

matters following the September 9, 2019, request for documents from the House Permanent Select Committee on Intelligence, the House Committee on Oversight and Reform, and the House Committee on Foreign Affairs, including, but not limited to, documents collected that pertain to the hold on military and other security assistance to Ukraine, the scheduling of a White House meeting for the president of Ukraine, and any requests for investigations by Ukraine;

(H) the complaint submitted by a whistleblower within the Intelligence Community on or around August 12, 2019, to the Inspector General of the Intelligence Community;

(I) all meetings or calls, including requests for or records of meetings or telephone calls, scheduling items, calendar entries, White House visitor records, and email or text messages using personal or work-related devices between or among—

(i) current or former White House officials or employees, including but not limited to President Trump; and

(ii) Rudolph W. Giuliani, Ambassador Sondland, Victoria Toensing, or Joseph diGenova; and

(J) former United States Ambassador to Ukraine Marie “Masha” Yovanovitch, including but not limited to the decision to end her tour or recall her from the United States Embassy in Kiev; and

(2) the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the United States Senate in serving the subpoena authorized to be issued by this section.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. MCCONNELL. Mr. Chief Justice, I ask the Court for a brief 15-minute recess before the parties are recognized to debate the Schumer amendment.

#### RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, at 2:49 p.m., the Senate, sitting as a Court of Impeachment, recessed until 3:16 p.m.; whereupon the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. There are now 2 hours of argument on Senator SCHUMER’s amendment.

Mr. SCHIFF, do you wish to be heard on the amendment, and as the proponent or as the opponent?

Mr. Manager SCHIFF. Mr. Chief Justice, we wish to be heard and are a proponent of the amendment.

The CHIEF JUSTICE. Very well.

Mr. Cipollone.

Mr. Counsel CIPOLLONE. Mr. Chief Justice, we are an opponent of the amendment.

The CHIEF JUSTICE. Mr. SCHIFF, you have an hour.

Mr. Manager SCHIFF. Thank you, Mr. Chief Justice.

In a moment, I will introduce House Manager LOFGREN from California to respond on the amendment, but I did want to take this opportunity, before certain representations became congealed, to respond to my colleagues’ argument on the resolution at large.

First, it is worth noting they said nothing about the resolution. They said nothing about the resolution. They made no effort to defend it. They made no effort to even claim that this was like the Senate trial in the Clinton proceeding. They made no argument that, well, this is different here because of this or that. They made no argument about that whatsoever. They made no argument that it makes sense to try the case and then consider documents. They made no argument about why it makes sense to have a trial without witnesses.

And why? Because it is indefensible. It is indefensible. No trial in America has ever been conducted like that, and so you heard nothing about it. And that should be the most telling thing about counsel’s argument.

They had no defense of the McConnell resolution because there is none. They couldn’t defend it on the basis of setting precedent. They couldn’t defend it on the basis of Senate history, traditionally. They couldn’t defend it on the basis of the Constitution. They couldn’t defend it at all.

And so what did they say? Well, first they made the representation that the House is claiming there is no such thing as executive privilege. That is nonsense. No one here has ever suggested there is no such thing as executive privilege, but the interesting thing here is they have never claimed executive privilege. Not once during the House investigation did they ever say that a single document was privileged or a single witness had something privileged to say.

And why didn’t they invoke privilege? Why are we now? And even now they haven’t quite invoked it? Why are we now? Why not in the House?

Because in order to claim privilege, as they know, because they are good lawyers, you have to specify which document, which line, which conversation, and they didn’t want to do that because to do that the President would have to reveal the evidence of his guilt. That is why they made no invocation of privilege.

Now they make the further argument that the House should only be able to impeach after they exhaust all legal remedies, as if the Constitution says: The House shall have the sole power of impeachment, asterisk, but only after it goes to court in the district court, then the court of appeals, then the en banc, then the Supreme Court. Then it is remanded, and they go back up the chain, and it takes years.

Why didn’t the Founders require the exhaustion of legal remedies? Because they didn’t want to put the impeachment process in the courts.

And you know what is interesting is that while these lawyers for the President are here before you today saying the House should have gone to court, they were in court saying the House may not go to court to enforce subpoenas. I kid you not.

Other lawyers—maybe not the ones at this table—but other lawyers for the

President are in court saying the exact opposite of what they are telling you today. They are saying: You cannot enforce congressional subpoenas. That is nonjusticiable. You can’t do it.

Counsel brings up the case involving Charles Kupperman, who was a deputy to John Bolton on the National Security Council, and says: He did what he should do. He went to court to fight us.

Well, the Justice Department took the position that he can’t do that. So these lawyers are saying he should, and then those lawyers are saying he shouldn’t. They can’t have it both ways.

Now, interestingly, while Mr. Kupperman—Dr. Kupperman—went to court—and they applaud him for doing that—his boss, John Bolton, now says there is no necessity for him to go to court. He doesn’t have to do it. He is willing to come and talk to you. He is willing to come and testify and tell you what he knows. The question is, Do you want to hear it? Do you want to hear it? Do you want to hear from someone who was in the meetings, someone who described what the President did—this deal between Mulvaney and Sondland—as a drug deal? Do you want to know why it was a drug deal? Do you want to ask him why it was a drug deal? Do you want to ask him why he repeatedly told people: Go talk to the lawyers?

You should want to know. They don’t want you to know. They don’t want you to know. The President doesn’t want you to know.

Can you really live up to the oath you have taken to be impartial and not know? I don’t think you can.

Now, they also made the argument that you will hear more later on from, apparently, Professor Dershowitz that, well, abuse of power is not an impeachable offense. It is interesting that they had to go outside the realm of constitutional lawyers and scholars to a criminal defense lawyer to make that argument, because no reputable constitutional law expert would do that. Indeed, the one they called in the House—that Republicans called in the House—Jonathan Turley, said exactly the opposite. There is a reason that Jonathan Turley is not sitting at the table, much to his dismay, and that is because he doesn’t support their argument. So they will cite him for one thing, but they will ignore him for the other.

Now they say: Oh, the President is very transparent. He may have refused every subpoena, every document request, but he released two documents—the document on the July 25 call and the document on the April 21 call.

Well, let’s face it. He was forced to release the record of the July 25 call when he got caught, when a whistleblower filed a complaint, when we opened an investigation. He was forced because he got caught. You don’t get credit for transparency when you get caught. And what is more, what is revealed in that, of course, is damning.

Now they point to the only other record he has apparently released, the

April 21 call, and that is interesting too. Now, that is just a congratulatory call, but what is interesting about it is the President was urged on that call to bring up an issue of corruption. And, indeed, in the readout of that call the White House misleadingly said he did, but now that we have seen the record, we see that he didn't. And notwithstanding counsel's claim in their trial brief that the President raised the issue of corruption in his phone call, the July 25 call, of course, that word doesn't appear in either conversation. And why? Because the only corruption he cared about was the corruption that he could help bring about.

Now, Mr. Cipollone and Mr. Sekulow made the representation that Republicans were not even allowed in the depositions conducted in the House. Now, I am not going to suggest to you that Mr. Cipollone would deliberately make a false statement. I will leave to it Mr. Cipollone to make those allegations against others. But I will tell you this: He is mistaken. He is mistaken. Every Republican on the three investigative committees was allowed to participate in the depositions, and, more than that, they got the same time we did. You show me another proceeding, another Presidential impeachment or other that had that kind of access for the opposite party.

And, now, there were depositions in the Clinton impeachment. There were depositions in the Nixon impeachment. So what they would say is some secret process. Well, they were the same private depositions in these other impeachments as well.

Finally, on a couple last points, they made the argument that the President was not allowed, in the Judiciary Committee chaired by my colleague Chairman NADLER, to be present, to present evidence, to have his counsel present. That is also just plain wrong, just plain wrong. I am not going to suggest to you that they are being deliberately misleading here, but it is just plain wrong.

