeFazio%20Connolly%20Carson%20to%20Roth%20re%20Trump%20Hotel%20Conflicts%20....pdf>).

⁶⁸ *Id.*

⁶⁹ General Services Administration, *GSA Releases Statement on Old Post Office Lease* (Dec. 14, 2016) (online at www.gsa.gov/about-us/newsroom/news-releases/gsa-releases-statement-on-old-post-office-lease-0).

⁷⁰ Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, and Peter A. DeFazio, Ranking Member, Committee on Transportation and Infrastructure, to Denise Turner Roth, Administrator, General Services Administration (Dec. 14, 2016) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2016-12-14.EEC%20DeFazio%20Connolly%20Carson%20to%20Roth%20re%20Trump%20Hotel%20Conflicts%20....pdf>).

On January 20, 2017, Donald Trump became President without resolving these concerns. Three days later, Ranking Member Cummings sent another letter to GSA requesting information on “President Donald Trump’s apparent breach of the Old Post Office lease agreement his company entered into with the U.S. Government.”⁷¹ He emphasized that the Committee had been pursuing this issue for months.

On March 23, 2017, two months after the President entered office, the GSA Contracting Officer determined that the President was “in full compliance” with the lease and that “the Lease is valid and in full force and effect.”⁷²

According to President Trump’s financial disclosures, he reported “revenues” for Trump Old Post Office LLC of \$40,408,037 in 2017,⁷³ \$40,842,294 in 2018,⁷⁴ and \$40,523,041 in 2019.⁷⁵

Attempts to Obtain Documents from GSA

The Committee’s concerns about the President’s GSA lease and his continued conflicts of interest were expanded when the Committee learned new information in 2019.

In a January 2019 report, the GSA Inspector General (IG) found “serious shortcomings” in GSA’s decision-making, highlighting the agency’s mismanagement of the “emoluments issues” raised by the lease. Specifically, the IG found that GSA “attorneys decided to ignore the emoluments issues” in their assessment of the lease leading up to the March 2017 decision to permit the President to retain his ownership interest.⁷⁶ In addition, a contracting officer admitted to the IG that he did not understand certain lease provisions prior to signing the lease agreement. According to the IG, “the decision to overlook the constitutional

⁷¹ Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, Rep. Gerald E. Connolly et al., to Timothy Horne, Acting Administrator, General Services Administration (Jan. 23, 2017) (online at <https://oversight.house.gov/news/press-releases/top-oversight-and-transportation-committee-dems-request-information-on-gsa-s>).

⁷² Letter from Kevin M. Terry, Contracting Officer, General Services Administration, to Donald J. Trump, Jr., Old Post Office LLC (Mar. 23, 2017) (online at www.gsa.gov/reference/freedom-of-information-act-foia/electronic-reading-room).

⁷³ Office of Government Ethics, *Form 278e for President Donald J. Trump* (May 15, 2018) (online at <https://oge.app.box.com/v/Trump2018Annual278>).

⁷⁴ Office of Government Ethics, *Form 278e for President Donald J. Trump* (May 15, 2019) (online at <https://oge.app.box.com/s/e32qrrfvyxk9cgrvteo7diicwd11pac4>).

⁷⁵ Office of Government Ethics, *Form 278e for President Donald J. Trump* (July 31, 2020) (online at www.cnn.com/2020/07/31/politics/read-trump-financial-disclosure-2019/index.html).

⁷⁶ General Services Administration, Office of Inspector General, *Evaluation of GSA’s Management and Administration of the Old Post Office Building Lease* (Jan. 16, 2019) (online at www.gsaig.gov/sites/default/files/ipa-reports/JE19-002%20OIG%20EVALUATION%20REPORT-GSA%27s%20Management%20%26%20Administration%20of%20OPO%20Building%20Lease_January%2016%202019_Redacted.pdf).

issues influenced GSA's understanding of Section 37.19" of the lease.⁷⁷ The report noted that ***"the constitutional issues surrounding the President's business interests in the lease remain unresolved."***⁷⁸

On January 16, 2019, Chairman Cummings issued a statement in response to the report.⁷⁹

In early February, the Committee held a hearing to examine and obtain testimony about H.R. 1, which contained provisions relevant to GSA oversight and the Committee's investigation of the Old Post Office hotel lease agreement. At the hearing, an ethics expert at a government watchdog organization testified that it is a "major conflict of interest" when the President is the "the landlord, the tenant, the judge, and the jury, and obviously appointed the head of the General Services Administration."⁸⁰ Another witness testified that GSA's actions and the Inspector General's report "raise[d] the question of whether there was improper influence or at least the specter of self-dealing to the public that greatly undermines public trust."⁸¹ The relevant provisions in H.R. 1 would prohibit contracts between the United States or its agencies and the President⁸² and would require the President and Vice President to divest from financial holdings that may pose a conflict of interest.⁸³

As discussed above, in late February, the Committee held a hearing with the President's former attorney, Mr. Cohen, and obtained new testimony that further expanded the Committee's investigation and potential legislative remedies. Mr. Cohen testified that the President routinely altered the estimated value of his assets and liabilities on his financial statements. Mr. Cohen further testified that President Trump may have deflated certain assets to "reduce his real estate taxes."⁸⁴

This testimony raised concerns about President Trump's self-reporting in the GSA bidding process in 2011. The Committee had learned that Mazars served as auditor for the Trump Old Post Office LLC for some time, but the Committee does not know the exact duration. Under the terms of the lease, GSA relied on President Trump's financial statements to determine the amount of payments made to the U.S. government.

⁷⁷ *Id.*

⁷⁸ *Id.* (emphasis added).

⁷⁹ Committee on Oversight and Reform, *Press Release: Chairman Cummings Issues Statement on Scathing Inspector General Report on Trump Hotel* (Jan. 16, 2019) (online at <https://oversight.house.gov/news/press-releases/chairman-cummings-issues-statement-on-scathing-inspector-general-report-on-trump>).

⁸⁰ Committee on Oversight and Reform, *Hearing on H.R. 1: Strengthening Ethics Rules for the Executive Branch* (Feb. 6, 2019) (online at <https://oversight.house.gov/legislation/hearings/hr-1-strengthening-ethics-rules-for-the-executive-branch>).

⁸¹ *Id.*

⁸² See H.R. 1., § 8014.

⁸³ *Id.* § 8012.

⁸⁴ Committee on Oversight and Reform, *Hearing with Michael Cohen, Former Attorney to President Trump* (Feb. 27, 2019) (<https://oversight.house.gov/legislation/hearings/with-michael-cohen-former-attorney-to-president-donald-trump>).

The Committee expanded its investigation to examine whether there were serious flaws and shortcomings in GSA's management of the contract award process and lease program that had prevented GSA from identifying issues with the President's bid in 2011 or when he later provided personal guarantees of his financial status to GSA every six months from 2013 to 2016. The Committee requested documents from both Mazars and GSA in order to understand whether the President's initial bid and later financial guarantees for the Old Post Office hotel contained inaccuracies, as Mr. Cohen alleged, and if so, in what way Congress may enact legislation to avoid similar issues in the future.

On April 12, 2019, Chairman Cummings and Subcommittee Chairman Gerald E. Connolly sent a letter to GSA requesting 14 categories of documents relating to the Committee's investigation of the lease, which reiterated several requests for documents that Members had made in the 115th Congress that had been rebuffed by GSA.⁸⁵

The letter also requested all documents relating to the "Developer's Financial Capacity and Capability" submitted "in response to the Request for Proposals for the Redevelopment of the Old Post Office, dated March 24, 2011" and "all documents referring or relating to Mazars USA LLP or WeiserMazars LLP related to the Old Post Office lease."⁸⁶ The Committee appended these requests following the information it obtained regarding the role that Mazars had in preparing financial statements for President Trump and in light of President Trump's representations to GSA regarding his financial affairs in connection with the Trump Hotel.

For example, under the terms of the lease, President Trump was required to provide a personal guarantee to protect taxpayer interests in the event he defaulted on his obligations to the U.S. government. He was also required to provide a "bad acts guaranty" to cover fraud, willful misconduct, failure to pay taxes, and bankruptcy. Until substantial completion of the Old Post Office redevelopment project, President Trump also was required to maintain a personal net worth of at least \$2 billion. From August 2013 to at least August 2016, as required under the lease, President Trump personally certified every six months that his financial condition had not adversely changed since he submitted the proposal to GSA on July 20, 2011.⁸⁷

In 2015, after President Trump became a candidate for federal office, he requested to be released from the personal guarantee after reportedly satisfying certain conditions. However, President Trump was apparently still subject to the "bad acts guaranty" and made subsequent

⁸⁵ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Gerald E. Connolly, Subcommittee on Government Operations, to Emily Murphy, Administrator, General Services Administration (Apr. 12, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-04-12.EEC%20and%20GEC%20to%20GSA%20re%20Trump%20Hotel.pdf>).

⁸⁶ *Id.*

⁸⁷ General Services Administration, *Certificate of Financial Status of Trump Old Post Office LLC and Donald J. Trump* (Aug. 5, 2013) (online at www.gsa.gov/cdnstatic/Trump_-_Finance_2__26_pgs.pdf); General Services Administration, *Certificate of Financial Status of Donald J. Trump* (Aug. 19, 2016) (online at www.gsa.gov/cdnstatic/Trump_-_Finance_2__26_pgs.pdf).

certifications about his financial condition to GSA. None of the certifications appear to be backed by any supporting material or auditor's statements, and it is unclear how President Trump established his net worth during the relevant period or whether GSA reviewed or confirmed the information provided.

While GSA provided a response to the Committee's April 12, 2019, letter, GSA's limited production failed to provide the Committee with key information necessary to its inquiry. In that production, GSA simply reproduced documents it had previously produced or produced documents concerning routine hotel activities of no investigative interest, such as fire alarm testing, repair work, and art installations. However, GSA refused to produce any documents in response to the Committee's requests for certain financial information.⁸⁸

As a result of GSA's document production deficiencies, on June 27, 2019, the Subcommittee on Government Operations held a hearing to hear directly from GSA personnel involved in document production efforts about compliance with the Committee's requests. The GSA official who testified assured the Committee that the agency was prepared to work with the Committee to address its needs.⁸⁹ However, since the hearing, GSA has not produced a single additional document related to the Old Post Office Hotel.

To the contrary, on August 22, 2019, GSA sent a letter to the Committee explaining its decision to withhold several key categories of documents requested by the Committee, including financial documents that GSA considers to be protected from disclosure under the lease and information submitted by the Trump Old Post Office LLC in response to GSA's Request for Proposals.⁹⁰

According to the letter, GSA consulted with the Trump Organization and deferred to them on the decision not to produce certain categories of documents. GSA wrote:

The Lease prohibits disclosure of confidential information without the Tenant's consent unless certain conditions are met. As noted in the enclosed letter, the Tenant has objected to GSA's release of confidential information in connection with the document request from the Committee.⁹¹

⁸⁸ See, e.g., Letter from Jeffrey A. Post, Associate Administrator, General Services Administration, to Chairman Elijah E. Cummings, Committee on Oversight and Reform, Chairman Gerald E. Connolly, Subcommittee on Government Operations (Aug. 22, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.08.22%20GSA%20Response%20to%20EEC%20GEC%20re%20Trump%20Hotel.pdf>).

⁸⁹ Committee on Oversight and Reform, Subcommittee on Government Operations, *Hearing on Document Production Status Update: OPM, FBI, and GSA* (June 27, 2019) (online at <https://oversight.house.gov/legislation/hearings/document-production-status-update-opm-fbi-and-gsa>).

⁹⁰ Letter from Jeffrey A. Post, Associate Administrator, General Services Administration, to Chairman Elijah E. Cummings, Committee on Oversight and Reform, Chairman Gerald E. Connolly, Subcommittee on Government Operations (Aug. 22, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.08.22%20GSA%20Response%20to%20EEC%20GEC%20re%20Trump%20Hotel.pdf>).

⁹¹ *Id.*

In a letter appended to GSA's response, Trump Organization attorney Stefan Passantino—the same attorney who represented the White House in its dealings with the Office of Government Ethics over President Trump's deficient financial disclosures—argued, among other things, that “the Chairman's request for Confidential Information lacks any legitimate legislative purpose.”⁹²

GSA explained its refusal to produce documents submitted by President Trump in response to GSA's Request for Proposals for the redevelopment of the Old Post Office, which includes financial documents prepared by WeiserMazars LLP:

GSA did not create, prepare, or certify the accuracy of any of the requested information [in Committee Requests 13 and 14 in its April 12, 2019 letter]. GSA was merely a recipient. Thus, this information may be more readily available from third parties, including the Tenant, who has specifically objected to its disclosure (see enclosed letter from Mr. Passantino). In fact, GSA understands the Committee is presently seeking to obtain documents directly from Mazars USA LLP. If the Committee is successful in doing so, there would be no need to request the same documents from GSA.⁹³

While the set of documents in GSA's possession is likely not an exact duplicate of the set in Mazars' possession, certainly some of them would be duplicates. Furthermore, GSA's statements made clear that the agency and the President considered GSA's records related to the hotel to be the President's personal information that should be protected from disclosure to Congress.

On April 29, 2020, Rep. Carolyn B. Maloney, who became Chairwoman after Rep. Cummings' passing, sent a letter to GSA demanding full compliance with outstanding document requests contained in the Committee's April 12, 2019, letter. In the letter, Chairwoman Maloney explained the continuing concern: “This President is no ordinary federal tenant: he oversees the agency responsible for managing the government's properties, including the lease on the Trump Hotel.”⁹⁴

To date, GSA has not produced any additional responsive material.

