House of Representatives

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. 18003(j)(1); May 10,

This symbol represents the time of day during the House proceedings, e.g., 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.
H334
CONGRESSIONAL RECORD — HOUSE
January 21, 2020

1950, ch. 171, Sec. 4(j)(1) (as amended by Pub-
lic Law 110-69, Sec. 7016); (121 Stat. 684); to
the Committee on Science, Space, and Tech-
ology.

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). Re-
ferred 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 re-
ferred, as follows:
By Ms. ESHOO (for herself, Mr. WELLS,
Mr. MCGOVERN, Mr. NELSON, Mr. ENGEL,
Mr. DEAFAQ, Mr. COX of California, Mr. HUFFMAN,
Ms. SPEICHER, Mr. SCHEFF, Ms. GABARDO, Ms. MENO, Mr.
BLUMENAUER, Mr. SERRANO, Mr. LYNCH, Mr. RASKIN, Mr. TRONE,
Ms. MCCOLLUM, Mr. PAPPAS, Ms. MOORE, Ms. KUSTER of New Hampshire,
and Mrs. TRAHAN):
H.R. 5661: 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). Re-
ferred to the Committee of the Whole
House on the state of the Union.

PRIVATE BILLS AND
RESOLUTIONS

Under clause 3 of rule XII.

By Mr. ROY:
H.R. 5639. A bill to amend title 23, United States Code, to ensure that each State re-
ceives an aggregate apportionment equal to at least 100 percent of the estimated tax pay-
ments attributable to certain highway users
in the State, and for other purposes; to the
Committee on Transportation and Infra-
structure.

By Mr. BANKS (for himself and Ms.
CHENY):
H.R. 5661. A bill to prohibit the sharing of
United States intelligence with countries
that suppress or restrict freedom of
expression and association, and to prohibit
the operation of Huawei fifth gener-
ation 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 consider-
ation of such provisions as fall within the ju-
risdiction of the committee concerned.

By Mr. GUTHRIE (for himself and Mr.
PAPPAS):
H.R. 5661. A bill to amend the Federal
Food, Drug, and Cosmetic Act to give au-
thority to the Secretary of Health and
Human Services, acting through the Com-
missioner of Food and Drugs, to destroy
counterfeit devices; to the Committee on En-
ergy 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 ade-
quate 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 Per-
sons 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 ad-
dition to the Committee on the Judiciary,
for a period to be subsequently determined
by the Speaker, in each case for consider-
ation of such provisions as fall within the ju-
risdiction of the committee concerned.

By Ms. LEE of California (for herself,
Mr. GRIJALVA, Mr. LOWENTHAL, and
Ms. NORTON):
H. Con. Res. 144. Concurrent resolution sup-
porting 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
calling-name and bullying in their commu-
nities; to the Committee on Education and
Labor.

CONSTITUTIONAL AUTHORITY
STATEMENT

Pursuant to clause 7 of rule XII of the Rules of the House of Representa-
tives, the following statements are sub-
mitted regarding the specific powers granted to Congress in the Constitu-
tion to enact the accompanying bill or joint
resolution.

By Ms. ESHOO: H.R. 5658. Congress has the power to enact this legis-
lation pursuant to the following:
Article 1, Section 8, clause 3 of the Con-
itution.

By Mr. ROY: H.R. 5660. Congress has the power to enact this legis-
lization pursuant to the following:
Article I, Section 8: The power to lay and
collect taxes, duties, imposts and excises, to
pay the debts and provide for the common
defense and general welfare of the United
States.

By Mr. BANKS: H.R. 5661. Congress has the power to enact this legis-
lization pursuant to the following:
Article I, section 8 of the United States Constitu-
tion pursuant to the following:

By Mr. McCaul: H.R. 5664. Congress has the power to enact this legis-
lization pursuant to the following:
Article I, section 8 of the Constitution of the United
States.

ADDITIONAL SPONSORS

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

H.R. 30: Mr. NORMAN.
H.R. 175: Mr. BUD, Mr. GERTZ.
H.R. 250: Ms. ESHOO.
H.R. 1055: Mr. PHILLIPS.
H.R. 1153: Ms. KENDRA S. HORN of Okla-
ham.
H.R. 1379: Mr. LOUDERMILK.
H.R. 1497: Mr. HADEN.
H.R. 1735: Mr. PRICE of North Carolina.
H.R. 1766: Mr. KENNEDY and Mr. MORELLE.
H.R. 1849: Mr. PETERSON and Ms. SPANBERGER.
H.R. 1889: Mr. MIHAL, F. DOYLE of Penn-
sylvania.
H.R. 2103: Mr. LOWENTHAL.
H.R. 2148: Mr. TRONE.
H.R. 2184: Mr. HASTINGS.
H.R. 2238: Mr. SMITH of New Jersey.
H.R. 2339: Ms. SLOTKIN.
H.R. 2630: Ms. JOHNSON of Texas.
H.R. 2694: Mr. PAPPAS.
H.R. 2747: Mr. ESPAILLAT.
H.R. 2767: Mrs. AXNE.
H.R. 2868: Mrs. DEMINGS.
H.R. 2931: Mr. CASE.
H.R. 3070: Mr. SMITH of New Jersey.
H.R. 3386: Mr. O’HALLERAN.
H.R. 3510: Mr. F проведения.
H.R. 3668: Ms. SANDMAN.
H.R. 3794: Mr. CROW.
H.R. 3799: Mr. GRIJALVA and Ms. BASS.
H.R. 4008: Mr. RIOGELA.
H.R. 4076: Mrs. KIRKPATRICK.
H.R. 4296: Ms. MUCARES-Powell.
H.R. 4308: Mr. BISHOP of North Carolina.
H.R. 4322: Mr. ALLRED, Mr. MCADAMS, Mr.
SCHNEIDER, Mr. WALBERG, and Mrs. WATSON
COLEMAN.
H.R. 4346: Mr. NADLER.
H.R. 4374: Mr. SMITH of New Jersey.
H.R. 4404: 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. LUCAS.
H.R. 5276: Mrs. HARTWERK.
H.R. 5319: Mr. HIMES.
H.R. 5319: Mrs. WAGNER.
H.R. 5418: Mr. ESPAILLAT.
H.R. 5525: Mr. AMODEI and Mr. McHENRY.
H.R. 5543: Mr. McNEELEY, Mr. RUPPERS-
BERGER, Ms. BROWN 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. 5585: Mr. NORMAN.
H.R. 5598: Mr. ST堡, Ms. DEGETTE, and
Ms. HAALAND.
H.R. 5609: Mr. COSTA.
PETITIONS, ETC.

Under clause 3 of rule XII,

81. 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 admo- nition, 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 de- clare 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 resolu- tion 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 in- formation in hand, the Senate will con- sider 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 overcoming the presumption of inno- cence and undoing a democratic elec- tion.

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 Representa- tives. The House broke with precedent by denying Members of the Republican minority the same rights that Demo- crats 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 Presi- dent'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 road- map for our trial. We need it in place before we can move forward, so the Senate should prepare to remain in ses- sion today until we complete this reso- lution and adopt it.

This basic, four-part structure aligns with the first steps of the Clinton im- peachment trial in 1999. Twenty-one years ago, 100 Senators agreed unani- mously that this roadmap was the right way to begin the trial. All 100 Senators agreed the proper time to consider the question of potential wit- nesses was after—after—opening argu- ments and Senators' questions.

Now, some outside voices have been urging the Senate to break with prece- dent on this question. Loud voices, in- cluding the leadership of the House ma- jority, colluded with Senate Democrats and tried to force the Senate to precommit ourselves to seek specific witnesses and documents before Sen- ators had even heard opening argu- ments or even asked questions. These are potential witnesses whom the House managers themselves—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 dead- line. 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—their inquiries were concluded before 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 precummit to pursuing them.

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 uphold 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 it did protect our bipartisan precedent.

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 chairman argue that the Senate must precummit 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 precummit 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 a 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—blurring—the traditional role between 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 chairmen to declare their inquiry was finished and move right ahead. The House chose not to pursue the same witnesses they apparently would now like—would now like—the Senate to precummit to pursuing them.

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 of this 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 understand 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 accused of using 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 will then 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 darkness of the night—literally the dark of night. If the President is so confident in his case, if Leader McConnell 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
one of the darker moments in the Senate history. Perhaps one of the even darkest.

Leader McConnell has just said he wants to go by the Clinton rules. Then why did he change them in four important respects? One is that the trial itself will be longer, without breaks. It will be later.

We are here 24 hours a day, we are at 1 a.m., and that is why McConnell wants to force the managers to make important parts of their case in the dark of night.

McConnell resolution limits presentation of the parties to 24 hours per side over only 2 days. We start at 1, 12 hours a day, we are at 1 a.m., and that is why McConnell wants to force the managers to make important parts of their case in the dark of night.

Second, unlike the Clinton rules, the McConnell resolution limits presentation by requiring a vote on whether such motions are even in order. It will be later in the trial. It will be later in the trial. It will be later in the trial. It will be later in the trial.

I don't want anyone on the other side to say: I am going to vote no first on witnesses, but then later will I determine—if they vote for McConnell's resolution, they are making it more difficult to vote in the future, later on in the trial.

And finally, unlike the Clinton rules, the McConnell resolution allows a motion to dismiss at any time—any time—in the trial.

In short, contrary to what the leader has said, the McConnell rules are not at all like the Clinton rules. The Republican leader's resolution is based neither in precedent nor in principle. It is driven by partisanship and the politics of the moment.

Today I will be offering amendments to fix the many flaws in Leader McConnell's deeply unfair resolution and seek the witnesses and documents we have requested, beginning with an amendment to have the Senate subpoena White House documents.

Let me be clear. These amendments are not dilatory. They only seek one thing: the truth. That means relevant documents. That means relevant witnesses. That is the only way to get a fair trial, and everyone in this body knows it.