You have also heard my friends at the other table make attacks on me and Chairman NADLER. You will hear more of that. I am not going to do them the dignity of responding to them, but I will say this. They make a very important point, although it is not the point I think they are trying to make. When you hear them attack the House managers, what you are really hearing is: We don't want to talk about the President's guilt. We don't want to talk about the McConnell resolution and how patently unfair it is. We don't want to talk about how—pardon the expression—ass-backward it is to have a trial and then ask for witnesses. And so they will attack House managers because maybe we can distract you for a moment from what is before you. Maybe if we attack House managers, you will be thinking about them instead of thinking about the guilt of the President.

So you will hear more of that, and every time you do, every time you hear

them attacking House managers, I want you to ask yourself: Away from what issue are they trying to distract me? What was the issue that came up just before this? What are they trying to deflect my attention from? Why don't they have a better argument to make on the merits?

Finally, Mr. Sekulow asked: Why are we here? Why are we here?

Well, I will tell you why we are here: Because the President used the power of his office to coerce an ally at war with an adversary, at war with Russia, used the powers of his office to withhold hundreds of millions of dollars of military aid that you appropriated and we appropriated to defend an ally and defend ourselves, because it is our national security as well. And why? To fight corruption? That is nonsense, and you know it.

He withheld that money and he withheld even meeting with him in the Oval Office—the President of Ukraine—because he wanted to coerce Ukraine into these sham investigations of his opponent that he was terrified would beat him in the next election. That is what this is about.

You want to say that is OK? Their brief says that is OK. The President has a right to do it. Under article II, we heard the President can do whatever he wants. You want to say that is OK? Then you have got to say that every future President can come into office and they can do the same thing. Are we prepared to say that? Well, that is why we are here.

I now yield to Representative LOFGREN.

Ms. Manager LOFGREN. Mr. Chief Justice, Senators, counsel for the President, the House managers strongly support Senator SCHUMER's amendment, which would ensure a fair, legitimate trial based on a full evidentiary record.

The Senate can remedy President Trump's unprecedented coverup by taking a straightforward step. It can ask for the key evidence that the President has improperly blocked. Senator SCHUMER's amendment does just that.

The amendment authorizes the subpoena for White House documents that are directly relevant to this case. These documents focus on the President's scheme to strong-arm Ukraine to announce an investigation into his political opponent to interfere with the 2020 election.

The documents will reveal the extent of the White House's coordination with the President's agents, such as Ambassador Sondland and Rudy Giuliani, who pushed the President's so-called "drug deal" on Ukrainian officials. The documents will also show us how key players inside the White House, such as the President's Acting Chief of Staff, Mick Mulvaney, and his deputy, Robert Blair, helped set up the deal by executing the freeze on all military aid and withholding a promised visit to the White House. The documents include

records of the people who may have objected to this scheme, such as Ambassador Bolton.

This is an important impeachment case against the President. The most important documents are going to be at the White House. The documents Senator SCHUMER's amendment targets would provide more clarity and context about President Trump's scheme. The amendment prevents the President from hiding evidence, as he has previously tried to do.

The House subpoenaed these documents as part of the impeachment inquiry, but the President completely rejected this and every document subpoenaed from the House. As powerful as our evidence is—and make no mistake, it overwhelmingly proves his guilt—we did not receive a single document from the executive branch agency, including the White House itself.

Recent revelations from press reports, Freedom of Information Act requests, and additional witnesses, such as Lev Parnas, underscore how relevant these documents are and, therefore, why the President has been so desperate to hide them and his misconduct from Congress and the American people.

A trial without all the relevant evidence is not a fair trial. It would be wrong for you Senators, acting as judges, to be deprived of relevant evidence of the President's offenses when you are judging these most serious charges. It would also be unfair to the American people, who overwhelmingly believe the President should produce all relevant documents and evidence.

Now, documentary evidence is used in all trials for a simple reason. As the story goes, the documents don't lie. Documents give objective real-time insight into the events under investigation. The need for such evidence is especially important in Senate impeachment trials. More than 200 years of Senate practice make clear that documents are generally the first order of business. They have been presented to the Senate before witnesses take the stand in great volume to ensure the Senate has the evidence it needs to evaluate the case.

Documentary evidence in Senate trials has never been limited to the documents sent by the House. The Senate, throughout its existence, has exercised its authority pursuant to its clear rules of procedure to subpoena documents at the outset of the trial.

We don't know with certainty what the documents will say. We simply want the truth, whatever that truth may be, and so do the American people. They want to know the truth, and so should everybody in this Chamber, regardless of party affiliation.

There are key reasons why this amendment is necessary. We will begin by walking through the history and precedent of Senate impeachment trials. I will let you know about the House's efforts to get the documents, which were met by the President and

his administration's categorical commitment to hide all the evidence at all costs, and we will address the specific need for these subpoenaed White House documents. I will tell you why these documents are needed now, not at the end of the trial, in order to ensure a full, fair trial based on a complete evidentiary record.

Someone suggested incorrectly that the Senate is limited only to evidence gathered before the House approved its Articles of Impeachment. Others have suggested, also incorrectly, that it would somehow be strange for the Senate to issue subpoenas. These claims are without any historical, precedential, or legal support.

Over the past two centuries, the Senate has always understood that its sole power under the Constitution to try all impeachments requires the Senate to sit as a Court of Impeachment and hold a trial. In fact, the Founders assigned sole authority only twice in the Constitution, first, giving the House sole authority to impeach, and, second, giving the Senate sole authority to try that impeachment.

If the Founders had intended for the Senate to serve as some kind of appellate body, they would have said that. But, no, instead they wrote this in article I, section 3: "The Senate shall have sole Power to try all Impeachments."

The Senate has always received the relevant documents in impeachment trials, and, indeed, the Senate's own rules of procedure and practice make clear that new evidence will be considered. Precedent shows this. All 15 full Senate impeachment trials considered new evidence.

Let's look at a few examples that show the Senate takes new evidence in impeachment trials.

The first-ever impeachment trial in 1868 against President Andrew Johnson allowed the House managers to spend the first 2 days of the trial introducing new documentary evidence.

It was the same in Judge John Pickering's trial in 1804. New documents were presented to the Senate nearly a week before House managers made their opening statements and later throughout the trial.

As has been mentioned earlier by Mr. SCHIFF, in modern times, in 2010, Judge Porteous's impeachment trial included 7 months of pretrial discovery and 6,000 pages of documentary evidence admitted at trial. After that evidence was admitted, the Senate held its trial.

President Clinton's case did not involve subpoenas for documents. Why was that? Because President Clinton had already produced a huge trove of documents. The independent counsel turned over to Congress some 90,000 pages of relevant documents gathered during the course of his years-long investigation, and I remember, as a member of the Judiciary Committee, going over to the Ford building and looking at the boxes of the documents. But even with all those documents, the Clinton trial included the opportunity

to present new evidence and submission of additional documents and three witnesses.

The Clinton impeachment precedent also shows how President Trump's refusal to produce any relevant documents in response to congressional subpoenas is different from past Presidents—different from President Clinton, different from President Johnson, and less even than President Nixon. In short, not a single President has categorically refused to cooperate with an impeachment investigation. Not a single President has issued a blanket direction to his administration to produce no documents and no witnesses. These are the precedents the Senate must rely on.

The Senate should issue a subpoena for documents at the very outset of the proceedings so that this body, the House managers, the President can all account for those documents in their presentations and deliberations.

It doesn't make sense to request and receive documents after the parties present their cases. The time is now to do that. So why is the amendment needed to prevent President Trump from continuing his categorical commitment to hide the evidence?

In this case the House sought White House documents. Why don't we have them? It is not because we didn't try. It is because the White House refused to give them to us. The President's defense team seems to believe that the White House is permitted to completely refuse to provide any documents without regard to whether or not it is privileged. They apparently believe that Congress's authority is subject to the approval of the President. But that is not what the Constitution says. Our Constitution sets forth a democracy with a system of checks and balances to ensure that no one, and certainly not the President, is above the law. Even President Nixon produced more than 30 transcripts of White House recordings and notes in the meetings with the President.

