The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. BUTTERFIELD).

**DESIGNATION OF THE SPEAKER PRO TEMPORE**

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

>
> I hereby appoint the Honorable G. K. BUTTERFIELD to act as Speaker pro tempore on this day.

NANCY PELOSI,

Speaker of the House of Representatives.

**PRAYER**

Reverend Benjamin Hogue, Lutheran Church of the Reformation, Washington, D.C., offered the following prayer:

> God of love, truth, and goodness, You promise to join us along the way.
>
> Give those gathered here open spirits to discern Your presence within, open minds to legislate and dream with creative possibility, and open hearts to join one another in cooperation, humility, and hope.
>
> Remind us of the fierce urgency of now. Bless the promises of democracy, and make freedom and equality a reality for all of Your children.
>
> Keep us uncomfortable with complacency, and let us never be satisfied until justice rolls down like waters and righteousness like a mighty stream.
>
> Assure us that we have what we need for today; that You will provide us what we need for tomorrow; and that You have called us to lead Your people into the future.
>
> For all this and the grace we receive this day, we give You thanks. Amen.

**THE JOURNAL**

The SPEAKER pro tempore. Pursuant to section 3(a) of House Resolution 790, the Journal of the last day’s proceedings is approved.

**PLEDGE OF ALLEGIANCE**

The SPEAKER pro tempore. The Chair will lead the House in the Pledge of Allegiance.

The SPEAKER pro tempore led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

**ENROLLED BILL SIGNED**

Cheryl L. Johnson, Clerk of the House, reported and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 5430. An act to implement the Agreement between the United States of America, the United Mexican States, and Canada attached as an Annex to the Protocol Replacing the North America Free Trade Agreement.

**ADJOURNMENT**

The SPEAKER pro tempore. Pursuant to section 3(b) of House Resolution 790, the House stands adjourned until 2 p.m. on Friday, January 24, 2020.

Thereupon (at 10 o’clock and 2 minutes a.m.), under its previous order, the House adjourned until Friday, January 24, 2020, at 2 p.m.

**EXECUTIVE COMMUNICATIONS, ETC.**

Under clause 2 of rule XIV, executive communications were taken from the Speaker’s table and referred as follows:


3605. A letter from the Senior Advisor, FDA, Department of Health and Human Services, transmitting a notification of an action on nomination and a discontinuation of service in acting role, pursuant to 5 U.S.C. 3349(a); Public Law 106-277, 151(b); (112 Stat. 2681-614); to the Committee on Oversight and Reform.

3606. A letter from the Chair, National Science Board, transmitting the Board’s Science and Engineering Indicators 2020 report, pursuant to 42 U.S.C. 1865(j)(1); May 10,
REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. NEAL: Committee on Ways and Means. H.R. 3301. A bill to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, to provide disaster relief, and for other purposes; with an amendment (Rept. 116–379). Referred to the Committee of the Whole House on the state of the Union.

Mr. BINGHAM: Committee on Transportation and Infrastructure. H.R. 5662. A bill to amend the Trafficking Victims Protection Act of 2000 to ensure adequate time for the preparation of the annual Trafficking in Persons Report, require the timely provision of information to the Office to Monitor and Combat Trafficking in Persons and the Bureau of Diplomatic Security of the Department of State regarding the number and location of visa denials based, in whole or in part, on grounds related to human trafficking, and for other purposes; to the Committee on Foreign Affairs, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SCHIFF, Ms. GABBARD, Ms. MENG, Mr. BLUMENTHAL, Mr. SERRANO, Mr. LYNCH, Mr. RASKIN, Mr. TRONE, Ms. MCCOLLUM, Mr. PAFFER, Ms. MOORE, Mr. KUSTER of New Hampshire, and Ms. TRAHAEN:

H.R. 5664. A bill to amend the Taxpayer Protection Act of 2020 to provide adequate time for the preparation of the annual Taxpayer Protection Report, require the timely provision of information to the Office to Monitor and Combat Taxpayer Protection, and for other purposes; to the Committee on Ways and Energy and Commerce, and referred to the Committee of the Whole House on the state of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

By Ms. ESHOO (for herself, Mr. WELCH, Mr. McGovern, Mr. NEAL, Mr. ENGEL, Mr. DeFazio, Mr. Cox of California, Mr. Huffman, Ms. Speier, Mr. Schiff, Ms. Gabbard, Ms. Meng, Mr. Blumenauer, Mr. Serrano, Mr. Lynch, Mr. Raskin, Mr. Trone, Ms. McCollum, Mr. Paffrath, Ms. Moore, Ms. Kuster of New Hampshire, and Mrs. Trahan):

H.R. 5662. A bill to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, to provide disaster relief, and for other purposes; to the Committee on Energy and Commerce.

By Mr. ROY:

H.R. 5663. A bill to amend title 23, United States Code, to require that each State receives an aggregate apportionment equal to at least 100 percent of the estimated tax payments attributable to certain highway users in the State, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. BANKS (for himself and Ms. Cheney):

H.R. 5661. A bill to prohibit the sharing of United States intelligence with countries that are operating over Huawei fifth generation telecommunications technology within their borders; to the Committee on Intelligence (Permanent Select).

By Mr. BIGGS:

H.R. 5662. A bill to amend title 18, United States Code, to prohibit certain abortion procedures, and for other purposes; to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. GUTHRIE (for himself and Mr. Roy):

H.R. 5663. A bill to amend the Federal Food, Drug, and Cosmetic Act to give authority to the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, to destroy counterfeit devices; to the Committee on Energy and Commerce.

By Mr. McCaul (for himself and Mr. Engel):

H.R. 5664. A bill to amend the Trafficking Victims Protection Act of 2000 to ensure adequate time for the preparation of the annual Trafficking in Persons Report, require the timely provision of information to the Office to Monitor and Combat Trafficking in Persons and the Bureau of Diplomatic Security of the Department of State regarding the number and location of visa denials based, in whole or in part, on grounds related to human trafficking, and for other purposes; to the Committee on Foreign Affairs, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. LEE of California (for herself, Mr. Grijalva, Mr. Lowenthal, and Ms. Norton):

H. Con. Res. 196. Concurrent resolution supporting the goals and ideals of No Name-Calling Week in bringing attention to name-calling of all kinds and providing schools with the tools and inspiration to launch an ongoing dialogue about ways to eliminate name-calling and bullying in their communities; to the Committee on Education and Labor.

PRIVATE BILLS AND RESOLUTIONS

Under clause 3 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

H.R. 5666. A bill introduced by Mr. WELCH for the relief of Maria Rose Versace; which was referred to the Committee on the Judiciary.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2 of rule XII of the Rules of the House of Representa-
tives, the following statements are submitted regarding the specific powers granted to Congress in the Constitution to enact the accompanying bill or joint resolution.

By Ms. ESHOO:

H.R. 5668. Congress has the power to enact this legislation pursuant to the following:

Article 1, Section 8, clause 3 of the Constitution

By Mr. ROY:

H.R. 5660. Congress has the power to enact this legislation pursuant to the following:

Article 1, Section 8, clause 8 of the Constitution

By Mr. McCaul:

H.R. 5661. Congress has the power to enact this legislation pursuant to the following:

Article 1, section 8 of the Constitution

By Mr. GUTHRIE:

H.R. 5662. Congress has the power to enact this legislation pursuant to the following:

Article 1, Section 8

By Mr. McCaul:

H.R. 5661. Congress has the power to enact this legislation pursuant to the following:

Article 1, section 8 of the Constitution of the United States

By Mr. BRINDISI:

H.R. 5665. Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions, as follows:

H.R. 30: Mr. NORMAN.
H.R. 175: Mr. BUDU.
H.R. 250: Mr. GARTZ.
H.R. 873: Ms. ESHOO.
H.R. 1055: Mr. PHILLIPS.
H.R. 1153: Ms. KENDRA S. HORN of Oklahoma.
H.R. 1379: Mr. LOUDERMILK.
H.R. 1497: Mr. HADERMAN.
H.R. 1735: Mr. PRICE of North Carolina.
H.R. 1766: Mr. KENNEDY and Mr. MORELLE.
H.R. 1849: Mr. PETERSON and Ms. SPAUNERGER.
H.R. 1899: Mr. MICHAEL F. DOYLE of Pennsylvania.
H.R. 2105: Mr. LOWENTHAL.
H.R. 2149: Mr. TRONE.
H.R. 2184: Mr. HASTINGS.
H.R. 2206: Mr. SMITH of New Jersey.
H.R. 2383: Ms. SLOTKIN.
H.R. 2650: Ms. JOHNSON of Texas.
H.R. 2694: Mr. PAPPAS.
H.R. 2747: Mr. ESPAILLAT.
H.R. 2767: Mrs. AXNE.
H.R. 2888: Mrs. DEMINGS.
H.R. 2931: Mr. CASE.
H.R. 3070: Mr. SMITH of New Jersey.
H.R. 3398: Mr. O’HALLERAN.
H.R. 3510: Mr. Fritztick.
H.R. 3668: Ms. SÁNCHEZ.
H.R. 3794: Mr. CROW.
H.R. 3799: Mr. GRIJALVA and Ms. BASS.
H.R. 4009: Mr. ROGELMÁN.
H.R. 4076: Mrs. KIRKPATRICK.
H.R. 4296: Ms. MUCARESEL-POWELL.
H.R. 4308: Mr. BISHOP of North Carolina.
H.R. 4310: Mr. ALLRED, Mr. MCADAMS, Mr. SCHNEIDER, Mr. WALBERG, and Mrs. WATSON COLEMAN.
H.R. 4336: Mr. NELDER.
H.R. 4374: Mr. SMITH of New Jersey.
H.R. 4490: Mr. HASTINGS.
H.R. 4564: Ms. FINKENAUER, Mr. HARDER of California, and Mr. STIVERS.
H.R. 5036: Mr. MORELLE.
H.R. 5052: Ms. HAALAND.
H.R. 5200: Mr. PAPPAS.
H.R. 5210: Mr. LUJÁN.
H.R. 5276: Mrs. HARTZER.
H.R. 5319: Mr. HIMES.
H.R. 5376: Mrs. WAGNER.
H.R. 5488: Mr. ESPAILLAT.
H.R. 5525: Mr. AMODEI and Mr. MCKINNEY.
H.R. 5543: Mr. MCKEENEY, Mr. RUPPERSBERGER, Ms. BROWNLY of California, Mr. VELA, and Mr. ROSE of New York.
H.R. 5546: Mrs. WAGNER and Ms. NORTON.
H.R. 5579: Mr. NORMAN.
H.R. 5580: Mr. NORMAN.
H.R. 5581: Mr. NORMAN.
H.R. 5589: Mr. STEWART, Ms. DEGETTE, and Ms. HAALAND.
H.R. 5609: Mr. COSTA.
PETITIONS, ETC.

Under clause 3 of rule XII,

The SPEAKER presented a petition of the Miami City Commission, relative to Resolution Number R-19-0477, urging the State of Florida and the United States government to declare a climate emergency, and requesting regional collaboration on a transition plan and emergency mobilization effort to restore a safe and sustainable climate; which was referred to the Committee on Energy and Commerce.
The Senate met at 12:30 p.m. and was called to order by the President pro tempore (Mr. GRASSLEY).

PRAYER
The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal God, You are our rock and fortress. Keep us from dishonor. Only by walking in Your precepts can our lawmakers remain within the circle of Your protection and blessings. Lord, turn their ears to listen to Your admonition, as You infuse them with the courage to obey Your commands. We have trusted You since the birth of this land we love. That is why we will declare Your glory as long as we have breath. Lord, as our Senators prepare to gather for today's impeachment trial, we declare that You alone are our hope.

We pray in Your mighty Name. Amen.

PLEDGE OF ALLEGIANCE
The President pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER
The PRESIDING OFFICER (Mr. CRUZ). The majority leader is recognized.

IMPEACHMENT

Mr. MCCONNELL. Mr. President, last Thursday, the U.S. Senate crossed one of the greatest thresholds that exist in our system of government. We began just the third Presidential impeachment trial in American history. This is a unique responsibility which the Framers of our Constitution knew that the Senate—and only the Senate—could handle. Our Founders trusted the Senate to rise above short-term passions and factionalism. They trusted the Senate to soberly consider what has actually been proven and which outcome best serves the Nation. That is a pretty high bar, and you might say that later today, this body will take our entrance exam.

Today, we will consider and pass an organizing resolution that will structure the first phase of the trial. This initial step will offer an early signal to our country. Can the Senate still serve our founding purpose? Can we still put fairness, evenhandedness, and historical precedent ahead of the partisan passions of the day? Today's vote will contain some answers. The organizing resolution we will put forward already has the support of a majority of the Senate. That is because it sets up a structure that is fair, evenhanded, and tracks closely with past precedents that were established unanimously.

After pretrial business, the resolution establishes the four things that need to happen next. First, the Senate will hear an opening presentation from the House managers. Second, we will hear from the President's counsel. Third, Senators will be able to seek further information by posing written questions to either side through the Chief Justice. Fourth, with all that information in hand, the Senate will consider whether we feel any additional evidence or witnesses are necessary to evaluate whether the House case has cleared or failed to clear the high bar of overriding the presumption of innocence and undoing a democratic election.

The Senate's fair process will draw a sharp contrast with the unfair and precedent-breaking inquiry that was carried on by the House of Representatives. The House broke with precedent by denying Members of the Republican minority the same rights that Democrats had received when they were in the minority back in 1998. Here in the Senate, every single Senator will have exactly the same rights and exactly the same ability to ask questions.

The House broke with fairness by cutting President Trump's counsel out of their inquiry to an unprecedented degree. Here in the Senate, the President's lawyers will finally receive a level playing field with the House Democrats and will finally be able to present the President's case. Finally, some fairness.

On every point, our straightforward resolution will bring the clarity and fairness that everyone deserves—the President of the United States, the House of Representatives, and the American people. This is the fair roadmap for our trial. We need it in place before we can move forward, so the Senate should prepare to remain in session today until we complete this resolution and adopt it.

This basic, four-part structure aligns with the first steps of the Clinton impeachment trial in 1999. Twenty-one years ago, 100 Senators agreed unanimously that this roadmap was the right way to begin the trial. All 100 Senators agreed the proper time to consider the question of potential witnesses was after—after—opening arguments and Senators' questions.

Now, some outside voices have been urging the Senate to break with precedent on this question. Loud voices, including the leadership of the House majority, colluded with Senate Democrats and tried to force the Senate to preempt ourselves to seek specific witnesses and documents before Senators had even heard opening arguments or even asked questions. These are potential witnesses whom the House managers themselves—declined to hear from, whom the House itself declined to pursue through the legal system during its own inquiry.

The House was not facing any deadline. They were free to run whatever
investigation they wanted to run. If they wanted witnesses who would trigger legal battles over Presidential privilege, they could have had those fights. However, the chairman of the House Intelligence Committee and the chairman of the House Judiciary Committee decreed that their inquiry was finished and moved right ahead. The House chose not to pursue the same witnesses they apparently would now like—would now like—the Senate to precommit to pursuingoursely.

As I have been saying for weeks, nobody—nobody—will dictate Senate procedure to U.S. Senators. A majority of us are committed to upholding the unanimous, bipartisan Clinton precedent against outside influences with respect to the proper timing of these midtrial questions. So if any amendments are brought forward to force premature decisions on midtrial questions, I will move to table such amendments and to protect our bipartisan precedent. If a Senator moves to amend the resolution or to subpoena specific witnesses or documents, I will move to table such motions because the Senate will decide those questions later in the trial, just like did in 1999.

Now, today may present a curious situation. We may hear House managers themselves agitate for such amendments. We may hear a team of managers led by the House Intelligence and Judiciary Committees chairmen argue that the Senate must precommit ourselves to reopen the very investigation they themselves oversaw and voluntarily shut down. It would be curious to hear these two House chairmen argue that the Senate must precommit ourselves to supplementing their own evidentiary record, to enforcing subpoenas they refused to enforce, to supplementing a case they themselves have recently described as “overwhelming”—“overwhelming”—and “beyond reasonable doubt.”

These midtrial questions could potentially take us even deeper into even more complex constitutional waters. For example, many Senators, including me, have serious concerns about blurring—the traditional role be tween the House and the Senate within the impeachment process. The Constitution divides the power to impeach from the power to try. The first belongs solely to the House, and with the power to impeach comes the responsibility to investigate.

The Senate agreeing to pick up and carry on the House’s inadequate investigation would set a new precedent that could incentivize frequent and hasty Judiciary Committees’ conclusions. It could dramatically change the separation of powers between the House and the Senate if the Senate agrees we will conduct both the investigation and the trial of an impeachment.

What is more, some of the proposed new witnesses include executive branch officials whose communications with the President and with other executive branch officials lie at the very core of the President’s constitutional privilege. Pursuing those witnesses could indefinitely delay the Senate trial and draw our body into a protracted and complex legal fight over Presidential privilege. Such litigation could potentially have permanent repercussions for the separation of powers and the institution of the Presidency that Senators would need to consider very, very carefully.

So the Senate is not about to rush into these weighty questions without discussion and without deliberation—without even hearing opening arguments first. There were good reasons why 100 out of 100 Senators agreed two decades ago to cross these bridges when we came to them. That is what we will do this time as well. Fair is fair. The process was good enough for President Clinton, and basic fairness dictates it ought to be good enough for this President as well.

The eyes are on the Senate. The country is watching to see if we can rise to the occasion. Twenty-one years ago, 100 Senators, including a number of us who sit in the Chamber today, did just that. The body approved a fair, commonsense process to guide the beginning of a Presidential impeachment trial. Today, two decades later, this Senate will retake that entrance exam. The basic structure we are proposing is just as eminently fair and evenhanded as it was back then. The question is whether the Senators are themselves ready to be as fair and as evenhanded.

The Senate made a statement 21 years ago. We said that Presidents of either party deserve basic justice and a fair process. A challenging political moment like today does not make such statements less necessary but all the more necessary, in fact.

So I would say to my colleagues across the aisle: There is no reason why the vote on the resolution ought to be remotely partisan. There is no reason other than base partisanship to say this particular President deserves a radically different rule book than what was good enough for a past President of your own party. I urge every single Senator to support our fair resolution. I urge everyone to vote to uphold the Senate’s unanimous bipartisan precedent of a fair process.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Democratic leader is recognized.

IMPEACHMENT

Mr. SCHUMER. Mr. President, before I begin, there has been well-founded concern that the additional security measures required for access to the Galleries during the trial could cause reporters to miss some of the events on the Senate floor. I want to assure everyone in the press that I will vociferously oppose any attempt to begin the trial unless the reporters trying to enter the Galleries are seated.

The press is here to inform the American public about these pivotal events in our Nation’s history. We must make sure they are able to. Some may not know what happens here to be public; we do.

Mr. President, after the conclusion of my remarks, the Senate will proceed to the impeachment trial of President Donald John Trump for committing high crimes and misdemeanors. President Trump is accepting a foreign leader into interfering in our elections to benefit himself and then doing everything in his power to cover it up. If proved, the President’s actions are crimes against democracy itself.

It is hard to imagine a greater subversion of our democracy than for powers outside our borders to determine the elections there within. For a foreign country to attempt such a thing on its own is bad enough. For an American President to deliberately solicit such a thing—to blackmail a foreign country with military assistance to help him win an election—is unimaginably worse. I can’t imagine any other President doing this.

Beyond that, for then the President to deny the right of Congress to conduct oversight, deny the right to investigate any of his activities, to say Article II of the Constitution gives him the right to “do whatever [he] wants”—we are staring down an erosion of the sacred democratic principles for which our Founders fought a bloody war of independence. Such is the gravity of this historic moment.

Once Senator INHOFE is sworn in at 1 p.m., the ceremonial functions at the beginning of a Presidential trial will be complete. The Senate then will determine the rules of the trial. The Republican leader will offer an organizing resolution that outlines his plan—his plan—for the rules of the trial. It is completely partisan. It was kept secret until the very eve of the trial. Now that it is public, it is very easy to see why.

The McConnell rules seem to be designed by President Trump for President Trump. It asks the Senate to rush through as fast as possible and makes getting evidence as hard as possible. It could force presentations to take place at 2 o’clock or 3 o’clock in the morning so the American people will not see them.

In short, the McConnell resolution will result in a rushed trial, with little evidence, in the dark of the night—literally the dark of night. If the President is so confident in his case, if Leader McCONNEL is so confident the President did nothing wrong, why don’t they want the case to be presented in broad daylight?

On something as important as impeachment, the McConnell resolution is nothing short of a national disgrace. This will go down—this resolution—as
January 21, 2020

CONGRESSIONAL RECORD — SENATE

S289

one of the darker moments in the Senate history, perhaps one of even the darkest.

Leader McConnell has just said he wants to go by the Clinton rules. Then why did he change them, in four important particulars? It will be later in the trial less transparent, less clear, and with less evidence? He said he wanted to get started in exactly the same way. It turns out, contrary to what the leader said— I am amazed he could say it with a straight face—that the rules are the same as the Clinton rules. The rules are not even close to the Clinton rules.

Unlike the Clinton rules, the McConnell resolution does not admit the record of the House impeachment proceedings into evidence. Leader McConnell wants a trial with no existing evidence and no new evidence. A trial without evidence is not a trial; it is a coverup.

Democrats. They are the President’s own men. The documents are not Democratic documents. They are documents, period. We don’t know if the evidence of the witnesses or the documents will be exculpatory to the President or incriminating, but we have an obligation to try impeachments—in particular now during the most deep and solemn part of our Constitution—to seek the truth and then let the chips fall where they may.

My Republican colleagues have offered several explanations for opposing witnesses and documents at the start of the trial. None of them has much merit. Republicans have said we should deal with the question of witnesses later in the trial. Of course, it makes no sense to hear both sides present their case first and then afterward decide if the Senate should hear evidence. The evidence is supposed to inform arguments, not come after they are completed.

Some Republicans have said the Senate should not go beyond the House record by calling any witnesses, but the Constitution gives the Senate the sole power to try impeachments—not the sole power to rehash or the sole power to rush but to try.

Republicans have called our request for witnesses and documents political. If seeking the truth is political, then the Republican Party is in serious trouble.

The White House has said that the Articles of Impeachment are brazen and wrong. Well, if the President believes his impeachment is so brazen and wrong, why won’t he show us why? Why is the President so insistent that no one come forward, that no documents be released? If the President’s case is so weak, that none of the President’s men can defend him under oath, shame on him and those who allow it to happen. What is the President hiding? What are our Republican colleagues hiding? If they weren’t afraid of the truth, they would say: Go right ahead, get at the truth, get witnesses, get documents.

In fact, at no point over the last few months have I heard a single, solitary argument on the merits of why witnesses and documents should not be part of the trial. No Republicans explained why less evidence is better than more evidence.

Nevertheless, Leader McConnell is poised to ask the Senate to begin the first impeachment trial of a President in history without witnesses that rushes through the arguments as quickly as possible; that, in ways both shameless and subtle, will conceal the truth—the truth—from the American people.

Leader McConnell claimed that the House “ran the most rushed, least thorough, and most unfair impeachment inquiry in modern history.” The truth is, Leader McConnell is plotting the most rushed, least thorough, and most unfair impeachment trial in modern history, and it begins today.

The Senate has before it a very straightforward question. The President is accused of coercing a foreign power to interfere in our elections to help himself. It is the job of the Senate to determine if these very serious charges are true. The very least we can do is examine the facts, review the documents, hear the witnesses, try the case as run from it, not hide from it—try it.

If the President commits high crimes and misdemeanors and Congress refuses to act, refuses even to conduct a fair trial of his conduct, then President Trump and future Presidents—can commit impeachable crimes with impunity, and the order and rigor of our democracy will dramatically decline.

The fail-safe—the final fail-safe of our democracy will be rendered mute. The most powerful check on the Executive—the one designed to protect the people from tyranny—will be erased.

In a short time, my colleagues, each of us, will face a choice about whether to begin this trial in search of the truth or in service of the President’s desire to cover it up, whether the Senate will conduct a fair trial and a full airing of the facts or rush to a predetermined political outcome.

My colleagues, the eyes of the Nation, the eyes of history, the eyes of the Founding Fathers are upon us. History will be our final judge. Will Senators rise to the occasion? I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

RECESS SUBJECT TO THE CALL OF THE CHAIR

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess, subject to the call of the Chair.

Thereupon, the Senate, at 12:58 p.m., recessed subject to the call of the Chair and reassembled at 1:18 p.m., when called to order by the Chief Justice.

TRIAL OF DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial are approved to date.

The CHIEF JUSTICE. I am aware of one Senator present who was unable to take the impeachment oath last Thursday.
Will he please rise and raise his right hand and be sworn.

Do you solemnly swear that in all things pertaining to the trial of the impeachment of Donald John Trump, President of the United States, now pending, you will do impartial justice according to the Constitution and laws, so help you God?

Mr. INHOFE. I do.

The CHIEF JUSTICE. The Secretary will note the name of the Senator who has just taken the oath and will present the oath book to him for signature.

The CHIEF JUSTICE. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, Michael C. Stenger, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the Articles of Impeachment exhibited by the House of Representatives against Donald John Trump, President of the United States.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. McCONNELL. Mr. Chief Justice, I would communicate that for the information of all Senators, the trial briefs filed yesterday by the parties have been printed and are now at each Senator’s desk.

UNANIMOUS CONSENT AGREEMENT—AUTHORITY TO PRINT SENATE DOCUMENTS

The following documents will be submitted to the Senate for printing in the Senate Journal: the precept, issued January 16, 2020; the writ of summons, issued on January 16, 2020; and the record of summons, issued January 16, 2020.

The following documents, which were received by the Secretary of the Senate, will be submitted to the Senate for printing in the Senate Journal, pursuant to the order of January 16, 2020: the answer of Donald John Trump, President of the United States, to the Articles of Impeachment exhibited by the House of Representatives against him on January 16, 2020, received by the Secretary of the Senate on January 18, 2020; the trial brief filed by the House of Representatives, received by the Secretary of the Senate on January 18, 2020; the trial brief filed by the House of Representatives, received by the Secretary of the Senate on January 18, 2020; the trial brief filed by the President, received by the Secretary of the Senate on January 20, 2020; the replication of the House of Representatives, received by the Secretary of the Senate on January 20, 2020; and the rebuttal brief filed by the House of Representatives, received by the Secretary of the Senate on January 21, 2020.

Without objection, the foregoing documents will be printed in the CONGRESSIONAL RECORD.

The documents follow:

In Proceedings Before the United States Senate

Answer of President Donald J. Trump

The Honorable Donald J. Trump, President of the United States, Hereby Responds:

The Articles of Impeachment submitted by House Democrats are a dangerous attack on the right of the American people to freely choose their President. This is a brazen and unlawful attempt to overturn the results of the 2016 election and interfere with the 2020 election. The articles are highly partisan and reckless in their approach with impeaching the President began the day he was inaugurated and continues to this day.

The Articles of Impeachment are constitutionally invalid on their face. They fail to allege any crime or violation of law whatsoever, let alone high Crimes and Misdemeanors, as required by the Constitution. They are the result of a lawless process that violated basic due process and fundamental fairness. Nothing in these Articles could permit every Senator to truly survive the duly elected President or warrant nullifying an election and subverting the will of the American people.

The Articles of Impeachment before the Senate are an affront to the Constitution of the United States, our democratic institutions, and the American people. The Articles in fact, allege in violation of process that brought them here—are a transparently political act by House Democrats. They debase the grave power of impeachment and the solemn responsibility that power entails. They debase the American people. The Articles of Impeachment exhibited by the House of Representatives by House Democrats run a fundamentally flawed and illegitimate process that denied the President every basic right, including the right to have counsel present, the right to cross-examine witnesses, and the right to present evidence. Despite all this, the information House Democrats assembled actually disproves their claims against the President. The President acted at all times with full constitutional and legal authority and in our national interest. He continued his Administration’s policy of unprecedented support for Ukraine, including the delivery of lethal military aid that was denied to the Ukrainians by the prior administration.

The first Article fails on its face to state an impeachable offense. It alleges no crimes at all, let alone “high Crimes and Misdemeanors,” as required by the Constitution. In fact, it alleges in violation of process that brought them here—are a transparently political act by House Democrats. They debase the grave power of impeachment and the solemn responsibility that power entails. They debase the American people.

The first Article is therefore constitutionally invalid on their face. They fail to allege any crime or violation of law whatsoever. House Democrats’ “abuse of power” claim would do lasting damage to the separation of powers under the Constitution.

The first Article also fails on the facts, because President Trump has not in any way “abused the powers of the Presidency.” At all times, the President has faithfully and effectively discharged his Office on behalf of the American people. The President’s actions on the July 25 call, as well as on the earlier April 21, 2019, telephone call with President Volodymyr Zelensky of Ukraine (the “July 25 call”), as well as on the earlier April 21, 2019, telephone call (the “April 21 call”), and in all surrounding and related events, were perfectly legal, completely appropriate, and taken in the ordinary course, and the President acted at all times with full constitutional and legal authority and in our national interest.

President Trump raised the important issue of Ukrainian corruption in the earlier April 21 call, and, therefore, without constitutional authority. They sought testimony from a number of the President’s closest advisors de–spite the fact that, under longstanding, bipartisan practice of prior administrations of both political parties and similarly longstanding guidance from the Department of Justice, those advisors are immune from compelled testimony before Congress related to their official duties. And
they sought testimony disclosing the Executive Branch’s confidential communications and internal decision-making processes on matters of foreign relations and national security, despite the well-established constitutional privileges and immunity seeking such information. As the Supreme Court has recognized, the President’s constitutional authority to protect the confidentiality of Executive Branch information is at its apex in the field of foreign relations and national security. House Democrats also barred the attendance of Executive Branch counsel at witness proceedings, thereby preventing the President from protecting important Executive Branch confidentiality interests.

Notwithstanding these abuses, the Trump Administration repeatedly responded appropriately to these subpoenas and identified their constitutional defects. Tellingly, House Democrats did not seek to enforce these constitutionally defective subpoenas in court. To the contrary, when one subpoena recipient sought a declaratory judgment as to the validity of the subpoena he had received, House Democrats quickly withdrew the subpoena to prevent the court from issuing a ruling.

The House may not usurp Executive Branch power of impeachment or immunity and may not bypass our Constitution’s system of checks and balances. Asserting valid constitutional privileges and immunities cannot be an impeachable offense. The second Article is therefore invalid and must be rejected.

III. CONCLUSION

The Articles of Impeachment violate the Constitution. They are defective in their entirety. They are the product of invalid proceedings that flagrantly deny the President any due process rights. They rest on dangerous distortions of the Constitution that would do lasting damage to our structure of government.

In the first Article, the House attempts to seize the President’s power under Article II of the Constitution to determine foreign policy. In the second Article, the House attempts to control and penalize the assertion of the Executive Branch’s constitutional privileges, which are designed to prevent the destruction of the Framers’ system of checks and balances. By approving the Articles, the House violated our constitutional order, illegitimately abused its power of impeachment, and attempted to encroach upon the President’s ability to faithfully execute the duties of his Office. They sought to undermine his authority under Article II of the Constitution, which vests the entirety of “[t]he executive Power” in the President of the United States of America.

In order to preserve our constitutional structure of government, to reject the poisonous partisanship that the Framers warned against, to ensure one-party political impeachment vendettas do not become the “new normal,” and to vindicate the will of the American people, the Senate must reject both Articles of Impeachment. In the end, this entire process is nothing more than a dangerous attack on the American people themselves and their fundamental right to vote.

JAY ALAN SHKULOV, Counsel to President Donald J. Trump, Washington, DC

PAT A. CIPOLLINE, Counsel to the President, The White House

DATED THIS 18TH DAY OF JANUARY, 2020.

Although these theories were groundless, President Trump sought a public announcement by Ukraine of investigations into them in order to help his 2020 reelection campaign. An announcement of an investigation into one of his key political rivals would be enormously valuable to President Trump in his reelection in 2020—just as the FBI’s investigation into Hillary Clinton’s emails had helped him in 2016. And an investigation suggesting that Russia interfered in the 2016 election would give him a basis to assert—false—that he was the victim, rather than the beneficiary, of foreign interference in the election. Ukraine’s announcement of that investigation would bolster the perceived legitimacy of his Presidency and, therefore, his political standing going into the 2020 race.

Overwhelming evidence shows that President Trump solicited these two investigations in order to obtain a personal political benefit, not because the investigations served the national interest. The President’s own National Security Advisor charged of providing the Ukrainian government with assurances that it would receive no top-secret information “if it engaged in investigations for political purposes,” and the Vice President threatened to refuse to certify that the US government would release political assistance to Ukraine if it did not initiate the investigations. This ‘bribe’ was clearly designed to elicit from Ukraine an investigation that would be to the Trump Administration’s political advantage.

TRUMP ABUSE OF POWER

President Trump abused the power of his office by pressuring the government of Ukraine to interfere in the 2020 U.S. Presidential election for his personal benefit. In order to pressure the recently elected Ukrainian President, Volodymyr Zelensky, to announce investigations that would advance President Trump’s re-election bid in 2020 and his personal political interests, the President exercised his official power to withhold from Ukraine critical U.S. government support—$391 million of vital military aid and a coveted White House meeting.

During a July 25, 2019 phone call, after President Zelensky expressed gratitude to President Trump for American military assistance, President Trump immediately responded by asking President Zelensky to “do us a favor though.” The “favor” he sought for Ukraine was for Ukraine to publicly announce two investigations that President Trump believed would improve his domestic political prospects. One investigation concerned former Vice President Joseph Biden—a political rival in the upcoming 2020 election—and the false claim that, in seeking the removal of a corrupt Ukrainian prosecutor four years earlier, then-Vice President Biden had acted to protect a company where his son was a board member. The second investigation concerned debunked conspiracy theories that Russia did not interfere in the 2016 Presidential election to aid President Trump, but instead that Ukraine interfered in that election to aid President Trump’s opponent, Hillary Clinton.

These theories were baseless. There is no credible evidence to support the allegation that Russia did not interfere in the 2016 election. Indeed, the 2016 election was marked by Russian state-sponsored social media disinformation campaigns, which俄罗斯 had not interfered in the 2016 election—and the false claim that, in seeking the removal of a corrupt Ukrainian prosecutor four years earlier, then-Vice President Biden had acted to protect a company where his son was a board member. The second investigation concerned debunked conspiracy theories that Russia did not interfere in the 2016 Presidential election to aid President Trump, but instead that Ukraine interfered in that election to aid President Trump’s opponent, Hillary Clinton.

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In order to preserve our constitutional structure of government, to reject the poisonous partisanship that the Framers warned against, to ensure one-party political impeachment vendettas do not become the “new normal,” and to vindicate the will of the American people, the Senate must reject both Articles of Impeachment. In the end, this entire process is nothing more than a dangerous attack on the American people themselves and their fundamental right to vote.

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As part of the same pressure campaign, President Trump withheld a crucial White House meeting with President Zelensky—a meeting that he had previously promised and that was essential to both the united States and Ukraine.25 Such face-to-face Oval Office meetings with a U.S. President are immensely important for international credibility.28 In an Oval Office meeting with President Trump was critical to the integrity of our democratic processes and ensuring that Ukraine was a free and independent country and the United States and Ukraine would continue to work together as partners.25 That meeting still has not occurred, even though President Trump has personally invited President Zelensky to meet in the White House since President Zelensky’s election— including an Oval Office meeting with Russia’s top diplomat.26

President Trump’s solicitation of foreign interference in our elections to secure his own political success is precisely why the Framers of our Constitution provided Congress with the power to impeach a corrupt President and remove him from office. One of the Founding generation’s principal fears was that foreign governments would seek to manipulate presidential elections—the key feature of our self-government. Thomas Jef ferson and John Adams warned of “foreign Intercourse, Intrigue, Influence,” and predicted that, “as often as Elections happen, the danger of foreign Influence recurs.”27 The Framers therefore would consider a President’s attempt to corrupt America’s democratic processes by demanding political favors from foreign powers to be a singularly pernicious act. They designed impeachment as the remedy for such misconduct because a President who manipulates U.S. elections to his advantage can avoid being held accountable by the voters through those same elections. And they would have expected President Trump’s efforts to encourage foreign election interference as all the more dangerous where, as here, those efforts are part of an ongoing pattern of misconduct for which the President is unpun ishable.

The House of Representatives gathered overwhelming evidence of President Trump’s misconduct, which is summarized in the attached Statement of Material Facts and in the comprehensive reports prepared by the House Permanent Select Committee on Intelligence and the Committee on the Judiciary.28 On the strength of that evidence, the House approved the First Article of Impeachment, which charged President Trump for Obstruction of Congress.29 The Senate should now convict him on that Article. Article, President Trump’s continuing presence in office undermines the integrity of our democratic processes and endangers our national security.

OBSTRUCTION OF CONGRESS

President Trump obstructed Congress by undertaking an unprecedented campaign to prevent Congress from investigating his misconduct. The Constitution entrusts the House with the “sole Power of Impeachment.”30 The Framers thus ensured that Congress would require— and the President, and not the President—determines the existence, scope, and procedures of an impeachment investigation into the President’s conduct. Congress has an independent constitutional authority to conduct such an investigation effectively if it cannot obtain information from the President or the Executive Branch about the President’s misconduct. Under our constitutional system of divided powers, a President cannot be permitted to hide his offenses from view by refusing to comply with a Congress’s request for information and to require Executive Branch agencies to do the same. That conclusion is particularly importan t given the Department of Justice’s position that the President cannot be indicted. If the President could both avoid accountability under the criminal laws and preclude an effective criminal investigation, he would truly be above the law.

But that is what President Trump has attempted. President Trump’s conduct is the Framers’ worst nightmare. He directed his Administration to defy every subpoena issued in the House’s impeachment inquiry, including the White House, Department of State, Department of Defense, Department of Energy, and Office of Management and Budget (OMB) refused to produce any documents in response to those subpoenas.31 Several witnesses also followed President Trump’s orders, denying requests for documents and lawful subpoenas, and refusing to testify.32 And President Trump’s interference in the House’s impeachment inquiry was not an isolated incident—it was consistent with his past efforts to obstruct the Special Counsel’s investigation into Russian interference in the 2016 election.

By categorically obstructing the House’s impeachment inquiry, President Trump claimed the House’s sole impeachment power for himself, and his misconduct from Congress and the American people. Although his sweeping cover-up effort ultimately failed—seventeen public officials testified, and provided documentary evidence of the President’s wrongdoing33—his obstruction will do long-lasting and potentially irreparable damage to our constitutional system of divided powers if it goes unchecked.

Based on the overwhelming evidence of the President’s misconduct, there is no doubt that he thwarted the impeachment inquiry, the House approved the Second Article of Impeachment, for obstruction of Congress.34 The Senate should now convict him on that Article. If it does not, future Presidents will feel empowered to resist any investiga on into their own wrongdoing, effectively nullifying Congress’s power to exercise the Constitution’s most important safeguard against Presidential misconduct. That outcome would not only embolden this President to continue seeking foreign interference in our elections but would telegraph to future Presidents that they are free to engage in serious wrongdoing without accountability or repercussions.

The Constitution entrusts Congress with the sole Article of Impeachment. The President engages in “Treason, Bribery, or other high Crimes and Misdemeanors.”35 The impeachment power is an essential part of the republic we created.26 It is an essential check on the authority of the President, and Congress must exercise this power when the President places his personal and political interests above those of the Nation.

Thus, the Framers resolved to hold the President “impeachable whilst in office” as a check on the President’s “habitual and cendant in our councils.”53 James Madison asked: “Shall the man who has practised corruption & by that means procured his appointment in the first instance, be suf fice his escape punishment, by repeating his guilt?”54

The Framers recognized that a President who abuses his power to manipulate the democratic process cannot properly be held accountable by means of elections if he has that he has hig advantage.56 The Framers specifically feared a President who abused his office by sparing “no efforts or means whatever to get himself re-elected.”57 Mason asked: “Shall the man who has prac tised corruption & by that means procured his appointment in the first instance, be suf fice his escape punishment, by repeating his guilt?”54

The Framers particularly feared that foreign influence could undermine our new system of self-government.56 In his farewell address to the Nation, President George Washing ton warned Americans “to be constantly on your guard against the encroachments of the Executive.”58 By empowering Congress to immediately remove a President when his misconduct warrants it, the Framers provided the President with representa ves as the ultimate check on a President whose corruption threatened our democracy and the Nation’s core interests.59

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Guided by these concerns, the Framers included within the Constitution various
mechanisms to ensure the President’s accountability and protect against foreign influence—including a requirement that Presidents be natural-born citizens of the United States, a veto power to reject acts of Congress, and the right to be impeached by the House and removed from office by the Senate. The Framers also recognized that “many great and dangerous offenses committed by public officials that inflict severe harm on the constitutional order.”

In drafting the Impeachment Clause, the Framers adopted a standard flexible enough to reach the full range of potential presidential misconduct: “Treason, Bribery, or other high Crimes and Misdemeanors.” The decision to denote “Treason” and “Bribery” as impeachable offenses set the stage for the evil-era concerns over foreign influence and corruption. But the Framers also recognized that “Treason” and “Bribery” as offenses should be limited to acts of foreign interference in the American electoral process—were permitted to attend. Some witnesses produced documentary evidence in their possession. In late November 2019, the Senate voted to call the President’s counsel to be impeached and the evidence against President Trump—in which the President’s counsel was invited, but declined, to participate—and then reported two Articles of Impeachment to the House. On December 18, 2019, the House voted to impeach President Trump and adopted two Articles of Impeachment. The First Article of Impeachment states that President Trump “abused the powers of the Presidency” by “soliciting the Government of Ukraine to publicly announce an investigation of the President to help him win the 2020 election.” The Judiciary Committee held public hearings evaluating the constitutional standard for impeachment and the evidence against President Trump. The First Article of Impeachment accuses President Trump of “abuse of power” and “corruption.” The last two articles accused President Trump of “high crimes and misdemeanors” that “would encompass” a wide range of offenses. The second article accused President Trump of “abuse of power” and “corruption.”

The Senate Should Convict President Trump of Abuse of Power

President Trump abused the power of the Presidency by pressuring a foreign government to interfere in an American election on his behalf. He solicited this foreign interference to advance his reelection prospects at the expense of America’s national security. President Trump is uniquely dangerous. President Trump’s misconduct is an impeachable abuse of power.

A. President Trump Exercised His Official Power to Pressure Ukraine into Aiding His Reelection

After President Zelensky won a landslide victory in Ukraine in April 2019, President Trump pressured the new Ukrainian President. Trump sought to pressure Zelensky to announce investigations that were politically favorable to President Trump and to help him win the 2020 election by announcing investigations that were politically favorable to President Trump and designed to harm his political rival. The impeachment inquiry into the President’s misconduct was “consistent” with President Trump’s “previous invitations of foreign interference in United States elections.”

The Second Article for Obstruction of Congress was the first of a series of actions to “abuse the powers of the Presidency in a manner offensive to, and subversive of, the Constitution” when he “directed the unprecedented, in a manner that compromised the national security of the United States and undermined the integrity of the United States democratic process.” These actions were “consistent” with President Trump’s “previous invitations of foreign interference in United States elections.”

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Second, President Trump sought to pressure President Zelensky publicly to announce an investigation into former Vice President Biden and a Ukrainian gas company, Burisma Holdings, where Biden’s son sat. As Vice President, Biden had in late 2015 encouraged the government of Ukraine to remove a Ukrainian prosecutor general. The Ukrainian parliament removed the prosecutor in March 2016. President Trump and his allies have asserted that the former Vice President acted improperly and the ouster of the prosecutor, who was himself corrupt, in the actual actions. But, the prosecutor’s removal made it more likely that the investigation into Burisma would be pursued. Therefore, President Trump never sought to pressure the Ukrainian government to conduct an investigation into Biden and Burisma. The Senate Select Committee on

ARGUMENT

I. The Senate Should Convict President Trump of Abuse of Power

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Intelligence similarly concluded that Russia, not Ukraine, interfered in the 2016 U.S. Presidential election.105 President Trump never seized on the false theory and sought an investigation that would give him a basis to assert that Ukraine rather than Russia interfered in the 2016 election. Such an investigation would eliminate any threat to his presidency and boost his political standing in advance of the 2020 election.106

In furtherance of the corrupt scheme, President Trump conditioned the official power to pressure Ukraine into announcing the desired investigations. In the White House meeting on April 24, 2019—one day after the media reported that his personal attorney, Mr. Giuliani, had made such an offer to Ukrainian officials—President Trump informed Ambassador Sondland of the condition and demanded that Ukraine confirm that his efforts to press the Ukrainian government to remove a perceived threat to his presidency would have grounds to claim—false— that he was elected President in 2016 not because he was the beneficiary of Russian election interference, but because the Ukrainian election interference aimed at helping his opponent.107

Second, agents and associates of President Trump who helped carry out his agenda in Ukraine confirmed that his efforts to pressure President Zelensky into announcing the desired investigations were intended for his personal political benefit rather than for a legitimate policy purpose. For example, after speaking with President Trump, Ambassador Sondland told a colleague that President Trump “did not give a [expletive] about Ukraine,” and instead cared only about “big stuff” that benefitted him personally.108

Third, the involvement of President Trump’s personal attorney, Mr. Giuliani—who has professional obligations to the President but now also serves as a rubber stamp for President Trump—suggests that President Trump sought the investigations for personal and political reasons rather than a legitimate foreign policy reason. Mr. Giuliani openly and repeatedly acknowledged that he was pursuing the Ukrainian investigations to advance the President’s interests, stating: “Mr. Giuliani was pushing.”109 And Mick Mulvaney, President Trump’s Acting Chief of Staff, acknowledged to a reporter that there was a quid pro quo with Ukraine involving the military aid, conceded that “[t]here is going to be political influence in foreign policy,” and stated, “I have news for everybody: get over it.”110

Fourth, President Trump’s pursuit of the sham investigations marked a dramatic deviation from longstanding bipartisan American foreign policy goals in Ukraine. The American government has long supported anti-corruption reforms in Ukraine since 2014.111 The new and vulnerable Ukrainian administration, its strong anti-corruption reforms in Ukraine, would benefit from Russian election interference in 2016, and that he was the preferred candidate of Mr. Putin—both of which President Trump viewed as calling into question the legitimacy of his Presidency. An announcement that Ukraine was investigating its own alleged 2016 election interference would have turned these facts on their head. President Trump would have grounds to claim—that he was elected President in 2016 not because he was the beneficiary of Russian election interference, but because the Ukrainian election interference aimed at helping his opponent.
President Trump’s agents were pursuing in...
right to information in an impeachment investigation is a critical safeguard in our system of divided powers. Otherwise, a President could hide his own wrongdoing to prevent discovery of any misconduct, effectively nullifying Congress’s impeachment power. President Trump’s sweeping effort to shield his misconduct from public view is unconstitutional and thus works a grave constitutional harm and is itself an impeachable offense.

A. The House Is Constitutionally Entitled to the Relevant Information in an Impeachment Inquiry

The House has the power to issue subpoenas and demand compliance in an impeachment inquiry. The Supreme Court has long recognized that, “[w]ithout the power to investigate—including of course the authority to compel testimony, either through its own processes or through judicial trial—Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively.” The Court has since emphasized the “duty of all citizens” and “their unremittable obligation to respond to subpoenas, to respect the dignity of the Congress and its committees and to testify before them.”

The Constitution grants Congress’s “power of inquiry—of great consequence” be

Conclusion

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to conceal wrongdoing—particularly in an impeachment inquiry—and because the President and his agents have already diminished any confidentiality interests by speaking about the events in public fora except Congress. President Trump has been impeached for Obstruction of Congress not based upon discrete invocations of privilege but rather for his argument that the Executive Branch categorically stonewall the House impeachment inquiry by refusing to comply with all subpoenas. To President Trump’s claims that he has concealed evidence to protect the Office of the President, the Framers considered and rejected that defense. Several clauses at the Constitutional Convention warned that the impeachment power would be “destructive of [the executive’s] independency.” But the Framers adopted an impeachment power anyway because, as Alexander Hamilton observed, “the powers relating to impeachments” are “an essential check in the hands of Congress upon the encroachments of the executive.” The impeachment power does not exist to protect the Presidency; it exists to protect the nation from a corrupt and dangerous President like Donald Trump.

Second, President Trump has no basis for objecting to how the House conducted its impeachment inquiry. The Constitution vests the House with the “sole Power of Impeachment” and the power to “determine the Rules of its Proceedings.” The Chamber has not demanded that he have never been recognized and have not been afforded in any prior Presidential impeachment.” President Trump has been afforded protections equal to or greater than those afforded Presidents Nixon and Clinton during their impeachment proceedings in the House. Any claim that President Trump was deprived of due process rights on a criminal trial during the entirety of the House impeachment inquiry ignores both law and history. A House impeachment inquiry cannot be compared to a criminal trial because the Senate, not the House, possesses the “sole Power to try Impeachments.” The Constitution does not entitle President Trump to a separate, full trial first in the House.

Even indulging the analogy to a criminal trial, the President, his agents, or a court, actor or grand jury deciding whether to bring charges would have the rights President Trump has claimed. As the House Judiciary Committee observed in the Watergate, “it is not a right but a privilege or a courtesy” for the President to participate through counsel in House impeachment proceedings. President Trump’s demands are just another effort to obstruct the House in the exercise of its constitutional duty.

Third, President Trump’s assertion that his impeachment for obstruction of Congress is invalid because the Committees did not first seek judicial enforcement of their subpoenas ignores again the Constitutional dictate that the House has the exclusive power to determine how to proceed with an impeachment. It also ignores President Trump’s own arguments to the federal courts.

President Trump is telling one story to Congress while spinning a different tale in the courts. He is saying to Congress that the Committees should have sued the Executive Branch in court to ensure their subpoenas. But he has argued to that court that Congressional Committees cannot sue the Executive Branch to enforce their subpoenas. President Trump cannot tell Congress that it must pursue him in court, while simultaneously telling the courts that they are powerless to compel him to testify.

President Trump’s approach to the Judicial Branch thus mirrors his obstruction of the Legislative Branch—in his view, neither can engage in any review of his conduct. This position conveys the President’s dangerously misguided belief that no other official, including the courts, can hold him accountable for abusing it. That belief is fundamentally incompatible with our form of government. Months of oversight over each of the House’s subpoenas is in any event no answer in this time-sensitive inquiry. The House’s subpoena to former White House Counsel Don McGahn was issued in April 2019, but it is still winding its way through the courts over President Trump’s strong objections.250 Litigating President Trump’s direction that each subpoena be denied would conflict with the House’s urgent duty to act on the compelling evidence that it has uncovered. Further delay could also compromise the integrity of the 2020 election.

When the Framers entrusted the House with the sole power of impeachment, they obviously meant to equip the House with the necessary tools to discover abuses of power by the President. Without that authority, the Impeachment Clause would fall as an ineffective safeguard against tyranny. A system in which the President can be charged with a crime, as the Department of Justice believes, and in which he can nullify the impeachment power through blanket obstruction, as President Trump has, is a system in which the President is above the law. The Senate should convict President Trump for his categorical obstruction of the House’s impeachment inquiry and ensure that this President, and any future President, cannot commit impeachable offenses and then avoid accountability by covering them up.

III. The Senate Should Immediately Remove President Trump From Office to Prevent Further Abuses

President Trump has demonstrated his continued willingness to corrupt free and fair elections, betray our national security, and subvert the constitutional separation of powers—all for personal gain. President Trump’s ongoing pattern of misconduct demonstrates that he is an immediate threat to the Nation and the rule of law. It is impermissible for him to remain in the political or judicial posture of office from now, and permanently bar him from holding federal office.

A. President Trump’s Repeated Abuse of Power Presents an Ongoing Threat to Our Elections

President Trump’s solicitation of Ukrainian interference in the 2020 election is not an isolated incident. It is part of his ongoing and deeply troubling course of misconduct that, as the First Article of Impeachment states, is “consistent with President Trump’s interference in the foreign election interference in United States elections.” These previous efforts include inviting Russian interference in the 2016 Presidential election and interference in the 2018 midterm elections. The Trump Campaign concluded, the “Russian government interfered in the 2016 presidential election in sweeping and systematic fashion.” Throughout the 2016 election cycle, the Trump Campaign maintained significant contacts with agents of the Russian government who were offering damaging information concerning then-candidate Trump and Mrs. Trump repeatedly praised—and even publicly requested—the release of politically charged Russia-hacked emails. The Trump Campaign welcomed Russia’s election interference because it “expected it would benefit electorally from information stolen and released through Russian interference.”13

In President Trump’s recent actions confirm that public censure is insufficient to deter him from continuing to facilitate foreign interference in U.S. elections. In June 2019, President Trump declared that he sees “nothing wrong with listening” to a foreign power’s offer to assist him in a political adversary. In the President’s words: “I think I’d take it.”251 Asked whether he would allow the information gathered to law enforcement, President Trump retorted: “Give me a break, life doesn’t work that way.”252 On only one day after Special Counsel Mueller testified to Congress that the Trump Campaign welcomed and sought to capitalize on Russia’s efforts to damage the President’s political rival in 2016, President Trump spoke to President Zelensky, pressuring Ukraine to announce investigations to damage President Trump in the 2020 election and undermine Special Counsel Mueller’s findings. President Trump still embraces that call as both “routine” and “perfect.”253 President Trump’s conduct would have horrified the Framers of our republic.

In its findings, the Intelligence Committee emphasized the “proximate threat of further presidential attempts to solicit foreign interference in our next election.”254 That threat is not abating. In a sign that President Trump’s corrupt efforts to encourage interference in the 2020 election persist, he reiterated his desire for Ukraine to investigate the Bidens.255 When asked in October 2019 what he hoped President Zelensky would do about “the Bidens,” President Trump answered that it was “very simple” and he hoped Ukraine would “start a major investigation into Biden.”256 President Trump has also continued to engage in corruption reforms.”245 Not only was Mr. Giuliani perpetuating the false allegations against the former Vice President, but he was reiterating the threat that President Trump had used to pressure President Zelensky to announce the investigations: that U.S. assistance to Ukraine would be withheld until Ukraine pursued the sham investigations. Mr. Giuliani has stated that he and the President continue to be “on the same page.”246 Ukraine, as we all understand, that Mr. Giuliani represents President Trump’s interests.247

President Trump’s unrepentant embrace of foreign election interferenceิต
t the threat posed by his continued occupancy of the Office of the President. It also refutes the notion that any of his misconduct should be decided by the voters in the 2020 election. The aim of President Trump’s Ukraine scheme was to corrupt the integrity of the 2020 election by giving a foreign power to give him an unfair advantage—in short, to cheat. That threat persists today.

B. President Trump’s Obstruction of Congress Threatens Our Constitutional Order

President Trump’s obstruction of the House’s impeachment inquiry intended to
hold him accountable for his misconduct presents a serious danger to our constitutional checks and balances.

President Trump has made clear that he refuses to accept Congress’s expression—explicitly—of its constitutional role in conducting impeachments.248 He has thereby subverted the Constitution that he pledged to uphold when he took his oath on the steps of the Capitol. By his words and deeds, President Trump has obstructed the House’s impeachment inquiry at every turn: He has dismissed impeachable conduct as “illusory,” “illegal,” and “unconstitutional”;249 directed the Executive Branch not to comply with House subpoenas and testified before the House.250 and intimidated and threatened the anonymous intelligence community whistleblower as well as the patriotic public servants who honored their subpoenas and testified before the House.251

President Trump’s obstruction is part of an ominous pattern of efforts “to undermine United States Government investigations into foreign interference in United States elections.”252 Rather than assist Special Counsel Mueller’s investigation into Russian interference in the 2016 election and his own campaign’s exploitation of that foreign assistance, President Trump repeatedly used the powers of his office to impede it. Among other things, President Trump directed the White House Counsel to fire the Special Counsel and then create a false record of the firing, tampered with witnesses in the Special Counsel’s investigation, and repeatedly and publicly attacked the legitimacy of the investigation.253 President Trump’s current obstruction of Congress is, therefore, not the first time he has committed misconduct concerning a federal investigation into election interference and then sought to hide it. Allowing this pattern to continue without repercussion would send the clear message that President Trump is correct in his view that no governmental body can hold him accountable for wrongdoing. That view is erroneous and exceptionally dangerous.

C. The Senate Should Convict and Remove President Trump to Protect Our System of Government and National Security Interests

The Senate should convict and remove President Trump to avoid serious and long-term damage to our democratic values and the Nation’s security.

If the Senate permits President Trump to remain in office, he and future leaders would be emboldened to worship, and even enlist, foreign interference in elections for years to come. When the American people’s faith in their electoral process is shaken and its results called into question, the essence of democratic self-government is called into doubt.

Failure to remove President Trump would signal that a President’s personal interests may take precedence over those of the Nation, alarming our allies and emboldening our adversaries. Our leadership depends on the power of our example and the consistency of our purpose,” but because of President Trump’s actions, “[b]oth have now been open to question.”

Ratifying President Trump’s behavior would likewise erode longstanding U.S. anti-corruption policy, which encourages countries to cooperate in the criminal justice system to investigate political opponents. As many witnesses explained, urging Ukraine to engage in “selective politically associated investigations or prosecutions” undermines the power of America’s example and our longstanding efforts to promote the rule of law abroad.254 An acquittal would also provide license to President Trump and his successors to use taxpayer dollars for personal political ends.

Foreign aid is not the only vulnerable source of funding; Presidents could also hold hostage federal funds earmarked for States—such as money for natural disasters, highways, capitalism, and training state officials perform personal political favors.

Any Congressional appropriation would be an opportunity for a President to solicit a favor, or not, for his personal political purposes—or for others to seek to curry favor with him. Such an outcome would be entirely incompatible with our constitutional system of self-government.

President Trump has betrayed the American people and the ideals on which the Nation was founded. Unless he is removed from office, he will continue to endanger our national security, jeopardize the integrity of our elections, and undermine our core constitutional principles.

Respectfully submitted,

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Endnotes

2. See Statement of Material Facts (Statement of Facts) (Jan. 18, 2020), ¶ 1–151 (filed as an attachment to this Trial Memorandum).
3. Id. ¶¶ 75–76.
4. Id. ¶¶ 76–77.
5. Id. ¶¶ 11–12.
6. Id. ¶¶ 11–16.
7. Id. ¶¶ 12.
8. Id. ¶¶ 13.
9. See, e.g., id. ¶¶ 53.
10. See, e.g., id. ¶ 16, 18.
11. See, e.g., id. ¶ 9.
12. See, e.g., id. ¶ 24.
13. See, e.g., id. ¶¶ 19, 25, 145–47.
15. See, e.g., id. ¶ 49.
16. See, e.g., id. ¶ 46.
17. See, e.g., id. ¶ 43, 46–48.
18. See, e.g., id. ¶¶ 127, 131.
19. See, e.g., id. ¶¶ 49–69.
20. See, e.g., id. ¶ 50.
22. See, e.g., id. ¶ 137.
28. Id. ¶¶ 179–83.
29. See, e.g., id. ¶¶ 186–87.
30. See id. ¶¶ 191–93.
31. See id. ¶¶ 187–90.
32. See id. ¶¶ 178; H. Res. 755, at 5–8.
41. 2 Farrand at 67.
42. See id. at 65.
43. Id. at 64.
44. Id. at 65.
45. See The Federalist No. 65 (Alexander Hamilton).
47. Washington Farewell Address.
49. 2 Farrand at 66.
51. See, e.g., 160.
52. U.S. Const., Art. II, ¶ 1, cl. 5.
57. 2 Farrand at 550.
58. The Federalist No. 65 (Alexander Hamilton) (capitalization altered).
59. These issues are discussed at length in the report by the House Committee on the Judiciary, See H. Rep. No. 116-346, at 28–75.
60. Statement of Facts ¶ 180.
61. Id. ¶ 161.
62. See id. ¶¶ 166, 180, 183, 189–90.
63. Id. ¶ 162.
64. Id. ¶ 164.
65. See id. ¶ 164–69.
66. Id. ¶ 183.
67. Id. ¶ 187.
68. Id. ¶¶ 188–89.
69. Id. ¶ 189.
70. See id. ¶ 176; see also H. Rep. No. 116-355.
71. Statement of Facts ¶ 176; see also H. Res. 755.
74. Id.
75. Id. at 3.
76. Id.
77. See id.
78. Id.
79. Id.
80. Id.
81. See id.
82. See id.
83. See id.
84. See id.
85. See id. at 8.
funds. placed by the President on the remaining needs to evaluate the legality of the hold plains that OMB and the State Department the Department of Defense. The opinion ex-

of power as an impeachable offense, see H. 22, 1986) (impeachment of Judge Claiborne).

Porteous, Jr.,

election.

deputy Robert Blair and OMB official Mi-

139.

140.

141.

142.

143.

144.

145.

146.

147. Id. *59. Although Bolton has not co-

operated with the House’s inquiry, he has of-

fered to testify to the Senate if subpoenaed. 148. Id. *58.

149. Id. *57.

150. Id. *83.

151. Id. *118.

152. Id. *55 (recalling his statement to Amb-

assador Volker in July 2019). 153. Id. *68.

154. Id. *104.

155. Id. *130.

156. Id. *151.

157. Id. *143.

158. See id. *2, 33.

159. See id. *85.


162. See id. *73, 39.


164. See id. *8-9, 81.

165. See id. *82 n.138.

166. See e.g., id. *62, 131.


168. See id. *43-45.

169. See id. *44.

170. See id.

171. See id. *131.

172. Id. *28.

173. Id. *51.

174. Id.

175. Id.

176. Id. *34.

177. Id. *132-33.

178. Id. *4 & n.8.

179. See id. *50.

180. See id.


182. Transcript, Impeachment Inquiry: Amb-

assador Marie “Masha” Yovanovitch: Hearing Before the H. Permanent Select Comm. on Intelligence, 116th Cong. Nov 21, 2019 (Yovanovitch Hearing Tr.).

183. Transcript, Impeachment Inquiry: Amb-


186. Id. *16-19.

187. See id. *194-56 (then-candidate Trump’s actions relating to the FBI’s investiga-
tion into Hillary Clinton).

188. Id. *88.

189. Id. *121. Mr. Mulvany, Blair and Duffey would shed additional light on the White House’s efforts to create an after-the-fact justification for the President’s witholding of secur-

ity assistance. Ambassador Bolton’s testi-

mony would likewise be illuminating in this regard given public reporting of his repeated, yet unsuccessful, efforts to convince the President to lift the hold.

190. See id. *112.

191. Id.

192. Id.

193. See, e.g., The Federalist No. 65 (Alex-

ander Hamilton) (referring to the House as the “inquirors for the nation” for purposes of impeachment); Kilburn v. Thompson, 103 U.S. 168, 193 (1880); 4 James D. Richardson ed., Messages and Papers of Presidents 494-35 (1896); also see H. Rep. No. 116-366, at 139-42 (collecting examples of past Presidents be-

inning with George Washington acknowledging the importance of Congress’s right to information from the Executive Branch in impeachment inquiries).


198. Id. at 175.


202. Kilbourn, 103 U.S. at 190. The Court in Kilbourn invalidated a contempt order by the House but opined that the “whole aspect of the case would have changed” if it had been an impeachment proceeding. Id. at 193.
I, Statement of Material Facts

A. President Trump’s Abuse of Power

1. On April 21, 2019, Volodymyr Zelensky, a political neophyte, won a landslide victory in Ukraine’s Presidential election.2 President Trump campaigned on an anti-corruption platform, and his victory reconfirmed the Ukrainian people’s strong desire for reform.3

2. When President Trump congratulated Zelensky later that day, President Trump did not raise any concerns about corruption in Ukraine, although his staff had prepared written materials for him recommending that he do so, and the White House call readout incorrectly indicated he did.5

3. During the call, President Trump promised President-elect Zelensky that a high-level U.S. delegation would attend his inauguration and told him, “When you’re settled in and ready, I’d like to invite you to the White House.”6

4. Both events would have demonstrated strong support by the United States as Ukraine fought a war—and negotiated for peace—with Russia. President Trump did not publicly gauge the level of American support for the Ukrainian Government.7 A White House visit would also have bolstered Zelensky’s standing at home as he pursued his anti-corruption agenda.8

5. Following the April 21 call, President Trump asked Vice President Mike Pence to lead the American delegation to President Zelensky’s inauguration. During his own call with President-elect Zelensky on April 23, Vice President Pence promised that the U.S. delegation would attend the inauguration “if the dates worked out.”9

6. On April 23, the media reported that former Vice President Biden was going to enter the 2020 race for the Democratic nomination for President of the United States.10

7. The next day, April 24, the State Department executed President Trump’s order to recall the U.S. ambassador to Ukraine, Marie “Masha” Yovanovitch, who was a well-regarded career diplomat and champion for anti-corruption reforms in Ukraine.11

8. The removal of Ambassador Yovanovitch was the culmination of a months-long smear campaign waged by the President’s personal lawyer, Rudy Giuliani, and other allies of the President.12 The President also helped amplify the smear campaign.13

9. Upon her return to the United States, Ambassador Yovanovitch was informed by State Department officials that there was no substantive reason or cause for her removal, but that the President had simply “lost confidence” in her.14

10. Mr. Giuliani later disclosed the true motive for Ambassador Yovanovitch’s removal: Mr. Giuliani “believed that [he] needed Yovanovitch out of the way” because “she was going to make the investigations difficult for everybody.”15

11. Mr. Giuliani was referring to the two politically motivated investigations that President Trump solicited from Ukraine in order to assist his 2020 reelection campaign: one into former Vice President Biden and one into a Ukrainian gas company, Burisma Holdings, on whose board Biden’s son sat,16 the other into a discredited conspiracy theory that Ukraine interfered in the 2016 U.S. election to help Hillary Clinton’s campaign. One element of the latter conspiracy theory was that CrowdStrike—a company based in Sunnyvale, California, that the President erroneously believed was owned by a Ukrainian oligarch—had colluded with the Democratic National Committee (DNC) to frame Russia and help the election campaign of Hillary Clinton.17

12. There was no factual basis for either investigation. As to the first, witnesses unanimously testified that there was no credible evidence to support the allegations that, in 2015, Vice President Biden encouraged Ukraine to remove then-Prosecutor General Viktor Shokin because he was investigating Burisma.18 Rather, Vice President Biden was carrying out the administration’s policy of encouraging Ukraine to carry out anticorruption reforms with bipartisan support—a policy designed to promote anti-corruption reforms in Ukraine because Shokin was viewed by the United States, its partners, and the International Monetary Fund to be ineffectual at prosecuting corruption and was himself corrupt.19 In fact, witnesses unanimously testified that the removal of Shokin made it more likely that Ukraine would investigate corruption, including Burisma and its owner, not less likely.20 The Ukrainian Parliament removed Shokin in March 2016.21

13. As to the second investigation, the U.S. Intelligence Community determined that Russia interfered in the 2016 election.22 The Senate Select Committee on Intelligence reached the same conclusion following its own lengthy bipartisan investigation.23 The Intelligence Community’s conclusion was consistent with its prior conduct during and after the 2016 election.24

14. As Dr. Fiona Hill—who served until July 2019 as the Senior Director for European and Russian Affairs at the National Security Council (NSC) under President Trump until July 2019—testified, the theory of Ukrainian interference in the 2016 election is a “fictional narrative that is being perpetrated and propagated by the Russian security services themselves” to deflect from Russia’s own culpability and to drive a wedge between the United States and Ukraine.25 In fact, shortly after the 2016 U.S. election, this conspiracy theory was promoted by none other than President Vladimir Putin himself.26 On May 3, 2019, shortly after President Zelensky’s election victory and before President Putin spoke by telephone, including about the so-called “Russian Hoax.”27

15. President Trump’s senior advisors had attempted to dissuade him from promoting this conspiracy theory, to no avail. Dr. Hill testified that President Trump’s former Homeland Security Advisor Tom Bossert and former National Security Advisor H.R. McMaster “spent a lot of time trying to refute this theory in the first year of the administration.”28 Bossert later said of the false narrative that Russia interfered in the 2016 election was “not only a conspiracy theory; it is completely debunked.”29

16. The President Enlisted His Personal Attorney and U.S. Officials To Help Execute the Scheme for His Personal Benefit

17. Shortly after his April 21 call with President Zelensky, President Trump began to pressure Ukraine’s president to carry out Investigations that the President wanted Ukraine to pursue. On April 25—the day that former Vice President Biden announced his candidacy for the Democratic nomination for President Trump called into Sean Hannity’s prime time Fox News show. Referencing alleged Ukrainian interference in the 2016 election, President Trump said, “It sounds like big stuff,” and suggested that the Attorney General might investigate.30
VerDate Sep 11 2014 17:29 Jan 22, 2020 Jkt 099060 PO 00000 Frm 00015 Fmt 4624 Sfmt 0634 E:\CR\FM\A21JA6.110 S21JAPT1SSpencer on DSKBBXCHB2PROD with SENATE

17. On May 6, in a separate Fox News interview, President Trump claimed Vice President Biden’s advocacy for Mr. Shokin’s dismissal in 2016 was “a very serious problem” and “the most serious problem that we had.”43 Mr. Giuliani stepped up and said, “I know that’s not what I heard.”

18. On May 9, the New York Times reported that Mr. Giuliani was planning to travel to Ukraine to urge President Zelensky to pursue the investigation into corruption.44 Mr. Giuliani acknowledged that “[s]omebody could say it’s improper” to pressure Ukraine to open investigations that would benefit President Trump and his campaign, and “I’m going to give them to stop. And I’m going to give them reasons why they shouldn’t do it because that information will be very, very helpful to my client.”

19. In a letter dated May 10, 2019, and addressed to President-elect Zelensky, Mr. Giuliani wrote that he “represent[ed] him [President Trump] as a private citizen, not as President of the United States.” In his capacity as counsel to the President, he encouraged Mr. Trump, and with his knowledge and consent, Mr. Giuliani requested a meeting with President Zelensky the following week to discuss their relationship.

20. On the evening of Friday, May 10, however, Mr. Giuliani announced that he was canceling a later explained, “I am not going to” go to Ukraine “because I’m walking into a group of people that are enemies of the President.”

21. By the following Monday morning, May 13, President Trump had ordered Vice President Pence not to attend President Zelensky’s inauguration in favor of a lower-ranking delegation led by Secretary of Energy Rick Perry.45

22. The U.S. delegation—which also included Ambassador to the European Union Gordon Sondland and Special Envoy for Ukraine Negotiations Ambassador Kurt Volker, and NSF Director for Ukraine Lieutenant Colonel Alexander Vindman—was turned away at the airport, indicating that President Zelensky was genuinely committed to anti-corruption reforms.

23. In the Oval Office on May 23, members of the delegation relayed their positive impressions to President Trump and encouraged him to schedule the promised Oval Office meeting for President Zelensky. President Trump, however, said he “didn’t believe” the delegation’s positive assessment, claiming “that’s not what I hear” from anyone else.46 Mr. Giuliani later explained that he “am not going to” go to Ukraine “because I’m walking into a group of people that are enemies of the President.”

24. Rather than commit to a date for an Oval Office meeting with President Zelensky, President Trump directed the delegation to “[t]alk to Rudy, talk to Rudy.”47 Ambassador Volker testified that “[t]he delegation” never called Rudy and just left it alone nothing would happen with Ukraine,48 and “[t]he President” was going to have his mind changed, that was the path.”

25. By the following Monday morning, May 27, Vice President Pence was meeting with President Zelensky in New York City.49 Mr. Mulvaney reportedly emailed his senior advisor Robert Blair, “Did we ever find out about the money for Ukraine and whether we can hold it back?” Mr. Blair responded that it would be possible, but they should “expect Congress to become unhinged” if the President held back the appropriated funds.50

26. On June 17, Ambassador Bill Taylor, whom Secretary of State Mike Pompeo had recently asked to replace Ambassador Yovanovitch, arrived in Kyiv as the new Chargé d’Affaires.

27. Ambassador Taylor quickly observed that there was an “irregular channel” led by Mr. Giuliani that, over time, began to undermine the official channel of U.S. diplomatic relations with Ukraine.51 Ambassador Sondland similarly testified that the agenda described by Mr. Giuliani became more “insidious” over time.52 Mr. Giuliani would prove himself a “cynical and malicious” Security Advisor Ambassador John Bolton told a colleague, a “hand grenade that was going to blow everyone up.”

28. The President froze vital military and other Security Assistance for Ukraine.

29. Since 2014, Ukraine has been engaged in an ongoing armed conflict with Russia in the Donbas region of eastern Ukraine.53 Ukraine is a “strategic partner of the United States,” and the United States has long supported Ukraine in its conflict with Russia.54 As Ambassador Volker and multiple other witnesses testified, supporting Ukraine is “critisically important” to U.S. interests, including countering Russian aggression in the region.

30. Ukrainians face casualties on a near-daily basis in their ongoing conflict with Russia.55 Since 2014, Russian aggression has resulted in more than 13,000 Ukrainian deaths on Ukrainian territory,56 including approximately 3,931 civilians, and has wounded another 30,000 persons.57

31. In 2014, following Russia’s invasion of Crimea, the United States and its European allies have provided more than $11 billion in foreign assistance to Ukraine over that same period (not including the United Kingdom, which has contributed approximately $3.1 billion in military and other security assistance, and France which has contributed approximately €1.5 billion in military and other security assistance, and $1.6 billion in non-military, non-humanitarian aid to Ukraine).58

32. The military assistance provided by the United States to Ukraine “saves lives” by making it possible to fight Russia more effectively.59 It likewise advances U.S. national security interests because, “[i]f Russia prevails and Ukraine falls to Russian domination, we will see the United States, and Europe, cede territory to Russia that will expand its territory and influence.”60 Indeed, the reason the United States provides assistance to the Ukrainian military is “so that they can fight Russia over there, and we don’t have to fight Russia here.”

33. The United States’ European allies have similarly provided political and economic support to Ukraine. Since 2014, the European Union (EU) has been the largest donor to Ukraine.61 The EU has extended more macro-financial assistance to Ukraine than any other non-EU country and has committed to extend another €1.1 billion.62 Between 2014 and September 2019, the EU and its member states funded the policy reform process in Ukraine.63

34. For fiscal year 2019, Congress appropriated and authorized $931 million in taxpayer-funded security assistance to Ukraine: $250 million in funds administered by the Department of Defense (DOD) and $113 million in funds administered by the Department of State, with another $28 million carried over from fiscal year 2018.64 DOD planned to use the funds to provide Ukraine with non-lethal aid, including grenade launchers, counter-artillery radars, electronic warfare detection and secure communications, and night vision equipment, among other military equipment to defend itself against Russian forces, which have occupied part of eastern Ukraine since 2014.65 These purposes were consistent with the goals of Congress, which stated that the funds administered by DOD under the Ukraine Security Assistance Initiative (USAI) for the purpose of providing “trainings, equipment, logistics support, supplies and services; sustainment; and intelligence support to the military and national security forces of Ukraine, and . . . replacement of any damage caused to the Government of Ukraine.”66

35. On June 18, 2019, after all Congressionally mandated conditions on the DOD-administered aid—including certification that Ukraine had adopted sufficient anti-corruption reforms—were met, DOD issued a press release announcing its intention to provide the $250 million in security assistance to Ukraine.67

36. On June 19, the Office of Management and Budget (OMB) received questions from President Trump about the funding for Ukraine.68 OMB, in turn, made inquiries with the relevant Executive Branch agencies during a scheduled meeting.

37. On June 27, Acting Chief of Staff Mick Mulvaney reportedly emailed his senior advisor Robert Blair, “Did we ever find out about the money for Ukraine and whether we can hold it back?” Mr. Blair responded that it would be possible, but they should “expect Congress to become unhinged” if the President held back the appropriated funds.69

38. Around this time, despite overwhelming support for the security assistance from every relevant Executive Branch agency,70 and despite the fact that the funds had been authorized and appropriated by Congress with strong bipartisan support,71 the President ordered a hold on all military and other security assistance for Ukraine.

39. On July 3, OMB issued the release of $141 million in State Department funds. By July 12, all military and other security assistance for Ukraine was frozen.

40. On July 18, OMB announced to the relevant Executive Branch agencies during a secure videoconference that President Trump had ordered a hold on all Ukraine security assistance.72

41. On July 25—approximately 90 minutes after the announcement, the President released the statement that he had held out for higher-level Security Assistance for Ukraine—OMB’s Associate Director for National Security Programs, Michael
Duffy, a political appointee, instructed DOD officials: “Based on guidance I have received and in light of the Administration’s plan to review assistance to Ukraine, including the Ukraine Security Assistance Initiative, please hold off on any additional DoD obligations of these funds, pending direction from that process.” He added: “Given the sensitive nature of the request, I am sending you your keeping that information closely held to those who need to know to execute the direction”.

In late July, the NSC convened a series of interagency meetings during which senior Executive Branch officials discussed the hold on security assistance. Many of these meetings, a number of these meetings, a number of which were held in person and some by teleconference, were attended by officials from the Department of State, the Department of Defense, the intelligence community, and other agencies. In addition, the Department of State has been coordinating with the Department of the Treasury on a range of issues, including the implementation of sanctions.

On January 16, 2020, the White House announced that it would cut off all assistance to Ukraine, including military aid. The decision was made in response to a request from the European Union, which had been lobbying for increased aid to Ukraine. The White House stated that it would no longer support the extension of the General Agreement on Tariffs and Trade (GATT) for Ukraine, which was due to expire in February 2020. The decision was also made in response to concerns about the handling of the funds, which had been raised by members of Congress, including Senator John McCain, who had been a strong supporter of increased aid to Ukraine.

Ambassador Volker, a career diplomat, was appointed as the Assistant Secretary of State for European and Eurasian Affairs in 2018. He was previously the Ambassador to Ukraine and had been involved in the negotiations that produced the Minsk agreements, which ended the civil war in eastern Ukraine.

Volker was named as a special envoy to Ukraine by President Trump in March 2019. He was tasked with coordinating the US government’s response to reports of Russian interference in the 2016 US presidential election. Volker was a key figure in the negotiations leading up to the signing of the Minsk agreements, which ended the civil war in eastern Ukraine.

In light of the growing crisis in eastern Ukraine, Volker had been calling for increased aid to the country, including military assistance. The White House had previously announced that it would cut off all aid to Ukraine, including military aid, in response to a request from the European Union.

In a statement released on January 16, 2020, Volker said: “This is a difficult decision, but it is in the best interests of Ukraine and the United States.” He added: “We are committed to working with the Ukrainian government to address the challenges it faces and to support its efforts to achieve a stable and secure future.”

The decision to cut off all aid to Ukraine was widely criticized, with many members of Congress, including Senator John McCain, calling for increased aid to the country. McCain had been a strong supporter of increased aid to Ukraine, and had been involved in negotiations leading up to the signing of the Minsk agreements, which ended the civil war in eastern Ukraine.

The decision to cut off all aid to Ukraine was also criticized by many experts, who argued that it would make it more difficult for Ukraine to achieve stability and security. The decision was also seen as a blow to the efforts of the European Union, which had been lobbying for increased aid to Ukraine.

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top Trump Administration officials—showed that his efforts regarding Ukraine were not part of a rogue foreign policy. To the contrary, Ambassador Sondland testified that “everybody” was involved.

68. The Ukrainians also understood the quid pro quo—and the domestic U.S. political ramifications of the investigations they were being asked to pursue. On July 25, Ambassador Volker told a key White House advisor to President Zelensky that the Ukrainian leader “did not want to be used as a pawn in a U.S. reelection.” The next day, Ambassador Taylor warned Ambassador Sondland that President Zelensky was “sensitive about Ukraine being taken seriously, not merely as an instrument in Washington domestic, reelection politics.”

69. Nevertheless, President Trump, directly and through his hand-picked representatives, continued to press the Ukrainian government for the announcement of the investigations, including during President Trump’s July 25 call with President Zelensky.

70. In the days leading up to President Trump’s July 25 call with President Zelensky, U.S. polling data showed former Vice President Biden leading in the State of Pennsylvania in a closely contested contest against President Trump.

71. Meanwhile, Ambassadors Sondland and Volker continued to prepare President Zelensky for the upcoming call with President Trump until right before it occurred.

72. On the morning of July 25, Ambassador Sondland spoke with President Trump in advance of his call with President Zelensky. Ambassador Sondland then called Ambassador Volker and left a voicemail.