Each Senate impeachment trial in our history, all 15 that were brought to completion, feature witnesses—even single ones.

The witnesses we request are not 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, an obligation, particularly 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 complete.

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 rehear, but the sole power 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 biased and wrong. Well, if the President believes his impeachment is so biased and wrong, why won't he show us why? Why is the President so consistent 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, why won't he show us why? Why is the President so consistent 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, why won't he show us why?

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, and then 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.
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 same to the Clerk of the Senate at Arms to be entered in the record.

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 like to state 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 CHIEF JUSTICE. The following document will be submitted to the Senate for printing in the Senate Journal:


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 adopted 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 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 of 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 following statements follow:

[In Proceedings Before the United States Senate]

Answer of President Donald J. Trump

The HONORABLE DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, HERewithReports

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—now just months away. The highly partisan nature of this attack with impeaching the President began the day he was inaugurated and continues to this day.

I. THE FIRST ARTICLE OF IMPEACHMENT MUST BE REJECTED

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 no 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, he truthfully and effectively executed the duties of his Office on behalf of the American people. The President’s actions on the July 25, 2019, telephone call are at the center of the Articles’ claims against him. The July 22 call, as well as the April 21, 2019, telephone call (the “April 21 call”), and in all surrounding and related events, were constitutional, perfectly legal, completely appropriate, and taken in furtherance of our national interest.

President Trump raised the important issue of burden sharing on the July 25 call, noting that other European countries such as Germany were not carrying their fair share and recklessly obstructing with important questions of Ukrainian corruption. President Zelensky acknowledged these concerns on that same call.

Despite House Democrats having run an entirely illegitimate and one-sided process, several simple facts were established that prove the President did nothing wrong:

First, the transcript of both the April 21 call and the July 25 call make absolutely clear that the President did nothing wrong.

Second, contrary to the notion that President Trump obstructed Congress is absurd. President Trump acted with transparency and unprecedented transparency by declassifying and releasing the transcript of the July 25 call that is at the heart of this matter.

While following the President’s direction that the July 25 call transcript, House Democrats issued a series of unconstitutional subpoenas for documents and testimony. They issued these subpoenas with partisan intent, to jeopardize the President’s ability to receive votes and, therefore, without constitutional authority. They sought testimony from a number of the President’s closest aides despite the fact that, in the past, bipartisan practice of prior administrations of both political parties and similarly long-standing guidance from the Department of Justice, those advisers were immune from compelled testimony before Congress related to their official duties.

Furthermore, the notion that President Trump obstructed Congress is absurd. President Trump acted with transparency and unprecedented transparency by declassifying and releasing the transcript of the July 25 call that is at the heart of this matter.

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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 privilege 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’s actions were appropriate to the subpoenaed information 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 authority 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 denied 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 may lawfully be used to destroy the Framers’ system of checks and balances. By approving the Articles, the House violated our constitutional order, illegally abused its power of impeachment, and attempted to obstruct President Trump’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. CIPOLLONE, Counsel to the President, The White House.

Dated this 18th day of January, 2020.
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 crucial 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,26 encouragement,27 and the orderly conduct of government.28 The meeting was critical to the newly elected Ukrainian President because it would signal to Russia—which had invaded Ukraine and occupied Ukrainian territory—that Ukraine could count on American support.29 That meeting still has not occurred, even though President Trump has met with President Zelensky in the White House since President Zelensky’s election—including an Oval Office meeting with Russia’s top diplomat.30

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.31 One of the Founding generation’s principal fears was that foreign governments would seek to manipulate elections—the twin feature of our self-government, Thomas Jefferson and John Adams warned of “foreign Influence, Intrigue, and Inflated Expectations.” Jefferson asked: “Shall the man who has practised corruption & by that means procured his advances to power, have great oppoRTunities of abusing his power?”32

The Framers recognized that a President who abuses his power to manipulate the democratic process cannot properly be held accountable by means of elections that he has rigged to his advantage.33 The Framers specifically feared a President who “acts[s] from some corrupt motive or other” or “willfully abuses[his] trust” must be impeached,43 because the President will have great opportunities of abusing his power.44

Thus, the Framers resolved to hold the President “impeachable whilst in office” as an “essential check on the power of the Executive.”45 By empowering Congress to immediately remove a President when his misconduct warrants it, the Framers established the people’s elected representatives as the ultimate check on a President whose corruption threatened our democracy and the Nation’s core interests.46

The Framers particularly feared that foreign influence could undermine our new system of self-government.47 In his farewell address to the Nation, President George Washington warned Americans “to be constantly and carefully watching against foreign influence.”48 In a speech before the American Philosophical Society, he warned that foreign influence is one of the most baneful foes of republican government.”49 Alexander Hamilton articulated that the “most deadly adversaries of republican government” may come “chiefly from the desire in foreign powers to gain an improper ascendant in our councils.”50 James Madison worried that a future President could “betray his trust to foreign powers,” which “might be fatal to the Republic.”51 And, of course, we have witnessed the personal correspondence about “foreign Influence” that Thomas Jefferson and John Adams discussed their apprehension that “as often as foreign Parties happen to the dangerous of foreign Influence recurs.”52

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 two-term constitutional limit, and President Trump’s bid to reschedule the 2020 election—give Congress the power to impeach the President if he is guilty of high crimes and misdemeanors.

II. The House’s Impeachment of President Donald J. Trump

The President’s Misconduct

A. The House’s Resolution

The House of Representatives on December 18, 2019, adopted two Articles of Impeachment. The First Article for Abuse of Power states that President Trump “abused the powers of the Presidency” by “soliciting the Government of Ukraine to publicly announce investigations that would harm the election prospects of a political opponent, and influence the 2020 United States Presidential election to his advantage.” President Trump sought to “pressure the Government of Ukraine to take these steps by conditioning official United States Government acts of significant value to Ukraine on its public announcement of the investigations.” President Trump undertook these actions “for corrupt purposes in pursuit of personal political benefit” and “used the powers of the Presidency 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,” and demonstrated that President Trump “will remain a threat to national security and the Constitution if allowed to remain in office.”

The Second Article for Obstruction of Congress was based on “abuse of the powers of the Presidency in a manner offensive to, and subversive of, the Constitution” when he “directed the unprecedented, extraordinary, and illegal seizure of documents in the possession of the House of Representatives,” thereby impeding the House’s investigation. The abuse of power required the removal of the President, the prosecutor in March 2016. President Trump’s misconduct was “consistent” with President Trump’s “previous efforts to undermine United States Government investigations into foreign interference in United States elections,” and demonstrated that he “acted in a manner grossly incompatible with self-governance and the rule of law” that will remain a threat to the Constitution if allowed to remain in office.

B. The Senate’s Conviction

President Trump sought to press President Zelensky publicly to announce an investigation into former Vice President Biden and a Ukrainian gas company, Burisma Holdings, on whose board his son sat. As Vice President, Biden had in late 2015 encouraged the government of Ukraine to remove a Ukrainian prosecutor general who had failed to investigate a corruption case. The Ukrainian parliament removed the prosecutor in March 2016. President Trump and his allies have asserted that the former Vice President acted in order to stop an investigation of Burisma and thereby protect his son. This is false. There is no evidence that Vice President Biden acted improperly. He can point to no official United States policy—with the backing of the international community and bipartisan support in Congress—to suggest that the ouster of the prosecutor, who was himself corrupt, was an improper action. In addition, the prosecutor’s removal made it more likely that the investigation into Burisma would be pursued. President Trump’s misconduct was “consistent” with President Trump’s “previous efforts to undermine United States Government investigations into foreign interference in United States elections,” and he “acted in a manner grossly incompatible with self-governance and the rule of law” that will remain a threat to the Constitution if allowed to remain in office. After President Zelensky won a landslide victory in Ukraine in April 2019, President Trump pressured the new Ukrainian President to help him win re-election by announcing investigations that were politically favorable for President Trump and designed to harm his political rival. First, President Trump sought to pressure President Zelensky publicly to announce an investigation into former Vice President Biden and a Ukrainian gas company, Burisma Holdings, on whose board Biden’s son sat. As Vice President, Biden had in late 2015 encouraged the government of Ukraine to remove a Ukrainian prosecutor general who had failed to investigate a corruption case. The Ukrainian parliament removed the prosecutor in March 2016. President Trump and his allies have asserted that the former Vice President acted in order to stop an investigation of Burisma and thereby protect his son. This is false. There is no evidence that Vice President Biden acted improperly. He can point to no official United States policy—with the backing of the international community and bipartisan support in Congress—to suggest that the ouster of the prosecutor, who was himself corrupt, was an improper action. In addition, the prosecutor’s removal made it more likely that the investigation into Burisma would be pursued. President Trump’s misconduct was “consistent” with President Trump’s “previous efforts to undermine United States Government investigations into foreign interference in United States elections,” and he “acted in a manner grossly incompatible with self-governance and the rule of law” that will remain a threat to the Constitution if allowed to remain in office.

Second, President Trump sought to press President Zelensky publicly to announce an investigation into a conspiracy theory that Ukraine had colluded with the Democratic National Committee to interfere in the 2016 U.S. Presidential election in order to help the campaign of Hillary Clinton against then-candidate Donald Trump. This theory was not only pure fiction, but malign Russian propaganda. In the words of one of President Trump’s own top National Security Council officials, President Trump’s theory of Ukrainian election interference is “a fictional narrative that is being perpetrated and propagated by the Russian security services themselves” to deflect from the President’s own culpability and ensure the appearance of a strong foreign power that had interfered with the 2016 presidential election.” The Senate Select Committee on
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 he knew there was no basis for.106 The simple question: Was there a quid pro quo?