Here, even before the House launched the investigation that led to this trial, President Trump rejected Congress's constitutional responsibility to use its lawful authority to investigate his actions. He asserted that his administration was fighting all the subpoenas, proclaiming: "I have an Article II, where I have the right to do whatever I want as President."

Here is what he said: "I have an Article II, where I have the right to do whatever I want as President."

Even after the House formally announced its investigation of the President's conduct in Ukraine, the President still continued his obstruction. Beginning on September 9, 2019, the House investigative committee made two attempts to voluntarily obtain documents from the White House. The White House refused to engage and, frankly, to even respond to the House committee.

On October 4, the House Committee on Oversight Reform sent a subpoena

to the White House Acting Chief of Staff, Mick Mulvaney, this time compelling the production of documents from the White House by October 18. On October 8, before the White House documents were due, the White House Counsel sent a letter to Speaker PELOSI, stating the President's position that President Trump and his administration cannot participate in this partisan inquiry under the circumstances. The President simply declared that he will not participate in an investigation he didn't like.

Ten days later, on October 18, the White House Counsel sent a letter to the House, confirming that it would continue to stonewall. The White House Counsel again stated that the President refused to participate.

Well, the Constitution, article I, section 2, says that the House will have the sole power of impeachment, just as in article I, section 3, the Senate has the sole power to try. Participation in a duly authorized congressional investigation isn't optional. It is not up to the President to decide whether to participate or not. The Constitution gives the House the sole power of impeachment. It gives the Senate the sole power to try all impeachments.

The President may not like being impeached, but if the President, not the Congress, decides when impeachment proceedings are appropriate, then the impeachment power is no power at all. If you let him block from Congress and from the American people the evidence to cover up his offenses, then the impeachment power truly will be meaningless.

With all the back-and-forth about these documents, we have heard the phrase "executive privilege." The President and his lawyers keep saying—they talk about a vast legal right to justify hiding the truth, withholding information. But that is a distraction. That is not what the Constitution provides.

The truth is, as has been mentioned by Mr. SCHIFF, in the course of the entire impeachment inquiry, President Trump has not once asserted executive privilege—not a single time. It was not the reason provided by Mr. Cipollone for refusing to comply with the House subpoenas. Indeed, President Trump didn't offer legal justification for withholding the evidence.

Here is the truth. The President, Members of Congress, judges, and the Supreme Court have recognized throughout our Nation's history that Congress's investigative powers are at their absolute peak during impeachment proceedings—your powers. Executive privilege cannot be a barrier to give absolute secrecy to cover up wrongdoing. If it did, the House and the Senate would see their powers disappear.

When President Nixon tried that argument by refusing to produce tape recordings to prosecutors and to Congress, he was soundly rebuked by the other two branches of government. The

Supreme Court unanimously ruled against him. The House Judiciary Committee voted that he be impeached for obstruction of Congress.

It would be remarkable for the United States Senate to declare for the first time in our Nation's history that the President has an absolute right to decide whether his own impeachment trial is legitimate. It would be extraordinary for the Senate to refuse to seek important documentary evidence, especially when the President has yet to assert any privilege to justify withholding documents.

There is another reason this amendment is important. The documents sought are directly relevant to the President's misconduct. The White House is concealing documents involving officials who had direct knowledge of key events at the heart of this trial. This isn't just a guess. We know these documents exist from the witnesses who testified in the House and from other public release of documents.

Let's walk through those specific documents that the White House should send to the Senate. They include, among other documents relating to President Trump, direct communications with President Zelensky; President Trump's request for political investigations, including communications with Rudy Giuliani, Ambassador Sondland, and others; President Trump's unlawful hold of the \$391 million of military aid; concerns that White House officials reported to NSC legal counsel in real time; and the President's decision to recall Ambassador Marie Yovanovitch from Ukraine.

The first set of documents the Senate should get about President Trump's communication with the President of Ukraine would include the phone calls on April 21 and July 25, as well as the September 25, 2019, meeting with President Zelensky in New York.

We know, for example, that NSC officials prepared talking points for the President in preparation for both calls to the Ukrainian President. The talking points were about American policy, as reflected by the votes of Congress, as well as the Trump administration itself. They didn't include any mention of the Bidens or the 2016 election interference or investigations that President Trump requested on the July 25 call.

Here is a clip of Lieutenant Colonel Vindman explaining how the President ignored the points about American policy reflecting the views of both the Congress and the Trump administration.

[Text of Videotape presentation:]

Mr. SCHIFF. Colonel Vindman, if I can turn your attention to the April 21 call that is the first call between President Trump and President Zelensky. Did you prepare talking points for the President's use during that call?

Colonel VINDMAN. Yes, I did.

Mr. SCHIFF. Do those talking points include rooting out corruption in Ukraine?

Colonel VINDMAN. Yes.

Mr. SCHIFF. That was something the President was supposed to raise in the conversation with President Zelensky?

Colonel VINDMAN. Those were the recommended talking points that were cleared through NSC staff for the President, yes.

Ms. Manager LOFGREN. The materials provided for the July 25 call that Lieutenant Colonel Vindman mentioned are highly relevant. They could help confirm that the President's actual statements to President Zelensky were unrelated to the foreign policy objectives of his own administration and show that they served his own personal interest at the expense of America's national security interest.

These documents also include handwritten notes and other documents that White House officials generated during the calls and meetings. We know, for example, that Lieutenant Colonel Vindman, Mr. Morrison, and Jennifer Williams all testified to taking contemporaneous handwritten notes during the July 25 call. Ms. Williams and Lieutenant Colonel Vindman both testified that President Zelensky made an exclusive reference to Burisma that was not included in the memorandum that the White House released to the public. Here is a clip of their testimony.

[Text of Videotape presentation:]

Mr. SCHIFF. Both of you recall President Zelensky in that conversation raising the issue of mentioning Burisma; do you not?

Ms. WILLIAMS. That is correct.

Colonel VINDMAN. Correct.

Mr. SCHIFF. And yet the word "Burisma" appears nowhere in the call record that has been released to the public; is that right?

Ms. WILLIAMS. That is right.

Colonel VINDMAN. Correct.

Ms. Manager LOFGREN. Why do we need documents generated after the calls and meetings? They would shed light on how these events were perceived in the White House and what actions were taken moving forward. For example, National Security Advisor John Bolton wasn't on the 25th call, but he was apparently informed about the contents of the call afterward. His reaction, once he was informed, would be helpful to understanding the extent to which President Trump's action deviated from American policy and American security interest.

There is another set of documents that the Senate should get, and they relate to the political investigations that President Trump and his agents repeatedly asked Ukrainian officials to announce. These documents were about efforts to pressure Ukraine to announce investigations and the decision to place a hold on military aid to Ukraine. They would be very important for you to evaluate the President's conduct.

For example, Ambassador Bolton is a firsthand witness to President Trump's abuse of power. He reported directly to the President. He supervised the entire staff of the National Security Council. Public reports indicate that John Bolton is a voracious note-taker at every meeting.

From witness testimony, we know that Ambassador Bolton hosted the July 10, 2019, meeting where Ambassador Sondland told Ukrainian officials that the promised White House meeting would be scheduled if they announce the investigations. We know Bolton was briefed about this meeting immediately following it when Ambassador Sondland said he had a deal with Mick Mulvaney to schedule the promised White House meeting if Ukraine announced investigations into the Bidens in the 2016 election.

We also know Ambassador Bolton was involved in briefing the President on a Presidential decision memorandum in August reflecting the consensus interagency opinion that the Ukrainian security assessment was vital to America's national security—something the Congress had approved appropriately and something the President had signed.

Press reports indicate that he, too, was involved in the late August Oval Office meeting where he, Secretary Pompeo, and Secretary Esper all tried to convince the President to release the aid.