73. The same day, Ambassador Sondland’s message, Ambassador Volker sent a text message to President Zelensky’s aide, Mr. Yermak, approximately 90 minutes before the call:

> Heard from White House—assuming President Z concedes Trump will investigate “to the bottom of what happened” in 2016, we will nail down date for visit to Washington. Good luck.

74. In his public testimony, Ambassador Sondland elaborated that the Ambassador Volker’s text message to Mr. Yermak accurately summarized the directive he had received from President Trump earlier that morning.

75. During the roughly 30-minute July 25 call, President Zelensky thanked President Trump for the “great support in the area of defense” that the United States and Ukraine had received from the United States and stated that Ukraine would soon be prepared to purchase additional Javelin anti-tank missiles from the United States.

76. President Trump immediately responded with his own request: “I would like you to do us a favor, though,” which was “to find out what happened” with alleged Ukrainian ambassador Volker in the 2018 Meeting, to “look into” former Vice President Biden’s role in encouraging the removal of the former Ukrainian prosecutor general.

77. Referencing Special Counsel Mueller’s investigation into Russian interference in the 2016 election, President Trump told President Zelensky, “[T]hey say a lot of it started with Ukraine, and [that] whatever it is you can find out, it’s very important that you do it if that’s possible.”

78. President Trump repeatedly pressed the Ukrainian government to consult with his personal lawyer, Mr. Giuliani, as well as Attorney General William Barr, about the two specific investigations.

79. President Zelensky agreed, referencing Mr. Giuliani’s back-channel role, noting that Mr. Yermak “spoke with Mr. Giuliani just recently and we are hoping very much that [Mr. Giuliani] will travel to Ukraine” and “we will meet once he comes to Ukraine.”

80. Later in the call, President Zelensky headed off the investigation he had mentioned from Ambassadors Sondland and Volker: he thanked President Trump for his invitation to the White House and then reiterated that, “[o]n this other hand,” he would “emphasize that Ukraine pursued “the investigation” that President Trump had requested. President Zelensky confirmed the investigations should be done “in Washington.”

81. During the call, President Trump also attacked Ambassador Yovanovitch. He said, “She comes in as a part of a rogue foreign policy. To the contrast, the former Vice President, the woman, was bad news and the people she was dealing with in the Ukraine were bad news so I just want to let you know that.” He later added, “Well, she’s going to go through some things.” President Trump also defended then-Ukrainian Prosecutor General Yuriy Lutsenko, who was widely known to be close to President Trump.

82. The President did not mention any other issues relating to Ukraine, including concerns about Ukrainian corruption, President Zelensky’s anti-corruption reforms, or the on-going war with Russia. The President only identified two people in reference to investigations: Vice President Biden and his son.

83. Listening to the call as it transpired, several White House staff members became alarmed. Lt. Col. Vindman immediately reported his concerns to his supervisor, as he testified, “[i]t is improper for the President of the United States to demand a foreign government investigate a U.S. citizen and a political opponent.”

84. Jennifer Williams, an advisor to Vice President Pence, testified that the call struck her as “unusual and inappropriate” and that “the references to specific individuals and investigations, such as former Vice President Biden and his son, struck me as political in nature.” She believed President Trump’s solicitation of an investigation was “inappropriate” because it “appeared to be a domestic political matter.”

85. Timothy Morrison, Dr. Hill’s successor as the NSC’s Senior Director for Europe and Russia and Lt. Col. Vindman’s supervisor, reported that “the call was not the full-throated endorsement of the agenda that I was hoping to hear.” He too reported to NCS lawyers, worrying that the call would be “damaging” if leaked publicly.

86. In response, Mr. Eisenberg and his deputy, Michael Ellis, tightly restricted access to the call summary, which was placed on a highly classified list, even though it did not contain any highly classified information.

87. On July 26, the day after the call, Ambassador Sondland had lunch with State Department aides in Kyiv, including David Holmes, the Counselor for Political Affairs at the U.S. Embassy in Kyiv. During the lunch, Ambassador Sondland called President Trump directly from his cellphone. President Trump asked Ambassador Sondland whether President Zelensky was “going to do the investigation.” Ambassador Sondland stated that President Zelensky was “going to do it” and would “do anything you ask him.”

88. After the call, it was clear to Ambassador Sondland that “a public statement from President Zelensky” committing to the investigations was “knocks with his press” and he is a very capable guy. If you could speak to him that would be great.”

89. President Zelensky agreed, referencing Mr. Giuliani’s back-channel role, noting that Mr. Yermak “spoke with Mr. Giuliani just recently and we are hoping very much that [Mr. Giuliani] will travel to Ukraine” and “we will meet once he comes to Ukraine.”

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interference in the political processes of the United States,” but it did not explicitly mention the two investigations that President Trump had requested in the July 25 call.

97. The next day, Ambassadors Volker and Sondland discussed the draft statement with Mr. Giuliani, who told them, “If the statement is worded like that, while it’s true, it’s not credible.” As Ambassador Sondland would later testify, “Mr. Giuliani was expressing the desires of the President of the United States, and I knew these conversations were very important to the President.”

98. Ambassador Volker and Ambassador Sondland relayed this conversation to Mr. Yermak. Ambassador Volker also relayed this conversation to Mr. Morrison, who had been standing across the room observing their interactions. Ambassador Sondland told Mr. Morrison that Mr. Yermak had said that “the resumption of U.S. aid would like- less be a mistake” in telling Ukrainian officials that “what he had communicated [to Mr. Yermak] is that . . . what could help [Ukraine] move the aid was if the prosecutor general later remarked, “It’s critically important for the west not to pull us into some conflicts between their ruling elites.”

99. In advance of this meeting, Ambas- sador Sondland told Vice President Pence that he “had concerns that the delay in aid had become tied to the issue of investiga- tions, and that it was just as valuable to the Ukrainians as the actual dollars.” He also voiced concern that “any hold or appearance of reconsideration of such assist- ance might embolden Russia to think that the United States was no longer committed to Ukraine.”

100. Vice President Pence told President Zelensky that he would speak with President Trump that evening. Although Vice Presi- dent Pence had emphasized that the White House meeting was a “mistake” in telling Ukrainian officials that “what he had communicated [to Mr. Yermak] about the Sondland-Yermak conversa- tion, Ambassador Sondland walked over to Mr. Morrison, who had been standing across the room observing their interactions. Ambassador Sondland told Mr. Morrison that “what he had communicated [to Mr. Yermak] was that . . . what could help [Ukraine] move the aid was if the prosecutor general later remarked, “It’s critically important for the west not to pull us into some conflicts between their ruling elites.”

101. Without an explanation for the hold, and with President Trump already condi- tioning a White House visit on the announce- ment of the investigations, it became increasingly apparent to multiple witnesses that the security assistance was being with- held in order to pressure Ukraine to an- nounce the investigations. As Ambassador Sondland testified, President Trump’s effort to condition release of the security assistance on announcement of the investiga- tions was as clear as “two plus two equals four.”

102. On August 22, Ambassador Sondland emailed Secretary Pompeo in an effort to “break the logjam” on the security assistance and the White House meeting. He pro- posed that President Trump should arrange to speak to Ambassador Zelensky during an up- coming trip to Warsaw, during which Presi- dent Zelensky could “look [President Trump] in the eye and tell him” he was pre- pared to have a White House meeting, and those issues of importance to Potus and to the U.S.—“i.e., the announcement of the two investigations.”

103. On August 28, news of the hold was publicly reported by Politico.

104. As soon as the hold became public, Ukrainian officials expressed significant con- cern to U.S. officials. They were deeply worried not only about the practical impact that the hold would have on efforts to fight Russian aggression, but also about the sym- bolic message the new-publicized lack of sup- port from the Trump Administration sent to the Russian government, which would at- most certainly seek to exploit and react to perceived crack in U.S. resolve toward Ukraine. Mr. Yermak and other Ukrainian officials told Ambassador Taylor that they would not travel to Washington to make a public box about the security assistance. The recently appointed Ukrainian prosecutor general later remarked, “It’s critically important for the west not to pull us into some conflicts between their ruling elites.”

105. Immediately following that conversa- tion, Ambassador Sondland walked over to Mr. Morrison, who had been standing across the room observing their interactions. Ambassador Sondland told Mr. Morrison that “what he had communicated [to Mr. Yermak] was that . . . what could help [Ukraine] move the aid was if the prosecutor general later remarked, “It’s critically important for the west not to pull us into some conflicts between their ruling elites.”

106. On the next day, September 8, Ambassador Sondland confirmed in a phone call with Ambassador Taylor that he had spoken to President Trump and that “President Trump that the release of the security assist- ance had been conditioned on the announcement of the investigations.”

107. During the meeting that followed, which Ambassador Sondland also attended, “the very first question” that President Zelensky asked Vice President Pence related to the status of U.S. security assistance. President Zelensky emphasized that “the symbolic value of U.S. support in terms of security assistance . . . was just as valuable to the Ukrainians as the actual dollars.” He also voiced concern that “any hold or appearance of reconsideration of such assistance might embolden Russia to think that the United States was no longer committed to Ukraine.”

108. On September 7, President Trump and Ambassador Sondland spoke by telephone. As Ambassador Sondland relayed later that day during a call with Mr. Morrison, Presi- dent Trump told him “that there was no quid pro quo, but President Zelensky must an- nounce the opening of the investigations and he should want to do it.”
124. Within hours after the White House publicly released a record of the July 25 call, DOJ itself confirmed in a statement that no such request was ever made:

The President has not spoken with the Attorney General about having Ukraine investigate anything related to former Vice President Biden or his son. The President has not asked the Attorney General to contact Ukraine—on this or any other matter. The Attorney General has not communicated with Ukraine—on this or any other subject.210

G. President Trump Was Forced to Lift the Hold but Has Continued to Solicit Foreign Interference in the Upcoming Election

125. As noted above, by early September 2019, President Trump had signaled his willingness to announce the two investigations to secure a White House meeting and the security assistance. He was scheduled to make the announcement during a CNN interview later in September, but other events intervened.200

126. On September 9, the House Permanent Select Committee on Intelligence, the Committee on Oversight and Reform, and the Committee on Foreign Affairs announced a joint investigation into the scheme by President Trump to improperly pressure the Ukrainian government to assist the President’s bid for reelection.”201 The same day, the committees sent document production and requests to the White House and the State Department.202

127. NCS staff members believed that the Congressional investigation “might have the effect of making the hold on Ukraine’s military assistance, because it would have been “potentially politically challenging” to “justify that hold.”204

128. Later that day, the Inspector General of the Intelligence Community (ICIG) wrote to the Chairman and Ranking Member of the Intelligence Community notifying them that a whistleblower had filed a complaint on August 12 that the ICIG had determined to be both an “urgent concern” and “credible.” The ICIG did not disclose the contents of the complaint.205

129. The ICIG further stated that the Acting Director of National Intelligence (DNI) had told the ICIG that he was withholding the whistleblower complaint from Congress.206 It was later revealed that the Acting DNI had done so as a result of communications between the White House and the Department of Justice.207 The next day, September 10, Chairman Schiff wrote to Acting DNI Joseph Maguire to express his concern about the ICIG’s determination that an urgent, unclassified complaint about a failure to transmit an urgent, unclassified whistleblower complaint, as required by law, raises the prospect that an urgent matter of a serious nature is being purposefully concealed from Congress.208

130. The White House was aware of the contents of the whistleblower complaint since at least August 26, when the Acting DNI informed the Speaker of the House and the Senate that an urgent whistleblower complaint was being reviewed by the White House Counsel Pat Cipollone and Mr. Eisenberg reportedly briefed President Trump on the whistleblower complaint late in August.209

131. On September 11—two days after the ICIG released the whistleblower complaint and the three House Committees announced their investigation—President Trump lifted the hold on security assistance.210 At the time of the release, there had been no discernible changes in international assistance commitments for Ukraine or Ukrainian anti-corruption reforms.211

132. Because of the hold the President placed on Ukraine—on both the $400 million—or 14 percent—of the funds appropriated for Ukraine, the DOD was unable to spend approximately $35 million—or 14 percent—of the funds appropriated by Congress for fiscal year 2019.212

133. Congress passed a new law to extend the funding in order to ensure the full amount could be used by Ukraine to defend itself.213 Still, by early December 2019, Ukraine had not received approximately $20 million of the military assistance.214

134. Although the hold was lifted, the White House still had not announced a date for President Zelensky’s meeting with President Trump, and there were indications that President Zelensky’s interview with CNN would still occur.215

135. On September 18, a week before President Trump was scheduled to meet with President Zelensky on the sidelines of the U.N. General Assembly in New York, Vice President Pence had a telephone call with President Zelensky. During the call, Vice President Pence “asked[ed] a bit more about how things were going.”216

136. Additional details about this call were provided to the House by Vice President Pence’s advisor, Jennifer Williams, but were classified by the Office of the White House Counsel.217

137. Despite repeated requests, the Vice President refused to declassify Ms. Williams’ supplemental testimony.

138. On September 19, at the urging of Ambassador Taylor,218 President Zelensky cancelled the CNN interview.219

139. By date, almost nine months after the initial invitation by President Trump on April 21, a White House meeting for President Zelensky has not occurred.220

140. Since the initial invitation, President Trump has met with a dozen world leaders at the White House, including a meeting in the Oval Office with the Foreign Minister of Russia on December 18.221

141. Since lifting the hold, and even after the House impeachment inquiry was announced on September 24, President Trump has continued to press Ukraine to investigate Vice President Biden and alleged 2016 election interference by Ukraine.222

142. On September 24, in remarks at the opening of the U.N. General Assembly, President Trump stated: “What Joe Biden did for his son, that’s something [Ukraine] should be looking at.”223

143. On September 26, during remarks at the swearing-in of the new National Security Advisor, President Trump stated: “Now, the new President of Ukraine ran on the basis of no corruption. But they did have a lot of corruption, having to do with the 2016 election against us. And we want to get to the bottom of it, and it’s very important that we do.”224

144. On September 30, reporters that he was aware of Mr. Giuliani’s meetings with Ukrainian government officials, including a current Ukrainian member of Parliament who attended a KGB school in Moscow and in other countries to investigate a potential political opponent?,” Trump replied in part, “Here’s what’s okay: If we feel there’s something corrupt, we have a right to go to a foreign country.”225

145. As the House’s impeachment inquiry unfolded, Mr. Giuliani, on behalf of the President, also continued to urge Ukraine to pursue the investigations and dig up dirt on former Vice President Biden.226

146. Upon his return to Kiev, Mr. Giuliani told the New York Times that in meeting with Ukrainian officials he was acting “on behalf of his client, President Trump: I like a good lawyer, I am gathering evidence to defend my client against false charges being leveled against him.”227

147. During his trip to Ukraine, on December 3, Mr. Giuliani tweeted: “The conversation regarding anti-corruption reforms was based on compelling evidence of criminal conduct by then VP Biden, in 2016, that has not been resolved and until it is will be a major obstacle to U.S. assistance to Ukraine, with its anti-corruption reforms.”228 Not only was Mr. Giuliani perpetuating the false allegations against Vice President Biden, but he was reiterating the threat that President Trump had used to pressure President Zelensky to announce the investigations: that U.S. assistance to Ukraine could be in jeopardy until Ukraine investigated Vice President Biden.229

148. Later that day, President Trump told reporters that he was aware of Mr. Giuliani’s efforts in Ukraine and believed that Mr. Giuliani wanted to report the information he gathered to the Attorney General and Congress.230

149. On December 17, Mr. Giuliani confirmed that President Trump has been “very supportive.” Mr. Giuliani replied: “You dig up dirt on Vice President Biden in Ukraine and they are on the same page.”231
150. Such ongoing efforts by President Trump, including through his personal attorney, to solicit an investigation of his political opponent have undermined U.S. credibility, the Senate impeachment inquiry into President Trump's actions, including to determine whether to investigate Clinton and the House Permanent Select Committee on Intelligence about the findings of his investigation into Russia's interference in the 2016 presidential election and President Trump's efforts to undermine that investigation (see infra)

II. President Trump's Obstruction of Congress

158. President Trump ordered categorical obstruction of the impeachment inquiry under these circumstances.273

A. The House Launched an Impeachment Inquiry

159. During the 116th Congress, a number of Committees of the House have undertaken investigations into allegations of misconduct by President Trump and his Administration, including several that recommend articles of impeachment.250

160. As discussed above, on September 9, the Intelligence Committee and the Committees on Oversight and Reform and Foreign Affairs announced they would conduct a joint investigation into the President's scheme to pressure Ukraine to announce that "[t]here should be a way of stopping it," 271

161. During the 116th Congress, a number of Committees of the House have undertaken investigations into allegations of misconduct by President Trump and his Administration, including several that recommend articles of impeachment.250

162. On October 31, the House enacted a resolution confirming the Committees' authority to conduct the impeachment inquiry and adopting procedures governing the inquiry.264

163. The procedures adopted by the House afforded procedural privileges to the President that were equivalent to, or in some instances exceeded, those afforded during prior impeachment investigations.252

164. While the Supreme Court has recognized that the President has a "right to control the manner in which his official papers are treated," the Court has "[h]eld that information responsive to the subpoenas was "potentially protected by executive privilege."279

165. In addition, the President and his agents have spoken at length about these events to the press and on social media. Since the impeachment inquiry was announced in September, the President has made numerous public statements about his communications with President Zelensky and his decision-making relating to the hold on security assistance.280

166. The President's agents have done the same. For example, on October 16, Secretary Perry gave an interview to the Wall Street Journal. During the interview, Secretary Perry stated that after the May 23 meeting at which President Trump refused to schedule a White House meeting with President Zelensky, Secretary Perry sought out Rudy Giuliani this spring at President Trump's direction to address Mr. Trump's concerns about alleged Ukrainian corruption.281

167. Instead of responding directly to the Committees, the President publicly declared the impeachment inquiry "a disgrace," and stated that "it shouldn't be allowed" and that "[t]here should be a way of stopping it," 271

168. When the White House did not respond, the Committees sent a follow-up letter on September 26, 2019. Three House Committees sent a letter to White House Counsel Pat Cipollone requesting six categories of documents relevant to the Ukrainian corruption by September 26. When the White House did not respond, the Committees issued a subpoena compelling the White House to turn over documents.272

169. The President's response to the House's inquiry—sent to White House Counsel Pat Cipollone on October 8 sought to accomplish the President's goal of "stopping" the House's investigations. Mr. Cipollone wrote "on behalf of President Donald J. Trump and the Congress that "President Trump cannot permit his Administration to participate in this partisan inquiry under these circumstances."273

170. Despite the Constitution's placement of the "sole Power" of impeachment in the House, Mr. Cipollone's October 8 letter opined that the House's inquiry was "constitutional invalid," "lack[ed] . . . any basis," "lack[ed] the necessary authorization for a valid impeachment," and was merely "a COUP, intended to take away the Power of the People," 275 an "unconstitutional abuse of power,"276 and an "open war on American Democracy."277

171. The letter's rhetoric aligned with the President's public campaign against the impeachment inquiry, which he has branded "a COUP, intended to take away the Power of the People," 275 an "unconstitutional abuse of power,"276 and an "open war on American Democracy."277

172. Although President Trump has categorically sought to obstruct the House's impeachment inquiry, he has never formally asserted a claim of executive privilege as to any document or testimony. Mr. Cipollone's October 8 letter refers to "long-established Executive Branch confidentiality interests and analogous privileges but not actually assert executive privilege.278

173. In response to the House impeachment inquiry, the President has made public statements about his communications with President Zelensky and his decision-making relating to the hold on security assistance.280

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175. During the interview, Secretary Perry went on to say that he and President Trump had spoken in June 2019, and he and Mr. Giuliani said, "Look, the president is really concerned that there are people in Ukraine..."
that tried to beat him during this presidential election. . . . He thinks they’re corrupt and . . . that there are still people over there engaged that are absolutely corrupt. . . .

175. On October 17, Acting Chief of Staff Mulvaney acknowledged during a White House press conference that he discussed security with the Ukrainian Ambassador and that the President’s decision to withhold it was directly tied to his desire that Ukraine investigate alleged Ukrainian interference in the 2016 U.S. election.291

176. On December 3, 2019, the Intelligence Committee transmitted a detailed nearly 300-page report documenting its findings about the Trump administration’s related investigation into it, to the Judiciary Committee.292 The Judiciary Committee held public hearings evaluating the constitutionality of every Executive Branch agency that received an impeachment inquiry request or subpoena defied it.293

177. The President maintained his obstructionist position throughout this process, declaring the House’s investigation “illegal.” Speaker Nancy Pelosi issued on December 17, 2019, President Trump further attempted to undermine the House’s inquiry by dismissing impeachment as a “legal, irrelevant, and unconstitutional”294 and by intimidating and threatening an anonymous Intelligence Community whistleblower as well as the patriotic public servants who honored their subpoenas and testified before the House.295

178. On December 18, 2019, the House voted to impeach President Trump and adopted two Articles of Impeachment.296

C. Following President Trump’s Directive, the Executive Branch Refused to Produce Requested and Subpoenaed Documents

179. Adhering to President Trump’s directive, every Executive Branch agency that received an impeachment inquiry request or subpoena defied it.297

180. House Committees issued document requests to the White House, the Office of the Vice President, OMB, the Department of State, DOD, and the Department of Energy.298

181. In its response, the Office of the Vice President echoed Mr. Cipollone’s assertions that the impeachment inquiry was pro- 299. durally and constitutionally flawed. The Office of Management and Budget also explicitly cited the President’s directive.299

182. The Executive Branch has refused to produce documents in response to the Committees’ valid, legally binding subpoenas, even though witness testimony has revealed that highly relevant records exist.300

183. Indeed, by virtue of President Trump’s order, not a single document has been produced by the White House, the Office of the Vice President, OMB, the Department of State, DOD, or the Department of Energy in response to 71 specific, individualized requests or demands for records in their possession, custody, or control. These agencies and offices also blocked many current and former officials from producing records to the Committees.301

184. Certain witnesses, however, defied the President’s order and identified the substance of key documents. For example, Lt. Col. Vindman described a “Presidential Decision Memo” issued in August that conveyed the “consensus views” among foreign policy and national security officials that the hold on aid to Ukraine should be released.302 These witnesses identified substantial documents that the President and various agencies were withholding from Congress that were directly relevant to the impeachment inquiry.307

185. Some responsive documents have been released by the State Department, DOD, and OMB pursuant to judicial orders issued in re- 308. sponse to lawsuits filed under the Freedom of Information Act (FOIA).309 Although limited in scope and heavily redacted, these documents revealed the Trump Administration is withholding highly pertinent documents from Congress without any valid legal basis.310

D. President Trump Ordered Top Aides Not to Testify, Even Pursuant to Subpoena

186. President Trump directed government witnesses to violate their legal obligations and defy House subpoenas—regardless of whether those subpoenas were part of the House’s impeachment inquiry. The President personally directed that senior aides defy subpoenas on the ground that they are “absolutely immune” from compelled testimony.311 Other officials refused to appear “as directed by” Mr. Cipollone’s October 8 letter.312 Still others refused to appear because—consistent with the House Deposition Rules drafted by the then-majority Republican—agency counsel was not permitted in the depositions.313

187. This Nation-wide effort to pre- 314. vent witnesses from providing testimony was coordinated and comprehensive. In total, twelve current or former Administration of- 315. ficials failed to cooperate with the House’s impeachment inquiry into the Ukrainian matter, nine of whom did so in defiance of duly authorized subpoenas.316 House Committees advised such witnesses that their refusal to testify may be used as an adverse inference against the President.317 Nonetheless—despite being instructed by the President to impede cooperation with the House’s impeachment inquiry, in di- 318. rectives that frequently cited or enclosed copies of Mr. Cipollone’s October 8 letter319—to block the United States House of Represent- atives from exercising its “sole Power of Im- peachment” assigned by the Constitution. In both instances, President Trump obstructed investigations into foreign election interference to hide his own misconduct.

188. House Committees conducted deposi- 320. tions or transcribed interviews of seventeen witnesses.321 All members of the Committee—322. as well as staff from the Majority and the Minority—were permitted to attend. The Majority and Minority were allotted an equal amount of time to question wit- 323. nesses.324

189. In late November 2019, twelve of these witnesses testified in public hearings con- 325. vened by the Intelligence Committee, includ- ing three witnesses called by the Majority.326

190. Unwilling witnesses: President Trump resorted to intimidation tactics to penalize them.327 He also levied sustained attacks on the anonymous whistle- 328. blower.329

E. President Trump’s Conduct Was Consistent with His Previous Efforts to Obstruct Investigations into Foreign Interference in U.S. Elections

191. President Trump’s obstruction of the House’s impeachment inquiry was consistent with his previous efforts to undermine Spe- cial Counsel Mueller’s investigation of Rus- sia’s interference in the 2016 election and the President’s own misconduct.330

192. President Trump repeatedly used his powers of office to undermine and derail the Mueller investigation by threatening to block the United States House of Representatives from exercising its “sole Power of Impeachment” assigned by the Constitution. In both instances, President Trump obstructed investigations into foreign election interference to hide his own misconduct.

1. id.; see also Transcript, Interview of Kurt Volker Before the H. Permanent Select Comm. on Intelligence, 116th Cong. 64–65 (Oct. 14, 2019) (Hill Dep. Tr.); see also Transcript, Interview of David A. Holmes Before the H. Permanent Select Comm. on Intelligence 18 (Oct. 17, 2019) (Holmes Dep. Tr.).
Before the H. Permanent Select Comm. on Intel-
genience, 116th Cong. 21–22 (Nov. 15, 2019) (Yovanovitch Hearing Tr.); Transcript, Im-
peachment Inquiry: Fiona Hill and David Holmes, Permanent Select Comm. on Intelligence, 116th Cong. 18–19 (Nov. 21, 2019) (Hill-Holmes Hearing Tr.); Holmes Dep. Tr. at 13–14, 142.

21. See Kent Dep. Tr. at 45, 93–94; Volker Interview Tr. at 36–37, 330, 355.

22. See Kent Dep. Tr. at 101–02.

23. Office of the Dir. of Nat’l Intelligence, ICA 2017–01D, Assessing Russian Activities and Intentions in Recent U.S. Elections (Jan. 6, 2017), https://perma.cc/D3UA-W5M4; see, e.g., id., at 11 ("We assess Russian President Vladim-

24. See, e.g., id., at 11 ("We assess Russian President Vladim-

25. Id. at 305.

26. Volker Interview Tr. at 29–30, 304.

27. See also, e.g., 3m; Valve and Bureaucratic Challenges: Russia, and U.S. Policy

28. See, e.g., id., at 34, 42–43.

29. Transcript, Deposition of Catherine

30. Transcript, Deposition of Laura

31. Transcript, Deposition of the

32. Transcript, Deposition of the

33. Transcript, Deposition of President

34. Transcript, Deposition of the

35. Transcript, Deposition of the

36. Transcript, Deposition of the

37. Transcript, Deposition of the
plus two $1 billion—three $1 billion loan guarantees. That is not—those get paid back largely, so just over $3 billion.

61. Taylor Dep. Tr. at 152.
62. Hale Dep. Tr. at 18.
63. Volker-Morrison Hearing Tr. at 11.
66. Id.
67. See EU Aid Explorer: Donors, European Comm’n, https://perma.cc/79H6-AHFY.
69. Transcript, Impeachment Inquiry: Ms. Laura Cooper and Mr. David Hale: Hearing Before the H. Permanent Select Comm. on Intelligenc, 116th Cong. 22-23 (Nov. 20, 2019) (Cooper-Hale Hearing Tr.); Cooper Dep. Tr. at 95-96.
73. DOD Announces $250M to Ukraine, (https://perma.cc/4UXH-ZKXP). DOD had certified in May 2019 that Ukraine satisfied all anti-corruption standards needed to receive the Congressionally appropriated military aid. See Letter from John C. Rood, Under Sec’y for Def. Policy, to Chairman Eliot L. Engel, House Comm. on Foreign Affairs (May 23, 2019), https://perma.cc/6IFS-ZX26 (‘‘Ukraine has taken substantive steps to make defense institutional reforms for the purposes of decreasing corruption. . . . [N]ow that this defense institution reform has occurred, we will use the authorities provided . . . to support programs in Ukraine further.’’).
74. Sandy Dep. Tr. at 24-25; Cooper Dep. Tr. at 33-34.
75. Sandy Dep. Tr. at 24-28.
76. Eric Lipton et al., Behind the Ukraine Aid Freeze: 84 Days of Conflict and Confusion, N.Y. Times (Dec. 29, 2019) (‘‘Behind the Ukraine Aid Freeze: 84 Days of Conflict and Confusion’’).
77. See, e.g., Cooper Dep. Tr. at 13, 16, 32, 46, 60-62, 64-65; Taylor Dep. Tr. at 28, 132, 170.
79. Williams Dep. Tr. at 54; Croft Dep. Tr. at 15; Kent Dep. Tr. at 303-305; Transcript, Deposition of Ambassador David MacInlan Hale Before the H. Permanent Select Comm. on Intelligence 81 (Oct. 31, 2019) (Hale Dep. Tr.); Transcript, Deposition of Ambassador Taylor-Morrison Before the H. Permanent Select Comm. on Intelligence 264 (Nov. 6, 2019) (Taylor-Morrison Dep. Tr.).
80. Cooper-Hale Hearing Tr. at 14; Vindman Dep. Tr. at 178-79; see also Stalled Ukraine Military Aid Concerned Members of Congress for Months, CNN (Sept. 30, 2019), https://perma.cc/5CHF-HFJK; Sandy Dep. Tr. at 38-39 (describing July 12 email from White House Office of Management and Budget that ‘‘President is directing a hold on military support funding for Ukraine.’’).
81. See Sandy Dep. Tr. at 96; Hill Dep. Tr. at 225; Kent-Harding Hr’g Tr. at 36; Vindman Dep. Tr. at 181; Holmes Dep. Tr. at 154-55.
82. Taylor-Kent Hearing Tr. at 35; Hill Dep. Tr. at 225.
83. Email from Michael Duffey, Assoc. Dir. for Nat’l Sec. Programs, Office of Mgmt. & Budget, to Peter Norquist et al. (July 25, 2019), 11:04 AM, https://perma.cc/P9G9-3M6B.
84. Id.
85. Kent Dep. Tr. at 303, 307, 311; Taylor-Kent Hearing Tr. at 182-85, Cooper Dep. Tr. at 45.
86. Kent Dep. Tr. at 303-305; Hale Dep. Tr. at 81.
87. Croft Dep. Tr. at 15; Hale Dep. Tr. at 105; Holmes Dep. Tr. at 21; Kent Dep. Tr. at 304, 310; Cooper Dep. Tr. at 44-45; Sandy Dep. Tr. at 91, 97; Morrison Dep. Tr. at 162-63. Mr. Morrison testified that, during a Deputies Committee meeting on July 26, OMB stated that the ‘‘President was concerned about corruption in Ukraine, and he wanted to be sure Ukraine was taking steps enough to manage that corruption.’’ Morrison Dep. Tr. at 165. Mr. Morrison did not testify that concerns about Europe’s contributions were raised at this meeting. In addition, Mark Sandy testified that, as of July 26, despite OMB’s own statement, senior OMB officials were unaware of the reason for the hold at that time. See Sandy Dep. Tr. at 55-56.
88. Sandy Dep. Tr. at 99; Vindman Dep. Tr. at 181-82; Kent Dep. Tr. at 305; Morrison Dep. Tr. at 236.
89. Morrison Dep. Tr. at 163; Cooper Dep. Tr. at 47-48. For example, Deputy Assistant Secretary of Defense Laura Cooper testified that, during an interagency meeting on July 26 involving senior leadership from the State Department and DOD and officials from the National Security Council, ‘‘immediately deputies began to raise concerns about how this could be done in a legal fashion” and there ‘‘was a sense that there was not an available mechanism to simply not spend the funds that had been notified to Congress or earmarked for Ukraine. Cooper Dep. Tr. at 47-48.
90. Sandy Dep. Tr. at 42-43.
91. Cooper Dep. Tr. at 75-76.
92. Cooper Dep. Tr. at 91.
94. Sandy Dep. Tr. at 149-55.
97. See, e.g., id. at 139 (‘‘I told him exactly, you know, what had transpired and that Ambassador Sondland had basically indicated that there was an agreement with the President of Staff that they would have a White House meeting or, you know, a Presidential meeting if the Ukrainians started up these investigations again.’’); Vindman Dep. Tr. at 37 (‘‘Sir, I think I—I mean, the top line I just offered, I’ll restate it, which is that Mr. Sondland asked for investigations, for these Whitewater investigations into Bidens and Burisma. I actually recall having that particular conversation. Mr. Eisenberg doesn’t really work on this issue, so I had to go a little bit into the back story of what these investigations were, and that I expressed concerns and thought it was inappropriate.’’). A third NSC official, F. Wells Griffith, also reported the July 10 meeting to the NSC Legal Advisor, but he refused to comply with a subpoena and did not testify before the House.
98. Volkert Text Messages at KV00000316.
99. See, e.g., id. at KV00000077; Ambassador Gordon D. Sondland, Opening Statement Before the U.S. House of Representatives Permanent Select Comm. on Intelligence 15 (Nov. 20, 2019), https://perma.cc/2Z2W-AHHS (‘‘As I communicated to the team, I told President Zelenskiy in advance that assurances to run a fully transparent investigation and turn over every stone were necessary in his call with President Trump.’’).
100. See, e.g., id. at KV00000037; Ambassador Taylor-Kent Hearing Tr. at 37-38 (Ambassador Taylor quoting Ambassador Sondland).
101. Sondland Dep. Tr. at 27; Sondland Opening Statement at 21, Ex. 4.
102. Sondland Dep. Tr. at 27; Sondland Hearing Tr. at 37.
104. Volkert Text Messages at KV00000307.
105. See, e.g., id. at KV00000037; Ambassador Taylor quoting Ambassador Sondland.
106. See, e.g., id. at KV00000037; Ambassador Taylor quoting Ambassador Sondland.
107. See, e.g., id. at KV00000037; Ambassador Taylor quoting Ambassador Sondland.

126. See, e.g., id. at KV0000088; July 25 Deposition at 45–46, https://perma.cc/8JRD-6K9V.
128. Sondland Hearing Tr. at 53–54.
129. Volker Test Messages at KV0000019.
130. Sondland Hearing Tr. at 53–55.
131. See July 25 Memorandum at 2, https://perma.cc/8JRD-6K9V.
132. Id. at 3; President Trump continues to embrace this call as both “routine” and “perfect.” See, e.g., Remarks by President Trump upon Arriving at the U.N. General Assembly, Sept 24, 2019 (Trumponline Statement at 23).
133. Sondland Hearing Tr. at 32 (Mr. Holme’s “clear impression was that the security assistance was not likely intended by the President either as an expression of dissatisfaction with the Ukrainians, who had not yet agreed to the Burisma/Biden investigation, or as an effort to increase the pressure on them to do so.”).
134. Sondland Hearing Tr. at 22.
137. Id. at 4.
138. Id. at 3, 5.
139. See generally id. Mr. Trump had previously engaged in efforts to cut aid to anti-corruption programs in Ukraine and other foreign countries. See, e.g., Colby Itkowitz, Trump Defends Call to Ukrainian President, Calling It ''Perfectly Fine and Routine,” Wash. Post (Sept. 21, 2019), https://perma.cc/TSZM-GKLB.
140. Id. at 34; Williams Dep. Tr. at 148–49.
141. Vindman-Williams Hearing Tr. at 15.
142. Morrison Dep. Tr. at 41.
143. Id. at 43.
144. Id. at 43, 47–50, 52; see also Vindman Dep. Tr. at 49–51, 119–22.
146. Sondland Hearing Tr. at 26–27.
147. Id. at 26–27.
148. See, e.g., Cooper-Hale Hearing Tr. at 13-14.
149. Vindman Test Messages at KV0000019.
150. Sondland Opening Statement at 7, Ex. 7; Sondland Hearing Tr. at 28, 102.
151. Vuker Test Messages at KV0000020.
152. Volker Interview Tr. at 113.
153. Vindman-Williams Hearing Tr. at 18.
154. Volker Test Messages at KV0000023. Ambassador Kurt Volker, Testimony Before the House of Representatives Committee on Foreign Affairs, Permanent Select Committee on Intelligence, and Committee on Oversight & Government Reform (Oct. 9, 2019) (Volker’s Opening Statement), https://perma.cc/9DDN-2WFW; Volker Interview Tr. at 44–45, 199; Volker-Morrison Hearing Tr. at 21.
155. See, e.g., Sondland Opening Statement at 16 (“[m]y goal, at the time, was to do what was necessary to get the aid released, to break the logjam. I believed that the public statements by the President for weeks was essential to advancing that goal.”).
Aid to Ukraine, of Whistle-Blower Complaint When He Released White House counsel to control and keep any assistance to Ukraine prior to the lifting of the hold on September 11. Sandy Dep. Tr. at 180. Lt. Col. Vindman similarly confirmed that none of the “facts on the ground” changed before the President lifted the hold. Vindman Dep. Tr. at 306.


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Murphy Dep. Tr. at 13; Taylor-Kent Hearing Tr. at 106–67; see also Zelensky Planned to Announce Trump’s ‘Quo’, https://perma.cc/5N4X-HWEU.

Williams Dep. Tr. at 156.

Classified Supp’1 Submission of Jennifer Williams to the House Permanent Select Comm. on Intelligence (Nov. 26, 2019) (describing additional details of the Vice President’s call with President Zelensky on September 24).

Taylor-Kent Hearing Tr. at 106–67; Hill-Holmes Hearing Tr. at 33.

Zelensky Planned to Announce Trump’s ‘Quo’, https://perma.cc/MTT7-DKNX.

Hill-Holmes Hearing Tr. at 46–47 (testimony of David Holmes) (“And although the hold on the security assistance may have been lifted, there were still things they wanted that they weren’t getting, including a meeting with the President in the Oval Office... And I think that continues to this day.”).


E.g., H. Rep. No. 116–346, at 124; see also Hill-Holmes Hearing Tr. at 46–47.


http://perma.cc/ZQ4P-FQTV.


Morrison Dep. Tr. at 244; Vindman Dep. Tr. at 306; Williams Dep. Tr. at 147. Mr. Sandy testified that he was not aware of any other countries committing to provide any security assistance to Ukraine prior to the lifting of the hold on September 11. Sandy Dep. Tr. at 180. Lt. Col. Vindman similarly confirmed that none of the “facts on the ground” changed before the President lifted the hold. Vindman Dep. Tr. at 306.


Molly O’Toole & Sarah D. Wire, Millennials in Military Aid at Center of Impeachment Hasn’t Reached Ukraine, https://perma.cc/5J46-Y8RG.


Leonard Williams to the House Permanent Select Committee on Intelliegence (Nov. 26, 2019).

Vindman Dep. Tr. at 306; Williams Dep. Tr. at 244.

President Trump told Mr. Giuliani that an announcement of a meeting with the President in the Oval Office...  And I think that continues to this day.”).

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EXECUTIVE SUMMARY

The Articles of Impeachment now before the Senate are an affront to the Constitution and to our democratic institutions. The Articles treat the rigged process that brought them here—...
II. The impeachment inquiry in the House was irredeemably flawed

A. House Democrats’ Inquiry Violated All Precedent and Due Process

1. The process that resulted in these Articles was flawed from the start. Since the Founding of the Republic, the House has never launched an impeachment inquiry against a President without a vote of the House authorizing it. And there is good reason for that. No committee can investigate pursuant to powers assigned by the Constitution to the House—including the power of initiation—unless the House has voted to delegate authority to the committee.22 Here, it was emblematic of the lack of seriousness that characterized this process that House Democrats cast law and history aside and started their inquiry with nothing more than a press conference.23 On that authority alone, they issued nearly two dozen subpoenas that OLC determined were unauthorized and invalid.24 The full House did not vote to authorize the inquiry until five weeks later when it adopted House Resolution 660 on October 31, 2019. That belated action was a telling admission that the process was unauthorized.

2. Next, House Democrats concocted an unheard of procedure that denied the President any semblance of fair process. The proceedings began with secret hearings in a basement room, three committees under the direction of Chairman Schiff of the House Permanent Select Committee on Intelligence (HPSCI). The President was denied any right to participate at all. He was denied the right to have counsel present, to cross examine witnesses, to call witnesses, and to see and present evidence. Meanwhile, House Democrats leaked and released versions of the secret testimony to compli-ant members of the press, who happily fed the public a false narrative about the President.

Then, House Democrats moved on to a true show trial as they brought their hand-picked witnesses, whose testimony had already been set in private, before the cameras to present pre-screened testimony to the public. There, before HPSCI, they continued to deny the President any rights. He could not be rep-re-sented, could not present evidence or witnesses, and could not cross ex-am ine witnesses.

This was not only violated every preced-dent from the Nixon and Clinton impeach-ment inquiries, it violated every principle of justice and fairness known to our legal tradi-tion. For more than 250 years, the common law system has regarded cross-examination as the “greatest legal engine ever invented for the discovery of truth.”25 House Demo-crats denied the President that right and every other right because they were not interested in the truth. Their only interest was securing an impeachment, and they knew that they could not get them there.

When the impeachment-stage-show moved on to the Judiciary Committee, House Demo-crats again denied the President his rights. The Committee decided to go find-fact and to adopt the one-sided record from HPSCI’s ex parte hearings. Worse, Speaker Nancy Pelosi had already in-structed the Judiciary Committee to draft impeachment. The only role for the Committee was to ram through the articles to secure a House vote by Christmas.26 There could be no trial, no cross-examination, no presentation that evidence did not matter, the process was rigged, and impeachment was a pre-ordained result.

All of this reflected shameful hypocrisy from House Democrat leaders, who for decades had insisted on the importance of due process protections in an impeachment in-quiry. Chairman Nadler himself has ex-plained that a House impeachment inquiry “demands a rigorous level of due process.”27 Specifically, the process must be “administered in such a way that the accused—[a] person[s] . . . the right to confront the wit-nesses against you, to call your own wit-nesses, and to have the assistance of counsel.”28 Here, due process rights were denied to the President.

3. Chairman Schiff’s hearings were fatally defective for another reason—Schiff himself was shortcutting the truth story behind them. This inquiry centered on the President’s conversation on July 25, 2019, with the President of Ukraine. That call became a matter of public record when the so-called whistleblower relayed a distorted, second-hand version of the call to the Inspector General of the Intelligence Community (IG). Before laundering his distortions through the IG, the same person secretly shared his false account with Chairman Schiff’s HPSCI staff and asked “for guid-ance.”29 House counsel, who is tasked with representing the President any rights. He could not be re-presented by counsel, could not present evi-dence or witnesses, and could not cross ex-amine testimony.

The so-called whistleblower relayed a distorted, second-hand version of the call to the Inspector General of the Intelligence Community (ICIG). Before laundering his distortions through the IG, the same person secretly shared his false account with Chairman Schiff’s HPSCI staff and asked “for guidance.” The ICIG shared his false account with Chairman Schiff and his staff in playing out the complaint that launched this entire farce re-mains shrouded in secrecy to this day.30 The chairman Schiff shut down every ef-fort to inquire into it.

4. The denial of basic due process rights to the President is such a fundamental error in-fecting the House proceedings that the Senate could not possibly rely upon the cor-rupted House record to reach a verdict of conviction. As we have suggested, and any reliance on a record created through the wholesale denial of due process rights would be unconstitutional. Nor is it the Senate’s role to remedy the House’s errors by pro-viding a “do-over” and developing the record itself.

B. House Democrats’ Goal Was Never to Ascertain the Truth

House Democrats resorted to these unprec-edented procedures because the goal was never to get to the truth. The goal was to impeach the President, no matter the facts. The House Democratic impeachment crusade started the day the President took office. As Speaker Pelosi confirmed in December 2019, her party’s quest to impeach the President has lasted “for 22 months . . . [t]wo and a half years, actually.”31 The moment the President was sworn in, The Washington Post reported that partisans had launched an “alleged coup.”32 The current proceedings began with a complaint prepared with the assistance of a lawyer who declared in 2017 that he would use “impeach-ment” to effect a “coup.”33

House Democrats originally pinned their impeachment hopes on the lie that the Trump Campaign had colluded with Russia during the 2016 election. That brought the country the Mueller investiga-tion. But after almost two years, $32 million, 2,800 subpoenas, and nearly 500 search war-rants—all along with incalculable damage to the Nation—the Mueller investigation thor-oughly disproved Democrats’ Russian collu-sion delusion. To make matters worse, we now know that the Mueller investigation (and its precursor, Crossfire Hurricane) also brought with it shocking abuses in the use of FISA orders to spy on American citizens and institutions.34–36 Nothing—no malice, inc luding omissions and even outright lies to the Foreign Intelligence Surveillance Court and the fabrication of evidence by a com-mitted partisanship—could save impeachment from the wake of House Democrats’ impeach-at-all-costs strategy.
A. The Evidence Shows That the President Did Not Condition Military Aid or a Presidential Meeting on Ukraine’s Specific Investigations

House Democrats have falsely charged that the President supposedly conditioned military aid or a presidential meeting on Ukraine’s specific investigations. Yet despite running an entirely ex parte, one-sided process to gather evidence, House Democrats do not have a single witness who could provide direct knowledge, that the President ever actually imposed such a condition. Several undisputed, core facts make clear that House Democrats’ charges are baseless.

1. In an unprecedented display of transpar-ency, the President released the transcript of a telephone call he had with Ukraine’s Volodymyr Zelensky, and it shows that the President did nothing wrong. The Department of Justice reviewed the transcript months ago and evidenced (after a Politico article was published on Au-

2. President Zelensky, his Foreign Min-
ister, and other Ukrainian officials have re-
peatedly said there was no quid pro quo and no preconditions for any aid.

3. President Zelensky, his senior advisers, and House Democrats’ own witnesses have all confirmed that Ukraine’s senior leaders did not request or know aid was paused before it was released on September 11—over a month after the July 25 call and barely two weeks before the aid was released on September 11.

4. House Democrats’ case rests almost en-
tirely on: (i) statements from Ambassador to the EU Gordon Sondland (and he had come to believe [before talking to the President] that the aid and a meeting were “likely” linked to investigations; and (ii) hearsay and speculation from others echoing Sondland—one-sided process to gather evidence.

B. House Democrats Rest on the False Premise That There Could Have Been No Legitimate Reason To Mention 2016 or the Biden-Burisma Matter

The charges in Article I are further flawed because they rest on the mistaken premise that it would have been illegitimate for the President to mention to President Zelensky either (i) possible Ukrainian interference in the 2016 election; or (ii) an incident in which then-Vice President Biden had forced the dismissal of a Ukrainian prosecutor. House Democrats acknowledge that, even under their theory of “abuse of power,” they must establish (in their words) that these matters were “bogus,” that the only reason for raising them would have been to “obtain an improper personal political benefit.” But that is obviously false.

1. Uncovering potential foreign interfer-
ence in U.S. elections is always a legiti-
mate goal, whatever the source of the inter-
ference and whether or not it fits with Demo-
crats’ preferred narrative about 2016. A House Manager might argue that raising histori-
a questions about the last election somehow equates to securing “improper inter-
ference” in the next election is nonsen-
sical. Asking about the past cannot be twist-
ed into interference in a future election.

2. It also would have been legitimate to 
mention the Biden-Burisma affair. The 
articles are also defective because 
importantly, even under House Democrats’ 
theory, mentioning the matter to President Zelensky would have been entirely justified as long as there was a basis to think that would advance the public interest. To defend merely asking a question, the President would not have to show that Vice President Biden (or his son) actually committed any wrongdoing. By contrast, under their own theory of the case, to show “abuse of power,” the House Managers would have to prove that the inquiry could have no public purpose whatsoever. They have no such evidence. The record shows it would have been legitimate to mention the Biden-Burisma affair.

IV. The articles are structurally deficient and can only result in acquittal

The articles are also defective because each charges multiple different acts as pos-
sible grounds for conviction. The problem with offering such a menu of options is that, for a valid conviction, the Constitution re-
quires two-thirds of Senators present to vote on each article. The Senate’s inability to vote on these articles, however, cannot en-
sure that a two-thirds majority agreed on a particular ground for conviction. Instead, the vote could reflect a simple majority or even less. Further, this defect cannot be remedied by dividing the different allega-
tions within each article for voting, because

January 21, 2020

III. Article I fails because House Democrats have no evidence to support their claims

The answer to the question is no.”

When asked if “the President ever [told him] that Ukraine, and a presidential meeting was first

... on Mr. Manafort and on other people as well.” All of that—and more—provides leg-
gitimate grounds for impeachment.” The

... and it was released on September 11—over a month after the July 25

call and barely two weeks before the aid was released on September 11.

... i.e., for aid or a meeting—Sondland responded. “No.” And when Ambassador Kurt Volker, the special envoy who had ac-
tually been negotiating with the Ukrainians, was asked if the President ever withheld a meeting with the Ukrainians, he said: “The answer to the question is no.”

... “I want nothing. I want no quid pro quo.” Similarly, Senator Johnson related that, when he asked the President if there was any linkage between investigations and the aid, the President responded: “(Expletive deleted).” So do that.”

5. The military aid flowed on September 11, 2019, and a presidential meeting was first scheduled for September 1 and then took place on September 23, 2019, all without the Ukrainian government having done anything about investigations.

... so the President ever actually imposed such a condition. Several undisputed, core facts make clear that House Democrats’ charges are baseless.

... that the President ever actually imposed such a condition. Several undisputed, core facts make clear that House Democrats’ charges are baseless.

... testifying that when he asked the President what he wanted, the President stated unequivocally: “I want nothing. I want no quid pro quo.”

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that is prohibited under Senate rules.62 The only constitutional option is for the Senate to reject the articles as framed and acquit the President.

The Framers foresaw that the House might at times fail prey to tempestuous partisan tempers. Alexander Hamilton recognized that "the perversion of an intemperate or designing majority in the House of Representa-
tives" was a real danger in impeachments,63 and Jefferson acknowledged that impeachment provided "the most formidable weapon to be the harpoon of the dominant faction that ever was contrived."64 That is why the Framers entrusted the trial of impeachments to the Senate.65 They explicitly instructed the Senate to be a "tribunal—removed from popular power and passions . . . and from the more dangerous influence of mere party spirit," and guided by "a deep responsibility to future times."65 Now, perhaps as never before, it is essential for the Senate to fulfill the role Hamilton envisioned for it as a "guard[ion] against the danger of persecution, from the prevalence of a factious spirit" in the House.65

The Senate should speedily reject these de-
ficient impeachment articles and acquit the President. The only threat to the Con-
stitution that House Democrats have brought to light is their own degradation of the impeachment process by, through the separation of powers. Their fixation on damaging the President has trivialized the momentous act of impeachment, debased the standard of proof, and converted the power of impeachment by turning it into a partisan, election-year political tool. The consequences of accepting House Democrats' diluted standards for impeach-
ment would reverberate far beyond this elec-
tion year and do lasting damage to our Re-
public. As Senator Lyman Trumbull, one of the seven Senators who switched the aisle to vote against wrongfully con-
vincing President Andrew Johnson, ex-
plained: "Once [we] set the example of im-
peaching a President for what, when the ex-
citement of the hour shall subside, will be regarded as insufficient causes . . . no future President will be safe . . . . [A]nd what then becomes of the checks and bal-
ances of the Constitution, so carefully de-
vised and so vital to its perpetuity? They are all gone."66 It is the solemn duty of this body to defend the Constitution against attacks on its enumerated im-
peachment powers.67

Enough of the Nation's time and resources have been wasted in these proceedings by the final vote of 52–48. It is time to put an end to these excesses so that Congress can get back to its real job: working together with the President to improve the lives of all Americans.

STANDARDS

The extraordinary process invoked by House Democrats under Article II, Section 4 of the Constitution and the proced-
urally preferred means to determine who should lead our country. It is a mechanism of last resort, reserved for exceptional cir-
cumstances. As President Akhil Amar describes bribery as "secretly giving a reward or 
handing over a bribe,"70 the President is "tried."71 And it implies impeachable 
service of bribery . . . must be an act that 
actually threatens the constitutional stability of the Republic. A review of the Impeachment Clause indicates that "the ‘other’ crimes and misdemeanors that qualify as im-
peachable offenses must be sufficiently egregious to rank among the highest offenses. For example, impeachment for maladministration will involve a fundamental betrayal that threatens to subvert the constitutional order of govern-
ment. The Framers and President Andrew Johnson, ex-
cept for a criminal offense, is "tried."71 And it implies impeachable 
service of bribery . . . must be an act that 
actually threatens the constitutional stability of the Republic. A review of the Impeachment Clause indicates that "the ‘other’ crimes and misdemeanors that qualify as im-
peachable offenses must be sufficiently egregious to rank among the highest offenses. For example, impeachment for maladministration will involve a fundamental betrayal that threatens to subvert the constitutional order of govern-
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The articles of impeachment approved by the House Judiciary Committee included multiple violations of law. Article I alleged obstruction of justice, and Article II alleged an international 'grandersonal obligation'.

The impeachment of Andrew Johnson proves the point. In 1867, the House Judiciary Committee resolved articles of impeachment against President Johnson. The articles, however, did not allege any violation of law. Largely as a result of that fact, the Committee refused approval for them from a majority of the House. The minority report from the Committee arguing against adoption of the articles of impeachment noted that the House of Representatives may impeach a civil officer, but it must be done according to law. It must be for a "crime known to the law" and not created by the faction of the members of the House." 123 Rep. James F. Wilson argued the position of the minority report on the House floor, explaining that "no civil officer of the United States can be lawfully impeached except for a crime or misdemeanor known to the law." 124 As one historian has explained, "[w]e should not refuse to impeach Andrew Johnson ... at least in part because many representatives did not believe he had committed a specific violation of law." 125

Even if judicial impeachments have been based on charges that do not involve a criminal offense or violation of statute, 127 that would provide no sound basis for applying the standards for presidential impeachment. Textually, the Constitution’s Good Behavior Clause vests the President with the authority of an entire branch of the federal government, his removal would necessarily create uncertainty and legal standards for impeachment. "When Senators remove one of a thousand federal judges (or even one of nine justices), they are not transforming an entire branch of government. But that is exactly what happens when they oust America’s one and only President, in whom all executive power is vested by the first sentence of Article II." 128 Unlike a presidential impeachment inquiry, impeachment of a federal judge "does not paralyze the Nation" or cast doubt on the direction of the country’s foreign policy. 129 Similarly, "[t]he grounds for the expulsion of the one person elected by the entire nation to preside over the executive cannot be the same as those for one member of the almost four-thousand-member federal judiciary." 130

As Senator Biden recognized: "The constitutional scholarship overwhelmingly recognizes that the fundamental structural commitment to a separation of powers requires [the Senate] to view the President as different than a Federal judge." 131 Indeed, "our history establishes that, as applied, the constitutional standard for impeaching the President has been distinctive, and properly so." 132

C. The Senate Cannot Convict Unless It Finds that the House Managers Have Proven an Impeachable Offense Beyond a Reasonable Doubt.

Given the profound implications of removing a duly elected president from office, an exceptionally demanding standard of proof must apply in a presidential impeachment trial. 133 Senators should convict on articles of impeachment against a President only if they are convinced beyond a reasonable doubt that the President committed an impeachable offense beyond a reasonable doubt.

Burke Robinson recognized in the Clinton impeachment, "[i]n making a decision of this magnitude, it is best not to err
at all. If we must err, however, we should err on the side of . . . respecting the will of the people.”135 Democrat and Republican Senators alike applied the beyond a reasonable doubt standard during President Trump’s impeachment trial.136 As Senator Barbara Mikulski put it then: “The U.S. Senate must not make the decision to remove a President based on the charging that the charges be true. The strength of our Constitution and the strength of our Nation dictate that [the Senate] be sure—beyond a reasonable doubt.”137

D. The Senate May Not Consider Allegations Not Charged in the Articles of Impeachment

Under the Constitution, the House is given the “sole Power of Impeachment” and the Senate is given the “power to try all Impeachments.”138 An impeachment is literally a “charge” of particular wrongdoing.139 Thus, under the division of responsibility in the Constitution, the Senate can conduct a trial solely on the charges specified in articles of impeachment approved by a vote of the House and presented to the Senate. The Senate cannot expand the scope of a trial to consider mere assertions appearing in House reports that the House did not include in the articles of impeachment submitted.140

Under the Constitution, the essential case in the Senate must be confined to the specific conduct alleged in the Articles of Impeachment.141 These restrictions follow both from the plain terms of the Constitution limiting the Senate to trying an “impeachment” framed by the House and from elementary principles of due process. “[T]he senator’s role is solely one of acting on the accusations (Articles of Impeachment) voted by the House of Representatives. . . . The Senate cannot find the president guilty of something not charged by the House, any more than a trial jury can find a defendant guilty of something changed in the indictment. The principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused.”142 As the Supreme Court has explained, it has been the rule for over 130 years that a defendant cannot be tried on charges that are not made in the indictment against him.143 Doing so is “fatal error.”

Under the same principles of due process, the Senate must similarly refuse to consider any uncharged allegations as a basis for conviction.

PROCEDURAL HISTORY

House Democrats have focused these proceedings on a telephone conversation between President Trump and President Zelensky of Ukraine on July 25, 2019.144 At some unknown time shortly after that call, a staffer in the Intelligence Community (IC)—who had no first-hand knowledge of the call—approached the staff of Chairman Adam Schiff of the House Permanent Select Committee on Intelligence (HPSCI) raising complaints about the call.145 Although it is known that Chairman Schiff’s staff provided the IC staff with the “guidance,”146 the extent of the so-called whistleblower’s coordination with Chairman Schiff’s staff remains unknown.

The IC staffer retained counsel, including an attorney who had announced just days after President Trump took office that he supported “nullifying” and “rebellion” to remove the President from office.147 On August 12, 2019, the IC staffer filed a complaint about the July 25 telephone call with the Inspector General of the IC.148 The Inspector General found that there was “some indicia of an arguable political bias on the part of [the so-called whistleblower] in favor of a rival political candidate.”149

On September 24, 2019, Speaker Nancy Pelosi unilaterally announced at a press conference that “the House of Representatives is moving forward with an official impeachment inquiry.”150 Based on the anonymous complaint about the July 25 telephone call, there was no vote by the House to authorize such an inquiry.

On September 25, pursuant to a previous announcement,151 the President declassified and released the complete record of the July 25 call.152 On September 26, HPSCI held its first hearing—approached the staff of Chairman Schiff for “guidance”153—and the hearing was open to the public.154 The President already and his counsel were not permitted to participate in any of these proceedings.

On October 31, after five weeks of hearings, House Democrats finally authorized an impeachment inquiry.155 In its seconds after the full House voted to approve House Resolution 660.156 By its terms, the Resolution did not purport to retroactively authorize investigative efforts before October 31.157 On November 13, HPSCI held the first of seven public hearings featuring some of the witnesses who had already testified in secret.158 At this stage, too, the President and his counsel were not permitted to participate. HPSCI released a report on December 3, 2019.159

On December 4, the House Judiciary Committee held its first hearing, which featured presentations solely from staff members from HPSCI and the Judiciary Committee.160 The House Judiciary Committee did not hear from any fact witnesses at any time.

On December 10, Chairman Jerrold Nadler offered two articles of impeachment for the Judiciary Committee’s consideration,161 and the Committee voted to approve the articles on December 13 on a party-line vote.162 On December 18, a mere 85 days after Speaker Pelosi announced that articles of impeachment would be drafted, the Judiciary Committee transmitted its last hearing, which featured presentations solely from staff members from HPSCI and the Judiciary Committee.163 The House Judiciary Committee did not hear from any fact witnesses at any time.

On December 14, a mere 85 days after the press conference purportedly launching the inquiry, House Democrats completed the fastest presidential impeachment inquiry in history and adopted the Articles of Impeachment over bipartisan opposition.164

House Democrats justified their unseemly haste by claiming they had to move forward “without delay” because the President would allegedly “continue to threaten the Nation’s security, democracy, and constitutional system if he is allowed to remain in office.”165 In other words, however, as soon as they had voted, they decided that there was no urgency at all. House Democrats took a leisurely 28 days to complete the procedure of transmitting the articles to the Senate—more than three times longer than the entire length of proceedings before the House Judiciary Committee.

The Senate now has the “sole Power to try” the Articles of Impeachment transmitted by the House.166

THE ARTICLES SHOULD BE REJECTED AND THE PRESIDENT SHOULD IMMEDIATELY BE ACQUITTED.

1. The Articles Fail to State Impeachable Offenses

A. House Democrats’ Novel Theory of “Abuse of Power” Does Not State an Impeachable Offense and Would Do Lasting Damage to the Separation of Powers

The Framers intended impeachment to address “foreign entanglements” and “corruption of election[s].” But the Framers restricted impeachment to specific offenses established by law.167 “Crimes and Misdemeanors,”168 the Framers particularly intended impeachment to address “foreign entanglements” and “corruption of elections.” The Framers’ standard for impeaching and removing a President is “that requires a violation of established law to state an impeachable offense. By contrast, in their Articles of Impeachment, House Democrats have not even attempted to identify any law that was violated. Moreover, House Democrats’ theory in this case rests on the radical assertion that the President could be impeached and removed from office entirely for his subjective motives—that is, for undertaking permissible actions for supposedly forbidden reasons. The unprece-
dented test is so flexible it would vastly expand the impeachment power beyond constitutional limits and would permanently undermine the President’s ability to continue his office’s pursuit of the Nation’s security, democracy, and constitutional system.

Under the Constitution, impeachable offenses must be defined under established law. And they must be based on objective wrongdoing that distorts history and adds no legitimacy to the radical theory of impeachment based on subjective motives alone.

1. House Democrats’ Novel Theory of “Abuse of Power” as an Impeachable Offense Subverts Constitutional Standards and Would Permanently Weaken the Presidency

House Democrats’ theory that the President could be impeached and removed from office under a vaguely defined concept of “abuse of power” would vastly expand the impeachment power beyond the limits set by the Constitution and should be rejected by the Senate.

(a) House Democrats’ made-up “abuse of power” standard fails to state an impeachable offense because it does not rest on violation of an established law

House Democrats’ claim that the Senate can remove a President from office for running “afoul of some ill-defined conception of “abuse of power” finds no support in the text or history of the Impeachment Clause. As explained above,169 by limiting impeachment to cases of treason or other high Crimes and Misdemeanors,” the Framers restricted impeachment to specific offenses against “already known and established offenses.” It was the Framers’ intent to design a check and balance that would constrain the power of impeachment.170 Restricting impeachment to offenses established by law provided a crucial safeguard for the independence of the Executive from what James Madison called the “impetuous vortex” of legislative power.171 As many constitutional scholars have recognized, the Framers were concerned with protecting the presidency from the encroachments of Congress . . . then they were
with the potential abuse of executive power."174 The impeachment power necessarily implicated that concern. If the power were too expansive, the Framers feared, it would be used to "hold [impeachments] as a rod over the Executive and by that means effectually destroy his independence."175 One key voice at the Constitutional Convention, Chief Justice John Marshall, warned that, as they crafted a mechanism to make the President "amenable to Justice," the Framers "should take care to provide that it will not make the President dependent on the Legislature."176 To limit the impeachment power, Morris argued that only "few" "offences . . . ought to be impeachable," and the "cases ought to be emended & defined."177

Indeed, the debates over the text of the Impeachment Clause vividly illustrate the Framers' concern that ill-defined standards could give free rein to Congress to utilize impeachment to undermine the Executive. As explained above,178 when "maladministration" was proposed as a ground for impeachment, it was rejected based on Madison's concern that "[e]very vague term will be equivalent to a tenor during [the] pleasure of the Senate."179 Madison rightly feared that a nebulous standard could allow Congress to impeach a President merely based on policy differences, making it function like a parliamentary no-confidence vote. That would cripple the independence that the Framers had worked and reworked the Parliamentary system they had expressly rejected. Circumscribing the impeachment power to reach only existing, defined offenses guarded against such misuse of the authority.180

As Luther Martin, who had been a delegate at the Constitutional Convention, summed it up in his impeachment trial of Justice Samuel Chase in 1804, "[a]dmit that the House of Representatives have a right to impeach for acts which are not contrary to law, and that then the Senate may convict and the officer be removed, you leave your judges and all your other officers at the mercy of the prevailing party."181 The Framers prevented that dangerous result by limiting impeachment to defined offenses under the law.

House Democrats cannot reconcile their amorphous "abuse of power" standard with the constitutional text simply by asserting that, "[t]he founding generation, abuse of power was not an undefined offense."182 In fact, they conspicuously fail to provide any citation for that assertion. No one defined the term, and the "cases ought to be emended & defined."177

First, by making impeachment turn on nearly impossible inquiries into the subjective intent behind entirely lawful conduct, House Democrats' standard would be so vague and malleable that entirely permissible actions could lead to impeachment of a President (and potentially removal from office) based solely on a hunch that the President's decision was motivated by an ulterior motive.

Second, by focusing on high crimes and misdemeanors, House Democrats' standard would be tantamount to the use of bills of attainder and ex post facto laws, which are expressly forbidden by the Constitution and are contrary to the American spirit of justice.183

House Democrats justify their focus on subjective motives based largely on the cherrypicking of language from James Iredell made in the North Carolina ratification debates.180 Iredell observed that "the President would be liable to impeachment if . . . he had acted from some corrupt motive or other."184 But nothing in that general statement suggests that Iredell—let alone the other members of the convention who ratified the Constitution in the states—subscribed to House Democrats' current theory treating impeachment as a roving license to attack a President based on the President's lawful actions based on subjective motive alone. To the contrary, in the same very speech, Iredell himself warned against the use of impeachment as a political weapon to "shift the whole burden of impeachment into other hands, and ascribe to them the responsibility which the framers of the Constitution intended only to lay upon the legislative body."185
between political parties and that, due to a lack of ‘charity,’ each might often “attribute every opposition” to its own views “to an ill motive.”220 In that environment, every difference of opinion might be interpreted, by the malignity of party, into a deliberate, wicked action.”221 That, he argued, should not be a basis for impeachment.

House Democrats’ assertions that past presidential impeachments provide support for the Johnson impeachment are based on subjective-motives-alone theory are also wrong.223 Contrary to their claims, neither the Nixon impeachment nor the impeachment of President Johnson supports their assertions.

In the impeachment inquiry, none of the articles recommended by the House Judiciary Committee were labeled “abuse of power” or framed the charge in those terms. And it is simply wrong to say that the theory underlying the proposed articles is that President Nixon had taken permissible actions with the wrong subjective motives. Article I alleged President Nixon obstructed justice, a clear violation of law. And Article II of the Johnson impeachment charges breaches of the Constitution. It claimed that President Nixon “violated[ed] the constitutional rights of citizens,” “contemptuous disregard of the letter and spirit of the executive branch,” and “authorized and permitted to be maintained a secret investigative unit within the office of the President” that unlawfully utilized resources of the Central Intelligence Agency, and engaged in covert and unlawful activities.224 Those allegations did not turn on describing permissible conduct that had simply been done with the wrong subjective motives. Instead, they charged unlawful conduct.

House Democrats’ reliance on the Johnson impeachment fares no better. According to House Democrats, the Johnson impeachment supports their concocted impeachment-based-on-subjective-motives theory under the following tortured logic: The articles of impeachment actually adopted by the House supported their assertions.225 That is not the “real” reason the House sought to remove President Johnson. The real reason was that he had undermined Reconstruction. And, in House Democrats’ telling, this Reconstruction was actually a better reason to impeach him.226 For support, House Democrats cite a recent book co-authored by one of their own, Joshua Motch, on the Cheyenne Tribe.227 This is nonsense. Nothing in the Johnson impeachment charged the President with violating the Tenure of Office Act.228 But that was not the “real” reason the House sought to remove President Johnson. The real reason was that he had undermined Reconstruction. And, in House Democrats’ telling, this Reconstruction was actually a better reason to impeach him.229 For support, House Democrats cite a recent book co-authored by one of their own, Joshua Motch, on the Cheyenne Tribe.220 This is nonsense. Nothing in the Johnson impeachment charged the President with violating the Tenure of Office Act.228 But that was not the “real” reason the House sought to remove President Johnson. The real reason was that he had undermined Reconstruction. And, in House Democrats’ telling, this Reconstruction was actually a better reason to impeach him.229 For support, House Democrats cite a recent book co-authored by one of their own, Joshua Motch, on the Cheyenne Tribe.220 This is nonsense. Nothing in the Johnson impeachment charged the President with violating the Tenure of Office Act.228 But that was not the “real” reason the House sought to remove President Johnson. The real reason was that he had undermined Reconstruction.

If the Johnson impeachment established any precedent relevant here, it is that the House refused to impeach the President until it clearly violated the letter of the law. As one historian has explained, despite widespread anger among Republicans about President Johnson’s actions undermining Reconstruction, until Johnson violated the Tenure of Office Act, “[t]he House had refused to impeach him [. . .] at least in part because its liberal (and therefore disbelieving) Democrats did not believe he had committed a specific violation of law.”230 Second, House Democrats’ theory raises particular concerns because it may generate a political benefit to the President. Under that standard, a President could potentially be impeached and removed from office for taking any action with his political interests in view. In a representative democracy, every interest of the electorates required keeping those troops in place? Manufacturing an impeachment out of such an assertion ought to be dismissed out of hand.

House Democrats’ abuse-of-power theory is also profoundly anti-democratic. In assigning the Executive Power to the President, the Constitution ensures that power is exercised by a person uniquely responsible to the people through a quadrennial election.231 This ensures that the people themselves will regularly and frequently have a say in the formation of the nation’s policy, including foreign policy. As a result, removing a President on the ground that his foreign policy decisions were allegedly based on “illicit motives”—because they failed to conform to a purported “consensus” of career bureaucrats—would fundamentally subvert the democratic principles at the core of our Constitution.

This very impeachment shows how anti-democratic House Democrats’ theory really is. Millions of Americans voted for President Trump precisely because they were convinced that it would disrupt the foreign policy status quo. He promised a new, “America First” foreign policy that was not for other nations; it was for America. And the President has delivered, bringing fresh and successful approaches to foreign policy in a host of areas, including relationships with NATO and South and North Korea. In particular, with respect to Ukraine and elsewhere, his foreign policy has focused on ensuring that America does not shoulder a disproportionate burden for various international missions, that other countries do their fair share, and that taxpayer dollars are not squandered. House Democrats’ theory that an “emergency” “consensus” among career bureaucrats can be used to show improper motive is an affront to the tens of millions of American citizens who voted for President Trump’s foreign policy and not a continuation of the Washington establishment’s policy preferences.

2. House Democrats’ assertions that the framers particularly valued impeachment to guard against “foreign entanglements” and “corruption” of elections are inaccuracies that distort history. House Democrats try to shore up their made-up theory of abuse of power by pretending that anything related to what they call “foreign entanglements” or elections stands at the core of the Framers’ discussions. This novel accounting of the concerns animating the impeachment power conveniently allows House Democrats to claim that their allegations just happen to tie in perfectly with a constitutional right of impeachment, as if their accusations show that “President Trump has realized the Framers’ worst nightmare.”232 That is a pretentious and insidious charge. The Framers were concerned about the possibility of treason and the danger that foreign princes with vast treasuries at their disposal might actually fund the growth of the Chief Magistrate, debt-ridden republic situated on the seaboard of a vast wilderness continent—most of which was still claimed by European powers eager to advance their imperial interests. Their worst nightmare was not the President of the United States-as-superpower having an innocuous conversation with the leader of a comparatively small European republic and disclosing the conversation for all Americans to see.

To peddle their distortion of history, House Democrats cobbled together snippets from the Framers’ discussions on various different subjects and try to portray them as if
they define the contours of impeachable offenses. As explained above, the Framers intended a limited impeachment power. But when House Democrats find the Framers raising any risks to the new government, they leap to the conclusion that those concerns must identify impeachable offenses. Such transparently results-driven historiography—baseless and unsupported—does no support for House Democrats’ drive to remove the President.

First, House Democrats mangle history in offering “foreign entanglements” as a type of impeachable offense. Their approach confines two different concepts—entangling the country with foreign governments buying influence—to create a false impression that there is something insidious about anything involving a foreign connection to the President. This is a particularly racy ground for impeachment.

When the Framers spoke about foreign “entanglements” they had in mind the danger of the young country becoming ensnared in alliances that would draw it into conflicts between European powers. When President Washington asserted that “history and experience prove that foreign influence is one of the most baneful foes of republican government,” he was thinking about executives meriting removal from office. He was advocating for neutrality in American foreign policy, and in particular, with respect to Europe. One of President Washington’s most controversial decisions was establishing American neutrality in the escalating war between Great Britain and revolutionary France. He then used his Farewell Address to argue against “entangling” [American] peace and prosperity in the toils of European ambition, rivalship, interest, humor of power. Again, he was wondering about the United States being drawn into foreign alliances that would trap the young country in disputes between European powers. House Democrats’ false allegations here have nothing to do with the danger of a foreign entanglement as the Founders understood that term, and the admonitions from the Founding era they cite are irrelevant.

The Framers were also concerned about the distinct problem of foreign attempts to interfere with the governance of the United States. Based on his score, they identified particular concerns based on historical examples and addressed them specifically. They were concerned about officials being bought off by foreign powers. As President Morris articulated this concern: “Our Executive . . . may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard [against it] by displacing him.” He specifically mentioned the bribe King Louis XIV of France had paid to King Charles II of England to influence English policy. This is why “Bribery” and “Treason” were made impeachable offenses. The Framers also addressed the danger of foreign interventions directed at the President by barring his acceptance of “any present, reward, or pension, from any foreign prince.” Again, he was wondering about the United States being drawn into foreign alliances that would trap the young country in disputes between European powers. House Democrats’ articles of impeachment make no allegations under any of these specific offenses.

In the end, House Democrats’ historiographical arguments rest on a non sequitur. They essentially argue that because the Framers showed concern about foreign intervention, the Nation should do the same. House Democrats’ Articles of Impeachment make no allegations under any of these specific offenses. House Democrats’ Articles of Impeachment make no allegations under any of these specific offenses.

The President’s proper concern for requiring the House to proceed by lawful measures and for protecting long-settled Executive Branch legal defenses and immunities against defective subpoenas from House committees.

The President does not commit “obstruction” by asserting legal rights and privileges. And House Democrats turn the law on its head with their unprecedented claim that it is “obstruction” for anyone to assert rights that normally serve to protect Executive Branch confidentiality against House Democrats’ overreaching investigation.

Treating a disagreement regarding constitutional limits on the House’s authority to compel documents or testimony as an impeachable offense would do permanent damage to the Constitution’s separation of powers and our structure of government. It would allow the House of Representatives to demand its own doctrine of executive privilege in disagreement with the Executive Branch. No one with a stake in preserving the separation of powers—and based on advice from the Department of Justice and the Office of Legal Counsel—would allow the House to proceed by lawful measures.

1. President Trump acted properly—and upon advice from the Department of Justice—by refusing to comply with subpoenas issued by House committees.

2. House Democrats’ articles of impeachment are based on three actions by the President or Executive Branch officials acting under his authority, each of which was expressly preserved and taken only after securing advice from OLC.

(a) Administration officials properly refused to comply with subpoenas that lacked authorization from the House.

(b) It was entirely proper for Administration officials to decline to comply with subpoenas issued pursuant to a purported “impeachment inquiry” before the House of Representatives had authorized any such inquiry.

(c) House subpoenas pursuant to the House’s impeachment power without authorization from the House itself. On precisely that basis, OLC determined that all subpoenas issued before the adoption of House Resolution 660 on October 31, 2019, purportedly to advance an “impeachment inquiry,” were unauthorized and invalid. Numerous witness subpoenas and all of the document subpoenas cited in Article II are invalid for this reason alone. These invalid subpoenas imposed no legal obligations on Executive Branch officials and were entirely lawful for the recipients not to comply with them.

(b) The belated adoption of House Resolution 660 on October 31 to authorize the investigation had no effect on the subpoenas issued pursuant to the House’s impeachment power before that date. Congress did not specifically authorize the House to proceed by lawful measures.

250 And House Democrats turn the law on its head with their unprecedented claim that it is “obstruction” for anyone to assert rights that normally serve to protect Executive Branch confidentiality against House Democrats’ overreaching investigation.
(i) A delegation of authority from the House is required before any committee can investigate pursuant to the impeachment power. No committee can exercise authority assigned by the Constitution to the House absent a clear delegation of authority from the House itself. The Constitution assigns the "sole power of impeachment" to the House as a chamber—not to individual Members or subordinate units. Assessing the validity of a committee's inquiry and subpoena requests requires attributing authority to the authority which the House of Representatives gave to the committee. Where a committee cannot demonstrate that its inquiry is directed by a committee that has been authorized by an affirmative vote of the House assigning the committee authority, the committee's actions are ultra vires, and its subpoenas have no force.

To pursue an "impeachment inquiry," and to compel testimony and the production of documents for such an inquiry, the committee must be authorized to conduct an inquiry pursuant to the House's impeachment power. That power is distinct from the power to legislate assigned to Congress in Article I, Section 7. In order to investigate the conduct of specific persons, that differs from the Oversight Committee's responsibility for oversight. That differs from the Judiciary Committee's jurisdiction over the responsibilities of a presidential impeachment inquiry. The House has given to the Judiciary Committee, the House specifically rejected an initial proposal that would have allowed impeachment proceedings only pursuant to their legislative jurisdiction (previously, for example, a separate House vote was required to delegate subpoena authority to a particular committee). Thus, after these amended rules were adopted, committees were able to begin investigations within their legislative jurisdiction and issue subpoenas without securing House approval, but that resolution did not authorize self-initiated impeachment inquiries. Indeed, it was precisely because the committee's initial request under impeachment inquiry did not receive a favorable vote from the House that the committee turned to the legal questions.

(ii) Nothing in existing House rules authorized a committee to pursue an impeachment inquiry. Nothing in the House Rules adopted at the beginning of this Congress delegated authority to pursue an impeachment inquiry to any committee. In particular, Rule X, which defines each committee's jurisdiction, makes clear that it addresses only committees' "legislative"—not impeachment—powers. Rule X does not assign any committee any authority whatsoever with respect to impeachment. It does not even mention impeachment. Instead, it is focused on authorizing committees to conduct "investigatory proceedings" pursuant to "[state and territorial boundary lines]" to the Oversight Committee's responsibility for "[h]olidays and celebrations." But Rule X does assign a committee the authority to investigate the conduct of executive branch officials. At least the same level of process provided to investigating committees seeks to ensure that House committees had the power to conduct investigations. When the House reconsidered the impeachment power in 1974 to address the House's need to transfer power from the House to committees and to remake committee jurisdiction, the House specifically rejected an initial proposal that would have allowed impeachment proceedings only pursuant to their legislative jurisdiction (previously, for example, a separate House vote was required to delegate subpoena authority to a particular committee). Thus, after these amended rules were adopted, committees were able to begin investigations within their legislative jurisdiction and issue subpoenas without securing House approval, but that resolution did not authorize self-initiated impeachment inquiries. Indeed, it was precisely because the committee's inquiry into the executive branch was initially rejected that the committee turned to the legal questions.

(iii) More than 200 years of precedent confirm that the House must vote to begin an impeachment inquiry. Historical practice confirms the need for a House vote to launch an impeachment inquiry. Since the Founding of the Republic, the House has never undertaken the solemn responsibility for an impeachment inquiry without first authorizing a particular committee to begin the inquiry. That has also been the House's nearly unbroken practice for every judicial impeachment inquiry for two hundred years. In every prior presidential impeachment inquiry, the House has adopted a resolution explicitly authorizing the committee to conduct the investigation before any compulsory process was used. In President Clinton's impeachment inquiry, the Judiciary Committee explained that the resolution was a constitutional requirement "[b]ecause impeachment is delegated solely to the House of Representatives" and "the joint resolution thus "the full House of Representatives should be involved in critical decision making regarding various stages of impeachment." As the Judiciary Committee Chairman explained during President Nixon's impeachment, an "authorization . . . resolution has always been passed by the House as a necessary step." Thus, he recognized that, without authorization from the House, "the committee's subpoena power [did] not now extend to impeachment." Indeed, with respect to impeachments of judges or lesser officers in the Executive Branch, the requirement that the full House pass a resolution authorizing an impeachment inquiry traces back to the first impeachments under the Constitution.

