

[ORAL ARGUMENT HELD ON MARCH 24, 2022]  
No. 21-5289

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

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COMMITTEE ON WAYS AND MEANS,  
UNITED STATES HOUSE OF REPRESENTATIVES,  
*Plaintiff-Appellee,*

v.

UNITED STATES DEPARTMENT OF THE TREASURY; INTERNAL REVENUE  
SERVICE; CHARLES PAUL RETTIG, in his official capacity as Commissioner of the  
Internal Revenue Service; and JANET L. YELLEN, in her official  
capacity as Secretary of the United States Department of the Treasury,  
*Defendants-Appellees,*

DONALD J. TRUMP, ET AL.  
*Intervenors for Defendant-Appellants.*

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On Appeal from the United States District Court  
for the District of Columbia, No. 1:19-cv-01974  
Before the Honorable Trevor N. McFadden

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**APPELLEE'S MOTION FOR IMMEDIATE ISSUANCE OF THE  
MANDATE AND FOR EXPEDITED TREATMENT**

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August 11, 2022

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Appellee Committee on Ways and Means for the U.S. House of Representatives respectfully requests that the Court immediately issue its mandate in this appeal and that it expedite treatment of this motion.

Defendants-Appellees (“Treasury”) do not oppose the relief this motion is seeking.

Defendants-Intervenors (“Trump Parties”) plan to seek rehearing and a stay pending certiorari. But if those motions are denied, the Trump Parties believe that the mandate should remain stayed for a period of time to allow them to seek an emergency stay of the mandate from the Supreme Court. The Trump Parties believe that period should be 14 days. With regard to the expedited treatment of this motion, the Trump Parties oppose the request that their response be due by August 16, 2022, but they will agree to file by August 18, 2022.

1. On August 9, 2022, this Court affirmed the district court’s dismissal of the Trump Parties’ case. ECF No. 1958452. The Court concurrently ordered that the mandate be withheld “until seven days after disposition of any timely petition for rehearing or rehearing en banc, ... without prejudice to the right of any party to move for expedited issuance of the mandate for good cause shown.” Order, ECF No. 1958453. Good cause for immediately issuing the mandate exists here.

2. The Chairman of the Committee issued a statutory request for the Trump Parties' tax information to the Department of the Treasury in June 2021. The Trump Parties filed cross claims in this action challenging the request as, among other things, beyond Congress' authority and in violation of the constitutional separation of powers and the First Amendment. After briefing and oral argument, the district court dismissed all of the Trump Parties' claims. *See Committee on Ways and Means v. U.S. Dep't of the Treasury*, 575 F. Supp. 3d 53 (D.D.C. 2021). On the Trump Parties' unopposed motion, the district court "STAY[ED] its judgment pending [the Trump Parties'] appeal to the D.C. Circuit." Order, ECF No. 155 (Dec. 20, 2021). The district court also prohibited Treasury from "disclos[ing] any of [the Trump Parties'] tax documents pending [their] appeal to the D.C. Circuit." Order, ECF No. 157 (Apr. 12, 2022); *see* Order, ECF No. 150 (Dec. 12, 2021).

3. This Court granted the parties' joint motion to expedite this appeal on December 27, 2021. After expedited briefing and argument, the Court unanimously affirmed the district court's dismissal, with Judge Henderson writing separately on a single issue and joining the judgment in full. The Court concluded that the Committee's request did not exceed Congress's powers and complied with the separation of powers. It found that the request "articulates a clear legislative purpose on a matter [on] which legislation could be had," and, relying on well-

established Supreme Court precedent, explained that “the mere fact that individual members of Congress may have political motivations as well as legislative ones is of no moment.” Op. 9-10 (quoting *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 508 (1975)), 13.

4. This Court then concluded that the “request in this case passes muster under all suggested variations of the separation of powers analysis,” including the “heightened standard” applied by the Supreme Court in *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019 (2020), because “any burden to the sitting President or the Executive Branch as a whole is tenuous at best.” Op. 17; *see also id.* at 25 (“neither burden, under any test, proves sufficient to require us to enjoin the Chairman’s request for the returns and return information”). This Court also rejected the Trump Parties’ statutory challenge as insufficient under the relevant standard for facial challenges, Op. 25, and their First Amendment challenge as lacking sufficient factual allegations of retaliatory motive to state a claim, Op. 28.

5. By this motion, the Committee now requests that the Court issue its mandate immediately to end the district court’s stay and free Treasury to finally comply with the Committee’s request. Doing so will allow the Committee to begin its constitutionally assigned work of assessing the requested information and determining whether legislative action is necessary or appropriate to address

potentially significant problems with the Presidential Audit Program, Presidential conflicts of interest, or other matters in the public interest.