⁹² Letter from Stefan Passantino, Michael Best & Friedrich LLP, to Kevin Terry, Senior Realty Contracting Officer, General Services Administration (June 20, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/REDACTED%202019.06.20%20Passantino_Enclosure_Michael%20Best%20letter.pdf).

⁹³ Letter from Jeffrey A. Post, Associate Administrator, General Services Administration, to Chairman Elijah E. Cummings, Committee on Oversight and Reform, Chairman Gerald E. Connolly, Subcommittee on Government Operations (Aug. 22, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.08.22%20GSA%20Response%20to%20EEC%20GEC%20re%20Trump%20Hotel.pdf>).

⁹⁴ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, Chairman Gerald E. Connolly, Subcommittee on Government Operations, to Emily Murphy, Administrator, General Services Administration (Apr. 29, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-04-28.CBM%20GEC%20to%20Murphy-%20GSA%20re%20Trump%20Hotel.pdf>).

Because GSA appears to be unduly influenced by President Trump, not least in its deference to the President on the decision to withhold documents from congressional investigators, the Committee continues to focus its efforts on obtaining information about the President's finances and his GSA lease through a neutral third party, Mazars.

Consideration of Remedial Legislation

One of the legislative priorities of the 116th Congress has been identifying and remediating the obvious conflicts of interest that arise when the President or his businesses enter into a private contract with the United States or any of its agencies. H.R. 1 provides one approach to address these concerns. It would prohibit contracts between the United States or its agencies and the President⁹⁵ and would require presidents to divest from financial holdings that pose a conflict of interest if they do not disclose additional information.⁹⁶

Specific information about the President's finances as they relate to the hotel project could help build lawmaker support for H.R. 1 by providing evidence that its provisions would fix serious problems under existing law. Furthermore, if the Committee uncovered evidence that the Trump Organization provided misleading or incomplete information to GSA as part of its annual financial statement submissions, then it would better understand how to help GSA identify similar issues in the future to ensure proper stewardship of taxpayer dollars. The information discovered might also support alternative measures, such as independent auditing of contracts that involve the President or requiring GSA to change the reporting relationship of contracting officers to increase their independence and impartiality.

In addition, depending on the information revealed in the investigation, the Committee may consider other legislation that would, among other things: (i) increase oversight of GSA's management of federal leases that may implicate Emoluments Clause or conflict-of-interest issues; (ii) tighten requirements for the submission of audited financial documentation from bidders and leaseholders, particularly those who may be able to exert undue influence on GSA; (iii) require GSA to provide bidding and financial documents of federal leaseholders to Congress upon request; and (iv) require consideration of the Emoluments Clauses in GSA's management and assessment of lease agreements.

D. Emoluments Clauses

The Emoluments Clauses of the Constitution prohibit the President from accepting any benefits from foreign states without Congress's consent and from accepting any payments from the U.S. government or any State other than a predetermined salary.⁹⁷ The Founders adopted the

⁹⁵ H.R. 1, § 8014.

⁹⁶ *See id.* § 8012.

⁹⁷ U.S. Const. art. I, § 9, cl. 8 (stating that "No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State."); U.S.

Emoluments Clauses because they believed America would be harmed if federal officeholders, including the president, made policy decisions based on their own self-interest rather than the national interest.

The Framers were concerned about corrupt influences from foreign governments or the individual states in the union and about officials profiteering from federal office.⁹⁸ The Framers inscribed this provision in the Constitution to guarantee the complete and undivided loyalty of the president and other federal officeholders to the American people.

The Committee is investigating the President's adherence to these constitutional safeguards and conflicts of interest that have arisen from the failure to adhere to them. To ensure that government policy serves the American people rather than the President's personal interests, Congress needs to determine whether any unlawful benefits or payments to the President have distorted policy in order to effectively remediate and address those negative effects through legislation.

History

Since President Trump's inauguration, foreign governments reportedly have paid millions of dollars to his businesses—hotels, commercial and residential towers, and golf courses and resorts—at the same time the Trump Administration has developed and conducted foreign policy affecting those foreign governments.⁹⁹ Foreign governments also have reportedly granted valuable trademarks and other intellectual property rights and regulatory benefits to the President and his companies.¹⁰⁰

While the President received the benefit of these payments through a trust in his name, he has never sought or obtained Congress's permission to accept these payments or other benefits reportedly made to his businesses by foreign governments. As discussed below, these include payments and benefits from the governments of Afghanistan, China, Georgia, India, Iraq, Kuwait, Malaysia, the Philippines, Poland, Qatar, Romania, Saudi Arabia, Slovakia, Thailand, and Turkey. By the time the Committee requested documents from Mazars, numerous press reports about foreign payments to properties owned by President Trump had come to light.

Const. art. II., § 1, cl. 7 (prohibiting the President from receiving “any other Emolument from the United States” other than an official salary).

⁹⁸ Gabe Lazra, *Profiting Off the Presidency: Trump's Violations of the Emoluments Clauses* (Oct. 1, 2019) (online at www.acslaw.org/expertforum/profitting-off-the-presidency-trumps-violations-of-the-emoluments-clauses/).

⁹⁹ See, e.g., *Trump Still Makes Money From His Properties: Is This Constitutional?*, New York Times (July 10, 2019) (online at www.nytimes.com/interactive/2018/12/17/us/politics/trump-emoluments-money.html).

¹⁰⁰ *Trump Trademark Applications Spiked Around the World When He Started Running for President*, CNBC (Dec. 19, 2019) (online at www.cnn.com/2019/12/04/trump-accelerated-trademark-requests-while-running-for-president.html).

For example, in February 2017 and June 2017, reports revealed that the Saudi Arabian government booked rooms at the Trump International Hotel in Washington, D.C. totaling approximately \$270,000 for rooms and expenses between November 2016 and February 2017.¹⁰¹

In February 2017, reports revealed that the Embassy of Kuwait held its National Day celebration at President Trump's Washington, D.C. hotel that same month. The estimated price of the celebration was between \$40,000 and \$60,000.¹⁰² In February 2018, reports showed that the next year, the Embassy again held its celebration at the hotel.¹⁰³

In March 2017, reports showed that since President Trump assumed office, the Chinese government approved 38 new trademarks to Trump and his companies. The director of a Hong Kong intellectual property consultancy said he "had never seen so many applications approved so expeditiously."¹⁰⁴

In September 2017, reports revealed that the Malaysian Prime Minister and dozens of members of his diplomatic delegation stayed at President Trump's Washington, D.C. hotel.¹⁰⁵

In July 2018, reports identified the Trump Organization's continuing relationship with a state-owned Chinese bank, the Industrial and Commercial Bank of China, which continued to lease significant office space in Trump Tower in New York City. The bank's lease is estimated to be "worth close to \$2 million annually."¹⁰⁶

In May 2019, reports showed that the governments of Afghanistan, India, Iraq, Kuwait, Qatar, Malaysia, Saudi Arabia, Slovakia, and Thailand all paid for residential space in Trump World Tower in New York City for their diplomats. During the first eight months of President

¹⁰¹ *Saudis Foot Tab at Trump Hotel*, Politico (Feb. 9, 2017) (online at www.politico.com/story/2017/02/trump-hotel-saudi-arabia-234878); *Trump Hotel Received \$270,0000 from Lobbying Campaign Tied to Saudis*, Wall Street Journal (June 6, 2017) (online at www.wsj.com/articles/trump-hotel-received-270-000-from-lobbying-campaign-tied-to-saudis-1496700739).

¹⁰² *Kuwait Could Pay up to \$60,000 for Party at Trump Hotel in Washington*, Reuters (Feb 25, 2017) (online at www.reuters.com/article/us-usa-trump-hotel-idUSKBN1640LE).

¹⁰³ *Critics Question Undisclosed Flow of Money from Foreign Governments to Trump Properties*, ABC News (Feb. 28, 2018) (online at <https://abcnews.go.com/Politics/critics-question-undisclosed-flow-money-foreign-governments-trump/story?id=53413228>).

¹⁰⁴ *China Grants Preliminary Approval to 38 New Trump Trademarks*, Associated Press (Mar. 8, 2017) (online at <https://apnews.com/8f54b14808a2459f9efcb0089f41f056/china-grants-preliminary-approval-38-new-trump-trademarks>).

¹⁰⁵ *From Trump Hotel Lobby to White House, Malaysian Prime Minister Gets VIP Treatment*, Washington Post (Sept. 12, 2017) (online at www.washingtonpost.com/politics/from-trump-hotel-lobby-to-white-house-malaysian-prime-minister-gets-vip-treatment/2017/09/12/1b296f54-97d1-11e7-87fc-c3f7ee4035c9_story.html).

¹⁰⁶ *As Tariffs Near, Trump's Business Empire Retains Ties to China*, Washington Post (July 5, 2018) (online at www.washingtonpost.com/politics/as-tariffs-near-trumps-business-empire-includes-china-ties/2018/07/05/9bfd1056-7956-11e8-aece-4d04c8ac6158_story.html).

Trump's tenure, more foreign governments notified the State Department that they would lease space in Trump World Tower than in the previous two years combined.¹⁰⁷

In addition to these and other foreign payments to the President's businesses, there are almost certainly more that are not yet publicly known, which suggests the inadequacy of current disclosure laws. In response to press reports and congressional attention focused on foreign government payments, President Trump pledged to "donate" to the United States Treasury all "profits" from foreign government payments to his hotels during his presidency. The Trump Organization has transmitted payments of \$151,470 for 2017, \$191,538 for 2018, and \$105,465 for 2019 to the Department of the Treasury. However, President Trump has not provided an accounting of these payments or the identities of the foreign governments that made them.¹⁰⁸ His "donations" also do not appear to account for the payments and benefits conferred by foreign monarchs and governments on his many non-hotel business enterprises.

In addition, President Trump and his family have continually denied that they have profited financially from the presidency. As Donald Trump Jr. stated during a television interview, "We've been international businesspeople for decades, but we can't even do those kinds of deals anymore."¹⁰⁹ President Trump also claimed that holding office has cost him between \$2 billion and \$5 billion for his businesses,¹¹⁰ and he has called the Emoluments Clauses of the Constitution "phony."¹¹¹

President Trump's failure to fully separate himself from his businesses may have affected domestic policy as well. At least 285 administration officials, 90 Members of Congress, and 47 state officials reportedly visited and patronized his properties by January 2020.¹¹² As ethics experts have warned from the beginning of the Trump Administration, the payments by federal agencies and public officials to the President's personal businesses not only present serious conflict-of-interest issues, but may also be unconstitutional domestic emoluments.

¹⁰⁷ *Exclusive: Foreign Government Leases at Trump World Tower Stir More Emoluments Concerns*, Reuters (May 2, 2019) (online at www.reuters.com/article/us-usa-trump-emoluments-exclusive/exclusive-foreign-government-leases-at-trump-world-tower-stir-more-emoluments-concerns-idUSKCN1S80PP).

¹⁰⁸ *Trump Organization's Donation to U.S. Treasury Shows Drop in Foreign Government Profits*, Washington Post (Mar. 9, 2020) (online at www.washingtonpost.com/business/2020/03/09/trump-foreign-profits/).

¹⁰⁹ *The Trump Brothers' Claims That They No Longer Profit from Foreign Deals*, Washington Post (Nov. 1, 2019) (online at www.washingtonpost.com/politics/2019/11/01/trump-brothers-claims-that-they-no-longer-profit-foreign-deals/).

¹¹⁰ *Trump Says Being President Has Cost Him \$2 Billion to \$5 Billion*, Reuters (Oct. 21, 2019) (online at www.reuters.com/article/us-usa-trump-loss/trump-says-being-president-has-cost-him-2-billion-to-5-billion-idUSKBN1X021D).

¹¹¹ *'Phony.' Donald Trump Mocks 'Emoluments' Clause of U.S. Constitution that Bans Foreign Gifts*, USA Today (Oct. 21, 2019) (online at www.usatoday.com/story/news/politics/2019/10/21/donald-trump-mocks-constitution-emoluments-clause-phony/4055162002/).

¹¹² *How Trump Fused His Business Empire To The Presidency*, Politico (Jan. 20, 2020) (online at www.politico.com/news/2020/01/20/trump-businesses-empire-tied-presidency-100496).

Investigation During the 115th Congress

In April 2017, the Republican-led Committee sent a bipartisan letter to Ms. Dillon requesting documents and information about the Trump Organization's processes for identifying payments from foreign governments and entities they control. The letter noted:

A Trump Organization spokesperson on March 17 announced that the company has developed a policy to identify foreign government customers and donate profits. ... Additional details of the plan to donate profits derived from foreign government payments, however, are still unclear. Meanwhile, recent news accounts have reported that the Trump Organization may have received payments from foreign government sources since President Trump's inauguration.¹¹³

The letter requested documents and a meeting with Trump Organization officials to determine how the President intended to comply with the Constitution's Foreign Emoluments Clause.

In response, the Trump Organization submitted a 40-sentence pamphlet that failed to respond to any of the Committee's specific requests. The pamphlet stated that identifying foreign patronage at the President's businesses would be "impractical" and "diminish the guest experience of our brand." In its letter, the Trump Organization wrote that "we believe it is premature to respond at this time insofar as final determinations regarding these matters are dependent on many factors that will not be known to TTO until after the close of this year."¹¹⁴

On May 24, 2017, Ranking Member Cummings sent a letter directly to George Sorial, Executive Vice President and Chief Compliance Counsel for the Trump Organization, renewing the request for information. He explained:

Complying with the United States Constitution is not an optional exercise, but a requirement for serving as our nation's President. If President Trump believes that identifying all of the prohibited foreign emoluments he is currently receiving would be too challenging or would harm his business ventures, his options are to divest his ownership or submit a proposal to Congress to ask for our consent.

