No. 19A545

In the Supreme Court of the United States

DONALD J. TRUMP; THE TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION LLC; THE TRUMP CORPORATION; DJT HOLDINGS LLC; THE DONALD J. TRUMP REVOCABLE TRUST; AND TRUMP OLD POST OFFICE LLC,

Applicants,

v.

MAZARS USA, LLP; COMMITTEE ON OVERSIGHT AND REFORM OF THE U.S. HOUSE OF REPRESENTATIVES,

Respondents.

On Application for Stay

EMERGENCY APPLICATION FOR A STAY OF MANDATE PENDING THE FILING AND DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

The parties to the proceeding below are as follows:

Applicants are Donald J. Trump, President of the United States of America; Trump Organization, Inc.; Trump Organization; LLC, Trump Corporation; DJT Holdings, LLC; Donald J. Trump Revocable Trust; and Trump Old Post Office LLC. They were the plaintiffs in the district court and appellants in the court of appeals.

Respondents are Mazars USA, LLP and Committee on Oversight and Reform of the U.S. House of Representatives. Mazars was the defendant in the district court and appellee in the court of appeals. The Committee was the intervenor-defendant in the district court and intervenor-appellee in the court of appeals.

The related proceedings below are:

1. *Donald J. Trump, et al., v. Mazars USA, LLP & Committee on Oversight and Reform of the U.S. House of Representatives*, No. 19-5142 (D.C. Cir.) – Judgment entered October 11, 2019; and

2. *Donald J. Trump, et al. v. Committee on Oversight & Reform of the U.S. House of Representatives, et al.*, No. 19-cv-01136 (APM) (D.D.C.) – Judgment entered May 20, 2019.

CORPORATE DISCLOSURE STATEMENT

Per Supreme Court Rule 29, Applicants The Trump Organization, Inc., Trump Organization LLC, The Trump Corporation, DJT Holdings LLC, and Trump Old Post Office LLC state that they have no parent companies or publicly-held companies with a 10% or greater ownership interest in them.

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the District of Columbia Circuit:

This is a case of firsts. It is the first time Congress has subpoenaed the personal records of a President that predate his time in office. It is the first time Congress has issued a subpoena, under its legislative powers, to investigate the President for illegal conduct. And, for the first time, a court has upheld a congressional subpoena to the President for his personal papers. After the decision below, however, any committee of Congress can subpoena any personal information from the President; all the committee needs to say is that it's considering legislation that would force Presidents to disclose that same information. Given the temptation to dig up dirt on political rivals, intrusive subpoenas into personal lives of Presidents will become our new normal in times of divided government—no matter which party is in power. If every committee chairman is going to have this unbounded authority, this Court should be the one to say so.

It should be unsurprising, then, that the one thing the district court, the panel, and the dissenting judges agree upon is that this case raises important separation-of-powers issues. Yet this Court will not have the opportunity to decide for itself whether the decision warrants review unless a stay pending certiorari is granted. That is because the Oversight Committee, despite voluntarily staying the subpoena for more than six months while this dispute wound its way through the lower courts, is going to enforce the subpoena when the D.C. Circuit's mandate issues—i.e., when the parties' agreement expires—unless this Court issues a stay.

The question at this preliminary stage is thus straightforward: whether the President will be allowed to petition for review of an unprecedented demand for his personal papers, or whether he'll be deprived of that chance because the Committee issued the subpoena to a third-party custodian with no incentive to test its validity. This choice should be easy. The Court does not "proceed against the president as against an ordinary individual" and extends him the "high degree of respect due the President of the United States." *United States v. Nixon*, 418 U.S. 683, 708, 715 (1974). The Court's deferential approach is not driven by concern for any "particular President," but for "the Presidency itself." *Trump v. Hawaii*, 138 S. Ct. 2392, 2418 (2018). Respect for the office warrants a stay to prevent the President from suffering the irreparable harm of being denied further review because his case has been mooted through no fault of his own. *See Garrison v. Hudson*, 468 U.S. 1301, 1302 (1984) (Burger, C.J., in chambers); *John Doe Agency Corp.*, 488 U.S. 1306, 1309 (Marshall, J., in chambers).

There is also a fair prospect the Court will reverse the judgment below if review is granted. As Judge Rao thoroughly explained, the Committee's investigation of the President for wrongdoing is not a "'legitimate legislative purpose.'" *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 501 n.14 (1975). It is an attempt to exercise a law-enforcement power beyond Congress's legislative purview. Nor can the investigation "result in ... valid legislation." *Kilbourn v. Thompson*, 103 U.S. 168, 194 (1881). The Presidency is created by the Constitution—not Congress. Hence, Congress cannot expand or alter the office's qualifications, *Powell v. McCormack*, 395 U.S. 486 (1969),

and it cannot interfere with the President's "responsibility to take care that the laws be faithfully executed," *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 493 (2010). The species of financial-disclosure legislation that the Committee supposedly has in mind would do both. But the court never should have reached these issues because the Committee lacks express statutory authority to subpoena the President. An express statement should be required given the serious separation-of-powers issues raised by unleashing every congressional committee to subpoena the President for his personal records.

Finally, there are no countervailing reasons to alter the status quo during the certiorari stage. The suggestion that the Committee suddenly has an urgent need to consider financial-disclosure legislation during the short period of time the petition will be under review is difficult to accept. It becomes impossible upon learning that the only pending legislation with possible relevance had already passed the House and failed in the Senate two weeks ago. Regardless, any harm the Committee might endure pales in comparison to the case-mooting harm Applicants will suffer. When it comes to the balance of harms, this is not a "close case." *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (Brennan, J., in chambers).

For these reasons, Applicants respectfully ask this Court to stay issuance of the D.C. Circuit's mandate pending the filing and disposition of Applicants' petition for certiorari. Additionally, because the mandate will issue on November 20, 2019, Applicants respectfully ask this to Court administratively stay issuance of the mandate pending disposition of this Application.

OPINIONS BELOW

The district court's opinion is reported at *Trump v. Committee on Oversight and Reform of U.S. House of Representatives,* 380 F. Supp. 3d 76 (D.D.C. 2019), and it is reproduced at Appendix ("App.") 144-84. The D.C. Circuit's opinion is reported at *Trump v. Mazars USA, LLP*, 941 F.3d 710 (D.C. Cir. 2019), and it is reproduced at Appendix 1-134. The D.C. Circuit's order denying rehearing en banc is available at *Trump v. Mazars USA, LLP*, --- F.3d ---, 2019 WL 5991603 (D.C. Cir. Nov. 13, 2019), and it is reproduced at App. 136-42.