In describing the claim of foreign interference in the 2016 election, President Trump declared that “they say a lot of it started with Ukraine,” and that “[w]hatever you can do to help, it’s very important to do it if that’s possible.”119 Absent from the discussion was any mention by President Trump of anti-corruption reforms in Ukraine.

And in describing the claim of foreign interference in the 2020 election, President Trump mentioned only two people: former Vice President Biden and his son.118

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One of the key moments for carrying out the President’s agenda in Ukraine, Ambassador Gordon Sondland, testified that President Trump’s effort to condition security assistance on an announcement of the investigations was as clear as “two plus two equals four.”116 President Trump, however, personally ordered OMB to withhold the assistance after the White House publicly announced an investigation of President Zelensky’s advisor that Ukraine desperately needed and that he could leverage only by virtue of his office: $391 million in security assistance and a White House meeting.2

WITHHELD SECURITY ASSISTANCE

President Trump illegally ordered the Office of Management and Budget to withhold $391 million in taxpayer-funded military and other security assistance to Ukraine.110 This assistance would provide Ukraine with sniper rifles, rocket-propelled grenade launchers, counter-artillery radars, electronic warfare detection equipment, night vision equipment, among other military equipment, to defend itself against Russian forces that occupied part of eastern Ukraine.111 The new and vulnerable government headed by President Zelensky urgently needed this assistance—both because the funding itself was critically important to defend against Russia and because the funding was a highly visible sign of American support for President Zelensky in his efforts to negotiate an end to the conflict from a position of strength.112

Every relevant Executive Branch agency supported the assistance, which also had broad support in Congress.113 President Trump, however, personally ordered OMB to withhold the assistance after the bulk of it had been appropriated by Congress, thereby violating the Federal Appropriations Act, which limits the President’s authority to withhold funds that Congress has appropriated.114

The evidence is clear that President Trump conditioned release of the vital military assistance on Ukraine’s announcement of the sham investigations. During a telephone conversation between the two Presidents on July 25, immediately after President Zelensky raised the issue of U.S. military support for Ukraine, President Trump asked whether Ukraine would formally enter the 2020 U.S. Presidential race—the State Department executed President Trump’s order to recall the U.S. ambassador to Ukraine, a well-placed career diplomat and anti-corruption crusader.115 President Trump needed her “out of the way” because “she was going to make the decision to defend” Ukraine and Russia, and so President Trump then proceeded to exercise his official power to pressure Ukraine into announcing his desired investigations. The evidence is unambiguous that President Zelensky “must announce the opening of the investigations and he should want to do it.”118

President Trump ultimately released the military assistance, but only after the press publicly reported the hold, after the President learned that a whistleblower within the Intelligence Community had filed a complaint about his misconduct, and after the House publicly announced an investigation of his abuse of his official power to withhold the assistance.119 In describing the announcement of the investigations to advance the President’s 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 [explicative] about Ukraine,” and instead cared only about “big stuff” that benefitted him personally, including the potential of Ukraine confirming that his efforts to pressure President Zelensky were successful.

Mr. Giuliani openly and repeatedly acknowledged that he was seeking information that “will be very, very helpful to my client.”127 Mr. Giuliani also similarly represented Ukraine’s interests in the United States and was acting with the President’s “knowledge and consent.”128

First, although there was no basis for the two conspiracy theories that President Trump advanced, the public announcement of the investigations that President Trump himself instigated would yield enormous political benefits for President Trump, who viewed the

Fourth, President Trump’s pursuit of the sham investigations marked a dramatic deviation from longstanding bipartisan American foreign policy doctrine that legitimate investigations could be recognized as an anti-corruption foreign policy
goal, but there was no factual basis for an investigation into the Bidens or into supposed Ukrainian interference in the 2016 election. To the contrary, the requested investigations were of the type of investigations that American foreign policy dissuades other countries from undertaking. That explains why the scheme to obtain the announcement from Ukraine, and thus socially acceptable to Russia, was diagrammed in the President’s chosen political appointees and his personal attorney; 142 why Trump Administration officials attempted to keep the scheme public by referring to it as a “sensitive” one; 143 why no credible explanation for the hold on security assistance was given to Congress; 144 why, over Defense Department objections, President Trump and his allies violated the law by withholding the aid; 145 and why, when that request was found to be false, President Trump falsely claimed that his pursuit of the investigations did not involve a quid pro quo. 146

Fifth, American and Ukrainian officials alike say that President Trump’s scheme for what it was: improper and political. As we expect the testimony of Ambassador John Bolton, President Trump’s National Security Advisor stated that he wanted nothing “part of whatever drug deal” President Trump wanted to conduct with Ukraine. 147 Dr. Hill testified that Ambassador Sondland was becoming involved in a “domestic political errand” in pressuring Ukrainian officials to obtain the investigations that the President solicited and that the investigations were a “domestic political matter.” 148 Lt. Col. Alexander Vindman, the NSC’s director for Ukraine, testified that “it is improper for the President of the United States to demand that the Ukrainian citizen and a political opponent.” 149 William Taylor, who took over as Chargé d’Affaires in Kyiv after President Trump re-called Ambassador Yovanovitch, emphasized that “I think it’s crazy to withhold security assistance for help with a political campaign.” 150 And George Kent, a State Department official, testified that “asking another country to investigate a prosecution for political reasons undermines our advocacy of the rule of law.” 151

Ukrainian officials also understood that President Trump’s corrupt effort to solicit the sham investigations would drag them into a political intrigue. As part of the President’s efforts, a senior Ukrainian official conveyed to Ambassador Taylor that President Zelensky “did not want to be used as a pawn in a U.S. re-election campaign.” Another Ukrainian official later stated that “it’s critically important for the west not to pull us into some conflicts between their ruling elite.” 152 And when Ambassador Kurt Volker tried to warn President Zelensky’s advisor against investigating President Zelensky’s former political opponent—the prior Ukrainian President—for corruption allegations, U.S. officials were making “a demand that President Zelensky personally commit on a cable news channel to a specific investigation of President Zelensky’s.” 153

Finally, there is no credible alternative explanation for President Trump’s conduct. It is not credible that President Trump sought announcements of investigations because he was in fact concerned with corruption in Ukraine or burden-sharing with our European allies, as he claimed after the scheme was uncovered. 154

Before news of former Vice President Biden’s candidacy broke, President Trump’s conduct toward Ukraine, and in prior years he approved military assistance—financial and political—without a requirement that Ukraine take actions to conduct investigations. 155 After his announcement, President Trump remained indifferent to anti-corruption measures beyond the two investigations he was demanding. 156 When he first spoke with President Zelensky, the President ignored the recommendation of his national security advisors and did not mention corruption at all—even though the President fully understood that President Zelensky had made important progress in his anti-corruption efforts. 157 President Trump ignored the recommendation of his national security advisors and did not mention corruption at all—even though the President fully understood that President Zelensky had made important progress in his anti-corruption efforts. 158

President Trump’s entire policy team agreed that President Zelensky was committed to anti-corruption reforms, yet President Trump refused a White House meeting that the team advised would support President Zelensky’s anti-corruption agenda. 159 President Trump’s own Department of Defense, in consultation with the State Department, had certified in May 2019 that Ukraine satisfied all anti-corruption requirements; 160 but actual investigations were never the point. President Trump was interested only in the announcement; 161 and overseas efforts to cut foreign programs tasked with combating corruption in Ukraine and elsewhere. 162

Moreover, the President Trump truly sought to assist Ukraine’s anti-corruption efforts, he would have focused on ensuring that Ukraine actually conducted investigations. Instead of the President Trump’s solicitation of investigations was a “quid pro quo.” 163 Whether or not the investigations were a “quid pro quo,” the investigations did not involve a quid pro quo. 164

President Trump’s purported concern about sharing the burden of assistance to Ukraine with Europe is equally without a factual basis. From the time OMB announced the hold on assistance—outside the President’s standard—President Trump directed the hold and after the White House meeting that President Trump had directed the hold and the President had learned of the whistleblower complaint, the President repeatedly justified the President’s delay in providing the military assistance jeopardized these national security interests—“saves lives” by making Ukrainian military assistance more effective. 165 It likewise advances American national security interests because, “if Russia prevails in Ukraine, Russia fails to Russian dominance, we can expect to see other attempts by Russia to expand its territory and influence.” 166 Indeed, the reason the United States provides assistance to the Ukrainian military is “so that the United States doesn’t have to fight Russia here.” 167 President Trump’s delay in providing the military assistance jeopardized these national security interests—“saves lives” by making Ukrainian military assistance more effective. 168

The White House meeting that President Trump promised President Zelensky—but could not provide assistance to Ukraine, because the United States had signaled to Russia that the United States stands behind Ukraine, showing “U.S. support at the highest levels.” 169 By refusing to hold this meeting, President Trump denied Ukraine a showing of strength that could deter further Russian aggression and help Ukraine negotiate a favorable end to its war with Russia. 170 The White House meeting that President Trump promised President Zelensky—could not provide assistance to Ukraine, because the United States had signaled to Russia that the United States stands behind Ukraine, showing “U.S. support at the highest levels.” 171 By refusing to hold this meeting, President Trump denied Ukraine a showing of strength that could deter further Russian aggression and help Ukraine negotiate a favorable end to its war with Russia. 172 The White House meeting that President Trump promised President Zelensky—could not provide assistance to Ukraine, because the United States had signaled to Russia that the United States stands behind Ukraine, showing “U.S. support at the highest levels.” 173 By refusing to hold this meeting, President Trump denied Ukraine a showing of strength that could deter further Russian aggression and help Ukraine negotiate a favorable end to its war with Russia. 174 The White House meeting that President Trump promised President Zelensky—could not provide assistance to Ukraine, because the United States had signaled to Russia that the United States stands behind Ukraine, showing “U.S. support at the highest levels.” 175 By refusing to hold this meeting, President Trump denied Ukraine a showing of strength that could deter further Russian aggression and help Ukraine negotiate a favorable end to its war with Russia. 176 But for a subsequent act of Congress, approximately $35 million of military assistance to Ukraine would have lapsed and been unavailable as a result of the President’s abuse of power. 177

Equally troubling is that President Trump’s conduct underlines the President’s personal benefit, causing our allies to constantly “question the extent to which they can count on us.” 178 Because American leadership depends on “the power of our example and the consistency of our American leadership,” 179 and undermines the President’s personal benefit, causing our allies to constantly “question the extent to which they can count on us.” 180

President Trump’s conduct undermines the U.S., exposes our friends, and widens the playing field for autocrats like Putin. 181 President Trump’s use of official acts to pressure Ukraine to announce politically motivated investigations harms our credibility in promoting democratic values and institutions around the world. American credibility abroad “is based on a respect for the United States,” and “if we damage that respect,” American foreign policy cannot do its job. 182

President Trump abused the powers of his office to invite foreign interference in an election for his own personal political gain and to the detriment of American national security interests. With faith to faithfully execute the laws and betrayed his public trust, President Trump’s misconduct presents a danger to our democratic processes and our commitment to the rule of law. He must be removed from office.

