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Levin and Lugar Centers Urge Supreme Court to Support Congressional Subpoenas in Key Trump Cases

Cite critical importance of individual case studies in carrying out Congress' constitutional responsibility to inform, investigate, and legislate

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The Levin Center at Wayne Law and the Lugar Center today jointly filed an amicus brief in two Supreme Court cases reviewing Congress' right to information. The cases, *Trump v. Mazars USA, LLP* and *Trump v. Deutsche Bank AG*, involve the enforcement of Congressional subpoenas to an accounting firm and two banks seeking financial records related to President Trump and his businesses.

The House Committee on Oversight and Reform issued one of the subpoenas to Mazars USA, LLP, an accounting firm, "for records related to work performed for President Trump and several of his business entities," while the House Committee on Financial Services and the Permanent Select Committee on Intelligence issued subpoenas to Deutsche Bank and Capital One for records related to the President. In both cases President Trump filed suit to block the recipients from providing documents to Congress. The committees went to federal court to enforce compliance, and in both cases the lower courts ruled the documents should be produced to Congress. President Trump appealed those decisions, and they are now pending in the Supreme Court.

One argument made by President Trump and dissenting judges in the two cases questions the authority of Congress to investigate individuals, contending that such "case studies" are really law enforcement inquiries that only the executive branch can conduct. In addition, one dissent contends that Congress can investigate wrongdoing by the President only through an impeachment inquiry and not a regular committee investigation. In response, the Levin and Lugar Centers recount in their bipartisan amicus brief the extensive history of congressional investigations that relied on case studies of individuals for fact-finding and legislative reforms and urge the Court to reject any effort to curtail Congress' use of case studies as an oversight tool.

The Centers note in the brief that investigations into case studies featuring individuals have, since Congress' earliest days, "allowed it to analyze complex issues, present facts to the public in comprehensible ways, and take corrective action." They assert that "[a]ny decision by this Court limiting Congress' ability to use case studies to further its legislative function, including as to impeachable officials, would greatly hinder Congress' ability to inform the public about its government's workings, check abuses, and pass evidence-based laws in the public interest. It also would be without basis in the law."

The brief cites the seminal case of *McGrain v. Daugherty* from 1927 in which the Supreme Court "upheld the right of Congress to investigate malfeasance in the Department of Justice using a case study focused squarely on that agency's head, then-Attorney General Harry Daugherty." The Centers point out that the *McGrain* court did not hold that Congress' inquiry into the attorney general constituted a criminal investigation, nor did it require Congress to pursue impeachment as the sole means of investigating an Executive Branch official. The Centers note how the "nearly hundred-year-old [*McGrain*] decision has become the polestar for assessing Congress' investigative powers under the Constitution, has been widely relied upon by subsequent courts, and should be reaffirmed."

This is the first time either Center has filed an amicus brief. "The stakes couldn't be higher," Carl Levin, the Levin Center chair said. "Congress must have the freedom, long recognized in previous court decisions, to conduct investigations that dig into the facts necessary to legislate wisely. Individual case studies are a crucial tool to carry out that constitutional responsibility, one that I used constantly during my 36 years in the Senate. I can honestly say that the consequences to good government would be dire should the Supreme Court hold otherwise."

The full amicus brief can be viewed here. <https://oversightcases.org/wp-content/uploads/2020/03/19-71519-760-LugarCenter-LevinCenterAtWayneLaw-Amicus-Brief.pdf>

The Lugar Center was founded by former United States Senator Richard G. Lugar, the six-term Republican senator for the State of Indiana who previously chaired the Senate Committee on Foreign Relations and the Committee on Agriculture, Nutrition, and Forestry. The Lugar Center's mission is to foster informed debate, enhance bipartisan governance, and bridge ideological divides on important issues.

The Levin Center at Wayne Law was founded and is presently chaired by former United States Senator Carl Levin, the six-term Democratic senator for the State of Michigan who previously chaired the Senate Armed Services Committee and the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs. The primary mission of the Levin Center at Wayne Law is to strengthen bipartisan, fact-based oversight, particularly in Congress. The Levin Center at Wayne Law is affiliated with Wayne State University Law School, but its brief does not purport to present the institutional views, if any, of either the university or the law school.