JURISDICTION

The D.C. Circuit issued its opinion on October 11, 2019. On October 24, 2019, Applicants filed a timely petition for rehearing and rehearing en banc. That same day, Applicants also moved the D.C. Circuit to stay its mandate pending the filing and disposition of a petition of certiorari. On November 7, 2019, the D.C. Circuit denied the motion to stay the mandate. App. 143. On November 13, 2019, the D.C. Circuit denied the petition for rehearing and rehearing en banc. App. 136. Absent a stay by this Court, the mandate will issue on November 20, 2019. *See* Fed. R. App. 41(b). The Court has jurisdiction to stay issuance of the D.C. Circuit's mandate pending the filing and disposition of a petition for certiorari. *See* 28 U.S.C. § 2101(f).

STATEMENT OF THE CASE

On April 15, 2019, the Oversight Committee of the House of Representatives ("Committee") issued a subpoena to Mazars USA LLP, the longtime accountant for President Trump and several Trump entities (Applicants). The subpoena required Mazars to produce eight years of information from four broad categories:

1. All statements of financial condition, annual statements, periodic financial reports, and independent auditors' reports prepared, compiled, reviewed, or audited by Mazars USA LLP or its predecessor, WeiserMazars LLP;

2. Without regard to time, all engagement agreements or contracts related to the preparation, compilation, review, or auditing of the documents described in Item Number 1;

3. All underlying, supporting, or source documents and records used in the preparation, compilation, review, or auditing of documents described in Item Number 1, or any summaries of such documents and records relied upon, or any requests for such documents and records; and

4. All memoranda, notes, and communications related to the preparation, compilation, review, or auditing of the documents described in Item Number 1, including, but not limited to:

    a. all communications between Donald Bender and Donald J. Trump or any employee or representative of the Trump Organization; and

    b. all communications related to potential concerns that records, documents, explanations, or other information, including significant judgments, provided by Donald J. Trump or other individuals from the Trump Organization, were incomplete, inaccurate, or otherwise unsatisfactory.

DDC Doc. 1 at 9-10.

The subpoena emerged from a Committee hearing last February, featuring the testimony of Michael Cohen. At the time he testified, Cohen was awaiting sentencing following his guilty plea to numerous dishonesty-based crimes (including lying to Congress). Among other things, Cohen alleged that the President had "inflated" and "deflated" his assets on "personal financial statements from 2011, 2012, and 2013" to obtain a bank loan for a (never materialized) deal "to buy the Buffalo Bills," "to reduce his [New York] real estate taxes," and to reduce his insurance premiums. Hearing with Michael Cohen, Former Attorney to President Donald Trump: *Hearing Before*

the H. Comm. on Oversight & Reform, 116th Cong. 13, 38, 160-61 (2019), bit.ly/2IrXTkX. The financial statements in question were prepared by Mazars.

The Committee made clear why it was interested in Cohen's testimony. As the Chairman put it: "Mr. Cohen's testimony raises grave questions about the legality of Donald Trump's—President Donald Trump's conduct." Cohen Hearing 6. Committee members agreed. *See id.* at 107 (Hill: "I ask these questions to help determine whether our very own President committed felony crimes"); *id.* at 163-65 (Tlaib: "[O]ur sole purpose[] is exposing the truth.... President Donald J. Trump ... commit[ed] multiple felonies, and you covered it up, correct?"); *id.* at 37 (Clay: "I would like to talk to you about the President's assets, since by law these must be reported accurately."); *id.* at 160-61 (Ocasio-Cortez: "[D]id the President ever provide inflated assets to an insurance company? ... Do you think we need to review his financial statements ... to compare them?"); *id.* at 150-52 (Khanna: "[Y]ou have provided ... compelling evidence of Federal and State crimes, including financial fraud.... I just want the American public to understand that ... the President ... may be involved in a criminal conspiracy."); *id.* at 30 (Maloney: lamenting that "while [Cohen is] facing the consequences of going to jail, [the President] is not").

Before issuing the Mazars subpoena, the Chairman explained its purpose in two documents. The first, a March 20 letter to Mazars, explained that the Committee wanted to verify Cohen's testimony that "President Trump changed the estimated value of his assets and liabilities on financial statements prepared by your company—including inflating or deflating the value depending on [his] purpose." DDC Doc. 30

at 5. The Chairman identified what he perceived to be inconsistencies between the 2011, 2012, and 2013 statements produced by Cohen, and he asked Mazars "[t]o assist [its] review of these issues." DDC Doc. 30 at 6-8. The second, an April 12 memorandum to the Committee, again referenced the need to verify Cohen's testimony, and offered four potential legislative purposes for the subpoena:

> (1) 'whether the President may have engaged in illegal conduct before and during his tenure in office,' (2) 'whether he has undisclosed conflicts of interest that may impair his ability to make impartial policy decisions,' (3) 'whether he is complying with the Emoluments Clauses of the Constitution,' and (4) 'whether he has accurately reported his finances to the Office of Government Ethics and other federal entities.'

DDC Doc. 30 at 21. "The Committee's interest in these matters," the memorandum continued, "informs its review of multiple laws and legislative proposals under [its] jurisdiction." DDC Doc. 30 at 21.

On April 22, 2019, Applicants sued Mazars, the Committee Chairman, and the Committee lawyer who served the subpoena. The lawsuit alleged that the subpoena lacked statutory authority and sought Applicants' private information without a "legitimate legislative purpose." App. 169. A few days later, the Committee intervened in place of the individual congressional defendants, and it agreed to stay enforcement of the subpoena until the district court ruled on Applicants' preliminary-injunction motion. App. 155-56.[1]

The district court treated the preliminary-injunction filings as cross-motions for summary judgment, entered judgment for the Committee, and then denied a stay

[1] Throughout the proceedings below, Mazars has taken the position that "the dispute in this action is between Plaintiffs and the Committee," DDC Doc. 23, and thus deferred to the judiciary's resolution of this matter.

pending appeal. App. 158, 184. After Applicants appealed, the Committee again agreed to stay enforcement of the subpoena; by the parties' agreement, the subpoena will remain stayed until the D.C. Circuit's mandate issues. CADC Doc. 18 at 2-3. Upon issuance of the mandate, then, Mazars must promptly disclose Applicants' private information to the Committee.