6. This Court has recognized that immediate issuance of its mandate is warranted where the Court is “satisfied” that it “would not change its decision on [re]hearing” or hear the case en banc, and “there is no reasonable likelihood that the Supreme Court would grant review.” *Johnson v. Bechtel Assocs. Prof'l Corp.*, 801 F.2d 412, 415 (D.C. Cir. 1986) (per curiam). That standard is met here, as evidenced by this Court’s unanimous and well-reasoned decision. *See* Fed. R. App. P. 40(a)(2) (standard for panel rehearing); Fed. R. App. P. 35(a) (standard for rehearing en banc); S. Ct. R. 10 (standard for certiorari). Each of the four judges to have considered the Trump Parties’ claims has concluded that their challenges entirely lack merit based on a long line of Supreme Court and Circuit precedent. And in doing so, this Court concluded that the Trump Parties’ separation-of-powers claim fails *under any proposed standard*. *See, e.g.*, Op. 14, 23. None of the three opinions issued in this case, nor any argument in the Trump Parties’ briefs, suggests any basis to believe that further review will produce a different result. *See also Trump v. Mazars USA, LLP*, 39 F.4th 774 (D.C. Cir. 2022) (rejecting many of the same or similar arguments by the Trump parties).

7. In addition, withholding the mandate, and thereby keeping the stay order in place indefinitely while the Court processes any rehearing petition, will

cause significant and irreparable harm to the Committee. The Committee issued its request to the IRS in June 2021, and Treasury indicated that it intended to comply with the request the following month. The Trump Parties' challenge has delayed that compliance—and, as a result, hindered the Committee's ability to carry out its constitutionally assigned function—for over a year, more than half of the Congressional term. The Trump Parties have had their opportunity to seek judicial review, and continued delay would contravene the Supreme Court's command that challenges to legislative investigations "be given the most expeditious treatment ... because one branch of Government is being asked to halt the functions of a coordinate branch." *Eastland*, 421 U.S. at 511 n.17.

8. The potential harm from delay is acute here given the legislative calendar. Under the Court's order, the earliest the mandate will issue is September 30, 2022—assuming the Trump Parties do not seek rehearing. If the Trump Parties seek rehearing, the mandate will be stayed by additional weeks or months while the Court considers and acts on the petition. Either way—but especially if the Trump Parties seek rehearing, which they have stated they will do—there would be little time left in the current Congressional term by the time the mandate issues. Congress "cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change," *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927), and legislation can rarely be

drafted, let alone enacted, in short order. The opportunity for the Committee to receive the tax returns and return information sought, evaluate it, incorporate its findings into draft legislation, and move the bill through the bicameral process diminishes daily at this point. Realistically, a months-long delay in issuance of the mandate could entirely inhibit this Congress' ability to act on the requested information.

9. Any harm to the Trump Parties from immediate issuance of the mandate will be minimal and far outweighed by the Committee's interest. As the Court recognized in its decision, the potential harm to the Trump Parties from the Treasury's production of the requested information to the Committee, while "concrete," is modest. *Op. 25; see also id.* at 21 ("There is no constitutional guarantee to the privacy of tax returns."); *id.* at 24 (even *public* disclosure of requested information might be "inconvenient" to Trump Parties but not "overly burdensome"); *id.* ("burden" of "invasive requests" regarding former President "is not substantial"). The Court has also already suggested that this minimal harm is far outweighed by the irreparable harm to Congress of preventing the Committee from carrying out its legislative purpose and investigation. *See id.* at 17 ("the need for the Trump Parties' information to inform potential legislation overrides the

burden to the Executive Branch largely because that burden is so tenuous”).<sup>1</sup> *See Barnes v. E-System, Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1305 (1991) (“likelihood that denying the stay will permit irreparable harm to the applicant [does] not clearly exceed the likelihood that granting it will cause irreparable harm to others”). This Court should not allow the Trump Parties to use the federal judicial system as a mechanism to delay the proper activities of a coordinate branch.

10. Moreover, immediate issuance of the mandate need not moot the Trump Parties’ appeal and thereby thwart their ability to seek further review. This Court could stay the effect of its mandate for ten days to allow the Supreme Court to stay the mandate pending a petition for certiorari if the Trump Parties seek such relief at that time.

11. For the same reasons, the Court should expedite treatment of this motion. Currently, the Trump Parties’ response to this motion will be due August 22, 2022, and the Committee’s reply will be due August 29, 2022. *See* Fed. R. App. P. 27(a)(3)(A), (4). Given the urgency and importance of the Committee’s

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<sup>1</sup> Moreover, any potential injury asserted by the Trump Parties is diminished by the fact that the *New York Times* has already obtained and described certain of the relevant tax return data. *See* Buettner et al., *Long-Concealed Records Show Trump’s Chronic Losses and Years of Tax Avoidance*, N.Y. TIMES (Sept. 27, 2020), <https://perma.cc/2Z3H-VS9H>.



request to Treasury, the Committee proposes that the Trump Parties' response be due August 16, 2022, and that the Committee's reply be due August 18, 2022.

### CONCLUSION

For the foregoing reasons, the Court should immediately issue the mandate. It should also expedite treatment of this motion.

Respectfully submitted,

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August 11, 2022

## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), the undersigned hereby certifies that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2).

1. The motion contains 1691 words.
2. The motion has been prepared in proportionally spaced typeface using Microsoft Word for Microsoft 365 in 14 point Times New Roman font. As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

/s/ Douglas N. Letter  
DOUGLAS N. LETTER

August 11, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of August, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Douglas N. Letter

DOUGLAS N. LETTER