¹¹³ Letter from Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Sheri A. Dillon, Partner, Morgan Lewis (Apr. 21, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-04-21%20JEC%20EEC%20to%20Dillon%20-%20Trump%20Emoluments%20Plan.pdf>).

¹¹⁴ Letter from George A. Sorial, Executive Vice President and Chief Compliance Counsel, The Trump Organization, to Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform (May 11, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/REDACTED%202017.05.11%20Trump.Resp%20on%20to%20Chaffetz%20EEC%20re%20Trump%20Emoluments.pdf>).

Even if the President's companies were willing to carefully track [] all their foreign government payments, the President still would be required under the Emoluments Clause to request and obtain permission from Congress to accept those payments.¹¹⁵

On March 12, 2018, then-Ranking Member Cummings wrote to Mr. Sorial requesting additional information about the Trump Organization's donation of "profits from foreign government patronage" at its businesses.¹¹⁶ The letter noted: "When you announced this payment, you refused to disclose the amount, how it was calculated, or the specific foreign sources of these funds." It requested:

[D]ocuments sufficient to show the calculation for the payment to Treasury, including the foreign government entities that made payments, the amounts of the payments, the dates of the payments, which Trump Organization entities received the payments, the goods or services received for the payments, and any calculation of profits.¹¹⁷

The Trump Organization responded in April 2018, describing generally its methods of identifying and calculating foreign government patronage, but refusing to provide all responsive documents, including the identities of foreign sources of income.¹¹⁸

Investigation in the 116th Congress

Because of the unaddressed concerns about the efficacy of constitutional safeguards against foreign emoluments and undue influence, on December 19, 2018, incoming Committee Chairman Cummings sent a letter to the Trump Organization outlining his expectation that the company would comply with prior requests.¹¹⁹

¹¹⁵ Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to George A. Sorial, Executive Vice President and Chief Compliance Counsel, The Trump Organization (May 24, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-05-24.EEC%20to%20Trump%20Organization.pdf>).

¹¹⁶ Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to George A. Sorial, Executive Vice President and Chief Compliance Counsel, The Trump Organization (Mar. 12, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-03-12.EEC%20to%20Sorial-Trump%20Organization%20re%20Trump%20Org.%20Payment%20to%20Treasury.pdf>).

¹¹⁷ *Id.*

¹¹⁸ Letter from George A. Sorial, Executive Vice President and Chief Compliance Counsel, The Trump Organization, to Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform (Apr. 6, 2018) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2018.04.06%20Trump%20Organization.Respo%20nse%20to%20EEC%20re%20Emoluments_Redacted%20v.2.pdf).

¹¹⁹ Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Sheri A. Dillon, Partner, Morgan Lewis, and George A. Sorial, Executive Vice President and Chief Compliance Counsel, The Trump Organization (Dec. 19, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-18-19.EEC%20to%20Dillon-Morgan%20Lewis%20Sorial-Trump%20Org%20re%20Foreign%20Payments.pdf>).

As discussed above, in January 2019, the Chairman also issued a statement in response to concerns raised by the GSA IG that the agency mishandled Emoluments Clause concerns related to the Trump Hotel in Washington, D.C. On April 12, 2019, Chairman Cummings and Chairman Connolly sent a letter to GSA requesting records on the agency's management of the lease with the Trump Organization and its decision to disregard Emoluments Clause concerns.¹²⁰ As outlined above, GSA has refused to provide several categories of key documents.

On June 21, 2019, Chairman Cummings, along with Civil Rights and Civil Liberties Subcommittee Chairman Jamie Raskin, requested documents from the Department of Defense (DOD) on U.S. military expenditures at President Trump's golf course and resort in Ayrshire, Scotland.¹²¹ Though DOD has refused to fully comply with the Committee's document requests, its partial production revealed U.S. military spending—with federal government's funds—at the Turnberry Resort. As the Committee explained in a September 18, 2019, letter to DOD:

[T]he data provided by the Department now indicates that U.S. taxpayer funds have been used to pay for more than three dozen separate stays involving hundreds of nights of rooms—all after the President was sworn into office. ... [I]t appears that U.S. taxpayer funds were used to purchase the equivalent of more than 650 rooms at the Trump Turnberry just since August 2017—or the equivalent of one room every night for more than one-and-a-half years. This estimate does not include “an additional \$59,729.12” in unspecified charges to government travel cards, which would boost total military spending at Trump Turnberry to more than \$184,000.¹²²

In February 2020, Chairwoman Maloney, along with Committee Member Jackie Speier, sent a letter to the U.S. Secret Service requesting information on expenditures at Trump Organization properties.¹²³ This request followed a Government Accountability Office investigation requested by Chairman Cummings and Rep. Speier that showed that the Secret

¹²⁰ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Gerald E. Connolly, Subcommittee on Government Operations, to Emily Murphy, Administrator, General Services Administration (Apr. 12, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-04-12.EEC%20and%20GEC%20to%20GSA%20re%20Trump%20Hotel.pdf>).

¹²¹ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, to Acting Secretary Patrick Shanahan, Department of Defense (June 21, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Oversight%20Committee%20to%20DOD%2006-21-19%20Turnberry.pdf>).

¹²² Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, to Secretary Mark T. Esper, Department of Defense (Sept. 18, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-09-18.EEC%20Raskin%20to%20DOD-Esper%20re%20Turnberry-Followup%20to%2006-21%20Request.pdf>).

¹²³ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Rep. Jackie Speier, to James M. Murray, Director, U.S. Secret Service (Feb. 12, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-02-12.CBM%20Speier%20to%20Murray-USSS%20re%20Exorbitant%20Charges.pdf>).

Service, DOD, and other federal agencies spent \$13.6 million in tax dollars in connection with the President's travel to his personal golf club in Mar-a-Lago, Florida.¹²⁴

Although the Committee has obtained piecemeal information about the President's activities relating to the Emoluments Clauses, it has been unable to obtain a full accounting of the President's receipt of foreign or U.S. government funds at his properties, despite years-old congressional requests for this material. Such information is crucial not only for Congress to fulfill its constitutional duties regarding Emoluments, but also to assess whether unlawful benefits or payments have distorted policy to serve President Trump's personal interests rather than national interest and to determine whether legislation regarding the Emoluments Clauses is needed.

As an auditor for Trump Old Post Office LLC, which operates the Trump Washington, D.C. hotel, Mazars is expected to have access to the hotel's ledger, receipts, and other financial and accounting documents showing the hotel's revenue from foreign governments or the U.S. government. Mazars may have reviewed these documents to audit the hotel's financial information to provide to GSA as part of its contractually-obligated audit under the lease agreement. Therefore, the Committee reasonably believes that Mazars is in possession of documents relevant to the Committee's investigation regarding emoluments.

Consideration of Remedial Legislation

As with the Committee's investigations of the President's financial disclosures and the GSA Old Post Office Hotel lease, information regarding President Trump's receipt of funds from foreign government or federal agencies is necessary to inform numerous potential legislative reforms. The Committee has introduced, and is currently studying, several bills and legislative ideas to address the significant constitutional issues raised by the President's refusal to adhere to the Emoluments Clauses of the United States. These measures include enhanced presidential ethics requirements, stronger disclosure requirements, and enhanced agency reporting requirements.

Congress has passed or is considering numerous legislative proposals on this topic, including H.R. 1524, the CORRUPT Act, which would require federal agencies to report any spending at Trump Organization properties, or any business controlled or associated with the President, a member of the Trump family, or the head of an executive department; H.R. 706, the Restoring the Public Trust Act, which would expand ethics and anti-corruption laws in the Executive Branch, including by requiring the President to reimburse taxpayer dollars spent at properties in which the President has a financial interest; and H.R. 745, the Executive Branch Comprehensive Ethics Enforcement Act of 2019, which would authorize OGE to investigate allegations of violations, issue subpoenas during investigations, and to advise the President and inform the public when violations occur.

¹²⁴ Government Accountability Office, *Presidential Travel: Secret Service and DOD Need to Ensure That Expenditure Reports Are Prepared and Submitted to Congress* (Jan. 2019) (GAO-19-178) (online at www.gao.gov/assets/700/696512.pdf).

However, as discussed above, in the absence of a robust evidentiary record regarding the President's finances and what payments his holdings have received, Congress has been unable to determine definitively which legislative solution would be most effective or appropriate. Obtaining the President's personal information is necessary for the Committee to develop and tailor legislation narrowly and appropriately.

For example, obtaining President Trump's financial statements and source documents may show the tangible and intangible benefits President Trump has received and how President Trump's businesses have kept track of, or failed to keep track of, payments from these sources. Such information would aid consideration of legislation regarding the type of expenses that must be reported as foreign emoluments. Depending on the value and types of benefits, Congress could consider requiring this president's and future presidents' businesses to separately report funds received from certain sources until Congress or the appropriate regulatory entity reviews and approves.

The record also could help Congress clarify and define incidental or *de minimis* payments that Congress could exempt categorically from needing to seek consent.

In addition, the record could help Congress decide how to define the entities or organizations that fall into the definition of "King, Prince, or foreign State" in the Foreign Emoluments Clause of the Constitution. For example, Congress may decide that a 51%-state-owned company falls into the definition of a "foreign State" or opt to codify a multi-factored test rather than a bright line. Knowing how and how much the Trump Organization profited from foreign officials also would help Congress decide how to define, identify, and collect appropriate disgorgement of emoluments.

The documents also may help Congress scrutinize President Trump's policies toward foreign states that have paid his businesses and respond to any potential conflict of interest or self-dealing. For example, if the record shows that the President has a large revenue stream from a certain country and is simultaneously negotiating a trade agreement sought by the same country, Congress could monitor the negotiations or potentially pass legislation to prevent such an agreement if it decides that the agreement is not in the interests of the American public.

As discussed above, some lawmakers have challenged the need for such legislation, citing a lack of supporting evidence, including allegedly insufficient evidence that the President's continued financial holdings are any cause for ethical concern. For example, they have attacked the veracity of witnesses like Mr. Cohen, who provided the Committee with some Mazars documents, as discussed in detail above. Obtaining detailed information regarding the President's finances will provide evidence to those Members of Congress that legislation is needed. Those documents also will show whether the reforms currently being proposed are appropriately tailored to those purposes.

E. Committee's Subpoena to Mazars

As the Committee's investigations progressed in the spring of 2019, it became clear that Mazars possesses highly relevant information that is necessary to Congress for the reasons discussed above.

On March 20, 2019, the Committee sent a letter to Mazars requesting financial statements that Mazars prepared for President Trump and his businesses for the ten-year period spanning from January 1, 2009 to March 20, 2019. The Committee also requested documents and communications on how these financial statements and other financial disclosures were prepared for the same time period. The letter explained that the statements provided by Mr. Cohen "raise questions about the President's representations of his financial affairs on these forms and on other disclosures."¹²⁵

On March 27, 2019, outside counsel to Mazars responded that, pursuant to the company's legal obligations, Mazars could not voluntarily turn over the documents "unless disclosure is made pursuant to, among other things, a Congressional subpoena."¹²⁶ Outside counsel for Mazars and Committee staff held informal conversations about the type and volume of documents in Mazars' possession that may be responsive to the Committee's requests.

On April 12, 2019, Chairman Cummings circulated a memorandum to Committee members stating his intent to issue a subpoena to Mazars and soliciting Members' views. The memorandum referenced the three investigative tracks pursued by the Committee, and explained: "The Committee's interest in these matters informs its review of multiple laws and legislative proposals under our jurisdiction."¹²⁷

On April 15, 2019, Chairman Cummings issued a subpoena to Mazars seeking the same categories of documents, but narrowing the timeframe from ten years to eight years in order to tailor its request to the specific needs of the investigation.

The subpoena consists of four requests, all of which are related to the financial statements prepared by Mazars for the President and his businesses, and each is designed to help the Committee evaluate these financial statements. Request One calls for all financial statements created by Mazars for the President and certain of his businesses from 2011 to 2018. Request Two calls for any engagement letters governing the financial statements created from 2011 to 2018. Request Three calls for the documents Mazars relied on to create the financial statements.

¹²⁵ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Victor Wahba, Chairman and Chief Executive Officer, Mazars USA LLP (Mar. 20, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-03-20.EEC%20to%20Wahba-Mazars.pdf>).

¹²⁶ Letter from Jerry D. Bernstein, Counsel for Mazars USA LLP, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 27, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Mazars%20response%20letter%2003-27-2019_Redacted.pdf).

¹²⁷ Memorandum from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Members of the Committee (Apr. 12, 2019) (online at www.politico.com/f/?id=0000016a-131f-da8e-adfa-3b5f319d0001).

Request Four calls for any communications, memoranda, or notes in Mazars' possession regarding the financial statements, particularly those of Donald Bender, a partner at Mazars reported to be in charge of President Trump's accounts, and any communication raising concerns or red flags.

The scope of the subpoena is narrowly framed to obtain documents that the Committee has deemed necessary and essential for its investigations. Indeed, the Committee voluntarily narrowed the time frame of the subpoena to eight years, reduced from the original request for ten years.

F. New Developments

Since the Committee issued its subpoena in April 2019, new information has emerged about President Trump's conflicts of interest and self-dealing. These developments point to ongoing ethical challenges affecting the Office of the President, underscoring the urgent need for reform legislation and making it even more imperative that Congress determine the extent and scope of the President's conflicts of interest.