On October 11, 2019, in a divided opinion, the D.C. Circuit affirmed the district court's judgment. App. 1-66. For the subpoena to be statutorily valid, the majority explained, Congress must have "given the issuing committee ... authority" to demand these records. App. 18. For the subpoena to be constitutional, it needs a "legitimate legislative purpose." App. 46. That means, *inter alia*, that the Committee is "pursuing a legislative, as opposed to a law-enforcement, objective" and "is investigating a subject on which constitutional legislation 'could be had.'" App. 21. (quoting *McGrain v. Daugherty*, 273 U.S. 135, 177 (1927)).

Taking the issues "in reverse order," App. 20, the majority first upheld the subpoena as constitutional. In the majority's view, the Committee was pursuing a legislative—and not law-enforcement—investigation of the President. In so holding, the majority relied heavily on the Chairman's first memorandum. Despite the Committee's avowed desire to investigate whether the President broke the law, its assertion that its "interest in these matters informs the Committee's review of multiple laws and legislative proposals under its jurisdiction" was simply "more important." App. 26. (cleaned up). Moreover, "that the House has pending several pieces of legislation related to the Committee's inquiry offers highly probative

evidence of the Committee's legislative purpose." App. 27. The majority's view, then, was that this justification is not "an insubstantial, makeweight assertion of remedial [legislative] purpose." App. 28.

The majority further held that the Committee was investigating an area "in which [Congress] may potentially legislate or appropriate." App. 36, 45 (citation and quotations omitted). Specifically, laws requiring presidents to "*disclose* financial information" are a "category of statutes" within Congress's legislative authority because Congress could, among other things, enact laws to enforce the Emoluments Clauses. App. 39. According to the majority, such legislation would not "prevent the President from accomplishing his constitutionally assigned functions" in violation of Article II of the Constitution, impose an additional qualification, or otherwise exceed Congress' authority. App. 40 (cleaned up). To conclude otherwise "would be a return to an 'archaic view of the separation of powers'" that "is not the law." App. 43. In all, the majority saw "no constitutional flaw in laws requiring Presidents to publicly disclose certain financial information." App. 45.

The majority then turned to the Committee's statutory authority. It recognized that the Committee's subpoena authority under the House Rules does not expressly reach the President. But the majority declined "to interpret the House Rules narrowly to deny the Committee the authority it claims." App. 55. First, it rejected application of the clear-statement rule because "the House Rules have no effect whatsoever on 'the balance *between* Congress and the President." App. 59. Since "Congress already possesses—in fact, has previously exercised—the authority to

subpoena Presidents and their information, nothing in the House Rules could in any way alter the balance between the two political branches of government." App. 59-60. (citations and quotations omitted).

Second, the majority declined to apply the canon of constitutional avoidance. Under controlling precedent, the Committee's statutory authority must be narrowly interpreted if there are serious "'doubts'" as to the subpoena's "'constitutionality.'" App. 60. (quoting *United States v. Rumely*, 345 U.S. 41, 46 (1953)). In the majority's view, however, "the constitutional questions raised here are neither grave nor serious and difficult." App. 61 (cleaned up).

Last, the majority rejected application of a narrowing construction to avoid the separation-of-powers concerns raised by authorizing every House committee to subpoena the President. App. 61-64. Whether a flurry of committee subpoenas would interfere with the President's official duties was not presented, the majority held, because this subpoena was "directed at Mazars" and, regardless, there could be no argument that this subpoena "risks unconstitutionally burdening the President's core duties." App. 64.

Judge Rao dissented. App. 67-134. She explained that this case "raises serious separation of powers concerns about how a House committee may investigate a sitting president." App. 67. That is because "allegations of illegal conduct against the President cannot be investigated by Congress except through impeachment." App. 72. "Congress cannot undertake a legislative investigation of an impeachable official if the 'gravamen' of the investigation rests on 'suspicions of criminality.'" App. 73.

(quoting *Kilbourn*, 103 U.S. at 193, 195). Thus, whether this subpoena has "a legislative purpose presents a serious conflict between Congress and the President." App. 77.

In Judge Rao's view, Congress had exceeded its "legislative power" because the "subpoena and investigation explicitly state a purpose of investigating illegal conduct of the President, including specific violations of ethics laws and the Constitution." App. 67. Indeed, "the Committee has emphasized repeatedly and candidly its interest in investigating allegations of illegal conduct by the President." App. 104. The Committee's "investigation," she explained, "is not about administration of the laws generally or the President's incidental involvement in or knowledge of any alleged unlawful activity within the executive branch. Instead the topics of investigation exclusively focus on the President's possible engagement in 'illegal conduct.'" App. 105. That is law enforcement.

Judge Rao recognized that the subpoena also claims "a legislative purpose." App. 108. But "the mere statement of a legislative purpose is not 'more important' when a committee also plainly states its intent to investigate such conduct." App. 109. In this case, the subpoena's "gravamen ... is the President's wrongdoing. The Committee has 'affirmatively and definitely avowed,' *McGrain*, 273 U.S. at 180, its suspicions of criminality against the President." App. 116. Hence, "questions of illegal conduct and interest in reconstructing specific financial transactions of the President are too attenuated and too tangential to the Oversight Committee's legislative purposes." App. 114. (citation and quotations omitted).

In light of this conclusion, Judge Rao did not need to reach other arguments. She nevertheless expressed serious concerns with the majority's statutory analysis. In particular, Judge Rao rejected the notion that separation-of-powers concerns are not implicated because the subpoena was issued to a third-party custodian of the President's papers. App. 74-77. She also explained why, contra the majority's view, laws requiring regulating the President's finances as a condition of holding office are "rife with constitutional concerns." App. 122.

