



U.S. Department of Justice
Civil Division
950 Pennsylvania Ave. NW
Washington, DC 20530

January 24, 2020

VIA CM/ECF

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

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

Dear Mr. Langer:

In its Rule 28(j) letter, the Committee claims that “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.” That is incorrect.

As the President’s trial memorandum clearly reaffirmed, “[t]he Trump Administration, like the Obama Administration, has taken the position that a suit by a congressional committee attempting to enforce a subpoena against an Executive Branch official is not a justiciable controversy in an Article III court.” Trial Mem. of President Donald J. Trump 49 n.336 (Jan. 20, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/01/Trial-Memorandum-of-President-Donald-J.-Trump.pdf>. The President thus reiterated DOJ’s position that the political branches must use an “accommodation process in an effort to resolve the disagreement” between themselves. *Id.* at 48.

But recognizing that the House “has taken the opposite view,” the President responded: “the House cannot simultaneously (i) insist that the courts may decide whether any particular refusal to comply with a congressional committee’s demand for information was legally proper and (ii) claim that the House can treat resistance to any demand for information from Congress as a ‘high crime and misdemeanor’

justifying impeachment without securing any judicial determination that the Executive Branch's action was improper." Trial Mem. 49 n.336 (emphasis omitted). The impeachment trial statements excerpted by the Committee were simply expounding on the President's position that the House cannot have it both ways; they plainly were *not* reversing the position that the House may not properly seek judicial enforcement of subpoenas against the Executive.

We previously warned that the House seeks to use this litigation to support impeachment. McGahn Supp. Br. 2-3 (Dec. 23, 2019). Now, the Committee seeks to use the impeachment proceedings to support this litigation. That unprecedented commingling vividly confirms the prescience of Justice Souter's admonition that judicial intervention in this type of interbranch controversy "would risk damaging the public confidence that is vital to the functioning of the Judicial Branch, by embroiling the federal courts in a power contest nearly at the height of its political tension." *Raines v. Byrd*, 521 U.S. 811, 833 (1997) (concurring in the judgment) (citation omitted).

Sincerely,

/s/ Hashim M. Mooppan

Hashim M. Mooppan

Deputy Assistant Attorney General

cc: Counsel of Record (via CM/ECF)