That historical practice has continued into the modern era. As the White House itself acknowledged, there have been only three impeachments that did not begin with a House resolution authorizing an inquiry. Of those three, those three involved an impeachment process lasting a short interlude in the 1980s. Those other investigations provide no precedent for a presidential impeachment. To paraphrase the Supreme Court, "when considered against 200 years of settled practice, we regard these few scattered examples as anomalies." In addition, the Constitution also made clear that if the investigations were conducted by a federal judge does not provide the same weighty considerations as the impeachment of a president. Setting aside these three impeachments, any precedent that requires a House vote is required to initiate an impeachment inquiry for judges and subordinate executive officials. At least the same level of process provided to investigating committees seeks to ensure that House committees had the power to conduct investigations. When the House reconsidered the impeachment power in 1974 to address the House's need to transfer power from the House to committees and to remake committee jurisdiction, the House specifically rejected an initial proposal that would have allowed impeachment proceedings only pursuant to their legislative jurisdiction (previously, for example, a separate House vote was required to delegate subpoena authority to a particular committee). Thus, after these amended rules were adopted, committees were able to begin investigations within their legislative jurisdiction and issue subpoenas without securing House approval, but that resolution did not authorize self-initiated impeachment inquiries. Indeed, it was precisely because the committee's initial request under impeachment inquiry did not receive a favorable vote from the House that the committee turned to the legal questions. When the House reconsidered the impeachment power in 1974 to address the House's need to transfer power from the House to committees and to remake committee jurisdiction, the House specifically rejected an initial proposal that would have allowed impeachment proceedings only pursuant to their legislative jurisdiction (previously, for example, a separate House vote was required to delegate subpoena authority to a particular committee). Thus, after these amended rules were adopted, committees were able to begin investigations within their legislative jurisdiction and issue subpoenas without securing House approval, but that resolution did not authorize self-initiated impeachment inquiries. Indeed, it was precisely because the committee's initial request under impeachment inquiry did not receive a favorable vote from the House that the committee turned to the legal questions.

(iv) The Subpoenas Issued Before House Resolution 660 Were Invalid and Remain Invalid Because the Resolution Did Not Ratify Them

The impeachment inquiry was unauthorized and all the subpoenas issued by House committees in pursuit of the inquiry were therefore invalid. OLC reached the same conclusion. The vast bulk of the proceedings in the House were thus founded on the use of unlawful process to compel testimony. Until now, House Democrats have consistently agreed that a vote by the House is required to authorize an impeachment inquiry. In 2016, House Democrats' Judiciary Committee agreed that: "[i]n the modern era, the impeachment process begins in the House of Representatives only after the House has voted to adopt a resolution authorizing the Committee to investigate whether charges are warranted." As current Judiciary Committee member Rep. Hank Johnson said in 2016: "The impeachment process cannot begin until the 435 Members of the House of Representatives adopt a resolution authorizing the House Judiciary Committee to conduct an independent investigation." As Chairman Nadler put it, an impeachment inquiry without a House vote is "an obvious sham" and a "fake impeachment," or as House Manager Rep. Hakeem Jeffries explained, it is a "political charade," a "sham," and "a Hollywood-style production." These invalid subpoenas remain invalid today. House Resolution 660 merely directed the six investigating committees to "conduct an independent investigation." That did not even purport to ratify retroactively the nearly two dozen invalid subpoenas issued before it was adopted, as OLC has explained. The language effectuating ratification when it wants to—indeed, it used such language less than six months ago in a resolution that "expelled the member of Congress"—is a "valid law" because the Resolution Did Not Ratify Them.

Contrary to false claims from House Democrats, the White House did not have his own self above impeachment, "reject "any efforts at accommodation or compromise," or declare "himself and his entire branch of government exempt from subpoenas issued by the House." The White House simply made clear that Administration officials should not participate in House Democrats' inquiry out of deference to an impeachment process that was unauthorized under the House's own rules and suffered from the other serious defects. The President's counsel also made it clear that if the investigating committees sought to proceed under their oversight authorities, the White House would "ready to engage in that process as it [has] in the past," and would continue to rely on the well-established bipartisan constitutional protections.
Schiff and his colleagues who refused to engage in any accommodation process with the White House.

(b) The President Properly Asserted Immunity of His Senior Advisers From Compulsory Congressional Testimony

The President also properly directed his senior advisers not to testify in response to subpoenas. Those subpoenas suffered from a separate infirmity: they were unenforceable because the President’s senior advisers are immune from compelled testimony before Congress. Consistent with the longstanding doctrine of Executive Branch privilege, OLC advised the Counsel to the President that those senior advisers (the Acting Chief of Staff, the Legal Advisor to the National Security Council, the Deputy National Security Advisor) were immune from the subpoenas issued to them.

Across administrations of both political parties, OLC “has repeatedly provided for nearly five decades” that “Congress may not constitutionally compel the President’s senior advisers to testify about their official duties.” For example, President Obama asserted the same immunity for a senior adviser in 2011. Similarly, during the Clinton administration, Attorney General Janet Reno explained that “subpoenas directed to the President are immune from being compelled to testify before Congress, and that the ‘the immunity such advisers enjoy from testimony voluntarily given by a Presidential committee is absolute and may not be overborne by competing congressional interests.’” She explained that “compelling one of the President’s immediate advisers to testify on a matter of executive decision-making would . . . raise serious constitutional problems, no matter what the assertion of congressional privilege.”

This immunity exists because senior advisers “function as the President’s alter ego.” Allowing Congress to summon the President’s senior advisers would be tantamount to permitting Congress to subpoena the President, which would be intolerable under the Constitution: “Congress may no longer summon the President to a congressional committee room than the President may command Members of Congress to appear at the White House.”

In addition, immunity is essential to protect the President’s ability to secure candid and confidential advice and have frank discussions with his advisers. It thus serves, in part, to protect the same interests that underlie Executive Privilege. As the Supreme Court has explained, the protections for confidentiality embodied in the doctrine of Executive Privilege are “fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution.” Those subpoenas issued to the President’s senior advisers in this inquiry necessarily implicated three core areas of Executive Privilege—presidential communications, national security and foreign policy information, and deliberative process.

First, one of the House Democrats’ obvious objectives was to find out about presidential communications. Executive Branch communications involving national security and foreign policy information, and deliberative process are “fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution.” Those subpoenas issued to the President’s senior advisers in this inquiry necessarily implicated three core areas of Executive Privilege—presidential communications, national security and foreign policy information, and deliberative process.

Second, the subpoenas were directed to Acting White House Chief of Staff Mulvaney, for instance, sought materials reflecting the President’s discussions with advisors, including Schlissel. In the context of the House’s transcribed interview of the former Director of the White House Personnel Security Office, House Democrats could have eliminated a significant legal defect in the subpoenas simply by following Chairman Cummings’ example. They did not take this step, so the Administration properly accepted the argument of OLC that the subpoenas were unconstitutional and directed witnesses not to appear without agency counsel present.

(c) Administration officials improperly instructed employees not to testify before committees that improperly excluded agency counsel

Subpoenas for testimony from other Executive Branch officials suffered from a distinct flaw. Those improperly demanded that officials testify without agency counsel present. OLC has determined that congressional committees “may not bar agency counsel from attending executive branch witness without contravening the legitimate prerogatives of the Executive Branch,” and that attempting to enforce a subpoena while simultaneously denying counsel is “impermissibly broad.” As OLC explained, that principle applies in the context of the House’s purported impeachment inquiry just as it applies in more routine congressional oversight requests.

The requirement for congressional committees to permit agency counsel to attend the proceedings is firmly grounded in the President’s constitutional authorities “to protect privileged information from disclosure” and “to control access to information within the Executive Branch.” As OLC has explained, without the assistance of agency counsel, an Executive Branch employee might not be able to determine when a question invades a privileged area. It is the vital role of agency counsel to ensure that certain information need not be shared if its confidentiality is protected. Congressional rules do not override these constitutional principles, and there is no legitimate reason for House Democrats to seek to deny the constitutional assistance of appropriate counsel.

The important role of agency counsel in congressional investigations has been recognized by Administrations of both political parties. During the Obama Administration, for instance, OLC stated that exclusion of agency counsel could potentially undermine the Executive Branch’s interest in protecting its confidentiality interests in the course of the constitutionally mandated accommodation process, as well as the President’s constitutional authority to consider and assert executive privilege where appropriate.

Requiring agency counsel to be present when Executive Branch employees testify does not raise any insurmountable problems for congressional information gathering. To the contrary, as recently as April 2019, the House Committee on Oversight and Government Reform and the Trump Administration were able to work out an accommodation that satisfied both an information request and the need for agency counsel for an interview. In that case, after initially threatening contempt proceedings over a dispute, the late Chairman Elijah Cummings allowed the White House to transcribe the interview of the former Director of the White House Personnel Security Office. House Democrats could have eliminated a significant legal defect in the subpoenas simply by following Chairman Cummings’ example. They did not take this step, so the Administration properly accepted the argument of OLC that the subpoenas were unconstitutional and directed witnesses not to appear without agency counsel present.

2. Asserting legal defenses and immunities grounded in the constitution’s separation of powers is not an impeachable offense

House Democrats’ theory that it is “obstruction” for the President to assert legal rights grounded in the constitution’s separation of powers is not an impeachable offense.

Under fundamental principles of our legal system, asserting legal defenses cannot be labeled unlawful “obstruction.” In a government of laws, asserting legal defenses is a fundamental right. As the Supreme Court has explained: “[f]or an agent of the State to pursue a course of action whose objective is to penalize a person’s reliance on his legal rights is ‘patently unconstitutional.’” As Harvard Law Professor Laurence Tribe correctly explained in 1998, the same basic principles apply in impeachment proceedings.

The allegations that invoking privileges and otherwise using the judicial system to control information is “abusive of power” that should lead to impeachment and removal from office is not only frivolous, but also dangerous. Simultaneously, in the now-Chairman Nadler of the House Judiciary Committee agreed that a president cannot be impeached for asserting a legal privilege. As he put it, “the use of a personal privilege is not illegal or impeachable by itself, a legal privilege, executive privilege.”

House Democrats, however, ran roughshod over these fundamental protections. They threatened Executive Branch officials with obstruction charges if the officials dared to
assert legal rights against defective subpoenas. They claimed that any “failure or refusal to comply with [a] subpoena, including at the direction or behest of the President, would constitute evidence of obstruction.” 327 Even worse, Chairman Schiff made the remarkable claim that any action “that forces us to litigate the President’s claim of executive privilege is itself considered further evidence of obstruction of justice.” 328 Those assertions turn core principles of the law inside out.

(b) House Democrats’ Radical Theory of “Obstruction” of a Grave Damage to the Separation of Powers

More important, in the context of House demands for information from the Executive Branch, President Trump’s radical interpretation that asserting legal privileges should be treated immediately as impeachable “obstruction” would do lasting damage to the separation of powers.

The Legislative and Executive Branches have frequently clashed on questions of constitutional interpretation, including on issues surrounding congressional demands for information, since the very first presidential administration. 329 Such interbranch conflicts are not evidence of an impeachable offense; they are part of the constitutional design. The Founders anticipated that the branches might have differing interpretations of the Constitution and might resist one another’s demands. As Madison explained, “the Legislative, Executive, and Judicial departments . . . must, in the exercise of its functions, be guided by the text of the Constitution and according to its own interpretation of it.” 330 Friction between the branches on such points is part of the separation of powers at work.

When the Legislative and Executive Branches disagree about their constitutional duties with respect to sharing information, the proper and historically accepted solution is not an article of impeachment. Instead, it is for the branches to engage in a constitutionally mandated accommodation process in an effort to resolve the disagreement. 331 As courts have explained, this “[n]egotiation between the two branches” is “a dynamic process affirmatively furthering the constitutional scheme.” 332 If that accommodation process fails, Congress has other tools at its disposal to address a disagreement with the Executive. Historically, Congress has agreed and has failed to reach agreement and has engaged in a constitutional litigation process to determine the validity of its subpoenas and an injunction to enforce them. 333

In the prior Administration, House Democrats had actually been interested in securing information (rather than merely adding aphony count to their impeachment charge sheet), the proper course of action. As President Obama’s then-Attorney General, Eric Holder, put it: “We will vigorously exercise our constitutional duty to defend the Constitution and the independence of our branch.” 334

In the current Administration, House Democrats have not been interested in securing information (other than their ability to assert an article of impeachment). In the words of House Republicans, the OLC has determined that Executive Privilege is at issue here. Yet, in their desire to secure information, House Republicans have ignored the fundamental Madisonian principle that each branch must check the other and assert its constitutional privileges, a principle that has been repeatedly and conclusively affirmed by the Supreme Court.

Permitting that approach and treating the President’s response to the subpoenas as an impeachable offense would gravely damage the separation of powers. Suggesting that every congressional demand for information must automatically be obeyed on pain of impeachment would undermine the foundational premise that the Legislative and Executive Branches are coequal in the administration of the Constitution, neither of which is subversive to the other. As Madison explained, where the Executive and the Legislative Branches come into conflict “neither can pretend to an exclusive or superior right of settling the boundaries between their respective powers.” 335 That is why the courts have insisted on an accommodation by which the two branches work to reach a compromise in which the interest of each branch is advanced. As contrasted, for example, with President Coolidge, who declared the House supreme not only over the Executive Branch, but also over the Judicial Branch, by baldly proclaiming that, whenever Congress confronts the possibility of impeachment, the House itself is the sole judge of its own powers, because “in [its] view” the Constitution gives the House the final word. 336

House Democrats’ theory is unprecedented and dangerous for our structure of government. There is no reason to believe that the House, acting as judge in its own case, will properly acknowledge limits on its own powers. That is evident from numerous cases where courts have refused to enforce congressional subpoenas because they are invalid or overbroad. 337 More important, the House Democrats’ theory means that the House’s demand for impeachment over every congressional demand for information. Trivializing impeachment in this manner would functionally transform our government into precisely the type of parliamentary system the Framers rejected.

In his testimony before the House Judiciary Committee, Professor Turley rightly pointed out that Congress can demand any testimony or documents and then impeach any president who dares to go to the courts. “House Democrats were advancing a position that was ‘entirely untenable and abusive [of] an impeachment.’” 338 Other scholars agree. In the Clinton impeachment, for example, Professor Susan Low Bloch testified that “impeaching a president for invoking lawful privileges is a dangerous and ominous precedent.” 339

In the past, the House itself has agreed and has recognized that impeachment cannot be used for asserting a privilege. For example, the House Judiciary Committee recommended that the House should not impeach President Clinton—despite the allegation that President Clinton had “frivolously and corruptly asserted executive privilege” in connection with a criminal investigation. 340 Although the Committee believed that the President had improperly exercised executive privilege, 341 it nevertheless determined that this was not an “impeachable offense” and voted against the articles of impeachment. 342 Similarly, over 150 years ago, the House rejected an attempt to impeach President Tyler “for abusing his powers based on his refusal to share the documentation” that he was considering to nominate to various confirmable positions and his vetoing of a wide range of Whig-sponsored legislation. 343

If House Democrats’ unprecedented theory of “obstruction of Congress” were correct, virtually every President could have been impeached. Throughout our history, Presidents have refused to give information with Congress. For example, when Congress investigated Operation Fast and Furious during the last administration, President Obama invoked executive privilege in response to a request for documents responsive to a congressional subpoena. 344 Instead of a rash rush to impeachment, House Republicans secured a favorable outcome in reliance on the President’s assertion of privilege. 345 President Trump’s actions are entirely consistent with such steps taken by his predecessors. As Professor Turley explained, “[i]f this Committee elects to seek impeachment on the failure to yield to congressional demands in an oversight or impeachment inquiry, we will distinguish a long line of cases where prior presidents sought . . . [judicial] review while withholding witnesses.” 346

House Democrats fare no better in claiming that President Trump announced a more “categorical” refusal to cooperate with House demands than any past president. That claim misunderstands the law and misrepresents both the President’s conduct and history. On the law, there is nothing impairing about the President’s categorical and “categorically.” There is no requirement for a President to cede Executive Branch information to Congress on a categorical or time-limited basis.

On the facts, the President did not issue a categorical refusal. As noted above, the Counsel to the President made clear to House Democrats that, if they sought to pursue regular oversight, the Administration would “stand ready to engage in that process as we have in the past, in a manner consistent with well-established bipartisan constitutional protections.” 347 It was House Democrats who refused to engage in the accommodation process. Indeed, past Presidents—such as Presidents Truman, Coolidge, and Jackson—did announce categorical refusals to cooperate at all with congressional investigations. 348 None was impeached as a result. Contrary to House Democrats’ assertions, it also makes no difference that the subpoenas here were purportedly issued as part of an impeachment inquiry. 349 The defenses and immunities the President has asserted are grounded in the text and Constitution and protect confidentiality interests that are vital for the functioning of the Executive Branch. Those defenses and immunities do not disappear the instant the House begins an impeachment inquiry. Just as with the judicial need for evidence in a criminal trial, the House’s interest in investigating does not mean Executive Privilege goes away; instead, “it is necessary to resolve those competing interests in a manner that preserves the essential functions of each branch.” 350 If anything, the interbranch need for evidence in an impeachment inquiry heightens the need for scrupulous adherence to principles protecting each branch’s interest in preserving its own legitimate sphere of authority.

House Democrats’ insistence that the Constitution assigns the House the “Power of Impeachment” 351 does nothing to advance their argument. That provision simply makes it clear that the power of impeachment is assigned to the House and not anywhere else. It does not make the power of impeachment a paramount authority that sweeps away the constitutionally based privileges of other branches. 352 The fundamental Madisonian principle that each branch must check the other continues to apply even when the House invokes the power of impeachment. 353 The mere fact that impeachment provides an ultimate check on the Executive and the Framers made it a blank check for the House to expand its power without limit.

OLC has determined that Executive Privileges principles continue to apply in an impeachment inquiry. 354 And scholars agree that Presidents may assert privileges in response to impeachment inquiry, but not in a non-impeachment inquiry. As Executive Privilege is “essential to the . . . dignified conduct of the presidency and to the free flow of candid advice to the President.” 355

None of the excuses House Democrats have offered justifies their unprecedented leap to
impeachment while bypassing any effort either to seek constitutionally mandated accommodations or to go to court. Their claim that there was no time is no justification.352 As Professor Gerhardt explained, President Clinton had "failed without lawful cause or excuse to provide due process and to participate or defend himself. House Democrats arbitrarily decided to skip that step.

Next, Democrats falsely claim that that "the House has never before relied on litigation to compel witness testimony or the production of documents in a Presidential impeachment proceeding."353 In other words, House Democrats argued that the House could have "produced papers and things" sought by Congress simply by waiting for the courts to act. But they ignored the Supreme Court's statement in United States v. Rumely that "Congress, in its wisdom, has determined that the executive privilege is a fundamental, historically recognized constitutional right that the President can retain over communications with his counsel and advisors."354 Nor is their claim about urgency credible. The only constraint on timing here came from House Democrats themselves, who in December of 2017 gave President Trump a January 18 deadline to produce the documents in question.355 In the interim, the President and House Democrats engaged in back-and-forth communications about the attorney-client privilege. Then, after President Trump refused to produce the requested documents, the House Judiciary Committee decided to proceed with impeachment.356

The record there included evidence that, as early as February 2018, the House Judiciary Committee was engaged in a "review of whether to open an impeachment inquiry of President Trump."357

The Constitution vests the "sole Power of Impeachment" in the House of Representatives.358 Therefore, the House has the exclusive power to decide whether to impeach a president. Like all branches of government, the House is a constitutional entity and is presumed to act with the authority granted it by the Constitution.359 It is the House, and the House alone, that may decide whether to impeach a president.360

Impeachment Inquiry That Violated All Precedent and Deprived President Trump of a Fair Process Required by the Constitution

None of the House Democrats' arguments justifying the impeachment inquiry make any sense. First, the House "reviewed the constitutional record," which included evidence that the House was trying to find the "true facts and the truth" about the affair.361

The Constitution requires the House to conduct a fair and impartial impeachment inquiry that "participate or defend himself."362 The Constitution also requires the House to follow "due process."363

The House in the impeachment proceeding did not make any effort to secure access to tax return information in electronic surveillance; and illegally attempted to conduct foreign relations—matters squarely at the core of Executive Privilege where the President's powers and need to preserve confidentiality are greatest.

(c) The President cannot be removed from office based on a difference in legal opinion. House Democrats' reckless "obstruction" theory is further flawed because it asks the Senate to determine on its own what offenses constitute impeachable offenses.364 The Constitution established the Senate's role in impeachment proceedings as one of "advice and consent" to the President as required by the Constitution. See Part I.B. Contrary to 150 years of precedent, the House excluded the President from the impeachment process, denying him any right to participate or defend himself. House Democrats only pretended to provide the President any rights after the entire factual record had been compiled in ex parte hearings and the Speaker Pelosi had predetermined the result by instructing the Judiciary Committee to draft articles of impeachment. Third, the House voted to issue subpoenas after receiving an interested fact witness, Chairman Schiff, who—after falsely denying it—admitted that his staff had been in contact with the whistleblower and had given him guidance. See Part I.C. These three fundamental errors infected the underpinnings of this trial, and the Senate cannot constitutionally rely upon House Democrats' tainted record to reach any verdict other than acquittal.

See Part I.D. Nor is it the Senate's role to give House Democrats a "do-over" to develop their record anew in the Senate. Those errors require rejecting the Articles and acquitting the President.

A. The Purported Impeachment Inquiry Was Unconstitutional at the Core

It is inexcusable for House Democrats to assert that the impeachment inquiry was constitutional. Three fundamental errors infected the underpinnings of this trial, and the Senate cannot constitutionally rely upon House Democrats' tainted record to reach any verdict other than acquittal.

See Part I.D. Nor is it the Senate's role to give House Democrats a "do-over" to develop their record anew in the Senate. Those errors require rejecting the Articles and acquitting the President.

B. House Democrats' Impeachment Inquiry Deprived the President of the Fundamentally Fair Process Required by the Constitution

The most glaring defect in House Democrats' impeachment proceedings was the wholly unfair procedures used to conduct the
inquiry and compile the record. The Constitution requires that something as momentous as impeaching the President be done in a fundamentally fair way. Both the Due Process Clause and the separation of powers principles require the House to provide the President with fair process and an opportunity to defend himself. Every modern president insists, inquiry—acted as the individual meets the qualifications established by the Constitution. Finally, every federal officer has a protected liberty interest in his reputation that would be directly impaired by impeachment charges. Impeachment by the House alone has an impact on the protected property interest in the tenure and cannot be fired without due process. 305

There is no exemption from the clause for impeachment. In any proceeding that may lead to deprivation of a protected interest, it requires fair procedures commensurate with the interests at stake. 306 There is no exemption from the clause for Congress. Thus, for example, the Supreme Court has held that the process must apply to congressional investigations and provide witnesses in such investigations certain rights. 307 Congress’s “power to investigate, broad as it may be, is also subject to recognized limitations”—including those “found in the specific individual guarantees of the Bill of Rights.” 308 It would be anomalous if the Due Process Clause applied to investigations conducted under Congress’s legislative power—which aim merely to gather information for legislation—but somehow did not apply to investigations aimed at stripping individuals of their government positions. An impeachment investigation alleging that a President potentially seeks to impeach the President with “Treason, Bribery, or other high Crimes and Misdemeanors,” and to strip the President of both (1) his constitutionally granted right to “hold his Office during the Term of Four years,” and (2) his eligibility to “hold and enjoy any Office of honor, Trust or Profit under the United States,” including to be re-elected as President. 309

Those actions plainly involve deprivations of property and liberty interests protected by the Fifth and Fourteenth Amendments. As a general matter, it is settled law that even the lowest level “public employees who can be discharged only for cause have a constitutionally protected property interest in their tenure and cannot be fired without due process.” 305 Nothing in the Constitution suggests that the impeachment process for addressing charges crossing the extraordinarily high threshold of “Treason, Bribery, or other high Crimes and Misdemeanors” should involve less fair process than what the Constitution requires of a lower level federal employee. The Constitution also explicitly gives the President (and every individual) a protected liberty interest in eligibility for election to any future office as long as the individual meets the qualifications established by the Constitution. Finally, the House’s efforts to deprive the President of these constitutionally protected property and liberty interests necessarily can not be considered “found in the specific individual guarantees of the Bill of Rights.” 307

The gravity of the deprivation at stake in an impeachment—especially a presidential impeachment—is considered so great that some due process limitations must apply. It would be incompatible with the Framers’ understanding of the “delicacy and magnitude of a trust which so deeply concerns the political reputation and existence of every man engaged in the administration of public affairs” to think that they envisioned a system in which the House was free to devise any arbitrary or unfair mechanism it wished for impeaching individuals. The Supreme Court has described due process as “the means by which the ends of governmental action . . . [are] to be achieved in a manner compatible with the requirements of fairness.” 308 In 1974, the Department of Justice recognized this requirement of fair procedures in impeachment. Those provisions ensure that the President’s ability to defend himself in any investigation into how he has exercised his authority to conduct foreign affairs. Otherwise, a partisan fact-finder could smear the President with one-sided allegations with no opportunity for the President to respond. That would threaten to “undermine the President’s capacity” to “make foreign policy” and “compromise the very capacity of the President to speak for the Nation with one voice in dealing with other governments.” 309

(c) The House’s Sole Power of Impeachment and Power to Determine Own Proceedings Do Not Eliminate the Constitutional Requirement of Due Process

Nothing in the House’s “sole Power of Impeachment” and power to “determine the Rules of its Proceedings” undermines the House’s obligation to use fundamentally fair procedures in impeachment. Those provisions only mean that no other entity, has these powers. The Supreme Court has made clear that independent constitutional constraints limit otherwise plenary powers commensurate with political branches. For example, even though “[t]he [C]onstitution empowers each house to determine its rules of proceedings,” each House may not by its own “constitutional restraints or violate fundamental rights.” 300 Similarly, the doctrine of Executive Privilege, which is rooted in the separation of powers, constrains Congress’s exercise of its constitutionally assigned powers. A congressional committee cannot simply demand access to information protected by the Fifth Amendment. Yet access to such information at all, it must show that the information “is demonstrably critical to the responsible fulfillment of the Committee’s functions.” 414 The House could not evade that constraint by invoking its plenary authority to “determine the Rules of its Proceedings” and adopting a rule allowing its committees to override Executive Privilege. 415 Executive Privilege, which is itself grounded in the Constitution, similarly constrains the President’s ability to demand information that is “pertinent to his “sole Power of Impeachment.” 417

Nixon v. United States, in any case, does not suggest otherwise. 418 Nixon addressed whether a House impeachment trial violated the Senate’s constitutional right to a fair trial. The majority therefore held that a Senate impeachment trial violated the direction in the Constitution that the Senate
English impeachment of Warren Hastings,\(^{132}\) knew that “the House of Commons did hear the accused, and did permit him to produce testimony, before they voted an impeachment” in the United States rapidly established that the accused in an impeachment must be allowed fair process. Although a few early impeachments,\(^{424}\) the Supreme Court held that the House provided the accused with notice and an opportunity to be heard in the majority of cases stated.\(^{418}\) By Judge Peck’s impeachment in 1830, House Members, explicitly acknowledging that “it was obvious that it had not yet been tried to settle[]” \(^{425}\) “the practice in cases of impeachments, so far as regards the proceedings in this House,” Judge Peck had asked for the right to give him ability “to perform[]” a written exposition of the whole case, embracing both the facts and the law, and give him, also, process to call his witnesses from Missouri in support of his statement.\(^{426}\) The Judiciary Committee Chairman, James Buchanan, pointed out that “in the case of Warren Hastings” in England, “the House of Commons did hear the accused, and did permit him to produce testimony, before they voted an impeachment against him.”\(^{427}\) Miller explained that, in a prior impeachment inquiry against President Calhoun, “a friend of the Vice President had been permitted to appear, and represent the case when investigated.” That “[w]itnesses, also, had been examined on the part of the accused,” and that “witnesses in favor of the Vice President had been examined, as well as against him, and that his representative had been allowed to present before the committee through every stage of the examination.” He noted that at that time took some pains to ascertain what was the proper mode of proceeding, and they became satisfied that the party accused had, in these preliminary proceedings, a right to be thus heard.\(^{428}\) Mr. Pettis similarly concluded that “[t]he request of the Judge is supported by the whole train of English decisions in cases of a like kind” and that he should be given those rights here as well.\(^{429}\) The debate was thus settled in favor of due process rights for Judge Peck.\(^{430}\)

The Supreme Court’s “precedents establish the general rule that individuals must receive notice and an opportunity to be heard before the Government deprives them” of a constitutionally protected interest.\(^{431}\) That means, at a minimum, that the evidence must be disclosed to the accused, and the accused must be permitted an opportunity to test and respond to the evidence—particularly through “[t]he rights to confront and cross-examine witnesses,” which “have long been recognized as vital in a fair impeachment process.”\(^{432}\) Cross-examination is “the greatest legal engine ever invented for the discovery of
truth." 462 "[b]eing[d]ing light on the witness' perception, memory and narration" 463 and "[expos[ing]] inconsistencies, incoherencies, and inaccuracies in his testimony." 464 Thus, "[i]n defining what constitutes a clear and present danger, it is unthinkable that the Framers, steeped in the history of Anglo-American jurisprudence, would create a system that would allow the Chief Executive and Commander-in-Chief of the armed forces to use the due process that developed evidence without providing any of the elementary procedures that the common law has developed over centuries for ensuring the proper testing of evidence in an adversarial process.

The most persuasive source indicating what the Constitution requires in an impeachment investigation is the record of the House's own past practice, as explained above. 465 The due process rights consistently afforded by the House to the accused over the past 150 years have generally included the right to appear and to be represented by counsel at all hearings, to have access to and respond to, to submit new evidence, and to testify, to question witnesses and object to evidence, and to make opening statements and closing arguments. 466 Chairman Nadler, Chairman Schiff, former House Democrats, and then-Representative Schuler have repeatedly confirmed these procedural rights.

The House Impeachment Inquiry Failed to Provide the Due Process Demanded by the Constitution and Generated a Fundamentally Skewed Record That Cannot Be Reversed

Despite clear precedent mandating due process for the accused in any impeachment inquiry—and especially in a presidential impeachment inquiry—House Democrats concatenated the procedures in this case that denied the President fair process at every step of the way. Indeed, because the process started without any actual authorization from the House, committees initially made up the process as they went along. In the end, all three phases of the House's inquiry failed to afford the President even the most rudimentary procedures demanded by the Constitution, fundamentally fairness, and over 150 years of precedent.

(a) Phase I: Secret Hearings in the Basement Bunker

The first phase involved secret proceedings in a basement bunker where the President was not allowed to see or hear. It consisted of depositions taken by joint hearings of the House Permanent Select Committee on Intelligence (HPSCI), the House Committee on Foreign Affairs, and the House Committee on Oversight and Reform. To ensure there would be no transparency for the President or the American people, depositions were conducted in a facility dedicated to providing the President with access to and the opportunity to participate. He was denied the right to have counsel present. He was denied the right to cross-examine witnesses, call witness testimony, or object to evidence. He was denied the right to have Executive Branch counsel present during depositions of Executive Branch officials, thereby undermining any attempt to provide the President standing constitutional privileges over Executive Branch information. 467 Members in the Republican minority on the investigatory committees provided a false weight to remedy the lack of process for the President. They were denied subpoena authority to call witnesses, and they were blocked even from asking questions that would ensure a balanced development of the facts. For example, Chairman Schiff repeatedly pressured witnesses who had not exposed personal self-interest, prejudice, or bias of the whistleblower. 468

Finally, House Democrats were clear that the proceedings' secrecy was just a partisan stratagem. Daily leaks describing purported testimony of witnesses were calculated to present a slanted summary view of what was taking place behind closed doors and further the narrative that the President had done something wrong. 469 House Democrats knew that the basement Star Chamber hearings were justified because the House "serves in a role analogous to a grand jury and prosecutor." 470 They were building a record of providing due process over the last 150 years confirms that the House is not merely a grand jury. 471 Chairman Nadler, other House Democrats, and then-Representative Schuler rejected such analogies as "cramped view of the appropriate role of the House [that] finds no support in the Constitution and is completely contrary to the great weight of historical precedent." 472 The Judiciary Committee's own impeachment consultant stated such "[grand jury] analogies" as "badly misplaced when it comes to impeachment." 473

More importantly, the narrow rationales that justified due process protections in grand juries simply do not apply here. 474 For example, it is primarily grand jury secrecy—not the preliminary nature of grand jury proceedings—that is constitutionally privileged. 475 The secrecy of grand jury proceedings is essential to protecting the public reputations of those who may be investigated but never charged. Neither rationale applied to Chairman Schiff's proceedings for a straightforward reason: in relevant respects, the proceedings were entirely public. Chairman Schiff made no secret that his investigation was President Trump. He and his colleagues held news conferences to announce that fact, and they leaked information intended to undermine the President's case. The only difference was that this second round took place in public. 476 Thus, after six witnesses were deposed in closed doors, Chairman Schiff moved on to a true show trial—a stage-managed inquisition in front of the cameras, choreographed with pre-screened testimony to build a narrative aiming at a pre-determined result. The President was still denied any opportunity to participate, to cross-examine witnesses, to present witnesses or evidence, or to protect constitutionally privileged Executive Branch information by having agency counsel of the President testify to the facts of the case. In contrast to the rules that had governed the Nixon and Clinton impeachment inquiries. There, the President had been allowed to cross-examine and confront witnesses in public. The House's assertions that the basement hearings' secrecy was just a partisan ploy is off the mark.

(b) Phase II: The Public, Ex Parte Show Trial Before HPSCI

After four weeks of secret—and wholly unauthorized—hearings, the House introduced a resolution to have the House authorize an impeachment inquiry and the House Rules Committee resolved the issue without debate. 660 However, merely compounded the fundamentally unfair procedures from the secret cellar hearings by subjecting the President to a show trial—a stage-managed inquisition in front of the cameras, choreographed with pre-screened testimony to build a narrative aiming at a pre-determined result. The President was still denied any opportunity to participate, to cross-examine witnesses, to present evidence or witnesses, or to protect constitutionally privileged Executive Branch information by having agency counsel of the President testify to the facts of the case. In contrast to the rules that had governed the Nixon and Clinton impeachment inquiries. There, the President had been allowed to cross-examine and confront witnesses in public. The House's assertions that the basement hearings' secrecy was just a partisan ploy is off the mark.

(c) Phase III: The Ignominious Rubber Stamp from the Judiciary Committee

The House Committee on the Judiciary simply rubber-stamped the ex parte record compiled by Chairman Schiff and, per the Speaker's direction, relied on it to draft articles of impeachment. 477 This was direct legislative usurpation of the rules that had governed the Nixon and Clinton impeachment inquiries. Thus, the only procedural protections that House Resolution 660 provided that were inad- equate from the outset because they came far too late in the proceedings to be effective. 478 The only procedural protection that the cross-examination is essential to the factual record is being developed. Providing process only after the record has been compiled and after charges are being drafted can do little to remedy the distortions built into the record. Here, most witnesses testified twice under oath on the same topics—one in a secret trial and again in public—without any opportunity to confront and cross-examine the President. Locking witnesses into their stories by having them testify twice under oath compromises the benefit of cross-examination. Any deviation from prior testimony potentially exposes a witness to a double jeopardy charge, and, worse, the fraud upon the public that is done in each witness's mind in place of actual memory.

While it would have been next to impossible for a proceeding before the Judiciary Committee to remedy the defects in the prior two rounds of hearings, Chairman Nadler is now using his position to do just that. His only interest was following marching orders to report articles of impeachment to the House so they could be voted on before the new Congress convened. The rules provided vague and inadequate notice about what proceedings were planned until ultimately
informed the President that he had no plans for any evidentiary hearings at all.

For example, on November 26, 2019—two days before Thanksgiving—Chairman Nadler informed the President and the Administration that the Judiciary Committee would hold a hearing on December 4 vaguely limited to “the legal and constitutional basis of impeachment.” The Chairman provided no further information about the hearing, including the identities of the witnesses.495 All to no avail—Chairman Nadler did not even offer to meet with Chairman Nadler trying to find out about the process the Committee would follow and requesting specific rights to review a presentation of the law and facts, including requesting witnesses.497 Chairman Nadler simply ignored them. He offered only an after-the-fact apology that denied his request for witnesses in part on the misleading claim that “the President is not requesting any witnesses.” When it was Chairman Nadler who was effectively denied the President to call witnesses in the first place.498

As a backdrop to all of this, Chairman Nadler had told the President that “unprecedented provision of the Committee’s Impeachment Inquiry Procedures Pursuant to House Resolution 660 that allowed him to deny that he had any rights if the President continued to assert longstanding privileges and immunities to protect Executive Branch information and to challenge the Judiciary Committee’s issuance of ‘subpoenas’”499. This approach also departed from all precedent in the Clinton and Nixon eras when both Presidents had asserted numerous privileges, the Judiciary Committee never contemplated that offering the opportunity to present a defense and have a fair hearing should be conditioned on enforcing the President to abandon the longstanding constitutional rights and privileges of the Executive Branch. The Supreme Court has already addressed such Catch-22 choices and has made clear that it is “intolerable that one constitutional right should have to be surrendered in order to exercise another.”

As a result, by the December 6 deadline, the President had been left with no meaningful choice, because Chairman Schiff’s staff had not only had instructions to draft articles of impeachment before hearing any evidence; Chairman Nadler had kept the President in the dark until the last minute about how and when the Committee would proceed; and Committee counsel had finally confirmed that the Committee’s plan was to hear solely a staff presentation of the HPSCI report and not to hold any other hearings. It was abundantly clear that, if the President asked to present or cross examine any witnesses, any future hearings would be window–dressed designed to place a veneer of fair process on a stage–managed show trial already hurrying toward a preordained result. The President would not be given any meaningful opportunity to question fact witnesses or otherwise respond to the one–sided factual record compiled by another entity (there, the Independent Counsel) and proceed to judgment.

The House’s constitutionally deficient proceedings have so distorted the factual record compiled in the House that it cannot constitutionally be relied upon for the Senate to reach any verdict other than acquittal.

C. The House’s Inquiry Was Irredeemably Defective Because It Was Presided Over by an Interested Fact Witness—Interested Fact Witness Who Lied About Contact with the Whistleblower Before the Complaint Was Filed

The House’s entire factual investigation was conducted by an interested fact witness—by an interested fact witness: Chairman Schiff. His repeated falsehoods about the President leave him with no credibility whatsoever. In March, Chairman Schiff lied, announcing that he already had evidence that the Trump campaign colluded with Russia.509 That was proved false when the Mueller Report was released and the entire Russian hoax Chairman Schiff had been peddling was disproved.

In this proceeding, Chairman Schiff violated the fairness rule by orchestrating and executing the proceedings while secretly being a witness in the case. Before public release of the whistleblower complaint, when asked if he had “heard from the whistleblower,” Chairman Schiff falsely denied having “heard from the whistleblower,” saying: “We have not spoken directly with the whistleblower. We would like to.” But yes, we would love to talk directly with the whistleblower.”511 As multiple media outlets concluded, that statement was flat–out false.512 Chairman Schiff had learned “four Pinnochios” from The Washington Post513—because it “wrongly implied the committee had not been contacted” by the whistleblower before the whistleblower complaint was filed.514 Subsequent reporting showed that Chairman Schiff’s staff had not only had...
contact with the whistleblower, but apparently played some still-unverified role in advising the whistleblower before the complaint was filed. And Chairman Schiff began to insist that this matter by itself was a fact witness in these proceedings. The American people understand that Chairman Schiff cannot cooly advise the public about his involvement, and then pretend to be a neutral “investigator.” No wonder Chairman Schiff repeatedly denied requests to subpoena the whistleblower before the committee, sidestepping any questions that he feared might identify the whistleblower. Questioning the whistleblower would have exposed before the American people that the committee staff had in concocting the very complaint they purported to be investigating.

D. The Senate May Not Rely on a Factual Record Derived from a Procedurally Deficient House Impeachment Inquiry

The Senate may not rely on a corrupted factual record derived from constitutionally deficient proceedings to support a conviction of the President of the United States.320 The Senate has the responsibility to have a complete and accurate record of the proceedings to determine whether the President had committed a federal crime or committed conduct that justified a pre-ordained outcome—impeaching the President of the United States. Nor is the Senate’s quest for impeachment had “been going on for 22 months . . . [two and a half years, actually].”320 The moment that the President was sworn in, the Senate was already investigating, and the current proceedings began with a complaint prepared with the assistance of a lawyer who declared in 2017 that he was already planning “to use this opportunity to proceed.”322 The first resolution proposing articles of impeachment against President Trump was introduced in office for six months.322 As soon as Democrats gained control of the Senate, the in 2019 mid-term elections, they made clear that they would stop at nothing to force a second impeachment. Rep. Rashida Tlaib, for example, announced in January 2019: “[W]e’re going to go in there and we’re gonna impeach the motherfucker.”324

Over the past three years, House Democrats have filed at least eight resolutions to impeach the President, alleging a vast range of preposterous offenses. They have repeatedly charged the President with obstruction of justice in connection with the Mueller investigation—325 an allegation that the Department of Justice reasonably rejected.326 One resolution sought to impeach the President for protecting national security by providing a “do-over” to eight countries—an action upheld by the Supreme Court.328 Another article to impeach the President for publishing disparaging tweets about members in response to their own attacks on the President.329 Still another article could provide “satisfactory explanations” for the President’s “doings.”329

In this case, House Democrats ran the fastest presidential impeachment fact-finding on record. They moved more than three months from the beginning of their fact-finding investigation on September 24, 2019 to the adoption of articles of impeachment.330 The first resolution proposing articles of impeachment by Christmas. That rushed three-month process stands apart from the 1974 impeachment of President Nixon, which took place after a fact-finding period nearly four times as long. Independent Counsel Ken Starr received authorization to investigate the charges that led to President Clinton’s impeachment in January 1998.331 The Clinton impeachment was undertaken ethics guidelines, and the costs of the July 4 “Salute to America” event—all in the hope that rummaging through those records might give them some new basis for attacking the President. Democrats have been fixated on impeachment and Russia for the past three years for two reasons. First, they have never accepted that President Trump’s support for the Mueller investigation or his administration’s actions to include the special counsel’s report in the FISA court. One FBI official, who openly advocated for “resistance” against President Trump, twice refused to persuade the FISA court to maintain surveillance on an American citizen connected with the Trump campaign.347 Tellingly, the Inspector General could not rule out the possibility that Crossfire Hurricane was corrupted by political bias, because the FBI could not provide “satisfactory explanations” for the investigation. One report from the Inspector General would show wrongdoing “of a size and scope probably beyond Watergate.”348

The damage caused by Democrats’ Russian conspiracy delusion is anything directly attributable to the Mueller investigation. The Mueller investigation itself was conducted by an investigation, known as Crossfire Hurricane, that involved gross abuses of FBI investigative tools—including FISA orders and undercover agents. The investigation was undertaken ethics guidelines, and the costs of the July 4 “Salute to America” event—all in the hope that rummaging through those records might give them some new basis for attacking the President.

The second reason for Democrats’ fixations is that they desperately need an illegitimate boost for their candidate in the 2020 election, and the President is the only one that the Democrats have no response to the President’s record of achievement in restoring growth and prosperity to the American economy, rebuilding America’s military, and confronting America’s adversaries abroad. They have no policies and no ideas to compete against that.
Instead, they are held hostage by a radical left wing that has foisted on the party a radical agenda of socialism at home and appeasement abroad that Democrat leaders know, and the American people will never accept.

For Democrats, President Trump’s record of success made impeachment an electoral imperative. As Congressman Al Green explained, don’t impeach the President, he will get re-elected.”

The result of House Democrats’ relentless pursuit of Trump and the willingness to sacrifice every precedent, every principle, and every procedural right standing in their way—is exactly what the Framers would have wholly parted with to try impeachment. The Articles of Impeachment now before the Senate were adopted without a single Republican vote. Indeed, the only bipartisan articles were the congressional opposition to their adoption.

Democrats used to recognize that the momentous act of overturning a national election by impeaching a President should never take place on a partisan basis, and that impeachment should not be used as a partisan tool in electoral politics. As Chairman Nadler explained:

The effect of impeachment is to overturn the popular will of the voters. We must not overtly and remove a President from office except to defend our system of government or our constitutional liberties against a dire threat, and we must not do so without the opportunity for the country to be heard by the affected American people. There must never be a narrowly voted impeachment or an impeachment supported by one of our major political parties and opposed by another. Such an impeachment will produce divisiveness and bitterness in our politics for years to come, and will call into question the very legitimacy of our political system.

Senator Leahy agreed: “A partisan impeachment cannot command the respect of the American people. It is no more valid than a stolen election.”

Chairman Schiff likewise recognized that a partisan impeachment would be “doomed for failure,” adding that there was “little to be gained by putting the country through that kind of wrenching experience.”

Earlier last year even Speaker Pelosi acknowledged that, “before I think we should go down any impeachment path,” it would be “clearly bipartisan in terms of acceptance of it.”

Now, however, House Democrats have completely overturned precedent and placed before the Senate Articles of Impeachment that are partisan to their core. In their rush to impeach the President before Christmas, Democrats allowed speed and political expediency to conquer fairness and truth. As Professor Turley explained, this impeachment “stand[s] out among modern impeachments as the shortest proceeding, the slickestimpeachments as the shortest proceeding, the slickest, most expedient, and the most unfair.”

The Framers foresaw clearly the possibility of such an improper, partisan use of impeachment. As Hamilton recognized, impeachment could be a powerful tool in the hands of determined “pre-existing factions.”

The Framers fully recognized that “the persecution of an impeachment or de.signing a base design on a House of Representatives” was a real danger.

That is why they chose the Senate as the tribunal for trying impeachments. Further removed from the political bristles of the House, they believed the Senate could mitigate the “danger that the decision” to remove a President would be based on the “comparative strength of parties” rather “than by the real demonstrations of innocence or guilt.”

The Senate was thus “guard[ed] against the danger of a party spirit in the House.”

It now falls to the Senate to fulfill the role of guardian that the Framers envisioned and to reject the scandalous Articles of Impeachment that have been propelled forward by nothing other than partisan enmity to the President.

III. Article I Failed Because the Evidence Disproves House Democrats’ Claims

Despite House Democrats’ unprecedented, rigged process, the record compiled clearly establishes that the President did nothing wrong.

This entire impeachment charade centers on a telephone call that President Trump had with President Zelensky on July 25, 2019. There is no mystery about what happened on that call, because the President has been completely transparent: he released a transcript of the call months ago. And that transcript shows conclusively that the call was perfectly appropriate. Indeed, the person on the other end of the call, President Zelensky, has confirmed in multiple public statements that it was a normal conversation. Before they had even seen the transcript, though, House Democrats concocted all their charges based on distortions peddled by a former witness who had no first-hand knowledge of the call. And contrary to their claims, the transcript proves that the President did not seek to use either security assistance or a presidential meeting as leverage to pressure Ukrainians to announce investigations on two subjects: (i) possible Ukrainian interference in the 2016 election; or (ii) the Biden-Burisma affair. That is why the President had forced the dismissal of an anti-corruption prosecutor who reportedly had been investigating a company (Burisma) that paid Biden’s son, Hunter, to sit on its board.

The President did not even mention the security assistance on the call, and he invited President Zelensky to the White House without any condition whatsoever. When the President released the transcript of the call on September 25, 2019, it cut the legs out from under all of House Democrats’ assertions. Burisma had no leverage with the President to pressure him to announce any investigation between the assistance and any investigation. Instead, the record shows that he forced the dismissal of an anti-corruption prosecutor with both his authority to conduct foreign relations and his longstanding concerns about how the United States spends taxpayer dollars on foreign aid: burden-sharing and corruption.

Burden-sharing has been a consistent theme of the President’s foreign policy.

And the record is clear: the President was not interested in the Burisma affair. As Democrats’ witness Mr. Volker testified, Burisma was “surrounding himself with some of the same people.”

President Zelensky responded by noting that he had recalled the Ukrainian Ambassador to the United States— an individual who had sought to influence the U.S. election by authoring an anti-Trump op-ed. As Democrats’ witness Mr. Volker testified, many officials in the State Department and NSC were similarly concerned about individuals surrounding Zelensky. President Zelensky also mentioned an incident involving then-Vice President Joe Biden and a corruption investigation involving Burisma. In that incident, a corruption investigation involving Burisma had already been stopped after Vice President Biden threatened to withhold one billion dollars in U.S. loan guarantees unless the Ukrainian government fired Mr. Zelensky. At the time, Vice President Biden’s son, Hunter, was sitting on the Burisma’s board of directors.

At the July 23 call—The Washington Post reported that the prosecutor “said he believes his investigation into Hunter Biden’s Ukrainian business dealings is of serious interest” and “had remained in his post...he would have questioned Hunter

The most important piece of evidence demonstrating the President’s innocence is the transcript of the President’s July 25 telephone call with President Zelensky. In an unprecedented act of transparency, the President made that transcript public months ago. President Trump did not even mention the security assistance on the call, and certainly didn’t do so in connection between the assistance and any investigation. Instead, the record shows that he had removed a corrupt anti-corruption prosecutor with both his authority to conduct foreign relations and his longstanding concerns about how the United States spends taxpayer dollars on foreign aid: burden-sharing and corruption.

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The incident raised important issues for anti-corruption efforts in Ukraine, as it raised at least the possibility that a U.S. official may have been involved in a foreign government investigation of a foreign sovereign.

As these examples show, President Trump raised his concerns with President Zelensky. House Democrats’ claim that he did not address corruption because the incidents he raised were “not part of any official briefings and not part of my personal conversations.”597 President Trump spoke effortlessly and used specific examples rather than following boilerplate talking points prepared by aides. That is why President Zelensky’s responses to each request and the President’s response to each request are worth highlighting.

Similarly, National Security Adviser to the Vice President Keith Kellogg said that he “heard nothing wrong or improper on the call.”599

2. President Zelensky and Other Senior Ukrainian Officials Confirmed There Was No Quid Pro Quo and No Pressure on Them Concerning Investigations

The Ukrainian government also made clear that President Zelensky and other senior Ukrainian officials did not make any explicit or implicit connection to security assistance and investigations on the call. The Ukrainians’ official statement did not reflect any such link.531 President Zelensky also made no such connection in his public statements. He has explained that “we never talked to the President from the position of a quid pro quo” and stated that they did not discuss security assistance on the call at all.594 Indeed, President Zelensky has confirmed several separate times that his communications with President Trump were “good” and “normal,” and “no one pushed me.”595 The day after the call, President Zelensky met with Ambassador Volker, Ambassador Sondland, and Ambassador Taylor in Kyiv. Ambassador Volker reported that the Ukrainians “thought [the call] went well.”596 Likewise, Ambassador Taylor reported that President Zelensky was “very happy with the call.”597 And Ms. Croft, who met with President Zelensky’s chief of staff Andriy Bohdan the day after the call, heard from Bohdan that there were “very positive, they had good chemistry.”598

Further confirmation that the Ukrainians did not know about the pause comes from the fact that the Ukrainians did not raise the security assistance in any of the numerous high-level meetings held over the summer—something Yermak told Bloomberg they would have done had they known.531 President Zelensky did not raise the issue in meetings with Ambassador Taylor on either July 26 or August 27.532 And Volker—who was in touch with the highest levels of the administration concerning unfolding investigations—has said that Ukrainian officials “would confide things” in him and “would have asked” if they had any questions about the aid.533 Things change on a daily basis, so that “there was no leverage implied.”534 These facts alone vindicate the President.

4. House Democrats Rely Solely on Speculation Built on Hearsay

House Democrats’ charge is further disproved by the straightforward fact that not a single witness with actual knowledge ever testified that the President suggested any connection between announcing investigations and security assistance. Assumptions, presumptions, and speculation based on hearsay are all that House Democrats can rely on to spin their tale of a quid pro quo.535

House Democrats’ claims are refuted first and foremost by the fact that there are only two people with statements on record who were aware at the time, so that the matter—and both have confirmed that the President expressly told them there was no connection whatever between the security assistance and investigations—Ambassador Volker and Sondland testified that he asked President Trump directly about these issues, and the President explicitly told him that he did not want anything from Ukraine: “I want nothing. I want nothing. I want no quid pro quo. Tell Zelensky to do the right thing.”536

Similarly, Senator Ron Johnson has said that he asked the President “whether there was some kind of arrangement where we would take steps to ensure that the Ukrainians had no knowledge of the review until August 28, 2019.”537 Deputy Assistant Secretary Kent and Ambassador Sondland agreed.538

Public statements from high-level Ukrainian officials have confirmed the same point. For example, adviser to President Zelensky Andriy Yermak told Bloomberg that President Zelensky and his key advisers learned of the pause only from the Politico article.539

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First, President Trump asked President Zelensky to “do us a favor,” and he made clear that “us” referred to “our country” as he put it, “because our country has been through a lot.”581 Second, nothing in the flow of the conversation suggests that the President was drawing a connection between the Javelin request and the call.582 To the contrary, House Democrats seize on President Zelensky’s statement that Ukraine was “almost ready to buy more Javelins,” and President Trump’s subsequent turn of the conversation as he said, “I would like you to do us a favor as well because our country has been through a lot.”583 That is nonsense.

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meeting with the President of the United States, a phone call with the President of the United States, military aid or foreign aid from the United States unless they undertook with regard to Burisma, the Bidens, or the 2016 elections?

[A.] No, they did not.615

Against all of that unequivocal testimony, House Democrats’ baseless charge is that the temporary pause on security assistance compromises the national security of the United States by leaving Ukraine vulnerable to Russian aggression. They repeatedly prove that claim. In fact, Chairman Schiff’s hearings established beyond a doubt that the Trump Administration has been a stronger, more reliable ally of Ukraine than the prior administration. Ambassador Volker testified that “our policy actually quite publicly said that he was very skeptical about corruption in Ukraine. And, in fact, he’s not alone, because everyone has expressed great concerns about corruption in Ukraine.”636 Similarly, Ambassador Yovanovitch testified that “we” had concerns about corruption in Ukraine and noted that President Trump delivered an anti-corruption message to former President Petro Poroshenko in their meeting on May 20, 2017.630 NSC Senior Director Morrison confirmed that “he was aware that the President thought Ukraine had a corruption problem. He did mention the issue with Ukraine.”640 And Ms. Croft also heard the President raise the issue of corruption directly with then-President Poroshenko of Ukraine during a meeting at the United Nations General Assembly in September 2017.641 She also understood the President’s concern “[t]hat Ukraine is corrupt” when she “talked to an Ukrainians. When should the United States currently pays more than the United States currently pays more than the United States currently pays more than its fair share.”
that President Trump "never offered a review of burden-sharing."449 These assertions are demonstrably false.

Mr. Morrison testified that he was well aware of President Trump's "skeptical view" on foreign aid generally and Ukraine aid specifically. He affirmed that the President was "specifically interested in" the corruption and securing leverage over the U.S. taxpayers. He expressed concern that the Europeans were not fairly sharing the burden.

In or around June, the Administration temporarily paused $100 million in military aid to Lebanon. The Administration lifted the hold in December, with one official explaining that the Administration "continually evaluated" and "struggled to make sure the U.S. taxpayers were getting their money's worth" and explained that the President was "concerned that the United States seemed to be passive in providing security assistance to Ukraine. He wanted to see the Europeans step up and contribute more security assistance."

Thus the government paused aid as well. In a June 24 email with the subject line "POTUS follows up," a Department of Defense official replied to several questions from a meeting with the Roosevelt Institute. What did those NATO members spend to support Ukraine?462 Moreover, as discussed above, President Trump personally raised the issue of burden-sharing with President Zelensky on July 25.463 Senator Johnson similarly related that the President had shared concerns about burden-sharing with him. He recounted a conversation in which President Trump described discussions he would have with Angela Merkel, Chancellor of Germany, and Senator Johnson. Senator Johnson told President Trump explained: "Ron, I talk to Angela and ask her, 'Why don't you fund security assistance to Ukraine. He wanted to see the Europeans step up and contribute more security assistance.'"

President Trump's burden-sharing concerns concerned the necessity to demonstrate his commitment to the issues he campaigned on.655 Senator Johnson similarly related that the President had shared concerns about burden-sharing with him. He recounted a conversation in which President Trump described discussions he would have with Angela Merkel, Chancellor of Germany, and Senator Johnson. Senator Johnson told President Trump explained: "Ron, I talk to Angela and ask her, 'Why don't you fund security assistance to Ukraine? He wanted to see the Europeans step up and contribute more security assistance.'"
Sondland’s mere presumptions about such a link are not evidence. As he put it, the most he could do is “repeat . . . what [he] heard through Ambassador Volker from Volker to Mr. Giuliani.”700 Indeed, the President spoke to the President on this issue.702 But Ambassador Volker testified unequivocally that there was no connection between the meeting and investigations.

Q. Did President Trump ever withhold a meeting with President Zelensky or delay a meeting between the Presidents until the Ukrainians committed to investigate the allegations that you just described concerning the 2016 Presidential election?

A. The answer is no, if you want a yes-or-no answer. But the reason the answer is no is we did have difficulty scheduling a meeting, but there was no linkage like that.

Q. You said that you were not aware of any linkage between the delay in the Oval Office meeting between President Trump and President Zelensky and the Ukrainian commitment to investigate the two allegations as you described them, correct?

A. Correct.703

Sondland confirmed the same point. When asked if “the President ever [told him] personally about any preconditions for, or anything,” Sondland responded, “No.”705 And when asked if the President ever “told [him] about any preconditions for a White House meeting” — personally — “no.”706 No credible testimony has been advanced supporting House Democrats’ claim of a quid pro quo.

D. House Democrats’ Charges Rest on the False Premise That There Could Have Been No Legitimate Purpose To Ask President Zelensky About Ukrainian Involvement in the 2016 Election and the Biden-Burisma Affair

The charges in Article I are further flawed because they rest on the transparently erroneous proposition that it would have been illegitimate for the President to mention two matters to President Zelensky: (i) possible Ukrainian interference in the 2016 election; and (ii) an incident in which then-President Biden forced the dismissal of a Ukrainian anti-corruption prosecutor who reportedly had been investigating Burisma. House Democrats’ characterizations of the President’s conversation with Zelensky, moreover, mischaracterize the exchange. House Democrats frame their charges, to prove the element of “corrupt motive” at issue in Article I, in part to establish (in their own assertion) that the only reason for raising those matters would have been “to obtain an improper personal political benefit.”707 And as they cast their case, any investigation into those matters would have been “bogus” or a “sham” because, according to House Democrats, neither investigation was legitimate for the national security or foreign policy interest.

That is obviously incorrect. It would have been entirely proper for the President to mention both matters to the President of a friendly foreign country. Moreover, the mere fact that they would have been improper for President Trump to mention two matters to President Zelensky (or to a friendly foreign leader) is not evidence of illegitimacy.

2. No Witness With Direct Knowledge Testified About Investigations

House Democrats’ tale of a supposed quid pro quo involving a presidential meeting is further undermined by the fact that it rests on entirely speculative, hearsay, and inadmissible. Not a single witness provided any first-hand evidence that the President ever linked his presidential meeting to announcing investigations.

Once again, House Democrats’ critical witness—Sondland—actually destroys their case. The witness who stood ready to testify directly to President Trump on the subject. And Sondland testified that, when he broadly asked the President what he wanted from Ukraine, the President answered unequivocally: “I want nothing. I want no quid pro quo. I just want Zelensky to do the right thing, to do what he ran on.”701

Sondland further testified that “the President never discussed” a link between investigations and a White House meeting,702 and

1. It Was Entirely Appropriate for President Trump To Ask About Possible Ukrainian Interference in the 2016 Election

House Democrats’ theory that it would have been improper for President Trump to ask about possible Ukrainian interference in the 2016 election makes no sense. Uncovering any form of foreign interference in a U.S. presidential election is a legitimate and patriotic national interest. In this case, moreover, there is abundant information already in the public domain suggesting that Ukrainian officials or entrepreneurs had some role in the 2016 election to support one candidate: Hillary Clinton.

Given this, a few examples, a former Democratic National Committee (DNC) consultant, Alexandra Chalupa, admitted to a reporter that Ukraine’s embassy in the United States was “helpful” in her efforts to collect dirt on President Trump’s then-campaign manager, Paul Manafort.711 As Politico reported, “Chalupa said the [Ukrainian] embassy also worked directly with researchers researching Trump, Manafort and Russia to point them in the right directions.”712 A former political officer in that embassy also claimed the Ukrainian government coordinated directly with the DNC and the Clinton campaign in advance of the 2016 presidential election.713 And Neille Ohr, a former Trump administration political appointee, testified that the Ukrainian embassy helped to produce the Steele Dossier, testified to Congress that Serhii Leshchenko, then a member of Ukraine’s Parliament, also provided her firm with information as part of the firm’s opposition research on behalf of the DNC and the Clinton Campaign.714 Even high-ranking Ukrainian government officials were involved. For example, Arsen Avakov, Ukraine’s Minister of Internal Affairs, called then-candidate Trump “an even bigger danger to the US than terrorism.”715

If even a fraction of all this is true, House Democrats conducted their own investigations and concluded Ukraine’s government sought to interfere in the 2016 election. In January 2017, Politico concluded that “Ukrainian government officials tried to help Hillary Clinton and undermine Trump by publicly questioning his fitness for office.”716 And on the other side of the Atlantic, a separate investigation by The Financial Times confirmed Ukrainian election interference. The newspaper found that opposition to President Trump led “Kiev’s wider political leadership, including they who would never have attempted before: intervene, however indirectly, in a US election.”717 These efforts were designed to undermine Trump’s chances of winning. As one member of the Ukrainian parliament put it, the majority of Ukrainian politicians were “on Hillary Clinton’s side.”718

Two of House Democrats’ own witnesses, Dr. Hill, acknowledged that some Ukrainian officials “bet on Hillary Clinton winning the election,” and so it was “quite evident that they were trying to curry favor with the Clinton campaign,” including by “trying to collect information . . . on Mr. Manafort and on other people as well.”719

If even a fraction of all this is true, Ukrainian interference in the 2016 election is squarely a matter of national interest. It is well settled that the United States has a compelling interest in prohibiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over our elections. But the Constitution has forbidden foreigners’ involvement in American elections.720 And President Trump made clear more than a year ago that “the United States does not tolerate foreign meddling in our elections” during his Administration.721 Even Chairman Schiff is on
record agreeing that the Ukrainian efforts to aid the Clinton campaign described above would be "problematic," if true.723

A request for Ukraine's assistance in this case was been particularly appro-
priate because the Department of Justice had already opened a probe on a similar sub-
ject matter and was in the origins of foreign in-
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The question is: [question]
It is absurd for House Democrats to argue that any reference to the Biden-Burisma affair had no purpose other than damaging the President’s potential political opponent. The two sides have both engaged in smear attacks that are designed to advance the discussion to advance the U.S. foreign policy interest in ensuring that Ukraine’s new President is truly free, in President Zelensky’s words, to “restore the honesty” to corruption investigations.766

Moreover, House Democrats’ accusations rest on the dangerous premise that Vice President Biden somehow immunized his conduct (and his son’s) from any scrutiny by declaring his run for the presidency. There is no law. It certainly was not a rule applied when President Trump was a candidate. His political opponents called for investigations against him and his children almost daily.767 Nothing in the law requires the government to turn a blind eye to potential wrongdoing based on a person’s status as a candidate for President of the United States. If anything, the possibility that Vice President Biden may ascend to the highest office in the country provides a compelling reason for ensuring that, when he forced his family out of the White House, his family was not corruptly benefiting from his actions.

Implying that immunities to the whole Biden-Burisma affair would have been entirely justified as long as there was a reasonable basis to think that looking into the matter would advance the public interest. To defend merely asking a question, the President would not bear any burden of showing that Vice President Biden (or his son) actually committed any wrongdoing. By contrast, under their own theory of the case, for the House Managers to carry their burden of proving that merely raising the matter could advance the public interest, they would have to prove that raising the issue could have no legitimate purpose whatsoever. Their theory is obviously false. And especially on this record, the House Managers cannot possibly carry that burden, because no such definitive proof exists. Nobody, not even House Democrats’ own witnesses, could testify that the Bidens’ conduct did not at least factually raise an appearance of a conflict of interest. And while House Democrats repeatedly insist that any suggestions that Vice President Biden engaged in the same type of shakedowns as others is “bunked conspiracy theories” and “without merit,”768 they lack any evidence to support those bald assertions, because they have steadfastly refused to testify about the Bidens’ conduct. For example, they have refused to call Hunter Biden to testify.769 In stead, they have been adamant that Americans must simply accept the diktat that the Bidens’ conduct could not possibly have been part of a course of conduct in which the Office of the Vice President was misused to provide security assistance on unlawful cause or excuse, not to produce documents in our judiciary’s own contempt.

The Senate has also rejected unconstitutionally duplicitous articles. For example, Senator Frank Lautenberg defended an article for abuse of power, Article I invites the danger of an unconstitutional conviction if less than two-thirds of Senators agree that any particular act was unconstitutional or unconstitutional process that demonstrates that Vice President Biden improperly used his office of the Vice President to advance the public interest. The deficiency in the articles cannot be remedied by dividing the articles, because that is precisely what the Senate has asked the House to do. The Senate has rejected the Articles of Impeachment and acquitted the President. As a result, the Articles invite the danger of an unconstitutional conviction if less than two-thirds of Senators agree that any particular act was unconstitutional.

CONCLUSION

The Articles of Impeachment presented by House Democrats are constitutionally deficient on their face. The theories underpinning them would do lasting damage to the separation of powers under the Constitution. The Articles are also the product of an unprecendented and unconstitutional process that denied the President every basic right guaran ted by the Due Process Clause of the Constitution. The Articles were politics and not principles. The Articles were not predicated on any reasonable assurance that the allegations were apparently “drawn with some degree of particularity” (emphasis added). The Articles are not based on a facially constitutional theory or any judicial relief. The Articles lack any real inquiry into the Bidens’ conduct. For example, they have refused to call Hunter Biden to testify. In stead, they have been adamant that Americans must simply accept the diktat that the Bidens’ conduct could not possibly have been part of a course of conduct in which the Office of the Vice President was misused to provide security assistance on unlawful cause or excuse, not to produce documents in our judiciary’s own contempt.

IV. The Articles Are Structurally Deficient and Can Only Result in Acquittal

The Articles also suffer from a fatal structural defect. Put simply, the articles are impermissibly duplicitious—that is, each article is predicated on a different act of the President for sustaining a conviction.771 The problem with an article offering such a menu of options is that the Constitution requires three-times of Senators present to agree on the specific basis for conviction. A vote on a duplicitous article, however, could provide for a vote on the number of votes resting on no single one of which would have garnered two-thirds support if it had been presented separately. Accordingly, duplicitious articles like those exhibited here are facially unconstitutional.

A. The Constitution Requires Three-Thirds of Senators To Agree on the Specific Act That Is the Basis for Conviction and Thus Prohibits Duplicitous Articles

In impeachment trials, the Constitution mandates that “no Person shall be convicted without the Concurrence of two thirds of the Members present.”772 That provision requires two-thirds agreement on the specific act that warrants conviction. That is why the Senate has repeatedly made clear in prior impeachments that acquittal is required when duplicitous articles are presented.

In the Clinton impeachment,773 for example, Senate Democrats agreed to acquit by pointing out that the House had made “a significant and irreparable mistake in the actual drafting of the articles.”774 Because the House could not act on multiple acts of wrongdoing, it would be “impossible” ever to determine “whether a two-thirds majority of the Senate actually agreed on a particular allegation.”775 The Senate responded by eliciting those concerns, explaining that “the unconstitutional bundling of charges” in those articles “violates this constitutional require ment.”776 As he pointed out, because Article II, in particular, “contain[ed] 7 subparts each alleging a separate act of obstruction of justice, the bundling of these allegations would allow removal of the President if only 10 Senators agreed on each of the 7 separate subparts.”777 Senator Chris Dodd agreed, explaining that “[t]his smorgasbord approach to the allegations” was a threshold legal flaw that even called for dismissal outright and pointed to the “deeply troubling process” of “convict[ing] with-out two-thirds of the Senate agreeing on precisely what [the President] did wrong.”778

The Senate rejected a duplicitous article against President Andrew Johnson. That article alleged that Johnson had declared in a speech that the Thirty-Ninth Congress was a “nullity” and that he committed three different acts in pursuit of that declaration.779 In opposing the article, Senator John Henderson emphasized “the great defect in the [impeachment] article in ascertaining ‘what it really charges.’”780 Senator Garrett Davis similarly complained that the allegations were apparently “drawn with some degree of particularity” (emphasis added). The Articles are not based on a facially constitutional theory or any judicial relief. The Articles lack any real inquiry into the Bidens’ conduct. For example, they have refused to call Hunter Biden to testify. Instead, they have been adamant that Americans must simply accept the diktat that the Bidens’ conduct could not possibly have been part of a course of conduct in which the Office of the Vice President was misused to provide security assistance on unlawful cause or excuse, not to produce documents in our judiciary’s own contempt.

The Senate also rejected unconstitutionally duplicitous articles of impeachment against judges. In the impeachment of Judge Nixon, for example, Senator Frank Lautenberg objected on several different grounds to the nature of article III, which charged the judge with making multiple different false statements, and he “agreed[d] with the argument that the duplicitous [article] brings the Constitution to Judge Nixon by less than the super majority vote required by the Constitution.”782 Senator Herbert Kohl explained why this defect was fatal to the House’s OK to remove Judge Nixon on the article even if we have different visions of what he did wrong. But that’s not fair to Judge Nixon, to the Senate, or to the American people.”783

B. The Articles Are Unconstitutionally Duplicitous

Here, each Article is impermissibly duplicitous. Each Article presents a smorgasbord of multiple, independent acts as possible bases for conviction. Under the umbrella charge of “abuse of power,” Article I offers two separate means of conviction, and thus offers seven different bases for conviction: (1) “corruptly” requesting that Ukraine announce an investigation into the Biden-Burisma affair; (2) “corruptly” conditioning the release of funds to Ukraine on investigating Burisma; and (3) “corruptly” conditioning the release of funds to Ukraine on whether Ukraine’s prosecution of Burisma was influenced by the Vice President.

As a result, the Articles invite the dangers of all six of the Presidents who were impeached: (1) looking into the President’s private affairs; (2) looking into the President’s political opponents; (3) looking into the President’s personal relationships; (4) looking into the President’s private communications; (5) looking into whether the President acted improperly in judicial investigations; and (6) looking into whether the President acted improperly in political investigations.

ENDNOTES


2. 4 William Blackstone, Commentaries on the Laws of England


4. 2 William Blackstone, Commentaries on the Laws of England

5. ANDREW JACKSON: 1. The President of the United States. If anything, the possibility that Vice President Biden may ascend to the highest office in the country provides a compelling reason for ensuring that, when he forced his family out of the White House, his family was not corruptly benefiting from his actions.
5. 2019, https://perma.cc/THHR-HNC4 (“House leaders have signaled they hope to wrap up proceedings in their chamber before Congress leaves for the December holidays . . . . ‘We would be very grateful for it to all wrap up by Christmas?’ Rev. Val Domings (D-FL) asked.”); Mary Clare Jalonick, What’s Next in Impeachment: A Busy December Schedule, at 1 (Nov. 25, 2019), https://perma.cc/2JHJ-QLHB (“Time is running short if the House is to vote on impeachment by Christmas, which Democrats privately say is the goal.”).


42. Id. at 150–51.


44. 2019, https://perma.cc/THHR-HNC4 (“House leaders have signaled they hope to wrap up proceedings in their chamber before Congress leaves for the December holidays . . . . ‘Would be very grateful for it to all wrap up by Christmas?’ Rev. Val Domings (D-FL) asked.”); Mary Clare Jalonick, What’s Next in Impeachment: A Busy December Schedule, at 1 (Nov. 25, 2019), https://perma.cc/2JHJ-QLHB (“Time is running short if the House is to vote on impeachment by Christmas, which Democrats privately say is the goal.”).
65. 2 Joseph Story, Commentaries on the Constitution §743 (1833).
67. Andrew Johnson, President of the United States, before the Senate of the United States on Impeachment by the House of Representatives for High Crimes and Misdemeanors, 40th Cong., 2d Sess., vol. 1, at 320 (1868) (opinion of Sen. Lyman Trumbull).
70. Michael J. Gerhardt, The Lessons of Impeachment History, 67 Geo. Wash. L. Rev. 637, 637 (1999) ("[g]iven the division of impeachment authority between the House and the Senate, the Senate has . . . the opportunity to review House decisions on what constitutes an impeachable offense . . . .
71. Proceedings in the Trial of Andrew Johnson, President of the United States, before the U.S. Senate on Articles of Impeachment, 40th Cong. 524 (1868).
72. Id.
76. The Supreme Court and History of Impeachment: Hearing Before the Subcomm. on the Constitution of the H.R. Comm. on the Judiciary, 105th Cong. 69 (1998) (Clinton Judiciary Comm. Hear- ing on Background of Impeachment) (statement of Professor Matthew Holden, Jr., Univ. of Va., Dept. of Gov’t and Foreign Af- fairs) ("[I]t seems that this late-added provi- sion refers to such 'high misdemeanor' as would be comparable in their significance to 'treason' and 'brib- ery.'"); Arthur M. Schlesinger, Jr., Reflec- tions on Impeachment, 67 Geo. Wash. L. Rev. 693, 693 (1999) ("According to the legal rule of construction ejusdem generis, the other high crimes and misdemeanors must be on the same level and of the same quality as treason and bribery.").
77. U.S. Const. art. III, §3, cl. 1. This definition is repeated in the United States crimi- nal code, thereby alluring allegiance to the United States, levies war against them or ad- heres to their enemies, giving them aid and comfort within the United States or else- where of treason or bribery . . . .
80. See Clinton Judiciary Comm. Hearing on Background of Impeachment, supra note 74, at 40 (statement of Gary L. McDowell, Director, Inst. for Judicial Integrity, Univ. of Va., Dept. of Gov’t and Foreign Af- fairs) ("[T]he most dominant source of authority on the common law for those who wrote and ratified the Constitution was Sir William Blackstone and his justly celebrated Com- mentaries on the Laws of England (1765–69). That was a work that was described by Madi- son in the Virginia ratifying conventions as nothing less than 'a book which is in every man's hand.'").
83. 144 Cong. Rec. H10018 (1998) (statement of Rep. James M. Jeffords) ("The framers inten- tionally set this standard at an extremely high level to ensure that only the most seri- ous offenses would justify overturning a popu- lar election.").
84. 2 Joseph Story, Commentaries on the Constitution §749 (1835); see also 1 James Madison, The Federalist No. 105 (1795) ("[I]t . . . is the heaviest piece of artillery in the congressional arsenal, but because it is so heavy it is unfit for ordinary use. It is like a hundred-ton gun which needs complex machinery to bring it into position, an enormous charge of powder to fire it, and a large mark to aim at.").
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86. Black & Bobbitt, supra note 82, at 27.
87. 2 Records of the Federal Convention, supra note 74, at 436; see also Berger, supra note 73, at 74.
88. 4 Blackstone, Commentaries *256 (emphasis added). Blackstone, in fact, listed numerous 'high misdemeanors' that might subject the president to an official to impeachment, including 'mal- administration.'
89. Berger, supra note 73, at 74.
90. Id. at 86–87. Shortly before the Convention agreed to the 'high crimes and Misdeme- nanders' standard, delegates rejected the use of the phrase 'high misdemeanor' in the Extra- dition Clause because 'high misdemeanor' was thought to have 'a technical meaning too limited.' 2 Records of the Federal Conven- tion, supra note 74, at 436; see also Berger, supra note 73, at 74.
91. 4 Blackstone, Commentaries *256 (empha- sis added). Blackstone, in fact, listed numerous 'high misdemeanors' that might subject the president to an official to impeachment, including 'mal- administration.'
92. 2 Records of the Federal Convention, supra note 74, at 436.
93. Id. at 500.
94. Id.
95. Id. also id. at 500.
96. Berger, supra note 73, at 74.
97. 2 Records of the Federal Convention, supra note 74, at 64.
98. Id. at 337.
99. Id. at 127 (Jonathan Elliot 2nd ed. 1877).
100. 3 The Debates in the Several State Con- ventions on the Adoption of the Federal Consti- tution, supra note 74, at 436 (1787–88).
101. Berger, supra note 73, at 86.
102. Clinton Senate Trial, supra note 78, vol. IV at 2942 (statement of Sen. Patrick J. Leahy; see also id. at 2983 (statement of Sen. James M. Jeffords)) ("The framers inten- tionally set this standard at an extremely high level to ensure that only the most seri- ous offenses would justify overturning a popu- lar election.").
103. Article II claimed that President Nixon “violate[ed] the rights of citizens,” “contravene[ed] the laws governing agencies of the executive branch.”
104. Article II claimed that President Nixon “violate[ed] the rights of citizens,” “contravene[ed] the laws governing agencies of the executive branch.”
105. The Declaration of Independence para. 125.
108. Id. at 34 (asserting that Nixon “caused action . . . to cover up the Watergate break- in. This concealment required perjury, de- struction of evidence, obstruction of justice— all of which are crimes.”)
112. Tribe, supra note 106, at 723. The unique importance of a presidential im- peachment is reflected in the text of the Constitution as it requires, in contrast to all other cases of impeachment, that the Chief Justice of the United States preside over any Senate trial of a President, U.S. Const. art. I, §3, cl. 6.
114. U.S. Const. art. II, §3.
117. Memorandum from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel, Re: Amenable- ncy of the President, Vice President and other Civil Officers to Federal Criminal Prosecution While in Office, at 32 (Sept. 24, 1973).
section of “impeachment”: “[a] public charge of beyond-a-reasonable-doubt standard, the impeachment trial of Judge Claiborne suggests that Congress has applied a discern-

III, Stephen L. Sepinuck, Gonzaga University (statement of Professors Frank O. Bowman, ground of Impeachment, supra Clinton Judiciary Comm. Hearing on Back-

tory, none of us should have any doubts.”).}


153. Whistleblower Disclosure: Hearing Before the H.R. Permanent Select Comm. on Intel-


156. Id.


158. The Impeachment Inquiry into President Donald J. Trump: Presentations from the House Judiciary Committee Releases Draft Report as Part of Impeachment Inquiry (Dec. 3, 2019). See supra Appendix A.


161. Press Release, H.R. Comm. on Judici-


166. HJC Report at 44.

167. See id. at 48–53; Trial Mem. of U.S. House of Representatives at 10–11.

168. See supra Standards Part B.1.


171. Background and History of Impeachment: Hearing Before the Subcommit. on the Constitu-
tion of the H.R. Comm. on the Judiciary, 105th Cong. 48 (1998) (“Of these distinctive fea-
tures, the one of greatest contemporary concern is the founders’ choice of the words— ‘[c]rimes and misdemeanors’—for the purpose of narrowing the scope of the federal impeachment process.”) (statement of Professor Michael Gerhardt). (Clinton Judiciary Comm. Hearing on Background of Impeachment).


173. Id. at 69 (Gouverneur Morris).

174. Id. at 65.

175. See supra notes 92–100 and accompany-
text.

176. 2 Records of the Federal Convention, supra note 175, at 550 (James Madison).

177. Alexander Hamilton’s description in Federalist No. 65, 105th Cong. 48 (1998) (“‘House Democrats’ theory of a vague abuse-of-power offense. In an often-cited passage, Hamilton observed that the subjects of impeachment are “offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.’” The Federalist No. 65, at 396 (Alexander Hamilton) (Clinton Rossiter ed., 1961). Hamilton was merely noting fundamental characteristics common to impeachable of-

178. Id.

179. 2 Records of the Federal Convention, supra note 175, at 550 (James Madison). (Hinds’ Precedents). Justice Chase was ac-

180. Id.

181. Id.

182. 4607365-house-judiciary-committee-approval-articles-impeachment-23-17.


187. HJC Report at 44.

188. See id. at 48–53; Trial Mem. of U.S. House of Representatives at 10–11.

189. See supra Standards Part B.1.


192. Background and History of Impeachment: Hearing Before the Subcommit. on the Constitu-
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194. Id. at 69 (Gouverneur Morris).

195. Id. at 67.

196. See supra notes 92–100 and accompany-
text.

197. 2 Records of the Federal Convention, supra note 175, at 550 (James Madison).