Now, Ambassador Bolton has come forward and publicly confirmed that he was a witness to important events but also that he has new evidence that no one has seen yet. If we know there is evidence that has not yet come out, all of us should want to hear it. We should want to hear it now before Ambassador Bolton testifies. We should get documents and records relating to his testimony, including his notes, which would provide contemporaneous evidence about what was discussed in meetings related to Ukraine, which would help to evaluate his testimony.

The evidence is not restricted to just Ambassador Bolton. During his public testimony, Ambassador Gordon Sondland stated: I have not had access to all my phone records. He also said that he and his lawyers had asked repeatedly for these materials. He said the materials would help refresh his memory. We should go get that material.

Ambassador Sondland also testified that he exchanged a number of emails with top officials, like Mick Mulvaney, about his efforts to pressure Ukraine to announce the investigations President Trump demanded. Here is his testimony.

[Text of Videotape presentation:]

Ambassador SONDLAND. First, let me say precisely, because we did not think that we were engaging in improper behavior, we made every effort to ensure that the relevant decision makers at the National Security Council and The State Department knew the important details of our efforts. The suggestion that we were engaged in some irregular or rogue diplomacy is absolutely false. I have now identified certain State Department emails and messages that provide contemporaneous support for my view. These emails show that the leadership of the State Department, the National Security Council, and the White House were all informed about the Ukraine efforts from May 23, 2019, until the security aid was released on September 11, 2019.

Ms. Manager LOFGREN. These emails referenced in this testimony are in the possession of the White House, the State Department, and even the Department of Energy since officials from all three entities communicated together.

Now, during his testimony, Ambassador Sondland described it this way: Everyone was in the loop. It was no secret.

These emails are therefore important to understanding the full scope of the scheme.

A request for relevant evidence is not confined to Trump administration officials. The Senate should also get White House records relating to the President's private agents who acted on his behalf in Ukraine, including Victoria Toensing and Joe diGenova. Witness testimony and documents have made clear that Mr. Giuliani, a frequent visitor to the White House who also received and made frequent calls to the White House, was acting on behalf of the President to press Ukrainian officials to announce investigations that would personally and politically benefit the President.

For example, the May 10, 2019, letter from Mr. Giuliani to President-elect Zelensky that is shown on this slide states he was acting "as personal counsel to President Trump with his knowledge and consent." He requested a meeting with the President-elect, to be joined by Ms. Toensing, who is "very familiar with this matter." The evidence indicates he was collaborating with Ms. Toensing and Mr. diGenova in this effort.

The Senate should get the White House records of the meeting and of the calls involving Mr. Giuliani, Ms. Toensing, or Mr. diGenova. These records are important to help you understand the extent to which the White House was involved in Mr. Giuliani's efforts to coerce Ukraine to announce the investigation the President wanted. The records would also show how the President's personal political agenda became more important than policies to help America's national security interests.

The President's counsel may—consistent with his prior attempts to hide evidence—assert that attorney/client privilege would cover these documents, but the President's personal attorney/client privilege cannot shield evidence of misconduct in office or that of his aides or his lawyers' participation in corrupt schemes. We aren't asking for documents reflecting legitimate legal advice; we need documents about their actions to pressure Ukraine to announce an investigation into President Trump's political opponent.

There is a set of White House documents that relate directly to the President's unlawful decision to withhold \$391 million appropriated—bipartisan—to help Ukraine. Witnesses have testified that President Trump directly ordered a hold on the security assistance despite the unanimous opinion of these

agencies that the aid should be released.

Importantly, according to the Government Accountability Office, his action violated the law. On January 16, 2020, the GAO—an independent watchdog—issued a legal opinion finding that President Trump violated the law when he held up security assistance to Ukraine. The GAO said:

Faithful execution of the law does not permit the President to substitute his own policy priorities for those that Congress enacted into law. OMB withheld funds for a policy reason, which is not permitted under the Impoundment Control Act. The withholding was not a programmatic delay. Therefore, we conclude that OMB violated the ICA.

The fact that the President's action to freeze the aid, which he used to pressure Ukraine to announce the political investigations he wanted, was against not only the official consensus of his own administration but also against the law, and it was to help himself. That helps demonstrate these actions were taken for President Trump's personal and political benefit.

Witness testimony and public reporting made clear the White House has a significant body of documents that relate to these key aspects of the President's scheme. Some of these documents outline the planning of the President's freeze.

For example, the New York Times reported in June that Mr. Mulvaney emailed his senior adviser, Mr. Blair: Did we ever find out about the money for Ukraine and whether we can hold it back? This shows that Mr. Mulvaney was in email contact with his aides about the very issues under investigation as part of this impeachment. It tells us that the White House is in possession of communications that go to the heart of the charges before you.

The Senate should also get materials prepared for summary notes from the late August meeting with President Trump, Secretary of Defense Mark Esper, and Secretary of State Mike Pompeo when they try to convince the President that "freeing up the money for Ukraine was the right thing to do." According to the New York Times, Ambassador Bolton told the President this is in America's interest.

The Senate should review that highly relevant document, which reflects real-time assertions by President Trump's own senior aides that Ukrainian aid was in the national security interest of the United States and that there was no legitimate reason to hold up the aid. There are documents that include after-the-fact justifications to try to overcome legal problems and the unanimous objections to freezing the assistance to Ukraine, and we know these documents exist.

On January 3, 2020, OMB stated in a letter to the New York Times that it had discovered 20 responsive documents consisting of 40 pages reflecting emails between White House official Robert Blair and OMB official Michael Duffey that relate directly to the freezing of

the Ukraine security assistance. But OMB wouldn't release them in a Freedom of Information lawsuit, and they have refused to produce these documents at the direction of the President in response to the House's lawful subpoena.

The Washington Post reported that a "confidential White House review" of President Trump's decision to hold up "hundreds of documents that reveal extensive efforts to generate an after-the-fact justification for the . . . debate over whether the delay was legal"—that is known as a coverup, actually.

The White House lawyers had, apparently, uncovered "early August email exchanges between acting chief of staff Mick Mulvaney and White House budget officials seeking to provide some explanation for withholding the funds the president had already ordered a hold" on.

The documents also reportedly include communications between White House officials and outside agencies. Not only does Congress have a right to see them, but the public does, too, under freedom of information laws.

As a matter of constitutional authority, the Senate has the greatest interest in and the right to compel those documents. Indeed, as the news article explains, White House lawyers are reportedly worried about "unflattering exchanges and facts that could at a minimum embarrass the president." Perhaps they should be worried about that, but the risk of embarrassment cannot outweigh the constitutional interests in this impeachment proceeding.

Any evidence of guilt, including further proof of the real reason the President ordered the funds withheld, or after-the-fact attempts to paper over knowingly unlawful conduct, must be provided to ensure a full and fair trial. No privilege or national security rationale can be used as a shield from disclosing misconduct.

There are key White House documents relating to multiple instances when White House officials reported their concerns to White House lawyers about the President's scheme to press Ukraine to do the President a domestic political favor. For example, Lieutenant Colonel Vindman and Dr. Hill both informed NSC lawyers about the July 10 meeting in which Ambassador Sondland revealed he had a deal with Mr. Mulvaney.

I am going to go directly to the clip by Dr. Hill because, at Bolton's direction, Dr. Hill also reported that meeting to John Eisenberg, as she explained in her testimony.

(Text of Videotape presentation:)

Ms. HILL. I had a discussion with Ambassador Bolton both after the meeting in his office, a very brief one, and then one immediately afterward, the subsequent meeting.

Mr. GOLDMAN. So the subsequent meeting—after both meetings when you spoke to him and relayed to him what Ambassador Sondland said, what did Ambassador Bolton say to you?

Ms. HILL. Well, I just want to highlight, first of all, that Ambassador Bolton wanted

me to hold back in the room immediately after the meeting. Again, I was sitting on the sofa with a colleague—

Mr. GOLDMAN. Right. But just in that second meeting, what did he say?

