Tax & Financial Records Case

Oversight Committee-Mazars Case
Key Excerpts from 2021 District Court Opinion

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On April 15, 2019, the House Committee on Oversight and Reform ("Oversight Committee") subpoenaed documents from President Trump's longtime accounting firm, Mazars USA, requesting copies of Trump-related tax returns and other financial records. The request was made to advance committee investigations into the President's financial and ethics disclosures, conflicts of interest, and compliance with the Constitution's emoluments clause. On April 22, 2019, President Trump filed suit in D.C. federal district court to quash the subpoena. On May 20, 2019, D.C. District Judge Mehta dismissed the case and upheld the House subpoena.

President Trump appealed the district court decision to the D.C. Circuit and then to the Supreme Court. On July 9, 2020, the Supreme Court held that presidents are not immune to congressional subpoenas, found that federal courts have jurisdiction to resolve interbranch subpoena disputes, and issued a new 4-part test to evaluate congressional subpoenas seeking information related to the president. The case was eventually remanded to the district court which, on August 11, 2021, again upheld the subpoena, but with some restrictions. Here are key excerpts from Judge Mehta's 53-page opinion, each excerpt of which consists of a direct quotation taken from the text of his opinion, with no changes in punctuation but with footnotes omitted.

Different factual backdrop

Now, once again, the parties have filed cross-motions for summary judgment. But this time they do so against a meaningfully different factual backdrop. Since the Supreme Court announced the new *Mazars* test, President Trump lost the 2020 election. He is no longer the sitting President of the United States. Furthermore, the Committee reissued its subpoena to

Mazars on February 25, 2021, after its initial subpoena expired at the end of the 116th Congress. Prior to reissuance, the Committee's Chairwoman, Carolyn B. Maloney, circulated a 58-page, single-spaced memorandum explaining the legislative need for the subpoenaed material. The parties dispute whether and how these changed circumstances should inform the court's present analysis.

Subpoena limits imposed

This court previously allowed the Committee's demand for President Trump's financial records to proceed without qualification. But, applying the greater scrutiny required by *Mazars*, the court cannot now go so far. The court holds that the Committee's asserted legislative purpose of bolstering financial disclosure laws for Presidents and presidential candidates does not warrant disclosure of President Trump's personal and corporate financial records when balanced against the separation of powers concerns raised by the broad scope of its subpoena. By contrast, the Committee's other stated justifications for demanding President Trump's personal and corporate financial records—to legislate on the topic of federal lease agreements and conduct oversight of the General Services Administration's lease with the Old Trump Post Office LLC, and to legislate pursuant to Congress's authority under the Foreign Emoluments Clause—do not implicate the same separation of powers concerns. The records corresponding to those justifications therefore must be disclosed.

Categories of subpoenaed documents

The letter concluded by asking Mazars to produce four categories of documents with respect to not just President Trump but also several affiliated organizations and entities, including the Trump Organization Inc., the Donald J. Trump Revocable Trust, the Trump Foundation, and the Trump Old Post Office LLC. *Id.* at 4. The records sought included statements of financial condition, audited financial statements, documents relied upon to prepare any financial statements, engagement agreements, and communications between Mazars and President Trump or employees of the Trump Organization. ... On April 15, 2019, the Committee issued the subpoena to Mazars. The subpoena sought the same four categories of records identified in the March 20th letter, but it narrowed the relevant time period by two years to "calendar years 2011 through 2018."

New Supreme Court test

On July 9, 2020, the Court issued its opinion. *See Trump v. Mazars USA, LLP* (*Mazars III* or *Mazars*), 140 S. Ct. 2019 (2020). The Court recognized that Congress generally "has power 'to secure needed information' in order to legislate." *Id.* at 2031 (quoting *McGrain*, 273 U.S. at 161). But because the Committee's demand for President Trump's personal information triggered "weighty" separation of powers concerns, *id.* at 2035, the Court held that the subpoena's propriety could not be governed by "precedents that do not involve the President's papers," *id.* at 2033. Instead, it instructed courts to "perform a careful analysis that takes adequate account of the separation of powers principles at stake, including both the significant legislative interests of Congress and the unique position of the President." *Id.* (internal quotation marks omitted). The Court then announced four non-exhaustive "special considerations" meant to guide that analysis. *Id.* at 2035–36. Rather than apply the new test itself, the Court vacated the D.C. Circuit's judgment and remanded the case for review consistent with its opinion.