198. Alexander Hamilton’s description in Federalist No. 65, 105th Cong. 48 (1998) (“‘House Democrats’ theory of a vague abuse-of-power offense. In an often-cited passage, Hamilton observed that the subjects of impeachment are “offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.’” The Federalist No. 65, at 396 (Alexander Hamilton) (Clinton Rossiter ed., 1961). Hamilton was merely noting fundamental characteristics common to impeachable of-

199. Id.

200. Id.

201. Id.

202. Id. at 70 (asserting that impeachment cases are “reducible to intel-
ligible categories’’ including those involving “abuse of power’’ and “crimes and misdemeanors’’—for the purpose of narrowing the scope of the federal impeachment process.”) (statement of Professor Michael Gerhardt). (Clinton Judiciary Comm. Hearing on Background of Impeachment).

CONGRESSIONAL RECORD — SENATE

January 21, 2020

S341

(Comm. Print 1974) (arguing that "particular allegations of misconduct" in English cases suggest several general types of damage to the state, including "abuse of official power.")


187. H.R. Rep. No. 93–1305, at 1–3; see also id. at 10 (alluding that Nixon "violated the constitutional rights of citizens" and "contradicted the constitution governing agencies of the executive branch").

188. See supra notes 123–126 and accompanying text.

189. H.R. Hinds' Precedents §2407, at 843.


192. HJC Report at 33 (emphasis in original).


194. See Berger, supra note 174, at 294–95.

195. Id. at 295.


197. 2 Records of the Federal Convention, supra note 175, at 556.


199. Berger, supra note 174, at 118 (internal quotation marks omitted).


203. U.S. Const. art. I, § 3, cl. 6 (emphasis added).

204. Id.

205. U.S. Const. art. III, § 2, cl. 3 ("The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury.").

206. U.S. Const. art. II, § 2, cl. 1 ("[H]e shall have Power to Grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.").

207. The abuse of bribery, of course, involves an element of intent, and thus requires some evaluation of the accused’s motivations and state of mind. See 4 Blackstone, Commentaries *139 ("BRIBERY is when a judge, or other person concerned in the administration of justice, takes any undue reward to influence his behavior in his office."). See also Jefferson, Commentaries *139 ("BRIBERY is when any lawful action may be treated as an impeachable offense based on a characterization of subjective intent alone.").


210. Id. at 127.

211. Id.

212. Id.


214. H.R. Rep. No. 93–1305, at 1–2. This report presents convincing evidence that the President caused action—not only by his own subordinates but by agencies of the United States. . . . to cover up the president’s illegitimate breach of the acqui- perjury, destruction of evidence, obstruction of justice—all of which are crimes. Id. at 33.

215. Id. at 86 n.16. While the House Judiciary Committee’s report described Article II generally as involving ‘abuse of the powers of the office of President,’ id. at 139, it is significant that the actual charge the Judiciary Committee specified in the recommended article of impeachment was not framed in terms of the House Democrats’ theories. To the contrary, the article of impeachment itself charged unlawful actions and dropped the vague terminology of ‘abuse of power.’

216. The House recommended an article charged President Nixon with defying congressional subpoenas ‘without lawful cause or excuse’ and asserted that the President ‘had violated the “sole power of impeachment” to the House by resisting subpoenas. Id. at 4. It also provides no precedent for House Democrats’ abuse-of-power theory.


218. HJC Report at 45.

219. Id. at 47–48.

220. HJC Report at 44–45.


222. Even the source they cite undermines Johnson as precedent to show that impeachment can be done on purely political grounds. Tribe and Matz erroneously cite Johnson as precedent to show that impeachment was, unequivocally only was, to have the sense of the people operate in the choice of the person, to whom so important a trust was confided.’’); Hamdi v. Rumsfeld, 542 U.S. 507 (2004) (emphasizing that ‘‘our Constitution recognizes that core strategic matters of war-making belong in the hands of those who are best positioned and most politically accountable for making them’’).


224. Id. at 131; see also id. at 31 (pretending that the House Democrats recommended ‘‘the strongest possible case for impeachment and removal from office’’).


226. Washington Farewell Address, supra note 235.


228. Washington Farewell Address, supra note 235.

229. If anything, the concerns of the Founding generation would suggest here that the U.S. should not be giving aid to Ukraine to halt Russian aggression because that is a foreign entanglement. The foreign policy needs of the Nation have obviously changed.


231. 2 Records of the Federal Convention, supra note 175, at 68.

232. Id. at 69–70.


234. Benjamin Franklin explained the Framers adopted a narrow definition of treason because “prosecutions for treason were generally virulent; and perjury too easily made use of against innocence.” 2 Records of the Federal Convention, supra note 175, at 348. Article III, Section 3 not only defines treason in specific terms but it establishes a high standard of proof, requiring the testimony of two witnesses or a confession.

235. HJC Report at 52, 80.

236. 2 Records of the Federal Convention, supra note 175, at 65 (George Mason) (“One objection agst. Electors was the danger of their being corrupted by the Candidates: & this furnish a peculiar reason in favor of impeachments whilst in office.”); id. at 69 (Gouverneur Morris) (“The Executive ought clearly to be impeachable for . . . Corrupting his electors.”).


238. United States v. Nixon, 418 U.S. 683, 710–11 (1974) (explaining that “courts have tradi- tionally shown the utmost deference to Presi- dential responsibilities” for foreign policy and national security and emphasizing that courts should not question Presidential conduct for the purpose of dispensing with standards and definitions of impeachable acts.”).
First, the court, like the Committees, misread a House annotation to Jefferson’s Manual. See, e.g., Letter from Elijah E. Cummings, Chairman, House Oversight Committee, to Pat A. Cipollone, Counsel to the President, Office of Legal Counsel, July 9, 2019, at 4; Acting White House Chief of Staff, at 2 (Oct. 4, 2019). The language quoted by the court states that “various events have been credited to the President in the press in connection with the judicial inquiry.” H. Doc. 114-192, 114th Cong. § 603 (2017). But that does not mean that any of these “various events” automatically confers authority on a committee to initiate an impeachment inquiry. It merely acknowledges the historical fact that there is more than one way the President or anyone else may prompt the House to then authorize a committee to pursue an impeachment investigation.

Second, the court misread III Hinds’ Precedents §2400 as showing that “a resolution ‘authorizing’ HJC ‘to inquire into the official conduct of Andrew Johnson’ was passed after HJC ‘was already considering the subject.’” Id. at *27. That section discusses two House votes on separate resolutions that occurred weeks apart. The House first voted to authorize HJC to investigate (which the court misread), and then it voted to refer a second matter (the resolution cited by the court), which touched upon President Johnson’s conduct on the Judiciary, which was already considering the subject. III Hinds’ Precedents §2400. The court also misread the Nixon precedent as indicating that House Resolution 988 authorized the House to pursue an impeachment inquiry, then a single House member could trigger the delegation of the House’s “sole Power of Impeachment” to a committee and thus, for the House’s most serious inquiries, end-run Rule XI.1(b)(1)’s limitation on committee investigations to the committee’s jurisdiction under Rule X. 267. H.R. Res. 988, 93d Cong. 1, 13 (1974), reprinted in Appendix C. The House language was from the resolution by an amendment, see 120 Cong. Rec. 32,968–72 (1984), the amended resolution was adopted, id. at 34,469–70, and impeachment had already begun outside the impeachment committee’s jurisdiction ever since. Cf. Barenblatt v. United States 360 U.S. 109, 117–18 (1959) (disapproving of “read[ing] [a House resolution of investigation] ‘as authoriz[ing] the committee to pursue an impeachment investigation, then a single House member could trigger the delegation of the House’s “sole Power of Impeachment” to a committee and thus, for the House’s most serious inquiries, end-run Rule XI.1(b)(1)’s limitation on committee investigations to the committee’s jurisdiction under Rule X.”).

That language was stripped from the resolution by an amendment, see 120 Cong. Rec. 32,968–72 (1984), the amended resolution was adopted, id. at 34,469–70, and impeachment had already begun outside the impeachment committee’s jurisdiction ever since. Cf. Barenblatt v. United States 360 U.S. 109, 117–18 (1959) (disapproving of “read[ing] [a House resolution of investigation] ‘as authoriz[ing] the committee to pursue an impeachment investigation, then a single House member could trigger the delegation of the House’s “sole Power of Impeachment” to a committee and thus, for the House’s most serious inquiries, end-run Rule XI.1(b)(1)’s limitation on committee investigations to the committee’s jurisdiction under Rule X.”).

Executive Branch officials who were assisting the House Intelligence Committee, stating that “any action like that, that forces us to litigate or have to consider litigation, will be considered further evidence of obstruction of justice.”


253. Memorandum from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel, to Pat A. Cipollone, Counsel to the President, Office of Legal Counsel, August 30, 2019, at 2 (asserting that “there were insufficient explicit grants of authority to authorize such a referral”); see also DOJ OLC Opinion on Civil contempt, at 1–3 (Jan. 19, 2020) (Impeachment Inquiry Authorization, infra Appendix C).

254. See Ex Parte United States, 354 U.S. 178, 206, 215 (1957) (holding that congressional subpoenas were invalid where they exceeded “the mission[] delegated to [a committee] by the House”); United States v. United States District Court for the District of Columbia, 414 U.S. 41, 44 (1973) (holding that the congressional committee was without power to compel the production of certain information because the requests exceeded the scope of the authorization resolving); Tobin v. United States, 306 F.2d 270, 276 (D.C. Cir. 1962) (reversing a contempt conviction on the basis that the subpoena requested documents outside the scope of the Subcommittee’s authority to investigate).


257. Rumely v. United States, 345 U.S. 41, 44 (1953) (holding that the congressional committee was without power to compel the production of certain information because the requests exceeded the scope of the authorization resolving); Tobin v. United States, 306 F.2d 270, 276 (D.C. Cir. 1962) (reversing a contempt conviction on the basis that the subpoena requested documents outside the scope of the Subcommittee’s authority to investigate).


261. Nothing in the recent decision in In re Application of Committee on the Judiciary establishes that a committee can pursue an investigation pursuant to the impeachment power without authorization by a vote from the House. See F. Supp. 3d, 2019 WL 5485221, at *25 (Oct. 25, 2019). Such discussion was dicta. The question before the court was whether a particular Judiciary Committee inquiry was being conducted pursuant to an impeachment trial in the Senate, a question that the court viewed as depending on the inquiry’s “purpose” and whether it could lead to such a trial. That inquiry would not preempt the authorization acts under “Id. at *28 n.37. In any event, the court’s analysis was flawed.
The House accepted and ratified this advice in its first impeachment the next year and in each of the next twelve impeachments of judges and subordinate executive officers. III Hinds’ Precedents, supra note 232, at 324, 2364, 2385, 2444–2445, 2447–2448, 2469, 2504; VI Cannon’s Precedents of the House of Representatives, supra note 232, at 2385, 2426, 2472–2473, 2478–2479, 2486–2487, 2504–2505; 3 Deloscher’s Precedents ch. 14. §18.1. In some cases before 1870, such as the impeachment of Judge Pickering, the House relied on advice presented directly to the House to impeach an official before conducting an inquiry, and then authorized a committee to draft specific articles of impeachment based on the investigatory powers of the House. III Hinds’ Precedents §2321. Those few cases adhere to the rule that a vote of the full House is necessary to authorize any committee to investigate for impeachment purposes.


278. These letters are attached, infra, at Appendix D.

279. H.R. Comm. on the Judiciary, Memo to Judges Nixon and Hastings, supra note 278, at 8 (Feb. 5, 1971) (‘‘[T]he President and his immediate advisers—that is, those with whom the President on a regular or frequent basis—should be deemed absolutely immune from testimonial compulsion by a congressional committee.’’). Letter from Steven A. Engel, Assistant Attorney General, to Pat A. Cipollone, Counsel to the President (Oct. 5, 2019) (‘‘[W]e reiterate the longstanding position of the executive branch that the President and his immediate advisors are absolutely immune from testimonial compulsion by a Congressional committee.’’) (quotations and citations omitted).


281. Id. at *4 (‘‘[L]ike executive privilege, the immunity protects confidentiality within the Executive Branch and to the extent that the Supreme Court has acknowledged that it is essential to presidential decision-making.’’). 2014 OLC Immunity Opinion, supra note 278, at 15 (citations omitted).


283. Subpoena from the House Committee on Oversight and Reform to John Michael Mulvaney, Acting White House Chief of Staff (Oct. 4, 2019) (requesting documents concerning a May 23 Oval Office meeting, among other presidential communications).


286. See, e.g., 2014 OLC Immunity Opinion, 38 Op. O.L.C. at *6 (‘‘[S]ubjecting an immediate advisor to Congress’s subpoena power would threaten the President’s autonomy and his ability to receive sound and candid advice.’’). Letter from Steven A. Engel, Assistant Attorney General, to Pat A. Cipollone, Counsel to the President, at 2 (Oct. 25, 2019) (regarding Deputy National Security Advisor Kupperman). These letters are attached, infra, at Appendix D.


288. Id. at *2 (June 19, 2008) (‘‘Documents generated for the purpose of assisting the President in making a decision or for the purpose of assisting the President in discharging his duties may be covered by the Presidential Communications privilege’’).
sent a letter to the House stating, ‘‘[t]o admit, then, a right in the House of Repre-
sentatives to demand, and to have, as a matter of course, all the papers respecting a
case, the Court would have to establish a dangerous precedent’’ (citation omitted); Jonathan L. Entin, Separation of Powers, the Political Branches, and the Limits of Judicial Review, 51 Ohio St. L.J. 175, 186-209 (1990).


331. Myers v. United States, 272 U.S. 52, 85 (1926) (‘‘The purpose was not to avoid fric-
tion, but to avoid an identifiable incident to the distribution of the govern-
mental powers among three departments, to save the people from autocracy.’’). The Fed-
eralist No. 51, at 299 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (arguing that ‘‘liberty’’ requires that the government’s ‘‘constituent parts . . . be the means of keeping each other in their proper places’’).

332. United States v. Am. Tel. & Tel. Co., 567 F.2d 121, 127 (D.C. Cir. 1977) (when Congress asks for information from the Executive Branch, it ‘‘is implicit in the constitutional mandate to seek optimal accom-
modation . . . of the needs of the conflicting branches’’).

333. As the Minority Views on the House Judiciary Committee’s Report in the Nixon proceedings pointed out, it is important to have a body of Congress that issued a subpoena evaluate the subpoena be-
fore there is a move to contempt. ‘‘[I]f the Committee were to act as the final arbiter of the legality of its own demand, the result would seldom be in doubt. . . . It is for the reason just stated that, when a witness be-
fore a Congressional Committee refuses to give testimony or produce documents, the Committee cannot itself hold the witness in contempt. Rather, the established pro-
cedure is for the witness to be given an opportunity to appear before the House or Senate, as the case may be, and give reasons, if he can, why he should not be held in con-


335. Id. at 127.}

336. See, e.g., Senate Select Comm. on Presidenti-
campaign activities) (‘‘[T]here are still other witnesses, other documents that the White House will not obtain. But we are not going to judge this.’’.)


338. Am. Tel. & Tel. Co., 567 F.2d at 127.

339. Id. at 127.

340. Letter from Eliot L. Engel, Chairman, H.R. Comm. on Foreign Rela-
tions, to John Michael Ballin, Acting White House Chief of Staff, at 1 (Oct. 4, 2019).

341. Transcript of Pelosi Weekly Press Con-
ference, supra note 251 (statement of Rep. Adam Schiff) (emphasis added).

342. See History of Refusals by Executive Branch to Provide Information Re-
quested by Congress, Part I—Presidential Invoca-
tions of Executive Privilege Vis-à-Vis Con-
gress, 6 O.L.C. 751, 753 (1992) (explaining that the refusal for this refusal to provide information relating to negotiation of the Jay Treaty with Great Britain, President Washington

343. Turley Written Statement, supra note 252 at 10.

344. Background and History of Impeachment: Hearing Before the Subcomm. on the Const. of the H.R. Comm. on Judiciary, 115th Cong. 236 (2017) (statement of Professor Susan Low Bloch, George-
town University Law Center) (written statement of Professor Susan Low Bloch, George-
town University Law Center); see also Alan Dershowitz, Supreme, Supercourt, Supercourt, and Supercourt—Rug out from under Article of Impeachment, The Hill (Dec. 16, 2019), https://www.thehill.com/hsh/hsh-
nbcnews.com/politics/trump-impeachment-
quiry/transcript-nancy-pelosi-s-speech-
trump-impeachment-n1058853) (‘‘[R]ight now, we have to strike while the iron is hot. . . . And, we want this to be done expeditiously. And, we want this to be done expeditiously. But we are not going to the ten months and months and months of rope-a-dope in the courts, which the administration would love to have.’’).


346. Am. Tel. & Tel. Co., 567 F.2d at 127.

347. HJC Report at 11.

348. See, e.g., Senate Select Comm. on Presidenti-
campaign activities) (‘‘[T]here are still other witnesses, other documents that the White House will not obtain. But we are not going to judge this.’’.)


350. Am. Tel. & Tel. Co., 567 F.2d at 127.

351. HJC Report at 11.

352. See, e.g., Senate Select Comm. on Presidenti-
campaign activities) (‘‘[T]here are still other witnesses, other documents that the White House will not obtain. But we are not going to judge this.’’.)


354. Am. Tel. & Tel. Co., 567 F.2d at 127.

Presidents have acknowledged their obligation to comply with an impeachment investigation. Id. at 32-33. OLC has clarified that, when read in context, President Polk’s statement did not mean that the court had continued availability of executive privilege because President Polk explained that “even in the impeachment context, the Executive Branch has an affirmative obligation to prevent the exposure of all matters the publication of which might injuriously affect the public interest, except so far as this might be necessary to accomplish the great ends of public justice.’” Impeachment Inquiry Authorization, infra Appendix C, at 11 n.13 (quoting Memorandum for Elliot Richardson, Attorney General, from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel, Re: Presidential Immunity from Coercive Congressional Demands for Information at 252, at 42.”

358. History of Refusals, 6 O.L.C. Op. at 771 (“President Truman issued a directive providing for the confidentiality of all loyalty files and all requests for files from sources outside the Executive Branch to be referred to the Office of the President, for such response as the President may determine. The directive was in effect from April 22, 1948. President Truman indicated that he would not comply with the request to turn the papers over to the Committee.” (citations omitted)); id. at 769 (noting President Coolidge refused to provide the Senate “a list of all companies in which the Secretary of the Treasury was interested” and instead calling the Senate investigation an “unwarranted intrusion.”)

359. As explained above, many of the subpoenas were not authorized as part of any impeachment inquiry because they were issued when the House had not voted to authorize any such inquiry. See supra Part I.B.1(a).


361. History of Refusals, 6 O.L.C. Op. at 771 (noting President Johnson refused to provide to the Senate a paper purportedly read by the President to his Cabinet and instead asserted “the Legislature had no constitutional authority to require of me an account of any communication, either verbal or in writing, made to the heads of Departments acting as agents of the President” and that “such a requirement would be required to detail to the Senate the free and private conversations I have held with those officers on any subject relating to their official duties.”)

362. As explained above, many of the subpoenas were not authorized as part of any impeachment inquiry because they were issued when the House had not voted to authorize any such inquiry. See supra Part I.B.1(a).

363. Clinton Judiciary Comm. Hearing on Background of Impeachment, supra note 344, at 54 (written statement of Professor Joseph M. Gerhardt, The College of William and Mary School of Law) (emphasis added).

364. See supra note 271; see also Ex parte United States, 362 U.S. 561 (1960).

365. House Democrats’ reliance on Kilbourn v. Thompson is misplaced. Kilbourn merely states that, when conducting an impeachment inquiry, the House or Senate may “compel the attendance of witnesses, and their answer to proper questions, in the same manner and by the use of the same means that courts of justice can in like cases.” Kilbourn, 103 U.S. at 190 (1880). But constitutionally based privileges apply in “courts of justice,” so Kilbourn does not foreclose the assertion of privileges and immunities in impeachment proceedings. Regardless, the statement quoted by House Democrats is dictum and, therefore, not binding on this Court. Of course, this Court’s decision in Kilbourn has been relied upon as authority for the proposition that “[p]revious
formalities . . . ’’ Broughton, supra note 383, at 289.
384. U.S. Const. amend. V.
385. See, e.g., Walters v. Nat’l Ass’n of Radi-
ation tube workers, 343 U.S. 374, 375 (1952) (“The pro-
cesses required by the Clause with respect to the ter-
mination of a protected interest will vary depending upon the im-
portance at-
450. President Johnson was apparently “notified of what was going on, but never asked to appear”—a fact that Judiciary Committee members considered a deeming President Johnson’s impeachment as a precedent. Cong. Globe, 42nd Cong., 3d

Sess., 2122–23 (1873) (statement of Mr. Butler during impeachment investigation of Judge Sherman).

452. Authorization of an Inquiry into Whether Grounds Exist toConsider Impeaching President Jefferson


455. H.R. Res. 581 § 2(b); 3 Deschler’s Precedents ch. 14, § 6.5, at 2496; H.R. Res. 803 § 2(b).


502. Letter from Jerrold Nadler, Chairman, H.R. Comm. on Judiciary, to President Donald J. Trump (Nov. 29, 2019).

503. See supra note 491 at 4. 504. Id. (“We stand ready to meet with you to discuss a plan for these proceedings at your convenience.”).

505. Nicholas Fandos, Pelosi Says House Will Draft Impeachment Charges Against Trump, supra note 496.


507. Id. at 19.


512. See supra note 81 at 4 (the H.R. Permanent Select Committee on Intelligence submitted and received a report on the Whistleblower’s Concerns to the Judicial Committee).


514. Lori Robertson, Schiff Wrong on Whistleblower Contact, FactCheck.org (Oct. 6, 2019), https://perma.cc/B2F5-SWJW.

515. See supra note 81 at 4 (the H.R. Permanent Select Committee on Intelligence submitted and received a report on the Whistleblower’s Concerns to the Judicial Committee).


519. Zimbalist v. United States, 218 U.S. 450, 451 (1910) (rejecting that “the right of the accused to present witnesses in his defense includes the right to examine, upon equal terms, witnesses on the opposite side, so as to compel them to answer questions of fact adverse to their interests.”).

520.酒精 499. See supra note 491 at 4. 504. Id. (“We stand ready to meet with you to discuss a plan for these proceedings at your convenience.”).


523. See supra note 81 at 4 (the H.R. Permanent Select Committee on Intelligence submitted and received a report on the Whistleblower’s Concerns to the Judicial Committee).

524. Winterberger v. Gen. Teamsters Auto Truck Drivers & Helpers Local Union 162, 558 F.2d 923, 925 (9th Cir. 1977) (administrative law).


534. OIG FISA Report, supra note 543, at viii.
Was Not a Source" for Another Agency

FBI's Russia Inquiry: Hearing Before S. Comm.

justice-department-ig-horowitz-de-

https://www.cspan.org/video/...i-68/au-d87fa6fed034H; Press Release, Sen-

Trump: No More 'Rubber Stamp' in New Con-

us; Clerk, H.R., Resolution (Dec. 18, 2019), http://clerk-

Ukraine Impeachment Before the H.R. Comm. on

Trump, No More 'Rubber Stamp' in New Con-

wards Taylor and Volker even discussed

volunteers Seek Interviews on Reported Coordination

Russia Court Rules Manafort Dis-

[Burisma]....  Had he remained in his post,

See, e.g.

Vindman Dep. Tr. at 109, 241

Id.

Supreme Court, for President Mike Pence (Nov. 19, 2019), https://perma.cc/7FP8-

id

De-
that the first time that you believe the Ukrainians may have had a real sense that the aid was on hold? [A.] Yes.’’

606. Taylor-Kent Public Hearing, supra note 604, at 38:14. [Q.] But it was actually aid that had been authorized? [A.] That is correct. [Q.] And it wasn’t until President Trump and his administration knew that the aid was on hold? [A.] Yes. [Q.] And it wasn’t until August 29th forwarding that article, and also the interagency team, and President Poroshenko in their first meeting in the Oval Office?’’; 143:8-10 (Q. The administration had concerns about corruption in Ukraine, correct? A. We all did.).


Should Pay ‘Substantially More’ for Defense

2. the Europeans should be contributing more

224:19–225:6 (‘‘[T]he President believed that

support Ukraine’’); Morrison Dep. Tr. at

206:8–10 (‘‘We were expecting the President to meet with Presi-

dent Zelensky on 1 September. It’s the mid-

dle of August; it’s about two weeks.’’).


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dle of August; it’s about two weeks.’’).
474. Kent Interview Tr. at 88:8–9.


478. The Money Machine: How a High-Profile Corruption Investigation Fell Apart, supra note 747 (“The White House insisted the position was a private matter for Hunter Biden, and unrelated to his father’s job, but that is not how anyone I spoke to in Ukraine interpreted the board appointment to a ‘celebrity’ unacquainted with law, and with no previous experience.”); Will Hunter Biden Jeopardize His Father’s Campaign?, supra note 745.

479. See The Money Machine: How a High-Profile Corruption Investigation Fell Apart, supra note 747 (“The White House insisted the position was a private matter for Hunter Biden, and unrelated to his father’s job, but that is not how anyone I spoke to in Ukraine interpreted the board appointment to a ‘celebrity’ unacquainted with law, and with no previous experience.”); Will Hunter Biden Jeopardize His Father’s Campaign?, supra note 745.

480.液体 Inquiry: Amb. Marie "Masha" Yovanovitch Before the H.R. Perma- nent Select Comm. on Intelligence, 116th Cong. 135–36 (Nov. 19, 2019) (Yovanovitch Public Hearing) (“I think that it could raise the appearance of a conflict of interest.”); Taylor-Kent Public Hearing, supra note 694, at 55, 94–95 (Kent raised legitimate concern that Hunter Biden’s status as a board member could create the perception of a conflict of interest, and in particular was that there was the possibility of a perception of a conflict of interest.”); Williams-Vindman Public Hearing, supra note 589, at 129 (Vindman and Williams agreeing that Hunter Biden, on the board of Burisma, has the potential for the appearance of a conflict of interest”); Souland Public Hearing, supra note 614, at 172 (Souland said that while it’s an appearance of a conflict.”); Hill-Holmes Public Hearing, supra note 636, at 89:20–90:3 (Hill affir-ming that “there were perceived conflicts of interest troubling the government official involved with something that that government official has an official policy role in”); Taylor Dep. Tr. at 96:3–5 (conceding that a reasonable person could say there are perceived conflicts of interest in Hunter Biden’s position on Burisma’s board).


483. Foreign Affairs Issue Launch with Former Vice President Joe Biden, Council on Foreign Relations (Jan. 23, 2018), https:// www.cfr.org/event/foreign-affairs-issue-launch-former-vice-president-joe-biden (“'You’re not getting the billion . . . I looked at them and said: I’m leaving in six hours. If the prosecutor is not fired, you’re not getting the money.”).

484. Kent Interview Tr. at 91:42–24.


753. As Vice President, Biden Said Ukraine Should Increase Gas Production. Then His Son Got a Job with a Ukrainian Gas Company, supra note 753 (“In an email interview with The Post, Shokin said he believes his ouster was because of his interest in [Burisma].”); Had he remained in his post, Shokin said, he would have ques-tioned Hunter Biden.


755. Id. (emphasis added).


758. See Letter from Devin Nunes, Ranking Member, H.R. Permanent Select Comm. on Intelligence, to Adam Schiff, Chairman, House Permanent Select Comm. on Intel-ligence (Nov. 9, 2019); Letter from Doug Collins, Ranking Member, H.R. Comm. on Judi-cy, to Jerrold Nadler, Chairman, H.R. Comm. on Judiciary (Dec. 6, 2019).


760. ‘‘Duplicitv’’ is the joining of two or more distinct and separate offenses in a sin-gle transaction. See, e.g., United States v. Good, 565 F.3d 145, 150 (3d Cir. 2009); United States v. Chran, 529 F.2d 1236, 1237 n.3 (5th Cir. 1976).


762. President Clinton was charged in one article of providing perjurious, false and misleading testimony on any “one or more” of four topics and in another article of obstruc-tion through “one or more” of seven discrete “acts” that involved different behavior in different months with different persons. H.R. Res. 611, 106th Cong. (Dec. 19, 1998) see Pro-ceedings of the U.S. Senate in the Impeachment Trial of President William Jefferson Clinton, 106th Cong., vol. I at 472–75 (1999) (Clinton Impeachment Trial) (Trial Mem. of President Clinton).


764. Id. at 2655 (statement of Sen. Charles Robb).


766. Proceedings in the Trial of Andrew John-son, President of the United States, Before the U.S. Senate on Articles of Impeachment, 40th Cong. 6 (1868).

767. Id. at 1073–75 (statement of Sen. John Henderson).

768. Id. at 912 (statement of Sen. Garrett Davis).


770. Judge Nixon Senate Trial, supra note 782, at 49 (statement of Sen. Herbert Kohl); The Impeachment of President William Clinton, Part II: The Trial of the U.S. Senate on the Articles of Impeachment, 104th Cong. 52 (1996).

771. Id. at 307–308.

772. Id. at 769 (statement of Sen. Joe Biden).
President Zelensky: Yes it is very important for me and everything that you just mentioned earlier. For me as a President, it is very important and we are open for any further cooperation. We are ready to make a new page on cooperation in relations between the United States and Ukraine. For that purpose, we would like to have the new ambassador from United States and he will be replaced by a very competent and very experienced ambassador who will work hard on making sure that the two nations will have a good cooperation. We would also like and hope to see him having your trust and your confidence and have personal relations with you so we can cooperate even more. So, I will also say that one of my assistants spoke with Mr. Giuliani just recently and we are hoping very much that Mr. Giuliani can travel to Ukraine and we will meet once he comes to Ukraine. I just wanted to assure you once again that you have nobody but friends in us. I think that I surround myself with he best and most experienced people. I also wanted to tell you that we are friends. We are great friends and you Mr. President well enough.

President Zelensky: I wanted to tell you about you had a prosecutor who was very good and he was shut down and that’s really unfair. A lot of people are talking about that, the way they were doing with your very good prosecutor and you had some very bad people involved. Mr. Giuliani is a highly respected man. He was the mayor of New York City, a great city. I would ask him if you could speak to him. I will ask him to call you along with the Attorney General. Rudy very much knows what’s happening and he is a very capable guy. You could speak to him if you want. The former ambassador from the United States, the woman, was bad news and the people she was dealing with in the Ukraine were bad news so I just want to let you know that. The other thing. There’s a lot of talk about Biden’s son, that Biden stopped the prosecution and a lot of people want to find out about that so whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution. A lot of people want to look into it. It sounds horrible to me.

President Zelensky: I wanted to tell you about the prosecutor General of all I understand and I’m knowledgeable about the situation. Since we have won the absolute majority in our Parliament, the next prosecutor general will be 100% my person, my candidate, who will be approved by the parliament and will start as a new prosecutor in September. He or she will look into the situation, specifically to the company that you mentioned in this issue. The issue of the investigation of the case is actually the issue of making sure to restore the honesty so we are doing this. We are doing the investigations. I would kindly ask you if you have any additional information that you can provide to us, it would be very helpful for the investigation to make sure that we administer justice in our country with regard to the Ambassador to the United States from Ukraine as far as we understand her very much. It was great that you were the first one who told me that she was a bad ambassador because then all the white nonsense ended with a very poor performance by a man named Robert Mueller, an incompetent performance, but they say a lot of things. So when you can do, it’s very important that you do it if that’s possible.

President: [laughter] That’s a very good idea. I think your country is very happy about these meetings. We used quite a right Mr. President. We did win big and we winning easily. It’s a fantastic achievement. Victory. We all watched from the United States and the European countries are doing and they should be helping us. They are doing quite a lot for Ukraine. Much more for Ukraine. Much more for the Russian Federation. We want to continue to cooperate with the United States and we are almost ready to buy more Javelins from the United States for defense purposes.

President Zelensky: Yes you are absolutely right. Not only 100%, but actually 100% and I can tell you that we did meet to Angela Merkel and I did meet with her. I also met and talked with Macron and I told them that they are not doing quite as much as we expected with the issues with the sanctions. They are not enforcing the sanctions. They are not working as much as they should work for Ukraine. It turns out that the former ambassador from the Russian Union should be our biggest partner but technically the United States is a much bigger partner than the European Union and I’m very grateful for that because the United States is doing quite a lot for Ukraine. Much more than the European Union especially when we are talking about sanctions against the Russian Federation. I would also like to thank you for your great support in the area of defense. We are ready to continue to cooperate with the United States and we are almost ready to buy more Javelins from the United States.
Giuliani give you a call and I am also going to have Attorney General Barr call and we will get to the bottom of it. I’m sure you will figure it out. I heard the prosecutor was treated very badly and that a very fair prosecutor so good luck with everything. Your economy is going to get better and better because of the lot of assistance. It’s a great country. I have many Ukrainian friends, their incredible people.

President Zelensky: I would like to tell you that very briefly but with a few words. I many Ukrainian friends that live in the United States. Actually last time I traveled to the United States, I stayed in New York near Central Park and I visited the Trump Tower. I will talk to them and I hope to see them again in the future. I also wanted to thank you for your invitation to the United States, specifically Washington DC. On the other hand, I also want to ensure you that we will be very serious about the case and will work on the investigation. As to the economy, there is much potential for our two countries and one of the issues that is very important for Ukraine is energy independence. I believe we can be very successful and cooperating on energy independence with United States. We are already working on cooperation. We are buying American oil but I am very hopeful for a day when we will have more opportunities and more opportunities to discuss those opportunities and get to know each other better. I would like to thank you very much for your support.

The President: Good. Well, thank you very much and I appreciate that. I will tell Rudy and General Barr to call. Thank you. Whenever you would like to come to the White House, feel free to call. Give us a date and we’ll work that out. I look forward to seeing you.

President Zelensky: Thank you very much. I would be very happy to come and would be happy to meet with you personally and get to know you better. I am looking forward to seeing you.

The President: Okay, we can work that out. I look forward to seeing you in Washington and maybe in Poland because I think we are working on that time.

President Zelensky: Thank you very much Mr. President.

The President: Congratulations on a fantastic job you’ve done. The whole world was watching. I’m not sure it was so much of an upset but congratulations. President Zelensky: Thank you Mr. President bye-bye.

APPENDIX B: UNAUTHORIZED SUBPOENAS PURPORTEDLY ISSUED DURING THE HOUSE’S IMPEACHMENT POWER BEFORE HOUSE RESOLUTION 660

1. Subpoena from Elliot L. Engel to Michael R. Pompeo, Secretary of State (Sept. 27, 2019)

2. Subpoena from Adam B. Schiff to Rudy Giuliani (Nov. 30, 2019)


5. Subpoena from Adam B. Schiff to Christopher C. Stevens (Oct. 7, 2019)


7. Subpoena from Adam B. Schiff to Igor Fruman (Oct. 10, 2019)

8. Subpoena from Adam B. Schiff to Lev Parnas (Oct. 10, 2019)

9. Subpoena from Adam B. Schiff to James Richard Perry, Secretary of Energy (Oct. 10, 2019)

10. Subpoena from Adam B. Schiff to Marie Yovanovitch, former U.S. Ambassador to Ukraine (Oct. 11, 2019)

11. Subpoena from Adam B. Schiff to Fiona Hill, senior Senior Director for Russian and European Affairs, National Security Council (Oct. 14, 2019)

12. Subpoena from Adam B. Schiff to George Kent, Deputy Assistant Secretary of State for European and Eurasian Affairs (Oct. 15, 2019)

13. Subpoena from Adam B. Schiff to Dr. Charles Kupperman, former Deputy National Security Advisor (Oct. 21, 2019)


15. Subpoena from Adam B. Schiff to Laura K. Cooper, Deputy Assistant Secretary of Defense for Russia (Oct. 23, 2019)

16. Subpoena from Adam B. Schiff to Mick Mulvaney, Director of the Office of Management and Budget (Oct. 23, 2019)

17. Subpoena from Adam B. Schiff to Kurt Volker, Acting Special Representative for Afghanistan and Pakistan (Oct. 24, 2019)

18. Subpoena from Adam B. Schiff to Emily R. Murphy, Administrator of General Services Administration (Oct. 24, 2019)

19. Subpoena from Adam B. Schiff to Ulrich Brechbuhl, Counselor to Secretary of State (Oct. 25, 2019)

20. Subpoena from Adam B. Schiff to Philip Reeker, Associate Director of European Affairs, National Security Council (Oct. 26, 2019)

21. Subpoena from Adam B. Schiff to Alexander S. Vindman, Director for European Affairs, National Security Council (Oct. 29, 2019)

22. Subpoena from Adam B. Schiff to Christopher Anderson, former Special Adviser for Ukraine Negotiations, Department of State (Oct. 30, 2019)

23. Subpoena from Adam B. Schiff to Catherine Croft, Special Adviser for Ukraine Negotiations, Department of State (Oct. 30, 2019)
Robert S. Mueller, III. On March 4, 2019, the Justice investigation by Special Counsel that were also the focus of a Department of to the Judiciary Committee. settled practice, the resolution was referred tion, James Comey. ''Donald John Trump, President of the House investigate and impeach President members of Congress have proposed that the Presidential Misconduct'' man Nadler described the committee as con- examined to determine whether to approve arti- ceal.'' H.R. Rep. No. 116–105, at 12, 13 (2019).7 The committee formally claimed to be in- pelican Press Release, supra note 1. In an October 8, 2019 court hearing, the House’s General Counsel described the Speaker’s description of the Resolution for Investigative Procedures.pdf. H.R. Doc. no. 116–67, at 3–6 (May 16, 2019) (describing the “legislative process regarding a formal impeachment inquiry”). The committee formally claimed to be in- pelican Press Release, supra note 1. In an October 8, 2019 court hearing, the House’s General Counsel described the Speaker’s description of the Resolution for Investigative Procedures.pdf. H.R. Doc. no. 116–67, at 3–6 (May 16, 2019) (describing the “legislative process regarding a formal impeachment inquiry”). The committee formally claimed to be in-
process because it had not been authorized by the full House and did not provide the President with the procedural protections enjoyed in past impeachment inquiries. S. Res. 378, 116th Cong. (2019).

On October 25, 2019, the U.S. District Court for the District of Columbia granted the Judiciary Committee’s request for grand-jury information. See In re Application of the Comm. on the Judiciary, U.S. House of Representatives, 2019 WL 6548521 (D.D.C. Oct. 25, 2019), stayed, Granted, No. 19–5288 (D.C. Cir. Oct. 29, 2019), argued (D.C. Cir. Jan. 3, 2020). In so holding, the court concluded that the House need not adopt a resolution before a committee may begin an impeachment inquiry. Id. at *26–28. As we discuss below, the district court’s analysis of this point relied on a misreading of the historical record.

Faced with continuing objections from the Administration and members of Congress to the validity of the Judiciary Committee’s request for grand-jury information, the House decided to take a formal vote to authorize the impeachment inquiry. See Letter for Democratic Members of the House from Nancy Pelosi, Speaker of the House (Oct. 28, 2019). On October 31, the House adopted a resolution “direct[ing]” several committees to conduct an investigation as part of the existing House of Representatives inquiry into whether sufficient grounds exist for the House of Representatives inquiry into whether sufficient grounds exist for the House of Representatives to impeach Donald John Trump, President of the United States of America.” Resolution 660, § 1. The resolution also adopted expedited procedures for impeachment proceedings before HPSCI and the Judiciary Committee.

II.

The Constitution vests in the House of Representatives a share of Congress’s legislative power and, separately, “the sole Power to impeach.” U.S. Const. art. I, § 1; id. art. I, § 2, cl. 5. Both the legislative power and the impeachment power include implied authority to investigate, including by means of compulsory process. But those investigative powers are not interchangeable. The Constitution delegates to the House committee to investigate through court-like procedures differing significantly from those used in routine oversight. See, e.g., Jefferson’s Manual §696, at 324 (recognizing that, in modern practice, “the sentiment of committees has been in favor of permitting the accused to explain, present witnesses, cross-examine, and be represented by counsel” (citations omitted)); see also Cong. Research Serv., R459833, Congressional Access to Information in an Impeachment Investigation 15 (Oct. 21, 2019) (citing, e.g., In re Request for Access to Grand Jury Materials, 833 F.3d 1438, 1445 (11th Cir. 1987) (“Congress may conduct investigations using compulsory process to investigate in support of its other powers, including its power of impeachment.”) (relying on Mazars USA, 940 F.3d 739 (D.C. Cir. 2019), dis. cont.)) (the House . . . has a separate power to investigate pursuant to its impeachment authority). Because the House has different investigative powers, establishing which authority has been delegated has often been necessary in the course of determining the scope of a committee’s authority to compel witnesses and testimony. In addressing the scope of the House’s investigatory powers, all three branches of the federal government recognized the constitutional distinction between a legislative investigation and an impeachment inquiry. See, e.g., Watkins v. United States, 360 U.S. 102, 115 (1959) (“Congress . . . is an essential and appropriate auxiliary to the legislative function.”). McGraw, 273 U.S. at 174. Thus, in the legislative context, the House’s investigatory power “encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.” Watkins v. United States, 360 U.S. 102, 115 (1959) (the House “has investigatory powers that are ancillary to its impeachment power”); Mazars USA, 940 F.3d 739 (D.C. Cir. 2019), dis. cont. (the House “. . . has a separate power to investigate pursuant to its impeachment authority.”).

A.

The Constitution vests several different powers in the House of Representatives. As one half of Congress, the House shares with the Senate the power granted in the Constitution (U.S. Const. art. I, §1), which include the ability to pass bills (id. art. I, §7, cl. 2) and to override presidential vetoes (id. art. I, §7, cl. 3) in the process of enacting laws pursuant to Congress’s enumerated legislative powers (e.g., id. art. I, §8), including the power to appropriate federal expenditures. In the House, it is the sole power of “Power of Impeachment.” Id. art. I, §2, cl. 5. The House and Senate do not act in a legislative role in connection with impeachment. Thus, with the power to accredit civil officers of “Treason, Bribery, or other high Crimes and Misdemonaers” that warrant removal and disqualification from office. U.S. Const. art. I, §3, cl. 6; id. art. I, §§ 2, 5; id. art. I, §§3, 7; id. art. II, §4. As Alexander Hamilton explained, the members of the House act as “the inquirers for the people . . . the salvation of the state.” See Alexander Hamilton, The Federalist No. 67, at 441 (Electo C. Cooke ed., 1961). And Senators, in turn, act “in their judicial character as a court for the trial of impeachments.” Id. at 439; see also The Federalist No. 66, at 445–46 (defending the “partial intermixture” in the impeachment context of usually separated powers as necessary, but not as the “mutual defense of the several members of the government, against each other”; noting that dividing “the right of accusing” from “the power to impeach” between the two branches of the legislature . . . avoids the inconvenience of making the same persons both accusers and judges). The House’s investigatory authority is fundamentally in character from its legislative power.

With respect to both its legislative and its impeachment powers, the House has corroboration through the power to conduct investigations, which enable it to collect the information necessary for the exercise of those powers. The Supreme Court has explained that “[t]he power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.” McGraw, 273 U.S. at 174. Thus, in the legislative context, the House’s investigatory power “encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.” Watkins v. United States, 360 U.S. 102, 115 (1959) (the House “has investigatory powers that are ancillary to its impeachment power”); Mazars USA, 940 F.3d 739 (D.C. Cir. 2019), dis. cont. (the House “. . . has a separate power to investigate pursuant to its impeachment authority.”).
legislative oversight. See Senate Select Comm., 498 F.2d at 732. The court recognized that the impeachment investigation was rooted in “an express constitutional source” and that the House investigative power differed in kind from the Senate committee’s oversight needs. Id. In finding that the Senate committee had not demonstrated that President Polk was impeached with regard to “the performance of its legislative functions,” the court recognized “a clear difference between Congress’s legislative tasks and the power of a grand jury, or any individual engaged in like functions,” such as the House Judiciary Committee, which had “begun an inquiry into presidential impeachments” of that era.

More recently, the D.C. Circuit acknowledged this same distinction in Mazars USA. As the majority opinion explained, “the Constitution has left to Congress the judgment whether to commence the impeachment process” and to decide whether the conduct in question is “better addressed through oversight and legislation than impeachment.” 940 F.3d at 739. Judge Rao’s dissent also recognized the distinction between a legislative oversight investigation and an impeachment investigation. See id. at 761 (Rao, J., dissenting) (“Framers established a mechanism for Congress to hold even the highest officials accountable . . . and expected members of Congress to take responsibility for invoking this power.”). Judge Rao disagreed with the majority insofar as she understood Congress’s impeachment power to be the sole means for investigating past misconduct by impeachable officers. But both the majority and the dissent agreed with the fundamental proposition that the distinction drawn between investigations pursuant to the House’s impeachment authority and those that serve its legislative authority (including oversight).

2. The Executive Branch similarly has long distinguished between investigations for legislative and for impeachment purposes. In 1796, the House “resolved” that President Washington “be requested to lay before the House a copy of the instructions” given to John Jay in preparation for his negotiation of a peace treaty with Great Britain. 3 Annals of Cong. 759–62 (1796). Washington refused to comply because the Constitution contemplatesthat only the Senate, not the House, could negotiate a treaty. Id. at 760–61. “It [did] not occur to” Washington “that the inspection of the papers asked for, could be relative to any purpose under the cognizance of Representative power except that of an impeachment.” Id. at 760 (emphasis added). Because the House’s “resolution ha[d] not expressed” any purpose of pur-suing impeachment, Washington concluded that “a just regard to the constitution . . . forbade a compliance with [the House’s] request” for documents. Id. at 760, 762.

In 1832 President Jackson drew the same line. A select committee of the House had requested that the Secretary of War “furnish[ ] it with a copy of an unratified 1830 treaty with the Chickasaw Tribe and ‘the journal of the commissioners’ who negotiated it.” H.R. Rep. No. 29–488, at 4 (1832). The Secretary conferred with Jackson, who refused to comply with the committee’s request on the same ground cited by President Washington: he “did not perceive that a copy of any part of the incomplete and unratified treaty could be relevant to any purpose under the cognizance of the House of Representatives, except that of an impeachment, which the resolution has not expressly provided for.” Letter from Charles A. Wickliffe, Chairman, Committee on Public Lands, U.S. House of Representa-
tives, from Lewis Cass, Secretary of War (Mar. 2, 1832).

In 1846, another House select committee requested that President Polk account for his administration of the affairs of Mexico by Secretary of State Daniel Webster. Polk refused to disclose information that “che[cked]” that the House may have been entitled to such information if it had “instituted an [impeachment] inquiry into the matter.” Cong. Globe, 30th Cong., 1st Sess. 761 (1846) (Rao, J., dissenting). He took this position even though some members of Congress had suggested that evidence the expenditures could support an impeach-
ment inquiry. See infra Part II.C.1. Notably, he also recognized the difference between a legislative oversight investigation and an impeachment investigation if it had “instituted an [impeachment] inquiry into the matter.” Cong. Globe, 30th Cong., 1st Sess. 761–64 (Rao, J., dissenting) (discussing examples from the Buchanan, Grant, Cleveland, Theodore Roosevelt, and Coolidge Administrations).

3. House members, too, have consistently recognized the difference between a legislative oversight investigation and an impeachment investigation. For instance, in 1846, the House’s Select Committee on Public Lands, U.S. House of Representa-
tives, 940 F.3d at 761–62. The court concluded that the House’s resolution had not “expressly provided for” such a request. Thus, the court was compelled to consider the “sole power of impeachment,” U.S. Const. art. I, § 5, cl. 2, and found that the House had “broad discretion in determining the conduct of its own proceedings.” See, e.g., NLRB v. Noel Canning, 573 U.S. 513, 551–52 (2014); United States v. Bann, 14 U.S. 1, 5 (1816); see also 1 De弛er’s Precedents ch. 5, § 144 at 365–66. But the House must actually exercise its discretion by making that judgment in the first instance, and its resolution sets the parameters of that discretion. See United States v. Rumely, 345 U.S. 41, 43 (1953). No committee may exercise the House’s investigative powers in the absence of such a delegation.

As the Supreme Court has explained in the context of legislative oversight, “[t]he theory of a committee inquiry is that the committee members are serving as representa-
tives of the parent assembly in collecting information for a legislative purpose” and, in such circumstances, committees are endowed with the authority of the Congress to compel testimony. Watkins, 354 U.S. at 200–01. The same is true for impeachment investigations. Thus, Hamilton recognized, the impeachment power involves a “trust of such delicacy and magnitude” that it “deeply concerns the political reputation and existence of every man engaged in the administration of public affairs.” The Federalist No. 65, at 440. The Founders foresaw that an impeachment effort would “[i]n no way . . . destroy the pre-existing factions” and “inlist all their animosities, partialities, influence and interest on one side, or on the other.” Id. at 439. As a result, they placed the power to initiate an impeachment in “the representatives of the nation themselves.” Id. at 440. In order to enthrone one of its committees to in-
pose that authority, the House must “spell out that group’s jurisdic-
tion and purpose.” Watkins, 354 U.S. at 201. Otherwise, a House committee could not exercise its delegated power in an open-ended and untethered investigations without the sanction of a majority of the House.

Because a committee may exercise the House’s investigative power only when authorized, the committee’s actions must be within the scope of a resolution delegating authority from the House to the committee. Congress has delegated “its own affairs matters not whether the Constitution would give Congress authority to issue a subpoena if Congress has given the issuing committee no such authority.” Mazars USA, 940 F.3d at 722; see Dolan, Congressional Oversight Manual at 24 (“Committees of Congress only have the power to inquire into matters within the ‘matters of administration’ authorized by their parent body.”). In evaluating a committee’s authority, the House’s resolution “is the controlling charter of the commit-
tee.” See Part II.D.3.b, and the commit-
tee’s “right to exact testimony and to call for the production of documents must be
found in this language." Rumely, 345 U.S. at 44; see also Watkins, 354 U.S. at 201 ("Those instructions are embodied in the authorizing resolution. That document is the committee's charter, and it vests in the Committee's hands the exclusive authority to determine what evidence to receive and what process to employ."); Watkins, supra note 19, at 386 ("[P]rogram [t]he House's committees are restricted to the missions delegated to them. \ldots \) No witness can be compelled to make disclosures on matters touching the personal delicacy of the executive and judicial departments."); FTC, 589 F.2d 582, 592 (D.C. Cir. 1978) ("To issue a valid subpoena, \ldots a committee or subcommittee must conform strictly to the resolution adopted by the House, and its plenary character is defined by the House itself."); United States v. Lumont, 18 F.R.D. 27, 32 (S.D.N.Y. 1955) (Weinfeld, J.) ("No committee of either the House or Senate, and no National Committeeman, woman, or委员, has the authority either of the House or its own to conduct investigations unless authorized. Thus it must appear that Congress empowered the Committee to act, and further that at the time the witness allegedly defied its authority the Committee was acting within the power granted to it."). While a committee may study some matters without exercising the investigative powers of the House, a committee's authority to compel the production of documents and testimony depends entirely upon the jurisdiction provided by the terms of the House's delegation.

In Watkins, the Supreme Court relied upon those grounds to uphold the contempt of Congress because of the authorizing resolution's vagueness. The uncertain scope of the House's delegation impermissibly "owed a wide gulf between the responsibility for the use of investigative power and the actual exercise of that power," 345 U.S. at 205. If the House wished to authorize the exercise of its investigative power, then it needed to take responsibility for the use of that power, because a congressional subpoena, issued with the threat of a criminal contempt citation, necessarily placed "constitutional liberties" in "danger." Id. The concerns expressed by the Court in Watkins apply with equal, if not greater, force when considering the authority of a House committee to compel the production of documents in connection with an investigatory impeachment. As John Labovitz, a House impeachment attorney during the Nixon investigation, explained: ([I]mpeachment investigations, because they are subject to the power and the actual exercise of that power, \ldots), id. at 206 ("[P]lainly (the least where the president is being investigated) may have extraordinary consequences, are not to be undertaken in the same manner as so-called continental or investigatory investigations. The initiation of a presidential impeachment inquiry should itself require a deliberate decision by the House."); John R. Labovitz, Presidential Impeachment 184 (1978). Because a committee possesses only the authorities that have been delegated to it, a committee may not use compulsory investigative processes without the formal authorization of the House.

c. Historical practice confirms that the House must act by a法定 resolution authorizing an inquiry. See, e.g., Zivotofsky v. Kerry, 135 S. Ct. 2076, 2091 (2015) (recognizing that "[i]n separation-of-powers cases," the Court has placed "[a]bsolute separation of powers and the separation of powers and the presidential, executive, and judicial branches of government (standards and practice)"); Noel Canning, 573 U.S. at 514 (same). The House has expressly authorized every impeachment investigation of a President by identifying that impeachment investigation as a committee's investigative function and authorizing the use of compulsory process. The same thing has been true for nearly all impeachment investigations; that House committees have sometimes studied a proposed impeachment resolution or reviewed available information without conducting a formal investigation, in nearly every case in which the committee resorted to compulsory process, the House expressly authorized the investigative action.

That practice was foreseen as early as 1796. When Washington asked his Cabinet for opinions about how to respond to the House's resolution to adopt a resolution authorizing the impeachment investigation, the House expressly authorized the investigative function. "[W]hile that resolution may have extraordinary consequences, \ldots) except when an impeachment is proposed & a formal inquiry authorized."); Letter for George Washington to the Senate (Mar. 26, 1796), reprinted in 19 The Papers of George Washington: Presidential Series 611–12 (David R. Hoth ed., 2016) (emphasis added).

From the impeachment, the House has recognized that a committee would require a delegation to conduct an impeachment inquiry. In 1797, when House members considered whether a letter contained evidence of criminal misconduct by Senator William Blount, they sought to confirm Blount's handwriting but concluded that that resolution did not have the power of taking evidence. See 7 Annals of Cong. 456–58 (1877); 3 Asher C. Hinds, Hinds' Precedents of Representative Acts of Congress § 2294, at 644–45 (1907). Thus, the committee "rose," and the House itself took testimony. 3 Hinds' Precedents § 2294, at 644–46; 3 Hinds' Precedents § 2297, at 648. As we discuss in this section, we have identified dozens of other instances where the House, in referring proposed articles of impeachment, authorized formal impeachment investigations.

Against this weighty historical record, which involves nearly 100 authorized impeachment investigations, the outliers are few and far between. In 1797, it appears that the House, which was expressly authorized to conduct an oversight investigation into the administration of the United States, con-}
Senate’s approval, contrary to the terms of the Tenure of Office Act, which Johnson (correctly) held to be an unconstitutional limit on his authority. See Cong. Globe, 49th Cong., 1st Sess., at 292 (1886); 3 Hinds’ Precedents §2406–09, at 845–47; see also Myers v. United States, 272 U.S. 52, 176 (1926) (finding that provision of the Tenure of Office Act was an unconstitutional limit on the President’s authority). The Reconstruction reported an impeachment resolution to the House, which was debated on February 22 and passed on February 24. Cong. Globe, 49th Cong., 1st Sess., at 292 (1886); 3 Hinds’ Precedents §§2406–09, at 845–51.

The impeachment investigation of President Nixon began with a resolution introduced in support of President Nixon’s impeachment earlier in 1973. The House’s formal impeachment inquiry arose in the months following the “Saturday Night Massacre,” during which President Nixon caused the termination of Special Prosecutor Archibald Cox at the cost of the resignations of his Attorney General and Deputy Attorney General. See Letter Directing the Acting Attorney General to Discharge the Director of the Office of Watergate Special Prosecution Force (Oct. 20, 1973), Public Papers of Pres. Richard Nixon 891 (1973). Immediately thereafter, House members introduced resolutions calling for the President’s impeachment or for the opening of an investigation.22

The Speaker of the House referred the resolutions calling for an investigation to the Rules Committee, where those calling for impeachment were referred to the Judiciary Committee. See Office of Legal Counsel, U.S. Dep’t of Justice, Legal Aspects of Impeachment: An Overview at 40 (Feb. 1974) (“Legal Aspects of Impeachment: An Overview”); 3 Deschler’s Precedents ch. 14, §5, at 2020.

Following the referrals, the Judiciary Committee. — “beg[an] an inquiry into whether President Nixon ha[d] committed any offenses that could lead to impeachment,” an exercise that the committee considered “preliminary.” Richard L. Madden, Democrats Agree on House Inquiry into Nixon’s Acts, N.Y. Times, Oct. 23, 1973, at 1. The committee started “collate[ing] investigative files from Senate and House committees that have examined the question” before the House would proceed to the Judiciary Committee. See Statement of Rep. Solomon).

Although the committee “adopted a resolution permitting Mr. Rodino to issue subpoenas without the consent of the full committee.” H.R. Res. 581, 105th Cong. § 1 (1998). The resolution authorized the committee “to ‘require by subpoena or otherwise. the attendance and testimony of any person’” and “the production of any evidence” “as the committee ‘deem[ed] necessary’ to its investigation.” Id., §2(a).

Speaking on the House floor, Chairman Rodino described the resolution as a “necessary step” to confer the House’s investigative powers on the Judiciary Committee. We have reached the point where it is important that we define our responsibilities, and confirm our responsibility under the Constitution. As part of this resolution, we are asking the House to give the Judiciary Committee the power of subpoena in its investigations. Such a resolution has always been passed by the House. If it is a necessary step if we are to meet our obligations. The sole power of impeachment carries with it the power and complete investigation of whether sufficient grounds for impeachment exist or do not exist, and by this resolution these investigative powers are conferred upon the full extent upon the Committee on the Judiciary. 120 Cong. Rec. 6350–51 (1974) (emphases added). During the debate, others recognized that the resolution would delegate the House’s power of impeachment to the Judiciary Committee. See, e.g., id. at 2361 (statement of Rep. Rostenkowski) (“By delegating to the Judiciary Committee the powers contained in this resolution, we will be providing that committee with the resources it needs to inform the whole House of the facts and circumstances.”); id. at 2360 (statement of Rep. Boland) (“House Resolution 803 is intended to delegate to the Committee on the Judiciary the full extent of the powers of this House. By our actions here, both as to the persons and types of things that may be subpoenaed and the methods for doing so.”). Only after the Judiciary Committee was provided with authority, did the House do so.

The impeachment investigation of President Clinton. On September 9, 1998, Independent Counsel Kenneth W. Starr, acting under 28 U.S.C. § 591 (the Office of Independent Counsel Act) and as authorized by the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States of America, submitted to the House in an impeachment proceeding[]—both as to the persons and types of things that may be subpoenaed and the methods for doing so.”). Only after the Judiciary Committee was provided with authority, did the House do so.

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the investigation contemplated in the initial resolution). In a few instances, the House asked committees to draft articles of impeachment and authorized a full House impeachment investigation. For example, in 1876, after uncovering ‘‘unquestioned evidence of corruption and maladministration’’ by Comptroller General William B. Kellogg (who was then Secretary of War) in the course of another investigation, the House approved a resolution charging the President with the responsibility to ‘‘prepare and report without unnecessary delay suitable articles of impeachment.’’ 4 Cong. Rec. 1425, 1433 (1876).

In 1974, when a few of the committee’s inquiry, however, the committee determined that additional investigation was warranted, and it asked to be authorized ‘‘to take further steps in the course of its investigations to secure evidence’’ and ‘‘to then proceed in its search for alternative evidence.’’ Id. at 1594, 1566; see also 3 Hinds’ Precedents §§2444–45, at 902–05.

In some cases, the House declined to authorize a committee to investigate impeachment with the aid of compulsory process. In 1873, the House authorized the Judiciary Committee ‘‘to inquire whether anything’’ in testimony presented to a different committee implicating Vice President Schuyler Colfax ‘‘concerning the official conduct of any officer of the United States not a member of this House, or makes it proper that further investigation should be ordered in his case.’’ Cong. Pap. 9th Sess. 1545 (1873); see 3 Hinds’ Precedents §2510, at 1016–17. No further investigation was authorized. A similar sequence occurred in 1917 in the case of an impeachment resolution offered against members of the Federal Reserve Board. See 54 Cong. Rec. 3126–29 (1917) (impeachment resolution); H.R. Rep. No. 64–30, at 1 (1917) (copy of referral of impeachment resolution to the Judiciary Committee).

The committee had reviewed available information and determined that no further proceedings were warranted. In 1992, the House referred to the Judiciary Committee a resolution calling for the investigation of the possible impeachment of Secretary of the Treasury Andrew Mellon. H.R. Res. 92, 72nd Cong. (1932); see also 3 Deschler’s Precedents ch. 14, §14.1, at 2134–39. The following month, the committee approved an impeachment resolution continuing any investigation of the charges. 75 Cong. Rec. 3850 (1932); see also 3 Deschler’s Precedents ch. 14, §14.2, at 2139–40.

On the eve of the 1994 elections, the House referred to the Committee on the Judiciary with the referral of the resolution of its investigation, the committee referred, without report, a select committee ‘‘to inquire into the official conduct’’ of the Independent Counsel’s investigation. See Impeachment Articles Referred on John Koskinen (Part IIIIII): Hearing Before the H. Comm. on the Judiciary, 114th Cong., 2d Sess. 494, at 500 (2016). The ranking minority member, Representative John Conyers, observed that, despite the title, ‘‘this is not an impeachment hearing’’ because, ‘‘[a]ccording to the American people, the Independent Counsel’s investigation was present, the impeachment process does not begin until the House actually votes to authorize this Committee to investigate the President, which was never done.’’ H.R. Res. 628, 114th Cong. (2016).

Shortly after an attempt to force a floor vote on one of the resolutions, Koskinen voluntarily appeared before the committee at a hearing. Koskinen denied any wrongdoing, and the committee concluded that the charges warranted no action. Id. at 290 (authorizing the investigating committee to ‘‘send for persons and papers’’). The House followed the same procedure in 1916 for U.S. Attorney General Haworth. H. Snowden Marshall, H.R. Res. 90, 64th Cong. (1916) (initial resolution referred to the Judiciary Committee); H.R. Res. 110, 64th Cong. (1916) (resolving approving the investigation contemplated in the initial resolution). And the process repeated in 1922 for Attorney General Harry Daugherty. H.R. Res. 161, 66th Cong. (1922) (referring resolution approving the investigation contemplated in the initial resolution; and the process repeated in 1922 for Attorney General Harry Daugherty. H.R. Res. 161, 66th Cong. (1922) (referring resolution approving the investigation contemplated in the initial resolution).
appointment of a committee “to inquire into the propriety of impeaching.” Id. at 984; see 18 Annals of Cong. 2069 (1868). The House then passed a resolution forming a committee to conduct “a preliminary examination” which included “the power to send for persons, papers, and records” but, like most inquiries to follow, did not result in impeachment. 18 Annals of Cong. 2069–70 (1868). The committee was to exercise investigative powers.26 In one 1874 case, the Judiciary Committee realized only after witnesses had traveled from Arkansas that it needed a resolution authorizing it to exercise compulsory powers to investigate previously referred charges against Judge William Story. See 2 Cong. Rec. 1325, 3438 (1874); 3 Hinds’ Precedents 2319, at 1023. In order to “cure” that “defect,” the committee reported a privilege resolution to the floor of the House that would grant the committee “power to send for persons, papers, and records” as part of the impeachment investigation. 2 Cong. Rec. at 3438. The House promptly agreed to the resolution, enabling the committee to “examine” the witnesses that day. Id.

In other cases, however, no full investigation took place. In 1801, Judge Pickering, a district judge, was impeached, but the House voted to impeach him without conducting any investigation at all, relying instead upon documents supplied by President Jefferson. See 3 Hinds’ Precedents 2319, at 681–82; see also Lynn W. Turner, The Impeachment of John Pickering, 54 Am. Hist. Rev. 547 (1950). In 1803, John Pickering, Jr., the grant of subpoena authority. See H.R. Rep. No. 115–427, at 7 (2010); H.R. Res. 1448, 110th Cong. (2008); 154 Cong. Rec. 18002 (2008). After the Congress expired, the House in the next Congress adopted a new resolution re-authorizing the inquiry, again with subpoena authority. See H.R. Res. 15, 111th Cong. (2009); 155 Cong. Rec. 988, 971 (2009). Several months later, another district judge, Samuel Kent, pleaded guilty to obstruction of justice and was sentenced to 35 months in prison. See 154 Cong. Rec. 31157–58 (2008). The House had used the same practice with respect to federal judges.27 Thus, in 2008, the House adopted a resolution authorizing the Judiciary Committee to issue subpoenas ‘for the inspection of the House.’ This resolution was referred to the Committee on the Judiciary. See H.R. Res. 227, 110th Cong. (2008). The House then adopted a resolution directing the Judiciary Committee to investigate the impeachment of Justice John Paul Stevens.28 In 1990, the Senate adopted a resolution authorizing the Standing Committee on the Judiciary to investigate impeachment of Supreme Court Justice William Rehnquist.29 In 1991, the House adopted a resolution authorizing the House of Representatives to investigate Judge Harry Pregerson, Jr., including the grant of subpoena authority. See H.R. Res. 115, 102d Cong. (1991); 104 Cong. Rec. 30419 (1994). In 1998, the House adopted a resolution authorizing the judiciary to issue subpoenas to that end, but they do not grant authority to investigate for impeachment purposes. While the House committees could have sought some information relating to the same subjects in the exercise of their legislative oversight authority, the subpoenas purported to issue “pursuant to this Committee’s power of impeachment inquiry” were not in support of such oversight. We therefore conclude that they were unauthorized.

The standing committees of the House trace their general subpoena powers back to the House Rules, which the 116th Congress adopted by formal resolution. See H.R. Res. 7, 116th Cong. (2019). Those rules set out “several hundred” words, more than 60,000 words long, but they do not include the word “impeachment.” The Rules’ silence on that topic is particularly notable because the House Rules are the rules upon which the House has adopted specific “Rules of Procedure and Practice” for impeachment trials. S. Res. 479, 99th Cong. (1986).30 The most obvious conclusion to draw from that silence is that the current House, like its predecessors, retains impeachment authority at the level of the full House, subject to potential delegations in resolutions tailored for that purpose.

Rule XI of the Rules of the House authorizes committees to conduct investigations, including subpoenas, but only for matters within their legislative jurisdiction. The provision has been a part of the House Rules since 1975. See H.R. Res. 980, 99th Cong. § 301 (1974). Clause 2(m)(1) of Rule XI vests each committee with the authority to issue subpoenas “for the purpose of carrying out any of its functions and duties under this rule and rule X (including any matters referred to it under clause 2 of rule XII).” Rule XI, cl. 2(m)(1); see also Rule X, cl. 1(d)(1) (making clause 2 of Rule XI applicable to House committees) and Rule X, cl. 1(d)(1) (making clause 2 of Rule XI applicable to House committees) and Rule X, cl. 1(d)(1) (making clause 2 of Rule XI applicable to House committees) and Rule X, cl. 1(d)(1) (making clause 2 of Rule XI applicable to House committees). The committees therefore have subpoena power to carry out their authorities under three rules: Rule X, Rule XI, and clause 2 of Rule XII. The Committees on Appropriations has standing committee with jurisdiction over impeachment. Rule X establishes the “standing committees” of

January 21, 2020
CONGRESSIONAL RECORD — SENATE S361
the House and vests them with “their legislative jurisdictions.” Rule X, cl. 1. The jurisdiction of each committee varies in subject matter and scope. While the Committee on Ethics (Rule XII, cl. 13) has jurisdiction only “[t]he Code of Official Conduct” (Rule X, cl. 1(g)), the jurisdiction of the Foreign Affairs Committee spans seventeen subjects, including investigations of the United States’ relationship with foreign nations generally, “[i]ntervention abroad and declarations of war,” and “[t]he American National Red Cross and the Peace Corps.” Rule X, cl. 1(h). The rule likewise spells out the jurisdiction of the Committee on Oversight and Reform (Rule X, cl. 1(i)) similarly to the Committee on House Administration (Rule X, cl. 1(h)). Clause 11 of Rule X establishes HPSCI and vests it with jurisdiction over “[t]he Central Intelligence Agency and the Director of National Intelligence, and the National Intelligence Program” and over “[t]he Intelligence and intelligence-related activities of all other departments and agencies.” Rule X, cl. 11(a)(1), (b)(1)(A)(B).

The text of Rule X confirms that it addresses the legislative jurisdiction of the standing committee with the subject-matter jurisdiction of the standing committee’s subject-matter jurisdiction, the rule provides that “[t]he various standing committees shall have preliminarily the legislative oversight responsibilities” to assist the House in its analysis of the “application, administration, execution, and effectiveness of Federal law; the conditions, circumstances, and ramifications of changes in Federal law, and of such additional legislation as may be necessary or appropriate.” Rule X, cl. 2(a)(1)–(2). The committee’s authority to proceed “shall extend to all activities relating to foreign policy.” Rule X, cl. 3(f). And clause 4 addresses “[a]dditional functions of committees,” including functions related to the rule of the House, including the jurisdiction of the Committee on Oversight and Reform (Rule X, cl. 4(a)(1)) and the House Rules Committee (Rule X, cl. 4(c)(1)). But none of the “[special oversight” or “[additonal functions” specified in clauses 3 and 4 includes any reference to the House’s impeachment power. The powers of HPSCI are addressed in clause 11 of Rule X. Unlike the standing committees, HPSCI is not given “[g]eneral oversight responsibilities” in clause 2. But clause 3 gives it the “[special oversight functions” of “review[ing] and study[ing] on a continuing basis laws, programs, and activities of the intelligence community” and of “investigation[ing] and study[ing] the sources and methods of specified entities that engage in intelligence activities. Rule X, cl. 3(m). And clause 11 further provides that “[t]he Committee shall have authority to conduct investigations of the United States Government departments and agencies.” Rule X, cl. 11(b)(1), (c)(1); see also H.R. Rep. 658, 95th Cong. § 1 (1978) (resolution establishing HPSCI, explaining its purpose as “provid[ing] vigilant legislative oversight over the intelligence and intelligence-related activities of the United States Government.” (emphasis added)). Again, those powers sound in legislative oversight, and nothing in the Rules suggests that HPSCI has any generic delega-
tion of authority to conduct investigations.

Consistent with the foregoing textual analysis, Rule X has been seen as conferring legislative oversight responsibilities to the House’s committees, without any suggestion that impeachment authorities are somehow included therein. The Congressional Research Service stated that clause 11 of Rule X “authorize[s] the Committee to proceed with an ongoing rulemaking inquiry about President Nixon.” Michael L. Koenpel & Judy Schneidner, Cong. Res. Serv., H.41690, House Standing Committees’ Rules on Legislative Activities: Analysis of Rules in Effect in the 114th Congress 2 (Oct. 11, 2016); see also Dolan, Congressional Oversight and the Constitution (May 25, 2016). The Committee on House Administration (Rule X, cl. 1(h)) determines whether to “make recommendations to the House” (Rule X, cl. 1(h)). But if the Committee on House Administration determines that a formal inquiry is warranted, then the committee recommends that the House adopt a resolution that authorizes such an investigation, confers on the Speaker subpoena power, and provides special process to the target of the investigation. The Judiciary Committee followed precisely that procedure in connection with the impeachment investigations of Presidents Nixon and Clinton, among many others. By referring an impeachment resolution to the House Judiciary Committee, the Speaker did not expand that committee’s subpoena authority to cover a formal impeachment investigation. In any event, no impeachment resolution was ever referred to the Foreign Affairs Committee, HPSCI, or the Committee on Oversight and Reform. Rule XII thus could not provide any authority to those committees in support of the House’s impeachment-related subpoenas issued before October 31.

Accordingly, when those subpoenas were issued, HPSCI itself was not given any impeachment authority to any of those committees to issue subpoenas in connection with potential impeachment. In reaching this conclusion, we do not question the House’s decision to refer the House of Representatives to determine how and when to conduct its business. See U.S. Const. art. I, § 5, cl. 2. As the Supreme Court recognized, “‘what the House may determine is not subject to review.’” House v. Jost, 535 U.S. at 551 (quoting United States v. Ballin, 144 U.S. 1, 5 (1892)). The question, however, is not “what rules Congress may establish for its own governance,” but “rather what rules the House has established for which it is constitutionally required that it be followed.” Christofle v. United States, 338 U.S. 84, 88–89 (1949); see also Yellin v. United States, 374 U.S. 109, 121 (1963) (stating that the House “has the right to establish its House rules and to conduct its business in whatever manner it chooses”) (emphasis added). The Committee on House Administration has the Committee follow its rules and give it consideration according to the standards it has adopted in the relevant rules). United States v. Mardian, 115 S. Ct. at 832 (1995) (holding that the construction to be given to the rules affects persons other than members of the Senate, Clinton for impeachment purposes. H.R. Rep. No. 105–795, at 24 (emphasis added). And, even before Rule XI was adopted, the House had conferred on the Judiciary Committee a ma-
time turn to conduct an in-

the question presented is of necessity a judicial one.”). Statements by the Speaker or by committee chairmen are not statements of the House itself. Cf. Noel Canning, 573 U.S. at 552–53. Reports and proceedings of the House, even if signed by the Speaker, do not constitute the acts of the House itself, as reflected in the Journal of the Senate and the Congressional Record, to determine when the Senate was “in session.” Supra note 2. Nothing less, and nothing more, than the House resolution actually delegating such an investigation. There was, however, no resolution’s language.”’ Congressional Committee’s Request for the President’s Tax Returns Under 26 U.S.C. §6103(f), 43 Op. O.L.C._ , at 20 (June 13, 2019). To the contrary, “a threshold inquiry that should be made upon receipt of any congressional information is whether the request is supported by any legitimate legislative purpose.” Response to Congressional Requests for Confidential Executive Branch Information to Further an Impeachment Inquiry, 153, 159 (1989) (recognizing that the constitutionally mandated accommodation process “requires that each branch explain to the other why it believes its needs to be legitimate”). Here, the committee chairmen made clear upon issuing the subpoenas that the committees were interested in the requested materials to respond to the potential impeachment of the President, not to uncover information necessary for potential legislation within their respective areas of legislative jurisdiction. In marked contrast with routine oversight, each of the subpoenas was accompanied by a letter signed by the chairmen of three different committees, who transmitted a subpoena “[pursuant to the House of Representatives’ impeachment inquiry] and recited that the documents would “be collected as part of the House’s impeachment inquiry; that they would be ‘shared among the Committees, as well as with the Committee on the Judiciary as appropriate’; and that the subpoenas and accompanying text, apart from their token invocations of ‘oversight and legislative jurisdiction,’ the letters offered no hint of any legitimate purpose. The committee chairmen were therefore seeking to do precisely what they said—compel the production of information to further an impeachment inquiry.

In reaching that conclusion we do not foreclose the possibility that the Foreign Affairs Committee or the other committees could have issued similar subpoenas in the bona fide exercise of their respective oversight jurisdiction, in which event the requests would have been evaluated consistent with the long-standing confidentiality interests of the Executive Branch. See Watkins, 354 U.S. at 187 (recognizing that Congress’s general investigatory authority “comprehends probes into departments of the Federal Government to extend itself upon the tasks of the officers and men, who, in any branch of the Government, are necessary to the Powers and Duties of the Federal Government”). Should the Foreign Affairs Committee, or another committee, articulate a legitimate oversight purpose for a future investigation, a legislative branch standing committee would assess that request as part of the constitutionally required accommodation process.

But the Executive Branch was not confronted with that situation. The committee chairmen unequivocally attempted to conduct an impeachment inquiry into the President’s conduct of the foreign relations of the United States as the “sole Power of Impeachment,” having authorized such an investigation. Absent such an authorization, the committee chairmen’s “assertion of (‘oversight and legislative jurisdiction’) did not cure that fundamental defect.

We next address whether the House ratified any of the previous committee subpoenas when it adopted Resolution 660 on October 31, 2019—after weeks of objections from the Executive Branch to the efforts of Congress to the committees’ efforts to conduct an unauthorized impeachment inquiry. Resolution 660 provides that six committees of the House “are directed to continue their ongoing investigations as part of the existing House of Representatives inquiry into whether sufficient grounds exist for the House of Representatives to exercise its Constitutional power to impeach Donald John Trump, President of the United States of America.” Resolution 660, §1. The resolution did not provide the legal authority by which HPSCI and the Judiciary Committee may conduct hearings in connection with the investigation defined by that resolution. The resolution does no more than authorize the committees’ past actions or seek to ratify any subpoenas previously issued by the House committees. See Trump v. Mazars USA, LLP, 911 F.3d 1309, 1312 (D.C. Cir. 2019) (Rothstein, J., dissenting from the denial of rehearing en banc); see also Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context, 43 Op. O.L.C._ , at *4 (Nov. 1, 2019). The resolution “direct[s]” HPSCI and other committees to “continue their investigations, and the Rules Committee appears to have assumed, incorrectly, that earlier subpoenas were legally valid. See H.R. Rep. No. 116–266, at 3 (“All subpoenas to the Executive Branch remain in full force.”). But the resolution’s operative language does not address any previously issued subpoenas or provide the imprimatur of the House to give those subpoenas legal force.

And the House knows how to ratify existing subpoenas when it chooses to do so.77 On July 24, 2019, the House adopted a resolution that expressly “ratiﬁed” and “afﬁrmed all current and future investigations, as well as all subpoenas previously issued or to be issued in the future,” related to certain enumerated subpoenas within the Oversight and Select Committees of the House “as established by the Constitution of the United States and rules X and XI of the Rules of the House of Representatives.” H.R. Res. 507, 116th Cong. , §1 (2019) (emphasis added). There, as here, the House acted in response to questions regarding “the validity of . . . [congressional investigations],” id. pmbl. Despite that recent model, Resolution 660 contains no comparable language seeking to ratify previously issued subpoenas. The resolution directs committees to “continue investigations, and it speciﬁes procedures to govern future hearings, but nothing in the resolution looks backward to address or previously take account of Reso- lution 660 did not ratify or otherwise authorize the impeachment-related subpoenas issued before October 31, which therefore still had no compulsory effect on their recipients.

IV. Finally, we address some of the consequences that followed from our conclusion that the impeachment-related subpoenas were unauthor- ized. First, because the subpoenas exceeded

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685 U.S. at 201; cf. Gojak v. United States, 384 U.S. 702, 716–17 (1966). At the opening of this Congress, the House reasserted its investigatory authority over impeachment upon any committee, and therefore, no House committee had authority to compel the production of documents or testimony in furtherance of an impeachment inquiry that it was not authorized to conduct.

B. Lacking a delegation from the House, the committees could not compel the production of documents or the testimony of witnesses for purposes of an impeachment inquiry. Because the first impeachment-related subpoenas were not accompanied by the issuance of subpoenas but also the committees’ “oversight and legislative jurisdiction.” See supra note 9 and accompanying text. That assertion was reinforced by a letter from the committee that whether the committees could leverage their oversight jurisdiction to require the

77

January 21, 2020

CONGRESSIONAL RECORD — SENATE

S363
the committees’ investigative authority and lacked compulsory power, the committees were mistaken in contending that the recipients’ “failure or refusal to comply with the subpoena” evidenced a “violation of the institution of the House’s impeachment inquiry.” Three Chairmen’s Letter, supra note 2, at *3. As explained at length above, when the authority granted to the committee was authorized to exact the information during the deposition.

Second, we note that whether or not the impeachment inquiry was authorized, there were other, independent grounds to support directions by the Executive Branch that witnesses not appear in response to the committees’ subpoenas. We recently advised you that “the [Permanent Subcommittee on Investigations] ‘may be able to establish an interest in the appropriate protection of privileged information during the deposition. See id. at *4–5. In addition, we have concluded that the testimonial immunity of the President’s sen-

The resolution did not ratify them or otherwise address their terms.

Please let us know if we may be of further assistance.

STEVEN A. ENGEL, Assistant Attorney General.


3. Although volume 3 of Deschler’s Prece-

dents was published in 1979, our citations of Deschler’s Precedents use the continuously paginated version that is available at www.govinfo.gov/collection/precedents-of-


5. This opinion memorializes the advice we gave about subpoenas issued before October 31. We separately addressed some subpoenas that were served after October 31 for Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel (Nov. 7, 2019) (subpoena to Mick Mulvaney); Letter for Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel (Nov. 3, 2019) (subpoena to John Eisenberg); Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context, 43 Op. O.L.C. _ (Nov. 1, 2019) (subpoena to Representatives Committee on the Judiciary, Press Release: House Judiciary Committee Unveils Investigation into Trump’s Threats Against the Rule of Law (Oct. 4, 2019), judiciary.house.gov/news/press-releases/house-judiciary-committee-unveils-investigation-threats-against-rule-law; see also Letter for Jerrold Nadler, Chairman, Committee on the Judiciary, U.S. House of Representatives (Mar. 4, 2019).