Ms. HILL. Yes, but he was making a very strong point that he wanted to know exactly what was being said. And when I came back and related it to him, he had some very specific instruction for me. And I'm presuming that that's—

Mr. GOLDMAN. What was that specific instruction?

Ms. HILL. The specific instruction was that I had to go to the lawyers—to John Eisenberg, the senior counsel for the National Security Council, to basically say: You tell Eisenberg Ambassador Bolton told me that I am not part of this—whatever drug deal that Mulvaney and Sondland are cooking up.

Mr. GOLDMAN. What did you understand it to mean by the drug deal that Mulvaney and Sondland were cooking up?

Ms. HILL. I took it to mean investigations for a meeting.

Mr. GOLDMAN. Did you go speak to the lawyers?

Ms. HILL. I certainly did.

Mr. GOLDMAN. And you relayed everything that you just told us and more?

Ms. HILL. I relayed it, precisely, and then more of the details of how the meeting had unfolded, as well, which I gave a full description of this in my October 14 deposition.

Ms. Manager LOFGREN. There was something wrong going on here, and White House officials were told repeatedly: Go tell the lawyers about it—Dr. Hill, Lieutenant Colonel Vindman, and Mr. Morrison, who reported to Mr. Eisenberg at least two conversations. We need the notes of those documents to find out what was said. Again, attorney-client privilege cannot shield information about misconduct from the impeachment trial of the President of the United States.

It is interesting. This amendment is supported by 200 years of precedent. It is needed to prevent the President from continuing to hide the evidence, and that is why the specific documents requested are so important for this case. It is faithful to the Constitution's provision that the Senate shall have the sole power to try all impeachments.

The final point I will make today concerns urgency. The Senate should act on this subpoena now, at the outset of the trial. In 14 of the Senate's 15 full impeachment trials, threshold evidentiary matters, including the timing, nature, and scope of witness testimony, and the gathering of all relevant documents, were addressed at the very outset of the trial. There are practical considerations as to why the subpoenas need to be issued now. Resolving whether a subpoena should issue now would let us immediately engage with the White House to resolve asserted legitimate privilege issues, if any exist, and ensure you get the documents as soon as possible so they can be presented to the Senators in advance of witness testimony. Waiting to resolve these threshold matters until after the parties have presented their case would undercut the process of a genuine credible trial.

Thus, common sense, tradition, and fairness all compel that the amend-

ment should be adopted, and it should be adopted now.

Members of the Senate, for all of the reasons I have walked through today, I urge you to support the amendment to issue a subpoena for White House documents—documents that are directly relevant to evaluating the President's scheme.

The House did its job. In the face of the President's obstruction and categorical commitment to hide the evidence, we still gathered direct evidence of his conduct and determined that his conduct required impeachment.

The President complains about due process in the House investigation. But he was not only permitted to participate; he was actually required to participate. Yet he refused to do so. He refused to provide witnesses and documents that would tell his side of the story. So now it is up to you.

With the backing of a subpoena, authorized by the Chief Justice of the United States, you can end President Trump's obstruction. If the Senate fails to take this step, if it will not even ask for this evidence, this trial and your verdict will be questioned.

Congress and the American people deserve the full truth. There is no plausible reason why anyone wouldn't want to hear all of the available evidence about the President's conduct.

It is up to this body to make sure that happens. It is up to you to decide whether the Senate will affirm its sole power and constitutional duty to try impeachments and whether and when it will get the evidence that it needs to render a fair verdict. Don't surrender to the President's stonewalling. It will allow the President to be above the law and deprive the American people of truth in the process.

A fair trial is essential in every way. It is important for the President, who hopes to be exonerated, not merely acquitted by a trial seen as unfair. It is important for the Senate, whose vital role is to continue to protect and defend the Constitution of the United States, which has preserved our American liberty for centuries. And, finally, it is important for the American people, who expect a quest for truth, fairness, and justice.

History is watching, and the House managers urge that you support the amendment.

I reserve the balance of my time.

THE CHIEF JUSTICE. Thank you, counsel.

Mr. Cipollone.

Mr. Counsel CIPOLLONE. Mr. Chief Justice, Patrick Philbin will present our opposition.

THE CHIEF JUSTICE. Very well.

Mr. Philbin.

Mr. Counsel PHILBIN. Thank you.

Mr. Chief Justice, Majority Leader MCCONNELL, Democratic Leader SCHUMER, and Senators, it is remarkable that after taking the action of the breathtaking gravity of voting to impeach the duly elected President of the United States and after saying for

weeks that they had overwhelming evidence to support their case, the first thing that the House managers have done upon arriving, finally, at this Chamber, after waiting for 33 days, is to say: Well, actually, we need more evidence. We are not ready to present our case. We need to have subpoenas, and we need to do more discovery because we don't have the evidence we need to support our case.

This is stunning. It is a stunning admission of the inadequate and broken process that the House Democrats ran in this impeachment inquiry that failed to compile a record to support their charges. It is stunning that they don't have the evidence they need to present their case and that they don't really have a case.

If a litigant showed up in any court in this country on the day of trial and said to the judge, "Actually, Your Honor, we are not ready to go; we need more discovery; we need to do some more subpoenas; we need to do some more work," they would be thrown out of court, and the lawyers would probably be sanctioned. This is not the sort of proceeding that this body should condone.

We have just heard that this is so important. Let's consider what is really at issue in the resolution here and the amendment. It is a matter of timing. It is a matter of when this body will consider whether there should be witnesses or subpoenas for documents.

Why is it that the House managers are so afraid to have to present their case? Remember, they have had weeks of a process that they entirely controlled. They had 17 witnesses who testified first in secret and then in public. They have compiled a record with thousands of pages of reports, and they are apparently afraid to just make a presentation based on the record that they compiled and then have you decide whether there is any "there" there—whether there is anything worth trying to talk to more witnesses about.

Why is it that they can't wait a few days to make their presentation on everything they have been preparing for weeks and then have that issue considered? It is because they don't think there is any "there" there, and they want to ram this through now when it is something that they, themselves, failed to do.

I want to unpack a couple of aspects of what they are asking this body to do. Part of it relates to the broken process in the House and how that process was inadequate and invalid and compiled an inaccurate record, and part of it has to do with what accepting their request to have this body do their job for them would do to this institution going forward and how it would forever alter the relationship between the House and the Senate in impeachment proceedings.

First, as to the process in the House. What the House managers are asking this body to do now is to really do



their job for them because they didn't take the measures to pursue these documents in the House proceedings. There have been a number of statements made that they tried to get the documents and no executive privilege was asserted, and things like that.

Let's look at what actually happened.

They issued a subpoena to the White House, and the White House explained. And we were told a few minutes ago that the White House provided no response, provided no rationale. That is not true. In a letter of October 18, White House Counsel Pat Cipollone explained in three pages of legal argument why that subpoena was invalid. That subpoena was invalid because it was issued without authorization.

We have heard a lot today about how the Constitution assigns the sole power of impeachment to the House. That is right. That is what article I, section 2, says, that it assigns the sole power of impeachment to the House, not to any Member of the House. And no committee of the House can exercise that authority to issue subpoenas until it has been delegated that authority by a vote of the House. There was no vote from the House. Instead, Speaker PELOSI held a press conference, and she purported, by holding a press conference on September 24, to delegate the authority of the House to Manager SCHIFF and several other committees and have them issue subpoenas. All of those subpoenas were invalid. That was explained to the House, to Manager SCHIFF, and the other chairmen of the committees at the time in that October 18 letter.

Did the House take any steps to remedy that? Did they try to dispute that? Did they go to court? Did they do anything to resolve that problem? No, because, as we know, all that they wanted to do was issue a subpoena and move on. They just wanted to get through the impeachment process as quickly as possible and get it done before Christmas. That was their goal. So those subpoenas were unauthorized.

Now, what about some of the other things they brought up: the witnesses, the witnesses who were directed not to testify. In part on this, we have heard Manager SCHIFF say several times that the White House never asserted executive privilege. Well, let me be clear on that. That is a lawyer's trick because it is technically true that the White House didn't assert executive privilege because there is a particular situation in which you do that and a particular way that you do that.