House may reissue expired subpoena

[T]he subpoena now in dispute is not the Cummings Subpoena issued on April 15, 2019, but rather the one the Committee reissued to Mazars on February 25, 2021. *See* Hr'g Tr., ECF No. 69 [hereinafter Hr'g Tr.], at 9. The Cummings Subpoena expired along with the 116th Congress. As Plaintiffs acknowledge, to avoid mooting the case, Chairwoman Maloney invoked a House Rule that permits committee chairs to "ensure continuation of . . . litigation" by reissuing prior subpoenas and acting as "the successor in interest" to the "prior Congress." *See* Pls.' Mot. at 11 (quoting House of Representatives Rule II, cl. 8(c)). Pursuant to the Rule, Chairwoman Maloney reissued the Cummings Subpoena, without modification, on February 25, 2021. *Id.* at 10; Committee Cross-Mot. at 15. Plaintiffs would have the court treat that reissuance as a mere resurrection of the earlier subpoena, but to accept that position would require the court to ignore a significant act of the Committee. That it cannot do. Although the reissued subpoena is identical to the Cummings Subpoena in substance, the House reissuance process required the Committee to serve upon Mazars an entirely separate, fresh subpoena, and the Committee did so.

2020 Maloney Memorandum is relevant

As an attachment to its brief, the Committee included a 58-page, single-spaced memorandum from Chairwoman Carolyn B. Maloney—Chairman Cummings' successor—to the other members of the Committee (the "Maloney Memorandum"). ... With the proper focus then on the reissued Maloney Subpoena, the relevance of the August 2020 Maloney Memorandum is self-evident. When Chairwoman Maloney announced that the Committee would be reissuing an identical subpoena to Mazars, she did so in a four-page memorandum dated February 23, 2021. The February 23rd memorandum expressly referenced and quoted from the Maloney Memorandum, and it summarized the legislative rationale for the subpoenaed records set forth in the earlier memo. The February 23rd memorandum also attached and incorporated the Maloney Memorandum. The Maloney Memorandum is therefore critical to understanding the Committee's reasons for reissuing the subpoena to Mazars, and it would blink reality to ignore it. ... [B]ecause Chairwoman Maloney circulated the Maloney Memorandum well before the Maloney Subpoena issued, the former cannot be characterized as a retroactive rationalization of the latter.

Subpoena does not have an improper purpose

Plaintiffs assert that the court need not even evaluate the Maloney Subpoena under the four *Mazars* factors because it is invalid due to its improper purpose. *See* Pls.' Mot. at 30. Plaintiffs have advanced this argument at each stage of review, and no court has accepted it. *See Mazars II*, 940 F.3d at 726–32; *Mazars I*, 380 F. Supp. 3d at 99–101; *see also Mazars III*, 140 S. Ct. at 2035–36 (opting not to address the issue). This court rejects it once more.

Valid legislative purpose

All congressional subpoenas must serve a "valid legislative purpose." ... Plaintiffs argue that the "gravamen" or "primary purpose" of the Maloney Subpoena is exposing President Trump's supposed "wrongdoing." ... None of the cited evidence convinces the court that the Committee issued the subpoena to Mazars for an improper purpose.

Aspects of the D.C. Circuit opinion pose binding precedent

[T]he D.C. Circuit in *Mazars II* already held that some of the evidence cited by Plaintiffs—namely, the statements made prior to issuance of the Cummings Subpoena and the OLC memorandum opinion—does not establish an improper purpose. *See* 940 F.3d at 728 (rejecting the view that an interest in uncovering illegality "spoils the Committee's otherwise valid legislative inquiry"). The parties dispute whether—in light of the Supreme Court's vacatur of the D.C. Circuit's judgment—this court is bound by the holdings and reasoning in *Mazars II* that the Supreme Court left untouched. The court concludes that it is. In *Action Alliance of Senior Citizens of Greater Philadelphia v. Sullivan*, the D.C. Circuit left intact certain holdings from a prior opinion that the Supreme Court had vacated, because the Court "expressed no opinion on the merit of th[o]se holdings." 930 F.2d 77, 83 (D.C. Cir. 1991). The Circuit concluded that its earlier holdings "continue to have precedential weight, and in the absence of contrary authority, [the panel] do[es] not disturb them." *Id.* That result controls here. Because the Supreme Court declined to opine on the merits of the D.C. Circuit's analysis of improper purpose, the Circuit's holding on that issue—at least with respect to the evidence then in the record—is binding on this court.