II. The Senate Should Convict President Trump of Obstruction of Congress

In exercising its responsibility to investigate and consider the impeachment of a President of the United States, the House is constitutionally entitled to the relevant information from the Executive Branch concerning the President’s actions or omissions. The Framers, the courts, and past Presidents have recognized that honoring Congress’s
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 Congress from discovering impeachable misconduct, effectively nullifying Congress's impeachment power. President Trump's sweeping effort to shield his misconduct from scrutiny—by himself from the Executive Department, 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 indicated that the "duty of all citizens" and "their unremitting obligation to respond to subpoenas, to respect the authority of the Congress and its committees, and to honor obligations of process to enforce it—is an essential element of the Republic's system of divided powers." Otherwise, a President could hide his own misconduct to prevent Congress from discovering impeachable misconduct.

B. The Committee's Inquiry Was Complete and Adequate

The facts are undisputed. As charged in the Second Article of Impeachment, President Trump "[d]irected the White House to deny lawful subpoenas by withholding the production of documents and records," and "[d]irected the White House to direct the White House Counsel to assert and use executive privilege to withhold documents and testimony from the House." The House obtained compelling evidence of the President's misconduct. There can be no doubt that he abused his power. The failure of President Trump's obstruction and attempted cover-up, however, does not excuse his misconduct. The facts show that the withheld documents and testimony would provide Congress with highly pertinent information about the President's corrupt scheme. Indeed, witnesses have testified about specific withheld records concerning President Trump's July 25 call with President Zelensky and related materials, and President Trump's July 25 call with President Zelensky and related materials, and other witnesses have revealed the existence of dozens of responsive documents, including "hundreds of documents that reveal extensive efforts to discourage witnesses from coming forward and to discourage witnesses from coming forward and to discourage witnesses from coming forward and to discourage witnesses from coming forward.

C. President Trump's Excuses for His Obstruction Are Meritless

President Trump has offered various unpersuasive excuses for his blanket refusal to comply with the House's impeachment inquiry. President Trump's refusal to provide information is not a principled assertion of executive privilege, but rather is a transparent attempt to cover-up wrongdoing and amass power that the Constitution does not give him, the power to decide what the American people can and cannot see. The facts are undisputed. As charged in the Second Article of Impeachment, President Trump "[d]irected the White House to deny lawful subpoenas by withholding the production of documents and records," and "[d]irected the White House to direct the White House Counsel to assert and use executive privilege to withhold documents and testimony from the House."

D. Congress's Investigation Is a Critical Safeguard in Our System of Government

The Supreme Court has recognized that the impeachment power is "a matter of the most critical moment to the Nation" and that the impeachment process is "a matter of the most critical moment to the Nation" and "an indispensable element of the Republic's system of divided powers." Otherwise, a President could hide his own misconduct to prevent Congress from discovering impeachable misconduct. The facts are undisputed. As charged in the Second Article of Impeachment, President Trump "[d]irected the White House to deny lawful subpoenas by withholding the production of documents and records," and "[d]irected the White House to direct the White House Counsel to assert and use executive privilege to withhold documents and testimony from the House." The facts are undisputed. As charged in the Second Article of Impeachment, President Trump "[d]irected the White House to deny lawful subpoenas by withholding the production of documents and records," and "[d]irected the White House to direct the White House Counsel to assert and use executive privilege to withhold documents and testimony from the House."
to conceal wrongdoing—particularly in an impeachment inquiry—and because the President and his agents have already diminished any confidentiality interests by speaking and acting on the record. The President does not have the authority to stop a committee court from except Congress.219 President Trump has been impeached for Obstruction of Congress not based upon discrete invocations of privilege, but for his claim that the Executive Branch categorically stonewall the House impeachment inquiry by refusing to comply with all subpoenas.220 To President Trump’s claims that he has concealed evidence to protect the Office of the President, the Framers considered and rejected. The President’s refusal at the Convention warned that the impeachment power would be “destructive of [the executive’s] independence.”221 The Framers considered the courts. He is saying to Congress that the 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.”222 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. The Constitution vests the House with the “sole Power of Impeachment”223 and the power to “determine the Rules of its Proceedings.”224 The Framers clearly demanded that any impeachments have charge President Trump with a crime, as the Department of Justice believes, and in which he can nullify the impeachment power through blanket obstruction, as the Pennsylvania law is, 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 impera

President Trump has also continued to engage Mr. Giuliani in foreign investigations on his behalf.241 One day after President Trump was impeached, Mr. Giuliani claimed that he gathered derogatory evidence against Vice President Biden during a fact-finding trip to Ukraine—a trip where he met with a current Ukrainian official who attended a KGB school in Moscow and has led calls in Ukraine to investigate Burisma and the Bidens.242 During the trip, Mr. Giuliani tweeted: “The conversation was very simple. Donald Trump is asking Mr. Zelensky to process right because the Senate, not the House, possesses the “sole Power to try Impeachments.”225 The Constitution does not entitle President Trump to a separate, full trial first in the House. Even indulging the analogy to a criminal trial, President Trump has no basis for objecting to how the House conducted its impeachment. The Constitution vests the House with the “sole Power of Impeachment”223 and the power to “determine the Rules of its Proceedings.”224 The Framers clearly demanded that any impeachments have charge President Trump with a crime, as the Department of Justice believes, and in which he can nullify the impeachment power through blanket obstruction, as the Pennsylvania law is, 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.

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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 express—and exclusive—constitutional role in conducting impeachments. He has thereby subverted the Constitution that he pledged to uphold when he took his oath of office 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 impeachment as “illegal, invalid, and unconstitutiona”240 directed the Executive Branch not to comply with House subpoenas for documents and testimony;241 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.242

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.”243 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 actions, the President’s subpoena 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.244 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 work, 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 opened to question.”245

Ratifying President Trump’s behavior would likewise erode longstanding U.S. anti-corruption policy, which encourages countries to improve 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.246 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, and public infrastructure projects—until State officials perform personal political favors. Any Congressional appropriation would be an opportunity for a President to solicit a personal political favor 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,

ADAM B. SCHIFF,
JERROLD NADLER,
ROBERT L. LOFROEN,
HARKER S. JEFFRIES,
VAL BUTLER DEMINGS,
JASON CROW,
SYLVIA R. GARCIA,
U.S. House of Rep- resentatives Managers

January 18, 2020

The House Managers wish to acknowledge the assistance of the following individuals in preparing this trial memorandum: Douglas Letter, Elise L. Lanni, Jethro Maloney, Adam A. Groeg, William E. Havemann, and Jonathan B. Schwartz of the House Office of General Counsel; Daniel Noble, Daniel S. Goldman, and Maher Bitar of the House Permanent Select Committee on Intelligence; Norman L. Eisen, Barry H. Berke, Joshua Leib, and Sophia Brill of the House Committee on the Judiciary; the investigative staff of the House Committee on Oversight and Reform; and David A. O’Neill, Anna A. Moody, and Laura E. O’Neill.

ENDNOTES

2. See Statement of Material Facts (State- ment of Facts) (Jan. 18, 2020), 31–51 (as filed as an attachment to this Trial Memorandum).
5. See, e.g., id. ¶ 11–12.
6. See, e.g., id. ¶ 11–12.
7. Id. ¶ 12.
8. Id. ¶ 13.
9. Id. ¶ 14.
10. See, e.g., id. ¶ 53.
11. See, e.g., id. ¶ 16, 18.
12. Id. ¶ 53.
13. Id. ¶ 120–21.
14. Id. ¶ 122.
15. Id. ¶ 56.
16. See, e.g., id. ¶ 24.
17. See, e.g., id. ¶ 19, 25, 145–47.
18. Id. ¶ 28–48.
19. Id. ¶ 49.
20. Id. ¶ 46.
22. See, e.g., id. ¶ 127, 131.
23. See, e.g., id. ¶ 49–69.
24. Id. ¶ 50.
25. Id. ¶ 5–50.
26. See id. ¶ 137.


