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August 29, 2019

**By CM/ECF**

Catherine O'Hagan Wolfe  
Clerk of Court  
U.S. Court of Appeals for the Second Circuit  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: *Donald J. Trump, et al. v. Deutsche Bank, AG, et al.*, No. 19-1540 (response to the Committees' August 27, 2019 letter)

As the Court noted at oral argument, the Committees' subpoenas to Deutsche Bank request "tax returns" and, thus, must "compl[y]" with 26 U.S.C. §6103—the "specific[]" statute that governs tax-return requests. O.A. Recording 48:18-51:20. The Committees responded that their "request" was in "full compliance" with §6103 "because that statute allows requests by committees under certain circumstances for tax-return information." *Id.* at 49:54-50:17. Now, however, the Committees have abandoned that argument, instead contending that §6103 might not apply here at all depending on "facts the Committees do not know" about how Deutsche Bank obtained the returns. Cmtes. Ltr. (Doc. 158) 2. The Committees' speculation is mistaken.

Section 6103 broadly ensures the "confidentiality of federal income tax returns and return information." *Russell v. Bd. of Plumbing Examiners of Cty. of Westchester*, 74 F. Supp. 2d 339, 348 (S.D.N.Y.), *aff'd*, 1 F. App'x 38 (2d Cir. 2001). "This general ban on disclosure," then-Judge Ginsburg explained, "guarantees that the sometimes sensitive or otherwise personal information in a return will be guarded from persons not directly engaged in processing or inspecting the return for tax administration purposes." *Nat'l Treasury Employees Union v. FLRA*, 791 F.2d 183, 184 (D.C. Cir. 1986). And "being unable to get the [returns] directly from the Treasury," the Committees "should not be permitted to do so indirectly" either. *Russell*, 74 F. Supp. 2d at 348. Especially not from banks, which are further prohibited from disclosing private financial information by the Gramm-Leach-Bliley Act, 15 U.S.C. §6801 *et seq.*, the Right to Financial Privacy Act, 12 U.S.C. §3401 *et seq.*, and their contracts.

While the Committees "do not know" whether Deutsche Bank can *disclose* tax returns in response to the subpoenas, Cmtes. Ltr. 2, they never identify their authority to *request* tax returns in the first place. They have none. Tax-return requests by "Committees of Congress" are governed by §6103(f), which allows three specific committees to request

this information: “the Committee on Ways and Means of the House of Representatives,” “the Committee on Finance of the Senate,” and “the Joint Committee on Taxation.” The House Financial Services and Intelligence Committees aren’t listed. While §6103(f) contemplates requests by “[o]ther committees,” those requests must be “specially authorized ... by a resolution of ... the House” that states “the purpose for which the return or return information is to be furnished” and “that such information cannot reasonably be obtained from any other source.” The House has never done that, not even in its belated Resolution 507. Nor could the requirements of §6103 (a statute passed by both houses of Congress and signed by the President) somehow be changed, enlarged, or circumvented by the House Rules (a resolution passed by only one house of Congress). In short, §6103 means the Committees have no jurisdiction to request tax returns.

Of course, the Court need not definitely resolve this issue now. The parties have not had the opportunity to brief or argue how §6103 governs these subpoenas. Plaintiffs were forced to move for a preliminary injunction almost immediately after the subpoenas issued, long before either Bank could verify whether it had tax returns in its possession. Plaintiffs thus did not single out the tax returns specifically, given the broader defects with these subpoenas, the expedited nature of these proceedings, the fact that Plaintiffs sought only temporary relief, and the Committees’ total unwillingness to negotiate the subpoenas’ scope. Because this appeal involves only a preliminary injunction, Plaintiffs retain the ability to amend their complaint or raise additional arguments at summary judgment, including limitations on the production of tax returns. These questions can and should be litigated on remand.

Still, the Court’s questions about the Committees’ request for tax returns highlight more immediate concerns: These subpoenas are overbroad, nonpertinent attempts to reconstruct Plaintiffs’ entire financial history. And they raise “serious questions” (including the Committees’ attempts to exceed §6103 and the limits on their jurisdiction) that should be litigated, instead of mooted by the district court’s denial of a preliminary injunction.

Respectfully submitted,

s/ Patrick Strawbridge

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**CERTIFICATE OF SERVICE**

I filed a true and correct copy of this letter with this Court's Clerk via CM/ECF,  
which will notify all counsel.

Dated: August 29, 2019

s/ Patrick Stranbridge