Motive versus purpose

The Supreme Court has said repeatedly that "in determining the legitimacy of a congressional act," courts may "not look to the motives alleged to have prompted it." ... Plaintiffs attempt to draw a distinction between judicial scrutiny of congressional motives, which they concede is impermissible, and identification of legislative purpose, which courts must evaluate. *See* Pls.' Mot. at 31. Although these concepts are in theory different, the line between them is ill defined at best. ... [A]s the D.C. Circuit noted, "an interest in past illegality can be wholly consistent with an intent to enact [valid] remedial legislation." *Id.* at 728; *see also Hutcheson v. United States*, 369 U.S. 599, 617–18 (1962) (concluding that the Senate committee's investigation into the defendant's illegal conduct did not vitiate the legitimate purpose of remedial federal legislation).

Facially valid legislative purposes

Here, the Maloney Memorandum serves as the clearest and most comprehensive explanation of the Committee's purpose in reissuing the subpoena to Mazars. It includes a sample of 18 measures that "may be aided by the Committee's investigations." Maloney Mem. at 56. Those measures address, among other things, "presidential ethics and conflicts of interest, presidential financial disclosures, and presidential adherence to Constitutional safeguards against foreign interference and undue influence." *Id.* In the presence of such facially valid legislative purposes, the court declines to invalidate the Maloney Subpoena on improper purpose grounds.

Sitting versus former president

[S]ince the remand order, President Trump left office. That prompts an obvious constitutional question: How do the *Mazars* factors— which sprung from a dispute over a congressional subpoena for the personal records of a *sitting* President—apply, if at all, to a subpoena seeking the personal records of a *former* President? Not surprisingly, the parties disagree on the answer.

Different scrutiny of subpoena directed to former president

Plaintiffs would have the court evaluate the Maloney Subpoena with the same scrutiny required by the Supreme Court in *Mazars*; they urge the court to treat the Maloney Subpoena as if it were directed at the personal papers of a sitting President. ... The court rejects this approach because, once again, Plaintiffs conflate the Cummings Subpoena and the Maloney Subpoena. ... The Cummings Subpoena expired with the 116th Congress. ... The Maloney Subpoena is a new demand for records, which the Committee separately served on Mazars. Thus, when the Maloney Subpoena issued—more than a month after President Trump left office—it was directed at, and sought the personal papers of, a *former* President. Plaintiffs would have the court ignore these events, but to do so would be contrary to Circuit precedent. ... Just as the D.C. Circuit gave due weight to post-subpoena developments in *Senate Select Committee*, the court does so here.

Criminal versus civil subpoena enforcement

[T]he cases Plaintiffs cite all involve criminal prosecutions rather than civil enforcement. *See Watkins*, 354 U.S. at 181 (reviewing a conviction for contempt of Congress); *Gojack*, 384 U.S. at 704–05 (same); *Rumely*, 345 U.S. at 42 (same); *Shelton*, 327 F.2d at 602 (same). This distinction is crucial. A civil enforcement proceeding, like this case, concerns *future* compliance with a congressional subpoena. By contrast, criminal prosecutions seek to impose punishment for *past* non-compliance. ... [C]riminal punishment for non-compliance cannot be imposed on a witness based on facts not yet in existence at the time the witness made the decision not to comply. Such a concern does not exist in civil enforcement proceedings demanding only prospective relief.