The D.C. Circuit denied rehearing en banc. App. 136-37. Judge Katsas, joined by Judge Henderson, dissented. As he explained, "this case presents exceptionally important questions regarding the separation of powers among Congress, the Executive Branch, and the Judiciary." App. 138. This is only "the second time in American history [that] an Article III court has undertaken to enforce a congressional subpoena for the records of a sitting President." App. 138. And, unfortunately, the ruling "creates an open season on the President's personal records" since "whenever Congress conceivably could pass legislation regarding the President, it also may compel the President to disclose personal records that might inform the legislation." App. 139. "With regard to the threat to the Presidency," then, "'this wolf comes as a wolf.'" App. 139 (quoting *Morrison v. Olson*, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting).

Judge Rao, joined by Judge Henderson, also dissented. "The panel's analysis of these issues," she reiterated, "misapprehends the gravamen of the Committee's subpoena and glosses over the difficult questions it raises for the separation of

powers." App. 140. She added that the fallout from upholding this "unprecedented" subpoena will be serious; "the panel opinion has shifted the balance of power between Congress and the President and allowed a congressional committee to circumvent the careful process of impeachment. The exceptionally important constitutional questions raised by this case justify further review by our court." App. 140. Judge Rao also explained why a recent House resolution did not alter "the central question" here. App. 141-42. "This question is one of exceptional importance," she concluded, "both for this case as well as for the recurring disputes between Congress and the Executive Branch." App. 142.

REASONS FOR GRANTING THE STAY

"To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay. In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). Applicants meet this test.

I. There is a reasonable probability that the Court will grant certiorari to determine whether the Committee's subpoena is lawful.

This petition will present "an important question of federal law that has not been, but should be, settled by the Court." S. Ct. R. 10(c). The district court, before issuing a 41-page opinion, cautioned that "[t]he issues ... are serious" and that "[n]o

judge would make a hasty decision involving such important issues." DDC Doc. 33 at 4-5. The United States filed an amicus brief in support of Applicants, arguing that this dispute "raises significant separation-of-powers issues," and agreeing with Applicants that this novel subpoena is unlawful. CADC Doc. 12 at 6-8. The D.C. Circuit then issued a 66-page opinion that characterized the interests at issue as "weighty," App. 65, and the legal questions as "far" from "unimportant." App. 61. Judge Rao also emphasized the importance of this case in her dissenting opinions. There can be no reasonable dispute that "this case presents exceptionally important questions regarding the separation of powers among Congress, the Executive Branch, and the Judiciary." App. 138 (Katsas, J., dissenting from denial of rehearing en banc).

Nor is there any reasonable argument that resolution of these important issues turns on settled law. This Court has never decided whether a congressional subpoena is constitutional if law enforcement is its "'primary purpose[]'" or if a law-enforcement purpose is "affirmatively and definitely avowed." *Barenblatt v. United States*, 360 U.S. 109, 133 (1959). Nor has the Court decided whether Congress may impose financial disclosure requirements on the President. This is a serious issue given that the Office of the President (like the Supreme Court) is created by the Constitution itself—not by an Act of Congress. The Court also has never held that the House Rules are exempt from the clear-statement rule; rather, it has always subjected those Rules to avoidance principles and narrowing constructions.

More fundamentally, all of these issues are unsettled because everything about this case is "unprecedented." App. 140 (Rao, J., dissenting from denial of rehearing

en banc). This is only the second time a committee has ever subpoenaed the records of a sitting President, and the first time such a demand has been upheld. App. 138-39 (Katsas, J., dissenting from denial of rehearing en banc). Until this case, no court had ever upheld "a targeted investigation of the President's alleged unlawful conduct under the legislative power." App. 103 (Rao, J., dissenting). The subpoena "represents an unprecedented assertion of legislative power." App. 103 (Rao, J., dissenting). "In our government of three separate and co-equal departments the targeting of the President in a congressional subpoena seeking evidence of illegal conduct is no mere 'twist,' but the whole plot." App. 118.

That these questions will be presented in a petition filed by the President increases the likelihood that the Court will grant certiorari. The President is no "'ordinary'" litigant. *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 381 (2004) (quoting *Nixon*, 418 U.S. at 715). The Court gives him "special solicitude" and "'high respect'" when deciding whether to grant review. *Nixon v. Fitzgerald*, 457 U.S. 731, 743 (1982); *Cheney*, 542 U.S. at 385 (quoting *Clinton v. Jones*, 520 U.S. 681, 707 (1997)). In *Jones*, the Court granted a petition filed by the President's personal lawyers based solely on the case's "importance." 520 U.S. at 689. The Court was unmoved by arguments that the case was "one-of-a-kind" and "did not create any conflict among the Courts of Appeals." It deferred to the "representations made on behalf of the Executive Branch as to the potential impact of the precedent established by the Court of Appeals," *id.* at 690—the same representations the Executive Branch has made in this case, *see supra* 14.

President Trump should receive the same interim relief afforded to every other occupant of the office who has litigated a question of this type: a stay that allows this Court to review his challenge to the subpoena. Granting relief reflects the "public importance of the issues presented," *Nixon*, 418 U.S. at 686-87, as well as the "'judicial deference'" that is afforded to the President given his unique "'constitutional responsibilities and status,'" *Cheney*, 542 U.S. at 385 (quoting *Fitzgerald*, 457 U.S. at 753). The Court, in sum, should preserve its ability to review this case not to benefit this "particular President," but for benefit of "the Presidency itself." *Trump v. Hawaii*, 138 S. Ct. at 2418.

II. There is a fair prospect that this Court will reverse the D.C. Circuit's decision upholding the subpoena.

The Mazars subpoena is not "related to, and in furtherance of, a legitimate task of the Congress." *Watkins v. United States*, 354 U.S. 178, 187 (1957). Its primary purpose is law enforcement, not legislating; the legislation it purportedly pursues would be unconstitutional; and the subpoena is not unambiguously authorized by the House Rules.

First, Congress is not "a law enforcement or trial agency. These are functions of the executive and judicial departments of government." *Id.* The Committee's subpoena, however, is an unabashed effort to investigate whether the President violated federal law—a law-enforcement task that exceeds Congress's legislative power. App. 103-17 (Rao, J., dissenting).