Since President Trump took office, he has continually promoted his businesses,¹²⁸ and he has spent one out of every three days visiting his properties.¹²⁹ In May 2020, the *Washington Post* reported that the U.S. government had spent nearly \$1 million in taxpayer funds, at least, for room rentals at Trump hotels and establishments in connection with travels by President Trump, his family members, and other top officials.¹³⁰ While the Secret Service has resisted providing Congress with a full accounting of its spending at Trump properties, press reports indicate that the agency at times paid as much as \$650 per night for a room at President Trump's properties.¹³¹

In September 2019, the Committee's investigation also uncovered nearly \$200,000 in spending by the Air Force at President Trump's resort in Turnberry, Scotland.¹³²

Because the Trump Organization has refused to provide documents related to payments by foreign governments in response to the Committee's requests, the Committee does not know

¹²⁸ *Trump Has Publicly Name-Dropped His Properties At Least 70 Times As President*, Washington Post (Aug. 27, 2019) (online at www.washingtonpost.com/politics/2019/08/27/trump-has-publicly-name-dropped-his-properties-least-times-president/).

¹²⁹ *How Trump Fused His Business Empire to the Presidency*, Politico (Jan. 20, 2020) (online at www.politico.com/news/2020/01/20/trump-businesses-empire-tied-presidency-100496).

¹³⁰ *Trump's Company Has Received at Least \$970,000 from U.S. Taxpayers for Room Rentals*, Washington Post (May 14, 2020) (online at www.washingtonpost.com/politics/trumps-company-has-received-at-least-970000-from-us-taxpayers-for-room-rentals/2020/05/14/26d27862-916d-11ea-9e23-6914ee410a5f_story.html).

¹³¹ *Secret Service Has Paid Rates as High as \$650 a Night for Rooms at Trump's Properties*, Washington Post (Feb 7, 2020) (online at www.washingtonpost.com/politics/secret-service-has-paid-rates-as-high-as-650-a-night-for-rooms-at-trumps-properties/2020/02/06/7f27a7c6-3ec5-11ea-8872-5df698785a4e_story.html).

¹³² Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, to Secretary Mark T. Esper, Department of Defense (Sept. 18, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-09-18.EEC%20Raskin%20to%20DOD-Esper%20re%20Turnberry-Followup%20to%206-21%20Request.pdf>).

how much revenue Trump properties have received from foreign governments, how the Trump Organization tracks spending by foreign officials, whether the calculation of profits is reasonable, and whether there is any actual or apparent conflict of interest resulting from such payments. Nonetheless, since the Committee issued the subpoena to Mazars in April 2019, there have been numerous press reports of foreign government spending at Trump properties as well as other noteworthy incidents that raise concerns:

- In April 2019, President Trump, along with dozens of his supporters, visited his golf course in Rancho Palos Verdes, California. Guests included members of the City Council who had earlier approved a development agreement between the Trump property and the city.¹³³
- In June 2019, President Trump stayed for two nights at his Doonbeg resort in Ireland before and after his official visit to Britain, even though doing so required flying hundreds of miles out of the way. The resort had been losing millions of dollars in recent years. The visit marked the third time Trump has paused during an overseas trip to visit one of his businesses.¹³⁴
- In June 2019, the *Washington Post* reported that a wealthy Iraqi sheikh who hoped to convince senior White House officials to pursue a hardline approach against Iran had spent 26 nights at President Trump's Washington, D.C. hotel.¹³⁵
- In August 2019, the *Washington Post* reported that Attorney General William Barr had booked a \$30,000, 200-person holiday party at President Trump's Washington, D.C. hotel.¹³⁶
- In September 2019, on an official visit to Ireland, Vice President Pence stayed at the President's resort in Doonbeg, Ireland, even though his meetings were across the country. The *Washington Post* reported that President Trump had encouraged Vice President Pence to stay at his resort.¹³⁷

¹³³ *Trump Visits His For-Profit Golf Course During California Trip*, Washington Post (Apr. 5, 2019) (online at www.washingtonpost.com/politics/trumps-california-visit-comes-as-decisions-loom-for-his-seaside-golf-course-there/2019/04/05/cf957f88-57b9-11e9-8ef3-fbd41a2ce4d5_story.html)

¹³⁴ *Trump to Stay at Doonbeg, His Money-Losing Golf Course Threatened By Climate Change*, Washington Post (June 5, 2019) (online at www.washingtonpost.com/world/europe/trump-to-stay-at-doonbeg-his-money-losing-golf-course-threatened-by-climate-change/2019/06/05/417832fe-87a2-11e9-9d73-e2ba6bbf1b9b_story.html).

¹³⁵ *A Wealthy Iraqi Sheikh Who Urges a Hard-Line U.S. Approach to Iran Spent 26 Nights at Trump's D.C. Hotel*, Washington Post (June 6, 2019) (online at www.washingtonpost.com/politics/a-wealthy-iraqi-sheikh-who-urges-a-hard-line-us-approach-to-iran-spent-26-nights-at-trumps-dc-hotel/2019/06/06/3ea74c5e-7bf9-11e9-a66c-d36e482aa873_story.html).

¹³⁶ *Barr Books Trump's Hotel for \$30,000 Holiday Party*, Washington Post (Aug. 27, 2019) (online at www.washingtonpost.com/business/2019/08/27/cheers-barr-books-trumps-hotel-holiday-party/).

¹³⁷ *Trump Encouraged Pence to Stay at His Golf Resort in Ireland*, Washington Post (Sept. 3, 2019) (online at www.washingtonpost.com/politics/trump-encouraged-pence-to-stay-at-his-golf-resort-in-ireland/2019/09/03/a2dc63c4-ce3f-11e9-b29b-a528dc82154a_story.html)

- In September 2019, *Politico* reported that the U.S. Air Force had made 40 stops at President Trump's resort in Turnberry, Scotland.¹³⁸
- In October 2019, Acting White House Chief of Staff Mick Mulvaney announced that the G7 Summit would meet at the President's golf resort in Doral, Florida.¹³⁹ The President reversed this decision three days later only after intense criticism and mounting public pressure.
- In November 2019, President Trump was ordered to pay \$2 million in New York state court for misusing charity funds at the Trump Foundation. According to court documents, President Trump had used charity funds for personal purposes, including for campaign purposes.¹⁴⁰
- In November 2019, *Washington Post* reported that a visit by Kentucky Governor Matt Bevin to the Trump hotel in Washington, D.C. could run afoul of the Emoluments Clause. This followed reporting that other governors with close ties to the President, such as Maine Governor Paul LePage, have also stayed at President Trump's hotels.¹⁴¹
- In March 2020, the *Washington Post* detailed how the President's companies charged the U.S. Secret Service extremely high hotel rates during stays at his properties despite public statements from the President's companies that they only charged the U.S. government at-cost rates. The Secret Service spent more than \$150,000 for room rentals at Trump properties. Since the President took office in 2017, the Trump Organization has charged the Secret Service more than \$600,000. The article noted that the Secret Service had paid up to \$650 per night for stays at the President's properties and that the "payments show Trump has an unprecedented—and still partially hidden—business relationship with his own government. The full scope of that relationship is still unknown because the publicly available records are largely from 2017 and 2018, leaving huge gaps in the data."¹⁴²

¹³⁸ *Air Force Says It Sent Crews to Trump's Scottish Resort up to 40 Times*, *Politico* (Sept. 12, 2019) (online at www.politico.com/story/2019/09/12/air-force-trump-scottish-resort-1493624).

¹³⁹ *Trump's National Doral Miami Golf Course to Host G7 Summit*, *British Broadcasting Corporation* (Oct. 17, 2019) (online at www.bbc.com/news/world-us-canada-50087836).

¹⁴⁰ *Trump Ordered to Pay \$2 Million to Charities Over Misuse of Foundation, Court Documents Say*, *Washington Post* (Nov. 7, 2019) (online at www.washingtonpost.com/politics/trump-ordered-to-pay-2-million-to-charities-over-misuse-of-foundation-court-documents-say/2019/11/07/b8f804e2-018e-11ea-9518-1e76abc088b6_story.html).

¹⁴¹ *Kentucky Governor's Stay at Trump Hotel Could Carry Legal Implications For President*, *Washington Post* (Nov. 21, 2019) (online at www.washingtonpost.com/business/2019/11/21/kentucky-governors-stay-trump-hotel-could-carry-legal-implications-president/?arc404=true).

¹⁴² *Newly Obtained Documents Show \$157,000 in Additional Payments by the Secret Service to Trump Properties*, *Washington Post* (Mar. 5, 2020) (online at www.washingtonpost.com/politics/newly-obtained-documents-show-157000-in-additional-payments-by-the-secret-service-to-trump-properties/2020/03/05/7da2a610-5cbd-11ea-b014-4fafa866bb81_story.html).

- In April 2020, the Secret Service reportedly spent \$45,000 on golf carts to provide security for President Trump as he visited his own golf course in Sterling, Virginia.¹⁴³
- In April 2020, Trump Organization officials reportedly discussed potential coronavirus relief with the Trump Administration for the Trump Hotel in Washington, D.C., seeking a break on the terms of its lease with GSA, under which the hotel was obliged to pay the federal government \$268,000 per month.¹⁴⁴
- On May 15, 2020, the *Washington Post* revealed that the Secret Service would be spending another nearly \$200,000 to pay for golf carts and other vehicles at President Trump's Bedminster club. This would be the 22nd time the President has visited his Bedminster property while in office.¹⁴⁵
- In July 2020, the *New York Times* reported that President Trump had asked the American ambassador to Britain to request that the British Open golf tournament be held at his Turnberry resort in Scotland. The Ambassador, Robert W. Johnson, reportedly brought up the idea to the Scottish Secretary of State, but was rebuffed.¹⁴⁶

On July 31, 2020, President Trump filed his financial disclosure for calendar year 2019, which raised new concerns about the President's financial arrangements and receipt of gifts in the form of free legal services.¹⁴⁷ Despite the law's requirement that he report gifts totaling more than \$390 from a single source, President Trump only belatedly acknowledged his receipt of free legal services from Rudy Giuliani over a two-year span in a footnote: "Rudy Giuliani provided such *pro bono publico* counsel in 2018 and 2019. In any event, Mr. Giuliani is not able to estimate the value of that *pro bono publico* counsel; therefore, the value is unascertainable."¹⁴⁸

¹⁴³ *Secret Service Signs Contract This Week to Rent Golf Carts in Town of Trump Club*, Washington Post (Apr. 1, 2020) (online at www.washingtonpost.com/politics/amid-virus-outbreak-secret-service-signed-contract-to-rent-golf-carts-at-home-of-trump-club/2020/04/01/86d249fe-7449-11ea-85cb-8670579b863d_story.html).

¹⁴⁴ *Trump (the Company) Asks Trump (the Administration) for Hotel Relief*, New York Times (Apr. 21, 2020) (online at www.nytimes.com/2020/04/21/business/trump-hotel-coronavirus.html).

¹⁴⁵ *Secret Service Signs \$179,000 Contract to Rent Golf Carts in Bedminster, N.J., This Summer*, Washington Post (May 15, 2020) (online at www.washingtonpost.com/politics/secret-service-signs-179000-contract-to-rent-golf-carts-in-bedminster-nj-this-summer/2020/05/15/f9c09642-96b7-11ea-91d7-cf4423d47683_story.html).

¹⁴⁶ *Trump's Request of an Ambassador: Get the British Open for Me*, New York Times (July 21, 2020) (online at www.nytimes.com/2020/07/21/world/europe/trump-british-open.html?referringSource=articleShare).

¹⁴⁷ *Trump Releases 2019 Financial Disclosure Report*, CNN (July 31, 2020) (online at www.cnn.com/2020/07/31/politics/trump-financial-disclosures/index.html).

¹⁴⁸ Office of Government Ethics, *Financial Disclosure Report for President Donald J. Trump*, OGE Form 278e (July 31, 2020) (online at <https://assets.documentcloud.org/documents/7011742/Trump-Donald-J-2020Annual-278.pdf>).

Meanwhile, Mr. Giuliani has represented foreign officials who have sought to influence U.S. policy.¹⁴⁹

II. SUBPOENA IS WARRANTED AND REASONABLY NECESSARY

In its decision in *Trump v. Mazars*, the Supreme Court concluded that no government official, including the President, is above the law. It also announced a new standard for evaluating congressional subpoenas for the President's personal information. Set forth below is the Committee's explanation of how its subpoena to Mazars meets the new standard announced by the Supreme Court.

A. Factor #1: Whether the asserted legislative purpose “warrants the significant step of involving the President and his papers,” including whether “other sources could reasonably provide Congress the information it needs.”

The Committee is investigating *this President's* ethical challenges and conflicts of interest and how best to mitigate them, *this President's* financial holdings to illuminate the need for legislative reforms in presidential financial disclosures, and *this President's* acceptance of Emoluments and whether any congressional fixes are needed. These investigations directly aid Congress's consideration of a once-in-a-generation ethics reform package and other bills that would apply *specifically to the individual occupying the office of the president*, including enhanced reporting requirements for closely-held business debts and prohibitions on contracting with the federal government. Since *this President* refused upon entering office to divest his complex financial holdings and to release other financial information such as tax returns to the American public, *this President's* non-public financial information is the best evidence to help Congress develop and enact legislation to promote transparency, enhance public confidence in the integrity of elected officials including the President, and prevent grave conflict of interests for this and any future presidents.