32. Id. ¶¶ 179–83.
33. See, e.g., id. ¶¶ 186–87.
34. See id. ¶¶ 191–93.
35. Id. ¶¶ 197–90.
42. U.S. Const., Art. II, § 1, cl. 8.
43. 2 The Records of the Federal Convention of 1787, at 382 (Max Farrand ed., 1911) (Parrand).
45. 2 Farrand at 67.
46. See id. at 65.
47. Id. at 64.
48. Id. at 65.
49. Id. at 64.
50. See The Federalist No. 65 (Alexander Hamilton).
52. Washington Farewell Address.
53. The Federalist No. 68 (Alexander Ham-ilton).
54. 2 Farrand at 66.
56. U.S. Const., Art. II, § 1, cl. 5.
60. U.S. Const., Art. II, § 4; see 2 Farrand at 505.
61. 2 Farrand at 500.
63. 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.
64. Statement of Facts ¶ 160.
65. Id. ¶ 161.
66. See id. ¶¶ 166, 180, 183, 189–90.
67. Id. ¶ 162.
68. Id. ¶ 164.
69. Id. ¶ 164–69.
70. Id. ¶ 183.
71. Id. ¶ 187.
72. Id. ¶ 188–89.
73. Id. ¶ 189.
74. Id. ¶ 176; see also H. Rep. No. 116-335.
75. Statement of Facts ¶ 176; see also H. Res. 755.
76. Statement of Facts ¶ 178; H. Res. 755.
78. Id.
79. Id.
80. Id.
81. Id.
82. Id.
83. Id.
84. Id.
85. Id. at 8.
funds.

needs to evaluate the legality of the hold
have not provided the information GAO
the Department of Defense. The opinion ex-

of the H. Comm. of the Judiciary to Accompany
Impeachment of Judge Alcee L. Hastings: Report
Comm. on the Articles Against Judge G. Thomas

change for Ukraine's assistance with his re-

Trump's actions relating to the FBI's inves-
tigation of Robert Blair and OMB official Mi-
technical support to Ukraine in exchange for

funds. The Obama administration announced

in the alternative, for an after-the-fact justifica-
tion for the President's withholding of security
assistance. Ambassador Bolton's testimony
would likewise be illuminating in this regard given public reporting of his repeated,
yet unsuccessful, efforts to convince the
President to lift the hold.

See id. at 1172.

Id. at 54. As noted above, the testimony
of Messrs. 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 withholding of security
assistance. Ambassador Bolton's testimony
would likewise be illuminating in this regard given public reporting of his repeated,
yet unsuccessful, efforts to convince the
President to lift the hold.

See id. at 1172.

Id.

Id. at 194.

See Statement of Facts § 177.

See id. § 169.


Id. § 186–87.

Id. ¶ 186.

Id. ¶ 190 & nn.309–10.

H. Res. 755, at 8.

The Federalist No. 69 (Alexander Ham-
ilton).

See Statement of Facts §§ 184 & nn.296–
97.

Id. ¶ 45. As noted above, the testimony
of Messrs. Mulvany, Blair, and Duffey would
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for the President's withholding of security
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would likewise be illuminating in this regard given public reporting of his repeated,
yet unsuccessful, efforts to convince the
President to lift the hold.

See id. at 1172.

Id.

Id.

corp., 204 F.3d 1125, 1135 (D.C. Cir. 2000).

See, e.g., In re Sealed Case, 121 F.3d 729,
738 (D.C. Cir. 1997); Statement of Facts §§ 173 &
n.380.

See H. Res. 755, at 7.

220. 2 Farrand at 67.

221. The Federalist No. 66 (Alexander Ham-
ilton).


224. See, e.g., Statement of Facts §§ 163; see
also U.S. Const., Art. I, § 2, cl. 5.

225. Statement of Facts §§ 163; 165 Cong.
Rec. E1357 (2019) (Impeachment Inquiry Proce-
dures in the Committee on the Judiciary Pursuant
to H. Res. 660); Investigatory Powers of the Comm. on the Judiciary with Respect to its


227. Impeachment Inquiry: Hearings Before
the H. Comm. on the Judiciary, Book 1, 93d
Cong. 497 (1974) (statement of Chairman
Percy W. Rodino, Jr.).

228. See Statement of Facts §§ 192; Def.'s
Mot. to Dismiss, or in the Alternative, for
Summ. J. at 20, Kuppeman v. U.S. House of
Representatives, No. 19–3224 (D.D.C. Nov. 14,
2019), ECF No. 40; Def.'s and Def.-Intervenors'
Mot. to Dismiss at 4, 22–24, Comm. on Ways &
Means v. U.S. Dep't of the Treasury, No. 19–
197 (D.D.C. Sept. 6, 2019), ECF No. 44; see also
Brief for Def.-Appellant at 2, 3233, Comm. on
the Judiciary v. McGahn, No. 19–5331 (D.C. Cir.
Dec. 9, 2019).

229. See also Statement of Facts ¶ 164 (“I
have an Article II, where I have the right to
do whatever I want as president.”).

230. See id. ¶¶ 192 & n.316.

231. H. Res. 755, at 5.


233. Id. ¶ 13.
In re Impeachment of President Donald J. Trump

STATEMENT OF MATERIAL FACTS—ATTACHMENT TO THE TRIAL MEMORANDUM OF THE UNITED STATES HOUSE OF REPRESENTATIVES IN THE IMPEACHMENT TRIAL OF PRESIDENT DONALD J. TRUMP

INTRODUCTION

The U.S. House of Representatives has adopted Articles of Impeachment charging President Donald J. Trump with abuse of office and obstruction of Congress. The House’s Trial Memorandum explains why the Senate should convict and remove President Trump from office, and permanently bar him from government service. The Memorandum relies on this Statement of Material Facts, which summarizes key evidence relating to the President’s misconduct.

As further described below, and as detailed in House Committee reports, President Trump used the powers of his office and U.S. taxpayers’ money to pressure a foreign country, Ukraine, to interfere in the 2020 U.S. Presidential election on his behalf. President Trump’s goals—embraced by multiple U.S. officials who testified before the House—were simple and starkly political: he wanted Ukraine’s new President to announce investigations of his political rivals and assist his 2020 reelection campaign and tarnish a political opponent, former Vice President Joseph Biden, Jr. As leverage, President Trump illegally withheld nearly $400 million in vital military and other security assistance that had been appropriated by Congress, and an official White House meeting that President Trump had promised Volodymyr Zelensky, the newly elected President of Ukraine. President Trump did this despite U.S. national security officials’ unanimous opposition to withholding the aid from Ukraine, placing his personal and political interests above the national security interests of the United States and undermining the integrity of our democracy.

When this scheme became known and Committees of the House launched an investigation, the President, for the first time in American history, ordered the categorical obstruction of an impeachment inquiry. President Trump directed that no witnesses should testify and no documents should be produced in the House, a co-equal branch of government endowed by the Constitution with the “sole Power of Impeachment.”

President Trump’s conduct—both in soliciting a foreign country’s interference in a U.S. election and then obstructing the ensuing investigation into that interference—was consistent with his prior conduct during and after the 2016 election.

STATEMENT OF MATERIAL FACTS

I. President Trump’s Abuse of Power

A. The President’s Scheme To Solicit Foreign Interference in the 2020 Election From the New Ukrainian Government Begun in Spring 2019

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

2. When President Trump congratulated Zelensky later that day, President Trump did not raise any concerns about corruption in Ukraine, although his staff had preparedPosition his remarks for him recommending that he do so, and the White House call readout incorrectly indicated he did.3

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.”

4. Both events would have demonstrated strong support by the United States as Ukraine fought a war—and negotiated for peace—with Russia.4

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

1. On April 21, 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 said that the President would attend the inauguration “if the dates worked.” 5

2. 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.6

3. 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 efforts.7

4. 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.8

C. The President’s Scheme For His Personal Benefit Continued

1. 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.9

2. 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.”10

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

1. Shortly after his April 21 call with President Zelensky, President Trump began to pressure his Attorney General for investigations into his political adversary, former Vice President Biden, who he wanted Ukraine to pursue. On April 25—the day that former Vice President Biden announced his candidacy for the Democratic nomination for President—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.11
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 biggest problem we have.” Mr. Giuliani acknowledged that “[s]omebody could say it’s improper” to pressure Ukraine to open investigations that would benefit President Trump’s re-election chances.

“[T]his isn’t foreign policy—I’m asking them to do an investigation that they’re doing already, and other people are asking them to stop. And I’m going to give them reasons why they shouldn’t stop it because that information will be very, very helpful to my client, and may turn out to be helpful to my government, as well.”

Ukraine was not, in fact, “already” conducting these investigations. As described below, the Trump Administration repeatedly tried but failed to get Ukrainian officials to instigate these investigations. According to Mr. Giuliani, the President supported his actions, stating that President Trump “basically knows what I’m doing, sure, as his lawyer.”

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 “personal counsel to President Trump,” Mr. Giuliani wrote that he “represent[ed] him [President Trump] and with his knowledge and consent.” Mr. Giuliani requested a meeting with President Zelensky the following week to discuss “anti-corruption reforms.”

On the evening of Friday, May 10, however, Mr. Giuliani announced that he was canceling his trip to Kyiv “at the last minute” and had “decided not to go” to Ukraine “because I’m walking into a group of people that are enemies of the President.”

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.

The U.S. delegation—which also included Ambassador to the European Union Gordon Sondland, special envoy for Ukraine Negotiations Kurt Volker, and NSC Director for Ukraine Lieutenant Colonel Alexander Vindman—turned around in the delegation and instructed that President Zelensky was genuinely committed to anti-corruption reforms.

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 any other relevant Executive Branch officials. Mr. Giuliani also testified that he “represented” (that is, coordinated with) the President and was “acquainted with” Ukrainian officials, that a White House meeting would not occur until Ukraine announced the result of the two political investigations.

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

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.” Ambassador Sondland similarly testified that the agenda described by Mr. Giuliani became more “insidious” over time.

Mr. Giuliani would promote in his communications with the President’s National Security Advisor Ambassador John Bolton told a colleague, a “hand grenade that was going to blow everyone up.”

C. The President Focussed on Military and Other Security Assistance for Ukraine

Since 2014, Ukraine has been engaged in an ongoing armed conflict with Russia in the Donbas region of eastern Ukraine. Ukraine is a “strategic partner of the United States,” and the United States has long supported Ukraine in its conflict with Russia. As Ambassador Volker and multiple other witnesses testified, supporting Ukraine is “critically important” to U.S. national security interests because, “if Russia were to blow everyone up,” the United States would have to either “redeploy its own forces” into the region or “find a way to support the military and the security forces of Ukraine, and . . . remilitarize our own forces, which the United States has not done since World War II.”

