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January 23, 2020

By **CM/ECF**

Mark Langer
Clerk of Court
U.S. Court of Appeals for the D.C. Circuit
333 Constitution Ave. N.W.
Room 5205
Washington, D.C. 20001

Re: *Committee on the Judiciary of the United States House of Representatives v. McGahn*,
No. 19-5331

Pursuant to Rule 28(j), we write to inform the Court that the impeachment trial of President Trump commenced on January 21. President Trump's arguments in the impeachment trial contradict DOJ's assertion in this case that the Committee may not seek to enforce its subpoenas in court.

In his answer to the Articles of Impeachment, President Trump criticized the House for not "seek[ing] to enforce" its "subpoenas in court." Answer of President Donald J. Trump at 5, *In re Impeachment of President Donald J. Trump* (U.S. Senate Jan. 18, 2020). President Trump's impeachment attorney similarly faulted the House Committees for not litigating their subpoena disputes in court: "So take Article III of the United States Constitution and remove it? We're acting as if the Courts are an improper venue to determine constitutional issues of this magnitude? That is why we have courts. That is why we have a federal judiciary." Tr. of Senate Trial, Day 2 pt. 1 at 1:07:08-33, *In Re Impeachment of President Donald J. Trump* (Jan. 21, 2020).

By contrast, DOJ argued to this Court that courts cannot hear suits brought by a House Committee to enforce its subpoenas against the Executive Branch. *E.g.*, Oral Arg. Tr. at 13 ("Congress, when it's asserting its institutional prerogatives, never had standing"); *id.* at 15 (if the courts "resolv[e] a purely political dispute, a dispute between the political branches, it risks politicizing the court and undermining public

confidence in the court”); Br. 24 (adjudicating subpoena-enforcement suits threatens “permanent harm” to the Judiciary).

In light of President Trump’s argument, it is not clear whether DOJ still maintains its position that courts are barred from considering subpoena-enforcement suits brought by the House. At the very least, President Trump’s recognition that courts should resolve such suits undermines DOJ’s contrary threshold arguments in this case, which seek to prevent the House and its Committees from obtaining judicial resolution of subpoena-enforcement disputes. The Executive Branch cannot have it both ways.

Because the impeachment trial has now begun, the need for Mr. McGahn’s testimony is more urgent than ever. We respectfully urge the Court to rule expeditiously.

Respectfully submitted,

/s/ Douglas N. Letter

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CERTIFICATE OF SERVICE

I certify that on January 23, 2020, I caused the foregoing document to be filed via the U.S. Court of Appeals for District of Columbia Circuit CM/ECF system, which I understand caused a copy to be served on all registered parties.

/s/ Douglas N. Letter
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