1. Why This President?

The President's decision to disregard the bipartisan warnings of ethics experts and maintain his ownership interest in a complex and opaque web of financial holdings was unique and unprecedented—a stark departure from “decades of precedent set by previous Presidents” who divested their financial holdings or used blind trusts.¹⁵⁰ Since no previous modern president has made that decision, no previous modern president has faced the same ethical issues while in office. Therefore, pursuant to House Rules, the Committee adopted an Oversight Plan for the 116th Congress explaining the Committee's intent to investigate “the President's business interests, conflicts of interest, and emoluments.”¹⁵¹

¹⁴⁹ *A Great Big Gift Not on Trump's Disclosure Form: Giuliani's Legal Advice*, New York Times (Dec. 13, 2019) (online at www.nytimes.com/2019/12/13/us/politics/giuliani-trump-financial-disclosure.html).

¹⁵⁰ Committee on Oversight and Reform, *Authorization and Oversight Plans for All House Committees* (Apr. 12, 2019) (H. Rept. 116-40) (online at www.congress.gov/116/crpt/hrpt40/CRPT-116hrpt40.pdf).

¹⁵¹ *Id.*

As part of its investigations, the Committee convened a hearing examining the need for legislative solutions to the myriad ethics concerns affecting President Trump and the Administration. At that hearing, former Director of OGE, Walter Schaub, testified that President Trump’s “refusal to divest his conflicting financial interests” has been the “trigger” for an “ethics crisis,” leaving “the public with no way of knowing how personal interests are affecting public policy.”¹⁵²

As the Committee’s Oversight Plan explained, “financial interests in businesses across the United States and around the world” still owned by President Trump “pose both perceived and actual conflicts of interest,” which require “robust and independent oversight of the President and his family’s multiple business interests in order to guard against financial conflicts and unconstitutional emoluments.”¹⁵³ This need is even more pronounced because the financial disclosure laws have never been tested in this way by a president to ensure that they disclose assets and liabilities accurately or completely.

The Committee needs information about how *this President* has acted in order to develop legislation to immediately address any conflicts of interests and emoluments concerns with his own businesses and to prevent them from occurring with any future president. This President’s financial records are especially relevant because his refusal to separate himself completely from his complex and opaque financial arrangements have exposed failures in presidential ethics laws that had not previously been apparent. The Committee needs to examine the details of how the current ethics laws apply specifically to the President’s personal financial holdings in order to develop legislative fixes to close any gaps. The Committee is seeking to prevent this President’s behavior and actions from becoming the “new normal” and a precedent that can be invoked by future presidents. No other president’s information would suffice because other presidents took steps to avoid similar problematic arrangements, and none was ever a federal leaseholder during his presidency.

The President’s continued financial interest in the federal lease for the Old Post Office Building with GSA for Trump International Hotel in Washington, D.C. is one significant example of a financial conflict of interest caused by the President’s decision-making that warrants congressional attention and possible remedial action. Since President Trump is effectively a private party to a lease with the U.S. Government, the Committee cannot conduct oversight of a federal lease—including any undue influence that may be impairing GSA’s management of that lease—without the President’s personal information, such as representations he made to GSA.

¹⁵² Committee on Oversight and Reform, *Hearing on H.R. 1: Strengthening Ethics Rules for the Executive Branch* (Feb. 6, 2019) (online at <https://oversight.house.gov/legislation/hearings/hr-1-strengthening-ethics-rules-for-the-executive-branch>).

¹⁵³ Committee on Oversight and Reform, *Authorization and Oversight Plans for All House Committees* (Apr. 12, 2019) (H. Rept. 116-40) (online at www.congress.gov/116/crpt/hrpt40/CRPT-116hrpt40.pdf).

2. Why This President's Personal and Business Entity Records?

President Trump's decision to retain his business interests during his term in office, combined with the high degree of commingling between his personal and closely-held business finances, makes both his personal and business financial information highly relevant to Congress's ongoing investigative and legislative efforts. Among other matters, the Committee is studying the reliance of current financial disclosure law on the President's *personal* financial information and how that may leave gaps in information regarding the President's privately-held businesses. Congress needs more information about how the current laws apply or fail to apply to this President's complex and opaque financial holdings, encompassing hundreds of entities and holding companies, to define the need for and the scope of any additional information to require as part of federal financial disclosures, including potentially new categories of assets, liabilities, or income not currently subject to disclosure. An essential task in defining that scope is studying the benefits that would be gained from requiring such additional disclosures.

President Trump has structured his privately held businesses in a manner that blurs the distinction between personal and business finances and makes information about those business entities' finances highly relevant to the Committee's ongoing efforts. For instance, the Committee has obtained information showing that the President used his business and foundation entities' financial resources to receive payments from a variety of sources that he then used in a purely personal manner, but did not disclose on his federal financial disclosure forms. The Committee's investigation has preliminarily determined that these entities in effect serve as alter egos and extensions of this President, so their information will aid Congress's consideration of what additional information to require about a President's privately held businesses.

Therefore, the Committee has subpoenaed Mazars for information relating not only to President Trump personally, but to several of his business entities, including the following entities.

- The Donald J. Trump Revocable Trust is the principal holding entity for President Trump's numerous business assets and major operating companies following his election, including for the Trump Organization, Inc., Trump Organization LLC, Trump Corporation, and DJT Holdings LLC.¹⁵⁴ The trust has been held up as an example of how President Trump is removed from his business operations and is therefore shielded from ethics concerns and potential conflicts of interest,¹⁵⁵ even

¹⁵⁴ See, e.g., *Trust Records Show Trump Is Still Closely Tied to His Empire*, New York Times (Feb. 3, 2017) (online at www.nytimes.com/2017/02/03/us/politics/donald-trump-business.html).

¹⁵⁵ *Donald Trump's New Conference: Full Transcript and Video*, New York Times (Jan. 11, 2017) (online at www.nytimes.com/2017/01/11/us/politics/trump-press-conference-transcript.html) ("President-elect Trump wants there to be no doubt in the minds of the American public that he is completely isolating himself from his business interests. ... I'm gonna detail some of the extraordinary steps now that the president-elect is taking. First, President-elect Trump's investments and business assets commonly known as the-as the Trump Organization, comprising hundreds of entities ... have all been or will be conveyed to a trust prior to January 20th"); *Trump Can Quietly Draw Money from Trust Whenever He Wants, New Documents Show*, Washington Post (Apr. 3, 2017) (online at www.washingtonpost.com/politics/trump-can-quietly-draw-money-from-trust-when-ever-he-wants-new-documents-show/2017/04/03/7f4c0002-187c-11e7-9887-1a5314b56a08_story.html) ("White House press secretary Sean Spicer

though the trustees include his adult son who manages the assets “for the benefit of Donald J. Trump” and “shall distribute net income or principal ... at his request.”¹⁵⁶ In addition, the Committee has obtained documents and testimony showing that the President is not, in fact, removed from his business dealings or those of the trust, including evidence that the Donald J. Trump Revocable Trust, and later President Trump personally, reimbursed illegal campaign finance contributions and debts that the President failed to disclose on his personal financial disclosures in 2017.¹⁵⁷

- Trump Old Post Office LLC is a federal leaseholder of the Old Post Office Building in Washington, D.C. and operator of the Trump International Hotel, Washington, D.C., which the Committee is examining as part of its investigation of a federal lease and the President’s handling of Emoluments Clause concerns presented by his continued ownership of the hotel.¹⁵⁸ Previous Committee investigation has shown that the President’s hotels and golf resorts received payments that raise Emoluments Clause concerns, and numerous reports have documented foreign government spending at the Trump International Hotel in Washington, D.C. in apparent attempt to curry favor with President Trump.¹⁵⁹
- The Trump Foundation was a charitable organization maintained by President Trump that was dissolved in December 2018 after President Trump admitted that he had used the charity for personal purposes, given over \$2.8 million in purported charitable contributions to his political campaign, and used charity funds to satisfy his business debts.¹⁶⁰ New York’s Attorney General had previously alleged that the Trump Foundation was “little more than a checkbook

said Monday that Trump’s trust was not changed and defended its use. ‘A blind trust, or any kind of trust rather, the whole entire point of setting it up is so that somebody can draw money,’ Spicer said. ‘The idea that the president is withdrawing money at some point is exactly the purpose of why a trust is set up, regardless of an individual.’”).

¹⁵⁶ See *Trump’s Changing Trust, Annotated*, ProPublica (Apr. 3, 2017) (online at <https://projects.propublica.org/graphics/trump-trust>).

¹⁵⁷ Committee on Oversight and Reform, *Press Release: New Information Revealed in Oversight Hearing with Michael Cohen* (Feb. 27, 2019) (online at <https://oversight.house.gov/news/press-releases/new-information-revealed-in-oversight-hearing-with-michael-cohen>).

¹⁵⁸ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Gerald E. Connolly, Subcommittee on Government Operations, to Emily Murphy, Administrator, General Services Administration (Apr. 12, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-04-12.EEC%20and%20GEC%20to%20GSA%20re%20Trump%20Hotel.pdf>).

¹⁵⁹ See, e.g., *New Documents Show Pentagon Spent at Least \$184,000 in U.S. Taxpayer Funds at President Trump’s Turnberry Resort*, Committee on Oversight and Reform (Sept. 18, 2019) (online at <https://oversight.house.gov/news/press-releases/new-documents-show-pentagon-spent-at-least-184000-in-us-taxpayer-funds-at>); *Trump Hotel Sales Pitch Boasts of Profit Potential from Foreign Governments*, The Guardian (Nov. 14, 2019) (online at www.theguardian.com/us-news/2019/nov/14/trump-international-hotel-washington-dc-foreign-governments).

¹⁶⁰ *Trump Ordered to Pay \$2 Million to Charities for Misuse of Foundation*, New York Times (Nov. 7, 2019) (online at www.nytimes.com/2019/11/07/nyregion/trump-charities-new-york.html).

for payments from Mr. Trump or his businesses, regardless of their purpose of legality.”¹⁶¹ Mr. Cohen testified to Congress that President Trump “considered the foundation to be his checkbook, it’s his money, that’s how he would refer to it.”¹⁶² In his testimony before the Committee, Mr. Cohen described one example that occurred during the 2016 presidential campaign: “There was a contract that I ended up creating on Mr. Trump’s behalf for a Ukrainian oligarch by the name of Viktor Pinchuk. ... I was able to negotiate 15 minutes by Skype where they would have a camera. ... I negotiated a fee of \$150,000 for 15 minutes. I was directed by Mr. Trump to have the contract done in the name of Donald J. Trump Foundation, as opposed to Donald J. Trump for services rendered.”¹⁶³ The \$150,000 payment from the Ukrainian oligarch was never disclosed on the President’s personal financial disclosure forms. Mazars performed accounting work for the Trump Foundation.¹⁶⁴

3. Is the Significant Step Warranted?

As previously stated, the Committee’s investigations directly aid Congress’s consideration of a once-in-a-generation ethics reform package and other bills that apply *specifically to the President*, including enhanced reporting requirements for closely-held business debts, prohibitions on contracting with the federal government, and other measures to promote transparency and restore public confidence in a president that serves the American public instead of his own self-interest. As explained above, the Committee has a significant need for this President’s information to aid its consideration of this important legislation.

The Committee’s focus on the President actually serves to protect the Office of the President given its unique role in our constitutional scheme: before imposing unnecessarily onerous new requirements on a president or presidential candidates, Congress is weighing the need for and scope of such reform, which includes evaluating the potential informational benefits it would provide. A broad-brush approach that does not take account of evidence ensuring its scope and effectiveness would create significant additional demands on a president or presidential candidate’s time without a clear understanding of the benefits it would provide. Congress is attempting to craft a disclosure regime for presidents and presidential candidates that is tailored to respect the burdens on the Office of the President, yet still meets the legislative and Constitutional goals of identifying and deterring possible conflicts of interests.

¹⁶¹ *New York Attorney General Sues Trump Foundation After 2-Year Investigation*, New York Times (June 14, 2018) (online at www.nytimes.com/2018/06/14/nyregion/trump-foundation-lawsuit-attorney-general.html).

¹⁶² House Permanent Select Committee on Intelligence, *Deposition of Michael Cohen, Part 2* (Mar. 6, 2019) (online at <https://docs.house.gov/meetings/IG/IG00/20190520/109549/HMTG-116-IG00-20190520-SD001.pdf>).

¹⁶³ Committee on Oversight and Reform, *Hearing on Michael Cohen, Former Attorney to President Donald Trump* (Feb. 27, 2019) (online at www.govinfo.gov/content/pkg/CHRG-116hhrg35230/pdf/CHRG-116hhrg35230.pdf).

¹⁶⁴ *Meet the Shadowy Accountants Who Do Trump’s Taxes and Help Him Seem Richer Than He Is*, ProPublica (May 6, 2020) (online at www.propublica.org/article/meet-the-shadowy-accountants-who-do-trumps-taxes-and-help-him-seem-richer-than-he-is).

The breadth of the reform legislation that the House is considering reflects the importance it attaches to this moment. In seeking comprehensive reform, Congress is weighing how best to “increase public confidence in the federal government, demonstrate the integrity of government officials, deter conflicts of interest, deter unscrupulous persons from entering public service, and enhance the ability of the citizenry to judge the performance of public officials.”¹⁶⁵ Before fully and finally enacting sweeping ethics reforms directly affecting not just this President, but future presidents, Congress needs the information that the Mazars subpoena will provide. As the Supreme Court explained in the *Mazars* decision: “Without information, Congress would be shooting in the dark, unable to legislate ‘wisely or effectively.’”¹⁶⁶

B. Factor #2: Whether the subpoena is “no broader than reasonably necessary to support Congress’s legislative objective”?