At the Cohen hearing (the impetus for this subpoena), the Chairman and several Committee members admitted that their purpose was to assess "the legality

of ... President Donald Trump's conduct." *Supra* 6-7. The Committee's first request to Mazars also stated that it wanted to investigate the accuracy of the President's financial statements to see if he broke the law. In his formal memo, the Chairman's very first stated purpose for the Mazars subpoena was "to investigate whether the President may have engaged in illegal conduct before and during his tenure in office." *Id.* Moreover, the subpoena's "dragnet" requests and singular focus on "certain named individuals" and the "precise reconstruction of past events" are the hallmark of grand-jury and prosecutorial investigations, not legislative inquiries. *Wilkinson v. United States*, 365 U.S. 399, 412 (1961); *see Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 732 (D.C. Cir. 1974). The Committee, therefore, has "'affirmatively and definitely avowed'" an "'unlawful'" law-enforcement purpose. App. 115 (Rao, J., dissenting) (quoting *McGrain*, 273 U.S. at 180).

The D.C. Circuit disagreed because the Committee also said it might pass legislation, and because Applicants' records might be relevant to three bills currently circulating in the House. App. 27 (majority opinion). And while the Committee admitted that it seeks "'to investigate whether the President may have engaged in illegal conduct,'" the D.C. Circuit overlooked that admission because, in its view, investigating "past illegality can be wholly consistent with an intent to enact remedial legislation." App. 29 (quotations omitted). That, however, just turns the constitutional line between a permissible legislative pursuit and an impermissible law-enforcement investigation into a magic-words test. As the Court has explained many times, that is not the law.

Courts must ask, not whether legislation is one possible purpose behind the subpoena, but whether it is the subpoena's "real object," "primary purpose[]," and "gravamen." *McGrain*, 273 U.S. at 178; *Barenblatt*, 360 U.S. at 133; *Kilbourn*, 103 U.S. at 195. Courts, in other words, must not refuse to "see what all others can see and understand" when evaluating the "congressional power of investigation." *Rumely*, 345 U.S. at 44 (cleaned up). While a legislative investigation is not illegitimate because it might incidentally expose illegal conduct, App. 22, a law-enforcement investigation does not become legitimate just because it incidentally might inspire remedial legislation.

This anti-circumvention principle must be rigorously enforced when the President is the target of the subpoena. Although this Court has "upheld some congressional investigations that uncover unlawful action by private citizens," investigating "wrongdoing of the President or any impeachment official has never been treated as merely incidental to a legislative purpose." App. 113 (Rao, J., dissenting). That is because Congress is not afforded the benefit of the doubt when it wields its subpoena power against the Executive. App. 23-25; U.S. Amicus Br., CADC Doc. 12 at 24. Indeed, this Court has consistently required a heightened demonstration of need for a subpoena demanding presidential and White House records. *See Nixon*, 418 U.S. at 713; *Cheney*, 542 U.S. at 385; *In re Sealed Case*, 121 F.3d 729, 754-55 (D.C. Cir. 1997).

But the Court does not need to impose a heightened requirement to invalidate this subpoena. As Judge Rao explained, "the gravamen of the Oversight Committee's

investigation ... is the President's wrongdoing." App. 116 (Rao, J., dissenting). The subpoena "seeks to investigate illegal conduct of the President by reconstructing past actions in connection with alleged violations of ethics laws and the Emoluments Clauses." App. 103 (Rao, J., dissenting). It exceeds Congress's limited, enumerated powers under Article I of the Constitution.

Second, the subpoena concerns "an area in which Congress is forbidden to legislate." *Quinn*, 349 U.S. at 161. In the D.C. Circuit's view, laws requiring the President to make financial disclosures would be constitutional. App. 45. But that is incorrect. The office of the President (like the Supreme Court) is a creature of the Constitution itself—not an Act of Congress. Article II vests "[t]he executive Power" in "the President of the United States of America." U.S. Const. art. II, §1, cl. 1. Congress might have greater control over other executive-branch officials just as it might over the lower federal courts. But the presidency's "unique position in the constitutional scheme," *Nixon*, 457 U.S. at 749, means that Congress's power to legislatively control the occupant is severely constrained, *PCAOB*, 561 U.S. at 493; *see also* Memorandum from Laurence H. Silberman, Deputy Attorney General, to Richard T. Burress, Office of the President, Re: Conflict of Interest Problems Arising out of the President's Nomination of Nelson A. Rockefeller to be Vice President Under the Twenty-Fifth Amendment to the Constitution 5 (Aug. 28, 1974).

Such legislation also would change or expand the qualifications for serving as President. Congress lacks "the power to add to or alter the qualifications of its Members," *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 787 (1995), and, as a

result, it "is limited to the standing qualifications prescribed in the Constitution," *Powell*, 395 U.S. at 550. That rule applies to the President. *Thornton*, 514 U.S. at 803. Since "Congress may not alter or add to the qualifications in the Constitution" for federal elective office, *id.* at 796, its legislative purpose here is invalid.

The D.C. Circuit concluded that such laws do not add a qualification because they "exclude precisely zero individuals from running for or serving as President; regardless of their financial holdings, all constitutionally eligible candidates may apply." App. 45. But this Court rejected that theory of the Qualifications Clause in *Thornton*. There, Arkansas defended its term-limits rule by advancing the same argument. Its law barred no one from running for office or serving in Congress; it merely barred long-term incumbents from the being on the ballot. As Arkansas put it: "they may run as write-in candidates, and if elected, they may serve." 514 U.S. at 828. But the Court responded that because "constitutional rights would be of little value if they could be indirectly denied," the Qualifications Clause prohibits "indirect attempt[s] to accomplish what the Constitution prohibits [parties] from accomplishing directly." *Id.* at 829 (cleaned up). For that reason, the Constitution proscribes not only absolute bars on certain individuals from running or serving in office, but also laws that have "the likely effect of handicapping a class of candidates" in running for office. *Id.* at 836.

Courts applying *Thornton* thus have concluded that the practical ability to both comply with the obligation and serve in office is immaterial. In *Campbell v. Davidson*, the Tenth Circuit invalidated a state law requiring candidates for federal

office to register to vote as a condition of running for office. 233 F.3d 1229 (10th Cir. 2000). Similarly, the Ninth Circuit invalidated a state law requiring candidates for office to be residents of the State in which they sought office when filing nominating papers. *See Schaefer v. Townsend*, 215 F.3d 1031 (9th Cir. 2000). In both, the State argued that no one was barred from running for office. And, in both, the argument was rejected. *See Campbell*, 233 F.3d at 1234; *Schaefer*, 215, F.3d at 1037. On that understanding, a district court recently held that a presidential financial disclosure requirement similar to the one Congress proposes likely "imposes an additional substantive qualification beyond the exclusive confines of the Qualifications Clause and is likely invalid." *Griffin v. Padilla*, --- F. Supp. 3d. ---, 2019 WL 4863447, at **6-7 (E.D. Cal. 2019).

