

116TH CONGRESS  
2D SESSION

# H. R. 8335

To amend the Revised Statutes of the United States and title 28, United States Code, to enhance compliance with requests for information pursuant to legislative power under Article I of the Constitution, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2020

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

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## A BILL

To amend the Revised Statutes of the United States and title 28, United States Code, to enhance compliance with requests for information pursuant to legislative power under Article I of the Constitution, 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 of 2020”.

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           “(c) PENALTIES.—

11           “(1) CASES INVOLVING GOVERNMENT AGEN-  
12 CIES.—

13           “(A) IN GENERAL.—The court may impose  
14 monetary penalties directly against each head of  
15 a Government agency and the head of each  
16 component thereof held to have knowingly failed  
17 to comply with any part of a congressional sub-  
18 poena.

19           “(B) PROHIBITION ON USE OF GOVERN-  
20 MENT FUNDS.—No appropriated funds, funds  
21 provided from any accounts in the Treasury,  
22 funds derived from the collection of fees, or  
23 other Government funds shall be used to pay  
24 any monetary penalty imposed by the court  
25 pursuant to this paragraph.

1           “(2) LEGAL FEES.—In addition to any other  
2 penalties or sanctions, the court shall require that  
3 any defendant, other than a Government agency,  
4 held to have willfully failed to comply with any part  
5 of a congressional subpoena, pay a penalty in an  
6 amount equal to that party’s legal fees, including at-  
7 torney’s fees, litigation expenses, and other costs. If  
8 such defendant if is an officer or employee of a Gov-  
9 ernment agency, such fees may be paid from funds  
10 appropriated to pay the salary of the defendant.

11           “(d) WAIVER.—Any ground for noncompliance as-  
12 serted by the recipient of a congressional subpoena shall  
13 be deemed to have been waived as to any particular infor-  
14 mation withheld from production if the court finds that  
15 the recipient failed in a timely manner to comply with the  
16 requirements of section 105(b) of the Revised Statutes of  
17 the United States with respect to such information.

18           “(e) RULES OF PROCEDURE.—The Supreme Court  
19 and the Judicial Conference of the United States shall  
20 prescribe rules of procedure to ensure the expeditious  
21 treatment of actions described in subsection (a). Such  
22 rules shall be prescribed and submitted to the Congress  
23 pursuant to sections 2072, 2073, and 2074. This shall in-  
24 clude procedures for expeditiously considering any asser-  
25 tion of constitutional or Federal statutory privilege made

1 in connection with testimony by any recipient of a sub-  
2 poena from a congressional committee or subcommittee.  
3 The Supreme Court shall transmit such rules to Congress  
4 within 6 months after the effective date of this section and  
5 then pursuant to section 2074 thereafter.

6 “(f) DEFINITION.—For purposes of this section, the  
7 term ‘Government agency’ means any office or entity de-  
8 scribed in section 105 and 106 of title 3, an executive de-  
9 partment listed in section 101 of title 5, an independent  
10 establishment, commission, board, bureau, division, or of-  
11 fice in the executive branch, or other agency or instrumen-  
12 tality of the Federal Government, including wholly or part-  
13 ly owned Government corporations.”.

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

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

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

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

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

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

24 “(a) SUBPOENA BY CONGRESSIONAL COMMITTEE.—  
25 Any recipient of any subpoena from a congressional com-

1 mittee or subcommittee shall appear and testify, produce,  
2 or otherwise disclose information in a manner consistent  
3 with the subpoena and this section.

4 “(b) FAILURE TO PRODUCE INFORMATION.—

5 “(1) GROUNDS FOR WITHHOLDING INFORMA-  
6 TION.—Unless required by the Constitution or by  
7 Federal statute, no claim of privilege or protection  
8 from disclosure shall be a ground for withholding in-  
9 formation responsive to the subpoena or required by  
10 this section.

11 “(2) IDENTIFICATION OF INFORMATION WITH-  
12 HELD.—In the case of information that is withheld,  
13 in whole or in part, by the subpoena recipient, the  
14 subpoena recipient shall, without delay provide a log  
15 containing the following:

16 “(A) An express assertion and description  
17 of the ground asserted for withholding the in-  
18 formation.

19 “(B) The type of information.

20 “(C) The general subject matter.

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

22 “(E) The relationship of the author and  
23 addressee to each other.

24 “(F) The custodian of the information.

1           “(G) Any other descriptive information  
2           that may be produced or disclosed regarding  
3           the information that will enable the congress-  
4           sional committee or subcommittee issuing the  
5           subpoena to assess the ground asserted for  
6           withholding the information.

7           “(c) DEFINITION.—For purposes of this section the  
8           term ‘information’ includes any books, papers, documents,  
9           data, or other objects requested in a subpoena issued by  
10          a congressional committee or subcommittee.”; and

11           (2) in section 104, by striking the period at the  
12          end and inserting the following:

13          “, or the Attorney General for the District of Colum-  
14          bia, in which case, notwithstanding section 23–101, Dis-  
15          trict of Columbia Official Code, the offense may be pros-  
16          ecuted by the Attorney General for the District of Colum-  
17          bia, and shall be punishable by a fine of not more than  
18          \$1,000 and imprisonment of not more than 12 months.”.

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

          “105. Response to congressional subpoenas.”.

23          **SEC. 5. RULE OF CONSTRUCTION.**

24           Nothing in this Act may be interpreted to limit or  
25          constrain Congress’ inherent authority or foreclose any



1 other means for enforcing compliance with congressional  
2 subpoenas, nor may anything in this Act be interpreted  
3 to establish or recognize any ground for noncompliance  
4 with a congressional subpoena.

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