The Committee carefully tailored its subpoena to Mazars to include information “reasonably necessary” to its investigative and legislative goals. The subpoena consists of four requests targeting a specific set of documents. After sending the initial document request to Mazars, the Committee also voluntarily narrowed the timeframe of financial records requested—from ten years in its original request letter to eight years in the subpoena—in order to tailor its request to the specific needs of the investigation.

1. Timeframe

The Committee subpoenaed eight years’ worth of President Trump and his businesses’ financial records to advance its investigations and Congress’s consideration of important legislation. The Committee tailored this time period to cover key events and other information that the Committee needs. Eight years of records will aid the Committee’s investigations and Congress’s consideration of legislation for several reasons.

First, the Committee is examining how to best strengthen financial disclosure laws to capture possible conflicts of interest, especially in circumstances involving complex and opaque financial holdings. To do so, the Committee is evaluating how far back financial disclosure laws should reach into a President’s and presidential candidate’s personal financial history. Because each financial statement presents only a snapshot in time, the Committee needs to compare several years’ worth of financial statements to identify important trends over time. In fact, ethics officials routinely compare financial information across multiple years when reviewing financial disclosure statements.¹⁶⁷ To properly scope an optimal time period that should be required for disclosure, the Committee needs a reasonable time span of records to evaluate the necessity of additional information over time.

¹⁶⁵ See *United States v. Oakar*, 111 F.3d 146, 148 (D.C. Cir. 1997).

¹⁶⁶ See *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020).

¹⁶⁷ See, e.g., Office of Government Ethics, *OGE’s Electronic Financial Disclosure System, Integrity: Off to a Strong Start* (Jan. 11, 2016) (online at <https://oge.gov/Web/OGE.nsf/Resources/OGE%E2%80%99s+Electronic+Financial+Disclosure+System,+Integrity:+Off+to+a+Strong+Start>) (noting that “For the ethics officials who review financial disclosure reports, *Integrity* [electronic financial disclosure system] can also compare a filer’s current report with a prior report to highlight changes in the filer’s financial interests.”)

Under current law, presidential candidates must disclose certain financial information starting with the calendar year before they declare their candidacy for office.¹⁶⁸ President Trump filed his first financial disclosure as a candidate for office on July 15, 2015, in which he reported certain financial information back to the beginning of 2014. Five of the eight years of records sought by the Committee cover time periods already subject to disclosure under current laws: President Trump's term in office (2017-2018), his candidacy for federal office (2015-2016), and a period already subject to financial disclosure due to his candidacy (2014).

Given the President's prior role as a private businessman involved in complex and opaque financial dealings around the world, the Committee has sought records from a reasonably limited period of three additional years (2011-2013) to obtain a more accurate financial picture of the President's holdings and to assess the informational benefit that would be gained by reaching farther back in time and requiring additional disclosure.

Second, the Committee is assessing the need for, and proper scope of, additional conflict of interest provisions, including the potential prohibition or enhanced oversight of contracts between the U.S. government and the President or other elected officials. GSA issued its Request for Proposals for the Redevelopment of the Old Post Office in 2011 and awarded the project to President Trump in 2013. The Trump Hotel opened to the public three years later in September 2016—after President Trump accepted the Republican nomination. The documentation that President Trump used to obtain the Old Post Office Building lease—including documents prepared by Mazars dating back to 2011—is necessary to the Committee's consideration of how to ensure the effective management of this federal lease. For instance, the lease solicitation required audited or certified financial statements from President Trump to assess his financial capability compared with other contract bidders and to make a fair contract award.

Based on the Committee's preliminary review and understanding, the Mazars financial statements for President Trump provided by Mr. Cohen from around that time period appear to have been neither audited nor certified, which raises questions about the rigor of the review applied to the information President Trump submitted, as well as the nature of the subsequent certifications that he filed with GSA through at least 2016. After the Trump Hotel opened to the public, it has been frequented by foreign and domestic governments, as described in Section I, so Mazars' audits of hotel financial records and related communications will assist the Committee's review of whether and how to strengthen Congress's role regarding the Emoluments Clauses.

Third, the Committee must be able to analyze accurate and complete financial information to legislate effectively. The Committee received from Mr. Cohen incomplete portions of President Trump's financial statements covering 2011 to 2013, and they appear to show material and unexplained irregularities. As explained below, the Committee has already identified large fluctuations in President Trump's valuation of assets and liabilities, including a sudden \$4 billion increase in assets over a nine-month period between 2012 and 2013, which may be due to the sudden inclusion of new assets not previously reported. In his 2012 Mazars

¹⁶⁸ See, e.g., 5 U.S.C. app. § 102(b)(1)(A).

statement, President Trump claimed that the financial statement did not reflect the “value of Donald J. Trump’s worldwide reputation” and that the “goodwill attached to the Trump name has proven financial value in that potential users of real property around the world have demonstrated willingness to pay a significant premium for ownership or use of a Trump related residence.”¹⁶⁹

The Committee must obtain the full set of Mazars records from their original source along with the documents requested in the subpoena that would assist the Committee in analyzing those records in order for the Committee to take more tailored legislative action. By identifying new sources of wealth, their fluctuations, and the underlying causes, the Committee plans to assess the need for ethics reforms, including whether and how to require reporting of new assets, debts, or income, such as prospective foreign deals (e.g., signed letters of intent with foreign parties) and other monetized relationships given the significant value that President Trump placed on them.

These fluctuations also call into question whether the system of self-reporting that underpins financial disclosure laws is effective at providing sufficiently accurate and complete accounting of possible conflicts of interest for presidents and presidential candidates. Congress must assess and evaluate the gaps in laws governing presidential ethics and federal lease management that omissions of financial information expose so that it may better tailor its legislative reforms.

Specific Requests

- **Request 1: Financial Statements**

The Committee’s subpoena seeks financial statements prepared by Mazars for the President and his closely-held businesses, among other customary accounting products, to inform its review of the adequacy of existing ethics laws, such as the Ethics in Government Act, and to determine whether and how presidential financial disclosure laws should be amended.¹⁷⁰

The Committee is studying whether existing financial disclosure laws are effective when applied to the President’s complex financial holdings and adequately identify potential conflicts of interest and ethical issues. The financial statements created by Mazars would provide the Committee with detailed information about the President’s complex and opaque finances, including his assets and liabilities, which would help the Committee determine what additional information should be disclosed to provide a more accurate and complete picture of this President’s and future presidents’ or presidential candidates’ financial affairs and possible

¹⁶⁹ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Victor Wahba, Chairman and Chief Executive Officer, Mazars USA LLP (Mar. 20, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-03-20.EEC%20to%20Wahba-Mazars.pdf>).

¹⁷⁰ Under the Ethics in Government Act, Presidents must file periodic reports detailing, among other things, “[t]he source, type, and amount or value of income ... from any source,” “[t]he identity and value of the... total liabilities owed,” and “the date ... and value of any purchase, sale or exchange [of real property and securities] during the preceding calendar year.” 5 U.S.C. app. 4 § 102(a).

conflicts of interest and close any loopholes. Without more detailed information about *this President's* specific assets and liabilities, and therefore his range of conflicts of interest, the Committee is prevented from developing and enacting the most effective, specific, and tailored legislative remedies to fulfill the legislative goal of disclosure, which has underpinned presidential ethics laws for decades.¹⁷¹

Based on its preliminary review of portions of the 2011 and 2012 financial statements created by Mazars and a related 2013 document, the Committee began to discover that the President's personal and business financial affairs were more complex and opaque than previously understood, and therefore, that the current disclosure laws were not operating effectively to identify and disclose the President's conflicts of interests, including, for instance, by not requiring the reporting of assets, liabilities, and ownership structure of privately-held businesses. However, the Committee does not possess a full—or even near-complete—understanding of the President's personal and business financial affairs to understand where all of the gaps in current law exist and how best to close them.

Similarly, when it compared the President's first federal financial disclosures as a candidate in 2015 to Mazars documents provided by Mr. Cohen from a slightly different time period, the Committee identified numerous apparent discrepancies among the President's various reporting of his assets and liabilities. If the Committee learns that those discrepancies were simply a mistake, the Committee could mandate additional instructions or reporting requirements to assist presidential filers in avoiding those same mistakes. Alternatively, if the Committee obtained evidence that the President's self-reporting on financial disclosures includes intentional inaccuracies, Congress may choose to strengthen federal financial disclosure laws by requiring the submission of supporting financial information from presidents and presidential candidates. Depending on how complex and serious the problem proves to be, Congress may consider it necessary to require outside certification or auditing of such financial information. The appropriate remedy will depend on the information the Committee obtains from Mazars.

These apparent discrepancies in the descriptions of the President's assets and liabilities and other disclosures raise possible conflicts of interest concerns and highlight the need for additional review to identify how to close potential gaps in existing financial disclosure and ethics laws. These potential reporting discrepancies include:

- Possible Debt to Foreign Sources: The 2011 and 2012 Mazars financial statements describe a pledge of nearly \$20 million to President's Trump's "former partner in the Trump World Tower at United Nations Plaza"—an unidentified creditor that contemporaneous reports suggest is either the Korean conglomerate Daewoo or German financial institutions.¹⁷² No such liability is listed on the President's federal financial disclosure forms, so it is unclear whether this liability

¹⁷¹ See *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020) ("Without information, Congress would be shooting in the dark, unable to legislate 'wisely or effectively.'" (citation omitted)).

¹⁷² Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Victor Wahba, Chairman and Chief Executive Officer, Mazars USA LLP (Mar. 20, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-03-20.EEC%20to%20Wahba-Mazars.pdf>).

continues to exist, and if so, whether current financial disclosure laws need to be modified to include certain pledges as a liability.

- Unexplained Increases in Net Worth: In a nine-month period between June 30, 2012, and March 31, 2013, President Trump's reported net worth skyrocketed by \$4.2 billion—the vast majority of which is attributed to a new line item for “Brand Value.”¹⁷³ In his 2012 Mazars report, President Trump claimed that his overall statement did not reflect the “value of Donald J. Trump’s worldwide reputation” and that the “goodwill attached to the Trump name has proven financial value in that potential users of real property around the world have demonstrated willingness to pay a significant premium for ownership or use of a Trump related residence.”¹⁷⁴ It is unclear whether the brand value that was added to the 2013 “Summary of Net Worth” provided by Mr. Cohen to the Committee included President Trump’s valuations of foreign deals and relationships that he considers highly valuable, but are not reflected in his federal financial disclosures because they are not currently required to be disclosed. Any specific additional foreign deals and relationships would be highly relevant to the Committee’s emoluments investigation. In any event, financial disclosures include only a range of values with a maximum range for assets of over \$50 million, so large swings in the values of reported asset or liabilities values would not necessarily be reported. For instance, President Trump’s 2015 financial disclosure only revealed assets worth *at least* \$1.4 billion.¹⁷⁵
- Omissions of Assets and Liabilities: The 2012 Mazars financial statement explicitly stated that it had omitted any asset or liability for two of President Trump’s most significant real estate properties: hotels and residences in Chicago and Las Vegas. While President Trump’s subsequent federal financial disclosures described significant assets and liabilities for the Chicago property, they did not list any liabilities associated with the Las Vegas property, whose assets were valued at more than \$50 million.¹⁷⁶ According to news reports about President Trump’s federal financial disclosures: “For properties where a Trump company owned less than 100 percent of a building, [Trump Organization Chief Financial Officer] Mr. Weisselberg said, those debts were not disclosed.”¹⁷⁷ However,

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Donald Trump’s Income and Wealth Are Shown in Filing but Are Hard to Pinpoint*, New York Times (July 22, 2015) (online at www.nytimes.com/politics/first-draft/2015/07/22/f-e-c-releases-donald-trumps-financial-disclosure-statement/).

¹⁷⁶ Office of Government Ethics, *Financial Disclosure Report for President Donald J. Trump, OGE Form 278e* (filed July 15, 2015) (online at www.documentcloud.org/documents/3035802-Donald-Trump-2015-Financial-Disclosure.html).

¹⁷⁷ *Trump’s Empire: A Maze of Debts and Opaque Ties*, New York Times (Aug. 20, 2016) (online at www.nytimes.com/2016/08/21/us/politics/donald-trump-debt.html); *What Donald J. Trump Owns and Owes*, New York Times (Aug. 20, 2016) (online at www.nytimes.com/interactive/2016/08/20/us/elections/donald-trump-owns-and-owes-debt-properties.html).

reports show that President Trump had a 50 percent stake in the Las Vegas hotel, the loan against the hotel was reportedly worth \$110 million in 2010, and “a Trump entity was responsible for half the debt, and that all but \$6.4 million of the loan had been paid off.”¹⁷⁸

- Decision to Not Treat Member Deposits as Loans: The Mazars financial statements describe \$188 million in 2011 and \$157 million in 2012 in non-interest bearing member deposits at his golf clubs that require repayment thirty years after receipt over which “Mr. Trump will have use,” noting that he will “value this liability at zero.”¹⁷⁹ President Trump has not disclosed on his federal financial disclosures any member deposits at his resorts as liabilities, despite the significant value he attaches to these funds in the Mazars materials and his ability to use the funds at will.

