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Levin Center at Wayne Law's Response to Oral Arguments before the D.C. Circuit in the *McGahn* Case

STATEMENT OF LEVIN CENTER DIRECTOR JIM TOWNSEND

Today's oral argument before the D.C. Circuit dramatized what is at stake in the *McGahn* case and other oversight cases pending before the federal courts: the ability of Congress – the people's representatives – to gather information necessary to legislate, to appropriate, and to hold the government accountable. The Department of Justice today cloaked the President's war against oversight in the language of the Constitution, purporting to stand for checks and balances and the separation of powers. In reality, the DOJ's position would cement the power of the President to stonewall congressional inquiries and would codify President Trump's dystopian assertion, "I am the oversight," made after he was questioned about how the people could be assured that COVID-19 response funds would be properly spent.

As if to agree with that statement, the DOJ lawyer asserted that Congress did not have the power to enforce its subpoenas and only the Executive could do so. "Congress," the DOJ astonishingly claimed, "doesn't have a right to information." In other words, only the fox has the power to oversee the hen house. Fortunately, court precedents stretching back nearly a century reject the notion of an all-powerful and unaccountable Executive and embrace, instead, the Framers' vision of three co-equal branches of government in which the people's elected representatives in Congress have the power to insist on transparency from the Executive and, if necessary, go to court to enforce that right. Barring Congress from access to the courts to enforce that right would weaken Congress' ability to ensure that the government meets its obligations to the people and can check the power of the president as envisaged by the Constitution.

Today's arguments before the D.C. Circuit revealed both the recklessness of the DOJ's position and the solid constitutional foundation for Congress' continued right to resort to the courts when a president stonewalls Congress' and denies the people's right to information and oversight.

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