There is another doctrine of immunity of senior advisers to the President that is based on the same principles as executive privilege, and that has been asserted by Presidents of both political parties since the 1970s at least.

This is what one Attorney General explained about that: "... the immunity such advisers enjoy from testimonial compulsion by a congressional committee is absolute and may not be

overborne by competing congressional interests."

That was Attorney General Janet Reno in the Clinton administration explaining that senior advisers to the President are immune from congressional compulsion. That doctrine, that immunity, is rooted in the same principles of executive privilege that has been asserted by all Presidents since the 1970s, and that was the basis on which a number of these advisers whose pictures they put up were directed not to testify.

Did they try to challenge that inquiry? Did they go to court on that one? Did they try to go through the constitutionally mandated accommodations process to see if there was a way to come up with some aspect of testimony to be provided? No, none of that. They just wanted to forge ahead, rush through the process, not have the evidence, and then use that as another charge in their charging sheet for the impeachment, calling it obstruction of Congress.

And what that is, as Professor Turley explained, is this idea that, when there is a conflict between the executive branch and the House in seeking information and the President is asserting constitutionally based privileges, that is part of the operation of separation of powers. That is the President's constitutional duty to defend the prerogatives of the office for the future occupants of that office. It is not something that can be charged as an impeachable offense, as the House Democrats have tried to say here. To do that is an abuse of power. That is what Professor Turley explained. It is Congress's—it is the House Democrats' abuse of power.

We just heard Manager LOFGREN refer to executive privilege as a distraction. She was asserting that these issues of executive privilege are just a distraction that shouldn't hold things up. This is what the Supreme Court has said about executive privilege in *Nixon v. United States*; that the protections for confidentiality and executive privilege are "fundamental to the operations of government and inextricably rooted in the separation of powers under the Constitution."

Inextricably rooted in the separation of powers. That is why it is the President's duty to defend executive branch confidentiality and interests, and that is what the President was doing here.

Now, the process they pursued in the House abandoned any effort beyond issuing the first subpoena that was invalid to work out an accommodation with the White House and, instead, just tried to rush ahead to have the impeachment done by Christmas. What does that lead to now? They are coming to this body after a process that was half-baked, that didn't compile records sufficient to support their charges, and asking this body to do their job for them.

Now, as Leader MCCONNELL pointed out in some comments earlier today, to allow that, to accept the idea that the

House can bring in an impeachment here that is not adequately supported, that has not been investigated, that has not got a record to support it, and turn this body into the investigatory body would permanently alter the relationship between the House and the Senate in impeachment proceedings. It is not the role of the Senate to have to do the House's job for them. It is not the role of the Senate to be doing an investigation and to be doing discovery in a matter like the impeachment of a President of the United States. If the House has not done the investigation and cannot support its case, it is not the time, once it arrives here, to start doing all that work. That is something that is the House's role.

So this is something that is important for this institution, I believe, not to allow the House to turn it into a situation where this body would have to be doing the House's work for it. If there is not evidence to support the case, if they haven't done their investigation, then they are not going to be able to support their case.

Again, what is at issue here—and I think it is important to recall—on the issue of this amendment, is not whether the Senate, whether this body, will be considering whether there should be witnesses or not but when that should be considered. There is no reason not to take the approach that was done in the Clinton impeachment. One hundred Senators agreed then that it made sense to hear from both sides before making determination on that, to hear from both sides to see what sort of case the House could present and the President's defense.

That makes sense. In every trial system there is a mechanism for determining whether the parties have actually presented a triable issue, whether there is really some "there" there that requires the further proceedings. This body should take that commonsense approach and hear what it is that the House managers have to say.

Why are they afraid to present their case? They had weeks in a process that they controlled to compile their record, and they should be able to make that presentation now.

The one point that I will close on is we heard Manager SCHIFF say several times that we have to have a fair process here. I was struck by it that at one point he said, if you allow only one side to present evidence, the outcome will be predetermined. The outcome will be predetermined.

That is exactly what happened in the House. Let's recall that the process they had in the House was one-sided. They locked the President and his lawyers out. There was no due process for the President. They started in secret hearings in the basement. The President couldn't be present or, by his counsel, he couldn't present evidence. He couldn't cross-examine the witnesses. Then there was a second round in public where, again, they locked the President out.

We have heard—and they just said that the President had an opportunity to participate in the third round of hearings that they held before the Judiciary Committee. After one hearing on December 4, Speaker PELOSI, on the morning of December 5, went out and announced the conclusion of the Judiciary Committee proceedings. She announced that she was directing Chairman NADLER to draft Articles of Impeachment. That was before the day they had set for the President to even tell them what rights he wanted to have and to exercise in their proceedings.

It was all already predetermined. The outcome had been predetermined. The Judiciary Committee had already decided it was not going to have any fact hearings. There was no process for the President. He was never allowed to participate.

So when Chairman SCHIFF says here that, if you only allow one side to present evidence, that predetermines the outcome, that is what they did in the House because they had a predetermined outcome there, because it was all one-sided. For him to lecture this body now on what a fair process would be takes some gall. A fair process would be, when you come to the day of trial, be ready to start the trial and present your case and not ask for more discovery.

The President is ready to proceed. The House managers should be ready to proceed.

This amendment should be rejected. Thank you.

The CHIEF JUSTICE. The House managers have 8 minutes remaining.

Ms. Manager LOFGREN. Mr. Chief Justice, the House is certainly not asking the Senate to do the House's job. We are asking the Senate to do its job, to hold the trial. Have you ever heard of a trial that doesn't have evidence, that doesn't have witnesses? That is what this amendment is all about.

Just a moment about the subpoenas. The President—President Trump—refused to provide any information to the House, ordered all of his people to stonewall us. Now, it has been suggested that we should spend 2 or 3 years litigating that question. I was a young law student—actually working on the Nixon impeachment—many years ago, and I remember the day the Supreme Court issued its unanimous decision that the President had to release the tapes. I think *United States v. Nixon* still governs the President. The House and the Senate should not be required to litigate *United States v. Nixon* back in the Supreme Court and down again for it to be good law. It is good law. The President has not complied with those requirements, to the detriment of the truth.

This isn't about helping the House. This isn't about helping the Senate. This is about getting to the truth and making sure that impartial justice is done and that the American people are satisfied that a fair trial has been held.

Mr. Chief Justice, I would yield now to my colleague Mr. SCHIFF.

Mr. Manager SCHIFF. Mr. Chief Justice, Mr. Philbin says that the House is not ready to present its case. Of course, that is not something you heard from any of the managers. We are ready.

The House calls John Bolton. The House calls John Bolton. The House calls Mick Mulvaney. Let's get this trial started, shall we? We are ready to present our case. We are ready to call our witnesses. The question is, Will you let us? That is the question before us.

Mr. Philbin says: Well, if I showed up in court and said I wasn't ready, the judge would throw me out of the court. Of course, we are not saying we aren't ready. You know what would happen if Mr. Philbin went into a court and the judge said: I have made a deal with the defendant. I am not going to let the prosecutor call any witnesses. I am not going to let the prosecutor present any documents.

You know who would get thrown out of court? The judge. The judge would be taken out in handcuffs.

So let's step out of this body for a moment and imagine what a real trial would look like. It would begin with the government receiving documents, being able to introduce documents, and being able to call witnesses. This trial should be no different.

Mr. Philbin makes reference to the Cipollone letter on October 18, which followed a Cipollone eight-page letter on October 8, saying: We are not going to do anything you ask.

Part law, part diatribe. Mostly diatribe. You should read it. It is a letter, basically, that says what the President said on that TV screen, which is we are going to fight all subpoenas.

The doctrine of absolute immunity that counsel refers to has, yes, been invoked or at least attempted by Presidents of both parties and rejected uniformly by the courts, including the most recent decision involving Don McGahn, the President's former White House Counsel, where the court said: That would make him a King. He is no King, and this trial has determined that he shall not become a King, accountable to no one, answerable to no one.