Additional public reporting has identified other apparent errors and omissions in how the Mazars financial statements described the President’s financial affairs, including apparent inaccuracies about the amount of physical land that he owned, the number of floors in his building, and wild valuations based on future sales of as yet undeveloped properties for which he had not yet received final regulatory approval. If these inaccuracies were a result of inaccurate self-reporting by the President to Mazars, that would further corroborate Mr. Cohen’s testimony about the President and raise questions about the adequacy of existing financial disclosure law as applied to President Trump’s self-reporting on his federal financial disclosures. According to public reports:

- Golf and Residential Property in California: “Trump’s financial statement for 2011 said he had 55 home lots to sell at his golf course in Southern California. Those lots would sell for \$3 million or more, the statement said. But Trump had only 31 lots zoned and ready for sale at the course, according to city records. He claimed credit for 24 lots—and at least \$72 million in future revenue—he didn’t have.”¹⁸⁰
- Property in Upstate New York: “In 2011, the statements said that Trump’s Seven Springs estate in Westchester County, N.Y., was ‘zoned for nine luxurious homes.’ In the statement, Trump said those homes would yield significant cash flow as he built them and sold them. That led him to value the property at \$261 million—far more than the roughly \$20 million value assigned by local assessors. At the time, Trump had received preliminary ‘conceptual approval’ to build

¹⁷⁸ *Id.*

¹⁷⁹ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Victor Wahba, Chairman and Chief Executive Officer, Mazars USA LLP (Mar. 20, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-03-20.EEC%20to%20Wahba-Mazars.pdf>).

¹⁸⁰ *How Donald Trump Inflated His Net Worth to Lenders and Investors*, Washington Post (Mar. 28, 2019) (online at www.washingtonpost.com/graphics/2019/politics/trump-statements-of-financial-condition/).

homes on the site. But local officials said he never finished the last step in the approval process to build the homes or sell the lots.”¹⁸¹

- Virginia Vineyard: “In 2012, Trump’s statement said he owned a 2,000-acre vineyard in Virginia. But land records in Virginia show the Trump family owns about 1,200 acres. The Trump winery’s own website says 1,300 acres.”¹⁸²
- Trump Tower in New York: “He said Trump Tower has 68 stories. It has 58.”¹⁸³

The President also recently filed his Financial Disclosure for calendar year 2019, in which he belatedly acknowledged receiving free legal services from Rudy Giuliani in a footnote on the page of the form on which gifts must be disclosed. Despite current law requiring the President to report gifts totaling more than \$390 from a single source, President Trump’s disclosure stated: “Rudy Giuliani provided such *pro bono publico* counsel in 2018 and 2019. In any event, Mr. Giuliani is not able to estimate the value of that *pro bono publico* counsel; therefore, the value is unascertainable.”¹⁸⁴ As with his initial omission of debt to Mr. Cohen, the President did not amend his financial disclosure for the relevant year (calendar year 2018) to reflect this new information. Mr. Giuliani has represented foreign interests, including those with pending matters before the U.S. government, at the same time as he provided free legal services to the President, raising serious questions about foreign interference and undue influence on the President and self-dealing by Mr. Giuliani.¹⁸⁵

When combined with President Trump’s failure to disclose *at least one* significant debt on his annual financial disclosure form—an error identified by OGE, an agency within the Committee’s jurisdiction—these apparent errors and omissions on his financial disclosure forms and discrepancies in how President Trump self-reports his finances raise concerns over the inadequacy of existing law to provide Congress and the American public with an accurate and complete picture of this President’s or future presidents’ possible conflicts of interest.

Therefore, the President’s financial statements created by Mazars will help advance consideration of whether and how to revise existing law to more accurately and completely capture and disclose important financial information.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Office of Government Ethics, *Financial Disclosure Report for President Donald J. Trump, OGE Form 278e* (July 31, 2020) (online at <https://assets.documentcloud.org/documents/7011742/Trump-Donald-J-2020Annual-278.pdf>).

¹⁸⁵ See, e.g., *Giuliani Works for Foreign Clients While Serving as Trump’s Attorney*, Washington Post (July 10, 2018) (online at www.washingtonpost.com/politics/giuliani-works-for-foreign-clients-while-serving-as-trumps-attorney/2018/07/09/e21554ae-7988-11e8-80be-6d32e182a3bc_story.html); *Exclusive: Giuliani Told U.S. His Client Deserves Leniency for Financing Venezuela’s Opposition—Parnas*, Reuters (Jan. 22, 2020) (online at www.reuters.com/article/us-venezuela-politics-guaido-giuliani/exclusive-giuliani-told-u-s-his-client-deserves-leniency-for-financing-venezuelas-opposition-parnas-idUSKBN1ZL1AR).

In addition, Mazars' financial statements are needed to aid the Committee's investigation of GSA's management of the federal lease with President Trump for the Old Post Office Building in Washington, D.C. For instance, according to an August 22, 2019, letter from GSA, President Trump submitted three years of financial condition statements from Mazars' predecessor, WeiserMazars, apparently in connection with his bid for the hotel.¹⁸⁶ As part of its assessment of a contract bidder's financial capability to perform under the lease, GSA specifically requested "Financial statements for the past three years prior to the RFP issuance date," adding that "if audited financial statements are not available, please provide certified financial statements."¹⁸⁷

Based on the Committee's preliminary review, President Trump's financial statements created by Mazars and provided by Mr. Cohen do not appear to have been either audited or certified, which raises questions about what information President Trump submitted to GSA to win the lease award.

Mazars also conducted audits of the Trump Old Post Office LLC, which were provided to GSA pursuant to the lease and used by the U.S. government to determine how much money President Trump owed on the lease. Those audited financial statements are relevant to President Trump's conflicts of interest in the lease and GSA's management of those conflicts as well as emoluments concerns related to the President's receipt of payments from foreign and domestic governments. For instance, under the Old Post Office lease, President Trump must make certain rent payments that are calculated based on key financial figures that he submits in his audited financial reports.¹⁸⁸ Based on additional information obtained under the subpoena, the Committee could craft more tailored legislative reforms to ensure that proper rents are collected and taxpayer interests are protected.

In addition, audited hotel statements may include important descriptive information about sources of payments and cash flows related to foreign and domestic government payments, which will inform Congress's consideration of whether and what information presidents should report upon receipt of an emolument to preserve Congress's constitutional role in accepting or rejecting them. For example, President Trump's financial statements and source documents may show the tangible and intangible benefits President Trump has received, and how President Trump's businesses have recorded, or failed to record, payments from these sources. Such

¹⁸⁶ Letter from Jeffrey A. Post, Associate Administrator, General Services Administration, to Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Gerald E. Connolly, Subcommittee on Government Operations (Aug. 22, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.08.22%20GSA%20Response%20to%20EEC%20GEC%20re%20Trump%20Hotel.pdf>).

¹⁸⁷ *General Services Administration, Request for Proposals Redevelopment of Old Post Office, Washington, D.C.* (Mar. 24, 2011) (online at <https://govtribe.com/opportunity/federal-contract-opportunity/request-for-proposals-redevelopment-of-the-old-post-office-building-1100-pennsylvania-avenue-nw-washington-dc-nr73002105>).

¹⁸⁸ See General Services Administration, *Ground Lease between United States and Trump Old Post Office LLC* (Aug. 5, 2013) (Lease No. GS-LS-11-1307) (online at www.gsa.gov/cdnstatic/Segment_001_of_OPO_Ground_Lease_%282013%29.pdf) (calculating "Percentage Rent" and "Percentage Rent Difference" owed by Tenant as a percentage of Gross Revenues provided in audited financial statements).

information would aid consideration of legislation regarding the type of expenses that must be reported as foreign emoluments.

- **Request 2: Engagement Contracts**

The Committee has subpoenaed engagement agreements or contracts related to financial statements and other products that Mazars created for President Trump and his businesses. Engagement contracts or agreements define the respective responsibilities of the parties related to the work that President Trump and his businesses asked Mazars to perform. The engagement contract or agreement also will specify the applicable reporting framework and the level of rigor applied in assembling and reviewing the materials and could reveal additional information about the intended uses for the materials that could contextualize why certain information was included or excluded. That information is necessary for the Committee to understand the underlying products that it receives in the other subpoena requests.

For example, if the financial statements or accounting records that Mazars provides followed Generally Accepted Accounting Principles (GAAP), then the Committee will know that the accounting firm reviewed the information provided by the President or the Trump Organization based on a standard system intended to ensure the information's reliability. However, if the engagement agreements specify a lower level of rigor, it would be important to determine what Mazars' level of review entailed, or whether Mazars merely was compiling numbers and estimates self-reported by the President or the Trump Organization. Therefore, these engagement letters will help the Committee evaluate and analyze the financial information within the financial disclosures and other accounting records provided.

Furthermore, the Committee has a specific question about whether the documents submitted to GSA were audited or certified records, and if they were not, what level of rigor and auditing Mazars applied to those statements. According to an August 22, 2019, letter from GSA, President Trump submitted three years of financial condition statements from Mazars' predecessor, WeiserMazars, apparently in connection with his bid for the hotel, but GSA did not "create, prepare, or certify" any of that information.¹⁸⁹ As part of its assessment of a contract bidder's financial capability to perform under the lease, GSA specifically requested "Financial statements for the past three years prior to the RFP issuance date," adding that "*if audited financial statements are not available, please provide certified financial statements.*"¹⁹⁰

Based on the Committee's preliminary review, the Mazars financial statements for President Trump provided by Mr. Cohen appear to have been neither audited nor certified. The

¹⁸⁹ Letter from Jeffrey A. Post, Associate Administrator, General Services Administration, to Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Gerald E. Connolly, Subcommittee on Government Operations (Aug. 22, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.08.22%20GSA%20Response%20to%20EEC%20GEC%20re%20Trump%20Hotel.pdf>).

¹⁹⁰ General Services Administration, *Request for Proposals Redevelopment of Old Post Office, Washington, D.C.* (Mar. 24, 2011) (online at <https://govtribe.com/opportunity/federal-contract-opportunity/request-for-proposals-redevelopment-of-the-old-post-office-building-1100-pennsylvania-avenue-nw-washington-dc-nr73002105>) (emphasis added).

engagement contract for this project and communications surrounding it will reveal the level of rigor applied.

The Committee is not seeking every engagement contract or agreement that Mazars ever entered with President Trump. Instead, it is seeking those engagement letters that govern the work Mazars performed when it created financial statements and other accounting products during the relevant time period of 2011 to 2018. Given President Trump's reportedly longstanding relationship with key partners at Mazars, it is possible that an engagement agreement signed years earlier was still in use for the 2011 financial statement and accounting products, which is why this particular demand contains no time limitation. With this request, the Committee intends to obtain the accountants' rules of the road pertaining to the products that were created from 2011 to 2018, based on the content of the engagement agreements, not when the engagement was executed.

- **Request 3: Source Documents**

Source documents will aid the Committee's ongoing investigations and the Committee's review and development of legislative reforms. Source documents provide a more detailed understanding of the President's financial holdings and are key to obtaining a full picture of the President's potential conflicts and emoluments issues. Some of the source documents, such as ledgers and receipts for the Trump International Hotel in Washington, D.C. and other Trump businesses, will help the Committee determine the extent to which President Trump has benefitted from payments from foreign governments or the U.S. government or state officials. For instance, if the Committee obtains evidence in source records showing that foreign governments paid above-market rates for rooms at the Trump International Hotel (the President does not currently report this data publicly or to any authority), then the President's method of calculating profits from foreign government stays by using certain averages would be constitutionally deficient. This source information is key to developing legislative and other solutions to ensure that Congress is able to review and approve presidential emoluments.

Source documents are essential to help the Committee analyze and understand the financial statements and other documents received from Mazars. Source documents will help the Committee determine whether the financial statements and other accounting documents accurately and completely reflect President Trump's possible conflicts of interest, and they will assist the Committee in its modification of financial disclosure laws. For example, the Committee could determine that additional information in the source documents—such as real estate deeds or bank statements that are not currently collected under financial disclosure law—should be required in financial disclosures to evaluate ethical issues more closely.

- **Request 4: Memoranda, Notes and Communications**

The Committee is seeking communications and notes surrounding the creation of financial statements and other accounting products for President Trump and his businesses. These memoranda, notes, and communications will help the Committee examine and analyze the other records provided by Mazars and inform Congress's consideration of whether and how to

strengthen presidential financial disclosure and address presidential conflicts of interest and other ethics issues.

The Committee has already identified certain discrepancies between the few Mazars financial statements it possesses and the President's financial disclosures. Memoranda, notes, and communications surrounding those discrepancies and possibly others will help determine whether financial disclosure laws are operating effectively and sufficiently disclosing accurate and complete information on possible conflicts of interest related to this President and future presidents.

Legislative remedies will be tailored based on the content of the additional information the Committee obtains from its investigations. If the Committee obtains evidence of an additional conflict of interest that was not previously required to be disclosed, the Committee could legislate to require disclosure of that additional information. On the other hand, if the Committee obtains evidence that an omission was based on an intentional misstatement, or if it occurred by a mistake in calculation, or if it occurred because the disclosure instructions were unclear, then the Committee could consider alternative approaches to ensure that accurate and complete information is reported. Communications, notes, and memoranda will aid the Committee in its determination of which approach is appropriate.

In the subpoena, the Committee specifically named only one person, Donald Bender, who had been identified in public reporting as the Mazars partner responsible for managing the Trump account. His communications are essential to understanding the relationship between President Trump and Mazars and the role that the accountants played in preparing Mazars accounting products such as the financial statements. His communications also would inform the Committee about the purpose of these financial statements as well as how much they relied on the President or his company's self-reporting.

The Committee's subpoena also seeks specific communications expressing concerns regarding the financial statements. This will help the Committee determine whether the accountants themselves had questions or concerns about undisclosed assets or liabilities or their valuations and how those issues were addressed, which would in turn inform the Committee's understanding of how to tailor legislative reforms in these areas.