6. On June 11, 2019, the House adopted Resolution 430. Its first two clauses authorized the Judiciary Committee to file a lawsuit to enjoin subpoenas against Attorney General William Barr and White House Counsel Donald McGahn and purported to authorize the Bipartisan Legal Advisory Group to approve future litigation. See H.R. Res. 430, 116th Cong. (2019). The next clause of the resolution then stated that, “in connection with any judicial proceeding brought under the first or second resolving clauses, the chair of any standing or permanent select committee exercising authority thereunder has any and all necessary authority under Article I of the Constitution.” Id. “The information did not ‘implicate’ the “submission from President Clinton, 43 Op. O.L.C. at *4. According to the DOI’s own officials, in connection with HPSCI’s impeachment investigation after October 31, that the committee may not compel an executive branch witness to appear before the House without the assistance of agency counsel, when that counsel is necessary to assist the witness in ensuring testimony in support of the House’s ‘sole Power of Impeachment.’” U.S. Const. art. I, §2, cl. 5. The House had not authorized such an investigation in connection with the impeachment inquiry before October 31, and the subpoenas therefore had no compulsory effect. The House’s adoption of Resolution 660 did not alter the legal status of those subpoenas. Resolution 660’s resolution did not ratify them or otherwise address their terms.

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6. On June 11, 2019, the House adopted Resolution 430. Its first two clauses authorized the Judiciary Committee to file a lawsuit to enjoin subpoenas against Attorney General William Barr and White House Counsel Donald McGahn and purported to authorize the Bipartisan Legal Advisory Group to approve future litigation. See H.R. Res. 430, 116th Cong. (2019). The next clause of the resolution then stated that, “in connection with any judicial proceeding brought under the first or second resolving clauses, the chair of any standing or permanent select committee exercising authority thereunder has any and all necessary authority under Article I of the Constitution.” Id. “The information did not ‘implicate’ the

8. While the House has delegated to the Bipartisan Legal Advisory Group the ability to “articulate the legal position of the House,” it has done so only for purposes of “litigation matters.” H.R. Rule II, cl. 8(b). Therefore, neither the group, nor the House counsel that groups subsequent directions, could assert the House’s authority in connection with an impeachment investigation, which is not a litigation matter.

9. E.g., Michael V. Alvarez, Acting Chief of Staff to the President, from Elieh J. Cummings, Chairman, Committee on Oversight & Reform, U.S. House of Representatives, Permanent Select Committee on Intelligence, U.S. House of Representatives, and Eliot L. Engel, Chairman, Committee on Foreign Affairs, U.S. House of Representatives at 1 (Oct. 4, 2019); Letter for Mark T. Esper, Secretary of Defense, from Adam B. Schiff, Chairman, Permanent Select Committee on Intelligence, U.S. House of Representatives, and Eliot L. Engel, Chairman, Committee on Foreign Affairs, U.S. House of Representatives at 1 (Oct. 4, 2019); Letter for Gordon Sondland, U.S. Ambassador to the European Union, from Adam B. Schiff, Chairman, Permanent Select Committee on Intelligence, U.S. House of Representatives, and Eliot L. Engel, Chairman, Committee on Foreign Affairs, U.S. House of Representatives at 1 (Oct. 7, 2019); Letter for Gordon Sondland, U.S. Ambassador to the European Union, from Adam B. Schiff, Chairman, Permanent Select Committee on Intelligence, U.S. House of Representatives, and Eliot L. Engel, Chairman, Committee on Foreign Affairs, U.S. House of Representatives at 1 (Oct. 7, 2019); Letter for Adam B. Schiff, from Kevin McCarthy, Representative, U.S. House of Representatives at 1 & n.1 (Oct. 3, 2019); Mem. Amicus Curiae of Ranking Member Doug Collins in Support of Denial at 5-21, In re Application of the Comm. on the Judiciary, U.S. House of Representatives, in Support of Its Application for an Order Authorizing the Release of Certain Grand Jury Materials, at 10 n.9, In re Application of the Comm. on the Judiciary (D.D.C. Sept. 30, 2019). HPSCI and the Judiciary Committee later reiterated these arguments in their reports, each contending that executive branch officials had “obstructed” the House’s impeachment inquiry by declining to comply with the pre-Octoer 31 impeachment-related subpoenas. H.R. Rep. No. 116–289, at 116–346, at 10, 13–16 (2019). But those reports asserted that the pre-October 31 subpoenas were authorized because the committee misunderstood the historical practice concerning the House’s impeachment inquiries (as we discuss in Part II.C) and they misread the committees’ subpoena authority under the House Rules (as we discuss in Part III.A.).


12. The House Judiciary Committee permitted President Nixon’s counsel to submit and respond to evidence, to request to call witnesses, to attend hearings and examinations, to object to the examination of witnesses, to object to the denial of access to documents, and to question witnesses. See H.R. Rep. No. 93–1305, at 8–9 (1974); 3 Derschler’s Precedents ch. 14, § 6, at 2045–47. Later, President Clinton added a supplemental listing to include all executive session and open committee meetings, “the sort at which they were permitted to ‘cross examine witnesses,’ ‘make objections to the admission of evidence,’ ‘submit the personnel of the Committee’s report,’ ‘suggest that the Committee receive additional evidence,’ and ‘respond to the evidence adduced by the Committee.’” H.R. Rep. No. 93–1305 at 8–9. (See also 1964 House panel precedent in 2 Derschler’s Precedents app. at 549 (2013) (noting that, during the House impeachment investigation, the House made a ‘deliberate attempt to mirror the procedures of the House of Representatives, to the extent that the House’s use of its legislative jurisdiction to circumspect the protections traditionally provided in connection with impeachment. See Message from James Buchanan (June 22, 1860), reprinted in 5 A Compilation of the Messages and Papers of the
the Presidents 625 (James D. Richardson ed., 1897) (objecting that if the House suspects presidential misconduct, it should ‘‘transfer the question from [its] legislative to [its] accusatory jurisdiction, and take care that the preliminary judicial proceedings preparatory to the vote of articles of impeachment the accused should enjoy the benefit of cross-examinations and all other safeguards with which the Constitution surrounds every American citizen’’); see also Mazzù USA, 940 F.3d at 762 (Kao, J., dissenting) (discussing the episode).

21. The district court’s recent decision in In re Application of the Committee on the Judiciary of the Senate for an Order Compelling the Production of John Dean, 112 F. Supp. 2d 10 (D.D.C. 2000), aff’d, 244 F.3d 238 (D.C. Cir. 2001), and the United States Supreme Court’s recent decision in en banc United States v. Doe, 127 S. Ct. 1586 (2007) (‘‘The question from [its] legislative to [its] accusatory jurisdiction, and to report thereon whether in its judgment the petitioner has made out a prima facie case; and also whether . . . Congress should adopt a resolution instructing the Judiciary Committee, which has already considered the subject, to take care that in the investigation, including by providing subpoena power. In the report recommending adoption of the resolution, the committee likewise described the resolution as ‘‘the authorization’’ by the House to the Supreme Court to conduct an investigation of Judge Samuel Alschuler in 1935 similarly involved only a preliminary investigation—albeit one with actual investigatory powers. The House first referred to the Judiciary Committee a resolution that, if approved, would authorize an investigation of potential violations of the Ethics in Government Act. 2 U.S.C. § 208 (1988). The House took no action on the referral. The committee began considering a separate resolution authorizing an impeachment investigation. 39th Cong., 2d Sess. 320–21 (1867); 3

24. See, e.g., 3 Hinds’ Precedents 2489, at 986 (William Van Ness, Mathias Tallmadge, and William Wirt); id. at 2490, at 987 (Joseph Smith, 1825); id. at 274, at 771 (James Peck, 1830); id. at 290, at 990 (Alfred Conkling, 1854); id. at 291, at 989 (Buckner Thurston, 1857); id. at 293, at 985 (W. Lawrence, 1889); id. at 295, at 2497, 2498, at 994, 998, 1003 (John Watrous, 1852–60); id. at 2500, at 1005 (Thomas Irwin, 1839); id. at 2885, at 805 (West Humphreys, 1828–30); id. at 2886, at 170 (U.S. Marshal, 1828–29); id. at 2889, at 1027 (Henry Blodgett, 1879); id. at 2537–18, at 1028, 1030–31 (Alexk Boarman, 1890–92); id. at 2519, at 1032 (J.G. Jenkins, 1884); id. at 2520, at 1033 (A. F. Johnson, 1893); id. at 2525, at 1021 (Heber J. Grant, 1882); id. at 2922, at 1023 (William Baker, 1872); id. at 2924, at 1024 (Charles Francis Adams). On occasion, the Judiciary Committee received evidence from the Ways and Means Committee, which had been investigating congressional abuses, but the Judiciary Committee conducted no further investigation; 6 Cannon’s Precedents 535, at 769 (Kenesaw Mountain Landis, 1921; the Judiciary Committee reported that ‘‘charges were filed too late in the present session of the Congress’’ to enable investigation); 3 Deschler’s Precedents 1541, at 2144–45 (Joseph Molyneaux, 1934; the Judiciary Committee took no action on the referral of a resolution that would have authorized an investigation).

30. The House did pass resolutions authorizing funds for investigations with respect to the Hastings impeachment, see H.R. Res. 134, 100th Cong. (1987); H.R. Res. 396, 100th Cong. (1988); and authorizing the Committee to permit its counsel to take affidavits and depositions in both the Nixon and Hastings impeachments, see H.R. Res. 362, 100th Cong. (1988); H.R. Res. 320, 100th Cong. (1987) (Hastings).

31. In the post-1989 era, as before, most of the impeachments again focused on the issues that were referred to the Judiciary Committee did not result in any further investigation. See, e.g., H.R. Res. 916, 109th Cong. (2006) (adopting a resolution relating to the impeachment of Justice Anthony M. Kennedy); H.R. Res. 93 (Robert Collins); H.R. Res. 177, 103d Cong. (1993) (Robert Algerii); H.R. Res. 176, 103d Cong. (1993) (Robert Collins).

32. As the Senate treats its rules as remaining in effect continuously from one Congress to the next without having to be re-adopted,” Richard S. Beth, Cong. Research Serv., R43929, Procedures for Considering Changes in Senate Rules 9 (Jan. 22, 2013). Of course, like the House, the Senate may change its rules by simple resolution.

33. See supra note 19, all writs, warrants, and subpoenas of, or issued by order of, the House.” Rule I, cl. 4. But that provision was not in effect when the House issued its own order. See Jefferson’s Manual §626, at 348.

34. Clause 2(r) of Rule XI was initially adopted on October 8, 1974, and took effect on January 3, 1975. See H.R. Res. 98B, 94th Cong. The rule appears to have remained materially unchanged from 1975 to the present (including the Clinton impeachment investigation). See H.R. Rule XI, cl. 2(r), 105th Cong. (Jan. 1, 1998) (version in effect during the Clinton investigation); Jefferson’s Manual §§655, at 596–89 (reprinting current version and describing the provision’s evolution).

35. At the start of the 93rd Congress in 1973, the Judiciary Committee was “authorized to conduct full and complete studies and investigations and make inquiries within its jurisdiction as set forth in [the relevant provi-

36. The Judiciary Committee also has in-

37. Even if the House had sought to ratify a previously issued subpoena, it could give the subpoena only prospective effect. As discussed above, the Supreme Court has recog-

38. The Committee relied on other sub-


40. The Department of Justice has for decades taken the position, and this Office recently reaffirmed, that “Congress may not compel executive branch officials to testify about their official duties.” Testimonial Immunity Before Congress of the Former Counsel to the President, 43 Op. O.L.C. ___ at *2 (July 25, 2019) (”[I]t would be unconstitutional to enforce a subpoena against an agency employee ‘under a more general rule.’”); Testimonial Immunity Before Congress of the Former Counsel to the President, 43 Op. O.L.C. ___ at *2 (May 20, 2019) (“The constitutional separation of powers bars Congress from exercising its “judicial power” in the face of a presidential assertion of executive privilege.”); Whether the Department of Justice May Prosecute White House Officials forConcealing Information in Clinton Impeachment, 39 Op. O.L.C. ___ at *4 (May 23, 2019) (“[It] would be unconstitu-

41. The major exception is that, in the President’s capacity as a presidential adviser, and related matters. See supra note 9, contained similar note 9, contained similar
during the frequent periods when Mr. Bolton was traveling. Mr. Kupperman participated in sensitive internal deliberations with the President and other senior advisers, maintained his relationship with the West Wing of the White House, traveled with the President on official trips abroad on multiple occasions, and regularly attended the presentation of the President’s briefing and meetings with the National Security Council presided over by the President.

Mr. Kupperman’s immunity from compelled testimony is strengthened because his duties concerned national security. The Supreme Court held in Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982) that for purposes of testimonial immunity, presidential advisers do not enjoy absolute immunity from civil liability—a holding that, as we have previously explained, does not conflict with our recognition of the President’s immunity from compelled congressional testimony for such advisers, see, e.g., Immunity of the Former Counsel, 43 Op. O.L.C. at *7-14. Yet the Harlow Court recognized that “[t]o aid en trusted with discretionary authority in such sensitive areas as national security or foreign policy,” even absolute immunity from suit “might not be enough to preserve a unhastening performance of functions vital to the national interest.” 457 U.S. at 812; see also id. at *8. In a derivative capacity, Presidential immunity would be strongest in such “central” Presidential domains as foreign policy and national security, in which the President discharges a particularly vital mandant without delegating functions nearly as sensitive as his own”).

Immuny is also particularly justified here because the Committee apparently seeks Mr. Kupperman’s testimony about the President’s conduct of relations with a foreign government. The President has the constitutional authority to conduct foreign relations, see Assertion of Executive Privilege for Documents Concerning Conduct of Foreign Affairs with Respect to Haiti, 20 Op. O.L.C. 5, 7 (1996) (A.G. Reno), and as a result, the President has the “exclusive authority to determine the time, scope, and objectives of international negotiations.” Unconstitutional Restrictions on Activities of the Office of Science and Technology Policy in Section 1340(a) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011, 35 Op. O.L.C. 1, 3 (Nov. 19, 2010) (citations omitted). Compelling testimony about these sensitive constitutional responsibilities would only deepen the very concerns that powers of confidentiality—underlie the rationale for testimonial immunity. See New York Times Co. v. United States, 403 U.S. 713, 728 (1971) (Stewart, J., concurring) (“[I]t is elementary that the successful conduct of international diplomacy and the maintenance of an effective national defense require both confidentiality and secrecy.

Finally, it is inconceivable that Mr. Kupperman is now a private citizen. In Immunity of the Former Counsel, we recognized that for purposes of testimonial immunity, there is “no material distinction” between “current and former senior advisers to the President,” and therefore, an adviser’s departure from the White House staff “does not alter his immunity from compelled congressional testimony on matters related to his service to the President.” 43 Op. O.L.C. at *16; see also Immunity of the Former Counsel to the President from Compelled Congressional Testimony, 31 Op. O.L.C. 191, 192-93 (2007). It is sufficient for us to recognize that Kupperman’s testimony on matters related to his official duties at the White House. Please let us know if we may be of further assistance.

STEVEN A. ENGEL, Assistant Attorney General.
not enjoy absolute immunity from civil liability—a holding that, as we have previously explained, does not conflict with our recognition of absolute immunity from compelled testimony for such officials, see Immunity of the Assistant to the President, 38 Op. O.L.C. at *5-9. Yet the Harlow Court recognized that “[f]or aides entrusted with discretionary authority in such sensitive areas as national security or foreign policy,” even absolute immunity from suit “might well be justified to protect the 'unhesitating performance of functions vital to the public interest.’” 457 U.S. at 812; see also id. at 812 n.19 (“a derivative claim to President’s immunity in his capacity as a senior adviser to the President. The President has the constitutional responsibility to conduct diplomatic relations, see Assertion of Executive Privilege for Documents Concerning Conduct of Foreign Affairs with Respect to Haiti, 20 Op. O.L.C. 5, 7 (1996) (A.G. Reno), and as a result, the President has the “exclusive authority to determine the policy of his government. Thus, he readily qualifies as ‘the President’ when it comes to the maintenance of an effective national defense and the independence and autonomy of the President. See New York Times Co. v. United States, 403 U.S. 713, 728 (1971) (Stewart, J., concurring) (“[I]t is elementary that the successful conduct of international diplomacy and the maintenance of an effective national defense require both confidentiality and secrecy.’”). Please let us know if we may be of further assistance.

STEVEN A. ENGEL, Assistant Attorney General.

DEAR MR. CIPOLLONE: On November 7, 2019, the Permanent Select Committee on Intelligence of the House of Representatives issued a subpoena seeking to compel Mick Mulvaney, the President’s Acting White House Chief of Staff, to testify at a deposition on Friday, November 8. The Committee subpoenaed Mr. Mulvaney as part of its inquiry into the impeachment of the President. See H.R. Res. 660, 116th Cong. (2019). You have asked whether the Committee may compel him to testify. We conclude that Mr. Mulvaney is absolutely immune from compelled congressional testimony in his capacity as a senior adviser to the President.

The Executive Branch has taken the position for decades that “Congress may not constitutionally compel the President’s senior advisers to testify about their official duties.” Testimonial Immunity of the Former Counsel to the President, 43 Op. O.L.C. ___ at *1 (May 20, 2019). The immunity applies to those “immediate advisers . . . who customarily meet with the President at a regular or frequent basis.” Memorandum for John D. Ehrlichman, Assistant to the President for Domestic Affairs, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, Re: Power of Congressional Committee to Compel Appearance or Testimony (Feb. 5, 1971) (“Rehnquist Memorandum”). We recently advised you that this immunity applies in an impeachment inquiry just as in a non-impeachment context. Letter for Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel at 2 (Nov. 3, 2019). “Even when a potential shredding of proceedings are underway,” we explained, “the President must remain able to continue to discharge the duties of his office. The testimonial immunity of the President’s senior advisers remains an important limitation to protect the independence and autonomy of the President recently invoked subpoenas. This immunity applies in connection with the Committee’s subpoena for Mr. Mulvaney’s testimony. The Committee intends to question Mr. Mulvaney about matters related to his official duties at the White House—specifically the President’s conduct of foreign relations with Ukraine. See New York Times Co. v. United States, 457 U.S. 800, 812 n.19 (1982) (‘‘a derivative claim to President’s immunity in his capacity as a senior adviser to the President. The President has the constitutional responsibility to conduct diplomatic relations, see Assertion of Executive Privilege for Documents Concerning Conduct of Foreign Affairs with Respect to Haiti, 20 Op. O.L.C. 5, 7 (1996) (A.G. Reno), and as a result, the President has the “exclusive authority to determine the policy of his government. Thus, he readily qualifies as ‘the President’ when it comes to the maintenance of an effective national defense and the independence and autonomy of the President. See New York Times Co. v. United States, 403 U.S. 713, 728 (1971) (Stewart, J., concurring) (“[I]t is elementary that the successful conduct of international diplomacy and the maintenance of an effective national defense require both confidentiality and secrecy.’”). Please let us know if we may be of further assistance.

STEVEN A. ENGEL, Assistant Attorney General.

DRAFT TRADITIONAL MEMORANDUM OF PRESIDENT DONALD J. TRUMP


[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of President Donald J. Trump

REPLICATION OF THE UNITED STATES HOUSE OF REPRESENTATIVES, THE ANSWER OF PRESIDENT DONALD J. TRUMP TO THE ARTICLES OF IMPEACHMENT

The House of Representatives, through its Managers and counsel, replies to the Answer of President Donald J. Trump as follows:

The House denies each and every allegation and defense in the Preamble to the Answer.

The American people entrusted President Trump with the extraordinary powers vested in his Office by the Constitution, powers which he swore a sacred Oath to use for the Nation’s benefit. President Trump broke that promise. He used Presidential powers to pressure a vulnerable foreign partner to interfere in our elections for his own benefit. In doing so, he jeopardized our national security and our democratic self-governance. He then used his Presidential powers to orchestrate a cover-up unprecedented in the history of our Republic: a complete and relentless obstruction of the truth. Congress is obligated to use every tool at its disposal, including the power of impeachment, to hold him accountable. Congress will pursue the truth with determination and resolve.

President Trump maintains that the Senate cannot remove him even if the House proves every claim in the Articles of Impeachment. That is a chilling assertion. It is also dead wrong. The Framers deliberately drafted a Constitution that allows the Senate to remove Presidents who, like President Trump, abuse their power to cheat in elections, betray our national security, and ignore checks and balances. That President Trump believes otherwise, and insists he is free to engage in such conduct again, only highlights the continuing threat he poses to the Nation if allowed to remain in office.

Despite President Trump’s stonewalling of the impeachment inquiry, the House amassed overwhelming evidence of his guilt. It did so through fair procedures rooted firmly in the Constitution and precedent. It extended President Trump protections equal to those given to every other President in prior impeachment inquiries. To prevent President Trump’s obstruction of justice until after the very election he has argued is both necessary and desirable is dead wrong. The Framers deliberately drafted a Constitution that allows the Senate to use every tool at its disposal, including the power of impeachment, to hold him accountable. Congress will pursue the truth with determination and resolve.

President Trump asserts that his impeach-ment is a partisan ‘hoax.’ The House duly approved Articles of impeachment because its Members swore Oaths to support and defend the Constitution against all threats, foreign and domestic. The House has fulfilled its constitutional duty. Now, Senators must honor their own Oaths by
holding a fair trial with all relevant evidence. The Senate should place truth above faction. And it should convict the President on both Articles.

ARTICLE I

The House denies each and every allegation in the Answer to Article I that denies the acts, knowledge, intent, or wrongful conduct charged against President Trump. The House further states that the affirmative defenses set forth in the Answer to Article I is true, and that any affirmative defenses set forth in the Answer to Article I are wholly without merit. The House further states that any affirmative defense of an impeachable offense under the Constitution, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate before it can be dismissed.

Article I charges President Trump with Abuse of Power. The President solicited and pressured a foreign nation, Ukraine, to help him cheat in the next Presidential election by announcing two investigations: the first into an American citizen who was also a political opponent of his; the second into a baseless conspiracy theory promoted by Russia in Ukraine, not Russia, interfered in the 2016 election. President Trump sought to coerce Ukraine into making these announce- ments not merely as an instrument in Washington domestic, reelection politics. As ex- amined, not merely as an instrument in Wash- ington domestic, reelection politics. As exam- ined, not merely as an instrument in Wash- ington domestic, reelection politics. As exam- ined, not merely as an instrument in Wash- ington domestic, reelection politics. As exam- ined, not merely as an instrument in Wash- ington domestic, reelection politics. As exam- ined, not merely as an instrument in Wash- ington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam-

First, the impeachment inquiry was prop- erly authorized and Congressional subpoenas do not require a vote of either House. Second, President Trump’s blanket and cat- ego- rical defiance of the House stemmed from his unilateral decision not to participate in any impeachment investigation, not from any legal assertion.

Third, President Trump never actually as- serted a ‘privileged’ protection he has not been accepted as a basis for defying impeachment subpoenas. The foreign affairs and national security setting of this impeachment does not require a different re- sult here; it makes the President’s obstruc- tion all the more alarming. The Framers ex- plicitly stated that betrayal involving for- eigners is a core offense. The President immediately after he did so only after he was caught red- handed. And he still has not met with President Zelensky at the White House, which Ukraine has long sought to demonstrate United States support in the face of Russian aggression.

The Answer offers an unconvincing and im- plausible defense against the factual alleging in Article I. The ‘simple facts’ that it presents are either lies or outright forgeries. President Trump did not care at all about the release of desperately needed military aid and a vital White House meeting. There is overwhelming evidence of the charges in Article I. The Answer’s statement of material facts that the House submitted on January 18, 2020. In his Answer, the President describes “several imperfections” that prove he “did nothing wrong.” This is false. President Trump cites the record of his July 25, 2019 phone call with President Volodymyr Zelensky of Ukraine, where he repeatedly used the word “corruption” during the call and the transcript and confirmed his guilt. It shows, first and foremost, that he solicited a foreign power to announce two politically motivated investigations that would benefit him personally. It also indicates that he linked these investigations to the release of military assistance: on the call, he responded to President Zelensky’s inquiries about U.S. military support by pressuring him “to do us a favor.” In the next election, he announced plans to remove his Office of the Transatlantic Co-working and to “cooperate” with President Trump. This is the argument of a monarch, with no basis in the Constitu- tion.

Abuse of Power is an impeachable offense. When the Framers wrote the Impeachment Clause, they aimed it squarely at abuse of of- fice for personal gain. It is clear that the President engaged in a cover-up and concealing additional relevant evidence. He cannot deny facts established by overwhelming evidence while concealing additional relevant evidence. President Trump also asserts that Article I does not state an impeachable offense. In his view, the American people are powerless to remove a President from Office of the Transatlantic Co-working and to “cooperate” with President Trump. This is the argument of a monarch, with no basis in the Constitution.

Abuse of Power is an impeachable offense. When the Framers wrote the Impeachment Clause, they aimed it squarely at abuse of of- fice for personal gain. It is clear that the President engaged in a cover-up and concealing additional relevant evidence. He cannot deny facts established by overwhelming evidence while concealing additional relevant evidence.

Fourth, the President’s invocation of “ab- solute immunity” fails because this fictional doctrine has been rejected by every court to consider it in similar circumstances; President Trump extended it far beyond any un- derstanding by prior Presidents; and it offers no explanation for his across-the-board refusal to turn over every single document subpoenaed.

Finally, the President’s lawyers have ar- gued that the court that President Trump is currently under the Constitution, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment, not from any legal assertion.

The President also points to statements by “President Zelensky and other Ukrainian officials” that deny any impropriety. Yet there is clear proof that Ukrainian officials felt pressured by President Trump and grasped the corrupt nature of his scheme. For example, national security advisor stated that President Zelensky “is sensitive about Ukraine being taken seri- ously, not merely as an instrument in Wash- ington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam- ined, not merely as an instrument in Washington domestic, reelection politics. As exam-

The House further states that each and every al- legation in the Answer to Article II that denies the acts, knowledge, intent, or wrongful conduct charged against President Trump. The House further states that each and every al- legation in the Answer to Article II that denies the acts, knowledge, intent, or wrongful conduct charged against President Trump. The House further states that each and every al- legation in the Answer to Article II that denies the acts, knowledge, intent, or wrongful conduct charged against President Trump. The House further states that each and every al- legation in the Answer to Article II that denies the acts, knowledge, intent, or wrongful conduct charged against President Trump. The House further states that each and every al- legation in the Answer to Article II that denies the acts, knowledge, intent, or wrongful conduct charged against President Trump. 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his own misconduct, President Trump asserted the prerogative to nullify Congress's impeachment power itself. He placed himself above the law and eviscerated the separation of powers. This claim erodes monarchy and despotism. It has no place in our democracy, where even the highest official must answer to Congress and the Constitution.

CONCLUSION

The House denies each and every allegation and defense in the Conclusion to the Answer. President Trump did not engage in this corruption and obstruction to protect the President from protection the right to vote. He did it to cheat in the next election and bury the evidence when he got caught. He has acted in ways that are expressly prohibited, while injuring our national security and democracy. And he will persist in that misconduct—which he deems "perfect"—unless and until he is removed from office. The Senate should do so following a fair trial.

Respectfully submitted,
United States House of Representatives

ADAM B. SCHIFF,
JEHROLD NADLER,
LOFGREN,
ZOE R. GARCIA,
U.S. House of Representatives Managers.


(In the Senate of the United States Sitting as a Court of Impeachment)

In re Impeachment of President Donald J. Trump

REPLY MEMORANDUM OF THE UNITED STATES HOUSE OF REPRESENTATIVES IN THE IMPEACHMENT TRIAL OF PRESIDENT DONALD J. TRUMP

INTRODUCTION

President Trump's brief confirms that his misconduct is indefensible. To obtain a personal political "favor" designed to weaken a political rival, President Trump corrupted the newly elected Ukrainian President Zelensky with interventionalist investigations. As leverage against Ukraine in his corrupt scheme, President Trump illegally withheld hundreds of millions of dollars in security assistance critical to Ukraine's defense against Russian aggression, as well as a vital Oval Office meeting. When he got caught, President Trump sought to cover up his scheme by ordering his Administration to disclose no information to the House of Representatives in its impeachment investigation. President Trump's efforts to hide his misconduct continue to this day, as does his efforts to solicit foreign interference. President Trump must be removed from office now because he is trying to cheat his way to victory in an important presidential election, and he thereby undermines the very foundation of our democratic system.

President Trump's lengthy brief to the Senate claims without evidence or procedural grievances, but entirely lacks a legitimate defense of his misconduct. It is clear from his response that President Trump would rather discuss anything other than what he actually did. Indeed, the first 80 pages of his brief do not meaningfully attempt to defend his conduct—because there is no defense for a President who has obstructed Congress with information and his assertion that his own lawyers are the sole judges of impeachable offenses must involve criminal conduct is refuted by two centuries of precedent and, if adopted, would have intolerable consequences. But this argument has not been accepted in previous impeachment proceedings and should not be accepted here. As late member of his legal team previously conceded, President Trump's theory would mean that the President could not be impeached even if he allowed an enemy power to invade and conquer American territory. The absurdity of that argument demonstrates why every serious constitutional scholar to consider it—including the House Republicans' own legal expert—has rejected it.4 The Framers intentionally did not tie "high Crimes and Misdemeanors" to the federal criminal code—which did not exist at the time of the Constitution's adoption—but instead created impeachment to cover severe abuses of the public trust like those of President Trump. Third, President Trump now claims that he had virtuous reasons for withholding from our ally Ukraine sorely needed security assistance and that there was no actual threat or reward as part of his proposed corrupt bargain. But the President's after-the-fact justifications for his illegal hold on security assistance cannot fool anybody. The reason President Trump jeopardized U.S. national security and the integrity of our elections is even more pernicious: he wanted leverage in the upcoming election to manipulate the Nation's democratic process for political favor that he hoped would bolster his reelection bid.

If withholding the security assistance to Ukraine undercuts the President's own policy interests, then there is no reason President Trump's staff would have gone to such lengths to hide it, and no reason President Trump would have tried so hard to deny the obvious when it came to light. It is common sense that innocent people do not behave like President Trump did here. As his own Administration has bluntly confessed and as numerous other witnesses confirmed, there was indeed a quid pro quo with Ukraine. The Trump Administration's message was clear: "We do that all the time with foreign policy." Instead of embracing what his Acting Chief of Staff honestly disclosed, President Trump has tried to hide what the evidence plainly reveals: the Emperor has no clothes.

Fourth, President Trump's assertion that he is protected from impeachment during an impeachment trial is another falsehood. In fact, unlike any of his predecessors, President Trump's lawyers have not attempted to provide the House with any information and demanded that the entire Executive Branch cover up his misconduct. President Trump's subterfuges fall in line with the President's complaints about the House's "sole Power of Impeachment." No amount of legal rhetoric can distract from the plain fact that President Trump exemplifies why the Framers included the impeachment mechanism in the Constitution: to save the American people from the likes of their own President. Second, President Trump's assertion that impeachable offenses must involve criminal conduct is refuted by two centuries of precedent and, if adopted, would have intolerable consequences. But this argument has not been accepted in previous impeachment proceedings and should not be accepted here. As late member of his legal team previously conceded, President Trump's theory would mean that the President could not be impeached even if he allowed an enemy power to invade and conquer American territory. The absurdity of that argument demonstrates why every serious constitutional scholar to consider it—including the House Republicans' own legal expert—has rejected it.4 The Framers intentionally did not tie "high Crimes and Misdemeanors" to the federal criminal code—which did not exist at the time of the Constitution's adoption—but instead created impeachment to cover severe abuses of the public trust like those of President Trump. Third, President Trump now claims that he had virtuous reasons for withholding from our ally Ukraine sorely needed security assistance and that there was no actual threat or reward as part of his proposed corrupt bargain. But the President's after-the-fact justifications for his illegal hold on security assistance cannot fool anybody. The reason President Trump jeopardized U.S. national security and the integrity of our elections is even more pernicious: he wanted leverage in the upcoming election to manipulate the Nation's democratic process for political favor that he hoped would bolster his reelection bid.

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and political interests above those of our Nation, and they understand that foreign interference in our elections was one of the gravest threats to our democracy. The Framers believed that periodic democratic elections cannot serve as an effective check on a President who seeks to manipulate the those elections. The ultimate check on President Trump’s conduct would be for the Congress to empower the Framers through the power to impeach and remove a President—a power that the Framers vested in the representatives of the American people.

Indeed, on the eve of his impeachment trial, President Trump continues to insist that he has done nothing wrong. President Trump’s argument cannot be countenanced, except in an election he seeks to fix in his favor, underscores the need for the Senate to exercise its sole constitutional duty to remove President Trump from office. If the Senate does not convict and remove President Trump, he will have succeeded in placing himself above the law. Each senator should ask whether they would support and hold President Trump accountable to protect our national security and democracy.

ARGUMENT

I. President Trump must be Removed for Abusing his Power

A. President Trump’s Abuse of Power Is a Quintessential Impeachable Offense

President Trump contests that he can abuse power impunity—in his words, “do whatever I want as President”—provided he does not technically violate a statute in the process. That argument is both wrong and remarkable. History, precedent, and the words of the Framers conclusively establish that serious abuses of power offends the “trust” that the Framers ‘trust’ in a “President Trump” that threaten our democratic order, that demand accountability.

President Trump’s own misconduct illustrates the implications of his position. In President Trump’s view as long as he does not violate a specific statute, then the only check on his corrupt abuse of his office for his personal gain is the need to face reelection—eventually. The very goal of his abusive behavior is to cheat in that election. If President Trump were to succeed in his scheme and win a second and final term, he would face no such consequences. The Senate must reject that dangerous position.

1. The Framers Intended Impeachment as a Remedy for Abuse of High Office. President Trump contests that the fear that Presidents would abuse their power was among the key reasons that the Framers adopted an impeachment remedy.8 But he contends that abuse of power was never intended to be an impeachable offense in its own right.10

President Trump’s focus on the label to be applied to his conduct distracts from the fundamental point: his conduct is impeachable whether it is called an “abuse of power” or something else. The Senate is not engaged in an abstract debate about how to categorize the particular acts at issue; the question instead is whether President Trump’s conduct is impeachable because it carries all the essential qualities of impeachable offenses.

The Framers focused on the toxic combination of corruption and foreign interference—what James Madison put simply: “The President ‘might betray his trust to foreign powers.’”11

To the Framers, such an abuse of power was the quintessential impeachable conduct. They therefore rejected a proposal to limit impeachable offenses to only treason and bribery. They recognized the peril of setting a rigid standard for impeachment, and adopted a more flexible standard that the Framers considered “great and dangerous offenses” that “might ‘subvert the Constitution.’”12 The Framers considered and rejected the idea of impeachment for “corruption,” deciding instead on the term “high Crimes and Misdemeanors” because it would encompass the type of “abuse or violation of the public trusts” that President Trump committed here.13

2. Impeachable Conduct Need Not Violate Established Law. President Trump contends that his conduct is not impeachable because it violates no known statute.14 That contention conflicts with constitutional precedents and the overwhelming consensus of constitutional scholars.

The Framers borrowed the term “high Crimes and Misdemeanors” from British practice and state constitutions. As that term was applied in England, officials who had long been impeached for non-statutory offenses, such as the failure to spend money allocated by Parliament, disobeying an order of Parliament, and appointing unqualified subordinates.15 The Framers intended impeachable offenses to be “so various in their character, and so indefinable in their actual involvements, that it is almost impossible to provide systematically for all of them.”16 American precedent confirms that the Impeachment Clause is not confined to a statutory code. The articles of impeachment against President Nixon turned on his abuse of power, rather than on his commission of a statutory offense. Many of the specific allegations set forth in those three articles did not violate any known law; indeed, the House Judiciary Committee emphasized that President Nixon’s conduct was “undertaken for his own personal political advantage and not in furtherance of any valid national policy objective.”17 American precedent has expressed that the abuses of power warranted removal regardless whether they violated a specific statute.18

Previous impeachments were in accord. In 1912, for example, Judge Archibald was impeached and convicted for using his position to influence prospective litigants with potential litigants in his court, even though this behavior had not been shown to violate any then-existing law regulating judicial conflicts. The House Manager in the Archibald impeachment asserted that “[t]he decisions of the Senate of the United States, of the various State tribunals which have jurisdiction over impeachment cases, and of the Parliament of England all agree that an offense, in order to be impeachable, need not be indictable either at common law or under any statute.”19 As early as 1803, Judge Pickering was impeached and then removed from office by the Senate for refusing to allow an appeal, deciding cases, and appearing on the bench while intoxicated and thereby “degrading the honor and dignity of the United States.”20

President Trump’s argument conflicts with a long history of scholarly consensus, including among “some of the most distinguished members of the [Constitutional] convention.”21 The American precedents familiar to the Framers.22 It would be all the more wrong in their view because it involves a solicitation to a foreign sovereign to act to manipulate our democratic elections. The absurdity of that argument helps explain why it has been so uniformly rejected.

Even if President Trump were correct that the Impeachment Clause covers only conduct that violates established law, his argument would fail. President Trump concedes that “modern States and American precedents encompass conduct that is akin to the terms that precede it in the Constitution—treason and bribery.”23 And the casualness of reasonable doubt that his misconduct is close akin to bribery. “The corrupt exercise of power in exchange for a personal benefit defines impeachable bribery.”24 Here, President Trump conditioned his performance of a required duty (disbursement of Congressionally appropriated aid funds to Ukraine) on the receipt of personal benefit (the announce-ment of investigations designed to skew the upcoming election in his favor). This conduct carries all the essential qualities of bribery as understood by modern American precedents familiar to the Framers.25

The absurdity of that argument helps explain why it has been so uniformly rejected.

3. Corrupt Intent May Render Conduct an Impeachable Abuse of Power. President Trump next contends that the Impeachment Clause does not encompass any abuse of power that turns on the President’s reasons for acting. But President Trump’s position could perform an act for legitimate reasons, and so invoke the discharge of the duties of political of-
turns on similar considerations of corrupt intent. And, contrary to President Trump’s assertion, past impeachments have concerned “permissible conduct that had been simply categorized as wanton or wrongful conduct.” The first and second articles of impeachment against President Nixon, for example, charged him with using the powers of his office in support of quid pro quo schemes to obstruct justice and targeting his political opponents—in other words, for exercising Presidential power based on impermissible reasons.

There are many acts that a President has “objective” authority to perform that would constitute grave abuses of power if done for corrupt reasons. Such authority may arise from the President’s office with the impermissible goals of obstructing justice, removing a political rival, or for other corrupt motives, his conduct would be impeachable— as our Supreme Court added light on the facts.

Although President Trump argues that he “did not make any connection between the assistant attorney general and Ukrainian interference” as Acting Chief of Staff, Mick Mulvaney, admitted the opposite during a press conference— conceding that the investigation into Ukraine interference was part of “why we held up the money.” After a reporter inquired about this concession of a quid pro quo, Mr. Mulvaney replied, “We do this administration with foreign assistance, we added, ‘get over it,’ and then refused to explain these statements by testifying in response to a House subpoena. The President’s brief does not even address Mr. Mulvaney’s admission. Ambassador Taylor also acknowledged the quid pro quo, stating, “I think it’s crazy to withhold security assistance with a political campaign.” And Ambassador Sondland testified that the existence of a quid pro quo regarding the security assistance was as clear as “two plus two equals four.” President Trump’s lawyers also avoid responding to these statements.

The same is true of the long-sought Oval Office meeting. As Ambassador Sondland testified: “I know that members of this committee frequently frame these complicated issues in the form of a simple question: Was there a quid pro quo? He answered “with regard to the requested White House call and the White House meeting, the answer is yes.” Ambassador Taylor reaffirmed the existence of a quid pro quo regarding the Oval Office meeting, testifying that “the meeting President Zelensky wanted and Oval Office meeting on foreign policy grounds when it was underway. To the contrary, President Trump’s lawyer Rudy Giuliani acknowledged about his Ukrainian interference in the 2016 elections. Other witnesses testified similarly. President Trump’s principal answer to this evidence is to point to two conversations in which he declared to Ambassador Sondland and Senator John McCain that there was “no quid pro quo.” Both statements are false, and President Trump knew it after the White House had been informed of the whistleblower complaint against him, at which point he obviously had a strong motivation to come up with a seemingly innocent cover story for his misconduct.

In addition, President Trump’s brief the second conversation he had with Ambassador Sondland during their call. Immediately after declaring that there was “no quid pro quo,” the President insisted that “President Zelensky’s cooperation is very important that he wants to do it.” President Trump thus conveyed that President Zelensky “must” announce the sham investigations in exchange for American support—the very definition of a quid pro quo, notwithstanding President Trump’s self-serving, false statement to the contrary. Indeed that statement shows his consciousness of guilt.

President Trump also asserts that there cannot have been a quid pro quo because the President’s own officials have denied that President Trump acted improperly. But the evidence shows that Ukrainian officials understood that U.S. foreign policy regarding Ukraine, specifically that $300 million in aid was being held up, depended on the President’s quid pro quo in exchange for the announcement of two sham investigations that would help him personally. In fact, he praised a corrupt prosecutor and released Burisma and alleged Ukrainian interference in anti-corruption efforts. President Trump did not seek investigations into alleged corruption— as one would expect if anti-corruption efforts were being exposed. Instead, he used sham investigations to lanc headline investigations that would help him personally. President Trump asserts that he released the aid in response to Ukraine’s actual progress on combating financial institutions have committed over $16 billion to Ukraine. Since 2015, the United States and the European financial institutions have committed over $16 billion to Ukraine. In addition, President Trump never even asked European countries to increase their contributions to Ukraine as a condition for releasing the assistance. He released the assistance even though European countries did not change their contributions. President Trump’s asserted concern about burden-sharing is impossible to credit given that he kept his own Administration in the dark about the issue for months, never made any contemporaneous public statements about it, never asked Europe to increase its contribution, and released the aid two days after an investigation into his misconduct. And President Trump’s assertion that the removal of a former Ukrainian prosecutor general encouraged him to release the aid is astonishing. On the July 25 call with President Zelensky, President Trump praised that very same prosecutor for investigating his political rival.

The Burisma Pretext. The conspiracy theory that “the Bidens” were involved in Ukrainian corruption has never been attributed to his hold on military aid to a concern about other countries not sharing the burden of supporting Ukraine. One reason he never attempted to justify the hold on these grounds is that it is not grounded in reality. Other countries in fact contribute substantially to Ukraine. Since 2015, the United States and the entire European financial institutions have committed over $16 billion to Ukraine.

The Burisma Pretext. The conspiracy theory regarding Vice President Biden and Burisma is baseless. There is no credible evidence to
support the allegation that Vice President Biden encouraged Ukraine to remove one of its prosecutors in an improper effort to protect his son. To the contrary, Biden was carrying out policies that were consistent with the Administration's support for Ukrainian reform. And President Trump and his aides have repeatedly claimed that the same matters he seeks to protect. Executive privilege generally cannot be used to shield misconduct, and it does not apply here because President Trump and his associates have repeatedly claimed that the same matters he seeks to protect. The Intelligence Community, Senate Select Committee on Intelligence, and Special Counsel Mueller all unanimously found that Russia—not Ukraine—interfered in the 2016 election. President Trump's own FBI Director confirmed that American law enforcement has “no information that indicates that the Russian government interfered with the 2016 presidential election.” In fact, the theory of Ukrainian interference is Russian propaganda—a fictional narrative that is being perpetuated by the President and his security services themselves—to drive a wedge between the United States and Ukraine.

Thanks to President Trump, this Russian propaganda effort is spreading. In November, President Vladimir Putin said, “Thank God no one is accusing us of interfering in the U.S. elections. And now they are even accusing Ukraine of doing this.” President Trump is correct in asserting “that the United States has a compelling interest...in limiting the participation of foreign political parties in American democratic self-government.” and that is exactly why his misconduct is so harmful, and warrants removal from Office.

II. President Trump must be removed for obstructing congress

President Trump has answered the House's constitutional mandate to enforce its “sole power of Impeachment” with open defiance. For over two years, he has sought to whole sale by withholding documents, directly witnessing not to appear, threatening those who did, and declaring both the courts and Congress powerless to compel his compliance. As President Trump flatly stated, “I have an Article II, where I have the right to do whatever I want as president.”

President Trump further seeks to excuse his obstruction by falsely claiming that he has been transparent and by hiding behind hypothetical executive privilege claims that he has never invoked and that do not apply.

A. President Trump's Claim of Transparency Ignores the Facts

President Trump does not appear to dispute that the Congress during its impeachment investigation is itself an impeachable offense. He instead falsely insists that he “has been extraordinarily transparent...in his interactions with President Zelensky.”

President Trump’s transparency claim bears no resemblance to the facts. In no uncertain terms, President Trump has steadfastly insisted that “we’re fighting all the subpoenas [from Congress].” Later, through his White House Counsel, President Trump directed the entire executive branch to defy the House’s subpoenas for documents in the impeachment—and as a result not a single document from the Executive Branch was produced to the House. President Trump then instructed his personal attorney to tell the House’s subpoenas for documents in the impeachment—-and as a result not a single document from the Executive Branch was produced to the House. President Trump then instructed his personal attorney to tell the House: “We’re not going to hand over any documents.”

B. President Trump Illegally Refused to Comply with the House’s Impeachment Inquiry

In an impeachment investigation, the House has a constitutional entitlement to information concerning the President’s misconduct. President Trump’s categorical obstruction would, if accepted, seriously impair the impeachment process the Framers carefully crafted to guard against President misconduct.

President Trump asserts that individualized disputes to congressional subpoenas do not rise to the level of an impeachable offense. But this argument distorts the categorical nature of his refusal to comply with the impeachment investigation. President Trump has refused any and all cooperation and ordered his Administration to do the same. No President in our history has so flagrantly undermined the impeachment process.

President Nixon ordered “[a]ll members of the White House Staff [to] appear voluntarily...to testify under oath, and to answer fully all proper questions.” Even so, the Judiciary Committee voted to impeach him for not fully complying. When he withheld complete responses to certain subpoenas on executive privilege grounds, the Committee emphasized that “the doctrine of separation of powers cannot justify the withholding of information from an impeachment inquiry” because “the very purpose of such an inquiry is to permit the public to judge how well the people...to curb the excesses of another branch, in this instance the Executive.” If President Nixon’s obstruction of Congress raised a “slippery slope” for future presidents to excuse their complete defiance, we are called upon to resolve the conflict. When the courts have been asked to consider this argument has rejected the Executive Branch's counsel were barred from litigating and losing. The fact that President Trump has found lawyers willing to concoct theories on which documents or testimony might be protected is indisputably necessary here. It also protects the rights of witnesses to speak freely and without fear of reprisal—presidential advisors are “alter egos” of the President—cannot be used to shield misconduct, President Trump’s refusal to disclose the Watergate Tapes. In other words, President Trump’s defense of absolute immunity theory is an invention of the Executive Branch, and every court to consider this argument has rejected it.

President Trump finally maintains that complying with the impeachment inquiry would somehow violate the constitutional separation of powers doctrine. This argument is exactly backwards. The President cannot be barred from doing the same. No President in our history has ever been denied his own right to have a fair trial in the Senate. The House has a constitutional entitlement to information concerning the President’s misconduct. The fact that President Trump has found lawyers willing to concoct theories on which documents or testimony might be protected is indisputably necessary here.

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A. The Constitution Does Not Authorize
President Trump to Second Guess the
House’s Exercise of Its “Sole Power of Impeachment”

President Trump’s attack on the House’s
conduct of its impeachment proceedings dis-
regards the text of the Constitution, which
provides the House with “the sole Power of Impeach-
ment.” Article I, § 2, cl. 5.127 The Constitution
emphatically empowers the House to determine the
rules by which its impeachment proceedings shall
be conducted. See U.S. Const. art. I, § 5, cl. 1.128
The House’s Rules Committee is the only
body within the House that authorizes subpoenas.
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would replace the President not the losing presidential candidate.” Reply of the U.S. House of Representatives to the Trial Mem.

9. Opp. at 57 n.383.
10. Opp. at 1–2.
14. Id. at 131.
15. Id. at 13.
16. Id. ¶14.
18. Opp. at 80.
20. Id. ¶179–83.
21. Id. ¶186–87.
23. The Federalist No. 69.
32. See Opp. at 43–44.
33. See United States v. Nixon, 418 U.S. 683, 706 (1974) (“neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process”).
34. Opp. at 46–47.
37. Opp. at 36; see id. at 48–54.
98. Statement of FactsA6,176.
103. Id. at 220.
104. Id. at 231.
105. Opp. at 4.
106. One district court presented with this same argument recently concluded that “[i]n cases of presidential impeachment, a House resolution has never, in fact, been required to begin an impeachment inquiry,” explaining that the argument “has no textual support in the U.S. Constitution or the governing rules of the House.” In re Application of Comm. on Judiciary, U.S. House of Representatives, for an Order Authorizing Release of Certain Grand Jury Materials, No. 19–48 (BAH), 2019 WL 5485221, at *27 (D.D.C. Oct. 25, 2019).
107. Opp. at 1.
108. See id.
112. See Opp. at 37–38.
113. See H. Res. 6, 116th Cong. (2019).
116. Id. ¶ 162; see H. Res. 680.
117. Opp. at 32; see Opp. at 1.
118. See, e.g., House Rule XI(b)(1) (authorizing standing committees of the House to “conduct at any time such investigations and studies as [they] consider[ ] necessary or appropriate”); see also id. X1.2(m)(1)(B) (authorizing committees to “require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as [they] consider[ ] necessary”).
120. Opp. at 57.
122. Id. at 19, 21.
123. See id. at 17–22.
125. Statement of Facts ¶¶ 177, 190.
127. Opp. at 20–21.
130. Opp. at 107–09.
134. Id. No. 116–346, at 12 (quoting Letter from Pat A. Cipollone, Counsel to the President, to Jerrold Nadler, Chairman, H. Comm. on the Judiciary (Dec. 6, 2019)).
136. The CHIEF JUSTICE. I note the presence in the Senate Chamber of the managers on the part of the House of Representa- tives and counsel for the President of the United States.
137. The majority leader is recognized.
138. Mr. MCCONNELL. Mr. Chief Justice, I send to the desk a list of floor privi- leges for closed sessions. It has been agreed to by both sides. I ask that it be inserted in the RECORD and agreed to by unanimous consent.
139. The CHIEF JUSTICE. Without objection, it is so ordered.
140. FLOOR PRIVILEGES DURING CLOSED SESSION Sharen Soderstrom, Chief of Staff, Majority Leader Scott Raab, Deputy Chief of Staff, Majority Leader Andrew Ferguson, Chief Counsel, Majority Leader Robert Kareen, National Security Advisor, Majority Leader Stefanie Muchow, Deputy Chief of Staff, Majority Leader (Cloakroom only) Nick Rossi, Chief of Staff, Assistant Majority Leader Mike Lynch, Chief of Staff, Democratic Leader Erin Vaughn, Deputy Chief of Staff, Democratic Leader Mark Patterson, Counsel, Democratic Leader Reginald Babin, Counsel, Democratic Leader Meghan Taira, Legislative Director, Demo- cratic Leader Gerry Petrella, Policy Director, Demo- cratic Leader Reema Dodin, Deputy Chief of Staff, Demo- cratic Whip Dan Schwager, Counsel, Secretary of the Senate Mike Dislvestro Pat Bryan, Senate Legal Counsel Morgan Frankel, Deputy Senate Legal Counsel Krista Beal, ASA, Capitol Operations, (Bob Shelton will substitute for Krista Beal if needed) Jennifer Hemingway, Deputy ASA Terrence Liley, General Counsel Robert Shelton, Deputy ASA, Capitol Operations* Brian McGinty, ASA, Office of Security and Emergency Preparedness* Robert Duncan, Assistant Majority Sec- retary

PROVIDING FOR RELATED PROCE- DURES CONCERNING THE ARTI- CLES OF IMPEACHMENT AGAINST DONALD JOHN TRUMP, PRESIDENT OF THE UNITED STATES

Mr. Chief Justice, I send a resolution to the desk and ask that it be read.

The CHIEF JUSTICE. The clerk will read the resolution.

The legislative clerk read as follows:

A resolution (S. Res. 483) to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States.

Resolved, That the House of Representa- tives shall file its record with the Secretary of the Senate, which will consist of those publicly available materials that have been submitted to or produced by the House Judi- ciary Committee, including transcripts of public hearings or markups and any mante- nances provided by the House Judiciary Committee or the House Judiciary Committee pursuant to House Resolution 660. Materials in this record will be admitted into evidence subject to any hearsay, evidentiary, or other ob- jections that the President may make after opening presentations are concluded. All ma- terials filed pursuant to this paragraph shall be final and made available to all parties.

The President and the House of Representa- tives shall have until 9 a.m. on Wednesday, January 22, 2020, to file any motions per- mitted under the impeachment with the exception of motions to subpoena wit- nesses or documents or any other evidentiary motions. Responses to any such mo- tions shall be filed no later than 11 a.m. on Wednesday, January 22, 2020. All materials filed pursuant to this paragraph shall be...
filed with the Secretary and be printed and made available to all parties.

Arguments on such motions shall begin at 1 p.m. on Wednesday, January 22, 2020, and each side may determine the number of persons to make its presentation, following which the Senate shall deliberate, if so ordered under the impeachment rules, and vote on any such motions.

Following the disposition of such motions, or if no motions are made, then the House of Representatives shall make its presentation in supersedence of impeachment for a period of time not to exceed 24 hours, over to 3 session days. Following the House of Representatives’ presentation, the President shall make his presentation for a period not to exceed 24 hours, over to 3 session days. Each side may determine the number of persons to make its presentation.

Upon the conclusion of the President’s presentation, Senators may question the parties for a period of time not to exceed 16 hours.

Upon the conclusion of questioning by the Senate, there shall be 4 hours of argument by the parties, equally divided, followed by deliberation by the Senate. If at issue, the Senate shall consider and debate under the impeachment rules the subpoenaed witnesses or documents. The Senate, without any intervening action, motion, or amendment, shall then decide by the yeas and nays whether it shall consider and debate under the impeachment rules any motion to subpoena witnesses or documents.

Following the disposition of that question, other motions provided under the impeachment rules shall be in order.

If the Senate agrees to allow either the House of Representatives or the President to subpoena witnesses, the Senate shall first be deposed and the Senate shall decide after deposition which witnesses shall testify, pursuant to the impeachment rules. No testimony shall be admissible in the Senate unless the parties have had an opportunity to depose such witnesses.

At the conclusion of the deliberations by the Senate, the Senate shall vote on each article of impeachment.

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

Mr. Manager Schiff, are you a proponent or an opponent of this motion?

Mr. Manager SCHIFF. Mr. Chief Justice, the House managers are in opposition to this resolution.

The CHIEF JUSTICE. Thank you.

Mr. Counsel CIPOPOLLE. We are a proponent of the motion.

The CHIEF JUSTICE. Mr. Cipollone, your side may proceed first, and we will have the opportunity to rebuttal if you wish.

Mr. Counsel CIPOPOLLE. Thank you, Mr. Chief Justice.

Majority Leader MCCONNELL, Democratic Leader SCHUMER, Senators, my name is Pat Cipollone, I am here as counsel to the President of the United States. Our team is proud to be here, representing President Trump.

We support this resolution. It is a fair way to proceed with this trial. It is modern, it is fair, it is constitutional, which had 100 Senators supporting it the last time this body considered impeachment. It requires the House managers to stand up and make their opening statement and make their case. They have delayed bringing this impeachment to this body for 33 days, and it is time to start with this trial. It is a fair process. They will have the opportunity to make their opening statement. They will get 24 hours to do that. Then the President’s attorneys will have a chance to respond. After that, all of you will have 16 hours to ask whatever questions you have until the trial is finished and you have all of that information, we will proceed to the question of witnesses and some of the more difficult questions that will come before this body.

We are in favor of this. We believe that once you hear those initial presentations, the only conclusion will be that the President has done absolutely nothing wrong and that these Articles of Impeachment do not begin to approach the importance of the Constitution, and, in fact, they themselves will establish nothing beyond those articles. You will look at those articles alone, and you will determine that there is absolutely no case.

So we respectfully ask you to adopt this resolution so that we can begin with this process. It is long past time to start this proceeding, and we are here today to do it, and we hope that the House managers will agree with us and begin this proceeding today.

We reserve the remainder of our time for rebuttal.

Mr. Manager SCHIFF. Mr. Chief Justice, Senators, and counsel for the President, the House managers, on behalf of the House of Representatives, rise in opposition to Leader MCCONNELL’s resolution.

Let me begin by summarizing why.

Last week we came before you to present the Articles of Impeachment against the President of the United States for only the third time in our history. Those articles charge President Donald John Trump with abuse of power and obstruction. The misconduct set out in those articles is the most serious ever charged against a President.

The first article, abuse of power, charges the President with soliciting a foreign power to help him cheat in the next election. Moreover, it alleges—and we will prove—that he sought to coerce Ukraine into helping him cheat by withholding official acts—two official acts relating to the new President of Ukraine desperately sought with President Trump at the White House to show the world and the Russians, in particular, that the Ukrainian President had a good relationship with his American patron, the President of the United States. And even more perniciously, President Trump illegally withheld almost $400 million in taxpayer-funded military assistance to Ukraine, a nation at war with our Russian adversary, to compel Ukraine to help him cheat in the election.

Astonishingly, the President’s trial brief, filed yesterday, contends that even if this conduct is proved, that there is nothing that the House or this Senate may do about it. It is the President’s apparent belief that under article II he can do anything he wants, no matter how corrupt, outfitted in gaudy legal phrases.

And yet, when the Founders wrote the impeachment clause, they had precisely this type of misconduct in mind—conduct that abuses the power of his office for personal benefit, that undermines our national security, that invites foreign interference in our democratic process of an election. It is the trifecta of constitutional misconduct justifying impeachment.

In article II the President is charged with other misconduct that would likewise have alarmed the Founders—the full, complete, and absolute obstruction of a coequal branch of government, the Congress, during the course of its impeachment investigation into the President’s own misconduct. This is not a bit as damaging to our constitutional order as the misconduct charged in the first article.

If a President can obstruct his own investigation, if he can effectively nullify a power the Constitution gives to the Congress—indeed, the ultimate power—the ultimate power the Constitution gives to prevent Presidential misconduct, then, the President places himself beyond accountability, above the law. He cannot be held accountable, cannot be impeached, cannot be removed.”

And if the House has proved its case—and we believe the evidence will not be seriously contested—you will have to answer at least one other critical question: Does the commission of these high crimes and misdemeanors require the conviction and removal of the President?

We believe that it does, and that the Constitution requires that it be so or the power of impeachment must be rendered irrelevant or a casualty to partisan times and the American people left unprotected against a President who would abuse his power for the very purpose of corrupting the only other method of accountability, our elections themselves.

And so you will vote to find the President guilty or not guilty, to find his conduct impeachable or not impeachable. But I would submit to you
these are not the most important decisions you will make.

How can that be? How can any decision you will make be more important than guilt or innocence, than removing the President or not removing the President?

I believe the most important decision in this case is the one you will make today. The most important question is the question you must answer today. Will the President and the American people have a fair trial? Will there be a fair trial?

I submit that this is an even more important question than how you vote on guilt or innocence, because whether we have a fair trial will determine whether you have a basis to render a fair and impartial verdict. It is foundational—the structure upon which everything else will rest.

If you only get to see part of the evidence, allow one side to call witnesses, but not the other a chance to present their full case, your verdict will be predetermined by the bias in the proceeding. If the defendant is not allowed to introduce evidence of his innocence, it is not a fair trial. So too for the prosecution. If the prosecution can introduce documents and evidence, the defendant is not allowed to do the same, and any rebuttal witnesses. And when the evidentiary portion of the trial ends, the parties argue the case. You deliberate and render a verdict.

If there is a dispute as to whether a particular witness is relevant or material to the charges brought, under the Senate rules, the Chief Justice would rule on the issue of materiality. Why would this trial be different than any other trial? The short answer is it shouldn't. But Leader McConnell's resolution would turn the trial process on its head. His resolution requires the House to prove its case without witnesses, without documents, and only after it is done will such questions be entertained. You can't guarantee that any witnesses or any documents will be allowed even then. That process makes no sense.

So what is the harm of waiting until the end of the trial, of kicking the can down the road on the question of documents and witnesses? Beside the fact it is completely backwards—trial first, then evidence—beside the fact the documents would inform the decision on which witnesses and help in their questioning, the harm is this: You will not have any of the evidence the President continues to conceal throughout most or all of the trial.

And although the evidence against the President is already overwhelming, you may never know the full scope of the President's misconduct or those around him, and neither will the American people.

The charges here involve the sacrifice of our national security at home and abroad, and a threat to the integrity of the next election. If there are additional remedial steps that need to be taken after the President's conviction, the American people must know about it.

But if, as a public already jaded by experience has come to suspect, this resolution is merely the first step of an effort orchestrated by the White House to rush the trial, hide the evidence, and render a fast verdict, or worse, a fast sham trial process, the Senate will go away as quickly as possible, to cover up his misdeeds, then the American people will be deprived of a fair trial and may never learn just how deep the corruption of this administration goes or what other risk to our security and elections will remain hidden.

The harm will also endure for this body. If the Senate allows the President to get away with such extensive obstruction, it will affect the Senate's power of subpoena and oversight just as much as the House. The Senate's ability to conduct oversight will be held to the desires of this President and future Presidents, whether he or she decides they want to cooperate with a Senate investigation or another impeachment inquiry and trial. Our system of checks and balances will be broken. Presidents will become accountable to no one.

It has been reported that Leader McConnell has already got the votes to pass his resolution, the text of which we did not see until last night, and which has been changed even moments ago.

Let's say that Leader McConnell is a very good vote counter. Nonetheless, I hope that he is wrong, and not just because I think this process—the process contemplated by this resolution—is backwards and designed with a result in mind and that the result is not a fair trial. I hope that he is wrong because whatever Senators may have said or pledged or committed has been superseded by an event of constitutional dimensions. You have all now sworn an oath—not to each other, not to the legislature, but to the American people. You have sworn an oath to do impartial justice. That oath binds you. That oath suceeds all else.

Many of you in the Senate and many of you in the House have sworn statements about the President's conduct or this trial or this motion or expectations. None of that matters now. That is all in the past. Nothing matters now but the oath to do impartial justice, and that oath requires a fair trial—fair to the President and fair to the American people.

But is that really possible? Or as the Founders feared, has factionalism or an excessive partisanship made that now impossible?

One way to find out what a fair trial should look like, devoid of partisan consideration, is to ask yourselves how would you structure the trial if you didn’t know what your party was and you didn’t know who the President was? Would it make sense to you to have the trial first and then decide on witnesses and evidence later? Would that be fair to both sides? I have to think that your answer would be no. Let me be blunt. Let me be very blunt. Right now a great many, perhaps even most, Americans do not believe there will be a fair trial. They don’t believe that the Senate will be impartial. They believe the result is preordained. The President will be acquitted, not because he is innocent—he is not—but because the Senators will vote by party, and he has the votes—the votes to prevent the evidence from coming out, the votes to make sure the public never sees it.

The American people want a fair trial. They want to believe their system of governance is still capable of rising to the occasion. They want to believe that we can rise above party and do what is best for the country, but a great many Americans don’t believe that will happen.

Let’s prove them wrong. Let’s prove them wrong.
How? By convicting the President? No, not by conviction alone, by convicting him if the House proves its case and only if the House proves its case, but by letting the House prove its case, by letting the House call witnesses, by letting the House examine documents, by letting the House decide how to present its case and not deciding it for us—in sum, by agreeing to a fair trial.

Now let’s turn to the precise terms of the resolution, the history of impeachment trials, and what fairness and impartiality require.

Although we have many concerns about the resolution, I will begin with its single biggest flaw. The resolution does not ensure that subpoenas will, in fact, be issued for additional evidence that the Senate and the American people should have—and that the President continues to block—to fairly decide the President’s guilt or innocence. Moreover, it guarantees that such subpoenas will not be issued now, when it would be available to the Senate, the parties, and the American people.

According to the resolution the leader has introduced, first the Senate receives briefs and filings from the parties. Next it hears lengthy presentations from the House and the President. Now my colleagues, the President’s lawyers, have described this as opening statements. But let’s not kid ourselves; that is the trial that they contemplate. The opening statements are the trial. They will either be most of the trial or they will be all of the trial. If the Senate votes to deprive itself of witnesses and documents, the opening statements will be the end of the trial. So to say “Let’s just have the opening statements, and then we will see” means “Let’s have the trial, and maybe we can sweep this all under the rug.”

So we will hear these lengthy presentations from the House. There will be a question-and-answer period for the Senators, and then—and only then—after, essentially, the trial is over, after the briefs have been filed, after the arguments have been made, and after Senators have exhausted other questions, only then will the Senate consider whether to subpoena crucial documents and witness testimony that the President has desperately tried to conceal from this Congress and the American people—documents and witness testimony that, unlike the Clinton trial, have not yet been seen or heard.

It is true that the record compiled by the House is overwhelming. It is true the record already compels the conviction of the President in the face of unprecedented resistance by the President. The House has assembled a powerful case, evidence of the President’s high crimes and misdemeanors that includes direct evidence and testimony of officials who were unwilling and unwitting witnesses to a cover-up. The President claims that the facts were already known to the Senate, that the Senate heard all of the facts, and that the Senate is fully aware of the facts. But there were many facts that the Senate was not aware of. There are facts that the Senate should have known about and that the Senate should have been told about, but the Senate was not told about them.

Indeed, in some cases agencies have already produced documents in FOIA lawsuits, albeit in heavily redacted form. Witnesses with direct knowledge or involvement should be heard. That includes the President’s Acting Chief of Staff, Marc Short, and National Security Advisor John Bolton, who has publicly offered to testify—two senior officials integral to implementing the President’s freeze on Ukraine’s military aid also have very relevant testimony to give. But where is he?—Robert Blair, who served as Mr. Mulvaney’s senior adviser; Michael Duffey, a senior official at OMB; and other witnesses with direct knowledge whom we reserve the right to call later—but these witnesses with whom we wish to begin the trial.

Last month, President Trump made clear that he supported having senior officials testifying before the Senate during his trial, declaring that he would “love” to have Secretary Pompeo, Mr. Mulvaney, now former Secretary Perry, and “many other people testify” in the Senate trial. (Text of Videotape presentation:)

Mr. Manager SCHIFF. The Senate has an opportunity to take the President up on his offer to make all senior aides available, including Secretaries Pompeo and Perry.

But now the President is changing his tune. The bluster of wanting these witnesses to testify was just to make up for the President’s actions in withholding military aid from an ally at war that threatened our national security in the first place. Never mind that the most impeachable, serious offenses will always involve national security because they will involve our national security to protect national security to our national security.

The President sends his lawyers here to breathlessly claim that these witnesses or others cannot possibly testify because it involves national security. But let’s not kid ourselves either. The President’s actions in withholding military aid from an ally at war that threatened our national security in the first place. Never mind that the most impeachable, serious offenses will always involve national security because they will involve our national security to protect national security.

The President’s absurdist argument amounts to this: We must endanger national security to protect national security. This is dangerous nonsense. Justices of the Supreme Court have underscored, the Constitution is not a suicide pact.

But let us turn from the abstract to the very concrete, and let me show you just one example of what the President is hiding in the name of national security.

There is a document, which the President has refused to turn over, in
which his top diplomat in Ukraine says to two other appointees of the President: “As I said on the phone, I think it’s crazy to withhold security assistance for help with a political campaign.”

The administration refuses to turn over that document and so many more. We only know about its existence, we have only seen its contents because it was turned over by a cooperating witness.

This is what the President would hide from you and from the American people. In the name of national security, he would hide graphic evidence of his dangerous misconduct. The only question is—and it is the question raised by this resolution—Will you let him?

Last year, President Trump said that article II of the Constitution would allow him to do anything he wanted, and evidently believing that article II empowered him to denigrate and defy a co-equal branch of government, he also declared that he would fight all subpoenas. Let’s hear the President’s own words: “Then I have an Article II, where I have the right to do whatever I want as President.”

True to his pledge to obstruct Congress, when President Trump faced an impeachment inquiry in the House of Representatives, he ordered the executive branch to deny every single request on every single subpoena. He issued this directive through his White House Counsel, Pat Cipollone, on October 8—the same counsel who stood before you a moment ago to defend the President’s misconduct. He then affirmed it again at a rally on October 18.

Following President Trump’s categorical order, we never received the documents and communications. It is important to note, in refusing to respond to Congress, the President did not make any—any—formal claim of privilege, ever. Instead, Mr. Cipollone’s letter stated, in effect, that the President would withhold all evidence from the executive branch unless the House surrendered to demands that would effectively place President Trump in charge of the inquiry into his own misconduct.

Needless to say, that was a non-starter and designed to be so. The President was determined to obstruct Congress no matter what we did, and his only attacks on the impeachment inquiry, his attacks on witnesses—has affirmed that the President never had any intention to cooperate under any circumstance. And why? Because the evidence and testimony he conceals would only further prove his guilt. The innocent do not act this way.

Simply stated, this trial should not reward the President’s obstruction by allowing him to control what evidence is seen and when it is seen and what evidence will remain hidden. The documents the President seeks to conceal include White House records, including records about the President’s unlawful hold on military aid; State Department records, including text messages and WhatsApp messages exchanged by the State Department and Ukrainian officials and notes to file by career officials as they saw the President’s behavior; OMB records demonstrating evidence to fabricate an after-the-fact rationale for the President’s order, showing internal objections that the President’s orders violated the law; Defense Department records demonstrating that the President suspended military aid to a key security partner without explanation.

Many of the President’s aides have also followed his orders and refused to testify. These include essential figures in the impeachment inquiry, including White House Chief of Staff Mick Mulvaney, former National Security Advisor John Bolton, and many others who allowed the President’s order to freeze vital military and security assistance to Ukraine.

The Trump administration has refused to disclose their communications, even though we know from written testimonies, public reporting, and even Freedom of Information Act lawsuits that they were instrumental in implementing the hold and extending it at the President’s express direction even—as career officials warned accurately that doing so would violate the law.

The President has also made the insupportable claim that the House should have enforced its subpoenas in court. The President’s impeachment to delay for years. If we had done so, we would have abdicated our constitutional duty to act on the overwhelming facts before us and the evidence the President was seeking to cheat in the next election.

We could not engage in a deliberately protracted court process while the President continued to threaten the sanctity of our elections.

Resorting to the courts is also inconsistent with the Constitution that gives the House the sole power of impeachment. If the House were compelled to exhaust all legal remedies before impeaching the President, it would interpret his own impeachment power. Moreover, it would invite the President to present his own impeachment by endlessly litigating the matter in court—appealing the decision of a single judge between the House and the power to impeach. Indeed, in the case of Don McGahn—the President’s lawyer, who was ordered to fire the special counsel and lie about it—he was subpoenaed by the House in April of last year, and there is still no final judgment.

A President may not defeat impeachment and accountability by engaging in endless litigation. Instead, it has been the long practice of the House to compile core evidence necessary to reach a reasoned decision about whether to impeach and then to bring the case here to the Senate for a full trial. That is exactly what we did here, with an understanding that it is the House's own power to compel documents and testimony.

It would be one thing if the House had shown no interest in documents or witnesses during its investigation—albeit, even there, the House has the sole right to determine its proceedings as long as it makes the full case to the House, as it did—but it is quite another when the President is the cause of his own complaint, when the President withholds witnesses and documents and then attempts to rely on his own noncompliance to justify further concealment.

President Trump made it crystal clear that we would never see a single piece of it. And he was right. When he declared, as we just watched, that he would fight all subpoenas. As a matter of history and precedent, it would be wrong to assert that the Senate is unable to obtain and review new evidence during a Senate trial regardless of why evidence was not produced in the House.

You can and should insist on receiving all the evidence so you can render impartial justice and can earn the confidence of the public in the Senate’s willingness to hold a fair trial.

Under the Constitution, the Senate does not just vote on impeachments. It does not just debate them. Instead, it is commanded by the Constitution to try all cases of impeachment. If the Founders intended for the House to try the matter and the Senate to consider an appeal based on the cold record from the other Chamber, they would have said so, but they did not. Instead, they gave us the power to try and to bring the case here. And now you give you the power to try all impeachments.

The Framers chose their language and the structure for a reason. As Alexander Hamilton said, the Senate is given “awful discretion” in matters of impeachment. The Constitution thus speaks to Senators in their judicial character as a court for the trial of impeachments. It requires them to aim at real demonstrations of innocence or guilt and requires them to do so by having a trial.

The Senate has repeatedly subpoenaed and received new documents, often many of them while adjudicating cases of impeachment. Moreover, the Senate has heard witness testimony in every one of the 15 Senate trials—full Senate trials—in the history of this Republic, including those of Presidents Andrew Johnson and Bill Clinton. Indeed, in President Andrew Johnson’s Senate impeachment trial, the House managers were permitted to begin presenting documents to the Senate on the very first day of the trial. The House managers’ initial presentation of documents in President
Johnson’s case carried on for the first 2 days of trial and immediately after witnesses were called to appear in the Senate.

This has been the standard practice in prior impeachment trials. Indeed, in most trials the body has heard from many witnesses, ranging from 3 in President Clinton’s case to 40 in President Johnson’s case and well over 60 in other impeachments. As these numbers make clear, the Senate always has heard from key witnesses when trying an impeachment.

The notion that only evidence that was taken before the House should be considered is squarely and unequivocally contrary to Senate precedent. Nothing in law or history supports it.

To start, consider Leader McConnell’s own description of his work in a prior Senate impeachment proceeding. In the case of Judge Claiborne, after serving on the Senate trial committee, Leader McConnell described how the Senate committee “labored intensively for more than 2 months, amassing the necessary evidence and testimony.” In the same essay, Leader McConnell recognized the full body’s responsibility for amassing and digesting evidence, noting only a limited evidence for the Senate to amass and digest in that proceeding, which involved charges against a district court judge. The Senate heard testimony from 19 witnesses, and it allowed for over 2,000 pages to be entered into the record over the course of that trial.

At no point did the Senate limit evidence to what was before the House. Indeed, the opposite, consistent with unbroken Senate practice in every single impeachment trial—every single one.

For example, of the 40 witnesses who testified during President Johnson’s Senate trial, only 3 provided testimony to the House during its impeachment inquiry—only 3. The remaining 37 witnesses—Presidential impeachment trial testified before the Senate.

Similarly, the Senate’s full first impeachment trial, which involved charges against Judge Pickering, involved testimony from 11 witnesses, all of whom were new to the impeachment proceedings and had not testified before the House.

There are many other examples of this point, including the Senate’s most recent impeachment trial of Judge Porter. One that most of you and some of us know well. It, too, is consistent with this longstanding practice. There, the Senate heard testimony from 26 witnesses, 17 of whom had not testified before the House during its impeachment inquiry.

Thus, there is a definitive tradition of the Senate hearing from new witnesses when trying Articles of Impeachment. There has never been a rule limiting witnesses to those who appeared in the House or limiting evidence before the Senate to that which the House itself considered. As Senator Hiram Johnson explained in 1934, that is because the integrity of Senate impeachment trials depend heavily upon the witnesses who are called, their appearance on the stand, their mode of giving testimony.

There is thus an unbroken history of witness testimony in Senate impeachment proceedings. I would argue, in the case of a President, it is even more important to hear the witnesses and see the documents.

Any conceivable doubt on this score—whether the Senate had to take the documents now before the trial—must be dispelled by the Senate’s own rules for trial of impeachment. Obtaining documents and hearing live witness testimony is so fundamental that the Rules of Procedure and Practice in the Senate. When Sitting on Impeachment Trials, which date back to 19th century, devote more attention to the gathering, handling, and admission of new evidence than any other single subject. These rules expressly contemplate that the Senate will hear evidence at any stage of the impeachment trial when sitting as a Court of Impeachment. At every turn, they reject the notion that the House would take the House’s evidentiary record, blind itself to everything else, and vote to convict or acquit.

For example, rule VI says the Senate shall have the power to compel the attendance of witnesses and enforce obedience to its own orders. Rule VII authorizes the Presiding Officer to rule on all questions of evidence, including, but not limited to, questions of relevancy, materiality, and redundancy. This rule, too, presumes that the Senate trial will have testimony, giving rise to such questions.

Rule XI authorizes the full Senate to designate a committee of Senators to receive evidence and take testimony at such times and places as the committee may determine. As Rule XI makes clear, the committee’s report must be transmitted to the full Senate for final adjudication. But nothing here in the rules states: shall prevent the Senate from calling any witness and hearing his testimony in open Senate or by order of the Senate involving the entire trial in the open Senate. Here, too, the Senate’s operative impeachment rules expressly contemplate and provide for subpoenaing witnesses and hearing their testimony as part of the Senate trial.

And the list goes on.

These rules plainly contemplate a robust rule for the Senate in gathering and considering evidence. They reflect centuries of practice of accepting and requiring new evidence in Senate trials. This Senate should honor that practice today by rejecting this resolution.

It will be argued: What about the Clinton trial? Even if we are departing from every other impeachment trial in history, including the impeachment of President Andrew Johnson, it will be argued: What about the Clinton trial? Aren’t we following the same process as in the Clinton trial? The answer is no.

First, the process for the Clinton trial was worked out by mutual consent among the parties. That is not true here, where the process is sought to be imposed by one party on the other.

Second, all of the documents in the Clinton trial were turned over prior to the trial—all 90,000 pages of them—so they could be used in the House’s case. None of the documents have been turned over by the President in this case, and under Leader McConnell’s proposal, none may ever be. They certainly will not be available to you or to us during most or all of the trial. If we are really going to follow the Clinton precedent, the Senate must insist on the documents now before the trial begins.

Third, the issue in the Clinton trial was not one of calling witnesses but of recalling witnesses. All of the key witnesses in the Clinton trial had testified before the grand jury or had been interviewed by the FBI—of one of them, dozens of times—and their testimony was already known. President Clinton himself testified on camera and under oath before the Senate trial. He allowed multiple chiefs of staff and other key aides to testify. The effect of the Senate trial took place. Here, none of the witnesses we seek to call—none of them—have testified or have been interviewed by the House. And, as I said, the President cannot complain if we did not call these witnesses before the House when their unavailability was caused by the President himself.

Last, as you will remember—those of you who were here—the testimony in the Clinton trial involved decorum issues that are not present here. You may rest assured, whatever else the case may be, such issues will not be present here.

In sum, the Clinton precedent—if we are serious about it, it is medically serious about modeling this proceeding after the Clinton trial—is one where all the documents had been provided up front and where all the witnesses had testified up front prior to the trial. That is not being replicated by the McConnell resolution—not in any way, not in any shape, not in any form. It is far from it. The traditional model followed in President Johnson’s case and all of the others is really the one that is most appropriate to the circumstances.

The Senate should address all the documentary issues and most of the witnesses now, not later. The need to subpoena documents and testimony now has only increased due to the President’s obstruction for several reasons.

First, his obstruction has made him uniquely and personally responsible for the absence of the witnesses before the House. Having ordered them not to appear, he may not be heard to complain now that they followed his orders and refused to testify. To do otherwise only rewards the President’s obstruction.
and encourages future Presidents to defy lawful process in impeachment investigations.

Second, if the President wishes to contest the facts—and his answer and trial brief indicate that he will try—he must now deny the Senate access to the relevant witnesses and documents that shed light on the very factual matters he wishes to challenge. The Senate trial is not analogous to an appeal where the parties must argue the facts on the basis of the record below; it is the record before; there is no below. This is the trial.

Third, the President must not be allowed to mislead the Senate by selectively introducing documents while withholding the vast body of documents that may contradict them. This is very important. The President must not be allowed to mislead you by introducing documents selectively and withholding all of the rest. All of the relevant documents should be produced so there is full disclosure of the truth; otherwise, there is a clear risk that the President will continue to hide all evidence harmful to his position, while selectively producing documents without any context or opportunity to examine their creators.

Finally, you may infer the President’s guilt from his continuing efforts to obstruct the production of documents and witnesses. The President has said he wants witnesses like Mulvaney and others to testify and that his interactions with Ukraine have been perfect. Counsel has affirmed today that would be the President’s defense: His conduct was perfect. It was perfect. It was perfectly fine to coerce an ally with withholding military aid to get help cheating in the next election. That will be part of the President’s defense, although albeit not worded in that way.

