

117TH CONGRESS
1ST SESSION

H. R. 6079

To protect our democracy by preventing abuses of presidential power, restoring checks and balances and accountability and transparency in government, and defending elections against foreign interference, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 26, 2021

Ms. DEAN (for herself, Mr. NADLER, and Mr. SCHIFF) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To protect our democracy by preventing abuses of presidential power, restoring checks and balances and accountability and transparency in government, and defending elections against foreign interference, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Congressional Sub-
5 poena Compliance and Enforcement Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

1 (1) As the Supreme Court has repeatedly af-
2 firmed, including in its July 9, 2020, holding in
3 Trump v. Mazars, Congress’s “power of inquiry—
4 with process to enforce it—is an essential and ap-
5 propriate auxiliary to the legislative function”.
6 Congress’s power to obtain information, including
7 through the issuance of subpoenas and the enforce-
8 ment of such subpoenas, is “broad and indispen-
9 sable”.

10 (2) Congress “suffers a concrete and particular-
11 ized injury when denied the opportunity to obtain in-
12 formation necessary” to the exercise of its constitu-
13 tional functions, as the U.S. Court of Appeals for
14 the District of Columbia Circuit correctly recognized
15 in its August 7, 2020, en banc decision in Com-
16 mittee on the Judiciary of the U.S. House of Rep-
17 resentatives v. McGahn.

18 (3) Accordingly, the Constitution secures to
19 each House of Congress an inherent right to enforce
20 its subpoenas in court. Explicit statutory authoriza-
21 tion is not required to secure such a right of action,
22 and the contrary holding by a divided panel of the
23 U.S. Court of Appeals for the District of Columbia
24 Circuit in McGahn, entered on August 31, 2020,
25 was in error.

1 **SEC. 3. ENFORCEMENT OF CONGRESSIONAL SUBPOENAS.**

2 (a) IN GENERAL.—Chapter 85 of title 28, United
3 States Code, is amended by inserting after section 1365
4 the following:

5 **“§ 1365a. Congressional actions against subpoena re-**
6 **ipients**

7 “(a) CAUSE OF ACTION.—The United States House
8 of Representatives, the United States Senate, or a com-
9 mittee or subcommittee thereof, may bring a civil action
10 against the recipient of a subpoena issued by a congres-
11 sional committee or subcommittee to enforce compliance
12 with the subpoena.

13 “(b) SPECIAL RULES.—In any civil action described
14 in subsection (a), the following rules shall apply:

15 “(1) The action may be filed in a United States
16 district court of competent jurisdiction.

17 “(2) Notwithstanding section 1657(a), it shall
18 be the duty of every court of the United States to
19 expedite to the greatest possible extent the disposi-
20 tion of any such action and appeal. Upon a showing
21 by the plaintiff of undue delay, other irreparable
22 harm, or good cause, a court to which an appeal of
23 the action may be taken shall issue any necessary
24 and appropriate writs and orders to ensure compli-
25 ance with this paragraph.

1 “(3) If a three-judge court is expressly re-
2 requested by the plaintiff in the initial pleading, the
3 action shall be heard by a three-judge court con-
4 vened pursuant to section 2284, and shall be review-
5 able only by appeal directly to the Supreme Court of
6 the United States. Such appeal shall be taken by the
7 filing of a notice of appeal within 10 days, and the
8 filing of a jurisdictional statement within 30 days, of
9 the entry of the final decision.

10 “(4) The initial pleading must be accompanied
11 by certification that the party bringing the action
12 has in good faith conferred or attempted to confer
13 with the recipient of the subpoena to secure compli-
14 ance with the subpoena without court action.

15 “(c) PENALTIES.—

16 “(1) CASES INVOLVING GOVERNMENT AGEN-
17 CIES.—

18 “(A) IN GENERAL.—The court may impose
19 monetary penalties directly against each head of
20 a Government agency and the head of each
21 component thereof held to have knowingly failed
22 to comply with any part of a congressional sub-
23 poena, unless—

24 “(i) the President instructed the offi-
25 cial not to comply; and

1 “(ii) the President, or the head of the
2 agency or component thereof, submits to
3 the court a letter confirming such instruc-
4 tion and the basis for such instruction.

5 “(B) PROHIBITION ON USE OF GOVERN-
6 MENT FUNDS.—No appropriated funds, funds
7 provided from any accounts in the Treasury,
8 funds derived from the collection of fees, or
9 other Government funds shall be used to pay
10 any monetary penalty imposed by the court
11 pursuant to this paragraph.