What is more, this idea of absolute immunity, this fever dream of Presidents of both parties, it has no application to documents. Again, this amendment is on documents. There is no absolute immunity from providing documents.

As Representative LOFGREN illustrated, when this case has gone to the Supreme Court, in the Nixon case, the Court held that the interest and confidentiality in an impeachment proceeding must give way to the interests of the truth and the Senate and the American people.

You cannot invoke privilege to protect wrongdoing. You cannot invoke privilege to protect evidence of a constitutional crime like we have here.

Finally, with respect to those secret hearings that counsel keeps referring to, those secret depositions in the House were so secret that only 100 Members of Congress were able to be there and participate—only 100. That is how secret that Chamber was.

Imagine that, in the grand jury proceedings in the Clinton investigation or in the Jaworski and the Nixon investigation—imagine inviting 50 or 100 Members of Congress to sit in on those. Imagine, as the President would like here, apparently, the President insisting on having his lawyer in the grand jury because it was a case being investigated against him.

We had no grand jury here. Why is that? Why did we have no grand jury here? Why was there no special prosecutor here? Because the Justice Department said they are not going to look into this. Bill Barr's Justice Department said there is nothing to see here. If it were up to that Justice Department, you wouldn't know anything about this. That is why there was no grand jury. That is why we, and the House, had to do the investigative work ourselves, and, yes, just like in the Nixon case, just like in the Clinton case, we used depositions.

Do you know what deposition rules we used, those terribly unfair deposition rules we used? They were written by the Republicans. We used the same rules that the GOP House Members used. That is how terribly unfair they were.

My gosh, they used our rules. How dare they? How dare they?

Why do we do depositions? Because we didn't want one witness to hear what another witness was saying so they could either tailor their stories or know they just had to admit so much and no more. It is how every credible investigation works.

Counsel can repeat all they like that the President didn't have a chance to participate, didn't have a chance to have counsel present in the Judiciary Committee or to offer evidence. They can say it as much as they like, but it does not make it any more true when they make the same false representations time and again. It makes it that much more deliberate and onerous.

The President could have presented evidence in the Judiciary Committee. He chose not to. There is a reason for that. There is a reason why the witnesses they have talked about aren't material witnesses. They don't go to the question of whether the President withheld the aid for this corrupt purpose. They don't go to any of that, because they have no witnesses to absolve the President on the facts.

You should want to see these documents. You should want to see them. You should want to know what these private emails and text messages have to say. If you are going to make a guess about the President's guilt or innocence, if you are going to make a decision about whether he should be removed from office, you should want to see what these documents say.



If you don't care, if you have made up your mind—he is the President of my party or, for whatever reason, I am not interested, and what is more, I don't really want the country to see this—that is a totally different matter, but that is not what your oath requires. It is not what your oath requires. The oath requires you to do impartial justice, which means to see the evidence—to see the evidence. That is all we are asking. Just don't blind yourself to the evidence.

I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

#### MOTION TO TABLE

Mr. McCONNELL. Mr. President, I send a motion to the desk to table the amendment, and I ask for the yeas and nays.

The CHIEF JUSTICE. The question is on agreeing to the motion to table.

Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

The CHIEF JUSTICE. Are there any other Senators in the Chamber wishing to vote or change his or her vote?

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 15]

#### YEAS—53

Alexander	Fischer	Perdue
Barrasso	Gardner	Portman
Blackburn	Graham	Risch
Blunt	Grassley	Roberts
Boozman	Hawley	Romney
Braun	Hoeven	Rounds
Burr	Hyde-Smith	Rubio
Capito	Inhofe	Sasse
Cassidy	Johnson	Scott (FL)
Collins	Kennedy	Scott (SC)
Cornyn	Lankford	Shelby
Cotton	Lee	Sullivan
Cramer	Loeffler	Thune
Crapo	McConnell	Tillis
Cruz	McSally	Toomey
Daines	Moran	Wicker
Enzi	Murkowski	Young
Ernst	Paul	

#### NAYS—47

Baldwin	Hassan	Rosen
Bennet	Heinrich	Sanders
Blumenthal	Hirono	Schatz
Booker	Jones	Schumer
Brown	Kaine	Shaheen
Cantwell	King	Sinema
Cardin	Klobuchar	Smith
Carper	Leahy	Stabenow
Casey	Manchin	Tester
Coons	Markey	Udall
Cortez Masto	Menendez	Van Hollen
Duckworth	Merkley	Warner
Durbin	Murphy	Warren
Feinstein	Murray	Whitehouse
Gillibrand	Peters	Wyden
Harris	Reed	

The motion to table is agreed to; the amendment is tabled.

The CHIEF JUSTICE. The Democratic leader is recognized.

#### AMENDMENT NO. 1285

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to subpoena certain documents and records from the State Department, and I ask that it be read.

The CHIEF JUSTICE. The clerk will read the amendment.

The senior assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment, No. 1285.

(Purpose: To subpoena certain Department of State documents and records)

At the appropriate place in the resolving clause, insert the following:

SEC. \_\_\_\_\_. Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials—

(1) the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena to the Secretary of State commanding him to produce, for the time period from January 1, 2019, to the present, all documents, communications, and other records within the possession, custody, or control of the Department of State, referring or relating to—

(A) all meetings and calls between President Trump and the President of Ukraine, including documents, communications, and other records related to the scheduling of, preparation for, and follow-up from the President's April 21 and July 25, 2019 telephone calls, as well as the President's September 25, 2019 meeting with the President of Ukraine in New York;

(B) the actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or security assistance of any kind to Ukraine, including but not limited to the Ukraine Security Assistance Initiative (USAI) and Foreign Military Financing (FMF), including but not limited to all communications with the White House, Department of Defense, and the Office of Management and Budget, as well as the Ukrainian government's knowledge prior to August 28, 2019, of any actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance to Ukraine, including all meetings, calls, or other engagements with Ukrainian officials regarding potential or actual suspensions, holds, or delays in United States assistance to Ukraine;

(C) all documents, communications, notes, and other records created or received by, Secretary Michael R. Pompeo, Counselor T. Ulrich Brechbuhl, former Special Representative for Ukraine Negotiations Ambassador Kurt Volker, Deputy Assistant Secretary George Kent, then-United States Embassy in Ukraine Charge d'Affaires William B. Taylor, and Ambassador to the European Union Gordon Sondland, and other State Department officials, relating to efforts to—

(i) solicit, request, demand, induce, persuade, or coerce Ukraine to conduct or announce investigations;

(ii) offer, schedule, cancel, or withhold a White House meeting for Ukraine's president; or

(iii) hold and then release military and other security assistance to Ukraine;

(D) any meetings or proposed meetings at or involving the White House that relate to Ukraine, including but not limited to—

(i) President Zelensky's inauguration on May 20, 2019, in Kiev, Ukraine, including but not limited to President Trump's decision not to attend, to ask Vice President Pence to lead the delegation, directing Vice President Pence not to attend, and the subsequent decision about the composition of the delegation of the United States;

(ii) a meeting at the White House on or around May 23, 2019, involving, among others, President Trump, then-Special Representative for Ukraine Negotiations Ambassador Kurt Volker, then-Energy Secretary Rick Perry, and United States Ambassador to the European Union Gordon Sondland, as well as any private meetings or conversa-

tions with those individuals before or after the larger meeting;

(iii) meetings at the White House on or about July 10, 2019, involving Ukrainian officials Andriy Yermak and Oleksander Danylyuk and United States Government officials, including, but not limited to, then-National Security Advisor John Bolton, Secretary Perry, Ambassador Volker, and Ambassador Sondland, to include at least a meeting in Ambassador Bolton's office and a subsequent meeting in the Ward Room;

(iv) a meeting at the White House on or around August 30, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(v) a planned meeting, later cancelled, in Warsaw, Poland, on or around September 1, 2019 between President Trump and President Zelensky, and subsequently attended by Vice President Pence; and