Applying *Mazars* test to a former president

The Committee meanwhile would have the court ignore the *Mazars* test altogether. Committee Cross-Mot. at 21. It insists that the court instead should apply the more generic balancing test from *Nixon v. Administrator of General Services* (*Nixon v. GSA*), 433 U.S. 425 (1977). ... [T]he two interests that the Committee seeks to have balanced are two of the four considerations set forth in *Mazars* itself—"the asserted legislative purpose" and "the burdens imposed on the President by a subpoena." *Mazars III*, 140 S. Ct. at 2035–36. Yet, the Committee would have the court eschew, or at least not explicitly weigh, the other two considerations deemed pertinent by the Court: inquiring whether the subpoenaed records are "reasonably necessary to support Congress's legislative objective" and asking whether "the nature of the evidence offered by Congress . . . advances a valid legislative purpose." *See id.* The court cannot abide. As the Supreme Court held in *Nixon v. GSA*, separation of powers considerations do not entirely disappear merely because the entanglement is between Congress and a former President. 433 U.S. at 439. That those constitutional concerns are admittedly less substantial when a former President is involved does not warrant jettisoning the *Mazars* factors altogether.

***"Mazars* lite" test**

In the court's view, the correct approach requires an application of a "*Mazars* lite" test— that is, an examination of the *Mazars* factors cognizant of the fact that this case now involves a subpoena directed at a former President. That change affects the foundations of the *Mazars* test in at least two critical ways.

Separation of powers consideration

First, because President Trump no longer "alone composes a branch of government," this dispute no longer implicates a present "clash between rival branches of government." *Mazars III*, 140 S. Ct. at 2034. The Maloney Subpoena does not "intru[de] into the operation of the Office of the

President," nor will it burden "the [sitting] President's time and attention." *Id.* at 2036. The only remaining separation of powers concern identified by Plaintiffs involves Congress using the threat of a post-presidency subpoena for personal information to influence "how the sitting President treats Congress while in office." ... [E]ven remote threats to separation of powers must be given appropriate consideration.

Negotiation and compromise consideration

[T]he *Mazars* test was crafted against a "tradition of negotiation and compromise" between co-equal branches of government, 140 S. Ct. at 2031, but, as the Committee notes, a former President's incentives to accommodate Congress are greatly diminished compared to those of an incumbent, *see* Committee Cross-Mot. at 16. A former President no longer needs Congress's help to fund government or advance his policy priorities. Nor does he fear impeachment or electoral consequences for defying a congressional subpoena. Thus, a refusal to comply with a congressional demand is far less consequential for a former President than an incumbent. A President's motivation to compromise with Congress ebbs upon leaving office.

Reduced judicial scrutiny

These foundational differences alter the *Mazars* framework in important ways that support reduced judicial scrutiny of a congressional subpoena to a former President. Most significantly, under the fourth *Mazars* factor, the "burdens imposed on the President by a subpoena" are greatly diminished, if not eliminated entirely, when the President to whom the subpoena is issued no longer occupies the office. ... [U]nder the first *Mazars* factor—a careful assessment of "the asserted legislative purpose"—the Supreme Court characterized a subpoena to a sitting President as a "significant step" that requires a court to determine whether "other sources could reasonably provide Congress the information it needs in light of its particular legislative objective." ... [T]he risk of inter-branch conflict is mitigated when a President no longer occupies office. So, a court's inquiry about alternative sources should be less rigorous. For the same reason, with respect to the second *Mazars* factor—which requires a court to "insist on a subpoena no broader than reasonably necessary to support Congress's legislative objectives," *id.* at 2036—a court need not "insist" on as precise a fit when the subpoena is not directed to a sitting President. And, finally, as to the third *Mazars* factor—which instructs that a court must be "attentive to the nature of the evidence offered" to establish a valid legislative purpose, *id.*—the court's inquiry involving a former President must be no less "attentive," but a less "detailed and substantial" evidentiary submission to substantiate Congress's claimed legislative purpose may suffice given the circumscribed separation of powers concerns at play.

Three legislative tracks advanced to justify the subpoena

The Committee identifies three legislative tracks that it believes are advanced by the Maloney Subpoena: (1) presidential conflicts of interest and financial disclosures (the "financial disclosure track"); (2) oversight of GSA's management of the Trump Hotel lease (the "GSA track"); and (3) presidential conformity with the Emoluments Clauses of the Constitution (the "emoluments track"). The court considers each in turn.