Now he has changed course. He does not want the truth to be available to the logical inference in any court of law would be that the party’s continued obstruction of lawful subpoenas may be construed as evidence of guilt.

Let me conclude. The facts will come out in the end. The documents which the President is hiding will be released, through the Freedom of Information Act or through other means over time. Witnesses will tell their stories in books and film. The truth will come out.

The question is, Will it come out in time? And what answer shall we give if we did not pursue the truth now and let it remain hidden until it was too late to consider on the profound issue of the President’s guilt or innocence?

There are many overlapping reasons for voting against this resolution, but they all converge on this single idea: fairness.

The trial should be fair to the House, which has been wrongly deprived of fairness.

To consider on the profound issue of the Constitution, we did not pursue the truth now and let time? And what answer shall we give if the President is hiding will be released, through the Freedom of Information Act or through other means over time. The documents which the President is hiding will be released, through the Freedom of Information Act or through other means over time. Witnesses will tell their stories in books and film. The truth will come out.

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There are many overlapping reasons for voting against this resolution, but they all converge on this single idea: fairness.

The case is that the courts have a role in this. Executive privilege—why would that matter? It matters because it is based on the Constitution of the United States. One manager said it is you that is on trial: the Senate. He also said—and others did—that you are not capable of abiding by your oath.

Then we had the invocation of the ghost of the Mueller report. I know something about that report. It came up empty on the issue of collusion with Russia. There was no obstruction. In fact, the Mueller report, contrary to what these managers say today, came to the exact opposite conclusions of what they said.

Let me quote from the House impeachment report at page 18.

Alas, I will say: Trump has at times invoked the notion of due process, an impeachment trial, impeachment inquiry, is not a criminal trial and should not be confused with it.

Believe me, what has taken place in these proceedings is not to be confused with due process because due process demands and the Constitution requires that fundamental parities and due process—we are hearing a lot about due process. Due process is designed to protect the person accused.

When the Russia investigation failed, it devolved into the Ukraine, a quid pro quo. When that didn’t prove out, it was the Ukraine, or maybe extortion.

Somebody said—one of the Members of the House said treason. Instead, we get two Articles of Impeachment—two Articles of Impeachment that have a vague allegation about a noncrime allegation of abuse of power and obstruction of Congress.

Members, managers—right here before you today—who have said that executive privilege and constitutional privileges have no place in these proceedings—on June 28, 2012, Attorney General Eric Holder became the first U.S. Attorney General to be held in both civil and criminal contempt.

With respect to the Holder contempt proceedings, Mr. Manager SCHIFF wrote: “The White House assertion of privilege is backed by decades of precedent that has recognized the need for the President and his senior advisers to receive candid advice and information from their top aides.”

Indeed, that is correct—not because Manager SCHIFF said it but because the Constitution requires it.

Mr. Manager Nadler said that the effort to hold Attorney General Holder in contempt for refusing to honor various subpoenas was “politically motivated,” and Speaker PELOSI called the Holder matter “little more than a witch hunt.”

What are we dealing with here? Why are we here? Are we here because of a phone call or are we here before this great body because, as the President was sworn into office, there was a desire to see him removed?

I remember in the Mueller report there were discussions about—remember—insurance policies. The insurance policy didn’t work out so well, so then we moved to other investigations. I guess you would call them a reinsurance or an umbrella policy. That didn’t work out so well, and here we are today.

Manager SCHIFF quoted the Supreme Court, and I would like to make reference to the Supreme Court as well. It was then—Justice Rehnquist, later to be Chief Justice Rehnquist, who wrote for the majority in United States v. Russell in 1973. These are the words: “... we may someday be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial process to obtain a conviction. ...”

That day is today. That day was a year ago. That day was in July when counsel or maybe extortion.

I am not today going to take the empty to review, but I will do it later, the patterns and practices of irregularities that have gone on in these investigations.
from the outset; but to say that the courts have no role, the rush to impeach, to not wait for a decision from a court on an issue as important as executive privilege—as if executive privilege hasn’t been utilized by Presidents since our founding. This is not some sort of new concept. We don’t waive executive privilege, and there is a reason we keep executive privilege and we assert it when necessary, and that is to protect—to protect the Constitution and the separation of powers.

The moments, in their rush to impeach, have refused to wait for a complete judicial review. That was their choice. Speaker PELOSI clearly expressed her impatience and contempt for judicial proceedings when she said: “We cannot be at the mercy of the courts.” Think about that for a moment. We cannot be at the mercy of the courts.

So take article III of the U.S. Constitution and remove it. We are acting as if it was an improper venue to determine constitutional issues of this magnitude? That is why we have courts. That is why we have a Federal judiciary.

It was interesting when Professor Turley testified before the House Judiciary Committee, in front of Mr. NADLER’s committee. He said:

We have three branches of government, not two. If you impeach a President and you make a high crime and misdemeanor out of going to court on an abuse of power, it’s your abuse of power.

You know it is more than that. It is a lot more than that. There is a lot more than abuse of power if you say the courts don’t apply, constitutional principles don’t apply.

Let’s start with a clean slate as if nothing happened. A lot has happened. As we proceed in the days ahead, we will lay out our case. We are going to put forward to the American people—but, frankly, for the Constitution’s sake—what is taking place here; that this idea that we should ignore what is taking place over the last 3 years is outrageous.

We believe that what Senator MCCONNELL has put forward provides due process and allows the proceedings to move forward in an orderly fashion.

Thirty-three days—thirty-three days—they held on to those impeachment articles. Thirty-three days. It was a rush for our national security to impeach this President before Christmas that they then held them for 33 days. To do what: to act as if the House of Representatives should negotiate the rules of the U.S. Senate. They didn’t hide this. This was the expressed purpose. This was the reason they did it.

We are prepared to proceed. Majority leader, Democratic minority leader, we are prepared to proceed. In our view, these proceedings should begin.

Mr. Chief Justice, I yield the rest of my time to my colleague, the White House Counsel.

The CHIEF JUSTICE. Mr. Cipollone.

Mr. Counsel CIPOLLONE. Mr. Chief Justice, I just want to make a couple of additional points.

It is very difficult to sit there and listen to Mr. SCHIFF tell the tale he just told. Let’s remember how we all got here: They made false allegations about the President. They abused the power of the United States to declassify that telephone call and released it to the public. How is that for transparency?

When Mr. SCHIFF found out there was nothing to it, he focused on the second telephone call. He made false and his colleagues made false allegations about that second telephone call that occurred before the one he had demanded. So the President of the United States declassified and released that telephone call. Still nothing.

Again, complete transparency in a way that, frankly, I am unfamiliar with any precedent of any President of the United States releasing a classified telephone call with a foreign leader. When Mr. SCHIFF defined his allegations about this first call, he didn’t tell them it was a complete fake.

Do you want to know about due process? I will tell you about due process. Never before in the history of our country has a President of the United States been confronted with this kind of impeachment proceeding in the House. It wasn’t conducted by the Judiciary Committee. Mr. NADLER, when he applied for that job, told his colleagues, when they took over the House, that he was really good at impeachment.

But what happened was the proceedings took place in a basement of the House of Representatives. The President was forbidden from attending. The House was not allowed to have a lawyer present.

In every other impeachment proceeding, the President has been given a minimal due process. Nothing here.

Not even Mr. SCHIFF’s Republican colleagues were allowed into the SCIF. Information was selectively leaked out. Witnesses were threatened. Good public servants were told that they would be held in contempt. They were told that they were obstructing.

What does SCHUFF mean by “obstructing”? He means that unless you do exactly what he says, regardless of your constitutional rights, then, you are obstructing.

The President was not allowed to call witnesses. By the way, there is still evidence in the SCIF that we haven’t been allowed to see. I wonder why. No witnesses.

Let’s think about something else for a second. Let’s think about something else.

The White House, they held these articles for 33 days. We have all this talk about an overwhelming case—an overwhelming case that they are not even prepared today to stand up and make an opening argument about. That is because they have no case. Frankly, they have no charge.

When you look at these Articles of Impeachment, they are not only ridiculous; they are dangerous to our republic. And why? First of all, the notion that we can invade the constitutional rights to protect the executive branch, that has been done by just about every President since George Washington—that is obstruction.

That is our patriotic duty. Mr. SCHIFF, particularly when confronted with a wholesale trampling of constitutional rights that I am unfamiliar with in this country. Frankly, it is the kind of thing that our State Department would criticize if we see it in foreign countries. We have never seen anything like it.

And Mr. SCHIFF said: Have I got a deal for you. Abandon all your constitutional rights, forget about your lawyers, and come in and do exactly what I say.

No, thank you. No, thank you.

And then has the temerity to come into the Senate and say: We have no use for courts.

It is outrageous.

Let me tell you another story. There is a man named Charlie Kupperman. He is the Deputy National Security Advisor. He is the No. 2 to John Bolton.

You have to remember that Mr. SCHUFF wants you to forget, but you have to remember how we got here. They threatened him. They sent him a subpoena. Mr. Kupperman did whatever any American should be allowed to do, used to be allowed to do. He was forced to get a lawyer. He was forced to pay for that lawyer, and he went to court. Mr. SCHUFF doesn’t like courts. He went to court.

And he said: Judge, tell me what to do. I have obligations that, frankly, rise to what the Supreme Court has called the apex of executive privilege in the area of national security. And then I have a subpoena from Mr. SCHUFF. What do I do?

You know what Mr. SCHUFF did? Mr. Kupperman went to the judge, and the House said: Never mind. We withdraw the subpoena. We promise not to issue it again.

And then they come here and ask you to do the work that they refused to do for themselves. They ask you to trample on executive privilege.

Would they ever suggest that the executive could determine on its own what the speech or debate Clause means? Of course not. Would they ever suggest the House could invade the discussions the Supreme Court has behind closed doors? I hope not. But they come here, and they ask you to do what they refuse to do for themselves.

They had a court date. They withdrew the subpoena. They evaded the decision, and they are asking you to become complicit in that evasion of the courts. It is ridiculous. We should call it out for what it is.
Obstruction for going to court? It is an act of patriotism to defend the constitutional rights of the President, because if they can do it to the President, they can do it to any of you and do it to any American citizen, and that is wrong. Laurence Tribe, who has been advising us, didn’t tell you that in the Clinton impeachment, it is dangerous to suggest that invoking constitutional rights is impeachable. It is dangerous.

You know what? It is dangerous, Mr. Schiff.

What are we doing here? We have the House that completely concocted a process that we have never seen before. They lock the President out. By the way, will Mr. Schiff give documents? We asked them for documents. We asked them for documents when, contrary to his prior statements, it turned out that his staff was working with the whistle blower.

We said: If you see the documents, release them to the public.

We are still waiting.

The idea that they would come here and lecture the Senate—by the way, I was surprised to hear that. Did you realize you are on trial? Mr. Nadler is putting the case on trial.

Everybody is on trial except for them. It is ridiculous. It is ridiculous.

They said in their brief: We have overwhelming evidence. And they are afraid to make their case. Think about it. This is common sense—overwhelming evidence to impeach the President of the United States. And then, they come here on the first day and say: You know what, we need some more evidence.

Let me tell you something. If I showed up in any court in this country and said: Judge, my case is overwhelming, but I am not ready to go yet; I need more evidence before I can make my case, I would get thrown out in 2 seconds. And that is exactly what should happen here. That is exactly what should happen here.

It is too much to listen to almost—the hypocrisy of the whole thing. What are the stakes? What are the stakes? There is an election in almost 9 months. Months from now, there is going to be an election. Senators in this body the last time had very wise words. They echoed the words of our Founders. “A partisan impeachment is like an orange country election.” That is exactly what we have.

Talk about the Framers’ worst nightmare. It is a partisan impeachment they delivered to your doorstep, in an election year. Some of you are upset because you should be in Iowa right now. But, instead, we are here, and they are not ready to go. It is outrageous. It is outrageous.

The American people will not stand for it. I will tell you that right now. They are not here to steal one election. They are here to defend one election. It is buried in the small print of their ridiculous Articles of Impeachment. They want to remove President Trump from the ballot. They will not tell you that. They don’t have the guts to say it directly, but that is exactly what they are here to do. They are asking the Senate to attack one of the most sacred rights we have as Americans—the right to choose our President in an election year. It has never been done before. It shouldn’t be done.

The reason it has never been done is because no one ever thought that it would be a good idea for our country, for our children, for our grandchildren to try to prevent a President from being elected by a ballot, to deny the American people the right to vote based on a fraudulent investigation conducted in secret with no rights.

I could go on and on, but my point is very simple: It is long past time we start this so we can end this ridiculous charade and go have an election.

Thank you very much, Mr. Chief Justice.

The CHIEF JUSTICE. Does the President’s counsel yield back the remainder of their time?

Mr. Manager NADLER. We do.

The CHIEF JUSTICE. The Democratic leader is recognized.

The Senator from New York [Mr. SCHUMER].

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

The CHIEF JUSTICE. The clerk will read the document.

The legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1294.

(Purpose: To subpoena certain White House 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—

(i) the Chief Justice of the United States, through the legislative clerk, shall issue a subpoena to the Acting Chief of Staff of the White House 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 White House, including the National Security Council, relating or relating to—

(A) all meetings and calls between President Trump and the President of Ukraine, including documents, communications, and other records created or received by the National Security Council officials reported to, 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) all investigations, inquiries, or other probes related to Ukraine, including any that relate in any way to—

(i) former Vice President Joseph Biden;

(ii) Hunter Biden and any of his associates;

(iii) Burisma Holdings Limited (also known as “Burisma”);

(iv) interference or involvement by Ukraine in the 2016 United States election;

(v) the Democratic National Committee; or

(vi) Crooked Hillary.

(C) 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 (USAID) and Foreign Military Financing (FMF);

(D) all documents, communications, notes, and other records created or received by Acting Chief of Staff Mick Mulvaney, then-National Security Advisor John R. Bolton, Senior Advisor to the Chief of Staff Robert B. Blair, and other White House 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;

(E) 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, the 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 Kurt Volker, then-National Security Advisor John R. Bolton, Secretary of State Mike Pompeo, and United States Ambassador to the European Union Gordon Sondland, as well as any private meetings or conversations with those individuals before or after the larger meeting;

(iii) meetings at the White House on or around July 10, 2019, involving Ukrainian officials: Andriy Yermak and Danylyuk and United States Government officials, including, but not limited to, then-National Security Advisor John R. 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; 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; a 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 President Zelensky;

(iv) 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;

(F) meetings, telephone calls or conversations related to any occasions in which National Security Council officials reported concerns to National Security Council lawyers, including but not limited to National Security Council Legal Advisor, John R.Ebinger, regarding investigations related to Ukraine, including but not limited to—

(i) the decision to delay military assistance to Ukraine;

(ii) the July 10, 2019 meeting at the White House with Ukrainian officials;

(iii) the President’s July 25, 2019 call with the President of Ukraine;

(iv) a September 3, 2019 meeting between Ambassador Sondland and a Ukrainian official; and

(v) the President’s September 7, 2019 call with Ambassador Sondland;

(G) any internal review or assessment within the White House regarding Ukraine...
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 Select 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 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 Senate in serving the subpoena authorized to be issued by this section. (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.

Mr. Chief Justice.

Mr. SCHIFF, do you wish to be heard at this time?

Mr. SCHIFF. Yes, Mr. Chief Justice.

Mr. Chief Justice.

Mr. Chief Justice.

Mr. Chief Justice.

Mr. Chief Justice.

Mr. Chief Justice.

Mr. Chief Justice.
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 the 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 to make those allegations against others. But I will tell you this: He is mistaken. He ismistaken. Every Republican on the three investigatory committees was allowed to participate in the depositions, and, moreover, 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 want to coerce Mr. Cipollone to make those allegations against others. But I will tell you this: He is mistaken. He is mistaken.

Mr. 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 an attack on White House 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.

We don't know with certainty what these documents as part of the impeachment inquiry, but the President completely rejected this and every document subpoenaed these documents 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 documents 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 constitutional power 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. The Senate needs 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 incorrectly, and I think so, 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. One was the 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 discovery 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, over and over the boxes 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 at a formal impeachment investigation 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 participate 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 is privileged 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.

Here is the truth. The President, his lawyers keep saying—they talk about a vast legal right to justify hiding the truth, withholding information. But that is a distraction. What 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.

It 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—you 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 Trump’s unlawful hold of the $391 million of military aid; concerns that White House officials reported to NSC 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 Trump 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 when he was asked to prepare talking points for the President’s use during that call.

Colonel VINDMAN. Yes. I did. Mr. Sondland stated: I have not had access to all my phone records. He also said that he and his lawyers had asked repeatedly for them. 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.

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 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 related to his testimony including his notes so that we can 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 them. He said the materials would help refresh his memory. We should go get that material.

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[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 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 evidence 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’s 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.

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 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 interests.

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 and Jennifer Williams all testified to talking 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 included the word “Burisma” 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 or mentioning Burisma; do you not?

Ms. WILLIAMS. That is correct.

Colonel VINDMAN. Correct.

Mr. SCHIFF. 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.

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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, on 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. These documents have received 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, its action violated the law. On January 16, 2020, the GAO—an independent watchdog—issued a legal opinion finding that the White House’s actions were not a proper procedure. 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 make clear that there was 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 mid-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 the 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 aides about why the initial 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 disseminated responsive documents in response to a FOIA request that included 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 subpoenas.

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 to freeze.” These documents were taken for President Trump’s personal and political benefit. They were released in response to the House’s lawful subpoena.

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

These 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. Moreover, 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 cast 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 pressure 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, with Mr. GOLDMAN. So the subsequent meeting—and 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, what did he say?

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

Mr. GOLDMAN. What was that specific instruction?

Ms. HILL. The specific instruction was that he 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 you and—I will not say what he told me—but if it was something—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. And what 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. And you cannot have a client-privilege client 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 provisions 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. 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 undermine the process of a genuine credible trial.

Thus, common sense, tradition, and fairness all compel that the amendment 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 that he committed—and 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, on a clear and fair. 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. Chipollone.

Mr. Counsel CHIPOLLONE. 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 analyzing 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 more deposition, we need more depositions, we need 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 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 depositions; we need 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 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’s 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 anything worth trying to talk to more witnesses about.

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 an “there”—whether there is anything worth trying to talk to more witnesses about.

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 anything worth trying to talk to more witnesses about.
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 the Senate, not to the President, 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 chairs 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. We needed 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 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 in 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 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 advisors 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, asserting constitutional 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 LOFREGEN 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. I think that 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, as one Attorney General explained, if you didn’t have the White House explain why that subpoena was invalid, the White 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. 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 present any evidence.

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 do the House’s work for it. If there is not evidence to support the charge, then 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—the issue of this amendment, is not whether the President is doing his job, 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 is why we have that common sense 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 at one point because it is as if you want 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 present any evidence.

Consequently, many of 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 Judicial Committee. After one hearing on December 4, Speaker PELOSI, on the morning of December 5, went out and announced the conclusion of the Judicial Committee proceedings. She announced that she was directing Chairman NADLER to draft Articles of Impeachment. That was before they had set for the President to even tell his story. He wanted to have evidence 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 your 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 tells us all we need to know.

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 younglaw student—actually working as 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 about whether 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 Constitution. 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 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 be, being able to introduce documents, being able to call witnesses. This trial should be no different.

Mr. Philbin makes reference to the Cipollone letter. 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 President Trump. He chose not to. There is a reason for that. This amendment predetermines whether 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 President Trump, is a direct contravention of the plain language in the Constitution. It is a direct contravention of the plain language in the Constitution.

Mr. Speaker, this is what a fair trial would be. You could have one. You could have one. You could have a fair trial.

You can’t 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 unfair that 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 likes to do 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. I think if it were the Justice Department, you wouldn’t know anything about this. That is why there is 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 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. 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. They don’t 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 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 senior assistant legislative clerk caller if 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:

AYES—53

Alexander (D)     Fischer (R)     Perdue
Barrao (R)       Gardner (R)     Portman
Blackburn (R)    Graham (R)      Risch
Blunt (R)        Grassley (R)     Rounds
Boozman (R)      Hawley (R)      Romney
Brown (D)        Hoeven (R)      Rounds
Burr (R)         Hyde-Smith (R)  Bryant
Capito (R)       Inhofe (R)       Sarce
Cassidy (R)      Johnson (SC)    Scott (FL)
Collins (R)      Kennedy (SC)    Scott (SC)
Cornyn (R)       Lankford (R)  
Cotton (R)       Lee (D)         Shelby
Cramer (R)       Loeffler (R)    Sullivan
Crapo (R)        McConnell (R)  Tillis
Cruz (R)         McCain (R)      Toomey
Daines (R)       Moran (D)       Toomey
Em (D)           Markey (D)      Wicker
Ernst (R)        Paul (R)        Young

NAYS—47

Baldwin (D)      Bashar (D)      Rosen
Bennet (D)       Heinrich (D)    Sanders
Blumenthal (D)  Hirono (D)      Schatz
Boozman (R)     Jones (D)       Schumer
Brown (D)        Kaine (D)       Shaheen
Cantwell (D)    King (D)         Sinema
Cardin (D)       Klobuchar (D)  Smith
Carper (D)       Casey (D)       Stabenow
Coons (D)        Manchin (D)     Tester
Cortez Masto (D) Menendez (D)  Udall
Dockweiler (D)  McNichol (D)   Van Holten
Durbin (D)       Markey (D)      Warner
Feinstein (D)   Murray (D)      Warren
Gillibrand (D)  Pocan (D)       Whitehouse
Harris (D)       Reed (D)        Wyden

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

The CHIEF JUSTICE. The Democratic leader is recognized.

AMENDMENT NO. 1285

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. 4. 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—

(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 activity of potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military or other assistance, or any type of aid, security assistance, or economic aid 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 but not limited to all communications, 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, or accessible to, Secretary Michael R. Pompeo, Counselor T. Ulrich, Special Representative for Ukraine Negotiations Ambassador Kurt Volker, Deputy Assistant Secretary George Kent, then-United States Embassy in Ukraine Chargé 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, 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 messages or 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, to use Summarize representative decision about the composition of the delegation of the United States; 

(ii) a meeting at the White House on or around April 29, 2019, in Kiev, Ukraine, including but not limited to President Trump, then-Special Representative for Ukraine Negotiations Ambassador Kurt Volker, then-Deputy Secretary Rick Perry, and top Ambassador to the European Union Gordon Sondland, as well as any private meetings or conversations with those individuals before or after the later meeting;

(iii) meetings at the White House on or around July 10, 2019, involving Ukrainian officials and Ukrainian Ambassador Danylyuk and United States Government officials, including, but not limited to, then-National Security Advisor John Bolton, Secretary Ambassador, 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; and

(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 and 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 meetings, 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 Kyiv, including but not limited to 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
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 have testified under 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 $301 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 to 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, testified other State officials held by President Trump’s direction, the Secretary of State unlawfully defied that subpoena.

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 phone. We have obtained 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 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 administration officials understood the corrupt nature of President Trump’s demand.

We 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 documents 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 to release them. 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...
the recipient to hand over relevant documents. It must do so again here, and it must do so now at the beginning of the trial, not the end.

Of course the need for a Senate subpoena arises because, as I have noted, the White House told the State Department to defy a subpoena from the House. At this point, I would like to briefly describe our own efforts to get those materials. I will then address in a more detailed fashion exactly what documents the State Department has hidden from the American people and why the Senate should require it to turn them over.

On September 9, exercising their Article I oversight authority, the House investigating committee sent a document request to the State Department. The committee sought materials related to the President’s effort to pressure Ukraine to announce investigations into his political rival, as well as his dangerous, unexplained withholding of millions of dollars in vital military aid.

After the State Department failed to produce any documents, the House Committee on Foreign Affairs issued a subpoena to the State Department on September 10.

In a letter on October 1, Secretary Pompeo acknowledged receipt of the subpoena. At that time, he stated that he would respond to the committee’s subpoena for documents by the return date, October 4, but his response never came.

Instead, on October 8, President Trump’s lawyer—writing on the President’s behalf—issued a direction confirming that the administration would stonewall the impeachment inquiry.

To date, the State Department has not produced a single document—not a single document—in response to the congressional subpoena, but witnesses who testified indicated that the State Department gathered all of the records and was prepared to provide them before the White House directed it to defy the subpoena.

Notwithstanding this unlawful obstruction, through the testimony of brave State Department employees, the House was able to identify, with remarkable precision, several categories of documents relevant to the first Article of Impeachment that are sitting right now—right now—the documents are sitting right now at the State Department.

I would like to walk you through four key categories of documents that should be subpoenaed and which illustrate the highly relevant documents the State Department could produce immediately to this trial.

The first category consists of WhatsApp and other text messages from State Department officials caught up in these events, including Ambassadors Sondland and Taylor and also Deputy Assistant Secretary Kent, all three of whom confirmed in their testimony that they regularly use WhatsApp to communicate with each other and foreign government officials.

As Deputy Assistant Secretary Kent explained, WhatsApp is the dominant form of electronic communication in certain parts of the world. We know that the Department possesses records of WhatsApp and text messages from critical eyewitnesses to these proceedings, including from Ambassadors Sondland and Taylor and Deputy Assistant Secretary Kent.

We know that the Department is deliberately concealing these records at the direction of the President, and we know that they could contain highly relevant testimony about the President’s plan to condition official Presidential acts on the announcement of investigations for his own personal and political gain.

We know this not only from testimony but also because Ambassador Volker was able to provide us with a small but telling selection of his WhatsApp messages. Those messages confirm that a full review of these texts and WhatsApp messages from relevant officials would help to paint a vivid, firsthand picture of statements, decisions, concerns, and beliefs held by important players unfolding in real time.

For example, thanks to Ambassador Volker’s messages, we know that Ambassador Sondland—a key player in the President’s pressure campaign who tested, failed, and agreed to a quid pro quo arrangement—texted directly with the Ukrainian President, President Volodymyr Zelensky. This image produced by Ambassador Volker appears to be a screenshot of a text message that Ambassador Sondland exchanged with President Zelensky about plans for a White House visit—the very same visit that President Zelensky badly needed and that President Trump later withheld as part of the quid pro quo described by Ambassador Sondland in his testimony.

This body and the American people have a right to know what else Ambassador Sondland and President Zelensky said in this and other relevant exchanges about the White House meeting or about the military aid and the President’s demands, but we don’t know exactly what was conveyed and when. We don’t know if because President Trump directed the State Department to conceal these text records. These are records that the State Department would have otherwise turned over if not for the President’s direction and desire to cover up his wrongdoing.

To get a sense of why texts and WhatsApp messages are so vital, just consider yet another piece of evidence we have gleaned from Ambassador Volker’s partial production.

On July 10, after the White House meetings at which Ambassador Sondland pressured Ukrainian officials to announce investigations into the President’s political opponents, a Ukrainian official texted Ambassador Volker: “I feel that the key for many things is Rudi and I ready to talk with him at any time.”

This is evidence that, immediately following Ambassador Sondland’s ultimate, Ukrainian officials recognized that they needed to appease Rudy Giuliani by carrying out the investigations. Of course, Mr. Giuliani had publicly confirmed that he was not engaged in “foreign policy” but was instead advancing his client’s—the President’s—own personal interests.

Further, in another text message exchanged, provided to us by Ambassador Volker, we see evidence that Ukraine understood President Trump’s demands loud and clear.

On the morning of July 25, half an hour before the infamous call between President Trump and President Zelensky, Ambassador Volker wrote to a senior Ukrainian official:

> Heard from White House—assuming President Z convinces trump he will investigate/get to the bottom of what happened” in 30 days will not travel to Washington. Good luck! See you tomorrow—Kurt.

Ambassador Sondland confirmed that this text accurately summarized the President’s directive to him earlier that morning.

After the phone call between President Trump and President Zelensky, the Ukrainian official responded, pointedly: “Phone call went well.”

He then discussed potential dates for a White House meeting.

Then, the very next day, Ambassador Volker wrote to Rudy Giuliani: “Exactly the right messages as we discussed. These messages confirm Mr. Giuliani’s central role, the premeditated nature of President Trump’s solicitation of political investigations, and the pressure campaign on Ukraine waged by Mr. Giuliani and senior officials at President Trump’s direction.

Again, this is just some of what we learned from Ambassador Volker’s records. As you will see during this trial presentation, there were numerous WhatsApp messages in August while Ambassador Volker and Sondland and Mr. Giuliani were pressuring President Zelensky’s top aides to issue a statement announcing the investigation that President Trump wanted. Ambassador Taylor’s text that you saw earlier about withholding the aid further reveals how much more material there likely is that relates to the Articles of Impeachment.

There can be no doubt that a full production of relevant texts and WhatsApp messages from other officials involved in Ukraine and in touch with Ukrainian officials—including Ambassador Sondland, Ambassador Taylor, and Deputy Assistant Secretary Kent—would further illuminate the malfeasance addressed in our first article.

This leads to the second category of documents that the State Department is unlawfully withholding—emails involving key State Department officials.

CONGRESSIONAL RECORD — SENATE
January 21, 2020
concerning interactions with senior Ukrainian officials and relating to military aid, a White House meeting, and the President’s demand for an investigation into his rivals.

For example, on July 19, Ambassador Gordon Sondland spoke, directly with President Zelensky, about the upcoming July 25 call between President Trump and President Zelensky.

Ambassador Sondland sent an email updating key officials, including Secretary Pompeo, Acting White House Chief of Staff, and senior adviser, Robert Blair. In this email, he noted that he “prepared” President Zelensky, who was willing to make the announcements of political investigations that President Trump desired. Secretary Perry and Mick Mulvaney then responded to Sondland, acknowledging they received the email and recommending to move forward with the phone call that became the July 25 call between the Presidents of the United States and Ukraine.

We know all of this not because the State Department provided us with critical documents but, instead, because Ambassador Sondland provided us a reproduction of the email. In his further testimony, Ambassador Sondland correctly explained that this email demonstrated “everyone was in the loop.”

(Text of Video tape presentation:)

Everyone was in the loop. It was no secret. Everyone was informed via email on July 19th, just before the Presidential call. I communicated to the team, I told President Zelensky in advance that assurances to run a fully transparent investigation and turn over every stone were necessary in his call with President Trump.

Mrs. Manager DEMINGS. Even viewed alone, this reproduced email is damning. It was sent shortly after Ambassador Sondland personally conveyed the demand for investigations to Ukrainians at the White House, leading several officials to sound alarms. It was said just a few days before the July 25 call, where President Trump asked for a “favor,” and, by itself, this email shows who was involved in President Trump’s plan to pressure the Ukrainian President for his own political gain.

But it is obvious that the full email chain and other related emails to this key time period would also be highly relevant. We don’t have those emails because the State Department is hiding them, at the direction of the President. The Senate should issue the proposed subpoena to ensure a complete record of these and other relevant emails. Any doubt that the State Department is concealing critical evidence from this body was resolved when the State Department was recently ordered to release documents, including emails, pursuant to a lawsuit under the Freedom of Information Act. These documents are limited to a very narrow time period, but, nevertheless, despite the heavy redactions, this highly limited glimpse into the State Department’s secret records demonstrates that those records are full of information relevant to this trial.

For example, several of these newly released emails show multiple contacts between the State Department, including Secretary Pompeo, and Mr. Giuliani throughout 2019. This is an important fact.

Mr. Giuliani served as the President’s point person on this court pt. scheme. Mr. Giuliani repeatedly emphasized that his role was to advance the President’s personal agenda—the President’s political interests, not to promote the national security interests of the United States. The fact that the President’s private attorney was in contact at key junctures with the Secretary of State, whose senior officials were directed by the President to support Mr. Giuliani’s efforts in Ukraine, is relevant, disturbing, and telling.

For example, we know that on March 26, as Mr. Giuliani was pursuing the President’s private agenda in Ukraine, and just 1 week after The Hill published an article featuring Mr. Giuliani’s Ukraine theories, Secretary Pompeo and Mr. Giuliani spoke directly on the phone.

That same week, President Trump’s personal secretary was asked by Mr. Giuliani’s assistant for a direct connection to Secretary Pompeo. Based on these records, it is also clear that Secretary Pompeo was already actively engaged with Mr. Giuliani in early spring of 2019. It also appears that Mr. Giuliani’s efforts were backed by the White House, given the involvement of Mr. Giuliani’s personal secretary.

This body and the American people need to see these emails and other files that the White House, flushing out these exchanges and the details surrounding Mr. Giuliani’s communications with Secretary Pompeo. Moreover, based on call records lawfully obtained by the House from this period, Mr. Giuliani called the White House 25 times and also connected with Mr. Giuliani’s assistant for a direct connection to Secretary Pompeo.

These records show that on March 27, Mr. Giuliani placed a series of calls—series of calls—to the State Department switchboard, Secretary Pompeo’s assistant, and the White House switchboard in quick succession, all within less than 30 minutes.

Obtaining emails and other documents regarding the State Department leadership’s interaction with President Trump’s private lawyer in this period, when Mr. Giuliani was actively orchestrating efforts in Ukraine related to the sham investigation into Vice President Biden and the 2016 election, would further clarify the President’s involvement and direction at this key juncture in the formation of a plot to solicit foreign interference in our election.

We also know, based on recently obtained documents from Lev Parnas, an associate of Rudy Giuliani who assisted him in his representation of President Trump, that Giuliani likely spoke with Secretary Pompeo about Ukraine matters even earlier than previously understood.

According to documents obtained from Mr. Parnas, Mr. Giuliani wrote in early February of 2019 that he apparently spoke with Secretary Pompeo about the removal of the U.S. Ambassador in Ukraine, Marie Yovanovitch. Mr. Giuliani viewed her as an impediment to Ukraine’s corrupt scheme and orchestrated a long-running smear campaign against her. Here is what Mr. Parnas said about this just last week.

(Text of Videotape presentation:)

Ms. MADDOX. Do you believe that part of the motivation to get rid of Ambassador Yovanovitch, to get her out of post, was she was in the way of this effort to get the government of Ukraine to announce investigations of Joe Biden?

Mr. PARNAS. That was the only motivation.

Ms. MADDOX. That was the only motivation?

Mr. PARNAS. There was no other motivation.

Mrs. Manager DEMINGS. These are just some of the email communications that we know to exist, but there are undoubtedly more, including, for example, Ambassador Yovanovitch’s request for the State Department to issue a statement of support of her around the time that Mr. Giuliani was speaking directly with Secretary Pompeo, but the statement never came.

The State Department has gathered these records, and they are ready to be turned over pursuant to a subpoena from the Senate. It would not be a time-consuming or lengthy process to obtain them, and there are clearly—clearly—important and relevant documents to the President’s scheme. If we want the full and complete truth, then we need to see those emails.

The Senate should also seek a third item that the State Department has refused to provide, and that is Ambassador Taylor’s extraordinary first-person diplomatic cable to Secretary Pompeo, dated August 29 and sent at the recommendation of the National Security Advisor, John Bolton, in which Ambassador Taylor strenuously objected to the withholding of military aid from Ukraine, as Ambassador Taylor recounted in his deposition.

(Text of Videotape presentation:)

Ambassador TAYLOR. Near the end of Ambassador Bolton’s visit, I asked to meet him privately, during which I expressed to him my serious concern about the withholding of military assistance to Ukraine while the Ukrainian president was defending his country from Russian aggression. Ambassador Bolton recommended that I send a first-person cable to Secretary Pompeo directly relying on my concerns.

I wrote and transmitted such a cable on August 29th, describing the folly I saw in withholding military aid to Ukraine at a time when hostilities in the east and when Russia was watching closely to gauge the level of American support for
the Ukrainian Government. The Russians, as I said at my deposition, would love to see the humiliation of President Zelensky at the hands of the Americans. I told the Secretary that I could not and would not defend such a policy.

Although I received no specific response, I heard that soon thereafter the Secretary carried the cable with him to a meeting at the White House focused on security assistance for Ukraine.

Mrs. Manager DEMINGS. While we knew from Ambassador Taylor and Deputy Assistant Secretary Kent that the cable was received, we do not know whether or how the State Department responded, nor do we know if the State Department possesses any other internal records relating to this cable.

This cable is vital for three reasons. First, it demonstrates the harm that President Trump did to our national security when he used foreign policy as an instrument of his own personal, political ends. Second, it undermines the President’s claim that by the time, the State Department could “just release it” to be released. In other words, President Trump’s effort to use military aid to apply additional pressure on Ukraine was working.

Finally, based on reporting by the New York Times, we now know that within days of Ambassador Taylor sending this cable, President Trump discussed Ukrainian security assistance with Secretary Pompeo, Defense Secretary Esper, and National Security Advisor Bolton. The investigation uncovered testimony that Secretary Pompeo brought Ambassador Taylor’s cable to the White House; perhaps it was during this meeting. That, perhaps, is why Ambassador Taylor’s cable, all three of them pleaded—pleaded—with the President to resume the crucial military aid. Yet the President refused.

This body has a right to see Ambassador Taylor’s cable, as well as the other State Department records addressing the official response to it. Although it may have been classified at the time, the State Department could no longer claim that the topic of security assistance remains classified today in light of the President’s decision to declassify his two telephone calls with President Zelensky and Mr. Mulvaney’s public statements about security assistance.

The fourth category of documents that the Senate should subpoena are contemporaneous, first-person accounts from State Department officials who were caught up in President Trump’s corrupt scheme. These documents, which were described in detail by Deputy Assistant Secretary Kent, Ambassador Taylor, and political officer David Holmes, would help complete the record and clarify how the President’s scheme unfolded in real time and how the Ukrainians reacted.

Mr. Kent wrote notes or memos to file at least four times, according to his testimony. Ambassador Taylor took extensive notes of nearly every conversation he had—some in a little notebook. David Holmes, the Embassy official in Ukraine, was a consistent notetaker of important meetings with Ukrainian officials.

(Text of Videotape presentation:) Mr. GOLDMAN. Did you take notes of this conversation on September 1st with Ambassador Sondland?

Ambassador TAYLOR. I did.

Mr. GOLDMAN. And did you take notes related to most of the conversations, if not all of them, that you recited in your opening statement?

Ambassador TAYLOR. All of them, Mr. Goldman.

Mr. GOLDMAN. And you are aware, I presume, that the State Department has not provided those notes to the committee. Is that right?

Ambassador TAYLOR. I am aware.

Mr. GOLDMAN. So we don’t have the benefit of reviewing them to ask you these questions.

Ambassador TAYLOR. Correct. I understand that they may be coming, sooner or later.

Mr. GOLDMAN. Well, we would welcome that.

Mrs. Manager DEMINGS. The State Department never produced those notes.

As another example, Deputy Assistant Secretary Kent testified about a key document that he drafted on August 16, describing his concerns that the Trump administration was attempting to pressure Ukraine into opening politically motivated investigations.

(Text of Videotape presentation:) [Ms. SPEIER.] I’d like to start with you, Mr. Kent. In your testimony, you said that you had—”In mid-August, it became clear to me that Giuliani’s efforts to gin up politically motivated investigations were now infecting U.S. engagement with Ukraine.” Is that right?

Mr. KENT. Yes, ma’am. I wrote a memo to the file on August 16th.

Ms. SPEIER. But we don’t have access to that memo, do we?

Mr. KENT. I submitted it to the State Department, subject to the September 27th subpoena.

Ms. SPEIER. And we have not received one piece of paper from the State Department relative to this investigation.

Mrs. Manager DEMINGS. Deputy Assistant Secretary Kent also memorialized a September 15 conversation in which Ambassador Taylor described an Ukrainian official accusing America of hypocrisy for advising President Zelensky against investigating a prior Ukrainian president. Mr. Kent described that conversation during his testimony.

But the more awkward part of the conversation came after Special Representative Volker made the point that the Ukrainians, who had opened their authorities under Zelensky, had opened investigations of former President Poroshenko. He didn’t think that was appropriate.

Mr. KENT. Well, I don’t think that was appropriate.

When Andriy Yermak said: What? You mean the type of investigations you’re pushing for us to do on Biden and Clinton?

The conversation makes clear the Ukrainian officials understood the congressional subpoena’s request and therefore doubted American credibility on anti-corruption measures.

Records of these conversations—and other notes and memorandum by senior American officials in Ukraine—would flesh out and help complete the record for the first Article of Impeachment. They would tell the whole truth to the American people and to this body. You should require the State Department to provide them.

To summarize, the Senate should issue the subpoena proposed and the amendment requiring the State Department to turn over relevant text messages and WhatsApp messages, executive diplomatic cables, and notes. These documents bear directly on the trial of this body—the trial that this body is required by the Constitution to hold. They are immediately relevant to the first Article of Impeachment. Their existence has been attested to by credible witnesses in the House, and the only reason we don’t already have them is that the President has ordered his administration, including Secretary Pompeo, to hide them.

The President’s lawyers may suggest that the House should have sought these materials in court or awaited further lawsuits under the Freedom of Information Act, a.k.a. FOIA lawsuits. Any such suggestion is meritless.

To start, the Constitution has never been understood to require such lawsuits, which has never occurred—never occurred—in any previous impeachment.

Moreover, the President has repeatedly and strenuously argued that the House is not even allowed to file a suit to enforce its subpoenas.

In the Freedom of Information Act cases, the administration has only grudgingly and slowly produced an extremely small set of materials but has insisted on applying heavy and dubious redactions.

FOIA lawsuits filed by third parties cannot serve as a credible alternative to congressional oversight. In fact, it is well established that the administration has produced more documents pursuant to Freedom of Information Act lawsuits by private citizens and entities than congressional subpoenas.

Finally, as we all know, litigation would take an extremely long time—likely years, not weeks or months—while the misconduct of this President requires immediate attention. The misconduct of this President requires immediate attention.

If this body is truly committed to a fair trial, it cannot let the President play a game of “keep away” and dictate what evidence the Senators can view in this impeachment process.
and cannot see bearing on his guilt or innocence. This body cannot permit him to hide all the evidence while disingenuously insisting on lawsuits that he doesn’t actually think we can file—ones that he knows will not be resolved until after the election he can try to cheat. Instead, to honor our oaths to do impartial justice, we urge each Senator to support a subpoena to the State Department. And that subpoena should be issued now, at the beginning of the trial, rather than at the end. Time matters. They were reviewed and their importance weighed by the parties, by the Senate, and by the American people. That is how things work in every courtroom in the Nation, and it is how they should work here, especially because the stakes, as you all know, are so high.

The truth is there. Facts are stubborn things. The President is trying to hide it. This body should not surrender to his obstruction by refusing to demand a full record. That is why the House managers support this amendment.

Mr. Chief Justice, the House managers reserve the balance of our time.

The CHIEF JUSTICE. Mr. Cipollone.

Mr. CIPOLLINE. Thank you, Mr. Chief Justice.

In the interest of time, I will not repeat all of the arguments we have made already with respect to these motions. I would say one thing before I turn it over to my cocounsel. Mr. SCHIFF came here and said he is not asking you to do something he wouldn’t do for himself, and the House manager said: We were not asking you to do our jobs for us.

Mr. SCHIFF came up here and said: "I call Ambassador Bolton." Remember Paul Harvey? It is time for the rest of the story. He didn’t call him in the House. He didn’t subpoena Ambassador Bolton in the House.

I have one question from Ambassador Bolton’s lawyer. He is the same lawyer that Charlie Kupperman hired. It is dated November 8. He said: I write as counsel to Dr. Charles Kupperman and to Ambassador John Bolton in response to, one, the letter of November 5 from Chairman SCHIFF, Chairman ENGEL, and Acting Chair MALONEY, the House chairs, withdrawing the subpoena to Dr. Kupperman—I mentioned that earlier—and to recent published reports announce that the House chairs do not intend to issue subpoenas to Ambassador Bolton.

He goes on to say: "We are dismayed that committees have chosen not to join in seeking resolution from the Judicial Branch of this momentous Constitutional question." He ends the letter by saying: "If the House chooses not to pursue through subpoena the testimony of Dr. Kupperman and Ambassador Bolton, let the record be clear: that is the House’s decision."

The decision. The never subpoenaed Ambassador Bolton. They didn’t try to call him in the House. They withdrew the subpoena for Charles Kupperman before the judge could rule, and they asked that the case be mooted. Now they come here, and they ask you to issue a subpoena for John Bolton. It is not right.

I yield the remainder of my time to Mr. Sekulow.

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, the managers said facts are a stubborn thing. Let me give you some facts. It is from the transcripts.

Ambassador Sondland actually testified unequivocally that the President did not tie aid to investigations. Instead, he acknowledged that any leak he had suggested was based entirely on his own speculation, unconnected to any conversation with the President.

Here is the question: What about the aid? Ambassador Volker says that the aid was not tied.

Answer. I didn’t say that they were conclusively tied either. I said I was presuming it. Question. OK. And so the President never told you they were tied?

Answer. That is correct.

Question. So the Presidency and Ambassador Volker’s testimony is consistent, and the President did not tie investigations, aid to investigations.

Answer. That is correct.

Ambassador Sondland actually testified that he asked President Trump directly about these issues, and the President explicitly told him that he did not want anything from Ukraine. He said: I want nothing. I want nothing. I want no quid pro quo. Tell Zelensky to do the right thing.

Similar comments were made to Senator JOHNSON.

Those are the facts—stubborn, but those are the facts.

No one is above the law. Here is the law. As every Member of Congress knows and is undoubtedly aware, separate from even state sacred privileges is the Presidential communication expectation privilege in performance of a President’s responsibilities. The Presidential communications privilege has constitutional origins. Courts have recognized a great public interest in preserving the confidentiality of conversations that take place in the President’s performance of his official duties because such confidentiality is needed to protect the effectiveness of the Executive decision-making process. That is In re Sealed Case, which was decided in the District of Columbia Court of Appeals.

The Supreme Court found such a privilege necessary to guarantee the candor of Presidential advisers and to provide a President and those who assist him with freedom to explore alternatives in the process of ultimately shaping policies and making decisions and to do so in a way many would be unwilling to express except in private. For these reasons, Presidential conversations are presumptively privileged.

There is something else about this privilege. Communications made by Presidential advisers—again quoting courts—and by the way, lawyer lawsuits? Lawyer lawsuits? We are talking about the impeachment of a President of the United States, duly elected, and the Members and the managers are complaining about lawyer lawsuits? Constitution of the United States. It is disrespecting the Constitution of the United States to even say that in this Chamber, "lawyer lawsuits."

Here is the law. Communications made by Presidential advisers in the course of preparing advice for the President come under the Presidential communications privilege even when these communications are not made directly to the President—even when they are not made directly to the President—adviser to adviser. Given the need to provide sufficient elbow room for advisers to obtain information from all knowledgeable sources, the privilege must apply both to communications which these advisers solicit and to communications which these advisers authorize and receive or would authorize and receive, as well as those they authorized themselves.

The privilege must also extend to communications authored or received in response to solicitation by members of a Presidential adviser’s staff since in most instances advisers must rely on their staffs to investigate an issue and formulate advice given to the President.

Lawsuits. The Constitution—it is a dangerous moment for America when an impeachment of a President of the United States is being rushed through because of lawyer lawsuits. The Constitution allows it, if necessary. The Constitution demands it, if necessary.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Mrs. DEMINGS, you have 13 minutes for rebuttal, or Mr. SCHIFF.

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

Let me respond to some of my colleagues’ points, if I can.

First, counsel said: Well, the House would like to call John Bolton, but the House did not seek his testimony during its investigation.

Well, first of all, we did. We invited John Bolton to testify. Do you know what he told us? He said: I am not coming. And if you subpoena me, I will sue you.

That was his answer: “I will sue you.”

Mr. Bolton is represented by the same lawyer who represents Dr. Kupperman, who actually did sue us when he was subpoenaed. So we knew that John Bolton would make good on that threat.

Mr. Sekulow said something about lawyer lawsuits. I have to confess, I wasn’t completely following the argument, but he said something about lawyer lawsuits and that we are against lawyer lawsuits. I don’t know what that means, but I can tell you this: The Trump Justice Department is in court in that case and in other cases arguing that Congress cannot go to court to enforce its subpoenas. So when they say
something about lawyer lawsuits and they say there is nothing wrong with the House suing to get these witnesses to show up and they should have sued to get them to show up, their own lawyers are in court saying that the House has no such right. They are in court saying they have no leverage. They have nothing to do with the national security situation. The White House Counsel, but apparently it was the White House Counsel, they are national security. It was, well, John Bolton and Dr. McGahn, they are national security. The White House was aware of that complained. So the President tells everyone, called them into the office and said: Hey, I am going to tell you now; and then: I am going to tell you now. If he didn’t tell everyone, I guess it is case closed. Well, you know who the President did tell, among others? He told Mick Mulvaney. Mick Mulvaney went out on national television and said, yes, they discussed it, this Russian narrative that it wasn’t Ukraine that intervened in 2016; it was China. It wasn’t Russia; it was Ukraine. Yes, that bogus 2016 theory; yes, they discussed it; yes, it was part of the reason why they withheld the money. When a reporter said: Well, you are kind of describing a quid pro quo, his answer was: Yes, get used to it—or get over it. We do it all the time. Now, they haven’t said they want to hear from Mick Mulvaney. I wonder why. The President did talk to Mick Mulvaney about it. It is likely that you like to hear what Mick Mulvaney has to say? If you really want to get to the bottom of this, if they are really challenging the fact that the President conditioned $400 million in military aid to an ally at war, if Mick Mulvaney has already said publicly that he talked to the President about it, and this is part of the reason why, don’t you think we should hear from him? Wouldn’t you think impartial justice requires you to hear from him? I think you would. Now, counsel also referred to Ambassador Sondland and Sondland saying: Well, the President told me there was no quid pro quo. Now, of course, at the time the President said Sondland no quid pro quo, he became aware of the whistleblower complaint, presumably by Mr. Cipollone. So the President knew that this was going to come to light. On the advice, apparently, of Mr. Cipollone, or maybe others, the Director of the White House for the first time in history, withheld a whistleblower complaint from Congress, its intended recipient. Nonetheless, the White House was aware of that complaint. We launched our own investigations. Yes, they got caught. In the midst of being caught, what does he say? It is called a false exculpatory. For those people at home, that is a fancy word of saying it is a false, phony alibi. No quid pro quo. He wasn’t even asked the question about what is your explanation for just blurted it out. That is the defense? The President denies it? What is more interesting, he didn’t tell you about the other half of that conversation where the President says no quid pro quo. He says: No quid pro quo, but Zelensky needs to go to the mike, and he should want to do it, which is the equivalent of saying no quid pro quo, except that quid pro quo, and here is the other side of that equation. The other half of that equation is that he wants to go to the mike, and he should want to do it. That is the alibi?

They didn’t also mention, of course—and you will hear about this during the trial, if we have a real trial. Ambassador Sondland also said: We are often asked was there a quid pro quo, and the answer is, yes, there was a quid pro quo. There was an absolute quid pro quo.

What is more, when it came to the military aid, it was as simple as two plus two. Well, I will tell you something. We are not the only people who can add up two plus two. There are millions of people watching this who can add up two plus two also. When the trial begins, this is what you need to tell the trial: We are holding up the aid because of this, as the Chief of Staff admitted; when the President gives no plausible or other explanation for holding up aid that you all and we all supported and voted on in a very bipartisan way, has no explanation for it; when in that call he never brings up corruption except the corruption he wants to bring about, it doesn’t take a genius, it doesn’t take Albert Einstein to add up two plus two. It equals four. In this case, it equals guilt.

Now, you are going to have 16 hours to ask questions. You are going to have 16 hours. That is a long time to ask questions. Wouldn’t you like to be able to ask about the documents in that 16 hours? Would you like to be able to say: Counsel for the President, what did Mick Mulvaney mean when he emailed so-and-so and said such and such? What is your explanation for that? That would be pretty damning evidence of exactly what the House is saying. What is your explanation of that? Mr. Sekulow, what is your explanation?

Wouldn’t you like to be able to ask about the documents or ask the House: Mr. SCHIFF, what about this text message? Doesn’t that suggest such—what the President is arguing? Wouldn’t you like to be able to ask me that question, or one of my colleagues? I think you would. I think you should. But the backward way this resolution is drafted, you get 16 hours to ask questions about documents you have never seen. You know what is more? If you do decide at that point, after the trial is essentially over, that you do want to see the documents after all and the documents are produced, you don’t get another 16 hours. You don’t get 16 minutes. You don’t get 16 seconds to ask about those documents. Does that make any sense to you? Does that make any sense at all? I will tell you something I would like to know that may be in the documents. You probably heard before about the
The CHIEF JUSTICE. The question is on agreeing to the motion to table. Mr. MCCONNELL, I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll. The motion to table is agreed to; the amendment is tabled.

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

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to subpoena certain Office of Management and Budget documents, and I ask that it be read.

The CHIEF JUSTICE. The clerk will read the amendment.

The legislative clerk read as follows:

The amendment is tabled.

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to subpoena certain Office of Management and Budget documents, and I ask that it be read.

The CHIEF JUSTICE. The amendment is tabled.

Mr. Chief Justice, I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. MCCONNELL. Mr. Chief Justice, I send a motion to the desk to table the amendment.

The CHIEF JUSTICE. The question is on agreeing to the motion to table. Mr. MCCONNELL, I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll. The motion to table is agreed to; the amendment is tabled.

The motion to table is agreed to; the amendment is tabled.
communications with the Department of Defense related to concerns about the accuracy of the talking points; and

(G) all meetings and calls between President Trump and other individuals, including documents, communications, and other records related to the scheduling of, preparation for, and follow-up from the July 25, 2019, call between President Trump and President Zelensky, including phone calls, as well as the President’s September 25, 2019, meeting with the President of Ukraine in New York; 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 under this section.

The CHIEF JUSTICE. The majority leader is recognized.

PROGRAM

Mr. MCCONNELL. Mr. Chief Justice, first a scheduling note: As the parties are ready to debate this amendment, I suggest we go ahead, get through the debate, and vote before we take a 30-minute recess for dinner.

I remind everyone that I will be moving to table the amendment. It is also important to remember that both the evidence and witnesses are addressed in the underlying resolution.

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

Mr. Manager SCHIFF. Are you a proponent or opponent of this motion?

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

The CHIEF JUSTICE. Mr. Cipollone, are you a proponent or opponent?

Mr. Counsel CIPOLLONE. Mr. Chief Justice, we are an opponent.

The CHIEF JUSTICE. Mr. SCHIFF, your side will proceed first, and you will be able to reserve time for rebuttal.

Mr. Manager CROW. Mr. Chief Justice, before I begin, the House managers will reserve the balance of our time to respond to the counsel for the President.

Mr. Chief Justice, Senators, counsel for the President, and the American people, I am JASON CROW from the great State of Colorado.

The House managers strongly support this amendment to subpoena key documents from the Office of Management and Budget, or OMB. These documents go directly to one of President Trump’s abuses of power: his decision to withhold vital military aid from a strategic partner that is at war to benefit a primary reelection campaign. Why should that matter? Why should anybody care? Why should I care?

Before I was a Member of Congress, I was an American soldier serving in Iraq and Afghanistan. Although some years have passed since that time, there is still some memories that are seared in my brain. One of those memories was scavenging scrap metal on the streets of Baghdad in the summer of 2003, which we had to bolt onto the side of our trucks because we had no armor to protect against roadside bombs.

When we talk about troops not getting the equipment they need, when they need it, it is personal to me. To be clear here, we are talking of $391 million of taxpayer money intended to protect our national security by helping our strategic partner, Ukraine, fight against Vladimir Putin’s Russia, an adversary of the United States.

The President could not carry out this scheme alone. He needed a lot of people to help him. That is why we know as much about it as we do today. But there is much more to know. That is what trials are for, to get the full picture.

We know there is more because President Trump needed the Office of Management and Budget to figure out how to stop what should have been a routine release of funds mandated by Congress—a release of funds that was already under way.

The people in this Chamber don’t need me to tell you that because 87 of you in this room voted for those vital funds to support our partner Ukraine.

Witnesses before the House testified extensively about OMB’s involvement in carrying out the hold. It was OMB that relayed the President’s instructions and implemented them. It was OMB that scrambled to justify the freeze.

OMB has key documents that President Trump has refused to turn over to Congress. It is time to subpoena those documents. These documents would provide insight into critical aspects of how the President carried out the freeze. They would reveal the decision-making process and motivations behind President Trump’s freeze. They would reveal the concerns expressed by career OMB officials, including lawyers, that the hold was violating the law. They would expose the lengths to which OMB went to justify the President’s hold. They would reveal concerns about the impact of the freeze on Ukraine and U.S. national security. They would show that senior officials repeatedly attempted to convince President Trump to release the hold.

In short, they would show exactly how the President carried out the scheme to use our national defense funds to benefit his personal political campaign.

We are not speculating about the existence of these documents. We are not guessing what the documents might show. During the course of the investigation in the House, witnesses who testified before the committees identified multiple documents directly relevant to the impeachment inquiry that OMB continues to hold to this day.

We know these documents exist, and we know that the only reason we do not have them is because the President directed OMB not to produce them because he knows what they would show.

To demonstrate the significance of the OMB documents and the value they would provide in this trial, I would like to walk you through some of what we know President Trump and the Trump administration has refused to turn over.

As we have discussed, the Trump administration has refused to turn over any documents to the House in response to multiple subpoenas and requests. Based on what is known from the testimony and the few documents that have been obtained through public reporting and lawsuits, it is clear that the President is trying to hide his evidence of what it would show. The documents offer stark examples of the chaos and confusion that the President’s scheme set off across our government and made clear the importance of the documents that are still being concealed by the President.

We know that OMB has documents that reveal that as early as June, the President was considering holding military aid for Ukraine. The President began questioning military aid to Ukraine after Congress appropriated and authorized the money—$250 million in DOD funds and $140 million in State Department funds. This funding had wide bipartisan support because, as many witnesses testified, providing military aid to Ukraine to defend itself against Russian aggression also benefits our own national security. Importantly, the President’s questions came weeks after the Department of Defense already certified that Ukraine had undertaken the anti-corruption reforms and other measures mandated by Congress as a condition for receiving that aid. There is a process for making sure that the funds make it to the right place and to the right people—a process that has been followed for years. That we have been providing that security assistance to Ukraine, including the first 2 years under the Trump administration.

Nonetheless, the President’s questions came days after DOD issued a press release on June 18, announcing they would provide its $250 million portion of the taxpayer-funded military aid to Ukraine. According to public reporting, the day after DOD’s press release, a White House official named Robert Blair called OMB’s Acting Director, Russell Vought, to talk about the military aid to Ukraine. According to public reports, Mr. Blair told Vought: “We need to hold it up.”

OMB has refused to produce any documents related to this conversation. The Senate can get them by passing the amendment and issuing a subpoena.

We know there is more. The same day Blair told Vought to hold up the aid, Michael Duffey, a political appointee at OMB who reports to Vought, emailed Deputy Under Secretary of Defense Elaine McCusker and told her that the President had questions about the aid. Duffey copied Mark Sandy, a career official at OMB, who told us about the email in his testimony before the House.

Like all others, that email was not produced by the Trump administration in the House impeachment investigation. We know this email exists, however, because in response to a Freedom of Information Act lawsuit, the Trump
administration was forced to release a redacted email consistent with Sandy’s description.

But OMB provided none of those documents to the House. With this proposed amendment, the Senate has an opportunity to obtain and review the full record that can further demonstrate how and why the President was holding the aid. These documents would also shed light on the President’s order to implement the hold.

On July 3, the State Department told various agencies that OMB blocked it from dispensing $141 million in aid. OMB had directed the State Department not to send a notification to Congress about spending the money, and without that notification, the aid was effectively blocked. Why did OMB block the congressional notification? Who told them to do it? What was the reason? The Senate would get those answers if it issued this subpoena.

But there is more. On July 12, Blair—the White House official who had called Vought on June 19 and said “We need to hold it up”—sent an email to Duffey at OMB. Blair said: “The President is directing a hold on military support funding for Ukraine.”

We haven’t seen this email. The only reason we know about it is from the testimony of Mark Sandy, the career OMB official who followed the law and complied with his subpoena. As you can see from the transcript excerpt in front of you, Sandy testified that the July 14 phone call was a “concerning conversation about any other country or any other aid packages, just Ukraine. So of the dozens of countries we provide aid and support for, the President was only concerned about one of them—Ukraine. Why? Well, we know why. But OMB has still refused to provide a copy of this July 12 email and has refused to provide any documents surrounding it, all because the President told OMB to continue to hide the truth from Congress and the American people.

What was he afraid of? A subpoena issued by the Senate would show us.

OMB also has documents about a key series of meetings triggered by the President’s order to hold military aid. In the second half of July, the National Security Council convened a series of interagency meetings about the President’s hold on military aid. OMB documents would show what happened during those meetings. For example, on July 18, the National Security Council staff convened a routine interagency meeting to discuss Ukraine policy. During the meeting, it was the OMB representative who announced that President Trump placed a hold on all military aid to Ukraine.

According to Taylor, our most senior diplomat to Ukraine, participated in that meeting, and he described his reaction at his own hearing.

(Text of Videotape presentation:)

Mr. TAYLOR. In a regular NSC secure video conference on July 18, I heard a staff person from the Office of Management and Budget say that there was a hold on security assistance to Ukraine but could not say why. “Toward the end of an otherwise normal meeting, a voice on the call—the person was off-screen—said that she was from OMB and her named was [redacted] and she would not approve any additional spending on security assistance for Ukraine until further notice.”

Mr. Manager CROW. It is hard to believe OMB would not have any documents following this bombshell announcement. It surely does. It was the agency that delivered the shocking news to the rest of the U.S. Government about the President’s hold on the aid. Then there was a second meeting on July 23, where we understood again that concerns about the legality of OMB’s hold on the aid and then a third meeting, at a more senior level, on July 26. Witnesses testified that at that meeting, OMB struggled to offer an explanation for the President’s hold on the aid. Then there was a fourth meeting on July 31, where the legal concerns about the hold were raised. At each of these meetings, there was confusion about the scope and the reasons for the hold. Nobody seemed to know what was going on. But that was exactly the point.

All of the agencies—except OMB, which was simply conveying the President’s order—supported the military aid and argued for lifting the hold. OMB did not produce a single document providing information about it, all participation, preparation, or followup from any of these meetings. Did they come prepared with talking points for these meetings? Did OMB officials take notes during any of these meetings? Did they exchange emails about what was going on? Did OMB discuss what reasons they could give everyone else for the hold? By issuing this subpoena, the Senate can find out the answers to all of those questions and others like them. The American people deserve answers.

OMB documents would also reveal what happened on July 25. On July 25, President Trump conducted his phone call with President Zelensky, during which he demanded “a favor.” This favor was for Ukraine to conduct an investigation to benefit the President’s political campaign. That call was at 9 a.m. Just 90 minutes after President Trump hung up the phone, Duffey, the political appointee at OMB who is in charge of national security programs, emailed DOD to “formalize” the hold on the military aid, just 90 minutes after President Trump’s call—a call in which the President had asked for “a favor.”

That email is on the screen in front of you. We have a redacted copy of this email because it was recently released through the Freedom of Information Act. It was not released by the Trump administration in response to the House’s subpoena.

In this email, Duffey told DOD officials that, based on the guidance it received, they should “hold off on any additional DOD obligations of these funds.” He added that the request was “sensitive” and that they should keep the information “in the hold.” Why? Well, we know why. But OMB has still refused to provide any documents surrounding it.

Why did Duffey consider the information sensitive? Why didn’t he want anyone to learn about it? Answers to those questions may be found in OMB emails—emails that we could all see if you issue a subpoena.

But there is more. Remember, the administration needed to create a way to stop funding that was already underway. The train had already left the station. Something had already been done before. Later in the evening of July 25, OMB found a way, even though DOD had already notified Congress that the funds would be released. Here is how this scheme worked. OMB created a document that included a carefully worded footnote directing DOD to hold off on spending the funds “to allow for an interagency process to determine the best use.” Remember that language, “allow for an interagency process to determine the best use.”

Let me explain that. The footnote stated that this “brief pause” would not prevent DOD from spending the money by the end of the fiscal year, which was coming up on September 30. OMB had to do this because it knew that not spending the money was illegal, and they knew that DOD would be worried about that. And they were right; DOD was worried about it. Mr. Sandy testified that in his 12 years of experience at OMB, he could not recall anything like this ever happening before. The drafting of this unusual funding document and the issuance of the document must have generated a significant amount of email traffic, memos, and other documentation at OMB—memos, email traffic, and documentation that we would all see if the Senate issued a subpoena.

What was the result from this series of events on July 25? Where was Mr. Duffey’s guidance coming from? Why was the request “sensitive”? What was the connection between OMB’s direction to DOD and the call President Trump had with President Zelensky just 90 minutes before? Did agency officials communicate about the questions coming from Ukrainian officials?

The American people deserve answers. A subpoena would provide those answers.

OMB documents also would reveal information about the decision to have a political appointee take over Ukraine funding responsibility. The tensions
and chaos surrounding the freeze escalated at the end of July, when Duffey, a political appointee at OMB with no relevant experience in funding approvals, took authority for releasing military aid to Ukraine away from Sandy, a career OMB official. Sandy could think of no reasonable explanation for the political appointee’s taking on this responsibility. Sandy was given no reason other than Mr. Duffey wanted to be “more involved in daily operations.”

During his deposition, Sandy confirmed that he was removed from the funding approval process after he had raised concerns to Duffey about whether the hold was legal under the Impoundment Control Act. Needless to say, OMB has refused to turn over any documents or communications involving that decision to replace Mr. Sandy.

Why did Duffey—a political appointee with no relevant experience in this area—take over responsibility for Ukraine’s funding approval? Was the White House involved in that decision? Was Sandy removed because he had expressed concerns about the legality of the hold?

By August 7, people in our government were worried, and when people in the White House got worried, sometimes what they do is they draft memos, because when they are concerned about getting caught up in something that doesn’t seem right, they don’t want to be a part of it.

So, on that day, Mark Sandy and other colleagues at the OMB drafted and sent a memo about Ukraine military aid to Acting Director Vought. According to Sandy, the memo advocated for the release of the funds. It said that the military aid was consistent with American national security interests, that it would help to oppose Russian aggression, and that it was backed by strong bipartisan support. But President Trump did not lift the hold.

Over the next several weeks, the OMB continued to issue funding documents that kept kicking the can down the road, supposedly to allow for more of this “interagency process” while in reality those footnotes throughout the apportionment documents stated that the delay wouldn’t affect the funding. But here is the really shocking part: There was no interagency process. They made it up. It had ended months before, but it up until nobody could say the real reason for the hold. In total, the OMB issued nine of these documents between July 25 and September 10.

Did the White House respond to the OMB’s concerns and recommendation to release the aid? Did the White House instruct the OMB to continue creating a paper trail in an effort to justify the hold? Who knew what and when the OMB documents would shed light on the OMB’s actions as the President’s scheme unraveled? Did the White House direct the OMB to continue issuing the hold? What was OMB told about the President’s reasons for releasing the hold? What communications did the OMB officials have with the White House around the time of the release? As the President’s scheme unraveled, did anyone at the OMB connect the dots for the real reason for the hold? The OMB documents would shed light on these questions, and the American people deserve answers.

I remember what it feels like to not have the equipment you need when you need it. Real people’s lives are at stake. That is why this matters. We need the information so we can ensure that this never happens again. Eventually, this will all come out. We will have answers to these questions. The question now is whether we will have them in time and who here will be on the right side of history. I reserve the balance of our time for the President’s argument.

The CHIEF JUSTICE. Thank you, Mr. Sekulow.

Mr. SHELDON SEKULOW. Thank you, Chief Justice and Members of the Senate.

Manager Crow, you should be happy to know that the aid that was provided to Ukraine over the course of the previous administration included lethal weapons. Those were not provided by the previous administration. The suggestion that Ukraine failed to get any equipment is false. The security assistance was not for funding Ukraine over the summer of 2019. There was no lack of equipment due to the temporary pause. It was for future funding.

Ukraine’s Deputy Minister of Defense, who oversaw the U.S. aid shipment, said: “The hold went and came so quickly they did not notice any change.”

Under Secretary of State David Hale explained: “The pause to aid was for future assistance, not to keep the army going now.”

So the made-up narrative that security assistance was conditioned on Ukraine’s taking some action on investigations is further disproved by the straightforward fact that the aid was delivered on September 11, 2019, without Ukraine’s taking any action on any investigation.

It is interesting to note that the Obama administration withheld $385 million of promised aid to Egypt in 2013, but the administration’s public argument included lethal equipment.

So the delay had not been official, but technically, it was not due until September 30—the end of the fiscal year—so that then they didn’t have to disclose the halt to anyone.

It sounds like this may be a practice of a number of administrations. In fact, this President has been concerned about how aid is being put forward, so there have been pauses on foreign aid in a variety of contexts.

In September of 2019, the administration announced that it was withholding over $100 million in aid to Afghanistan over concerns about government corruption. In August of 2019, President Trump announced that the administration and Seoul were in talks to substantially increase South Korea’s share of the expense of U.S. military support for South Korea. In June, President Trump cut or paused over $550 million in foreign aid to El Salvador, Honduras, and Guatemala because those countries were not fairly sharing the burden of preventing mass migration to the United States.

It is not the only administration. As I said, President Obama withheld hundreds of millions of dollars of aid to Egypt.

To be clear—and I want to be clear—Ambassador Yovanovitch herself testified that our policy actually got stronger under President Trump, largely because, unlike the Obama administration, “this administration made the decision to provide lethal weapons to Ukraine to help Ukraine fend off Russian aggression.” She testified in a deposition before your various committees that “in the 3 years that I was there, partly because of my efforts but also the interagency team and President Trump’s decision to provide lethal weapons to Ukraine, that our policy actually got stronger.”

Deputy Assistant Secretary Kent, whose name has come up a couple of times, agrees that Javelins are incredibly effective weapons at stopping advance and that the Russians are scared of them.

Ambassador Volker explained that President Trump approved each of the decisions made along the way, and as a result, America’s policy toward Ukraine strengthened.

So when we want to talk about facts, go to your own discovery and your own witnesses that you called. This all supposedly started because of a whistleblower. Where is that whistleblower?

The CHIEF JUSTICE. The House managers have 35 minutes remaining.

Mr. Manager CROW. Mr. Chief Justice, in war, time matters; minutes and hours can seem like years. So the idea that, well, it made it there eventually just doesn’t work. And, yes, the aid was provided. It was provided by Congress—this Senate and the House of Representatives—with the President’s signature. The Congress is the one that sends the aid, and millions of dollars of this aid would have been lost because of the delay. Of course, Congress did not pass another law that extended that deadline to allow the funds to be spent. Let me repeat that. The delay had jeopardized the expenditure of the money to such an extent that Congress had to pass another law to extend the deadline so that the money and the equipment got to the people on the frontlines.

Need I reiterate, as to the supposed interagency process—the concern that the President and his counsel continue to raise about corruption and making sure that the process went right—there was no interagency process. The whole thing was made up. It
was a phantom. There was a delay, and delays matter.

Mr. Chief Justice, I reserve the balance of my time for Mr. SCHIFF.

The CHIEF JUSTICE. Mr. SCHIFF.

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

There are just a few additional points I would like to make on this amendment and on my colleagues’ arguments.

First of all, Mr. Sekulow makes the point that the aid ultimately got released. They ultimately got the money, right? Yes, they got the money after the President got caught, after the President was forced to relieve the hold on the aid. After he got caught, yes, but even then, they had held on to the aid so long that it took a subsequent act of Congress to make sure it could all go out the door.

So, what is the President supposed to get credit for that—that we had to intervene because he withheld the aid for so long and that this is the only reason Ukraine got all of the aid we had approved in the first place?

My colleagues have glossed over the fact that what they did was illegal, that a president of the United States, an independent agency—found that that hold was illegal. So it not only violated the law, it not only took an act of Congress to make sure they ultimately got the aid, but this is supposed to be the defense, not only took an act of Congress to make sure it could all go out the door.

And so when the Ukrainians learned and the Russians learned that the President did not have his back, was withholding this aid, what message do you think that sent to Vladimir Putin? What message do you think it sent to Vladimir Putin when Donald Trump wouldn’t let Volodymyr Zelensky, our ally, in the door at the White House but would let the Russian Foreign Minister? What message does that send?

So it is not just the aid, and it is not just when the aid is delivered, it is not just the one event. It is also what message does the freeze send to our friend and, even more importantly, to our foe, and the message it sent was a disaster—was a disaster.

Now, you yourself because counselors said: Hey, President Trump has given lethal weapons to Ukraine—you might ask yourself, if the President was so concerned about corruption, why didn’t he do that in 2017, and why didn’t he do that in 2018? Why was it only 2019 that there was a problem? Was there no corruption in Ukraine in 2017? Was there no corruption in Ukraine in 2018?

No, Ukraine has always battled corruption. It wasn’t the presence or lack of corruption in one year to another; it was the presence of Joe Biden as a potential candidate for President. That was the key change in 2019. That made all the difference.

Let’s get back to one of the key moments in this saga. A lot of you are attorneys—you are probably much better at law school than I am—and I am sure you had the experience in cases you tried where the evidence—a document, some conversation, some document. It may not have been the most important on its face, but it told you something about the case that was much larger than that conversation.

For me, one of those conversations was not on July 25 between President Trump and President Zelensky but on July 26, the very next day.

Now, you may have watched some of the House testimony. I mean, you may not have, and people watching may have seen it and maybe they didn’t, but there is this scene in a Ukrainian restaurant—a restaurant in Kyiv—with Gordon Sondland. Now, bear in mind it was Gordon Sondland who said there was absolutely quid pro quo and two plus two equals four. This is not some Never Trumper. This is a million-dollar donor to the Trump inaugural admissions saying: Gordon Sondland did I barely know him, or something to that effect, but this is a guy who picked up his cell phone, and he was an ambassador to the White House in Kyiv, and he does. And the President’s voice is so loud that David Holmes, this diplomat, can hear it. And what does the President say? Does he say: How is that reform coming? How is the attack on corruption going? Or, it just says: Is he going to do the investigation? Is Zelensky going to do the investigation? And Sondland says: Yes. He will do anything you want. He loves your ass.

That is the extent of the President’s interest in Ukraine. They go on to talk about other things, and then they hang up. And David Holmes turns to the Ambassador and says—in language which I will have to modify to remove an expletive—saying something along the lines of: Does the President give a “blank” about Ukraine? And Sondland says: No. He doesn’t give a “blank” about Ukraine. He only cares about the big stuff, like the investigation of the Bidens that Giuliani wants.

This is a million-dollar donor to the Trump inaugural admitting the President doesn’t care about Ukraine. He doesn’t care whether they get military dollars to defend themselves. He doesn’t care about what position Zelensky goes into in these negotiations with Putin. He doesn’t care about that.

Is that clear? It is why he didn’t care about corruption in 2017 or 2018, and he certainly didn’t care about it in 2019. All he cared about was the big stuff that affected him personally, like this investigation that he wanted of the Bidens.

So we do ask: Do you want to see these documents? Do you want to know if these documents corroborate Ambassador Sondland? Will the documents show, as we fully expect they will, that the only thing he needed about was the big stuff that affected him?

David Holmes’ response was: Well, you know, there is some big stuff going on here, like the war with Russia. This isn’t withholding aid because of a revolu­tion in Egypt. This is withholding aid from a country in which 15,000 people have died fighting the Russians, and as Ambassador Taylor said and others: You know, Russia is fighting to remake the map of Europe by dint of military force.

If we think that is just about Ukraine’s security, we are very deceived. It is about our security. It is
about the tens of thousands of troops we have in Europe. And if we undercut our own ally, if we give Russia reason to believe we will not have their back, that we will use Ukraine as a play thing or worse to get them to help us cheat in an election, that will only embolden them to do more.

You said it as often as I have—the only thing he resents is strength. You think that looks like strength to Vladimir Putin? I think that looks like something that Vladimir Putin is only too accustomed to, and that is the kind of condescension that he finds and perpetuates in his own regime and pushes all around the world.

My colleague VAL DEMINGS made reference to a conversation which I think is one of the other key vignettes in this whole sad saga, and that is a conversation that Ambassador Volker had with Andriy Yermak, one of the top aides to President Zelensky.

This is a conversation in which Ambassador Volker is doing exactly what he is supposed to be doing, which is he is telling Yermak: You know, you guys shouldn’t really do this investigation of your former President Poroshenko because it would be for a political reason. You really shouldn’t engage in political investigations. And as Representative DEMINGS said: What is the response of the Ukrainians? Oh, you mean like the one you want us to do to the Bidens and the Clintons. Threw it right back in his face. Ukraine is not oblivious to that hypocrisy.

Mr. Sekulow says: What are we here for? You know, part of our strength is not only our support for our allies, it is not only our military might, it is what we stand for.

We used to stand for the rule of law. We used to champion the rule of law around the world. Part of the rule of law is, of course, that no one is above the law.

But to be out in Ukraine or anywhere else in the world championing the rule of law, we can’t engage in political prosecutions and having them throw it right back in our face: Oh, you mean like the one you want us to do to the Bidens and the Clintons. Threw it right back in his face. Ukraine is not oblivious to that hypocrisy.

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We used to stand for the rule of law. We used to champion the rule of law around the world. Part of the rule of law is, of course, that no one is above the law.
The House tried to get Mr. Mulvaney’s testimony. We subpoenaed him. Mr. Mulvaney, together with other key witnesses—National Security Advisor John Bolton, senior White House aide Robert Blair, Office of Management and Budget official Michael Duffey, National Intelligence Community lawyer John Eisenberg—were called to testify before the House as part of this impeachment inquiry, but President Trump was determined to hide from the American people what they had to say. The White House directed executive branch and all of his top aides and advisers to defy all requests for their testimony. That cannot be allowed to stand.

Third, Mr. Mulvaney is a highly relevant witness to the events at issue in this trial. Mr. Mulvaney was at the center of every stage of the President’s substantial pressure campaign against Ukraine. Based on the extensive evidence the House did obtain, it is clear that Mr. Mulvaney was crucial in planning the scheme, executing its implementation, and carrying out the coverup.

Emails and witness testimony show that Mr. Mulvaney was in the loop on the President’s decision to explicitly condition House meetings with Ukraine’s announcement of investigations beneficial to the President’s reelection prospects.

He was closely involved in implementing the President’s hold on the security assistance and subsequently admitted that the funds were being withheld to put pressure on Ukraine to conduct one of the phony political investigations that the President wanted—phony political investigations.

A trial would not be complete without the testimony of Mick Mulvaney. Make no mistake. The evidentiary record that we have built is powerful and can clearly establish the President’s guilt on both of the Articles of Impeachment. It is hardly complete. The record comes to you without the testimony of Mr. Mulvaney and other important witnesses.

That brings me to one final preliminary observation. The American people agree that there cannot be a fair trial without hearing from witnesses who have relevant information to provide.

The Constitution, our democracy, the Senate, the President and, most importantly, the American people deserve a fair trial. A fair trial requires witnesses to provide the truth, the whole truth, and nothing but the truth. That is why this amendment should be adopted.

Before we discuss Mr. Mulvaney’s knowledge of the President’s geopolitical shakedown, it is important to note that an impeachment trial without witnesses would be a stunning departure from this institution’s past practice.

That distinguished body has conducted 15 impeachment trials. All have included witnesses. Sometimes those trials included just a handful of witnesses, as indicated on the screen. At other times, they included dozens. In one case, there were over 100 different witnesses.

As the slide shows, the average number of witnesses to appear at a Senate impeachment trial is 33, and in at least 3 of those instances, including the impeachment of Bill Clinton, witnesses appeared before the Senate who had not previously appeared before the House. That is because the Senate, this great institution, has always taken its responsibility to conduct a fair trial seriously. The Senate has always taken its duty to obtain evidence, including witness testimony, seriously. The Senate has always taken its obligation to evaluate the President’s conduct based on full and open availability of information seriously. This is the only way to ensure fundamental fairness for everyone involved.

Respectfully, it is important to honor that unbroken precedent today. Mr. Mulvaney, without fear or favor as to what he might say, can inform this distinguished body of Americans.

This amendment is also important to counter the President’s determination to bury the evidence of high crimes and misdemeanors.

As we have explained in detail today, despite considerable efforts by the House to obtain relevant documents and testimony, President Trump has directed the entire executive branch to execute a coverup. He has ordered the entire administration to ignore the powers of Congress’s separate and equal branch of government to investigate his offense in a manner that is unprecedented in American history.