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.

On June 19, the Office of Management and Budget (OMB) instructed the White House to remove $411 million from President Trump about the funding for Ukraine. OMB, in turn, made inquiries with DOD.

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 “[e]xpect Congress to become unhinged” if the President held back the appropriated funds.

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

On July 3, OMB issued the release of $341 million in State Department funds. By July 12, all military and other security assistance for Ukraine was provided.

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. No explanation for the hold was provided.

On July 25—approximately 90 minutes after the OMB announcement—the President met with President Zelensky—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 sensitivity of the request, please be sure that 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 and had fifteen meetings. At each of these meetings, a number of facts became clear: (1) the President personally directed the hold through OMB; (2) no credible justification was provided for the hold; (3) with the exception of OMB, all relevant agencies supported the Ukraine security assistance because, among other things, it was in the national security interests of the United States; and (4) there were serious concerns about the legality of the hold.

Although President Trump later claimed that the hold was part of an effort to get European allies to share more of the costs for security assistance for Ukraine, official statements by the security assistance providers testified they had not heard that rationale discussed in June, July, or August. For example, Mark Sandy, OMB’s Deputy Associate Director for Circulars and Policy, testified that he was never asked to reach out to the EU or its member states to ask them to increase their contribution because, among other things, it was never part of OMB’s legal counsel, ultimately resigned, in part, over concerns about the handling of the hold.

Two OMB career officials, including one with official national security policy toward Ukraine. GAO stated that “[f]aithful execution of the law does not permit the President to substitute his own policy priorities for those that Congress has enacted into law.”

In late August, officials from DOD warned officials from OMB that, as the hold continued, there was an increasing risk that the funds for Ukraine would not be timely obligated, in violation of the Impoundment Act. The President, in violation of the Impoundment Act, ensured the President’s support for the hold.

On August 30, however, an OMB official advised a Pentagon official by email that there was a “clear direction from POTUS to continue the hold on Ukraine through August and into September, without any credible explanation.”

D. President Trump Conditioned a White House Meeting on Ukraine Announcing It Would Launch Politically Motivated Investigations

Upon hearing about this discussion, Deputy Assistant Secretary of Defense Laura Cooper, whose responsibilities were to arrange for the phone call with President Trump of his willingness to undertake the investigations in order to get the White House meeting scheduled, testified that she participated in or knew of in August 2019.24 In addition, while the hold was in place, Ambassador Volker told Sondland, the U.S. Ambassador to the EU, never asked to reach out to the EU or its member states to ask them to increase their contribution.

54. Both Ambassadors Volker and Sondland explicitly communicated this quid pro quo to Ukrainian government officials. For example, on July 2, in Toronto, Canada, Am- bothAmbassadors Volker and Sondland explicitly communicated this quid pro quo to Ukrainian government officials. For example, on July 2, in Toronto, Canada, Ambassador Volker conveyed the message directly to President Zelensky and referred to the “Giuliani factor” in President Zelensky’s engagement with the United States.267 The email—and other correspondence with public officials to arrange a telephone call between President Trump and President Zelensky. They also worked to ensure that, during that phone call, President Zelensky would confirm President Trump’s willingness to undertake the investigations in order to get the White House meeting scheduled.

On July 19, Ambassador Volker had breakfast with Mr. Giuliani at the Trump Hotel in Washington, D.C. After the meeting, Ambassador Volker reported back to Ambas-ador Sondland that he and Mr. Giuliani had a very good conversation with Mr. Giuliani, stating, “Most imp is for Zelensky to say that he will help investigation—and address any specific personnel issues—if there are any.”

The same day, Ambassador Sondland spoke with President Zelensky and recommended that the Ukrainian leader tell President Trump that he will leave no stone unturned regarding the investigations during the upcoming Presidential phone call.

Following his conversation with Presi- dent Zelensky, Ambassador Sondland emailed top Trump Administration officials, including Secretary Pompeo, Mr. Mulvaney, and Secretary Perry. Ambassador Sondland stated that President Zelensky confirmed that he would “assure” President Trump that “he intends to run a fully transparent investigation,” and “we have no stone unturned.”

Secretary Perry responded to Ambas-ador Sondland’s email confirming the call being set up for tomorrow by NSC.” About an hour later, Mr. Mulvaney replied, “I asked NSC to set it up for tomorrow.”
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 liked it.”

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 20, just a day after the President’s most direct request for an investigation, Ambassador Sondland reported 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 was leading in a potential head-to-head contest against President Trump.

71. Meanwhile, Ambassadors Sondland and Volker continued to prepare President Zelensky for President Trump’s upcoming call, which President Trump called to press the need for an investigation. President Zelensky expressed support for Ukraine’s anti-corruption reform and the ongoing war with Russia. The President’s solicitation of an investigation was “inauspicious” because it “appeared to be a domestic political matter.”

72. The President did not mention any other issues relating to Ukraine, including concerns about Ukrainian corruption, President Zelensky’s anti-corruption reforms, or Russian interference in the 2016 election. The President only identified two people in reference to investigations: Vice President Biden and his son.

73. Listening to the call, several White House staff members became alarmed. Lt. Col. Vindman immediately reported his concerns to his superiors, 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 politician.”

74. Jennifer Williams, an advisor to Vice President Pence, testified that the call ‘shocked 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.”

75. Timotheus Hertog, the 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 a political agenda that I was hoping to hear.” He too reported the call to NSC lawyers, worrying that the call would be “damaging” if leaked publicly.

76. 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 contain any highly classified information.

77. 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 wanted “going to do the investigation.” Ambassador Sondland stated that President Zelensky was “going to do it” and would “do anything you ask him.”

78. After the call, it was clear to Ambassador Sondland that “a public statement from President Zelensky committing to the investigation” would “reboot of US-UKRAINE relationship, including the investigation.”

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. Yermak] will be able to travel to Ukraine and we will meet once he comes to Ukraine.”

80. Later in the call, President Zelensky asked President Trump to request that the investigation be made public. President Sondland and Volker thanked President Trump for his invitation to the White House and then reiterated that, “[o]n this other hand,” he would “енefy that Ukraine pursued “the investigation” that President Trump had requested. President Zelensky confirmed the investigations should be done “openly.”

81. During the call, President Trump also attacked Ambassador Yovanovitch. He said, “I don’t want to be used as a pawn in a U.S. reelection campaign.”

82. The President did not mention any other issues relating to Ukraine, including concerns about Ukrainian corruption, President Zelensky’s anti-corruption reforms, or Russian interference in the 2016 election. The President only identified two people in reference to investigations: Vice President Biden and his son.

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88. After the call, it was clear to Ambassador Sondland that “a public statement from President Zelensky committing to the investigation” would “reboot of US-UKRAINE relationship, including the investigation.”

89. The Ukrainian government was aware of the hold by at least late July, around the time of President Trump’s July 25 call with President Zelensky. On the day of the call itself, DOD officials learned that diplomats at the Ukrainian Embassy in Washington, D.C., had made multiple overtures to DOD and the State Department “asking about security assistance.”

90. Around this time, two different officials at the Ukrainian Embassy approached Ambassador Volker to ask the special advisor to ask her about the hold.

91. By mid-August, before the hold was public, Lt. Col. Vindman also received inquiries from the Ukrainian Embassy. Ambassador Volker testified that during this time-frame, “It was no secret, at least within government and official channels, that security assistance was on hold.”

92. The former Ukrainian deputy foreign minister, Olena Zerkal, has acknowledged that she became aware of the hold on security assistance no later than July 30 based on a diplomatic cable—transmitted the previous week—from Ukrainian officials in Washington, D.C. She said that President Zelensky’s office had received a copy of the cable “simultaneously.” Ms. Zerkal further stated that President Zelensky’s top advisor, Andriy Yermak, told him to keep it secret because it was about the hold or about when the Ukrainian government became aware of it.

93. In early August, Ambassador Sondland and Volker, in coordination with Mr. Giuliani, endeavored to pressure President Zelensky to make a public statement announcing the investigations. On August 10, in a text message that showed the Ukrainians’ understanding of the quid pro quo—President Zelensky’s advisor, Mr. Yermak, told Ambassador Volker that, once a date was set for the White House meeting, he would “call for a press briefing, announcing upcoming visit and outlining vision for the US-UKRAINE relationship including among other things Burisma and election meddling investigations[.]”

94. On August 11, Ambassador Sondland emailed two State Department officials, one of whom acted as a direct line to Secretary Pompeo, to inform them about the agreement for President Zelensky to issue a statement that would include confirmation of the two investigations. Ambassador Sondland stated that he expected a draft of the statement to be “delivered for our review this [or] tomorrow,” and added that the statement would “make the boss [i.e., President Trump] happy enough to authorize an invitation” for a White House meeting.

95. On August 12, Ambassador Volker sent an email to an official in the President’s Office with an initial draft of the statement. The draft referred to “the problem of...”
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.”

79. The next day, Ambassadors Volker and Sondland discussed the draft statement with Mr. Giuliani, who told them, “If the statement is not mine and Mr. Zelensky’s, 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 important to the President.”

80. Ambassador Volker and Sondland re-launched Mr. Yermak and explained that he had made a “mistake” in telling Ukrainian officials 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.”

81. Vice President Pence told President Zelensky that he would speak with President Trump that evening. Although Vice President Pence had made clear he supported a White House visit, the President still did not lift the hold.

82. Following the meeting between Vice President Pence and President Zelensky, Ambassador Sondland pulled aside President Zelensky’s advisor, Mr. Yermak, to explain that “the resumption of U.S. aid would like-ly not occur,” and that it was “just as valuable to the Ukrainians as the actual dollars.”