Financial disclosure rationale falls short

Even under a modified *Mazars* test, the Committee's financial disclosure rationale for the Maloney Subpoena falls short in two key respects. First, the Committee does not adequately explain why other sources of information— outside President Trump's personal papers— could not "reasonably provide Congress the information it needs in light of its particular legislative objective." ... President Trump is hardly the only high-level public official to have presented potential disclosure concerns based on ownership of significant businesses and other assets. It remains unclear, for instance, why the question of whether Presidents' financial disclosures should "reflect the true ownership structure" of businesses they own, *id.* at 14, cannot be just as informed by investigating the finances of other, non-presidential officials with similar complex interests. Or why an expert in complex business holdings might not supply the information the Committee seeks.

Additional facts rationale

The Committee asserts that the subpoenaed material could convince the Senate that the House's proposed reforms are necessary. *See* Committee Cross-Mot. at 32–33. But that argument proves too much. It can always be said that additional facts might in theory convince on-the-fence legislators, even when the practical likelihood is exceedingly low. If that reason were enough, the separation of powers claims asserted by former Presidents in cases like this one would be entirely toothless.

Over or under inclusive rationale

[T]he Committee argues that the subpoenaed material "is necessary . . . to determine whether" its legislative efforts "are over-or under-inclusive." *Id.* at 13. But Congress is not entitled to perfect information before it legislates on a given topic, especially when the claimed need for tailoring is predicated on the personal records of a former President. As the Supreme Court noted, "efforts to craft legislation involve predictive policy judgments that are 'not hampered . . . in quite the same way' [as criminal proceedings] when every scrap of potentially relevant evidence is not available." *Mazars III*, 140 S. Ct. at 2036 (quoting *Cheney*, 542 U.S. at 384). In sum, the Committee fails to demonstrate why the subpoenaed material is "reasonably necessary" to support its legislative objectives.

Burden outweighs congressional need for insights

Second, the Committee's need for insights into President Trump's finances is outweighed by "the burdens imposed . . . by [the] subpoena." ... [T]he House has already considered and passed H.R. 1, "a sweeping bill that includes a number of reforms that will strengthen accountability for executive branch officials—including the President." ... Viewed in the context of what Congress and the House in particular have already done in crafting enhanced financial disclosure legislation, the legislative objectives the Committee identifies are relatively incremental and therefore present only a limited need for President Trump's financial records. ... Such limited legislative need cannot justify the degree to which the Maloney Subpoena imposes on the separation of powers, even in the case of a former President. ... The more Congress can invade the personal sphere of a former President, the greater the leverage Congress would have on a sitting President. ... And the greater the leverage, the greater the improper "institutional advantage," *id.* at 2036, Congress would possess over a co-equal branch of government.

Broad invasive subpoena poses appreciable risk to separation of powers

Here, the scope of the Maloney Subpoena is undeniably broad. It covers President Trump, his revocable trust, five of his corporations, his foundation, and "any parent, subsidiary, affiliate, joint venture, predecessor, or successor of the foregoing." Maloney Subpoena at 2. As to those parties, the subpoena demands (1) "[a]ll statements of financial condition, annual statements, periodic financial reports, and independent auditors' reports prepared, compiled, reviewed, or audited" by Mazars; (2) "all [related] engagement agreements or contracts"; (3) all related "source documents"; and (4) "[a]ll [related] memoranda, notes, and communications." *Id.* The covered time period defaults to "calendar years 2011 through 2018"—from years before President Trump took office through only the first two years of his term. *Id.* Due to its broad, invasive nature, the subpoena poses an appreciable risk to the separation of powers.

Threat to the sitting President

In the current polarized political climate, it is not difficult to imagine the incentives a Congress would have to threaten or influence a sitting President with a similarly robust subpoena, issued after he leaves office, in order to "aggrandize itself at the President's expense," *Id.* at 2034. In the court's view, this not-insignificant risk to the institution of the presidency outweighs the Committee's incremental legislative need for the material subpoenaed from Mazars.