- C. **Factor #3: Whether the “nature of the evidence offered by Congress” establishes “that the subpoena advances a valid legislative purpose”? “The more detailed and substantial the evidence of Congress’s legislative purpose, the better.” If “legislation concerning the Presidency” is contemplated, Congress must “adequately identif[y] its aims and explain[] why the President’s information will advance its consideration of the possible legislation.”**

Regarding the requirement that it adequately identify its aims, the Oversight Committee did that and more in the months leading up to its April 2019 subpoena to Mazars.

First, as previously explained, the Committee filed an official report at the beginning of the 116th Congress pursuant to House Rules that specified its intent to investigate “the President’s business interests, conflicts of interests, and emoluments” as part of its review of ethics legislation and explained the basis for its concerns.¹⁹¹

Second, the Committee sent numerous request letters that identified the Committee’s investigative focus on presidential ethics and conflicts of interest, presidential financial disclosures, and presidential adherence to the Emoluments Clauses, as explained in Section I above. The Committee also clearly explained its focus on remedial ethics legislation.

Third, the Committee convened an official hearing on February 6, 2019, that focused on H.R. 1, a comprehensive ethics package, which includes a provision that would require this President and future presidents (and vice presidents) to either divest from their business interests that pose a conflict of interest or disclose significant information on their business interests, including ownership structure and assets and liabilities exceeding \$10,000. The hearing featured subject matter experts in the field of presidential ethics, as explained in Section I. During his opening statement, then-Chairman Cummings noted that ethics experts had long warned that because of President Trump’s refusal to divest from his financial interests, “every decision he made could be questioned, and the American people would rightly wonder whether he was serving the nation’s interests or his own financial interests.”¹⁹² He added:

Unfortunately, that is exactly what has happened over the past two years. The American people gave this Congress and this Committee a mandate to restore our democracy and clean up our government. They want greater transparency and accountability in our government.¹⁹³

Fourth, the Committee convened an official hearing on February 27, 2019, that focused on fact-finding related to the President’s financial affairs, among other matters, and featured the President’s former attorney and “fixer” Michael Cohen, as explained in Section I. Mr. Cohen provided testimonial and documentary evidence to the Committee, including some documents prepared by Mazars, that raised questions about the President’s self-reporting of his financial affairs both to Mazars and to federal ethics officials.

Fifth, the Committee sought voluntary production of the President’s personal information necessary for the Committee’s investigations, which was declined, as explained in Section I.

Sixth, the Committee sent to its Members a memorandum explaining the need for a subpoena, broadly describing the Committee’s legitimate legislative purposes, and soliciting Members for their views, as explained in Section I. That memorandum described the

¹⁹¹ Committee on Oversight and Reform, *Authorization and Oversight Plans for All House Committees* (Apr. 12, 2019) (H. Rept. 116-40) (online at www.congress.gov/116/crpt/hrpt40/CRPT-116hrpt40.pdf).

¹⁹² Committee on Oversight and Reform, Opening Statement of Chairman Elijah E. Cummings, *Hearing on H.R. 1: Strengthening Ethics Rules for the Executive Branch* (Feb. 6, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/EEC%20HR%201%20opening.pdf>).

¹⁹³ *Id.*

Committee's investigative focus and also clearly stated that it held legislation as its ultimate goal.

The Committee took all of these steps to adequately identify its aims **before** issuing its subpoena to Mazars on April 15, 2019.

From the beginning of his presidency, President Trump has denied the need for reform legislation, explaining that he has no conflicts of interest, that all of his financial reporting has been accurate, and that the American public would obtain no benefit from additional reporting of his finances. As is described above, the President and some Members of Congress have put the need for such legislation in question, challenging the reliability of the existing evidence regarding flaws in the existing reporting and disclosure regime.

The legislative process encompasses the drafting, introduction, debate, and passage of bills by both houses of Congress. It includes conducting investigations to obtain key facts to determine whether such legislation is necessary and to demonstrate the need for such legislation to Members of the House and Senate as well as to the American public—to whom Congress is directly accountable. These facts aid Congress in its determination of whether existing bills will work as intended or are over- or under-inclusive in their scope. This factual record could be important if the constitutionality of the new legislation is later challenged in court. Facts are key to every part of the development, passage, and defense of legislation, including being able to properly weigh the President's argument that there is no need for such legislation. As the Supreme Court explained in the *Mazars* decision: "Without information, Congress would be shooting in the dark, unable to legislate 'wisely or effectively.'"¹⁹⁴

D. Factor #4: Whether there are "burdens imposed on the President by the subpoena"?

The Committee has taken numerous reasonable steps to minimize the burden on the President during its investigations, including by the issuing the subpoena to Mazars, a third-party custodian for non-privileged information. Under the subpoena, Mazars is required to retrieve and organize the relevant information, not the President. If there are issues of noncompliance, Mazars, not the President, risks contempt.

In addition, the subpoena seeks records in which the President has asserted no proprietary or evidentiary protections. He cannot do so now because there are none. In its decision, the Court did not create a new accountant-client privilege¹⁹⁵ or attempt to impose one on the State of New York, where Mazars is headquartered.¹⁹⁶

As the Court noted, these are private records, and thus are not subject to Executive Branch privileges:

¹⁹⁴ *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020).

¹⁹⁵ *See Couch v. United States*, 409 U.S. 322, 335 (1973).

¹⁹⁶ *Peerenboom v. Marvel Entertainment, LLC*, 148 A.D.3d 531, 532 (N.Y. App. Div. 1st Dep't 2017).

We disagree that these demanding [executive privilege] standards apply here. ... We decline to transplant that protection root and branch to cases involving ***nonprivileged, private information, which by definition does not implicate sensitive Executive Branch deliberations***. The standards proposed by the President and the Solicitor General—if applied outside the context of privileged information—would risk seriously impeding Congress in carrying out its responsibilities.¹⁹⁷

The Committee acknowledges that monitoring Mazars’ compliance with the subpoena might require some presidential time and attention. Yet, citing its prior decision in *Clinton v. Jones*, the Court in *Mazars* stated: “We have held that burdens on the President’s time and attention stemming from judicial process and litigation, without more, generally do not cross constitutional lines.”¹⁹⁸

The Mazars accounting firm agreed during the pendency of the appeals to continue collecting documents and preparing its production for the Committee and has had sufficient time to complete its efforts. Since there is no legally recognized privilege for the President to assert regarding these records, the distractions on presidential time should remain minimal.

The Court does suggest that the burdens imposed by congressional subpoenas “should be carefully scrutinized” given that Congress has “incentives to use subpoenas for institutional advantage.”¹⁹⁹ However, the Committee has already identified several important and urgent bills that Congress is considering that justify the significant step of involving the President’s information in the Committee’s investigations. We have demonstrated that we seek to acquire the information we need to inform major ethics reform legislation—including garnering support in both Houses of Congress, from the President, and from the American people.

In addition, the Committee fully intends to continue this investigation and ethics reform legislation in the next Congress, regardless of who holds the presidency, because the Committee’s goal is to prevent problems raised by the circumstances of the current President from being repeated.

III. CONCLUSION

The Committee’s subpoena to Mazars will advance the Committee’s investigations into presidential ethics and conflicts of interest, presidential financial disclosures, and presidential adherence to constitutional safeguards to prevent corruption and undue influence, in aid of Congress’s consideration of presidential ethics reforms.

Continued delay not only materially harms the Committee’s investigations, but Congress’s consideration of this important legislation on behalf of the American people.

¹⁹⁷ *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2032-33 (2020) (emphasis added).

¹⁹⁸ *Id.* at 2036.

¹⁹⁹ *Id.*

IV. APPENDIX: HOUSE ETHICS LEGISLATION

Below is a sample of 18 measures introduced in the House that may be aided by the Committee's investigations. Each presents a different approach to addressing presidential ethics and conflicts of interest, presidential financial disclosures, and presidential adherence to Constitutional safeguards against foreign interference and undue influence. Information sought by the Mazars subpoena would aid Congress in determining which approaches are best tailored to respect both the gravity of the problems and the duties of the Office of the President.

- H.R. 1, the For the People Act of 2019, was introduced on January 3, 2019, by Rep. Sarbanes (D-MD). The bill is an historical reform package that would strengthen accountability for executive branch officials, including the President. It would require the President and Vice President to report detailed corporate financial information on their public financial disclosures and prohibit contracts between the United States or its agencies and the President.
- H.R. 210, the Presidential Inaugural Committee Oversight Act, was introduced on January 3, 2019, by Rep. Schrader (D-OR). This bill would require presidential inaugural committee disbursements to be related to the inaugural ceremony and reported to the Federal Election Commission (FEC). Any remaining funds would be donated to charity.
- H.R. 273, the Presidential Tax Transparency Act of 2019, was introduced on January 8, 2019, by Rep. Eshoo (D-CA). This bill would require the President, Vice President, and major party general election candidates for President and Vice President to disclose their last ten years of federal income tax returns to the FEC to be made publicly available.
- H.R. 706, the Restoring the Public Trust Act, was introduced on January 22, 2019, by Rep. Lieu (D-CA). This bill would expand ethics and anti-corruption laws in the Executive Branch, including by requiring the President to reimburse taxpayer dollars spent at properties in which the President has a financial interest.
- H.R. 950, the Presidential Tax Disclosure Act of 2019, was introduced on February 4, 2019, by Rep. Cicilline (D-RI). This bill would require any sitting President to submit his or her federal tax returns to OGE for year the individual holds office, as well as for the three years prior to assuming office. It also would require OGE to make the returns publicly available.
- H.R. 1481, the Presidential Accountability Act, was introduced on March 4, 2019, by Rep. Clark (D-MA). This bill would require the President and Vice President to divest from any financial interests that might pose a conflict of interest or to disclose detailed financial information about all of their business interests, as well as those of their close family members.

- H.R. 1524, the CORRUPT Act, was introduced on March 5, 2019, by Rep. Gallego (D- AZ). This bill would require federal agencies to publicly report any funds spent at Trump Organization properties or any establishments controlled by the President, a Trump Organization employee, a relative of the President, or the head of an executive agency.
- H.R. 1736, the MAR-A-LAGO Act, was introduced on March 13, 2019, by Rep. Quigley (D-IL). This bill would require the President to establish a public database to track the visitors to executive residences such as the White House, the residence of the Vice President, or any other residence where either the President or Vice President would normally conduct business.
- H.R. 2027, the Drain the Swamp and the President's Assets Act, was introduced on April 2, 2019, by Rep. Espaillat (D-NY). This bill would amend the Ethics in Government Act of 1978 to prohibit the President from holding any asset that would be considered a disqualifying financial interest under criminal statute. A violation of this bill would result in an impeachable offense.
- H.R. 3395, the Prohibiting Foreign Election Assistance Act of 2019, was introduced on June 20, 2019 by Rep. Schiff (D-CA). This bill would clarify the definition of "Thing of Value" in the Federal Election Campaign Act to include information sought or obtained for political advantage from foreign nationals. It also would require that political committees acknowledge awareness of the foreign money ban.
- H. Con. Res. 51 was introduced on June 28, 2019, by Rep. Lofgren (D-CA). This resolution called for the President to comply with the Emoluments Clause of the Constitution, disclose all foreign emoluments received by the President, and deemed any receipt of foreign emoluments by the President without opportunity for Congressional review as a violation of the Emoluments Clause.
- H.R. 3688, the Public Service Transparency Act, was introduced on July 10, 2019, by Rep. Ruiz (D-CA). This bill would amend the Ethics in Government Act of 1978 to require the disclosures of tax returns for Presidential and Vice Presidential candidates and office holders, as well as nominees for and officeholders of cabinet-level positions.
- H.R. 4454, the Disclosing Official Spending at Presidential Businesses Act, was introduced on September 20, 2019, by Rep. Schiff (D-CA). This bill would require disclosure of executive agency expenditures made to any privately held company owned by the President, either in full or in part.
- H.R. 4775, the Stop Waste and Misuse by the President Act of 2019, was introduced on October 21, 2019, by Rep. Lieu (D-CA). This bill would require the President, Vice President, and any immediate family members to reimburse the Treasury Department for any Secret Service protection or expenses incurred for staying at a hotel or other establishment owned by themselves.

- H.R. 5131, the Stop Padding Presidential Pockets Act, was introduced on November 15, 2019 by Rep. Watson Coleman (D-NJ). This bill would require anyone subject to Secret Service protection who travels to further the President's business or financial interests to reimburse the Treasury for any incurred expenses.
- H.R. 5433, the Transparency in Executive Branch Official Finances Act, was introduced on December 13, 2019, by Rep. Porter (D-CA). This bill would require the disclosure of foreign business interests by senior government officials and prohibit political appointees from receiving payments from foreign entities. It would also require the President and Vice President to disclose their federal income tax returns from the previous five years.
- H.R. 745, the Executive Branch Comprehensive Ethics Enforcement Act of 2019 was introduced on January 24, 2019, by Rep. Raskin (D-MD) and was reported favorably by the Committee on February 21, 2020. This bill would authorize OGE to investigate allegations of violations, issue subpoenas during investigations, and advise the President and inform the public when violations occur.
- H.R. 7526, the Stop Foreign Payoffs Act, was introduced on July 9, 2020, by Rep. Golden (D-ME). This bill would amend the Ethics in Government Act of 1978 to require senior government officials, including the President, and their family members to divest from foreign financial interests.

(Updated with technical corrections on August 28, 2020.)