(vi) a meeting at the White House on or around September 11, 2019, involving President Trump, Vice President Pence, and Mr. Mulvaney concerning the lifting of the hold on security assistance for Ukraine;

(E) all communications, including but not limited to WhatsApp or text messages on private devices, between current or former State Department officials or employees, including but not limited to Secretary Michael R. Pompeo, Ambassador Volker, Ambassador Sondland, Ambassador Taylor, and Deputy Assistant Secretary Kent, and the following: President Zelensky, Andriy Yermak, or individuals or entities associated with or acting in any capacity as a representative, agent, or proxy for President Zelensky before and after his election;

(F) all records specifically identified by witnesses in the House of Representatives' impeachment inquiry that memorialize key events or concerns, and any records reflecting an official response thereto, including but not limited to—

(i) an August 29, 2019 cable sent by Ambassador Taylor to Secretary Pompeo;

(ii) an August 16, 2019 memorandum to file written by Deputy Assistant Secretary Kent; and

(iii) a September 15, 2019 memorandum to file written by Deputy Assistant Secretary Kent;

(G) all meetings or calls, including but not limited to all requests for or records of meetings or telephone calls, scheduling items, calendar entries, State Department visitor records, and email or text messages using personal or work-related devices, between or among—

(i) current or former State Department officials or employees, including but not limited to Secretary Michael R. Pompeo, Ambassador Volker, and Ambassador Sondland; and

(ii) Rudolph W. Giuliani, Victoria Toensing, or Joseph diGenova; and

(H) the curtailment or recall of former United States Ambassador to Ukraine Marie "Masha" Yovanovitch from the United States Embassy in Kiev, including credible threat reports against her and any protective security measures taken in response; and

(2) the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the Senate in serving the subpoena authorized to be issued by this section.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. McCONNELL. Mr. Chief Justice, I ask for a brief 10-minute recess before the parties are recognized to debate the Schumer amendment. At the end of the debate time, I will again move to table the amendment, as the timing of these

votes are specified in the underlying resolution.

# RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, at 4:48 p.m., the Senate, sitting as a Court of Impeachment, recessed until 5:16 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The amendment is arguable by the parties for 2 hours equally divided.

Mr. Manager SCHIFF, are you a proponent or an opponent?

Mr. Manager SCHIFF. Proponent, Mr. Chief Justice.

The CHIEF JUSTICE. Thank you.

And Mr. Cipollone?

Mr. Counsel CIPOLLONE. Opponent.

The CHIEF JUSTICE. Mr. SCHIFF, you have an hour, and you will be able to reserve time for rebuttal.

Mrs. Manager DEMINGS. Chief Justice Roberts, Senators, counsel for the White House, I am VAL DEMINGS from the State of Florida.

The House managers strongly support the amendment to issue a subpoena for documents to the State Department.

As we explained, the first Article of Impeachment charges the President with using the power of his office to solicit and pressure Ukraine to announce investigations that everyone in this Chamber knows to be bogus. The President didn't even care if an investigation was actually conducted, just that it was announced. Why? Because this was for his own personal and political benefit. The first article further charges that the President did so with corrupt motives and that his use of power for personal gain harmed the national security of the United States.

As the second Article of Impeachment charges, the President sought to conceal evidence of this conduct. He did so by ordering his entire administration—every office, every agency, every official—to defy every subpoena served in the House impeachment inquiry. No President in history has ever done anything like this. Many Presidents have expressly acknowledged that they couldn't do anything like this.

President Trump did not take these extreme steps to hide evidence of his innocence or to protect the institution of the Presidency. As a career law enforcement officer, I have never seen anyone take such extreme steps to hide evidence allegedly proving his innocence, and I do not find that here today. The President is engaged in this coverup because he is guilty, and he knows it. And he knows that the evidence he is concealing will only further demonstrate his culpability.

Notwithstanding this effort to stonewall our inquiry, the House amassed

powerful evidence of the President's high crimes and misdemeanors—17 witnesses, 130 hours of testimony, combined with the President's own admissions on phone calls and in public comments, confirmed and corroborated by hundreds of texts, emails, and documents.

Much of that evidence came from patriotic, nonpartisan, decorated officials in the State Department. They are brave men and women who honored their obligations under the law and gave testimony required by congressional subpoena in the face of the President's taunts and insults. These officials described the President's campaign to induce and pressure Ukraine to announce political investigations; his use of \$391 million of vital military aid—taxpayer money appropriated on a bipartisan basis by Congress—as leverage to force Ukraine to comply; and his withholding of a meeting desperately sought by the newly-elected President of Ukraine.

This testimony was particularly compelling because the State Department is at the very center of President Trump's wrongdoing. We heard firsthand from diplomatic officials who saw up close and personal what was happening and who immediately—immediately—sounded the alarms.

Ambassador William Taylor, who returned to Ukraine in June of last year as Acting Ambassador, texted other State Department officials: "I think it's crazy to withhold security assistance for help with a political campaign."

Ambassador to the European Union Gordon Sondland, who was delegated authority over Ukraine matters by none other than President Trump, testified: "We knew these investigations were important to the President" and "we followed the President's orders."

David Holmes, a senior official at the U.S. Embassy in Kyiv, said: "[I]t was made clear that some action on a Burisma/Biden investigation was a precondition for an Oval Office meeting."

During their testimony, many of these State Department officials described specific documents—including text messages, emails, former diplomatic cables, and notes—that would corroborate their testimony and shed additional light on President Trump's corrupt scheme.

For instance, Ambassador Taylor, who raised concerns that military aid had been conditioned on the President's demand for political investigations, described a "little notebook" in which he would "take notes on conversations" he had with key officials.

Ambassador Sondland referred by date and recipient to emails regarding the President's demand that Ukraine announce political investigations. As we will see, those emails were sent to some of President Trump's top advisers, including Acting White House Chief of Staff Mick Mulvaney, Secretary of State Michael Pompeo, and Secretary of Energy Rick Perry.

Deputy Assistant Secretary of State George Kent, who oversaw Ukraine policy matters in Washington for the State Department, wrote at least four memos to file to document concerning conduct he witnessed or heard.

Ambassador Kurt Volker, the Special Representative for Ukraine Negotiations, provided evidence that he and other American officials communicated with high-level Ukrainian officials—including President Zelensky himself—via text message and WhatsApp about the President's improper demands and how Ukrainian officials would respond to them.

Based on the testimony we received and on evidence that has since emerged, all of these documents and others that we will describe bear directly on the allegations set forth in the first Article of Impeachment. They would help complete our understanding of how the President's scheme unfolded in real time. They would support the conclusion that senior Ukrainian officials understood the corrupt nature of President Trump's demand. They would further expose the extent to which Secretary Pompeo, Acting Chief of Staff Mick Mulvaney, and other senior Trump administration officials were aware of the President's plot and helped carry it out.

We are not talking about a burdensome number of documents; we are talking about a specific, discrete set of materials held by the State Department—documents the State Department has already collected in response to our subpoena but has never produced. We know these materials exist, we know they are relevant, and we know the President is desperately trying to conceal them.

As I will describe, the Senate should subpoena the following: No. 1, WhatsApp and other text message communications; 2, emails; 3, diplomatic cables; and 4, notes.

Given the significance and relevance of these documents, the House requested that they be provided. When these requests were denied—when our requests were denied—the House issued subpoenas commanding that the documents be turned over, but at the President's direction, the Department of State unlawfully defied that subpoena.

As I stand here now, the State Department has all these documents in its possession but refuses, based on the President's order, to let them see the light of day. This is an affront to the House, which has full power to see these documents. It is an affront to the Senate, which has been denied a full record on which to judge the President's guilt or innocence. It is an affront to the Constitution, which makes clear that nobody, not even the President, is above the law. It is an affront to the American people, who have a right to know what the President and his allies are hiding from them and why it is being hidden.

In prior impeachment trials, this body has issued subpoenas requiring