The D.C. Circuit also pointed to the Emoluments Clauses as a source of legislative authority. "If the President may accept no domestic emoluments and must seek Congress's permission before accepting any foreign emoluments," the court posited, "then surely a statute facilitating the disclosure of such payments lies within constitutional limits." App. 40. But if the President cannot accept *any* domestic emolument, then there is nothing to disclose; unless, of course, Congress is seeking to investigate wrongdoing. But that is just law enforcement. It matters not that the Committee wants to know whether the President is complying with the Constitution instead of a statute; "the Constitution and valid federal statutes" are both "the supreme law." *Alden v. Maine*, 527 U.S. 706, 757 (1999). Nor does the D.C. Circuit explain how the Domestic Emoluments Clause—a provision in Article II that states

what "[t]he President ... shall not" do, §1, cl. 7—is an affirmative grant of authority to Congress to enact legislation under Article I.

The D.C. Circuit's reliance on the Foreign Emoluments Clause fares no better. It is unsettled whether this provision even applies to the President. App. 123 (Rao, J., dissenting). The rationale also is boundless. After all, the Foreign Emoluments Clause (unlike its Domestic counterpart) applies to all who hold an "Office of Profit or Trust under [the United States]." Art. I, §9. According to Congress, that means it covers *millions* of federal government employees. 5 U.S.C. §7342(a); 6 O.L.C. Op. 156, 156-59 (1982). If ensuring compliance with the Foreign Emoluments Clause is a legitimate legislative purpose, Congress could subpoena the accounting records of any (or every) one of these millions of federal employees at any time to see whether he or she has accepted foreign emoluments. This cannot be legitimate if we are to maintain "a government of limited powers." *NFIB v. Sebelius*, 567 U.S. 519, 552 (2012) (opinion of Roberts, C.J.). In all events, it is unclear what such legislation would be given that the Constitution only empowers Congress to "Consent" to foreign emoluments. Art. I, §9, cl. 8. The notion that the "real object" of this subpoena, *McGrain*, 273 U.S. at 178, is to see whether the President has accepted emoluments so Congress can consent to them is untenable.

Third, the D.C. Circuit should not have reached any of these serious issues since the Committee lacks statutory authority to subpoena the President's records. A committee cannot issue a subpoena the House Rules do not authorize. *See Watkins v. United States*, 354 U.S. 178, 203-05 (1957). It is common ground that the House Rules

do not expressly authorize the committee to subpoena the President. But, in the D.C. Circuit's view, there was no reason to "interpret the House Rules narrowly" because the Mazars subpoena neither "alters the separation of powers" nor "raises serious constitutional questions." App. 58-65.

Both conclusions are wrong. Foremost, the "authorizing resolution[]" should be narrowly construed to avoid the "serious constitutional questions" that this dispute raises. *Tobin v. United States*, 306 F.2d 270, 274-75 (D.C. Cir. 1962). The D.C. Circuit did not dispute the principle. Nor could it under controlling precedent. *Rumely*, 345 U.S. at 46-48 (giving a House committee's authorizing resolution "a more restricted scope" to avoid "[g]rave constitutional questions"). The court instead held that this case raises no constitutional questions warranting invocation of the avoidance canon. App. 61. That is indefensible given the serious "threat to presidential autonomy and independence," upholding the subpoena poses, App. 139 (Katsas, J., dissenting from denial of rehearing en banc), and the "difficult questions it raises for the separation of powers," App. 140 (Rao, J., dissenting from denial or rehearing en banc).

In order to uphold the subpoena, the D.C. Circuit had to decide that: (1) the Committee did not cross the line from a valid legislative purpose to an invalid law-enforcement purpose, App. 21-36, 45-50; (2) requiring the President to make financial disclosures does not violate Article II of the Constitution, App. 36-45; (3) Congress can rely on the Necessary and Proper Clause to enact laws enforcing the Emoluments Clauses, App. 40; and (4) the President is subject to the Foreign Emoluments Clause,

App. 40. These are serious issues raised in a setting in which the Court should be hesitant to reach them. App. 120 (Rao, J., dissenting).

There should be special "reluctance to decide constitutional issues ... where, as here, they concern the relative powers of coordinate branches of government." *Public Citizen v. U.S. Dept. of Justice*, 491 U.S. 440, 466 (1989). That is doubly true when those issues arise in a subpoena-enforcement action—"not the most practical method of inducing courts to answer broad questions broadly. Especially is this so when the answers sought necessarily demand far-reaching constitutional adjudications. To avoid such constitutional holdings is [the Court's] duty, particularly in the area of the right of Congress to inform itself." *Tobin*, 306 F.2d at 274. That is why the prudent course is to "avoid serious constitutional adjudications until such time as Congress clearly manifests its intention of putting such a decisional burden upon [the court]." *Id.* at 276.

The D.C. Circuit also should have applied the clear-statement rule. It held that "the House Rules have no effect whatsoever on the balance between Congress and the President." App. 59. But this Court disagrees: "Whenever constitutional limits upon the investigative power of Congress have to be drawn by this Court, it ought only to be done after Congress has demonstrated its full awareness of what is at stake by unequivocally authorizing an inquiry of dubious limits." *Rumely*, 345 U.S. at 46. Forcing Congress to be fully aware and unequivocal vindicates important separation-of-powers principles. App. 120-21 (Rao, J., dissenting).

Investigative demands like this one can "distract a President from his public duties, to the detriment of not only the President and his office but also the Nation that the Presidency was designed to serve." *Fitzgerald*, 457 U.S. at 753; *see also id.* at 760-61 (Burger, C.J., concurring) ("The essential purpose of the separation of powers is to allow for independent functioning of each coequal branch of government within its assigned sphere of responsibility, free from risk of control, interference, or intimidation by other branches."). The full House must clearly delegate authority to its standing committees before they are unleashed to "issue successive subpoenas in waves, making far-reaching demands that harry the President and distract his attention." U.S. Amicus Br., CADC Doc. 12 at 11.