GSA rationale upheld with qualifications

Separately, the Committee argues that the Maloney Subpoena would advance its parallel investigation into President Trump's lease agreement with GSA for the Old Post Office Building and related legislation. Maloney Mem. at 5. Here, the court agrees, but with certain qualifications.

Committee's legislative purposes

[T]he Committee insists that it still needs documents from Mazars "to determine the accuracy and completeness of the information submitted to GSA, to assess the need for legislative reforms to safeguard the GSA bid process and the administration of its leases, and to address the constitutional deficiencies and potential Emoluments Clause violations stemming from the Old Post Office Building lease."

Separation of powers principles have little, if any, force here

Each of these [Plaintiffs'] arguments assumes the application of separation of powers principles that have little, if any, force here. During oral argument, Plaintiffs conceded that the Committee could subpoena the same material for an ordinary leaseholder who was not (and had never been) President. ... Nothing about the lease or the Committee's subsequent investigation necessarily implicates the concerns underlying the *Mazars* test because neither is inherent to the presidency and both are straightforwardly avoidable.

Financial disclosure versus federal contract

A presidential candidate can choose not to contract with the federal government, or can divest his interests upon assuming office, and thereby avoid the accompanying scrutiny. Contrast that with the financial disclosure track .... Because Congress can always assert some

disclosure-related legislative rationale for any President's personal papers, the potential threat of a related subpoena is unavoidable for a President and therefore implicates the separation of powers. The same cannot be said about the Committee's GSA track rationale. It is unique to President Trump. ... And the likelihood that future Presidents will be subject to similar congressional inquiry appears remote. Neither side has cited any historical precedent for a former President maintaining a business relationship with the federal government of the kind at issue here. Absent such a business tie, Congress's leverage over a sitting President who might fear a retributive subpoena upon leaving office for personal financial records disappears.

Legislative objectives may be imprecise

[T]he Maloney Memorandum's explanation of the Committee's legislative objective suffices, even if those objectives are imprecise. "The very nature of the investigative function—like any research—is that it takes the searchers up some 'blind alleys' and into nonproductive enterprises. To be a valid legislative inquiry there need be no predictable end result." *Eastland*, 421 U.S. at 509.

Plainly incompetent or irrelevant standard

Next, the allegedly "vague" nature of Cohen's testimony about President Trump's financial statements is insufficient to call the subpoena into question. *See Mazars I*, 380 F. Supp. 3d at 92–93 (noting that in ordinary circumstances, "[o]nly an investigative demand that is 'plainly incompetent or irrelevant to any lawful purpose of the [committee] in the discharge of its duties' will fail to pass muster" (quoting *McPhaul v. United States*, 364 U.S. 372, 381 (1960))).

Other sources for information

[F]inally, the court need not closely scrutinize whether "other sources could reasonably provide . . . the information [the Committee] needs." *Mazars III*, 140 S. Ct. at 2035–36. On this last point, even assuming the Committee were required to ask GSA for documents first, it already has. ... But the Committee still requires the nonidentical subpoenaed material "to determine the accuracy and completeness of the information submitted to GSA."

Not a case study for general legislation

Footnote 47: Also inapplicable is the Supreme Court's instruction that Congress may not look to the President "as a 'case study' for general legislation." *Mazars III*, 140 S. Ct. at 2036. Just as with Plaintiffs' arguments above, this constraint on Congress's subpoena authority turns on the application of separation of powers principles that are greatly diminished in the context of the GSA track. *See id.* (listing this concern in light of the principal that "constitutional confrontation between the two branches should be avoided whenever possible" (internal quotation marks omitted)). Moreover, the GSA track is not directed at "general legislation" of the kind that the Supreme Court referenced in *Mazars*. *See id.* (citing a congressional examination of how well banking regulators are discharging their responsibilities and whether new legislation is needed). The stated legislative purpose here centers on the leasing of federal properties, not on a broad industry.