There were 71 requests by the House for relevant evidence. In response, the White House produced zero documents in this impeachment inquiry—71 requests, 0 documents.

President Trump is personally responsible for depriving the Senate of information important to consider in this trial. This point cannot be overstated. When a congressional impeachment inquiry, a process expressly set forth by the Framers of the Constitution in article I, the President refused to comply in any respect, and he ordered his senior aides to fall in line.

As shown on the slide, as a result of President Trump’s obstruction, 12 key witnesses, including Mr. Mulvaney, refused to appear for testimony in the House impeachment inquiry. No one has heard what they have to say. These witnesses include central figures in the abuse of power charged in article I. What is the President hiding?

Equally troublesome, President Trump and his administration did not make any legitimate attempts to reach a reasonable accommodation with the House or compromise regarding any document requests or witness subpoenas. Why? Because President Donald John Trump wasn’t interested in cooperating. He was plotting a coverup.

It is important to take a step back and think about what President Trump is doing. Complete and total Presidential obstruction is unprecedented in American history. Even President Nixon, whose Articles of Impeachment included obstruction of Congress, did not block key White House aides from testifying in front of Congress during the Watergate hearings. In fact, he publicly urged White House aides to testify.

Remember all of those witnesses who came in front of this body? Take a look at the screen. John Dean, the former White House Counsel, testified for multiple days pursuant to a subpoena. H.R. Haldeman, President Nixon’s former Chief of Staff, was subpoenaed and testified. Alexander Butterfield, the White House official who revealed the existence of the tapes, testified publicly before the Senate, and so did several others. President Trump’s complete and total obstruction makes Richard Nixon look like a choirboy.

Two other Presidents have been tried before the Senate. How did they conduct themselves?

William Jefferson Clinton and Andrew Johnson did not block any witnesses from participating in the Senate trial. President Trump, by contrast, refused to permit any witnesses from testifying to this very day.

Many of President Clinton’s White House aides testified in front of Congress, even before the commencement of formal impeachment proceedings. Even during various investigations of the mid-1990s, the House and the Senate heard from more than two dozen White House aides, including the White House Counsel, the former Chief of Staff, and multiple senior advisers to President Clinton.

President Clinton himself gave testimony on camera and under oath. He also allowed his most senior advisers, including multiple Chiefs of Staff and White House Counsels, to testify in the investigation that led to his impeachment.

As you can see in the chart, their testimony was packaged and delivered to the Senate. There were no missing witnesses who had defied subpoenas. No aides who had personal knowledge of his misconduct were directed to stay silent by President Clinton.

We have an entirely different situation in this case. Here we are seeking witnesses the President has blocked from testifying in this impeachment inquiry. Apparently, President Trump thinks he can do what no other President before him has attempted to do in such a brazen fashion: float above the law and hide the truth from the American people. That cannot be allowed to stand.

Let us review the bedrock principles about the Congress’s authority to conduct investigations. Our broad powers of inquiry are at their strongest during an impeachment proceeding, when the House and Senate exercise responsibilities expressly set forth in article I of the Constitution.

Nearly 140 years ago, the Supreme Court recognized that, when the House
Mr. Mulvaney, perhaps more than any other single witness, excepting the President, has firsthand insight into the decision to withhold $391 million in military and security aid to a vulnerable Ukraine without justification. Indeed, our investigation revealed that President Trump personally ordered Mr. Mulvaney to execute the freeze in July of 2019. Mr. Mulvaney holds the senior-most staff position at the White House. He is a member of President Trump’s Cabinet, and he is responsible for President Trump’s team at 100 Pennsylvania Avenue. He remains the Director of the Office of Management and Budget, which implemented the hold on the security assistance, in violation of the law, as the Government Accountability Office recently confirmed.

In short, respectfully, the Senate’s responsibility to conduct a complete and fair trial demands that Mr. Mulvaney testify.

Second, Mr. Mulvaney’s testimony is critical because of his knowledge of the planning of President Trump’s abuse of power. Ambassador Gordon Sondland, the U.S. Ambassador to the European Union, testified that there was a quid pro quo. Ambassador Sondland is not a so-called rogue. He is a career Diplomat. Ambassador Sondland gave $1 million to President Trump’s inauguration.

He testified that everybody was in the loop and that it was no secret what was going on. In fact, as early as May of 2019, Ambassador Sondland made clear that he was coordinating on Ukraine matters with Mr. Mulvaney. Here is what David Holmes, an official at the U.S. Embassy in Ukraine, had to say on that matter:

Let me now turn to the third justification for this amendment. Mr. Mulvaney’s testimony is critical to considering the case for removal. It is imperative that we hear from the President’s closest aide, a man intimately involved at key stages of this extraordinary abuse of power. President Trump knows this. Why else would he be trying so hard to prevent Mick Mulvaney from testifying before you?

There are at least four reasons why Mr. Mulvaney’s testimony is critical. To begin with, as Acting White House Chief of Staff and head of the Office of Management and Budget. MickMulvaney has firsthand knowledge about President Trump’s efforts to shake down Ukraine and pressure its new President into announcing phony investigations.

Mr. Mulvaney was in the loop at each critical stage of President Trump’s scheme to shake down Ukraine and pressure its new President into announcing phony investigations.

Even admitted publicly that the aid was withheld in order to pressure Ukraine into announcing an investigation designed to elevate the President’s political standing.

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Mr. Mulvaney was in the loop at each critical stage of President Trump’s scheme to shake down Ukraine and pressure its new President into announcing phony investigations. He was in the loop in its implementation; and he was in the loop when the scheme fell apart. He
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 him to mean by the drug deal that Mulvaney and Sondland were cooking up?

Dr. HILL. I took it to mean investigations for a quid pro quo.

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

Dr. HILL. I certainly did.

Mr. Manager JEFFRIES, Sondland’s testimony not only corroborates Dr. Hill’s account. He actually says that Mick Mulvaney, the subject of this amendment, who should appear before the Senate if we are going to have a free and fair trial—Sondland says Mick Mulvaney knew all about it.

(Text of Videotape presentation:)
The CHAIRMAN. What I want to ask you about is, he makes reference in that drug deal to a drug deal cooked up by you and Mulvaney. It’s the reference to Mulvaney that I want to ask you about. You’ve testified that Mulvaney was aware of this quid pro quo, of this condition that the Ukrainians knew about. You are announcing these public investigations to get the White House meeting. Is that right?

Mr. SONDLAND. Yeah. A lot of people were concerned about the quid pro quo.

The CHAIRMAN. Including Mr. Mulvaney?

Mr. SONDLAND. Correct.

Mr. Manager JEFFRIES. The documents also highlight the extensive involvement of Mick Mulvaney in this geopolitical shakedown scheme. Email messages summarized by Ambassador Sondland during his sworn testimony show that he informed Mr. Mulvaney, as well as Secretary Pompeo and Secretary Perry, of his efforts to persuade President Zelensky to announce the investigations desired by President Trump.

For example, as shown on the screen, on July 19, Ambassador Sondland emailed several top administration officials, including Mr. Mulvaney, stating that he did not clearly communicate to President Zelensky to help prepare him for a meeting. Is that right?

Mr. SONDLAND. Yes. I was involved in communicating to the President.

Mr. Manager JEFFRIES. Mr. Mulvaney was a central figure with respect to how President Trump implemented his pressure campaign.

According to public reports and witness testimony, Mr. Mulvaney was deeply involved in implementing the scheme, including the unlawful White House freeze on $391 million in aid to Ukraine.

This isn’t just other people fingerling Mr. Mulvaney. Mr. Mulvaney has himself admitted that he was involved.

(Text of Videotape presentation:)

Mr. MULVANEY. Again, I was involved with the process by which the money was held up temporarily, okay?

Mr. Manager JEFFRIES. The public reports confirm Mr. Mulvaney’s own account that he has information that goes to the heart of this inquiry, specifically related to why the President ordered the hold on aid to Ukraine and kept it in place, despite deep-seated concerns among Trump administration officials.

This New York Times article on the screen summarizes an email conversation between Mr. Mulvaney and Robert Blair, a senior administration adviser, on June 27, when Mr. Mulvaney asked: “Did we ever find out about the money for Ukraine and whether we can hold it back?”

What prompted that email? According to public reports, Mr. Mulvaney was on Air Force One—Air Force One—with President Trump when he sent it. What other conversations did Mr. Mulvaney have with the President and White House officials about this unlawful freeze? The American people deserve to know.

There is other significant evidence concerning Mr. Mulvaney’s role in implementing the scheme. According to multiple witnesses, the direction to freeze the security assistance to Ukraine was delivered by Mick Mulvaney himself.

Office of Management and Budget official Mark Sandy testified about a July 12 email from Mr. Will Blair stating that President Trump “is directing a hold on military support funding for Ukraine.”

Was Mr. Blair acting at Mr. Mulvaney’s express direction? The members of this distinguished body deserve to know.

On July 18, the hold was announced to the agencies in the administration overseeing Ukraine policy matters. Those present were blindsided by the announcement that the security aid appropriated by this Congress on a bipartisan basis to Ukraine, which is still at war with Russian-backed separatists in the east, were alarmed that this aid had inexplicably been put on hold. Meanwhile, officials at the Defense Department and within the Office of Management and Budget became increasingly concerned that the hold also violated the law. Their concerns turned out to be well founded.

Public reports have indicated that the White House is in possession of early August emails, exchanges between Acting Chief of Staff Mick Mulvaney and White House budget officials seeking to provide an explanation for the hold. I should note, that they were trying to provide after the President had already ordered the hold.

Mr. Mulvaney presumably has answers to these questions. We don’t know what those answers are, but he should provide them to this Senate and to the American people.

Finally, on October 17, 2019, at a press conference at the White House, Mr. Mulvaney left no doubt that President Trump withheld the essential military aid as leverage to try to extract phony political investigations as part of his effort to solicit foreign interference in this election.

This was an extraordinary press conference. Mr. Mulvaney made clear that the President was, in fact,pressuring Ukraine to investigate the conspiracy theory that Ukraine, rather than Russia, had interfered in the 2016 election—a conspiracy theory promoted by none other than the great purveyor of democracy, Vladimir Putin himself.

When White House reporters attempted to clarify this acknowledge—more specifically, quid pro quo, security assistance. Mr. Mulvaney replied, “We do that all the time with foreign policy. I have news for everybody: get over it.”

Let’s listen to a portion of that stunning exchange.

(Text of Videotape presentation:)

Answer. Did he also mention to me in the past that the corruption related to the DNC server, absolutely. No question about that. But that’s it. And that’s why we held up the money. Now there was a report—

Question. The investigation into the Democrats was part of the reason that he wanted to withhold funding to Ukraine.

Answer. The look back to what happened in 2016—

Question. The investigation into Democrats—

Answer. Certainly was part of the thing he was worried about in corruption with that nation. That is absolutely appropriate.

Question. But to be clear, what you just described is a quid pro quo. It is: Funding was not flowing unless the investigation into the Democratic server happens as well.

We do that all the time with foreign policy. We were holding money at the same time for—what was it? The Northern Triangle countries. We were holding up aid at the Northern Tribal countries so that they would change their policies on immigration. By the way—and this speaks to an important point—I’m sorry? This speaks to an important point, because I heard this yesterday. And I can never remember the gentleman who testified. Was it McKinney, the guy—who was his name? I don’t know him. He testified yesterday. And if you go—and if you listen to the news reports because we’ve not seen any transcripts of this. The only transcript I’ve seen was Sondland’s testimony this morning. If you read the news reports and you believe them—what did McKinney say yesterday? Well, McKinney said yesterday that he was really upset with the political influence in foreign policy. There was one of the reasons he was so upset about this. And I have news for everybody: Get over it. There’s going to be political influence in foreign policy.

Mr. Manager JEFFRIES. In this extraordinary press conference, Mr. Mulvaney spoke with authority and conviction about why President Trump withheld the aid. He did not mince his words. But then following the press
conference, he tried to walk back his statements, as if he had not said them, or had not meant them. We need to hear from Mick Mulvaney directly so he can clarify his true intentions.

Having gone through the need for the evidence, let’s briefly address the President’s arguments that he can block this testimony. That argument is not only wrong, it fundamentally undermines our system of checks and balances.

Step back for a moment and consider the extraordinary position that President Trump is trying to manufacture for himself.

The Department of Justice has already said that the President cannot be indicted or prosecuted in office. As we sit here today, the President has actually filed a brief in the Supreme Court saying he cannot be criminally investigated while in the White House.

The Senate and the House are the only check that is left when the President tries to cheat in the next election, undermines our national security, breaks the law in doing so, and then tries to cover it up. This is America. No one is above the law.

If the President is allowed to determine he is even investigated by Congress, if he is allowed to decide whether he should comply with lawful subpoenas in connection with an impeachment inquiry or trial, then he is the ultimate arbiter of whether he did anything wrong. That cannot stand.

If he can’t be indicted, and he can’t be impeached, and he can’t be removed, then he can’t be held accountable. That is inconsistent with the U.S. Constitution.

You will no doubt hear that the reason the President blocked all of these witnesses, including Mr. Mulvaney, from testifying is because of some lofty concern for the Office of the Presidency and the preservation of executive privilege.

Let’s get real. How can blocking witnesses from telling the truth about the President’s misconduct help preserve the Office of the Presidency? This type of blanket obstruction undermines the credibility of the Office of the Presidency and deals the Constitution a potentially mortal death blow.

To be clear, executive privilege does not provide a legally justifiable basis for halting the investigation and total blacking out of evidence. In fact, as you heard earlier today, President Trump never even invoked executive privilege—not once. And without ever asserting this privilege, how can you consider his argument in a serious fashion?

Instead, speaking through Mr. Cipollone, the distinguished White House Counsel, in a letter dated October 8, 2019, President Trump simply decided that he did not want to participate in the investigation into his own wrongdoing.

It was a categorical decision not to cooperate, without consideration of specific facts or legal arguments. In fact, even the words President Trump used through his White House Counsel were made up.

In the letter, Mr. Cipollone referred to so-called “executive branch confidentiality interests.” But that is not a recognized jurisprudential shield, not a recognized legal principle or executive privilege. To the extent that there are privilege issues to consider, those can be resolved during their testimony, as they have been for decades.

And finally, the President claimed that Mr. Mulvaney could not be compelled to testify because of so-called absolute immunity. But every court to address this legal fiction has rejected it.

As the Supreme Court emphatically stated, in unanimous fashion, in its decision on the Nixon tapes, confidentiality interests of the President must yield to an impeachment inquiry when there is a legitimate need for the information, as there is here today.

There is no doubt that Mr. Mulvaney, as the President’s Chief of Staff and head of the Office of Management and Budget, is uniquely situated to provide this distinguished body with relevant and important information about the charges in the Articles of Impeachment.

The President’s obstruction has no basis in law and should yield to this body’s coequal authority to investigate impeachable and corrupt conduct.

On one final point bears mentioning. If the President makes witnesses available, even while preserving the limited protections of executive privilege, he can do so. In fact, President Trump expressed his desire for witnesses to testify in the Senate just last month.

Let’s go to the videotape.

(Text of Videotape presentation:)

President TRUMP. So, when it’s fair, and it will be fair in the Senate, I would love to have Mike Pompeo. I’d love to have Mick. I’d love to have Rick Perry and many other people testify.

Mr. Manager JEFFRIES. If President Trump had nothing to hide, as he and his advisers repeatedly claim, they should all simply testify in the Senate trial. What is President Donald John Trump hiding from the American people?

Mr. Cipollone. The Constitution requires a fair trial. Our democracy needs a fair trial.

Mr. Chief Justice, the House managers reserve the balance of our time.

THE CHIEF JUSTICE. Mr. Cipollone.

Mr. Counsel CIPOLLONE. Thank you.

Mr. Mike Purpura from the White House Counsel’s Office, Deputy Counsel to the President, will give the argument.

Mr. Counsel PURPURA. Mr. Chief Justice, Members of the Senate, good evening. My name is Michael Purpura. I serve as Deputy Counsel to the President.

We strongly oppose the amendments and support the resolution. There is simply no need to alter the process on witnesses and documents of impeachment. That of the Clinton trial, which was supported by this body 100 to 0. At its core, this case is very simple, and the key facts are undisputed.

First, you have the transcripts which the President released—transparent and unprecedented. There was no quid pro quo for anything. Security assistance funds aren’t even mentioned on the call.

Second, President Zelensky and the highest ranking officials in the Ukrainian Government repeatedly have said there was no quid pro quo and there was no pressure.

Third, the Ukrainians were not even aware of the pause in the aid at the time of the call and weren’t aware of it—they did not become aware of it until more than a month later.

Fourth, the only witnesses in the House record who actually spoke to the President about the aid—Ambassador Sondland and Senator Ron Johnson—say the President was unequivocal in saying there was no quid pro quo.

Fifth, and this one is pretty obvious, the aid flowed and President Trump and President Zelensky met without any investigations started or announced.

Finally—and I ask that you not lose sight of the big picture here—by providing legal aid to Ukraine, President Trump has proven himself to be a better friend and ally to Ukraine than his predecessor.

The time for the House managers to bring their case is now. They had their chance to develop their evidence before they sent the Articles of Impeachment to this Chamber. This Chamber’s role is not to do the House’s job for it.

I yield the balance of my time to Mr. Cipollone.

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice.

Just a couple of observations. First of all, as Mr. Purpura said, what we are talking about is when this question is addressed. Under the resolution, that will be next week. This resolution was accepted 100 to 0. Some of you were here then and thought it was great. If we keep going like this, it will be next week. For those of you keeping score at home, they haven’t started yet.

We are here today. We came hoping and we haven’t even started yet. We came here today and thought it was great. If you accept 100 to 0. Some of you were here then and thought it was. If we keep going like this, it will be next week. For those of you keeping score at home, they haven’t started yet. We came here today and thought it was great. If you accept 100 to 0. Some of you were here then and thought it was great. If we keep going like this, it will be next week. For those of you keeping score at home, they haven’t started yet.

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and you know what it doesn't say? It doesn’t say “quid pro quo” because there wasn’t any. Only in Washington would someone say that it is wrong when you don’t spend taxpayer dollars fast enough even if you spend them on time.

Let’s talk about the Judiciary Committee for a second. They spent 2 days in the Judiciary Committee—2 days. The Judiciary Committee is supposed to be in charge of impeachments. The delivery time for articles they have produced was 33 days. I think this might be the first impeachment in history where the delivery time was longer than the investigation in the Judiciary Committee.

They come here and falsely accuse people—by the way, they falsely accused you. You are on trial now. They falsely accused people of phony political investigations. Really. Since the House Democrats took over, that is all we have heard from them. They have used their office and all the money that the taxpayers send to Washington to pay them to conduct phony political investigations against the President, against his family, against anyone who knew about Project Z—him. They have used their office and all the money that the President was given to help him when he was running for President. By his own admission, he was going to be honest and impeach him the minute he was elected. They weaponized the House of Representatives to investigate incessantly their political opponent. And they come here and make false allegations of phony political investigations. I think the doctors call that projection. It is time for it to end. It is time for someone— for the Senate to hold them accountable.

Think about what they are asking. I said it; they didn’t deny it. They are trying to remove President Trump’s name from the ballot, and they can’t prove their case. They have told you that all day long. Think about what they are telling you. If they started from there, you know the people and you will only hear it because it is the only evidence that they have. Some of you are running for President. They are asking you to use your office to remove your political opponent from the ballot. That is wrong. That is not in the interest of our country. It is not in the interest of our country. It is not really a show of confidence.

I suppose we will have this debate again next week if we ever get there. It is getting late. I would ask you, respectfully, if we could simply stare maybe tomorrow we can start, and they can make their argument, and they can, I guess, make a case that they once called “overwhelming.” We will see.

But this resolution is right, it is fair, and it makes sense. You have a right to hear what they have to say before you have to decide these critical issues. That is all this is about. Is it now or is it a week from now? Seriously, can we please start?

Thank you.

The CHIEF JUSTICE. Mr. Cipollone, is your side complete?

Mr. Counsel CIPOLLONE. Yes, we are, Mr. Chief Justice.

The CHIEF JUSTICE. Thank you.

The House managers have 14 minutes remaining.

Mr. Manager JEFFRIES. Counsel to the President indicated that we have not charged President Trump with a crime. We have charged him with crimes against the U.S. Constitution—high crimes and misdemeanors and abuse of power. It strikes at the very heart of what the Framers of the Constitution were concerned about—betrayal of one’s oath of office for personal gain and the corruption of our democracy. High crimes and misdemeanors are what this trial is all about.

Counsel for the President again has declined to address the substantive merits of the amendment that has been offered and tried to suggest that House Democrats have only been focused on trying to overthrow President Trump. Nothing could be further from the truth.

In the last year, we passed 400 bills and sent them to this Chamber, and 275 of those bills are bipartisan in nature, addressing issues like lowering prescription drug prices, trying to deal with the gun violence epidemic. We have worked with President Trump on criminal justice reform. I personally worked with him, along with all of you, on the First Step Act. We worked with him on the U.S.-Mexico-Canada trade agreement. We worked with him to fund the government. We don’t hate this President, but we love the Constitution. We love America. We love our democracy. That is why we are here today.

The question was asked by Mr. Sekulow as he opened before this distinguished body: Why? Why are we here?

Let me see if I can just posit an answer to that question. We are here, sir, because President Trump pressured a foreign government to target an American citizen for political and personal gain. We are here, sir, because President Trump solicited foreign interference in our democracy. We are here, sir, because President Trump withheld $391 million in military aid from a vulnerable Ukraine without justification in a manner that has been deemed unlawful. We are here, sir, because President Donald Trump elevated his personal political interests and subordinated the national security interests of the United States of America. We are here, sir, because President Trump corruptly abused his power, and then he tried to cover it up. And we are here, sir, to follow the facts, apply the law, be guided by the Constitution, and present the truth to the American people. That is why we are here, Mr. Sekulow. And if you don’t know, now you know.

I yield to my distinguished colleague, Chairman SCHIFF.

Mr. Manager SCHIFF. I thank the gentleman for yielding and just want to provide a couple of quick fact checks to my colleagues at the other table.

First, Mr. Purpura said that security assistance funds were not mentioned at all in the July 25 call between President Trump and President Zelensky. Let’s think back to what was discussed in that call. You might remember from that call that President Zelensky thanks President Trump for the Javelin anti-tank weapons and says they are ready to order some more. Anybody think that President Trump’s immediate response?

I have a favor to ask, though. What was it about the President of Ukraine’s bringing up military assistance that triggered the President to go immediately to the favor that he wanted? I think that it is telling that it takes place in that part of the conversation.

So, yes, security assistance, military assistance did come up in that call. It came up immediately preceding the ask. What kind of message do you think that sends to Ukraine? They are not stupid. The people watching this aren’t stupid.

Now, Mr. Purpura said: Well, they never found out about it—or they didn’t find out about the freeze of the aid until a month later. Mr. Purpura needs to be a little more careful with his facts. Let me tell you about some of the testimony you are going to hear, and you will only hear it because it took place in the House. These were other witnesses from whom you wouldn’t be able to hear it.

You had Catherine Croft, a witness from the State Department, a career official at the State Department, who talked about how quickly, actually, after the freeze went into place that the Ukrainians found out about it, and she started getting contacts from the Ukrainian Embassy here in Washington. She said she was really impressed with her diplomatic tradecraft. What does that mean? It means she was really impressed with how quickly the Ukrainians found out about something that the administration was trying to hide from the American people.

Ukraine found out about it. In fact, Laura Cooper, a career official at the Defense Department, said that her office started getting inquiries from Ukraine about the issues with the aid on July 25—the very day of the call. So much for Ukraine’s not finding out about this until a month later.

I thought this was very telling, too: The New York Times disclosed that by July 30—so within a week of the call between President Trump and President Zelensky—Ukraine’s Foreign Ministry received a diplomatic cable from its Embassy, indicating that Trump had frozen the military aid. Within a week, that cable is reported to have gone from the Ukrainian Embassy to the Ukrainian Foreign Ministry.

Former Ukrainian Deputy Foreign Minister Olena Zerkal said:

We had this information. It was definitely mentioned that there were some issues.

She went on to say that this cable was simultaneously provided to President Zelensky’s office, but Andrii Derkach, whom you will hear more about later—a top aide to President
Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent to ask the question of when.

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. SCHUMER. Thank you, Mr. Chief Justice. The inquiry is permitted.

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. SCHUMER. Thank you, Mr. Chief Justice. The inquiry is permitted. Thank you, Mr. Chief Justice.

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. SCHUMER. Thank you, Mr. Chief Justice. The inquiry is permitted. Thank you, Mr. Chief Justice.

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Mr. SCHUMER. Thank you, Mr. Chief Justice. The inquiry is permitted. Thank you, Mr. Chief Justice.

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. SCHUMER. Thank you, Mr. Chief Justice. The inquiry is permitted. Thank you, Mr. Chief Justice.
Mr. Manager SCHIFF. We are a proponent.

The CHIEF JUSTICE. Mr. Cipollone? Mr. Counsel CIPOLLINE. Mr. Chief Justice, we are an opponent.

The CHIEF JUSTICE. Mr. SCHIFF, the House managers can proceed first and reserve their time for rebuttal.

Mr. Manager CROW. Mr. Chief Justice, the House managers will be reserving the balance of our time to respond to the argument of the counsel for the President.

Mr. Chief Justice, Senators, counsel for the President, and the American people, I would like to begin by getting something off my chest, something that has been bothering me for a little while.

Counsel for the President and some other folks in this room have been talking a lot about how late it is getting the subpoena from OMB. This is a delaying tactic. It is almost 10 p.m. in Washington, DC. They say: Let's get the show on the road. Let's get moving.

The whole time, the only thing I can think about is where do we even start with this? It is in other places because right now, it is the middle of the night in Europe, where we have over 60,000 U.S. troops. There are helicopter pilots flying training missions, tankers maneuvering across fields, infantrymen walking with 100-pound packs, and, yes, Ukrainian soldiers getting ready to wake up in their trenches facing off against Russian tanks right now. I don't think any of those folks want to hear us talk about how tired it is. We have time to have this debate.

That is why the House managers strongly support this amendment to subpoena key documents from the Department of Defense, because just like the individuals and entities identified earlier, the President began separating the personal political campaign and U.S. national security. They would reveal our defense officials' grave concerns about the impact of the freeze on Ukraine and U.S. national security. They would show that senior Defense Department officials repeatedly attempted to convince President Trump to release the aid. In short, they would further establish the President's scheme to use our national defense funds to benefit his personal political campaign.

We are not speculating about the existence of these documents or whether we are guessing about what they might show because during the course of the investigation in the House, witnesses and OMB officials that have testified before the committees identified multiple documents directly related to the request to the freeze. We know these documents exist, and we know that the only reason we do not have them is because the President himself directed the Pentagon not to produce them because he knows what they would show.

To demonstrate the significance of the DOD documents and the value they would provide in this trial, I would like to walk through you through the evidence that we know exists but that the Trump administration continues to refuse to turn over. Again, based on what is known from the testimony and the few documents that have been obtained from public reporting and lawsuits, it is clear that the President is trying to hide evidence because he is afraid of what it would show the American people.

We know that DOD has documents that reveal that as early as June, the President was considering withholding military aid for Ukraine. As I mentioned earlier, the President began...
questioning military aid to Ukraine in June of last year. The President’s questions came days after DOD issued a press release on June 18 announcing it would provide its $250 million portion of the aid to Ukraine.

According to subsequent reporting, Deputy Under Secretary of Defense Elaine McCusker, who manages the DOD’s budget, learned about the President’s questions. We know this email exists because in response to a Freedom of Information Act lawsuit, the Trump administration was forced to release a redacted email. But DOD provided none of those documents to the House.

Deputy Assistant Secretary of Defense Laura Cooper and her team were tasked by the Secretary of Defense with responding to the President’s questions about Ukraine assistance. Ms. Cooper testified that she put those questions in an email and described those emails during her deposition. She testified that DOD advised that the secretary of defense had given OMB a review of the hold. OMB’s action was crucial for both Ukraine and U.S. national security and had strong bipartisan support in Congress. But DOD provided none of those documents to the House.

With this proposed amendment, the Senate has an opportunity to obtain and review the full record that can further demonstrate how and why the President was holding the aid.

Laura Cooper also testified about the interagency meetings that occurred in late July, meetings at which DOD was shocked to learn that President Trump had placed a mysterious hold on the security assistance. We know what happened at several of those meetings because Ms. Cooper participated in them, in some cases with other senior Defense Department officials. However, we don’t have Laura Cooper’s notes from those meetings. We don’t have the emails she sent to senior DOD officials reporting the stunning news about the President. We don’t have the emails that show the response from the Secretary of Defense and other senior defense officials because DOD has refused to provide them.

Separately, Laura Cooper testified about when the Ukraine first learned of the President’s secret hold on the military assistance. The same day as the President’s July 25 call with President Zelensky, DOD officials received two emails from the State Department indicating that officials from the Ukrainian government had become aware of the hold and were starting to ask questions.

Ms. Cooper testified that she was informed that the Ukrainian embassy and House Foreign Affairs Committee are asking “about the military aid” and that “The Hill” knows about the PMS situation to an extent, and so does the Ukrainian Embassy. All of this shows that people were starting to get very worried.

Again, this amendment for a subpoena to DOD would compel the production of these important documents, but, again, there is more. DOD documents would also reveal key facts about what happened on July 25 after OMB directed DOD to “hold off” on any additional DOD obligations for the assistance to Ukraine. How did DOD officials react to OMB’s directive to keep this order quiet? Did DOD officials raise immediate questions about the legality of the hold—concerns that they would eventually vocally articulate to OMB in August? Did DOD officials hear from the American businesses that were on tap to provide the equipment for the hold and they did not have direction to pursue either of those legal options, DOD would have to start spending the funds on August 6. Cooper explained that if they did not start spending the funds, they would risk violating the Impoundment Control Act. It was a fateful warning because that is exactly what happened.

Throughout August, Pentagon officials grew increasingly concerned as the hold dragged on. According to public reporting, DOD wrote to OMB on August 9 to say that it could no longer claim the delay would have no effect on the Defense Department’s ability to spend the funds. We only know this through recent reporting about the contents of those emails.

President Trump certainly hasn’t made this information public. In response to a Freedom of Information Act request, the Trump administration released this August 9 email from Elaine McCusker, the Pentagon’s chief budget officer. As you can see from the slide in front of you, it is almost entirely blacked out.

According to public reporting, the email said:

As we discussed, as of 12 AUG, we don’t think we can agree that the pause “will not preclude timely execution.” We hope it won’t and will do all we can to execute once the policy decision is made, but can no longer make that decision.

Let me interpret what is actually being said here. What is actually being said is: We are in trouble. We can’t spend the money in the time that we have left, and we are not going to cover your tracks anymore and say that we were not involved. That is exactly what happened in the Freedom of Information Act production highlighting the administration’s efforts to conceal the President’s wrongdoing. They also underscore why the Senate must subpoena DOD documents to ensure that all of the relevant facts come to light, and, yes, there is more.

Based on the concerns expressed by McCusker and others at DOD, OMB officially respond by suggesting that it would be illegal to continue funding the project for another 45 days after the President’s July 25 hold. As you can see from the email, we know this from a press report—not from documents produced to Congress by the Trump administration.

Now, let me interpret what is actually being said here. Everybody is getting worried. Everybody knows that something bad is about to happen. Nobody has a good explanation, and nobody wants to be left holding the bag. So they are sending the emails, and they are sending the memos to say: I told you so, and I am not going to be held responsible.

DOD’s McCusker took issue with OMB’s talking point. She did so in writing. Ms. McCusker emailed Mr. Duffey to tell him that OMB’s talking points were “just not accurate” and that DOD had been consistently convinced that point from the beginning. Again, we know this from a press report—not from documents produced to Congress by the Trump administration.

Her concern that OMB’s talking points was “just not accurate” and that DOD had been consistently convinced that point from the beginning. The Senate should issue the subpoena.

DOD documents would also shed light on OMB’s actions as the President’s scheme unraveled. On September 9, Ms. McCusker informed Duffey that DOD could fall short of spending $120 million or more because of the hold. Duffey responded by suggesting that it would be DOD’s fault if they ended up violating the Impoundment Control Act. McCusker responded: “You can’t be serious. I am speechless.”

It will come as no surprise, then, that the documents in response to a lawsuit under the Freedom of Information Act, but here is what Ms. McCusker’s email looked like when it was released by the Trump administration.

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would expose the full extent of the truth to Congress and the American people and would firmly rebut any notion that President Trump was acting based on concerns about corruption or other countries’ contributions, and the President. If there was any doubt, recent events prove that DOD has documents that are directly relevant to this trial. As I spoke about earlier, before I was a Member of Congress, I was a soldier in Iraq and Afghanistan. I do know what it feels like to not have the equipment that you need. The men and women who work at the Department of Defense and administer this vital aid understand that reality too. That is why they repeatedly made the case to President Trump that military assistance to Ukraine is important and that it would not only help Ukraine but also bolster our deterrence against further Russian aggression in Europe. Every time we have these discussions, that might seem abstract to people around the country, I do think about those 60,000 U.S. troops we have in Europe, many of whom, by the way, are stationed there with their families, their spouses, their children, and how they are training every day and working every day to hold the line and fight for freedom and liberty in Europe. And if the war in Ukraine spills over outside of Ukraine, it is those men and women who will have to get into their tanks and their helicopters and fight.

The United States Senate cannot let this information remain hidden. It goes directly to one of President Trump’s abuses of power—again, withholding aid. That 87 people in this room already voted for. The President, the Senate, and the American people deserve a fair trial. Let’s see the documents and let’s see them now and let the facts speak for themselves. I would like to end by reading a short transcript of the testimony that I was thinking about earlier this evening. This is a transcript from Ambassador Taylor’s testimony. I just want to take a minute to read it to you. He was talking about a trip that he made to visit soldiers who were killed on the 22nd of October in the previous 5 years would be there. Ambassador Taylor was talking about our friends. At least 13,000 of them have given their lives in the last 5 years in the fight for liberty in Europe. This, ladies and gentleman, is a national disgrace, and only the people in this room can fix it. It is time to issue the subpoenas.

Mr. Chief Justice, the House managers reserve the balance of our time for an opportunity to respond to the President’s arguments.

The CHIEF JUSTICE. Mr. Cipollone?

Mr. Counsel CIPOLLONE. Mr. Chief Justice, Mr. Philbin will address the argument.

The CHIEF JUSTICE. Mr. Philbin.

Mr. Counsel PHILBIN. Mr. Chief Justice, Members of the Senate, I will be brief. This may seem like some deja vu all over again because we have been arguing about the same issues, really, for over a longer time. I think something that Americans don’t really understand about Washington is how could the House Democrats think that it is the best use of time for this body to spend an entire day deciding simply the issue of when this body should decide about whether or not there should be witnesses and documents subpoenaed? That is the issue before the body now. It is not the question, finally, of whether there should be witnesses.

As the majority leader has made clear multiple times, the underlying resolution simply allows that issue to be addressed a week from now. The only question at issue now—and the House managers keep saying: How can you have a trial without witnesses? How can you have a trial without documents? That is not even the issue. The only issue now is whether you have to have that issue as part of the documents now or decide it in a week after you hear the presentations. Why are they so eager to have you buy a pig in a poke? Why is it necessary to make that decision without having more information?

In the Clinton trial, this body agreed 100 to 0 that it made more sense to have more information and then decide how to proceed and that it was rational to have more information to hear the presentations and then decide what more was necessary. Why is it important that you have to make that decision now without that information? That doesn’t make any sense.

The rational thing to do is to hear what sort of case they present and, importantly, to hear the President’s defense because the President had no opportunity in the House to present any defense.

We have heard a lot about the rule of law and about precedent. What was unprecedented was the process that was used in the House, a process that began with an impeachment inquiry that started without any vote by the House.

This is the point I made earlier. The Constitution assigns the sole power of impeachment to the House, not to any single Member of the House. So the press conference that Speaker Pelosi held on September 24 did not validly initiate an impeachment inquiry, nor did it validly give power to committees over these documents.

We are talking now about the DOD documents. What efforts did they make in their proceeding to get these documents? They issued one invalid subpoena totally unauthorized under the Constitution. It was unprecedented because it was issued in an impeachment inquiry reportedly with no vote from the House. It had never happened before in our history. It was Presidential impeachment. It was unlawful. It was unauthorized. That is why no documents were produced, and they made no other efforts to pursue that.

We have heard a lot about the rule of law. The rule of law applies to House Democrats, as well, and they didn’t abide by it. It was unprecedented to have a process in which the President had no opportunity to present his defense, no opportunity to present witnesses, no opportunity to be represented by counsel, and no opportunity to present evidence whatsoever in three rounds of hearings.

They will mention: Oh, in the Judiciary Committee, they were willing to have a trial. But the President in the Judiciary Committee, after one hearing, the Speaker announced the conclusion that articles were going to be drafted and the committee had already decided it would hear no fact witnesses. There were no right to a trial. So it makes sense, what is rational—what 100 Senators 21 years ago thought was rational was to hear the case that can be presented on the record established so far and then decide if something else needs to happen. Let the President make his case. We are ready to get this started. The House managers should be as well.

Mr. Counsel CIPOLLONE. Mr. Chief Justice, we yield the balance of our time.

The CHIEF JUSTICE. The House managers have 38 minutes remaining.

Mr. Manager CROW. Mr. Chief Justice, I will be brief.

Counsel for the President continues to tell us a lot of things that just really rubs me the wrong way. When he says: You know, we are talking and saying the same argument over and over again, well, I am ready to keep going because this is an important debate, and we need to have it now. He also said something about what the American people don’t understand about Washington. Well, I haven’t been here very long, but I can tell you that I don’t think the American people care about whether the people in Washington are sitting around debating all the time and thinking about what you are concerned about right now. What they are concerned about is whether or not their government is working for them and whether or not there is corruption in their government. That is what they understand, and that is what this debate is about. Counsel for the President said: Why now? Why the information now? The better question is: Why not now? That trial has started. Let’s have the facts and information now.

Ladies and gentlemen, the time is right. There is no reason why we
shouldn’t issue those subpoenas, get the facts, get the testimony, have the debate, and let the American people see what is really going on.

Mr. Chief Justice, I yield the balance of my time to Mr. Schiff.

Mr. Manager SCHIFF, Senators, I will be brief, but I do want to respond to a couple of points my colleagues have made.

First is the argument that you heard before, and I have no doubt you will hear again—that the subpoenas issued by the House are invalid. Well, that is really wonderful. I imagine when you issue subpoenas, they will declare yours invalid as well.

What is the basis of the claim that they are invalid? It is because they weren’t issued the way the President wants.

Part of the argument is that you have to issue the subpoenas the way we say, and that only be done after there is a resolution that we approve of adopted by the full House. First, they complained there was no resolution, no formal resolution of the impeachment inquiry, and then when we passed the formal resolution, they complained about the delay. They didn’t have one, and they complained when we did have one.

They made that argument already in court, and they lost. In the McGahn case, they similarly argued that this subpoena is improper, do you know what the judge said? The judge essentially said: That is nonsense.

The President doesn’t get to decide how the House conducts an impeachment proceeding. The President doesn’t get to decide whether a subpoena at issue is valid or invalid. No, the House gets to decide because the House is given the sole power of impeachment, not the President of the United States. How can it be that the President claims he is entitled to know what the judge said? Do you know what the judge said? He said the “when” means never.

Finally, the Clinton precedent. President Clinton turned over 90,000 pages of his White House emails that my colleague Ambassador Taylor took detailed notes. If there is a dispute about what the President told Mr. Sondland, wouldn’t you like to see the notes? They don’t want you to know the notes exist.

They don’t want to have this debate. They would rather just argue: No, it is just about the documents. It is just about when. We want the Senators to have their 16 hours of questions before they can see any of this stuff. And do you know what? Then we are going to move to dismiss the case. As I said earlier, the “when” means never.

We even played a video for you of Secretary Esper on one of the Sunday shows saying, we are going to comply with these subpoenas. That was one week. Then somebody got to him and all of a sudden he was singing a different tune.

They don’t want you to know what these documents hold. And, yes, we are showing you what these witnesses can tell you. We are showing you what Mulvaney can tell you. And, yes, we are making it hard for you. We are making it hard for you to say no. We are making it hard for you to say: I don’t just have an abstract, if it is just your argument for documents, well, they can say: Well, that is really not that important, right? It is just some generic thing.

But when you learn, as you have learned today and tonight, what those documents are, when you have seen the efforts to conceal those Freedom of Information Act emails that my colleague Mr. Crow just referred to, and when you see what was released to the public, and it is all redacted, and we find out it is even more redactions, wow, surprise. It is incriminating information they have redacted out. That is not supposed to be the basis for redaction under the Freedom of Information Act. That is what we call a coverup.

They don’t want you to see that today. They don’t want you to see the before and the after, the redacted and the unredacted. They don’t want you to hear from these witnesses about the detailed personal notes they took. Ambassador Taylor took detailed personal notes.

They want to try to contest what Ambassador Sondland said about his conversations with the President because Sondland, after he talked with the President, talked directly with Ambassador Taylor and talked directly with Mr. Morrison and explained his conversation to the President. Guess what. Mr. Morrison and Ambassador Taylor took detailed notes. If there is a dispute about what the President told Mr. Sondland, wouldn’t you like to see the notes? They don’t want you to know the notes exist. They don’t want to have this debate. They would rather just argue: No, it is just about the documents. It is just about when.

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

There is a sufficient second. The clerk will call the roll.

The senior assistant legislative clerk called the roll.

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

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

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

Mr. SCHUMER, Mr. Chief Justice, The DEMOCRATIC leader is recognized.

AMENDMENT NO. 1289

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to issue subpoenas to Robert B. Blair and Michael P. Duffey, and I ask that it be read.

The CHIEF JUSTICE. The clerk will report the amendment.

The senior assistant legislative clerk read as follows: The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1289.

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

Notwithstanding any other provision of this resolution, pursuant to Rules V and VI of the Rules of Procedure and Practice in the Senate When Siting on Impeachment Trials—

(1) the Chief Justice of the United States, through the Secretary of the Senate, shall—

(A) issue a subpoena for the taking of testimony of Robert B. Blair; and

(B) issue a subpoena for the taking of testimony of Michael P. Duffey; 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 amendment is arguable by the parties for 2 hours, equally divided.

Mr. Manager SCHIFF, are you a proponent or opponent?
Mr. Manager SCHIFF. Mr. Chief Justice, we are a proponent. 

The CHIEF JUSTICE. Mr. Cipollone? Mr. Counsel CIPOLLONE. Mr. Chief Justice, we are an opponent.

The CHIEF JUSTICE. Mr. SCHIFF and the House managers will proceed and reserve time for rebuttal.

Ms. Manager GARCIA of Texas. Mr. Chief Justice, Senators, counsel for the President, my name is SYLVIA GARCIA, and I am a Congresswoman from Texas in the Houston region. I have been sitting for some time, as well as you, and it brought to mind the many years I spent as a judge, just as all of you today are judges in this hearing.

It is important that I say a few words before I start our argument for this amendment because, in the scheme of things, it is really not that very complicated. The American people, everyday Americans, know what a trial looks like. They have seen it on “Perry Mason” or “Law & Order,” or maybe they have been in court themselves. They know what a trial is. It is about making sure that people have an opportunity to be heard—both sides. It is about witnesses. It is about documents. It is about getting a fair shot.

That is all we are asking for today, is to make sure we give the American people the trial they expect, to make sure the American people know that this President had to have an explanation for this unprecedented decision to freeze vital military aid to Ukraine. They communicated about the freeze with each other, with Mulvaney, with OMB’s Acting Director, Russell Vought, and with numerous officials of the State Department and the Department of Defense. They stood at the center of this tangled web. Some of their communications are known to us from the testimony of other witnesses and House committees. Other communications have been revealed through public reporting and the Freedom of Information Act releases. But these communications only partly penetrate the secrecy in which President Trump sought to cloak his actions. Mr. Trump himself went on national television and on Twitter to call them “huff” and “double hatch.”

As plentiful evidence confirms, officials throughout the government were stumped—literally stumped—about why the freeze was happening. They were thwarted when they tried to get explanations from Blair and Duffey. Consistent with President Trump’s efforts to hide all evidence, Blair and Duffey have defied the House’s subpoenas at the President’s direction.

To explain why this amendment should be passed, I would like to walk you through some key events in which Blair and Duffey participated.

To start, Blair and Duffey were directly involved in the initial stages of President Trump’s freeze of the military aid. On July 18, the Department of Defense issued a statement that it would be providing its $250 million portion of the assistance to Ukraine and that Ukraine had testifies all the required preconditions for receiving the money. The very next day, on June 19, Blair, in his role as assistant to the President, called Vought, the Acting Director of OMB. The call was to talk about the military aid to Ukraine. According to public reports, Blair told Vought: “We need to hold it up.”

That same day, Duffey, who reports to Vought, emailed Deputy Under Secretary of Defense Blaine McCusker about the aid. More specifically, OMB directed the State Department not to send a notification to Congress about spending the aid. Without that notification, the aid was effectively frozen.

Now let’s move on to the implementation of the freeze. Despite Blair’s warning about how Congress would react, President Trump ordered a freeze on military aid to Ukraine in July. Blair and Duffey were directly involved in executing the President’s order. To be clear, decisions remain shrouded in secrecy, but key actions have been revealed.

On July 3, the State Department told various officials that OMB was blocking it from spending its $314 million portion of the aid. More specifically, OMB directed the State Department not to send a notification to Congress about spending the aid. Without that notification, the aid was effectively frozen.

Who from OMB ordered the State Department not to send its congressional notification? Did they give a reason? We just don’t know. Remember, at President Trump’s instruction, OMB and the State Department refused to produce a single document to the House, but the only document that was so important came from Duffey or one of his subordinates, acting on behalf of President Trump.

We also know that on July 12, Blair sent an email to Duffey. Duffey’s subordinate, Mark Sandy, saw the email and described it in his testimony before the House. As Sandy testified, it was Blair who conveyed that “the President is directing a hold on military support funding for Ukraine.” And that email explained why it was so important.

Blair’s email raises several questions. What other discussions took place about the President’s decision to freeze protection, we are a proponent.
the aid? Did the President or Mulvaney give Blair a reason for the freeze? Did Blair know that the President was holding the aid to pressure Ukraine to announce investigations of his political rival?

We also know that 2 days before Blair sent his email to Duffey, Ambassador Sondland told Ukrainian officials that he had a deal with Mulvaney. The deal consisted of a White House visit for President Zelensky on Ukraine conduct of investigations of high-level executive branch officials that President Trump sought. That is what prompted Ambassador Bolton to say he was “not part of whatever drug deal Sondland and Mulvaney are cooking up.”

Blair is Mulvaney’s senior adviser. Did Blair know about the Sondland/Mulvaney deal? Did he know that they were leveraging an official White House visit for the President to get Ukraine to investigate Trump’s political rival? The White House was unable to provide any reason for the hold.

Throughout this period, officials across the executive branch started asking questions—questions about the freeze. Why was the aid being withheld? Around July 17 or 18, Duffey emailed Blair. He asked about the reason for the freeze, but he got no explanation. Instead, Blair insisted: We need to let the hold take place and they could revisit the issue with the President later. Investigations. Did Blair know about the freeze? Did he provide any reason for the freeze? Some of those witnesses. They are up on the slide. Again, no one tells why—why this decision was made so secretly and without any explanation. Why was the President compromising the safety of his strategic ally in the region? Why was he harming our nation’s security interests in the process?

On July 26, Duffey attended a meeting of high-level executive branch officials about the aid. We also heard from several other officials from the Department of Defense, the NSC staff, and OMB, but no one—no one—heard any credible evidence, any credible explanation for the freeze at the time. No one. And here’s Mulvaney’s slide. Not even our top U.S. diplomat to Ukraine had any idea as to why the President had ordered the funds frozen. That is shocking. That should worry every single one of us here.

Here are some of those witnesses. They are up on the slide. Again, no one tells why—why this decision was made so secretly and without any explanation. Why was the President compromising the safety of his strategic ally in the region? Why was he harming our nation’s security interests in the process?

Witnesses who testified before the House all provided the same consistent recounting of what happened. As you can see from the statements on the slide, officials were not provided a clear explanation for such a dramatic step.

As we have already discussed earlier and will explain in more depth during the trial, these facts contradict the White House’s recent claims of why President Trump froze the Ukraine aid. Those facts clearly show efforts by this President and those around him to fabricate explanations after the President’s July 25 call with President Zelensky.

In fact, the White House Counsel’s own review of the freeze reportedly found that Mulvaney and OMB attempted to create an after-the-fact justification for the President’s decision. That is a polite way of saying Mulvaney’s team led an effort to cover up the President’s conduct and to manufacture misleading pretextual explanations to hide the corruption.

So Senators, there is still more. Blair and Duffey were also involved in the events surrounding President’s July 25 phone call with President Zelensky. On July 19, Blair, along with other officials, received an email from Ambassador Sondland. The email described a conversation he had just had with President Zelensky. Ambassador Sondland stated that Zelensky was “prepared to receive POTUS’ call,” and “will assure him that he intends to run a fully transparent investigation” and will “turn over every stone.”

As reflected in this email and confirmed by his testimony, Ambassador Sondland had helped President Zelensky prepare for his July 25 phone call with President Trump, telling him it was necessary to assure President Trump that he would conduct the investigations. Ambassador Sondland then reported back to Blair and others that President Zelensky was prepared to do just that.

Blair knew the plan. As Ambassador Sondland put it, he was in the loop on the scheme.

Why was Blair part of this group? What was his involvement in setting up the call? What did he understand Sondland’s message to mean? What did he know about the investigations sought by the President? Did he have any conversations with the President about that? What’s the request for the investigations? We need Blair’s testimony to answer these questions.

And then, 6 days later, Blair was in the Situation Room, listening in—listening on President Trump’s July 25 call with President Zelensky. He heard President Zelensky raise the issue of U.S. aid to Ukraine. He heard President Trump respond but asked him for “a favor, though”—namely, investigations of the 2016 election and of Vice President Biden.

The House heard the testimony of three of the other officials who listened into the President’s July 25 call—Lieutenant Colonel Vindman, Tim Morrison, and Jennifer Williams—each of them expressed concerns about the call. Lieutenant Colonel Vindman and Tim Morrison immediately reported the call to NSC lawyers. Jennifer Williams said the call “struck her as unusual and inappropriate,” and further, “more political in nature.”

Senators, the American people deserve to hear if Blair shared the concerns of the other officials who listened to the President’s call. What was his reaction to the call? Did he take notes? Was he at all concerned like the other officials about the corruption that was happening and why? Did the evidence we have suggest he did know? But the Senate should have the opportunity to ask him directly.

Just 90 minutes after that July 25 call, Blair’s contact at OMB, Michael Duffey, sent officials of the Department of Defense an email to make sure that DOD continued to freeze the military aid that Ukraine so desperately needed. This email, like all others, was not produced to the House. However, it was produced pursuant to court order in a Freedom of Information Act lawsuit.

As the email reflects, Duffey told the DOD to keep the aid to Ukraine. He repeated the guidance he had received, they should “hold off any additional DOD obligations of these funds.”

Duffey added that the request was sensitive and that they should keep the information as close as possible. This email, too, raises questions that Duffey should answer. What exactly was the guidance Duffey received? Who gave it to him? Was it connected to President Trump’s phone call? And why was it so sensitive that he directed DOD to keep it closely held?

The Senate should also hear from Duffey as to why he abruptly removed ambassador Taylor from his position. OMB officials who questioned the freeze on military aid to Ukraine and whether he did so at the direction of the White House or President Trump. Throughout July, Mark Sandy, the OMB career official who handled the aid, repeatedly tried to get Duffey to provide an explanation for the freeze. He was unsuccessful.

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He is the one who took over responsibility for withholding the aid? He gave no credible explanation for his decision. He only said that he wanted to become “more involved in daily operations.”

Sandy, who has decades of experience, testified that nothing like this had ever happened in his career. His boss, a political appointee, just happened to have a sudden interest in being more hands-on and was now laser-focused exclusively on Ukraine.

The Senate should ask Duffey why he took over the handling of the Ukraine military aid. Was he directed to? Why was Sandy removed from his responsibility over Ukraine aid? Was it because he expressed concerns about the legality of the freeze?

These questions are those that Duffey would be able to answer.

Now we move on to warnings from DOD. Around this period, in late July and early August, Duffey also ignored warnings from OMB about the legality of the freeze. The Senate should hear from him and judge what he has to say.

Throughout July and August, Duffey executed President Trump’s freeze of the military aid through a series of funding documents from OMB.

In carefully worded footnotes, OMB tried to claim that this was a brief pause and it would not affect DOD’s ability to spend the money on time. As we now know from public reporting, DOD officials grew more and more alarmed. They knew the freeze would impact DOD’s ability to spend the funds before the end of the fiscal year. DOD officials, including Deputy Under Secretary McCusker, voiced these concerns to Duffey on multiple occasions.

First, in an email on August 9, McCusker told Duffey DOD could no longer support OMB’s claim that the freeze on the security aid was illegal. According to public reporting, the freeze on the security aid was illegal. Duffey should be called to testify about what exactly he did, and why he failed to inform the House about the legality of the freeze. The Senate should hear from him and judge what he has to say.

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By the way, those agency minders don’t get to sit in on grand jury interviews either. There is a very good investigative reason that has been used by Republicans and Democrats that have been adamant about the policy of excluding agency counsel.

It was also reported that the Intelligence Committee and the Judiciary Committee wouldn’t allow the minority to call any witnesses. That is just not true. In fact, fully one-third of the witnesses who appeared in open hearing in our committee were minority-chosen witnesses. What they ended up having to say was pretty darn incriminating of the President, but, nonetheless, they chose them.

So about this idea that, well, we had no due process, the fact of the matter is, we followed the procedures in the Clinton and Nixon impeachments. They can continue to say we didn’t, but we did. In some respects, we gave even greater due process opportunities here than there. The fact that the President would take no advantage of them doesn’t change the fact that they had that opportunity.

Finally, the claim is made that we trampled on the constitutional rights by daring to subpoena these witnesses. If, during the impeachment trial of Donald John Trump, any party seeks to admit evidence that has not been submitted as part of the record of the House of Representatives and that was subject to a duly authorized subpoena, that party shall also provide the opposing party all other documents responsible to that subpoena. For the purposes of this paragraph, the term “duly authorized subpoena” includes any subpoena issued pursuant to the impeachment inquiry of the House of Representatives.

The Senate shall take all necessary measures to ensure the proper handling of confidential and classified information in the record.

The Senate shall be in a recess subject to the call of the Chair. There being no objection, the Senate, at 11:19 p.m., recessed until 11:39 p.m. and reassembled when called to order by the Chief Justice.

The Chief Justice. Mr. Schiff, are you in favor or opposed?
Mr. Manager SCHIFF, In favor.
The CHIEF JUSTICE. Mr. Cipollone.
Mr. Counselor CIPOLLONE. Mr. Chief Justice, we are opposed.
The CHIEF JUSTICE. There are 2 hours for argument, equally divided. Mr. Schiff may proceed first.
Mr. Manager SCHIFF. Senators, the majority leader amended his resolution earlier today to allow the admission of the House record into evidence, though the resolution leaves the record subject to objections.
But there is a gaping hole—another gaping hole—in the resolution. The resolution would allow the President to cherry-pick documents he has refused to produce to the House and attempt to admit them into evidence here.
That would enable the President to use his obstruction not only as a shield to his misconduct but also as a sword in his defense. That would be patently unfair and wholly improper. It must not stand that is what the Schumer amendment addresses.
The amendment addresses that issue by providing that if any party seeks to admit, for the first time here, information that was previously subject to subpoena, that party must do a simple and fair thing: it must provide the opposing party all of the other documents responsive to the subpoena. That is how the law works in America. It is called the rule of completeness.
When the selective introduction of evidence distorts facts or sows confusion in a trial, there is a solution. It is to ensure that documents that provide for a complete picture can be introduced to avert such distortions and confusion.
The rule of completeness is rooted in the commonsense evidentiary principle that a fair trial does not permit the parties to selectively introduce evidence in a way that would mislead factfinders. The Senators should embrace it as a rule for this trial, and the amendment does just that.
This amendment does not in any way limit the evidence the President may introduce during his trial. He should be able to defend himself against the charges against him as every defendant is able to defend himself against the charges against him as every defendant.
Mr. Schiff, you may proceed first.
Mr. SCHIFF. The amendment allows the privacy interests of many individuals to be protected, while allowing the Senators access to the facts.
As for the classified information that this amendment addresses, there may be several very relevant classified documents.
Let me just highlignt one in particular. It involves the testimony of the Vice President’s national security aide, Jennifer Williams, and it concerns a conversation between the Vice President and the President of Ukraine, and shed light that the House managers believe that it would be of value to this body to see, in trying the case.
Let me start by saying that we have twice requested that the Vice President declasify this document. We have reviewed it, and there is no basis to keep it classified. The Vice President has not responded, and we can only conclude this was an additional effort by the President to conceal wrongdoing from the public. As it stands now, it remains classified. It must be handled like any other classified document by this body in a manner that would allow them.
Mr. Schiff, you may proceed first.
Mr. Counselor CIPOLLONE. Thank you, Mr. Chief Justice. Mr. Schiff.
Mr. SCHIFF. The amendment seeks to balance the public’s interest in transparency with the importance of protecting limited, sensitive information for the record.
This amendment would say that any subpoena that the House issues pursuant to the impeachment inquiry without taking a vote, it never authorized any of its committees to issue subpoenas pursuant to the impeachment power.
In Rumsfeld, the Court explains that to determine the validity of a subpoena requires ‘construing the scope of the authority which the House of Representatives gave to the committee.’
There is a legal infirmity in those subpoenas, and it remains classified. It must be handled like any other classified document by this body in a manner that would allow them.
Mr. Schiff, you may proceed first.
Mr. CIPOLLONE. The first 23 subpoenas, at a minimum, that the House committees issued were all unauthorized in ultra vires, and that is why the Trump administration did not respond to them and did not comply with them. That was explained in a letter of October 18, from White House Counsel Cipollone to Chairman Schiff and others, that it is a legal infirmity in those subpoenas.
There has never been an impeachment inquiry initiated by the House of Representatives against a President of the United States without it being authorized by a vote of the full House. This is a principle that the Supreme Court has made clear in cases such as United States v. Curtiss-Wright Conn. States & Trade Union.
Mr. Schiff, you may proceed first.
Mr. SCHIFF. The rule of completeness has to be preserved. That is the rule of completeness. This amendment doesn’t have anything to do with the rule of completeness. I reserve the balance of our time.
The CHIEF JUSTICE. Mr. Cipollone.
Mr. Counselor CIPOLLONE. Thank you, Mr. Chief Justice. Mr. Schiff.
Mr. CIPOLLONE. The amendment allows the privacy interests of many individuals to be protected. The rule of completeness has to be preserved. That is the rule of completeness. This amendment doesn’t have anything to do with the rule of completeness.
Look at what they did in response to the FOIA, or Freedom of Information Act, requests. They blacked out all the incriminating information. They blacked out the “we can't represent any more what we are going to be able to actually spend this money in time. We can't represent that we are not going to be in violation of the law of the Impoundment Act.” They redact that.

Is that what you want in this trial, for them to be able to introduce one part of an email chain and not show you the rest?

You want to be able to have a situation where the President has withheld all these documents from you, can introduce a document that suggests a benign explanation but not the reply that confirms the corrupt explanation, because that is what we are really talking about here.

Now I can make this in the argument that, well, we don't think these were duly authorized subpoenas. We are merely categorizing the universe of documents they should turn over if they want to turn over selective documents, let them unduly authorized, therefore. The point is, that the documents that should be turned over should not be cherry-picked by a White House that has already shown such a deliberate intent to deceive.

Frankly, counsel says they can't tell whether we are dealing with a trial here. Well, do you know something? Neither can we. If they are confused, they are confused for a good reason, because that is what we are really talking about here.

The defendant doesn't get to decide who the prosecution can call as a witness. If you are confused, so is the public. They want this to look like a regular trial, and it should. That has been the history of this body. That has been the history of this body. Now I know it is late, but I have to tell you it doesn't have to be late. We don't control the schedule here. We are not deciding we want to carry on through the evening. We don't get to decide the schedule.

There is a reason for why we are still here at 5 minutes to midnight. There is a reason we are here at 5 minutes to midnight, and that is because they don't want the American people to see what is going on here. They are hoping people are asleep. You know, a lot of people are asleep right now, all over the country, because it is midnight. Now, maybe in my State of California people are still awake and watching, but is this really what we should be doing when we are deciding the fate of a Presidency—that we should be doing this in the midnight hour?

I started out the day asking whether there could be a fair trial and expressing the skepticism I think the country feels about whether that is possible, how much they want to believe this is possible. But I have to say, watching now at midnight, this effort to hide this in the dead of night cannot be encouraging to them about whether there will be a fair trial.

I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. McCONNELL. Mr. Chief Justice, I have a motion at the desk to table this amendment.

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

Is there a sufficient second? There is a sufficient second.

Mr. McCONNELL. I ask for the yeas and nays.

The CHIEF JUSTICE. The clerk will call the roll.

The legislative clerk called the roll.

The CHIEF JUSTICE. Does any Senator in the Chamber wish to change his or her vote?

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

[Rollcall Vote No. 21 Leg.]

YEAS—53


NAYS—47

Baldwin  Bennet  Barrasso  Blackburn  Booker  Brown  Cantwell  Cardin  Carper  Casey  Collins  Corker  Cornyn  Cory  Duckworth  Durbin  Ernst  Feinstein  Gillibrand  Harris  Hassan  Heinrich  Hirono  Jones  Kaine  King  Grassley  Klobuchar  Leahy  Manchin  Markay  Menendez  Merkley  Moran  Murray  Peters  Reed  Rosen  Sanders  Schatz  Schumer  Shaheen  Simon  Smith  Stabenow  Tester  Udall  Van Hollen  Warner  Warren  Whitehouse  Wyden

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

AMENDMENT NO. 1291

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to issue a subpoena to John Robert Bolton, and I ask that it be read.

The CHIEF JUSTICE. The clerk will read the amendment.

The legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1291.

At the appropriate place in the resolving clause, insert the following: Snc. . 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, the Chief Justice of the United States, through the Secretary of the Senate, directed the Clerk to serve a subpoena for the taking of testimony of John Robert Bolton, and 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 amendment is arguable by the parties with 2 hours equally divided.

Mr. Manager SCHIFF, are you a proponent?
Mr. Manager SCHIFF. Yes, I am.

The CHIEF JUSTICE. Mr. Cipollone, are you an opponent?
Mr. Counsel CIPOLLONE. Yes, Mr. Chief Justice.
The CHIEF JUSTICE. Mr. SCHIFF, you may proceed, and you may reserve time for rebuttal.

Mr. Manager NADLER. Before I begin, Mr. Chief Justice, the House managers will be reserving the balance of our time to respond to the arguments of the counsel for the President.

Mr. Chief Justice, Senators, counsel for the President, the House managers strongly object to this amendment to subpoena John Bolton. I am struck by what we have heard from the President’s counsel so far tonight. They complain about process, but they do not seriously contest any of the allegations against the President. They insist that the President has done nothing wrong, but they refuse to allow the evidence and hear from the witnesses. They will not permit the American people to hear from the witnesses, and they lie and lie and lie and lie.

For example, for months, President Trump has repeatedly complained that the House denied them the right to call witnesses, to cross-examine witnesses, and so forth. You heard Mr. Cipollone repeat it. Well, I have with me the letter that I sent as Chairman of the House Judiciary Committee last November 26, inviting the President and his counsel to attend our hearings, to cross-examine the witnesses, to call witnesses of his own, and so forth. I also have the White House letter signed by Mr. Cipollone, rejecting that offer. We should expect at least a little regard for the truth from the White House, but that is apparently too much to expect.

Ladies and gentlemen, this is a trial. At a trial, the lawyers present evidence. The American people know that. Most 10-year-olds know that. If you vote to block this witness or any of the evidence that should be presented here, it can only be because you do not want the American people to hear the evidence, that you do not want a fair trial, and that you are complicit in President Trump’s efforts to hide his misconduct and hide the truth from the American people.

Ambassador Bolton was appointed by President Trump. He has stated his willingness to testify in this trial. He is prepared to testify. He says that he has relevant evidence not yet disclosed to the public. His comments reaffirm what is obvious from the testimony and documents obtained by the House, which highlight Ambassador Bolton’s role in the repeated criticism of the President’s support of the country and its new President, and that is why the President and some Members of this body are afraid to hear from Ambassador Bolton—because they know too much.

There is also substantial evidence that Ambassador Bolton kept a keen eye on Rudy Giuliani, who was acting as the mouthpiece of the President, in connection with Ukraine. As we will describe, Ambassador Bolton communicated directly with Mr. Giuliani at key moments. He knows the details of the so-called drug deal he would later warn against.

Perhaps most importantly, Ambassador Bolton has said both that he will testify and that he has relevant information that has not yet been disclosed. A key witness has come forward and confirmed not only that he participated in critically important events but that he has new evidence we have not yet heard. That is precisely what Ambassador Bolton has done. His lawyer tells us that Ambassador Bolton has been involved in many of the events, meetings, and conversations about which the House heard testimony, as well as many relevant meetings and conversations that have not yet been discussed in the testimony thus far.

Ambassador Bolton was requested as a witness in the House inquiry, but he refused to appear voluntarily. His lawyers informed the House Intelligence Committee that Ambassador Bolton would not take the matter to court if issued a subpoena, as his subordinate did, but the Ambassador changed his tune. He recently issued a statement confirming that “if the Senate issues a subpoena for my testimony, I am prepared to testify.”

So the question presented as to Ambassador Bolton is clear. It comes down to this: Will the Senate do its duty and hear all the evidence? Or will it slam this door shut and show it is participating in a coverup because it fears to hear from Ambassador Bolton?

Ambassador Bolton is a firsthand witness to President Trump’s abuse of power. As the National Security Advisor, he reported directly to the President and supervised the entire National Security Council. That included three witnesses with responsibility for Ukraine matters, and he went to great detail before the House—Dr. Fiona Hill, Tim Morrison, and LTC Alexander Vindman.

Moreover, in his role, John Bolton was the tip of the President’s tongue on national security. It was his responsibility to oversee everything happening in the Trump administration regarding foreign policy and national security. By virtue of his unique position appointed by the President, Bolton had knowledge of the latest intelligence and developments in our relationship with Ukraine, including our support of the country and its new President, and that is why the President and some Members of this body are afraid to hear from Ambassador Bolton—because they know too much.
Consider this as well: Why is President Trump so intent on preventing us from hearing Ambassador Bolton, his own appointee, his formerly trusted confidant? Because he knows—he knows—his guilt and he knows that he doesn’t want people who know about it to testify. The question is whether Republican Senators here today will participate in that coverup.

The reasons seem clear. President Trump wants to block this witness because Ambassador Bolton has direct knowledge of the Ukraine scheme, which he called a drug deal. Let’s start with the key meeting that took place on July 10.

Just 2 weeks before President Trump’s now famous July 25 call with President Zelensky, Ambassador Bolton hosted senior Ukrainian officials in his West Wing office. That meeting included Dr. Hill, Lieutenant Colonel Vindman, Ambassador Sondland and Volker, and Energy Secretary Rick Perry. As they did in every meeting they had with U.S. officials, Ukrainian officials asked when President Trump would schedule a White House meeting for the newly elected Ukrainian President because it was very important for the Ukrainian President, a new President of an embattled democracy being invaded by Russia, to show that he had legitimacy by a meeting with the United States.

Dr. Hill testified that Ambassador Sondland blurted out that he had a deal with Mr. Mulvaney for a White House visit, provided that Ukraine first announce investigations into the President’s political rivals. Ambassador Bolton immediately stiffened and ended the meeting. Dr. Hill’s testimony is on the screen.

In other words, Ambassador Bolton and others at the meeting were interested in the national security of the United States. They were interested in protecting an American ally against Russian invasion. They couldn’t understand why this sudden order was coming from the President to abandon a policy that they believed didn’t know—there weren’t any known—at the President’s plot to try to extract the Ukrainian Government into doing him a political favor by announcing an investigation of a political rival.

When Dr. Hill reported back to Ambassador Bolton about the second conversation, Ambassador Bolton told Dr. Hill to go to the National Security Council’s legal advisor, John Eisenberg, and tell him: “I am not part of whatever drug deal Sondland and Mulvaney are cooking up on this.”

Here is an excerpt of her hearing testimony.

(Text of Videotape presentation:)

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

Mr. GOLDMAN. Did you understand him 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. Manager NADLER. These statements of events are relevant enough to insist that Ambassador Bolton testify. He can explain the misconduct that caused him to characterize the Ukraine scheme as a drug deal and why he directed his subordinates to report their concerns to a legal counsel. He can tell us everything about how Ambassador Sondland, Mr. Mulvaney, and others were attempting to press the Ukrainians to do President Trump’s political bidding. Once more, only Ambassador Bolton can tell us what he was thinking and what he knew as this scheme developed. That is why the President fears his testimony.

That is why some Members of this body fear his testimony.

Ambassador Bolton’s involvement was not limited to a few isolated events; he was a witness at key moments in the course of the Ukraine scheme, especially in July, August, and September of last year. I would like to walk through some of these events. Please remember, as I am describing them, that this is not the entire universe of issues to which Ambassador Bolton could testify; they are only examples that show why he is such an important witness and why the President is desperate to block his testimony.

We know from Ambassador Bolton’s attorney that there may be other meetings and conversations that have not yet come to our attention. To take one example, we know from witness testimony that Ambassador Bolton repeated expressing concerns about the involvement of President Trump’s personal lawyer, Mr. Giuliani.

In the spring and summer of 2019, Ambassador Bolton caught wind of Mr. Giuliani’s involvement in Ukraine and soon began to express concerns. Ambassador Bolton communicated directly with Mr. Giuliani three times for brief calls between April 23 and May 10, 2019, a time period that corresponds with the recall of Ambassador Yovanovitch and the acceleration of Mr. Giuliani’s efforts on behalf of President Trump to pressure Ukraine into opening investigations that would benefit his reelection campaign.

For instance, on April 23, the day before the State Department recalled Ambassador Yovanovitch from Ukraine, Mr. Giuliani had an 8-minute 28-second call from the White House. Thirty minutes later, he had a 48-second call with a phone number associated with Ambassador Bolton.

If we were to testify, we could ask Ambassador Bolton directly what transpired on that call and whether that phone call informed his assessment that Mr. Giuliani was “a hand grenade that was going to blow everybody up,” it was based on his fear that Mr. Giuliani’s work on behalf of the President’s political rivals was focused on only one. He didn’t care about anything else. He cared only about the company on which the former Vice President’s son had been a board member. Can you believe that he was concerned with corruption and only knew about one company, when there are hundreds of thousands of which have been accused of corruption—the President was focused on only one. He didn’t care about anything else. He cared only about the company on which the former Vice President’s son had been a board member.

Although Ambassador Bolton did not listen in on the July 25 call between President Trump and President January 21, 2020.
Zelensky in which President Trump asked the Ukrainian President a favor—a favor to investigate one company and Joe Biden's son—we have learned from witness testimony that Ambassador Bolton was opposed to scheduling the call in the first place. Why? Because he accurately predicted, in the words of Ambassador Taylor, that "there could be some talk of investigations or worse on the call." In fact, he did not want the call to happen at all because he "thought it was going to be a disaster.

How did Ambassador Bolton know that President Trump would bring this up? What made him so concerned that a call would be a disaster? I think we know, but only Ambassador Bolton can answer these questions.

Based on extensive witness testimony, we also know that throughout this period, multiple people on the National Security Council's staff reported concerns to Ambassador Bolton about tying American foreign policy to President Trump's "domestic political agenda." We know that a number of individuals at OMB and the Department of Defense raised serious concerns about the legality of freezing the funds, which we know is illegal. We now have an explicit ruling from the Government Accountability Office, which we didn't need because we know that is why the law was passed in 1974, that the freeze ordered by President Trump was illegal—and he was obviously told this—and violated the Impoundment Control Act.

We also know that after the meeting of Cabinet deputies on July 26, Tim Morrison talked to Ambassador Bolton, and according to Mr. Morrison, Ambassador Bolton said that the entire Cabinet supported releasing the freeze and wanted to get the issue to President Trump as soon as possible.

When did Ambassador Bolton first become aware that President Trump was withholding military aid to Ukraine and conditioning the release of that aid on Ukraine announcing political investigations? What was he told was the reason? What else did he learn about the President's actions in these meetings? Again, only Ambassador Bolton can answer these questions, and again we must presume that President Trump is desperate for us not to hear these answers. I hope not too many of the Members of this body are desperate to make sure that the American people don't hear these same answers.

We know that Ambassador Bolton tried throughout August, without success, to persuade the President that the aid to Ukraine had to be released because that was what was best in the interests of our national security.

In mid-August, we know Lieutenant Colonel Vindman wrote a Presidential decision memorandum recommending that the freeze be lifted based on the consensus views of the entire Cabinet. The memo was given to Ambassador Bolton, who subsequently had a direct, one-on-one conversation with the President in which he tried but failed to convince him to release the hold.

(Text of Videotape presentation:)

Mr. SWALWELL. You said Ambassador Bolton had a one-on-one meeting with President Trump in late August, but the President was not yet ready to approve the release of the assistance. Do you remember that?

Mr. MORRISON. This was 226?

Mr. SWALWELL. Yes, 266 and 268. But I am asking you: Did that happen or did it not?

Mr. MORRISON. Sir, I just want to be clear characterizing it, OK, sir.

Mr. SWALWELL. Yes. You testified to that. What was the outcome of that meeting between Ambassador Bolton and President Trump?

Mr. MORRISON. Ambassador Bolton did not yet believe the President was ready to approve the assistance.

Mr. SWALWELL. Did Ambassador Bolton inform you of any reason for the ongoing hold that stemmed from this meeting?

Mr. Manager NADLER. Ambassador Bolton's efforts failed. By August 30, OMB informed DOD that there was "clear direction from POTUS to continue to hold." What rationale did President Trump give Ambassador Bolton and other officials for refusing to release the aid? Were these reasons convincing to Ambassador Bolton, and did they reflect the best interests of our national security or the President's personal political interests?

Only Ambassador Bolton can tell us the answers. A fair trial in this body would ensure that he testifies. The President does not want you to hear Ambassador Bolton's testimony. Why is that? For all the obvious reasons I have stated.

The President claims that he froze aid to Ukraine in the interest of our
national security. If that is true, why would he oppose testimony from his own former National Security Advisor?

Make no mistake. President Trump had no legal grounds to block Ambassador Bolton’s testimony in this trial. Executive privilege is not a shield that the President can cast to cover up evidence of his own misconduct. It is a qualified privilege that protects senior advisers performing official functions. Executive privilege is a shield, not a sword. It cannot be used to block a witness from testifying, as Ambassador Bolton says he is.

As we know from the Nixon case in Watergate, the privilege also does not prevent us from obtaining specific evidence of wrongdoing. The Supreme Court unanimously rejected President Nixon’s attempts to use executive privilege to conceal incriminating tape recordings. All the similar efforts by President Trump must also fail.

The President sometimes relies on a theory of absolute immunity that says that he can order anybody in the executive branch not to testify to the House or the Senate or to a court. Obviously, this is ridiculous. It has been flatly rejected by every Federal court to come before it. It is embarrassing that the President’s counsel would talk about this today.

Again, even if President Trump asserts that Ambassador Bolton is absolutely immune from compelled testimony, the President has no authority to block Ambassador Bolton from appearing here. As one court recently explained, Presidents are not Kings, and they do not have subjects whose destiny they are entitled to control.

This body should not act as if the President is a King. We will see, with the next vote on this question, whether the Members of this body want to protect the President against all investigation, against all suspicion, against any crimes, or none.

The Framers of our Constitution were most concerned about abuse of power where it affects national security. President Trump has been impeached for placing his political interests ahead of our national security. It is imperative, therefore, that we hear from the National Security Advisor who witnessed the President’s scheme from start to finish. To be clear, the record, as it stands, fully supports both Articles of Impeachment. It is imperative that the President’s counsel argue that the President mounted a sustained pressure campaign to get Ukraine to announce investigations that would benefit him politically and then tried to cover it up. The President does not seriously deny any of the President’s agents.

The only question left is this: Why is the President so intent on concealing the evidence and blocking all documents and testimony here today? Only guilty people try to hide the evidence. Of course, all of this is relevant only if this here today is a fair trial, only if you, the Senate, sitting as an impartial jury, do not work with the accused to conceal the evidence from the American people.

We cannot be surprised that the President objects to calling witnesses who would prove his guilt. That is who he is. He does not want you to see evidence because he cannot control the details of how he betrayed his office and asked a foreign government to intervene in our election. But we should be surprised that, here in the U.S. Senate, the greatest deliberative body in the world, where we are expected to put our oath of office ahead of political expediency, where we are expected to be honest, where we are expected to protect the interests of the American people—we should be surprised, shocked—that any Senator would vote to block this witness or any relevant witness who might shed additional light on the President’s obvious misconduct.

The President is on trial in the Senate, but the Senate is on trial in the eyes of the American people. Will you only vote to deny current evidence to be presented here, or will you betray your pledge to be an impartial juror? Will you bring Ambassador Bolton here? Will you permit us to present you with the entire record of the President’s misconduct, or will you, instead, choose to be complicit in the President’s coverup?

So far, I am sad to say, I see a lot of Senators voting for a coverup, voting to deny witnesses—an absolutely indefensible vote, obstructing a fair trial. A vote against an honest consideration of the evidence against the President, a vote against a honest trial, a vote against the United States.

A real trial, we know, has witnesses. We urge you to do your duty, permit a fair trial. All the witnesses must be permitted. That is elementary in American justice. Either you want the truth and you must permit the witnesses, or you want a shameful coverup. History will judge. So will the electorate.

Mr. Chief Justice, we reserve the balance of our time—the managers.

The CHIEF JUSTICE. Mr. Cipollone.

Mr. Counsel CIPOLLINE. Mr. Chief Justice, Members of the Senate, we came here today to address the false case brought to you by the House managers. We have been respectful of the Senate. We have made our arguments to you.

You don’t deserve and we don’t deserve what just happened. Mr. NADLER came up here and made false allegations against our team. He made false allegations against all of you. He accused you of a cover up. He has been making false allegations against the President. The only one who should be embarrassed, Mr. NADLER, is you, for the way you have addressed this body. This is the U.S. Senate. You are not in charge here.

Now, let me address the issue of Mr. Bolton. I have addressed it before. They don’t tell you that they didn’t bother to call Mr. Bolton themselves. They didn’t subpoena him. Mr. COOPER wrote them a letter. He said very clearly: If the House chooses not to pursue through subpoena the testimony of Dr. Kupperman and Ambassador Bolton, let the record be clear. That is the House’s decision.

They didn’t pursue Ambassador Bolton, and they withdrew the subpoena to Mr. Kupperman. So, for them to come here now and demand that, before we even start the arguments—they ask you to do something that they refuse to do for themselves, and then force you to do it if you don’t do it—it is ridiculous. Talk about out-of-control governing.

Now, let me read you a quote from Mr. NADLER not so long ago: The effect of impeachment is to overturn the popular will of the voters. There must never be a narrowly voted impeachment or an impeachment supported by one of our major political parties and opposed by the other. Such an impeachment would produce divisiveness and bitterness in our politics for years to come and will call into question the very legitimacy of our political institutions.

Well, you have just seen it for yourself. What happened, Mr. NADLER? What happened?

The American people pay their salaries, and they are here to take away their vote. They are here to take away their voice. They have come here, and they have attacked every institution of our government. They have attacked the President, the executive branch. They have attacked the judicial branch. They say they don’t have time for courts. They have attacked the U.S. Senate, repeatedly. It is about time we bring this power trip in for a landing.

President Trump is a man of his word. He made promises to the American people, and he delivered—over and over and over again. And they come here and say, with no evidence, spending the day complaining, that they can’t make their case, attacking a resolution that had 100 percent support in this body. And some of the people here supported it at the time. It is a farce, and it should end.

Mr. NADLER, you owe an apology to the President of the United States and his family. You owe an apology to the Senate. But, most of all, you owe an apology to the American people.