83. The next day during a call with Mr. Morrison, President Zelensky and Mr. Yermak had told them that “although this was not a quid pro quo, if Zelensky does something up in public, we would be at a stalemate”—meaning “Ukraine would not receive the much-needed military assistance.”

144. The White House subsequently confirmed that the release of the security assistance had been conditioned on Ukraine’s announce-ment of the investigations. During a White House press conference on October 17, Ambassador of Special U.S. Policy for Ukraine, Groves, had noted that he had discussed security assistance with the President and that the President’s decision to withhold it was directly tied to his desire to investigate alleged Ukrainian interference in the 2016 U.S. election.

145. After a reporter attempted to clarify this explicit acknowledgement of a “quid pro quo,” Mr. Mulvaney replied, “We do that all the time with foreign policy.” He added, “I have news for everybody: get over it. There is going to be political influence in foreign policy.”

146. Multiple foreign policy and national security officials testified that the pursuit of investigations into the Bidens and alleged Ukrainian interference in the 2016 election had been “a key factor” in the Trump Administration’s decision to withhold aid.

147. As Ambassador Sondland relayed later that day during a call with Mr. Morrison, President Trump had told him that there was no “quid pro quo, but President Zelensky must announce the opening of the investigations and he should want to do it.”

148. At Ambassador Bolton’s direction, Mr. Morrison reported Ambassador Sondland’s description of the President’s statements to the NSC lawyers.

149. In early September, President Zelensky agreed to do a televised interview, during which he publicly announced the investiga-tions. The Ukrainians made arrange-ments for the interview to occur on CNN later in September.

150. The White House subsequently con-firmed that the release of the security assistance had been conditioned on Ukraine’s announce-ment of the investigations. During a White House press conference on October 17, Ambassador of Special U.S. Policy for Ukraine, Groves, had noted that he had discussed security assistance with the President and that the President’s decision to withhold it was directly tied to his desire to investigate alleged Ukrainian interference in the 2016 U.S. election.

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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.

125. 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 or instructed 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.

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.207 The same day, the Committees sent document production and interview requests to the White House and the State Department.

127. NCS staff members believed that the Congressional investigation “might have the effect of preserving the hold on Ukraine’s military assistance, because it would have been “potentially politically challenging” to “justify that hold.”208

128. On September 12, the ICIG notified Congress of the whistleblower complaint.209 The ICIG further stated that the Acticiary’s 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.210

129. The ICIG further stated that the Acting Director of National Intelligence (DNI) had told them the unprecedented step of withholding the whistleblower complaint from Congress.211 It was later revealed that the Acting DNI had done so as a result of communications with the White House and the Department of Justice.212 The next day, September 13, Chairman Schiff wrote to Acting DNI Joseph Maguire to express his concern about what he termed the “unprecedented departure from past practice” in withholding the whistleblower complaint and observed that the “failure to transmit to the Committee any urgent and credible whistleblower complaint, as required by law, raises the specter that an urgent matter of a serious nature is being purposefully concealed from Congress.”

130. The White House was aware of the contents of the whistleblower complaint since at least August 26, when the Acting DNI informed White House Counsel Pat Cipollone and Mr. Eisenberg reportedly briefed President Trump on the whistleblower complaint.213 The August 25 White House Counsel had contacted the FBI

131. On September 11—two days after the ICIG announced the opening of the investigation—President Trump lifted the hold on security assistance.214 Cipollone had signaled the President’s 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.215

132. Because of the hold the President placed on U.S. assistance to Ukraine, DOD was unable to spend approximately $35 million—or 14 percent—of the funds appropriated by Congress for fiscal year 2019.216

133. On the one hand, a new law was needed to extend the funding in order to ensure the full amount could be used by Ukraine to defend itself.217 Still, by early December 2019, Ukraine had not received approximately $20 million of the military assistance.218

134. Although the hold was lifted, the White House still did not announce a date for President Zelensky’s meeting with President Trump, and there were indications that President Zelensky’s interview with CNN would still occur.219

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 President Trump was going.”220

136. Additional details about this call were provided to the House by Vice President Pence’s advisor, Jennifer Williams, but were classified by the Committee on Intelligence.221

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

138. On September 19, at the urging of Ambassador Taylor,222 President Zelensky cancelled the CNN interview.223

139. On September 19, in remarks at the opening of the General Assembly, President Trump stated: “What Joe Biden did for his son, that’s something they [Ukraine] should be looking at.”

140. On September 24, during remarks at the swearing-in of the Acting White House Deputy Chief of Staff, President Trump stated: “Now, the new President of Ukraine ran on the basis of no corruption. But in a moment, 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 it.”224

141. On September 28, during remarks at the swearing-in of the Acting White House Deputy Chief of Staff, President Trump stated: “I want him to do whatever he can” in reference to the investigation of the Bidens.225

142. On October 3, when asked by a reporter what he had hoped President Zelensky would do following their July 25 call, President Trump responded: “Well, I would think that, if they were honest about it, they’d start a major investigation into the Bidens. It’s a very simple answer.”226

143. The President also suggested that “China should start an investigation” into what he claimed had happened in China is just about as bad as what happened with—with Ukraine.227

144. On October 4, President Trump equated his “own statements about these efforts further prove the investigations President Trump wanted.”228

145. On October 7, in a meeting with Ukrainian officials he was visiting on behalf of his client, President Trump: “I[like a good lawyer, I am gathering evidence to defend my client against the false charges being leveled against him.”

146. During his trip to Ukraine, on December 3, Mr. Giuliani tweeted: “The conversations regarding anti-corruption reforms were 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 the U.S. assistance to Ukraine in response to its anti-corruption reforms.”229 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 investigation: that U.S. assistance to Ukraine could be in jeopardy until Ukraine investigated Vice President Biden.

147. Mr. Giuliani told the Wall Street Journal that when he returned to New York on December 7, President Trump called him as his plane was still taxiing down the runway.

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 had gathered to the Attorney General and Congress.230

149. On December 17, Mr. Giuliani confirmed that President Trump has been “very involved in the criminal investigation” to dig up dirt on Vice President Biden in Ukraine and that they are “on the same page.”
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. For example, in 2016, Ambassador Volker advised Mr. Yermak against the Zelensky Administration conducting an investigation into President Zelensky’s own former political rival, former Ukrainian President Poroshenko. When Ambassador Volker raised concerns about such an investigation, Mr. Yermak retorted, “What, you mean like asking for ‘dirt’ on Clinton?”240 Ambassador Volker offered no response.241

151. Mr. Holme, a career diplomat, highlighted this hypocrisy: “While we had advised our Ukrainian counterparts to voice a commitment to following the rule of law and generally investigating credible corruption allegations in the United States, the Trump Campaign ‘expected it would benefit internationally from information stolen and released through Russian efforts.’”242

152. As a Presidential candidate, Mr. Trump repeatedly sought to benefit from Russia’s actions to help his campaign. For example, during a public rally on July 27, 2016, Mr. Trump responded to the emails hacked by Russian intelligence to solicit an investigation of his political rival, former Ukrainian President Petro Poroshenko, to solicit an investigation of his political opponent have undermined U.S. credibility.243

153. During his 2020 U.S. presidential election to help his re-election campaign in the United States, the Trump Campaign “expected it would benefit internationally from information stolen and released through Russian efforts.”244

154. Days earlier, WikiLeaks had begun releasing emails and documents that were stolen by Russian military intelligence services in order to damage the Clinton campaign.245 WikiLeaks released hundreds of thousands of documents through October 2016.246 Then-candidate Trump repeatedly applauded and sought to capitalize on WikiLeaks’s releases of thousands, even when Russia’s involvement was heavily reported by the press.247 Members of the Trump Campaign also planned messaging and communications strategies around releases by WikiLeaks.248 In the last month of the campaign, then-candidate Trump publicly referred to the emails hacked by Russia and disseminated by WikiLeaks over 150 times.249

155. Multiple members of the Trump Campaign used additional channels to seek Russia’s assistance in obtaining damaging information for example, by reaching out to key representatives of the Trump Campaign—including the Campaign’s chairman and the President’s son—met with a Russian attorney in June 2016 who had offered to provide damaging information about Clinton from the Russian government.250 A foreign policy advisor to the Trump Campaign also met repeatedly with people connected to the Russian government and their associates, one of whom claimed to have “dirt” on Clinton in the form of “thousands of emails.”251

156. Even Special Counsel Mueller released his report, President Trump confirmed his willingness to benefit from foreign election interference. When asked dur-
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-related issues with the President in advance of the July 25th call 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.

176. On December 3, 2019, the Intelligence Committee transmitted a detailed nearly 300-page report documenting its findings about unlawful efforts by the President and about the related investigation into it, to the Judiciary Committee.294 The Judiciary Committee held public hearings evaluating the constitutionality of the President’s order and identified the subpoenas—regardless of the citation of the House Deposition Rules—seeking or subpoenaed to the White House, the Department of State, DOD, or the Department of Energy in order, not a single document has been produced.295

177. The President maintained his obstructionist position throughout this process, declaring the House’s investigation “illegitimate” and refusing to devolve or even “cooperate” with respect to the investigation.296 By and by threatening and threatening an anonymous Intelligence Community whistleblower as well as the patriotic public servants who honored their subpoenas and testified before the House.297

178. On December 18, 2019, the House voted to impeach President Trump and adopted two Articles of Impeachment.298

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.299

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.300

181. In its response, the Office of the Vice President echoed Mr. Cipollone’s assertions that the impeachment inquiry was procedural and illegal, in “particular”297 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.298

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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 the citation of the House Deposition Rules—seeking or subpoenaed to the White House, the Department of State, DOD, or the Department of Energy in order, not a single document has been produced.295

187. This administration-wide effort to prevent witnesses from providing testimony was coordinated and comprehensive. In total, twelve current or former Administration officials either ignored the House’s impeachment inquiry into the Ukrainian matter or refused to testify when subpoenaed.301 As Mr. Cipollone stated, “Of the 17 people involved in the Russian scandal, 16 of them were under compulsion to not testify.302

188. House Committees conducted depositions or transcribed interviews of seventeen witnesses.306 All members of the Committees—as well as staff from the Majority and the Minority—were permitted to attend. The Majority and the Minority were allotted an equal amount of time to question witnesses.307

189. In late November 2019, twelve of these witnesses testified in public hearings convened by the Intelligence Committee, including three witnesses called by the Minority.308

190. Unlike witnesses who were subpoenaed to testify, President Trump resorted to intimidation tactics to penalize them.309 He also levied sustained attacks on the anonymous whistleblower.310

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 Special Counsel Mueller’s investigation of Russia’s interference in the 2016 election and of the President’s own misconduct.