The D.C. Circuit concluded that these concerns are hypothetical "because the only subpoena" at issue "is the one directed at Mazars," and no argument has been made that "compliance with *that* subpoena risks unconstitutionally burdening the President's core duties." App. 64. But that misunderstood Applicants' argument and the legal framework upon which it is built. App. 130-131 (Rao, J., dissenting). This Court takes a categorical approach to presidential immunity. *See Fitzgerald*, 457 U.S. at 751-53; *Jones*, 520 U.S. at 689-702. Immunity, accordingly, does not turn on the idiosyncratic burdens (or lack thereof) of a particular subpoena. The issue is whether "this particular [subpoena]—as well as the potential additional [subpoenas] that an affirmance of the Court of Appeals judgment might spawn—may impose an unacceptable burden on the ... office." *Jones*, 520 U.S. at 701-02. The President plainly would be distracted from his official duties if every standing committee of

Congress has the authority to "compel the President to disclose personal records that might inform the legislation" it purports to be considering. App. 139 (Katsas, J., dissenting from denial of rehearing en banc).

More broadly, the D.C. Circuit's rejection of these concerns is emblematic of a misguided approach to separation-of-powers questions. To be sure, "separation of powers does not mean that the branches 'ought to have no *partial agency* in, or no *control* over, the acts of each other.'" App. 43 (quoting *Jones*, 520 U.S. at 702-03 (other quotations omitted)). But the Court has not retreated from the foundational understanding that it is the "responsibility" of the President—and him alone—"to take care that the laws be faithfully executed," *PCAOB*, 561 U.S. at 493, and that "diffusion of power carries with it a diffusion of accountability," *id.* at 497. The Court remains vigilant in protecting the President from "interfere[nce] with the ... discharge of his public duties" given "Article II's vesting of the entire 'executive Power' in a single individual, implemented through the Constitution's structural separation of powers, and revealed both by history and case precedent." *Jones*, 520 U.S. at 710-11 (Breyer, J., concurring). There is thus every reason to be wary of the D.C. Circuit's decision and the flood of presidential subpoenas it will inevitably trigger. "With regard to the threat to the Presidency, 'this wolf comes as a wolf.'" App. 139 (Katsas, J., dissenting from denial of rehearing en banc) (quoting *Morrison*, 487 U.S. at 699 (Scalia, J., dissenting)).

III. Applicants will suffer irreparable harm absent a stay.

There is a clear "likelihood of irreparable harm if the judgment is not stayed." *Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1302 (2010) (Scalia, J., in chambers).

Without a stay, Mazars will disclose Applicants' records to the Committee, mooting this case, and irrevocably destroying Applicants' legal right to keep their information confidential. Certiorari is part of "'the normal course of appellate review,'" and "foreclosure of certiorari review by [the Supreme] Court would impose irreparable harm." *Garrison*, 468 U.S. at 1302 (Burger, C.J., in chambers); *accord Mikutaitis v. United States*, 478 U.S. 1306, 1309 (1986) (Stevens, J., in chambers). "The fact that disclosure would moot that part of the Court of Appeals' decision requiring disclosure," accordingly "create[s] an irreparable injury." *John Doe Agency*, 488 U.S. at 1309 (Marshall, J., in chambers). Preventing mootness thus is "'[p]erhaps the most compelling justification'" for a stay pending certiorari. *Id.*

Even apart from mootness, the "disclosure of private, confidential information 'is the quintessential type of irreparable harm that cannot be compensated or undone by money damages.'" *Airbnb, Inc. v. City of New York*, 373 F. Supp. 3d 467, 499 (S.D.N.Y. 2019); *accord Maness v. Meyers*, 419 U.S. 449, 460 (1975); *Araneta v. United States*, 478 U.S. 1301, 1304-05 (1986) (Burger, C.J., in chambers); *Providence Journal Co. v. FBI*, 595 F.2d 889, 890 (1st Cir. 1979). Loss of confidentiality is "[c]learly ... irreparable" because "[t]here is no way to recapture and remove from the knowledge of others information improperly disclosed." *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bishop*, 839 F. Supp. 68, 72 (D. Me. 1993); *Metro. Life Ins. Co. v. Usery*, 426 F. Supp. 150, 172 (D.D.C. 1976). Both the district court and the House's counsel agree. *See* App. 182; CA2 Doc. 37 at 105:24-25, *Trump v. Deutsche Bank, AG*, No. 19-1540

(2d Cir.) (Mr. Letter: "Obviously I concede that if the documents are out, it is then irreparable.").

Any suggestion that concerns over confidentiality turn on the existence of a privilege would be mistaken. "Irreparable" simply means "'monetary damages are difficult to ascertain or inadequate.'" *CSX Transp., Inc. v. Williams*, 406 F.3d 667, 673 (D.C. Cir. 2005). When confidentiality is lost, "no award of money damages will change the fact that information which Plaintiff was entitled to have kept from the knowledge of third parties is no longer shielded from their gaze." *Merrill Lynch*, 839 F. Supp. at 72.[2]

Moreover, as the Committee told the district court, it "cannot pledge that [the records] will be kept secret": "other Members of Congress" will immediately "have access" to them, and "the decision whether to make the records public lies within its discretion." 5/14/19 Tr. 59:14-25. This risk of public disclosure also irreparably harms Applicants. *See Mikutaitis*, 478 U.S. at 1309; *Airbnb*, 373 F. Supp. 3d at 499. Even disclosure to the Committee irreparably harms Applicants. As the Southern District of New York explained in a similar case: "the very act of disclosure to Congress is ... irreparable.... [P]laintiffs have an interest in keeping their records private from

[2] In any event, Applicants' records are privileged. Accountants have a legally enforceable duty not to disclose their clients' confidential information. 8 N.Y.C.R.R. §29.10(c); AICPA Code of Professional Conduct §1.700.001.01. To overcome this duty, a subpoena must be "validly issued and enforceable." AICPA Code §§1.700.001.02; 1.700.100.02. Even in federal court, then, clients have "a reasonable expectation of confidentiality" in their accounting records, and an accountant can "refuse to produce the documents" while the client "challenges the ... subpoena." *United States v. Deloitte LLP*, 610 F.3d 129, 142 (D.C. Cir. 2010).

everyone, including congresspersons ...." CA2 Doc. 37 JA122:18–JA123:4, *Trump v. Deutsche Bank, AG*, No. 19-1540.