Congressional burden of proof not met for certain persons

Plaintiffs' objections aside, the Committee nevertheless maintains the burden to show that the subpoenaed material is "related to, and in furtherance of" its valid legislative purpose. *See Watkins*, 354 U.S. at 187. The subpoena, taken as a whole, fails this standard. On the present record, of the eight individuals and entities listed in the Maloney Subpoena, the Committee has demonstrated that only the materials concerning President Trump, Trump Old Post Office LLC, and the Trump Organization are related to the GSA track. *See* Maloney Mem. at 15, 20 (President Trump and Trump Old Post Office LLC submitted certificates of financial status pursuant to the lease); *id.* at 16 (GSA selected Trump Organization for the Old Post Office redevelopment effort). The remaining entities are not evidently within the scope of the Committee's GSA track.

Court can narrow the subpoena

[T]he proper remedy for an overbroad subpoena, Plaintiffs contend, is invalidation. ... [T]he Committee submits that narrowing is an option. ... The Committee has the better argument. Plaintiffs overread the language in *Mazars III*. A judicially narrowed subpoena is still a subpoena. And insofar as the Committee is of the view that a judicial narrowing poses no separation of powers concerns, the court sees no issue with that course of action. Accordingly, the court finds that the GSA track warrants summary judgment for the Committee on the subpoenaed materials of only President Trump, Trump Old Post Office LLC, and the Trump Organization.

Emoluments rationale upheld

Finally, the Committee asserts that the Maloney Subpoena would advance its investigation into whether "President Trump's receipt of funds from foreign governments, federal officials, or state officials through his business holdings[] result[ed] in receipt of Emoluments." Maloney Mem. at 5. As with the GSA track, the court agrees in some respects but not others.

Definition of emolument

Neither the Supreme Court nor the D.C. Circuit has clarified the precise meaning of an "emolument." That said, the only two district courts to interpret the term have done so broadly. *See Blumenthal v. Trump*, 373 F. Supp. 3d 191, 207 (D.D.C. 2019) ("'Emolument' is broadly defined as any profit, gain, or advantage."), *rev'd on other grounds*, 949 F.3d 14 (D.C. Cir. 2020); *District of Columbia v. Trump*, 315 F. Supp. 3d 875, 904 (D. Md. 2018) (finding that "emoluments" "extend[] to any profit, gain, or advantage, of more than *de minimis* value, received by [the President], directly or indirectly, from foreign, the federal, or domestic governments"), *vacated*, 838 F. App'x 789 (mem.) (4th Cir. 2021).

Congress has active constitutional role in emoluments

Plaintiffs overstate the separation of powers concerns attendant to potential legislation in furtherance of Congress's expressly granted authority under the Foreign Emoluments Clause. Recall that the Clause prohibits any federal official "holding any Office of Profit or Trust"—including the President—from "accept[ing] . . . any present, Emolument, Office, or Title of any kind whatever, from any King, Prince, or foreign State" without "the Consent of Congress." U.S. Const. art. I, § 9, cl. 8. By its own terms, the Clause contemplates Congress's active enforcement or waiver of the default prohibition on foreign emoluments.

Therefore, the "balanced approach" to separation of powers made concrete by the four-factor *Mazars* test must, in this context, lean in favor of Congress. *See Pub. Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 486 (1989) (Kennedy, J., concurring) ("Where a power has been committed to a particular Branch of Government in the text of the Constitution, the balance has been struck by the Constitution itself."); *I.N.S. v. Chadha*, 462 U.S. 919, 945 (1983) (concluding that the lawmaking process must adhere to the "[e]xplicit and unambiguous provisions of the Constitution [that] prescribe and define the respective functions of [Congress and the Executive]").

Congress may legislate on emoluments

[A]s Plaintiffs admit, the Necessary and Proper Clause is "properly read as 'a means of making the exercise of powers by the various branches effective.'" *Id.* (internal quotation marks omitted) (quoting *Consumer Energy Couns. of Am. v. FERC*, 673 F.2d 425, 455 n.127 (D.C. Cir. 1982)). Applied here, Congress's power to consent—or not consent—to foreign emoluments allows it to enact laws that are "derivative of, and in service to, [that] granted power," *NFIB v. Sebelius*, 567 U.S. 519, 560 (2012). If Congress cannot mandate disclosure pursuant to its consent authority, one wonders how it could possibly exercise that authority effectively. *Cf. Mazars II*, 940 F.3d at 734 ("If the President . . . must seek Congress's permission before accepting any foreign emoluments, then surely a statute facilitating the disclosure of such payments lies within constitutional limits."). Presidents could simply conceal foreign emoluments from Congress to avoid scrutiny—a result contrary to the Framers' intent.