12 “(2) LEGAL FEES.—In addition to any other
13 penalties or sanctions, the court shall require that
14 any defendant, other than a Government agency,
15 held to have willfully failed to comply with any part
16 of a congressional subpoena, pay a penalty in an
17 amount equal to that party’s legal fees, including at-
18 torney’s fees, litigation expenses, and other costs. If
19 such defendant is an officer or employee of a Gov-
20 ernment agency, such fees may be paid from funds
21 appropriated to pay the salary of the defendant.

22 “(d) WAIVER.—Any ground for noncompliance as-
23 serted by the recipient of a congressional subpoena shall
24 be deemed to have been waived as to any particular infor-
25 mation withheld from production if the court finds that

1 the recipient failed in a timely manner to comply with the
2 applicable requirements of section 105(b) of the Revised
3 Statutes of the United States with respect to such infor-
4 mation.

5 “(e) RULES OF PROCEDURE.—The Supreme Court
6 and the Judicial Conference of the United States shall
7 prescribe rules of procedure to ensure the expeditious
8 treatment of actions described in subsection (a). Such
9 rules shall be prescribed and submitted to the Congress
10 pursuant to sections 2072, 2073, and 2074. This shall in-
11 clude procedures for expeditiously considering any asser-
12 tion of constitutional or Federal statutory privilege made
13 in connection with testimony by any recipient of a sub-
14 poena from a congressional committee or subcommittee.
15 The Supreme Court shall transmit such rules to Congress
16 within 6 months after the effective date of this section and
17 then pursuant to section 2074 thereafter.

18 “(f) DEFINITION.—For purposes of this section, the
19 term ‘Government agency’ means any office or entity de-
20 scribed in sections 105 and 106 of title 3, an executive
21 department listed in section 101 of title 5, an independent
22 establishment, commission, board, bureau, division, or of-
23 fice in the executive branch, or other agency or instrumen-
24 tality of the Federal Government, including wholly or part-
25 ly owned Government corporations.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
 2 for chapter 85 of title 28, United States Code, is amended
 3 by inserting after the item relating to section 1365 the
 4 following:

“1365a. Congressional actions against subpoena recipients.”.

5 **SEC. 4. COMPLIANCE WITH CONGRESSIONAL SUBPOENAS.**

6 (a) IN GENERAL.—Chapter 7 of title II of the Re-
 7 vised Statutes of the United States (2 U.S.C. 191 et seq.)
 8 is amended—

9 (1) by adding at the end the following:

10 **“SEC. 105. RESPONSE TO CONGRESSIONAL SUBPOENAS.**

11 “(a) SUBPOENA BY CONGRESSIONAL COMMITTEE.—
 12 Any recipient of any subpoena from a congressional com-
 13 mittee or subcommittee shall appear and testify, produce,
 14 or otherwise disclose information in a manner consistent
 15 with the subpoena and this section.

16 “(b) FAILURE TO PRODUCE INFORMATION.—

17 “(1) GROUNDS FOR WITHHOLDING INFORMA-
 18 TION.—Unless required by the Constitution or by
 19 Federal statute, no claim of privilege or protection
 20 from disclosure shall be a ground for withholding in-
 21 formation responsive to the subpoena or required by
 22 this section.

23 “(2) IDENTIFICATION OF INFORMATION WITH-
 24 HELD.—In the case of information that is withheld,
 25 in whole or in part, by the subpoena recipient, the

1 subpoena recipient shall, without delay provide a log
2 containing the following:

3 “(A) An express assertion and description
4 of the ground asserted for withholding the in-
5 formation.

6 “(B) The type of information.

7 “(C) The general subject matter.

8 “(D) The date, author, and addressee.

9 “(E) The relationship of the author and
10 addressee to each other.

11 “(F) The custodian of the information.

12 “(G) Any other descriptive information
13 that may be produced or disclosed regarding
14 the information that will enable the congres-
15 sional committee or subcommittee issuing the
16 subpoena to assess the ground asserted for
17 withholding the information.

18 “(c) DEFINITION.—For purposes of this section the
19 term ‘information’ includes any books, papers, documents,
20 data, or other objects requested in a subpoena issued by
21 a congressional committee or subcommittee.”.

22 (b) CLERICAL AMENDMENT.—The table of contents
23 for chapter 7 of title II of the Revised Statutes of the
24 United States is amended by adding at the end the fol-
25 lowing:

“105. Response to congressional subpoenas.”.

1 **SEC. 5. RULE OF CONSTRUCTION.**

2 Nothing in this Act may be interpreted to limit or
3 constrain Congress' inherent authority or foreclose any
4 other means for enforcing compliance with congressional
5 subpoenas, nor may anything in this Act be interpreted
6 to establish or recognize any ground for noncompliance
7 with a congressional subpoena.

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