IV. The balance of equities and relative harms weigh strongly in favor of granting a stay.

That Applicants will suffer severe, case-mooting harm should end the debate over a stay. Even if this were a "close case," however, the "'balance [of] equities'" strongly favors Applicants. *Rostker*, 448 U.S. at 1308 (Brennan, J., in chambers). Stays pending certiorari are relatively "short." *In re Biaggi*, 478 F.2d 489, 493 (2d Cir. 1973) (Friendly, J.). And, the Committee has identified no reason why it needs Applicants' records immediately, especially after it voluntarily agreed to stay its subpoena for six months. *See Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers) (agreeing that a self-imposed "eight-week delay ... undermines [the nonapplicant's] allegation of irreparable harm"). Any "interest" the Committee has "in receiving [this] information immediately" simply "poses no threat of irreparable harm." *John Doe Agency*, 488 U.S. at 1309.

The Committee's only possible need for Applicants' records is to help it consider "laws requiring Presidents to publicly disclose certain financial information." App. 45.[3] But studying disclosure laws is not urgent in any meaningful sense, especially in

[3] In opposing a stay below, the Committee suggested that it also needs these records for an impeachment investigation. "Throughout this litigation," however, "the Committee has maintained that it is 'not here relying on impeachment power,' Oral Arg. at 1:34:19–22, and both the panel opinion and dissent agree that the Committee has never invoked the impeachment power as the basis for this subpoena." App. 141 (Rao, J., dissenting from denial of rehearing en banc) (citing App. 24-28; App. 37-44 (Rao, J., dissenting). Indeed, the majority's primary response to the dissent was that the subpoena seeks "information important to determining the fitness of legislation," not "the President's fitness for office." App. 50 (emphasis omitted).

light of the "time and difficulty of enacting new legislation," *Coal. for Responsible Regulation, Inc. v. EPA*, 2012 WL 6621785, at *22 (D.C. Cir. 2012) (Kavanaugh, J., dissenting from denial of rehearing en banc). Nor does the Committee "need" these records to legislate given that "legislative judgments normally depend more on the predicted consequences of proposed legislative actions" than on examining "certain named individuals" or "precise[ly] reconstructi[ng] past events." *Senate Select Comm.*, 498 F.2d at 732. Moreover, the only pending legislation possibly related to this subpoena (H.R. 1) died in the Senate two weeks ago. *See* Congressman Sarbanes, *Senate Republicans Block Effort to Pass H.R. 1* (Oct. 30, 2019), bit.ly/2qeLAD8.

Even assuming the Committee would suffer some abstract harm if it could not immediately access these records, that harm is dwarfed by the irreparable, case-mooting harm that Applicants will suffer if a stay is denied. *See Providence Journal*, 595 F.2d at 890 (granting a stay because "the total and immediate divestiture of appellants' rights to have effective review" outweighed any harm from "postpon[ing] the moment of disclosure"); *Araneta*, 478 U.S. at 1304-05 (granting a stay despite the public's "strong interest in moving forward expeditiously with a grand jury investigation" because "the risk of injury to the applicants could well be irreparable and the injury to the Government will likely be no more than the inconvenience of delay"). "Refusing a stay" in this case, at bottom, "may visit an irreversible harm on

applicants, but granting it will apparently do no permanent injury to respondents." *Philip Morris*, 561 U.S. at 1305.

But this Court does not need to balance the equities anew; several decisions have already balanced them. *See, e.g.*, Judge Order, *Jones v. Clinton*, No. 95-1167 (8th Cir. Apr. 16, 1996) (granting President Clinton's "motion to stay the mandate" until "a petition for writ of certiorari has been filed" and the Supreme Court enters a "final disposition of the case"). In *Eastland*, for example, the D.C. Circuit twice stayed a congressional subpoena to the plaintiff's bank. *U.S. Servicemen's Fund v. Eastland*, 488 F.2d 1252, 1254 (D.C. Cir. 1973). The "decisive element" favoring a stay was the fact that "unless a stay is granted this case will be mooted, and there is likelihood, that irreparable harm will be suffered" by the plaintiff when the enforcement date arrives. *Id.* This Court ultimately reversed the D.C. Circuit's decision on the merits. But it praised how the court handled the preliminary procedural issues in the case—stressing the need to avoid the risk that "compliance by the third person could frustrate any judicial inquiry" into the subpoena's legality. *Eastland*, 421 U.S. at 501 n.14. That same risk exists here.

Finally, in *United States v. Nixon*—the most famous case involving a subpoena to a sitting President—the Court "stayed" the subpoena "pending [its] resolution" of the merits. 418 U.S. 683, 714 (1974). In fact, the Court granted a stay in *Nixon* even though the subpoena sought evidence that was "specific and central to the fair adjudication of a particular criminal case." *Id.* at 713. It is untenable to think that

the Committee somehow needs Applicants' records more than the President's records were needed in *Nixon*.

It makes sense "that from the legislative viewpoint, any alternative to outright enforcement of the subpoena entails delay." *United States v. AT&T Co.*, 567 F.2d 121, 130 (D.C. Cir. 1977). But delay "is an inherent corollary of the existence of coordinate branches." *Id.* Courts must always "balance" the "public interest in the congressional investigation" against individual rights and "executive ... interests." *Id.* at 128. Striking that balance in favor of preserving the status quo is especially important when the case raised unprecedented separation-of-powers issues that warrant the Court's review. *See supra* 14-15, 25-26. Generic concerns about "delay" cannot prevail when, as here, the case will have lasting "consequences for the functioning of the Presidency." *In re Lindsey*, 158 F.3d 1263, 1288-89 (D.C. Cir. 1998) (Tatel, J., concurring in part and dissenting in part).

CONCLUSION

For these reasons, Applicants respectfully ask that this Court order that the mandate for the United States Court of Appeals for the District of Columbia Circuit be stayed pending the filing and disposition of a petition for a writ of certiorari. Because the D.C. Circuit's mandate is set to issue on November 20, 2019. Applicants also respectfully ask that this Court order that the issuance of the mandate be stayed while the Court considers this Application.

Respectfully submitted,

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