No need to define emolument to uphold subpoena

In this context, the court need not precisely define the outer bounds of what qualifies as a foreign emolument. *See Rumely*, 345 U.S. at 46 (counseling that courts should avoid declaring an investigation by Congress unconstitutional unless "no choice is left"); *see also Nashville, C. & St. L. Ry v. Wallace*, 288 U.S. 249, 262 (1933) (explaining that courts may not make "abstract determination[s] . . . of the validity of a statute" or issue "decision[s] advising what the law would be on an uncertain or hypothetical state of facts"). ... [T]he court need not define the four corners of an emolument in order to accept the Committee's argument. *Cf. Mazars II*, 940 F.3d at 737 (finding "no inherent constitutional flaw" in the Committee's disclosure justification as a basis on which legislation may be had). In any event, the types of foreign payments that the Committee seeks to learn about here are not so far outside the scope of what might be considered a foreign emolument as to justify denying the Committee's request for records. *See Blumenthal*, 373 F. Supp. 3d at 207; *Trump*, 315 F. Supp. 3d at 904; *see also* GSA Inspector General Report at 16 ("In sum, we found evidence that the term 'emolument' as used historically and today includes the gain from private business activities.").

Detailed and substantial evidence substantiates Committee's legislative purpose

Plaintiffs' concern that an emoluments rationale always could be used to subpoena a past President's personal records is a legitimate one, but is ameliorated here by the fact that the Committee has presented "detailed and substantial" evidence, *Mazars III*, 140 S. Ct. at 2036, that President Trump, at least through his business interests, likely received foreign payments during the term of his presidency. *See* Maloney Mem. at 25–26 (citing sources regarding

hotel revenues, trademark rights, and commercial and residential leases). Indeed, early on, this was an issue of bipartisan interest to Congress, and it led President Trump to commit to contribute to the U.S. Treasury the profits from foreign government payments to his hotels. *Id.* at 27. The Trump Organization transmitted payments to the Treasury of $151,470, $191,538, and $105,465 in 2017, 2018, and 2019, respectively, *id.* at 26, thereby validating the Committee's belief that President Trump's businesses received some foreign payments during his presidency. The Committee therefore is not engaged in a baseless fishing expedition. It has presented the requisite degree of evidence to substantiate the Committee's legislative purpose.

Entities and documents upheld but time period reduced

[T]he court holds that the emoluments track justifies the scope of the Maloney Subpoena as to the entities listed and the types of documents requested. That said, the time period covered by the subpoena cannot be fully justified under the same rationale. Plaintiffs correctly note that President Trump "could not have received any emoluments until he became President in January 2017." Pls.' Mot. at 18. "Yet the Mazars subpoena seeks financial documents starting in 2011, years before President Trump was even a candidate for public office." *Id.; see* Maloney Subpoena at 2. The Committee explains this apparent disconnect by theorizing that emoluments from the Trump presidency might have their origins in his business dealings from years prior. Hr'g Tr. at 95–96. This is nothing more than speculation without any limiting principle. ... Accordingly, the court finds that the emoluments track warrants summary judgment for the Committee on the subpoenaed materials for only the years 2017 and 2018. ... Because the Committee has already won summary judgment as to those materials via its Foreign Emoluments Clause authority, the court need not address domestic emoluments or the parties' related arguments.

Summary of decision

For the foregoing reasons, the court grants in part and denies in part both cross-motions for summary judgment. The GSA track warrants entry of summary judgment for the Committee (and denial of Plaintiffs' motion) on the subpoenaed materials of only President Trump, Trump Old Post Office LLC, and the Trump Organization. The emoluments track warrants entry of summary judgment for the Committee (and denial of Plaintiffs' motion) on the subpoenaed materials for only the years 2017 and 2018. As for the remaining documents covered by the Maloney Subpoena, Plaintiffs' motion is granted, and the Committee's motion is denied.

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