Mr. Chief Justice, I yield the remainder of my time to Mr. Sekulow.

The CHIEF JUSTICE. Mr. Sekulow.

Mr. Counsel SEKULOW. Mr. Chief Justice. Members of the Senate, the chairman of the Judiciary Committee, at about 12:10 a.m., January 22, the chairman of the Judiciary Committee, in this body, on the floor of this Senate, said "executive privilege and other nonsense." Now, think about that for a minute—executive privilege and other nonsense.

Mr. NADLER, it is not nonsense. These are privileges recognized by the Supreme Court of the United States. To share the Constitution on the floor of this Senate, to momify what purpose? The Senate is not on trial. The Constitution doesn’t allow what just took place.
Look at what we have dealt with for the last now 13 hours. We, hopefully, are closing the proceedings, but not on a very high note.

Only guilty people try to hide evidence? So, I guess, when President Obama and his Attorney General, and that's not to say information, he was guilty of a crime. That is the way it works. Mr. NADLER? Is that the way you view the U.S. Constitution? Because that is not the way it was written. That is not the way it was interpreted, and that is not the way the American people should have to live.

I will tell you what is treacherous: To come to the floor of the Senate and say "executive privilege and other nonsense."

Mr. Chief Justice, we yield the rest of our time.

The CHIEF JUSTICE. The managers are permitted 25 minutes remaining.

Mr. Manager NADLER. Mr. Chief Justice. Members of the Senate, the President's counsel has no standing to talk about lying. He told this body today—the President has told this body—and told the American people repeatedly, for example, that the House of Representatives refused to allow the President due process. I told you that it is available—public document, November 26 letter from me, as chairman of the Judiciary Committee, to the President, offering him due process, offering witnesses, offering cross-examination.

A few days later, we received a letter from Mr. Cipollone on White House stationery that said: No, we have no interest in appearing.

On the one hand, the House is condemned by the President for not giving him due process after they rejected the offer of due process. That letter rejecting it was December 1.

The President's counsel says that the House should have issued subpoenas. We did issue subpoenas. The President, you may recall—you should recall—said he had no subpoena power and he did. So many of those subpoenas are still being fought in court—subpoenas issued last April. So that is also untrue. It takes a heck of a lot of nerve to criticize the House for not issuing subpoenas when the President said he would oppose all subpoenas. We have issued a lot of subpoenas. He opposes all of them, and they are tied up in court.

The President claims—and most Members of this body know better, executive privilege, which is a limited privilege, which exists but not as a shield, not as a shield against wrongdoing, as the Supreme Court specifically said in the Nixon case in 1974. The President's counsel has absolute immunity. Mr. Cipollone wrote some of those letters, not only saying the President but that nobody should testify that he doesn't want, and then they have the nerve to say that is a violation of the constitutional rights of the House of Representatives and the Senate and of the American people represented through them.

It is an assertion of the kingly prerogative, a monarchical prerogative. Only the President—only the President has rights, and the people as represented in Congress cannot get information from the executive branch at all. The body has committed. It has a 200-year record of issuing subpoenas, of having the administration of the day testify, of sometimes having subpoena fights, but no President has ever claimed the right to stonewall Congress on everything, period. Congress has no standing. The American people have no right to get information. That, in fact, is article II of the impeachment that we have voted.

It is beyond belief that the President claims monarchical powers—I can do whatever I want under article II, says he—and then acts on that, defies everything, defies the law to withhold aid from Ukraine, defies the law in a dozen different directions all the time, and lies about it, and says to Mr. Cipollone to lie about it. These facts are undeniable—undeniable.

I reserve.

Mr. Manager SCHIFF. Mr. Cipollone, once again, complained that we did not request Bolton to testify in the House, but of course we did. We did request his testimony, and he was a no-show.

When we talked to his counsel about subpoenaing his testimony, the answer was: You give us a subpoena, and we will sue you. And, indeed, that is what Mr. Bolton's attorney did with the subpoena for Dr. Kupperman.

There was no willingness by Mr. Bolton to testify before the House. He said he would sue us. What is the problem with his suing us? Their Justice Department, under Bill Barr, is in court arguing—actually in that very case involving Dr. Kupperman—that Dr. Kupperman can't sue the administration and the Congress. That is the same position that Congress has taken, the same position the President is taking in the Congress, but of course we did. We did request his testimony, and he was a no-show.

The President's counsel also says: Well, this is just like Obama, right? This is just like Obama, citing, I suppose, the Fast and Furious case. They don't mention to you the difference. They don't mention to you the difference. We are hacking the DNC, and now the Russians at it again.

There is no illusory threat to the independence of our elections. The Russians are at it, as we speak. What does the President do? Is he saying: Back off, Russia; I am not interested in your help; I don't want foreign interference? No, he is saying: Come on in, China. He has his guy in Ukraine continuing the scheme.

We can't wait a year or 2 years or 3 years, like we have had to wait with Don McGahn, to get John Bolton in to testify to let you know that this threat is ongoing.

Counsel also says: Yes, he is just like Obama, citing, I suppose, the Fast and Furious case. They don't mention to you that in that investigation, the Obama administration turned over tens of thousands of documents. They don't want to know about that. They say it is just like Obama.

When you find video of Barack Obama saying that under article II he can do anything, then you can compare Barack Obama to Donald Trump. When you find a video of Barack Obama saying: I am going to fight all subpoenas, then you can compare Barack Obama to Donald Trump.
And finally, Mr. Cipollone says, President Trump is a man of his word. It is too late in the evening for me to go into that one, except to say this. President Trump gave his word he would drain the swamp. He said he would drain the swamp. What have we seen? We have seen his personal lawyer go to jail, his campaign chairman go to jail, his deputy campaign chairman convicted of a different crime, his associates’ associate, Lev Parnas, under indictment. The list goes on and on. That is, I guess, how you drain the swamp. You have all your people go to jail.

I don’t think that is really what was meant by that expression. For the purposes of why we are here today, how does someone who promises to drain the swamp coerce an ally of ours into doing a political investigation? That is the swamp. That is not draining the swamp; that is exporting the swamp.

I yield back.

The CHIEF JUSTICE. I think it is appropriate at this point for me to admonish both the House managers and the President’s counsel in equal terms to remember that they are addressing the world’s greatest deliberative body. One reason it has earned that title is because its Members avoid speaking in a manner and using language that is not conducive to civil discourse.

In the 1905 Swayne trial, a Senator objected when one of the managers used the word “pettifogging,” and the Presiding Officer said the word ought not have been used. I don’t think we need to aspire to that high a standard, but I think those addressing the Senate should remember where they are.

The majority leader is recognized.

**MOTION TO TABLE**

Mr. MCCONNELL. Mr. Chief Justice, it will surprise no one that I move to table the amendment and ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There is a sufficient second.

The legislative clerk called the roll. The CHIEF JUSTICE. Are there any other Senators in the Chamber desiring to be recognized?

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

[Rollcall Vote No. 22 Leg.]

**YEAS—53**

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**NAYS—47**

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

The CHIEF JUSTICE. The Democratic leader is recognized.

**AMENDMENT NO. 1292**

Mr. SCHUMER. Thank you, Mr. Chief Justice.

I send an amendment to the desk to provide for a vote on the Senate on any motion to subpoena witnesses or documents after the question period, and I waive its reading.

The CHIEF JUSTICE. Is there any objection to the waiving of the reading?

Mr. Counsel CIPOLLONE. I object.

Mr. SCHUMER. I withdraw my request for a waiver.

The CHIEF JUSTICE. Does any Senator have an objection to the waiving of the reading?

Ms. MURKOWSKI. I object.

The CHIEF JUSTICE. The clerk will read the amendment.

The legislative clerk read as follows:

On page 3, lines 23 and 24 strike “and the” and insert “any such motion” after “decide”.

On page 3, line 10, strike “the question of” and all that follows through “rules” on line 12.

On page 3, line 14, insert “any such motion” after “decide”.

On page 3, line 15, strike “whether” and all that follows through “documents” on line 17.

On page 3, line 18, strike “that question” and insert “any such motion”.

On page 3, lines 23 and 24 strike “and the Senate shall decide whether such witnesses shall testify” and insert “and then shall testify in the Senate”.

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

Mr. Manager Schiff, are you a proponent or opponent?

Mr. Manager SCHIFF. Proponent.

Mr. Counsel CIPOLLONE. We oppose it.

The CHIEF JUSTICE. Mr. Schiff, you may proceed and reserve time for rebuttal.

Mr. Manager SCHIFF. Senators, this amendment makes two important changes to the McConnell resolution.

The first is, the McConnell resolution does not usually provide for an immediate vote even later on the witnesses we have requested.

What the McConnell resolution says is that at some point after, essentially, the trial is over—after you have had the arguments of both sides and you have had the opportunity for questioning—then there will be a debate as to whether to have a vote and a debate on a particular witness. There is no guarantee that you are going to get a chance to vote on specific witnesses.

All the resolution provides is that you are going to get an opportunity to vote to have a debate on whether to ultimately have a vote on a particular witness. This would strip that middle layer. It would see us on whether to have a debate on a particular witness.

If my counsel, my colleagues for the President’s team, are making the point that “Well, you are going to get that opportunity later,” the reality is that under the McConnell resolution, we may never get to have a debate about particular witnesses.

You heard the discussion of four witnesses tonight. There may be others who come to the attention of this body who are able to get documents that we should also call. But will you ever get to hear a debate about why a particular witness is necessary? Well, you may only get a debate over the debate.

This amendment would remove that debate over debate regarding particular witnesses.

The other thing this resolution would provide is that you should hear from these witnesses yourself. The McConnell resolution says that we depose, and that is it. It doesn’t say you are ever going to actually hear these witnesses for yourself, which means that you, as the triers of fact, may not get to see and witness the credibility of these witnesses. You may only get to see a deposition or deposition transcript or maybe a video of a deposition.

I don’t know. But if there is any contesting of facts, wouldn’t you like to hear from the witnesses yourself and very directly?

Now, the reason why it was done this way in the Clinton case and why there were depositions—and again, in the Clinton case, all these people had been interviewed and deposed or testified before. The reason it was done that way in the Clinton case is because of the salacious nature of the testimony. Nobody wanted witnesses on the Senate floor talking about sex. Well, as I said earlier, I can assure you that will not be the issue here.

To whatever degree there was a reluctance in the Clinton case to have live testimony because of its salacious character, that is not an issue here. That is not a reason here not to hear from those witnesses yourself.

This resolution makes those two important changes, and I would urge your support.

I reserve time.

The CHIEF JUSTICE. Mr. Cipollone.

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice.

Mr. Purpura will argue this motion.

Mr. Counsel PURPURA. Mr. Chief Justice, Members of the Senate, good morning. I will be very brief on this.

We strongly oppose the amendment. We support the resolution as written. We believe, as to the two areas that Manager Schiff discussed, the resolution appropriately considers those
questions and strikes the impeachment balance in the Senate’s discretion as the sole trier of impeachments.

The rules in place here in the resolution are similar to the Clinton proceeding in that regard in the sense that this is the only place we have 4 hours total, with 2 hours for them to try to convince you, after the parties have made their presentation—which they will have 24 hours to do—as to the preliminary question of whether it shall be in order to consider and debate any motion to subpoena witnesses or documents.

Those were precisely the Clinton rules—actually, stronger than the Clinton rules. Those rules, as I have indicated before, passed 100 to 0. We think that the resolution strikes the appropriate balance, and we urge that the amendment be rejected.

I yield my time.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. Manager SCHIFF. Don’t worry. I won’t use it.

I will say only that if there were any veneer left to camouflage where the President is counseled, it is really coming from the veneer is completely gone now. After saying we are going to have an opportunity to have a vote on these witnesses later, now they are saying: No, you are just going to have a vote on whether to debate having a vote on the witnesses.

The camouflage was pretty thin to begin with, but it is completely gone now.

What they really want is to get to that generic debate about whether or not there will be a debate on witnesses and have you vote it down so you never actually have to vote to refuse these witnesses, although you had to do that tonight. I don’t see what purpose that serves except, I suppose, to put one more layer in the way of accountability.

But the veneer is gone. All this promise about “You are going to get that opportunity, it is just a question of when”—no, the whole goal is for you to never get the chance to take that vote. And what is more, the vote on this resolution is a vote that says that you don’t want to hear from these witnesses yourself. You don’t want to evaluate the credibility of these witnesses yourselves. Maybe—just maybe—you will let them be deposed, but you don’t want to hear them yourself. You don’t want to see these witnesses put up their hand and take an oath.

I don’t know what the rules of these depositions—how long it is going to be. Maybe the public isn’t going to ever get to see what happens in those depositions. We released all the deposition transcripts from our depositions—the secret 100-person depositions—but we have no idea what rules they will adopt for these depositions. Maybe the public will see them; maybe they won’t. Maybe you will get to see them; I assume you will get to see them. But at the end of the day, this is also a vote you have to cast that says: No, I don’t want to hear them for myself. No, I don’t want to evaluate their credibility for myself.

This is, after all, only a vote, only a case, only a trial about the impeachment of the President of the United States. If you have a bank robbery trial or you have a trial where somebody is stealing a piece of mail, you could get live witnesses. But to impeach the President of the United States, they are saying: No, we don’t need to see their credibility.

Is that really where we are here tonight? Is that what the American people expect of a fair trial? I don’t think it is.

I yield back.

The CHIEF JUSTICE. The chairman is recognized.

Mr. Manager SCHIFF. Mr. Chief Justice, I move to table the amendment and ask for the yeas and nays.

The CHIEF JUSTICE. 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 PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

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

[Roll call Vote No. 23 Leg.]

YEAS—53

Alexander
Barrasso
Blackburn
Burr
Capito
Cassidy
Collins
Cornyn
Cotton
Cramer
Crano
Cruz
Daines
Enzi
Ernst
NAYs—47

Baldwin
Benet
Blumenthal
Booher
Brown
Cantwell
Cardin
Carper
Casey
Cochrane
Cortez Masto
Duckworth
Durbin
Feinstein
Gillibrand
Harris

[Read as follows:]

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to allow adequate time for written responses to any motions by the parties, 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 numbered 1293. On page 2, beginning on line 10, strike “11:00 a.m. on Wednesday, January 22, 2020” and insert “9:00 a.m. on Thursday, January 23, 2020.”

On page 2, line 15, strike “Wednesday, January 22, 2020” and insert Thursday, January 23, 2020.”

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

Mr. Manager SCHIFF, are you a proponent of this amendment?

Mr. Manager SCHIFF. I am a proponent.

The CHIEF JUSTICE. Mr. Cipollone, are you a proponent or an opponent of this amendment?

Mr. Counsel CIPOLLINE. Mr. Chief Justice, I am an opponent.

The CHIEF JUSTICE. Okay.

Mr. SCHIFF, you may proceed and reserve time for rebuttal if you wish. The CHIEF JUSTICE. Mr. Chief Justice, I yield back.

This amendment is quite simple. Under the McConnell resolution, the parties file motions tomorrow at 9 a.m.—written motions, that is—and the responding party has to file their reply 2 hours later. That really doesn’t give anybody enough time to respond to a written motion.

When the President’s team filed, for example, their trial brief, it was over 100 pages. We at least had 24 hours to file our reply, and that is all we would ask. In the Clinton trial—again, if we are interested in the Clinton case—they had 41 hours to respond to written motions. We are not asking for 41 hours, but we are asking for enough time to write a decent response to a motion.

That is essentially it, and I would hope that we could agree at least on this.

I reserve the balance of my time.

The CHIEF JUSTICE. Mr. Sekulow.

Mr. Counsel SEKULOW. Thank you, Mr. Chief Justice and Members of the Senate.

So it seems like tomorrow is a day off according to your procedure; is that correct, Mr. SCHIFF?

Mr. Manager SCHIFF. I forgot the time.

Mr. Counsel SEKULOW. Today is tomorrow, and tomorrow is today. The answer is that we are ready to proceed. We will respond to any motions. We would ask the Chamber to reject this amendment.

The CHIEF JUSTICE. Mr. SCHIFF, there are 59 minutes remaining.

Mr. Manager SCHIFF. I yield back our time.

The CHIEF JUSTICE. The majority leader is recognized.
The CHIEF JUSTICE. Mr. Cipollone, are you a proponent or an opponent of the motion?

Mr. Counsel CIPOLLINE. Mr. Chief Justice, I am an opponent.

The CHIEF JUSTICE. Mr. Schiff, you may proceed and reserve time for rebuttal.

Mr. Manager SCHIFF. Senators, this amendment would provide that the Presiding Officer shall rule on the materiality of a witness, if the Chief Justice finds that a witness would be probative and material to either Article of Impeachment.

It is quite simple. It would allow the Chief Justice and it would allow Senators, the House managers, and the President's counsel to make use of the experience of the Chief Justice of the Supreme Court to decide the questions of the relevance of witnesses. Either party can call the witnesses and if we can't come to an agreement on witnesses, we will pick a neutral arbiter, that being the Chief Justice of the Supreme Court. If the Chief Justice finds that a witness would be probative and material to the trial, he can overrule the Chief Justice, you can overrule him. If you have the votes, you can overrule the Chief Justice and say you disagree with what the Chief Justice has decided.

But it would give this decision to a neutral party. That right is extended to both parties, who will be done in line with the schedule that the majority leader has set out. It is not the schedule we want. We still don't think it makes any sense to have the trial and then decide our witnesses. But if we are going to have to do it that way, and it looks like we are, at least let's have a neutral arbiter decide—much as he may loathe the task—whether a witness is relevant or a witness is not.

We would hope that if there is nothing else we can agree on tonight, that we could agree to allow the Chief Justice to give us the benefit of his experience in deciding which witnesses are relevant to this inquiry and which witnesses are not relevant.

With that, I reserve the balance of my time.

The CHIEF JUSTICE. Mr. Sekulow. Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, and with no disrespect to the Chief Justice, this is not an appellate court. This is the U.S. Senate. There is not an arbitration clause in the U.S. Constitution. The Senate shall have the sole power to try all impeachments. We oppose the amendment.

We yield our time.

The CHIEF JUSTICE. Mr. Schiff, you have 55 minutes remaining.

Mr. Manager Schiff. This is a good note to conclude on because don't let it be said we haven't made progress today.

The President's counsel has just acknowledged for the first time that this is an appellate court and that we have established that. This is the trial, not the appeal, and the trial ought to have witnesses and the trial should be based on the cold record from the court below, but there is no court below, because the case has just admitted, you are not the appellate court.

But I think what we have also seen here tonight is, they not only don't want you to hear these witnesses, they don't want to hear them live. They don't want even really to hear them disposed. They don't want a neutral Justice to weigh in because if the neutral Justice weighs in and says: You know, pretty hard to argue that John Bolton is not relevant here, pretty hard to argue that Mick Mulvaney is not relevant here—I just watched that video tape where he said he discussed this with the President. They are contesting it. Pretty relevant.

What about Hunter Biden? Hunter Biden is probably the real reason they don't want the Chief Justice. They don't want the Chief Justice to have to rule on the materiality of a witness, right? What can Hunter Biden tell us about why the President withheld hundreds of millions of dollars from Ukraine? I can tell you what he can tell us about Ukraine. He can tell us anything about that. What can he tell us about these Defense Department documents or OMB documents? What can he tell us about the violation of the law, withholding this money? Of course he can't tell us anything about that because his testimony is immaterial and irrelevant. The only purpose in calling him is to succumb at what they failed to do earlier in this whole scheme, and that is to smear Joe Biden by going after his son.

We trust the Chief Justice of the Supreme Court to make that decision that he is not a material witness. This isn't like fantasy football here. We are not making trades—or we shouldn't be. We will trade you one completely irrelevant, immaterial witness who allows us to smear the President's opponent in exchange for one who are really relevant. What does Hunter Biden know about the violation of the law, withholding this money? Of course he can't tell us anything about that because his testimony is immaterial and irrelevant. The only purpose in calling him is to succumb at what they failed to do earlier in this whole scheme, and that is to smear Joe Biden by going after his son.

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Look, I will be honest. There has been some apprehension on our side about this idea, but we have confidence that the Chief Justice would make a fair and impartial decision and that he would do impartial justice, and it is something that my colleagues representing the President don't. They don't. They don't want a fair judicial
ruling about this. They don’t want one that you could overturn because they don’t want a fair trial.

And so we end where we started—with one party wanting a fair trial and one party that doesn’t; one party that doesn’t fear a fair trial and one party that is terrified of a fair trial.

I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. MCCONNELL. Mr. Chief Justice, I make a motion to table the amendment, and I ask for the yeas and nays.

The CHIEF JUSTICE. 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 desiring to vote?

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

[Rollcall Vote No. 25 Leg.]

YEAS—53

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

NAYS—47

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

The CHIEF JUSTICE. The yeas are 53, and the nays are 47.

The resolution (S. Res. 483) was agreed to.

(The resolution is printed in today’s RECORD under “Submitted Resolutions.”)

MORNING BUSINESS

CELEBRATION OF LIFE DAY

Mr. GRASSLEY. Mr. President, January 22 is celebration of life day, and I wanted to take that opportunity to recognize women facing unplanned pregnancies or parenting young children. Women with unplanned pregnancies sometimes lack access to adequate support. They deserve the backing of their community and access to information, resources, and quality care. In Iowa, programs like Ruth Har- bor in Des Moines provide a safe place for young women, giving them counseling, education support, life-skills training, parenting training, adoption assistance, and access to health care at no cost. Programs like these are critical.

47TH ANNUAL MARCH FOR LIFE

Mr. GRASSLEY. Mr. President, Friday marks the 47th annual March for Life. This year’s theme is “Life Empowers: Pro-Life is Pro-Woman.” This theme recognizes that 2020 is the centennial anniversary of the 19th amendment. The earliest feminists regarded abortion as a terrible consequence of our society’s failure to embrace women’s intrinsic value. These women instinctively embraced the sanctity of innocent human life, even though they could not have foreseen the advances in technology that have made it possible for newborn babies to survive at earlier and earlier stages of fetal development.

Two examples of such miracle babies are Micah Pickering of Iowa, born prematurely at 22 weeks gestation, who is now 7 years old, and Jaden Wesley Morrow, born at 22 weeks gestation, who died a few weeks after his birth in Des Moines last year. We today celebrate the lives of these miracle babies, remember all the other who were lost to abortion, and focus on how women are empowered by upholding the dignity of life.
remembered for his excellence in medical care and helping out in the community. I know Dr. Naramore not only as a leader in my hometown of Gillette but also as my personal doctor. About 25 years ago, I was in the Campbell County Memorial Hospital, but I went there to see Dr. Naramore. He ran some tests and soon discovered that I had a torn heart valve. By that night, I was in open heart surgery to repair my heart valve, and it has served me well since. I am grateful Dr. Naramore with saving my life.

Dr. Naramore has spent his entire career helping people and giving back to the community. Born and raised in Gillette, WY, Dr. Naramore received his bachelor's degree from John Brown University, his medical degree from the University of Utah, and completed a family practice residency at the University of Nebraska affiliated hospitals. After his fellowship residency, Dr. Naramore returned to Gillette to work in the emergency room at the Campbell County Memorial Hospital.

In 1980, Dr. Naramore began his practice and became a full-time member of the medical staff of Campbell County Memorial Hospital. In 1981, he moved to private practice at Family Health in Gillette. His family health clinic has provided excellent care to residents of Gillette for years and has attracted much-needed providers and specialists to the area.

Dr. Naramore has served in countless leadership positions both in Gillette and around Wyoming. He has received many awards for his hard work and outstanding achievements, most recently receiving the 2019 Outstanding Healthcare Award. Dr. Naramore is a committed man of faith. He is actively involved in his church, serving as an elder, youth group leader, and Sunday school teacher.

The University of Wyoming has a slogan saying that the world needs more cowboys. Well, I would also say that Wyoming needs more doctors, especially doctors like Dr. Naramore. If his past is any indication of his future, I think it is clear that he will be closing the door on this great chapter of his life and moving on to something new. Whatever that may prove to be, I am certain it will make good use of his abilities, background, and experience.

Diana joins in sending our best wishes to Dr. Naramore and his family. We thank him for his hard work and dedication to his patients and community throughout his career.

REMEMBERING RICHARD "RICK" GRAHAM HILL

Ms. BALDWIN. Mr. President, I rise today to honor the life and legacy of Mr. Richard “Rick” Graham Hill, revered leader of the Oneida Nation of Wisconsin, whose tireless work on behalf of all Native peoples will be honored, admired, and emulated for generations to come.

Rick’s work and accomplishments throughout his lifelong dedication to Tribal service were as dynamic as Rick himself. Grandson of Dr. Lillie Rosa Minoka-Hill—only the second indigenous female doctor in America—Rick was destined to live an exceptional life. Early on, Rick proved to be an elite athlete, earning the title of West De Pere High School Athlete of the Year in 1971. In keeping with Wisconsin tradition, his favorite sport was football. He would later serve as executive producer of a film still in production, entitled "The Legend of Jim Thorpe," honoring the NFL Hall-of-Famer and America’s first Native athlete to win an Olympic Gold Medal. His natural strength and enduring achievements in athletic competition were precursors to the successes that would eventually define his true legacy: his tireless, unbeatable, loving dedication to the advancement of Native communities.

At age 23, influenced by his time spent attending Tribal meetings with his father, Rick became the youngest person to serve on Oneida’s Tribal Council. He would serve two terms as chairman of the Oneida Nation, from 1990 to 1993 and from 2008 to 2011. His first term brought the first gaming compact between the Oneida Nation and the State of Wisconsin, a major milestone that would reshape the economic future of the Oneida. Gaming to Rick was more than a business venture or a path to profit—the advancement of gaming was a testament of the fight for the sovereignty, empowerment, and advancement of all Native peoples from coast to coast. Gaming brought revenue for healthcare, employment, education, and a host of other basic services crucial to independence.

Not surprisingly, in 1993, while still serving as chairman of the Oneida Nation, Rick became chairman of the National Indian Gaming Association, NIGA, a position he would hold until 2001. Rick flourished in this role: he rallied and unified other Native Tribes to the cause, tirelessly traveling to promote Indian gaming both inside the courtroom and in discussions with Governors and U.S. Senators.

Even outside of his official service in the Oneida Nation and the NIGA, Rick’s entrepreneurial efforts to lift up and diversify Native economies made history. His unique ability to unify Tribes in pursuit of shared cause was best exemplified by the creation of Four Fires, LLC. This four-Tribe partnership, the first inter-Tribal economic undertaking of its kind in history, culminated in the creation of a $43 million development located a short walk from our Nation’s Capitol.

Rick’s memory will be kept alive by his loving children, Rachel Richard Lo’nikuhliyo’ostu, Jr., aka Lotni; Sage McKinney Loliwhwaká.te Hill; and Dakota Grahame Tehokha’ti.ni Hill, as well as the countless many whose lives he touched in immeasurable ways. To all who knew him, Rick will be remembered as a visionary, full of brilliance and fortitude, with the resolve possessed by the few, true champions of our times. He will also be remembered as a calm, quiet presence, generous with his laughter and jokes, with a heart full of devotion to those he served. I will be forever grateful that Rick’s legacy will live on in the pride of Native peoples, the championed and forever honored to call him my friend.

REMEMBERING RONALD "RON" McCREA

Ms. BALDWIN. Mr. President, I rise today to honor a distinguished citizen of Wisconsin, Ronald Alan McCrea, who passed away in Madison on Dec. 14. Ron McCrea came from a family of journalists. His grandfather, Archie McCrea, was editor of the Muskogean Chronicle in Michigan, and his father was an editor for the Saginaw News and Toledo Blade. Ron began his journalism career editing his high school newspaper, the Arthur Hill News. He would also edit the Albion College Pleiad. He worked at the Boston Globe, the Washington Post, the Washington Star, the Long Island Newsday, and the San Jose Mercury News. Ron was one of the outstanding journalists in Madison, where he served as an editor and reporter at the Capital Times from 1970 to 1977 and again from 1998 to 2008. While in Madison, he was also an editor of the Press Connection from 1977 to 1980, the paper he emerged as a newspaper strike that he helped lead.

Ron graduated from Albion College in 1965 with a B.A. in political science. He was awarded an M.A. from the Fletcher School of Law and Diplomacy at Tufts University for his graduate work at the Medill School of Journalism at Northwestern University.

His gay activism began in the early 1970s when he joined the Wisconsin’s first gay rights organization, the Madison Alliance for Homosexual Equality, MAHE, which was founded in the fall of 1969 after the Stonewall Riots. Ron participated in panels that the early Gay Rights Newsletter sent over the University of Wisconsin-Madison campus. In line with his labor activism, he successfully lobbied for the Newspaper Guild to include nondiscrimination on the basis of sexual orientation in its national, multi-employer contract used throughout the Nation.

When elected in 1982, Governor Anthony Earl asked Ron to serve as his press secretary. Because of his advocacy, one of the State’s major papers headlined the appointment of an “Avowed Homosexual.” Earl refused McCrea’s offer to withdraw the appointment as too controversial.
During his journalism career, Ron McCrea became the chronicler of some unique LGBT history in the Madison area. One of his earliest efforts included stories on the hidden 1962 Gay Purge at the UW-Madison. He also contributed many unique items to the LGBT Collection of the UW-Madison Archives.

Ron loved a good story and entertained many of his friends with his delightful skill in presenting a tale. He had a deep love of music and was known for singing with Madison choral groups and tripping the ivories at the piano bar at Going My Way.

Ron is survived by his wife of 26 years, Elaine DeSmidt, and his stepson, Benjamin DeSmidt. Elaine, described as his partner, passion and love, was also involved in public life as an elected member of the Dane County Board of Supervisors.

Ron McCrea was an accomplished storyteller, a humorous character, and a courageous pioneer. He leaves behind his partner, passion and love, was Benjamin DeSmidt. Elaine, described as his partner, passion and love, was also involved in public life as an elected member of the Dane County Board of Supervisors.

As the aircraft left Neil’s controlled airspace, fellow air traffic controllers Jeff Aulbech and Mike Jacobson continued working the emergency situation. Jeff and Mike promptly evaluated their options. They decided the best course was to divert a flight of KC-135 tankers from a nearby, unrelated mission and to conduct a mid-air refueling. Jeff contacted pilots that the F-16 was at “Bingo Fuel”—a term used by military pilots when they reach a critical and emergency fuel state. When he secured agreement from both crews, Jeff executed precise time intercept vectors to join the two aircraft and begin refueling. As Jeff worked with the aircraft in the sky, Mike worked the radar and communicated with the airport in Syracuse to confirm suitable landing conditions. A short time later, the F-16 safely touched the ground in Syracuse.

Quick thinking and error-free execution from Neil Cospito, Jeff Aulbech, and Mike Jacobson saved the F-16 and its pilot from a number of dangerous alternatives, and they played a pivotal role in maneuvering this flawless refueling with a number of other planes sharing the skies. As many of us travel across the country throughout the year, we should take a moment to reflect on the significance of air traffic controllers like Neil, Jeff, and Mike and thank them for working every minute of every day each year to keep our skies safe.

On behalf of the people of New Hampshire, I ask my colleagues and all Americans to thank Neil, Jeff, and Mike for their service and wishing them all the best as they continue their good work.

MESSAGE FROM THE HOUSE RECEIVED DURING ADJOURNMENT

Enrolled Bill Signed

Under the authority of the order of the Senate of January 3, 2019, as modified by the order of January 16, 2020, the Secretary of the Senate, on January 21, 2020, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker had signed the following enrolled bill:

H.R. 5430. An act to implement the Agreement between the United States of America, the United Mexican States, and Canada attached as an Annex to the Protocol Replacing the North American Free Trade Agreement.

Under the authority of the order of the Senate of January 3, 2019, as modified by the order of January 16, 2020, the Secretary of the Senate, on January 21, 2020, during the adjournment of the Senate, received a message from the House of Representatives announcing that the House had passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 76. Joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Secretary of Education relating to “Borrower Defense Institutional Accountability”.

Under the authority of the order of the Senate of January 3, 2019, as modified by the order of January 16, 2020, the Secretary of the Senate, on January 21, 2020, during the adjournment of the Senate, received a message from the House of Representatives announcing that pursuant to 15 U.S.C. 1024(a), and the order of the House of January 3, 2019, the Speaker appointed the following Member on the part of the House of Representatives to the Joint Economic Committee: Mr. Jerrold B. Maloney of New York, to rank after Mr. Beyer of Virginia.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–779. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, submitting, pursuant to law, the report of a rule entitled “Suspension of Community Eligibility (44 CFR part 246, subpart D, and 44 CFR part 206, subpart A)” (RIN0462–0001) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Banking, Housing, and Urban Affairs.

EC–778. A communication from the Senior Legal Advisor for Regulatory Affairs, Financial Stability Oversight Council, submitting, pursuant to law, the report of a rule entitled “Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies” (RIN0350–ZAZ0) received in the Office of the President of the Senate on January 15, 2020; to the Committee on Banking, Housing, and Urban Affairs.

EC–777. A communication from the Acting General Counsel, Department of Transportation, submitting, pursuant to law, a report relative to a vacancy for the position of Administrator, Federal Transit Administration, Department of Transportation, received in the Office of the President of the Senate on January 15, 2020; to the Committee on Banking, Housing, and Urban Affairs.

EC–378. A communication from the Secretary, Securities and Exchange Commission, submitting, pursuant to law, the report of a rule entitled “Adjustments to Civil Monetary Penalty Amounts” (Rel. Nos. 33–10740; 34–87905; 1A–5428; IC–33740) received in the Office of the President of the Senate on January 15, 2020; to the Committee on Banking, Housing, and Urban Affairs.

EC–377. A communication from the Secretary, Security and Exchange Commission, submitting, pursuant to law, the report of a rule entitled “Standard Instrument Approach Procedures; Miscellaneous Amendments (49);” Amendment No. 3885 (RIN2120–AA65) (Docket No. 31289) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Commerce, Science, and Transportation.
EC-3782. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives: The Boeing Company Airplanes” ((RIN2120–AA64) (Docket No. FAA–2019–0679)) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Commerce, Science, and Transportation.

EC-3783. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Amendment of Class D and Class E Airspace; Eagle County, CO” ((RIN2120–AA66) (Docket No. FAA–2019–0637)) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Commerce, Science, and Transportation.

EC-3784. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives: Airbus SAS Airplanes” ((RIN2120–AA65) (Docket No. FAA–2019–0641)) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Commerce, Science, and Transportation.

EC-3785. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Amendment of Class E Airspace; Walla Walla, WA” ((RIN2120–AA60) (Docket No. FAA–2019–0679)) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Commerce, Science, and Transportation.

EC-3786. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “IFR Altitudes; Miscellaneous Amendments” ((RIN2120–AA63) (Docket No. FAA–2019–0679)) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Commerce, Science, and Transportation.

EC-3787. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Standard Instrument Approach Procedures; Miscellaneous Amendments (24); Amendment No. 3896” ((RIN2120–AA65) (Docket No. FAA–2019–0679)) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Commerce, Science, and Transportation.

EC-3788. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Amendment of Class D and Class E Airspace; Eagle County, CO” ((RIN2120–AA66) (Docket No. FAA–2019–0637)) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Commerce, Science, and Transportation.

EC-3789. A communication from the Attorney-Advisor, Office of General Counsel, Department of Transportation, transmitting, pursuant to law, a report relative to a vacancy in the position of Assistant Secretary for Transportation Policy, Department of Transportation, received in the Office of the President of the Senate on January 15, 2020; to the Committee on Commerce, Science, and Transportation.

EC-3790. A communication from the Attorney-Advisor, Office of General Counsel, Department of Transportation, transmitting, pursuant to law, a report relative to a vacancy in the position of Assistant Secretary for Research and Technology, Department of Transportation, received in the Office of the President of the Senate on January 15, 2020; to the Committee on Commerce, Science, and Transportation.

EC-3791. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Approval and Conditional Approval of California Air Plan Revision; Imperial County Air Pollution Control District; Region 9; Regional Containment Technology (RACT)” (FRL No. 10004–30–Region 9) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Environment and Public Works.

EC-3792. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Approval and Promulgation of Air Quality Improvement Plan for the District of Columbia: Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standard” (FRL No. 10004–09–Region 3) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Environment and Public Works.

EC-3793. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Extension of Time-Limited Tolerances for Emergency Exemptions (Multiple Chemicals, Various Commodities)” (FRL No. 10002–88–OCSPF) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Environment and Public Works; and Agriculture, Nutrition, and Forestry.

EC-3794. A communication from the Acting Assistant Secretary for Legislation, Department of Health and Human Services, transmitting, pursuant to law, a report entitled “Computation of Annual Liability Insurance (Including Self-Insurance), No-Fault Insurance, and Worker’s Compensation Settlement Recovery Threshold”; to the Committee on Finance.

EC-3795. A communication from the Senior Advisor, Department of Health and Human Services, transmitting, pursuant to law, a report relative to a vacancy in the position of Inspector General, Department of Health and Human Services, received in the Office of the President of the Senate on January 15, 2020; to the Committee on Finance.

EC-3796. A communication from the General Counsel, Government Accountability Office, transmitting, pursuant to law, a report entitled “Office of Management and Budget - Withholding of Ukraine Security Assistance”; to the Committee on Foreign Relations.

EC-3797. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, a report entitled “Office of Management and Budget - Withholding of Ukraine Security Assistance”; to the Committee on Foreign Relations.

EC-3798. A communication from the Director, Office of Government Ethics, transmitting, pursuant to law, the report of a rule entitled “2020 Civil Monetary Penalties Inflation Adjustments for Ethics in Government Act Violations” (RIN3209–AA49) received in the Office of the President of the Senate on January 15, 2020; to the Committee on Homeland Security and Governmental Affairs.

EC-3799. A communication from the Secretary, Judicial Conference of the United States, transmitting, pursuant to law, a report entitled “Report of the Proceedings of the Judicial Conference of the United States” for the September 2019 session; to the Committee on the Judiciary.

EC-3800. A communication from the Associate General Counsel for General Law, Department of Homeland Security, transmitting, pursuant to law, a report relative to a vacancy in the position of Director, U.S. Citizenship and Immigration Services, Department of Homeland Security, received in the Office of the President of the Senate on January 16, 2020; to the Committee on the Judiciary.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. MARKEY (for himself, Ms. BALDWIN, Ms. SMITH, Mr. O’MARA, Mr. VANN HOLLLEN, Mr. SANDERS, Mr. MURPHY, Ms. HASSAN, Mr. MERKLEY, Mrs. SHARREI, Mr. BLMUMENTHAL, Mr. BODE, Mrs. GILLIBRAND, Mr. GRAHAM, Ms. WARREN, and Ms. KLOBUCAR):

S. 3218. A bill to amend the Communications Act of 1934 to modify the definition of franchise fee, and for other purposes; to the Committee on Commerce, Science, and Transportation.
By Mr. SANDERS:
S. 3219. A bill to ensure full labor protections for graduate student workers, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. PORTMAN:
S. 3220. A bill to amend title XIX of the Social Security Act to clarify that the provision of home and community-based services is not prohibited in an acute care hospital, and for other purposes; to the Committee on Finance.

By Mr. BOOKER:
S. 3221. A bill to place a moratorium on large concentrated animal feeding operations; to the Committee on Agriculture, Nutrition, and Forestry.

S. 3222. A bill to establish a grant program relating to the prevention of student and student athlete opioid misuse; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. SHAHEEN (for herself, Ms. HASSAN, and Mr. MANCHIN):
S. 3222. A bill to require the Secretary of Veterans Affairs to allow for the use of commercial institutional review boards for research, and for other purposes; to the Committee on Veterans’ Affairs.

By Mr. ERNST:
S. 3225. A bill to reduce Federal spending and the deficit by terminating taxpayer financing of Presidential election campaigns; to the Committee on Finance.

By Mr. KENNEDY:
S. 3226. A bill to amend title 18, United States Code, to prohibit certain abortion procedures, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BOOKER (for himself, Mr. MENENDEZ, and Ms. HARRIS):
S. Res. 479. A resolution designating January 23, 2020, as “Maternal Health Awareness Day”; to the Committee on the Judiciary.

By Ms. KLICHCHAR (for herself, Mrs. GRASSLEY, Mrs. FEINSTEIN, Ms. HIRONO, Ms. HARRIS, Ms. ERNST, Mrs. BLACKBURN, Mr. TILLIS, and Mr. CRAPO):
S. Res. 480. A resolution raising awareness and encouraging the prevention of stalking by designating January 2020 as “National Stalking Awareness Month”; to the Committee on the Judiciary.

By Ms. ROSEN (for herself, Mr. LANKFORD, Mr. MENENDEZ, Mr. CRAMER, and Mr. CARDIN):
S. Res. 481. A resolution commemorating the 75th anniversary of the liberation of the Auschwitz concentration camp in Nazi-occupied Poland; to the Committee on Foreign Relations.

By Mr. TOOHEY (for himself, Mr. POMPEO, and Mr. RUHLEIN):
S. Res. 482. A resolution supporting the contributions of Catholic schools; to the Committee on Health, Education, Labor, and Pensions.

By Mr. McCONNELL:
S. Res. 483. A resolution to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; considered and agreed to.

ADDITIONAL COSPONSORS

S. 578. At the request of Mr. COTTON, the name of the Senator from Iowa (Mr. EINHORN) was added as a cosponsor of S. 578, a bill to amend title II of the Social Security Act to eliminate the five-month waiting period for disability insurance benefits under such title for individuals with amyotrophic lateral sclerosis.

S. 696. At the request of Mr. MERKLEY, the name of the Senator from Alaska (Mr. SULLIVAN) was added as a cosponsor of S. 696, a bill to designate the same individual serving as the Chief Nurse Officer of the Public Health Service as the National Nurse for Public Health.

S. 792. At the request of Ms. BALDWIN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 792, a bill to require enforcement against misbranded milk alternatives.

S. 1510. At the request of Mr. YOUNG, the name of the Senator from Kentucky (Mr. PAUL) was added as a cosponsor of S. 1510, a bill to amend the Internal Revenue Code of 1986 to modify the definition of full-time employee for purposes of the employer mandate in the Patient Protection and Affordable Care Act.

S. 1737. At the request of Mr. MURPHY, the name of the Senator from Minnesota (Ms. SMITH) was added as a cosponsor of S. 1737, a bill to strengthen parity in mental health and substance use disorder benefits.

S. 1750. At the request of Ms. HARRIS, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 1750, a bill to establish the Clean School Bus Grant Program, and for other purposes.

S. 1843. At the request of Mr. PETERS, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 1843, a bill to amend the Securities Exchange Act of 1934 to require the disclosure of the total number of domestic and foreign employees of certain public companies, and for other purposes.

S. 1966. At the request of Mr. BOOZMAN, the name of the Senator from Georgia (Mrs. LOEFLER) was added as a cosponsor of S. 1966, a bill to require the Secretary of Veterans Affairs to provide financial assistance to eligible entities to provide and coordinate the provision of suicide prevention services for veterans at risk of suicide and veteran families through the award of grants to such entities, and for other purposes.

S. 1967. At the request of Mr. WYDEN, the name of the Senator from Alabama (Mr. JONES) was added as a cosponsor of S. 1967, a bill to promote innovative approaches to outdoor recreation on Federal land and to increase opportunities for collaboration with non-Federal partners, and for other purposes.

S. 1989. At the request of Mr. SCOTT of South Carolina, the name of the Senator from Mississippi (Mr. WICKER) was added as a cosponsor of S. 1989, a bill to amend title XVIII of the Social Security Act to provide for transparency of Medicare secondary payer reporting information, and for other purposes.

S. 2001. At the request of Ms. STABENOW, the names of the Senator from Wyoming (Mr. ENZI), the Senator from Oklahoma (Mr. LANKFORD), the Senator from Florida (Mr. RUBIO) and the Senator from Massachusetts (Mr. WARREN) were added as cosponsors of S. 2001, a bill to award a Congressional Gold Medal to Willie O’Ree, in recognition of his extraordinary contributions and commitment to hockey, inclusion, and recreational opportunity.

S. 2032. At the request of Ms. ROSEN, the name of the Senator from Illinois (Ms. DUCKWORTH) was added as a cosponsor of S. 2032, a bill to enhance the rights of domestic workers, and for other purposes.

S. 2112. At the request of Mr. CARSTEN, the name of the Senator from Connecticut (Mr. BLUMENTHAL) was added as a cosponsor of S. 2112, a bill to enhance the rights of domestic workers, and for other purposes.

S. 2179. At the request of Mr. CARSTEN, the name of the Senator from Illinois (Ms. DUCKWORTH) was added as a cosponsor of S. 2179, a bill to amend the Older Americans Act of 1965 to provide social service agencies with the resources to provide services to meet the urgent needs of Holocaust survivors to age in place with dignity, comfort, security, and quality of life.

S. 2695. At the request of Mr. ROBERTS, the name of the Senator from Georgia (Mrs. LOEFLER) was added as a cosponsor of S. 2695, a bill to authorize the Secretary of Agriculture to provide for the defense of United States agriculture and food through the National Bio and Agro-Defense Facility, and for other purposes.

S. 2697. At the request of Mr. MARKEY, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor...
of S. 2699, a bill to reauthorize the Federal Ocean Acidification Research and Monitoring Act of 2009, and for other purposes.

S. 2705
At the request of Mrs. Murray, the names of the Senator from Illinois (Ms. Duckworth), the Senator from California (Ms. Feinstein), the Senator from Hawaii (Ms. Hirono), the Senator from New Jersey (Mr. Menendez) and the Senator from Maryland (Mr. Van Hollen) were added as cosponsors of S. 2705, a bill to amend title 10, United States Code, to modify the requirements relating to the use of construction authority in the event of a declaration of war or national emergency, and for other purposes.

S. 2990
At the request of Mr. Sullivan, the names of the Senator from North Carolina (Mr. Tillis), the Senator from Nevada (Ms. Rosen), the Senator from Indiana (Mr. Young), the Senator from South Dakota (Mr. Rounds), the Senator from Arkansas (Mr. Boozman) and the Senator from Tennessee (Mrs. Blackburn) were added as cosponsors of S. 2990, a bill to amend title 38, United States Code, to concede exposure to airborne hazards and toxins in burn pits under certain circumstances, and for other purposes.

S. 3090
At the request of Mr. Scott of South Carolina, the name of the Senator from Oklahoma (Mr. Lankford) was added as a cosponsor of S. 3090, a bill to amend the Fair Labor Standards Act of 1938 to harmonize the definition of employee with the common law.

S. 3173
At the request of Mr. Sullivan, the name of the Senator from North Dakota (Mr. Cramer) was added as a cosponsor of S. 3173, a bill to prohibit discrimination based on an individual’s texture or style of hair.

S.J. Res. 4
At the request of Mr. Kaine, the name of the Senator from Oregon (Mr. Merkley) was added as a cosponsor of S.J. Res. 4, a joint resolution requiring the advice and consent of the Senate or an Act of Congress to suspend, terminate, or withdraw the United States from the North Atlantic Treaty and authorizing related litigation, and for other purposes.

S.J. Res. 63
At the request of Mr. Kaine, the name of the Senator from Rhode Island (Mr. Raimondo) was added as a cosponsor of S.J. Res. 63, a joint resolution to direct the removal of United States Armed Forces from hostilities against the Islamic Republic of Iran that have not been authorized by Congress.

S. J. Res. 68
At the request of Mr. Kaine, the name of the Senator from Minnesota (Ms. Klobuchar) was added as a cosponsor of S.J. Res. 68, a joint resolution to direct the removal of United States Armed Forces from hostilities against the Islamic Republic of Iran that have not been authorized by Congress.

S. Res. 469
At the request of Mr. Graham, the name of the Senator from Texas (Ms. Cornyn) was added as a cosponsor of S. Res. 469, a resolution supporting the people of Iran as they engage in legitimate protests, and condemning the Iranian regime for its murderous response.

S. Res. 477
At the request of Mrs. Murray, the names of the Senator from Michigan (Ms. Stabenow) and the Senator from Michigan (Mr. Peters) were added as cosponsors of S. Res. 477, a resolution designating the week of February 3 through 7, 2020, as “National School Counseling Week.”

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 479—DESIGNATING JANUARY 23, 2020, AS “MATERNAL HEALTH AWARENESS DAY”
Mr. Booker (for himself, Mr. Menendez, and Ms. Harris) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. Res. 479
Whereas, every year in the United States, approximately 700 women die as a result of complications related to pregnancy and childbirth;
Whereas the pregnancy-related mortality ratio, defined as the number of pregnancy-related deaths per 100,000 live births, more than doubled between 1987 and 2016;
Whereas the United States is the only developed country whose maternal mortality rate has increased over the last several decades;
Whereas, of all pregnancy-related deaths between 2011 and 2015—
(1) nearly 31 percent occurred during pregnancy;
(2) about 36 percent occurred during childbirth or the week after childbirth; and
(3) 33 percent occurred between 1 week and 1 year postpartum;
Whereas more than 60 percent of maternal deaths in the United States are preventable; Whereas, in 2014 alone, 50,000 women suffered from a “near miss” or severe maternal morbidity, which includes potentially life-threatening complications that arise from labor and childbirth;
Whereas 28 percent of women who gave birth in a hospital in the United States reported experiencing 1 or more types of mistreatment, such as—
(1) loss of autonomy;
(2) being shouted at, scolded, or threatened; and
(3) being ignored or refused or receiving no response to requests for help;
Whereas certain social determinants of health, including bias and racism, have a negative impact on maternal health outcomes;
Whereas significant disparities in maternal health exist, including that—
(1) Black women are more than 3 times as likely to die from a pregnancy-related cause as are White women;
(2) American Indian and Alaska Native women are more than twice as likely to die from a pregnancy-related cause as are White women;
(3) Black, American Indian, and Alaska Native women with at least some college education are more likely to die from a pregnancy-related cause than are women of all racial and ethnic backgrounds with less than a high school diploma;
(4) Black, American Indian, and Alaska Native women are about twice as likely to suffer from a pregnancy-related morbidity as are White women;
(5) women who live in rural areas have a greater likelihood of severe maternal morbidity in the Alliance for Innovation on Maternal Health, which promotes consistent and safe maternity care to reduce maternal morbidity and mortality;
Whereas community-based maternal health care models, including midwifery childbirth services, doula support services, community and perinatal health worker services and group prenatal education, in collaboration with culturally competent physician care, show great promise in improving maternal health outcomes and reducing disparities in maternal health outcomes;
Whereas many organizations have implemented initiatives to educate patients and providers about—
(1) all causes of contributing factors to, and disparities in maternal mortality;
(2) the prevention of pregnancy-related deaths; and
(3) the importance of listening to and empowering all women to report pregnancy-related medical issues; and
Whereas several States, communities, and organizations recognize January 23 as “Maternal Health Awareness Day”
Resolved, That the Senate—
(1) designates January 23, 2020, as “Maternal Health Awareness Day”;
(2) supports the goals and ideals of Maternal Health Awareness Day, including—
(a) raising public awareness about maternal health and promoting maternal safety; and
(b) raising public awareness about maternal mortality, maternal morbidity, and disparities in maternal health outcomes; and
(B) encouraging the Federal Government, States, territories, Tribes, local communities, public health organizations, physicians, health care providers, and others to take steps to reduce adverse maternal health outcomes and improve maternal safety;

(3) promotes initiatives—
(A) to address and eliminate disparities in maternal health outcomes; and
(B) to ensure respectful and equitable maternity care practices;

(4) honors the mothers who have passed away as a result of pregnancy-related causes; and

(5) supports and recognizes the need for further investments in efforts to improve maternal health, eliminate disparities in maternal health outcomes, and promote respectful and equitable maternity care practices.

SENATE RESOLUTION 480—RAISING AWARENESS AND ENCOURAGING THE PREVENTION OF STALKING BY DESIGNATING JANUARY 2020 AS “NATIONAL STALKING AWARENESS MONTH”

Ms. KLOBUCHAR (for herself, Mr. GRASSLEY, Mrs. FEINSTEIN, Ms. HIRONO, Ms. HARRIS, Ms. ERNST, Mrs. BLACKBURN, Mr. TILLIS, and Mr. CRAPO) submitted the following resolution; which was referred to the Committee on the Judiciary;

S. Res. 480

Whereas approximately 1 in 6 women in the United States, at some point during their lifetimes, have experienced stalking victimization; whereas the women felt very fearful or believed that they or someone close to them would be harmed or killed; whereas, during a 1-year period, an estimated 7,500,000 individuals in the United States reported that they had been victims of stalking;

Whereas more than 80 percent of victims of stalking reported that they had been stalked by someone they knew;

Whereas nearly 70 percent of intimate partner stalking victims were threatened with pregnancy termination;

Whereas 11 percent of victims of stalking reported having been stalked for more than 5 years;

Whereas two-thirds of stalkers pursue their victims at least once a week;

Whereas many victims of stalking are forced to take drastic measures to protect themselves, including relocating, changing jobs, or obtaining protection orders;

Whereas the prevalence of anxiety, insomniac, social dysfunction, and severe depression is much higher among victims of stalking than the general population;

Whereas many victims of stalking do not report the stalking to the police or contact a victim service provider, shelter, or hotline;

Whereas stalking is a crime under Federal law and the laws of all 50 States, the District of Columbia, and the territories of the United States;

Whereas stalking affects victims of every race, age, culture, gender, sexual orientation, physical and mental ability, and economic status;

Whereas national organizations, local victim service organizations, campuses, prosecutors, and police departments stand ready to assist victims of stalking and are working diligently to develop effective and innovative responses to stalking, including one-strike stalking laws;

Whereas there is a need to improve the response of the criminal justice system to stalking through more aggressive investigation and prosecution;

Whereas there is a need for an increase in the availability of victim services across the United States, including programs tailored to meet the needs of victims of stalking;

Whereas individuals 18 to 24 years old experience the stalking victimization and, a majority of stalking victims report their victimization first occurred before the age of 25;

Whereas up to 75 percent of women in college who experience behavior relating to stalking experience other forms of victimization, including sexual or physical victimization;

Whereas there is a need for an effective response to stalking on each campus; and

Whereas the Senate finds that “National Stalking Awareness Month” provides an opportunity to educate the people of the United States about stalking; Now, therefore, be it

Resolved, That the Senate—

(1) designates January 2020 as “National Stalking Awareness Month”;

(2) applauds the efforts of service providers for victims of stalking, police, prosecutors, national and community organizations, campuses, and private sector supporters to promote awareness of stalking;

(3) encourages policymakers, criminal justice officials, victim service and human service agencies, institutions of higher education, and nonprofit organizations to increase awareness of stalking and continue to support the availability of services for victims of stalking; and

(4) urges national and community organizations, businesses in the private sector, and the media to promote awareness of the crime of stalking through “National Stalking Awareness Month”.

SENATE RESOLUTION 481—COMMENORATING THE 75TH ANNIVERSARY OF THE LIBERATION OF THE AUSCHWITZ EXTERMINATION CAMPS IN NAZI- OCCUPIED POLAND

Ms. ROSEN (for herself, Mr. LANKFORD, Mr. MENENDEZ, Mr. CRAMER, and Mr. CARDIN) submitted the following resolution; which was referred to the Committee on Foreign Relations;

S. Res. 481

Whereas, during World War II, the Nazi regime and its collaborators systematically murdered 6,000,000 Jews and millions of other individuals;

Whereas the Auschwitz concentration camp complex in Nazi-occupied Poland, which included a killing center at Birkenau, was the largest death camp complex establishe by the Nazi regime;

Whereas, on January 27, 1945, the Auschwitz extermination camp was liberated by Allied Forces during World War II, after almost 5 years of murder, rape, and torture at the camp;

Whereas nearly 1,300,000 innocent civilians were deported to Auschwitz from their homes across Eastern and Western Europe, particularly from Hungary, Poland, and France;

Whereas nearly 1,100,000 innocent civilians were murdered at the Auschwitz extermination camp between 1940 and 1945;

Whereas at least 960,000 of the nearly 1,100,000 murdered were Jewish;

Whereas the more than 100,000 other victims who perished at Auschwitz included non-Jewish Poles, Romani people, Soviet civilians and prisoners of war, Afro-Germans, Jehovah’s Witnesses, people with disabilities, gay men and women, and other ethnic minorities;

Whereas these innocent civilians were subjected to torture, forced labor, starvation, rape, medical experiments, and being separated from loved ones;

Whereas the names of many of these innocent civilians who perished have been lost forever;

Whereas the Auschwitz extermination camp symbolizes the extraordinary brutality of the Holocaust;

Whereas the United States Holocaust Memorial Museum teaches about and promotes remembrance of the Holocaust;

Whereas the people of the United States must never forget the terrible crimes against humanity committed at the Auschwitz extermination camp;

Whereas the people of the United States must continue to work toward tolerance, peace, and justice and to continue to work to end all genocide and persecution; and

(5) recommits to combatting all forms of anti-Semitism.
Whereas 30 percent of Catholic schools are internationally acclaimed for their academic excellence and provide students with more than just an exceptional scholastic education;

Whereas Catholic schools instill a broad, values-added education emphasizing the lifelong development of moral, intellectual, physical, and social values in young people in the United States;

Whereas Catholic schools serve the United States by providing a diverse student population, from all regions of the country and all socioeconomic backgrounds, a strong academic and moral foundation, and of that student population—

(1) 39 percent of students are from racial and ethnic minority backgrounds; and

(2) 19 percent of students are from non-Catholic families;

Whereas Catholic schools are an affordable option for parents, particularly in underserved urban areas;

Whereas Catholic schools produce students who are strongly dedicated to their faith, values, families, and communities by providing an intellectually stimulating environment rich in spiritual, character, and moral development;

Whereas Catholic schools are committed to community service, producing graduates who hold “helping others” as a core value;

Whereas, during the 2018–2019 academic year in the United States, almost 1,800,000 students were enrolled in Catholic schools and the student-teacher ratio for Catholic schools was 12 to 1;

Whereas the graduation rate of students from Catholic high schools is 99 percent, with 86 percent of graduates attending 4-year colleges;

Whereas, in the 2005 pastoral message entitled “Renewing Our Commitment to Catholic Elementary and Secondary Schools in the Third Millennium,” the United States Conference of Catholic Bishops stated, “Catholic schools are often the Church’s most effective contribution to those families who are poor and disadvantaged, especially in poor inner city neighborhoods and rural areas; that Catholic schools cultivate healthy interaction among the increasingly diverse populations of our society. In cities and rural areas, Catholic schools are often the only opportunity for economically disadvantaged young people to receive an education of quality that speaks to the development of the whole person. . . . Our Catholic schools have produced countless numbers of well-educated and moral citizens who are leaders in our civic and ecclesial communities.”;

Whereas the theme for National Catholic Schools Week 2020 is “Catholic Schools: Learn. Serve. Lead. Succeed.”; Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals of National Catholic Schools Week, an event—

(a) cosponsored by the National Catholic Educational Association, the United States Conference of Catholic Bishops; and

(b) established to recognize the vital contributions of the thousands of Catholic elementary and secondary schools in the United States;

(2) applauds the National Catholic Educational Association and the United States Conference of Catholic Bishops on the selection of a theme that all people can celebrate; and

(3) supports—

(a) the dedication of Catholic schools, students, parents, and teachers across the United States to academic excellence; and

(b) the key role that Catholic schools, students, parents, and teachers across the United States play in promoting and ensuring a brighter, stronger future for the United States.

PASSAGE OF THE RESOLUTION

The Sergeant at Arms was directed to inform the President pro tempore of the Senate, which will consist of those Members of the Senate, the Speaker of the House of Representatives, and the President of the United States, that the Senate had passed the foregoing resolution. The resolution was filed with the Secretary and be printed and made available to all parties. Materials filed pursuant to this paragraph shall be in order to consider and debate the article of impeachment against Donald John Trump, President of the United States.

The Senate voted to proceed to the consideration of the articles of impeachment against Donald John Trump, President of the United States, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States.

SA 1284. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States.

Each side may determine the number of persons to make its presentation.

Upon the conclusion of the presentation, Senators may question the parties for a period of time not to exceed 16 hours.

Upon the conclusion of questioning by the Senate, there shall be 4 hours of argument by the parties, equally divided, followed by deliberation by the Senate, if so ordered under the impeachment rules, on the question of whether it shall be in order to consider and debate under the impeachment rules any motion to subpoena witnesses or documents. The Senate, without any intervening action, motion, or amendment, shall then act as directed by the Senate, whether it shall be in order to consider and debate under the impeachment rules any motion to subpoena witnesses or documents.

Following the disposition of that question, other motions provided under the impeachment rules shall be in order.

The Senate voted to allow the Speaker of the House of Representatives or the President to subpoena witnesses, the witnesses shall first be deposed and the Senate shall decide after deposition which witnesses shall testify, pursuant to the impeachment rules. No testimony shall be admissible in the Senate unless the parties have had an opportunity to depose such witnesses.

With the conclusion of deliberations by the Senate, the Senate shall vote on each article of impeachment.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1284. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States.

SA 1284. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1286. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1287. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1288. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1289. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1290. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1291. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1292. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1293. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1294. Mr. SCHUMER (for Mr. VAN HOLLEN) proposed an amendment to the resolution S. Res. 483, supra.

TEXT OF AMENDMENTS

SA 1284. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:

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

(i) 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 the records or documents, and other records within the possession, custody, or control of the Department of State, the Office of Management and Budget, the Office of the Vice President, the Office of the Director of National Intelligence, and the Office of Management and Budget, commanding him to produce, for the time period from January 1, 2019, to the present, all documents, communications, and other records related to the scheduling of, attendance at, and 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;

(ii) investigations, inquiries, or other probes related to Ukraine, including any that relate in any way to—

(1) Vice President Joseph Biden; or

(2) Hunter Biden and any of his associates; or

(B) anyrising Limited also known as “Burisma”;

(iv) interference or involvement by Ukraine in the United States election;

(v) the Democratic National Committee; or

(vi) CrowdStrike;

(C) 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 (USAID) and Foreign Military Financing (FMP);

(D) all documents, communications, notes, and other records created or received by the Acting Chief of Staff Mick Mulvaney, then-National Security Advisor John R. Bolton, former National Security Advisor Robert B. Blair, and other White House 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;

(E) 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, and the subsequent decision about the composition of the delegation to Kiev;

(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 conversations with those individuals before or after the larger meeting;

(iii) meetings at the White House on or about July 10, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(iv) a meeting at the White House on or around August 28, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(v) a phone call, 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 25, 2019 involving President Trump, Vice President Pence, and Mr. Mulvaney concerning the lifting of the hold on security assistance for Ukraine;

(F) meetings, telephone calls or conversations related to any occasions in which National Security Council officials reported to the House Permanent Select Committee on Intelligence or White House lawyers, including but not limited to National Security Council Legal Advisor, John Eisenberg, regarding matters related to Ukraine, including but not limited to—

(i) the decision to delay military assistance to the Ukraine; (ii) the July 10, 2019 meeting at the White House with Ambassador Sondland;

(iii) the President’s July 25, 2019 call with the President of Ukraine;

(iv) a September 1, 2019 meeting between Ambassador Sondland and a Ukrainian official; and

(v) the President’s September 7, 2019 call with Ambassador Sondland;

(G) any inquiry or assessment within the White House regarding Ukraine matters following the September 9, 2019, request for documents from the House Permanent Select Committee on Intelligence for the House Committee on Oversight and Reform, and the House Committee on Foreign Affairs, including, but not limited to, documents concerning the entire sector of 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 videoconference or text messages using personal or work-related devices between or among—

(i) current or former White House officials or employees;

(ii) current or former government officials; or

(iii) any request for or investigation of United States; or

(i) 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 related to the scheduling of, attendance at, and 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;

(ii) investigations, inquiries, or other probes related to Ukraine, including any that relate in any way to—

(i) Vice President Joseph Biden; or

(ii) Hunter Biden and any of his associates; or

(iii) Burisma Holdings Limited also known as “Burisma”;

(iv) interference or involvement by Ukraine in the United States election;

(v) the Democratic National Committee; or

(v) CrowdStrike;

(C) 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 (USAID) and Foreign Military Financing (FMP);

(D) all documents, communications, notes, and other records created or received by the Acting Chief of Staff Mick Mulvaney, then-National Security Advisor John R. Bolton, former National Security Advisor Robert B. Blair, and other White House 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;

(E) 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, and the subsequent decision about the composition of the delegation to Kiev;

(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 conversations with those individuals before or after the larger meeting;

(iii) meetings at the White House on or about July 10, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;
meeting in Ambassador Bolton’s office and a subsequent meeting in the Ward Room; 
(iv) a meeting at the White House on or around September 11, 2019, involving President Trump, Secretary Pompeo, and Deputy Secretary 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. Mulvany concerning the lifting of the hold on security assistance for Ukraine; 
(E) any communications 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 election; 
(F) all records specifically identified by witnesses in the House of Representatives’ impeachment inquiry that memorialize key event points related to concerns, and any records reflecting an official response thereto, including but not limited to—
(1) an August 29, 2019 cable sent by Ambassador Taylor to Secretary Pompeo; 
(2) an August 16, 2019 memorandum to file written by Deputy Assistant Secretary Kent; and 
(3) 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, 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.

SA 1286. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:
At the appropriate place in the resolving clause, insert the following:
Sec. 6. 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, the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena to the Secretary of Defense commanding him to produce, for the time period from January 1, 2019, to the present, all 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 Sep- term or correspondence related to the withholding or release of foreign assistance, military assistance, or security assistance to Ukraine, including communications with the Department of Defense related to concerns about the accuracy of the talking points; and
(G) 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 Sep- term or correspondence related to the withholding or release of foreign assistance, military assistance, or security assistance to Ukraine, including communications with the Department of Defense related to concerns about the accuracy of the talking points; 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.

SA 1288. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:
At the appropriate place in the resolving clause, insert the following:
Sec. 6. 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 Defense commanding him to produce, for the time period from January 1, 2019, to the present, all documents, communications, and other records related to the withholding or release of foreign assistance, military assistance, or security assistance to Ukraine, including communications with the Department of Defense related to concerns about the accuracy of the talking points; 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.
Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:

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

SEC. 4. 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—

(A) issue a subpoena for the taking of testimony of Robert B. Blair; and

(B) issue a subpoena for the taking of testimony of Michael P. Duffey; 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.

SA 1290. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:

On page 2, beginning on line 17, strike "documents" and insert "draft or final letters from Deputy Secretary David Norquist to the Office of Management and Budget; and

(ii) communications received directly from the Ukrainian Embassy about United States foreign assistance, military assistance, and security assistance to Ukraine; and

(C) communications, opinions, advice, counsel, approvals, or concurrences provided by the Department of Defense, Office of Management and Budget, or the White House, on the legality of any suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, and security assistance to Ukraine; and

(D) planned or actual meetings with President Trump related to United States foreign assistance, military assistance, or security assistance to Ukraine, including but not limited to any talking points and notes for Secretary Mark Esper’s planned or actual meetings with President Trump on August 16, August 19, or August 30, 2019;

(E) the decision announced on or about September 11, 2019, to release appropriated foreign assistance, military assistance, and security assistance to Ukraine, including but not limited to any notes, memoranda, documentation or correspondence related to the decision; and

(F) all meetings and calls between President Trump and the President of Ukraine, including but not limited to 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; 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.

SA 1291. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:

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

SEC. 4. 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, the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena for the taking of testimony of John Robert Bolton, and 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.

SA 1292. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:

On page 3, line 8, strike "4 hours" and insert "2 hours".

On page 3, line 10, strike "the question of" and insert "any such motion".

On page 3, line 14, insert "any such motion" after "decide".

SA 1293. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:

On page 3, line 20, insert "The Presiding Officer shall rule to authorize the subpoena of any witness or any document that a Senator or a party moves to subpoena if the Presiding Officer determines that the witness or document is likely to have probative evidence relevant to either article of impeachment before the Senate.  " after "order."

The CHIEF JUSTICE. The majority leader is recognized.  

ADJOURNMENT UNTIL 1 P.M. TODAY

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the trial adjourn until 1 p.m., Wednesday, January 22, and that this order also constitute the adjournment of the Senate.  There being no objection, the Senate, sitting as the Court of Impeachment, at 1:50 a.m., adjourned until Wednesday, January 22, 2020, at 1 p.m.
CONGRATULATING NEW PRESIDENT AND CABINET OF THE BLACK CLERGY OF PHILADELPHIA AND VICINITY

HON. BRENDAN F. BOYLE
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, January 21, 2020

Mr. BRENDAN F. BOYLE of Pennsylvania. Madam Speaker, I rise today to offer my sincere congratulations to the incoming President and cabinet officers of the Black Clergy of Philadelphia and Vicinity. Chosen from among their peers, this group of accomplished individuals will be tasked with overseeing the mission of their organization to "unify African-American clergy grounded in Christian principles around issues of social, political and economic justice."

Each and every one of these men and women have selflessly devoted themselves, over the course of many years, to building and sustaining communities of faith that lift up those who need a helping hand, that stand up for those whose voices are often unheard or overlooked, and that fight for equal justice for all especially in communities of color.

Madam Speaker, I would like to take this opportunity to include in the RECORD the names of the incoming officers as follows:


As they are all consummate leaders in their own right, I am confident that, together, they will prove to be more than a match for the challenges that await them and that they will continue to make the Black Clergy of Philadelphia and Vicinity a potent source for good in the years to come.

CONGRATULATING ASHRITH REDDY

HON. MICHAEL CLOUD
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Tuesday, January 21, 2020

Mr. CLOUD. Madam Speaker, I would like to congratulate middle-schooler Ashrith Reddy for the achievement of winning first place in the 2019 U.S. Geography Olympiad National Championship.

Ashrith is a student at Marvin Baker Middle School in Corpus Christi. At the national competition in Chicago, though, he represented all of south Texas. To earn first place, Ashrith had to compete against students in his age group from across the country.

He was quizzed on the historical, cultural, urban, and economic facets of geography, completing both a written and buzzer test. His skills are impressive, and he is only getting better.

Ashrith won fourth place in 2018, so he persevered, studied hard, and finally took home the first-place win in 2019. Ashrith credits his parents, teachers, and school for supporting him in his passion for geography.

I think it is safe to say that, with such determination and a hard work ethic, Ashrith has a successful future ahead of him.

I congratulate Ashrith on this accomplishment.

He has made Corpus Christi and all of South Texas very proud.

RECOGNITION OF STEVE MARTINEZ’S COMMITMENT AND DEDICATION TO IDAHO HOME BUILDERS

HON. MICHAEL K. SIMPSON
OF IDAHO
IN THE HOUSE OF REPRESENTATIVES
Tuesday, January 21, 2020

Mr. SIMPSON. Madam Speaker, I want to recognize Steve Martinez for his hard work, commitment and dedication to the Idaho State Home Builders Association.

Last year was not an easy year for the State Home Builders Association. While the economy and businesses were booming, the association had a difficult year with the passing of Executive Officer Frankie Hickson, who ran not only the local Building Contractors Association for Western Idaho, but also the State Association for 27 years.

Steve is not only a hard worker and driven individual, but he is also a kind and compassionate person. He recognized the need of helping Frankie through such a difficult stretch and when the time came, he picked up the pieces and supported the staff as well as his peers within the association.

Steve Martinez grew up in the home building industry, his father was a custom homebuilder, a Past President of the local Building Contractors Association as well as Idaho State President.

Steve followed in his father’s footsteps in many ways, including his profession and positions within the home builder associations. Steve is also the national builder representative and is a member of the National Association of Home Builders Finance Committee. He recently received several awards including ‘One to Watch’ from the National Association.

I personally have had the pleasure of getting to know Steve and have appreciated the opportunity to work with him. He is extremely professional and passionate about home ownership and the needs of his community.

I congratulate Steve on his 2019 Special Recognition Award, as it is well deserved.

HONORING THE LEGACY OF DR. CARROL WAYMON

HON. SUSAN A. DAVIS
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, January 21, 2020

Mrs. DAVIS of California. Madam Speaker, I rise with admiration and respect to honor and remember the tremendous legacy of Dr. Carrol Waymon, who passed away in his San Diego home on January 3, 2020 at the age of 94.

Waymon was a champion for racial equality and one of the most impactful educators in San Diego’s history.

Born to a family of eight in North Carolina, Waymon overcame many obstacles before making his way to San Diego. He received an undergraduate education from Howard University followed by masters in psychology and education from Temple University.

In 1964, he was working on racial issues for the Los Angeles Human Relations Agency when a request for assistance came from the San Diego City Council to assess racial injustice in the city.

Waymon chose to move to San Diego and dedicated his life to our community. While other cities experienced significant racial tensions, Waymon saw an opportunity for San Diego to build bridges and improve the lives of all citizens.

In 1967, Waymon was appointed head of the Citizens Interracial Committee (CIC), San Diego’s first human relations agency. During his tenure he chaired more than 40 public meetings and spearheaded the drafting and adoption of San Diego’s first equal employment opportunity ordinances.

Among the many achievements realized by the CIC, Waymon played a critical role in removing housing restrictions for people of color, making it possible for African Americans to stay in any major hotel across the County, try on clothes in department stores, and dine in major restaurants.

Waymon was also widely regarded as a brilliant educator who was responsible for the founding of San Diego State University’s Africana Studies Department. He enjoyed a 33-year career working with San Diego Mesa College as a psychology, sociology, and anthropology professor.
I was privileged to have the opportunity to personally witness and appreciate his drive to bring people together in order to create a better community. I always admired his focus on education for all at the center of all he did; a wise and thoughtful approach.

I genuinely treasured our warm relationship and will sorely miss his presence in the community.

While San Diego has lost a giant, I believe that his life’s work will serve as a legacy and example for future generations to come.

Madam Speaker, I ask that you please join me in remembering and commemorating the great life of Dr. Carrol Waymon.
HIGHLIGHTS

Senate agreed to S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States.

Senate

Chamber Action

Routine Proceedings, pages S287–S441

Measures Introduced: Nine bills and five resolutions were introduced, as follows: S. 3218–3226, and S. Res. 479–483.

Measures Passed:

Organizing Resolution: By 53 yeas to 47 nays (Vote No. 26), Senate agreed to S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States, after taking action on the following amendments proposed thereto:

Rejected:

Schumer Amendment No. 1284, to subpoena certain White House documents and records. (By 53 yeas to 47 nays (Vote No. 15), Senate tabled the amendment.)

Pages S377–S431

Schumer Amendment No. 1285, to subpoena certain Department of State documents and records. (By 53 yeas to 47 nays (Vote No. 16), Senate tabled the amendment.)

Pages S385–S386, S386–S394

Schumer Amendment No. 1286, to subpoena certain Office of Management and Budget documents and records. (By 53 yeas to 47 nays (Vote No. 17), Senate tabled the amendment.)

Pages S394–S395, S395–S401

Schumer Amendment No. 1287, to subpoena John Michael “Mick” Mulvaney. (By 53 yeas to 47 nays (Vote No. 18), Senate tabled the amendment.)

Pages S401–S406

Schumer Amendment No. 1288, to subpoena certain Department of Defense documents and records. (By 53 yeas to 47 nays (Vote No. 19), Senate tabled the amendment.)

Pages S412–S416

Schumer Amendment No. 1289, to subpoena Robert B. Blair and Michael P. Duffey. (By 53 yeas to 47 nays (Vote No. 20), Senate tabled the amendment.)

Pages S416–S420

Schumer Amendment No. 1290, to prevent the selective admission of evidence and to provide for appropriate handling of classified and confidential materials. (By 53 yeas to 47 nays (Vote No. 21), Senate tabled the amendment.)

Pages S420, S420–S422

Schumer Amendment No. 1291, to subpoena John Robert Bolton. (By 53 yeas to 47 nays (Vote No. 22), Senate tabled the amendment.)

Pages S422–S428

Schumer Amendment No. 1292, to provide that motions to subpoena witnesses or documents shall be in order after the question period. (By 53 yeas to 47 nays (Vote No. 23), Senate tabled the amendment.)

Pages S428–S430

Schumer Amendment No. 1293, to allow additional time to file responses to motions. (By 52 yeas to 48 nays (Vote No. 24), Senate tabled the amendment.)

Pages S429–S431

Schumer (for Van Hollen) Amendment No. 1294, to help ensure impartial justice by requiring the Chief Justice of the United States to rule on motions to subpoena witnesses and documents. (By 53 yeas to 47 nays (Vote No. 25), Senate tabled the amendment.)

Pages S430–S431

Impeachment of President Trump: Senate, sitting as a Court of Impeachment, resumed consideration of the articles of impeachment against Donald John Trump, President of the United States, taking the following action:

Pages S289–S431

Administering the Oath to Senators: In conformance with Article I, section 3, clause 6 of the United States Constitution, and the Senate Rules on Impeachment, the Chief Justice administered the oath to Senator Inhofe.

Pages S289–S290

So that the Senate may have a complete documentary record of the proceedings in the Impeachment, the following documents were submitted for printing:

1. The precept, issued on January 16, 2020;
2. The writ of summons, issued on January 16, 2020; and
4. The answer of Donald John Trump, President of the United States, to the articles of impeachment exhibited by the House of Representatives against him on January 16, 2020, received by the Secretary of the Senate on January 18, 2020;
5. The trial brief filed by the House of Representatives, received by the Secretary of the Senate on January 18, 2020;
6. The trial brief filed by the President, received by the Secretary of the Senate on January 20, 2020;
7. The replication of the House of Representatives, received by the Secretary of the Senate on January 20, 2020; and
8. The rebuttal brief filed by the House of Representatives, received by the Secretary of the Senate on January 21, 2020.

A unanimous-consent agreement was reached providing for certain floor privileges during closed impeachment proceedings.

House of Representatives

Chamber Action

Public Bills and Resolutions Introduced: 6 public bills, H.R. 5659–5664; and 1 resolution, H. Con. Res. 84, were introduced.

Additional Cosponsors:

Report Filed: A report was filed today as follows: H.R. 3301, to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, to provide disaster relief, and for other purposes, with an amendment (H. Rept. 116–379).

Speaker: Read a letter from the Speaker wherein she appointed Representative Butterfield to act as Speaker pro tempore for today.

Guest Chaplain: The prayer was offered by the Guest Chaplain, Rev. Benjamin Hogue, Lutheran Church of the Reformation, Washington, DC.

Quorum Calls—Votes: There were no Yea and Nay votes, and there were no Recorded votes. There were no quorum calls.

Adjournment: The House met at 10 a.m. and adjourned at 10:02 a.m.

Committee Meetings

No committee meetings were held.

Joint Meetings

No joint committee meetings were held.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, p. D29)

H.R. 2385, to permit the Secretary of Veterans Affairs to establish a grant program to conduct cemetery research and produce educational materials for the Veterans Legacy Program. Signed on January 17, 2020. (Public Law 116–107)

COMMITTEE MEETINGS FOR WEDNESDAY, JANUARY 22, 2020

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Commerce, Science, and Transportation: to hold hearings to examine the 5G workforce and obstacles to broadband deployment, 10 a.m., SH–216.
Committee on Environment and Public Works: to hold an oversight hearing to examine the Economic Development Administration, 10 a.m., SD–406.

Select Committee on Intelligence: to receive a closed briefing on certain intelligence matters, 10 a.m., SH–219.

House

No hearings are scheduled.

CONGRESSIONAL PROGRAM AHEAD
Week of January 22 through January 24, 2020

Senate Chamber

During the balance of the week, Senate expects to continue consideration of the articles of impeachment against President Trump.

Senate Committees

(Committee meetings are open unless otherwise indicated)

Committee on Commerce, Science, and Transportation: January 22, to hold hearings to examine the 5G workforce and obstacles to broadband deployment, 10 a.m., SH–216.

Committee on Environment and Public Works: January 22, to hold an oversight hearing to examine the Economic Development Administration, 10 a.m., SD–406.

Select Committee on Intelligence: January 22, to receive a closed briefing on certain intelligence matters, 10 a.m., SH–219.

House Committees

No hearings are scheduled.
Next Meeting of the SENATE
1 p.m., Wednesday, January 22

Senator Chamber

Program for Wednesday: Senate will continue consideration of the articles of impeachment against President Trump.

Next Meeting of the HOUSE OF REPRESENTATIVES
2 p.m., Friday, January 24

House Chamber

Program for Friday: House will meet in Pro Forma session at 2 p.m.

Extensions of Remarks, as inserted in this issue

HOUSE
Boyle, Brendan F., Pa., B61
Cloud, Michael, Tex., B61
Davis, Susan A., Calif., B61
Simpson, Michael K., Idaho, B61