192. President Trump repeatedly used his powers of office to undermine and derail the Mueller investigation, particularly after the conclusion of Special Counsel Mueller;312 instructed Mr. McGahn to create a record and issue statements falsely denying this event;313 sought to curtail Mueller’s investigation by misleading the American people about the investigation agenda at home and to encourage Russian President Putin to take seriously President Zelensky’s peace efforts.”348

193. Special Counsel Mueller’s investigations into the House’s investigation of Russia’s interference in the 2016 election—the President coordinated with a foreign government in order to obtain an improper advantage during a Presidential election.287 And the Mueller investigation—like the House’s impeachment inquiry—exposed President Trump’s eagerness to benefit from foreign elections.287

194. In the latter, he attempted 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.


6. Apr. 21 Memorandum, supra note 2, at 3–4.


8. Id.


10. Transcript, Deposition of David A. Holmes Before the H. Permanent Select Comm. on Intelligence, 116th Cong. 18 (Nov. 19, 2019) (Holmes Dep. Tr.); see also Transcript, Deposition of John T. Sullivan Before the H. Permanent Select Comm. on Intelligence, 116th Cong. 18 (Nov. 19, 2019) (Sullivan Dep. Tr.).


12. Transcript, Deposition of Fiona Hill Before the H. Permanent Select Comm. on Intelligence, 116th Cong. 64-65 (Oct. 14, 2019) (Hill Dep. Tr.); see also Transcript, Deposition of David A. Holmes Before the H. Permanent Select Comm. on Intelligence, 116th Cong. 18 (Nov. 19, 2019) (Holmes Dep. Tr.); see also Transcript, Deposition of John T. Sullivan Before the H. Permanent Select Comm. on Intelligence, 116th Cong. 18 (Nov. 19, 2019) (Sullivan Dep. Tr.).
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/M3AS-DWML; see, e.g., id. at 11 ("We assess Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the US presidential election. Russian efforts were designed to undermine democracy and undermine faith in the US democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency. We further assess the Russian Government developed a clear preference for President-elect Trump. We have high confidence in these judgments.

24. Senate Select Comm. on Intelligence, Russian Active Measures Campaigns and Interference in the 2016 U.S. Election, Vol. II (May 8, 2019), https://perma.cc/96EC-22RU; see, e.g., id. at 4–5 ("The Committee found that the [Russian-based Internet Research Agency (IRA)] sought to influence the 2016 U.S. presidential election by harming Hillary Clinton’s chances of success and supporting Donald Trump at the direction of the Kremlin. . . . The Committee found that the Russian government sought to interfere in the 2016 U.S. election.").


27. Hill-Holmes Hearing Tr. at 40–41, 56–57.

29. See, e.g., Giuliani Plans Ukraine Trip to Push for Interrogations That Could Help Trump, N.Y. Times (May 9, 2019) (Giuliani Interview Tr.); Transcript, Deposition of Laura Cooper Before the H. Permanent Select Comm. on Intelligence 16, 38, 98 (Oct. 16, 2019) (Cooper Dep. Tr.) ("[A]s I testified previously . . . Mr. Bossert.


32. Telegram, Krasolutske, et al., Ukraine Prosecutor Says No Evidence of Wrongdoing by Bidens, Bloomberg (May 16, 2019), https://perma.cc/YX8U-U33C (quoting Yurii Lutsenko, Ukraine’s former prosecutor-general; "Hunter Biden did not violate any Ukrainian laws—at least as of now, we do not see any wrongdoing. A company can pay however much it wants. Biden was dealing in these transactions, but not involved. . . . We do not have any grounds to think that there was any wrongdoing starting from 2014 [when Hunter Biden joined Burisma]."


Military Aid Concerned Members of Congress for Months, CNN (Sept. 30, 2019), https://perma.cc/5CHP-HFKJ; Sandy Dep. Tr. at 38–39 (describing July 12 email from White House). President is directing a hold on military support funding for Ukraine.

81. See Sandy Dep. Tr. at 96; Hill Dep. Tr. at 226; Kent Hearing Tr. at 16; Vindman Dep. Tr. at 153–54.
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 [redacted] et al. (July 25, 2019, 11:04 AM), https://perma.cc/PG93-3M6B.
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 61.
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 make sure that the monies were spent to help manage that corruption.” Morrison Dep. Tr. at 165. Mr. Morrison did not testify that concerns about Europe’s contributions were raised during 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 264.
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 money.”
90. Morrison Dep. Tr. at 43.
91. Morrison, Dep’t of Def., Letter from John C. Rood, Under Sec’y of Def. for Pol’y, Dep’t of Def., to Sec’y of Def. for Pol’y, Dep’t of Def. (Oct. 1, 2019), https://perma.cc/4TU8-H7UR.
93. Sandy Dep. Tr. at 44–45, 106–107; Taylor-Kent Hearing Tr. at 37; Morrison Dep. Tr. at 43.
94. Sandy Dep. Tr. at 42–43.
95. Croft Dep. Tr. at 75–76.
96. Cooper Dep. Tr. at 91.
98. Sandy Dep. Tr. at 149–55.
100. See, e.g., id. at KV0000037. 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-4H9S ("As 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.").
126. See, e.g., id. at KV0000019; July 25 Memorandum at 3-4, https://perma.cc/8JRD-6KPV.


128. Sondland Hearing Tr. at 53-54.

129. Volker Text Messages at KV0000019.

130. Sondland Hearing Tr. at 53-55.

131. See July 25 Memorandum at 2, https://perma.cc/8JRD-6KPV.

132. Id. at 3-4; 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) (Trump: “I have a very special relationship with Ukraine.”). Yet the Democrats did not contest telling Mr. Holme’s “clear impression was that the security assistance was going to remain frozen.”


134. Id. at 34; Williams Dep. Tr. at 148-49.

135. Vindman-Williams Hearing Tr. at 15.

136. Morrison Dep. Tr. at 41.

137. Id. at 43.

138. Id. at 43, 47-50; see also Vindman Dep. Tr. at 49-51, 119-22.

139. Holmes Dep. Tr. at 24.

140. See, e.g., Cooper-Hale Hearing Tr. at 13-14; Vindman-Williams Hearing Tr. at 22; Sandy Dep. Tr. at 59-60.

141. Cooper-Hale Hearing Tr. at 13-14.

142. Croft Dep. Tr. at 86-88.

143. Vindman-Williams Hearing Tr. at 222.


145. Id. (quoting Ms. Zerkal).

146. Id. (quoting Ms. Zerkal’s summary of a statement by Mr. Yermak).

147. Volker Text Messages at KV0000019.

148. Sondland Opening Statement at 22, Ex. 7; Sondland Hearing Tr. at 28, 102.

149. Volker Text Messages at KV0000020.

150. Volker Interview Tr. at 113.

151. Sondland Hearing Tr. at 18.

152. Volker Text Messages at KV0000023. Ambassador Volker claimed he “stopped pursuing” the statement from the Ukrainians around this time because of concerns raised by Mr. Yermak. Ambassador Kurt Volker, Testimony Before the House of Representatives Committee on Foreign Affairs, Permanent Select Committee on Intelligence, and Committee on Oversight & Government Operations (Oct. 3, 2019) (Volker Opening Statement), https://perma.cc/9DDN-2WFW; Volker Interview Tr. at 44-45, 199; Volker-Morrison Hearing Tr. at 21.

153. See, e.g., Sondland Opening Statement at 16 (“[My goal, at the time, was to do whatever was necessary to get the aid released, to break the logjam. I believed that the public scrutiny would be damaging for weeks was essential to advancing that goal.”).
277. id.
281. YBLIR; Letter from Robert R. Hood, Assistant Sec'y of for Legislative Affairs, Dep't of Def., to Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence, et al. (Oct. 15, 2019), https://perma.cc/7SGZ-8SGM.
284. Id. (quoting Secretary Rick Perry).
293. Letter from Matthew E. Morgan, Counsel to the Vice President, to Chairman Eliah E. Cummings, House Permanent Select Comm. on Oversight and Reform, et al. (Oct. 15, 2019), https://perma.cc/L6LD-CHYM.
294. See Letter from Jason Yaworske, Assoc. Dir. for Legislative Affairs, Office of Mgmt. & Budget, to Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence, et al. (Nov. 4, 2019), https://perma.cc/4AYC-8SD9 (asserting OMB’s “position that, as directed by the White House Council of Economic Advisers on October 8, 2019, OMB will not provide documents in this partisan and unfair inquiry,” and that three OMB officials would therefore decline to appear for the OMB’s deposition).
296. See id. at 193–206 (describing and quoting from correspondence with each witness who refused to appear).
297. See H. Rep. No. 116–346, at 200, 365; see, e.g., Letter from Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence, et al., to Michael Duffy, Assoc. Dir. for Legislative Affairs, Office of Mgmt. & Budget (Oct. 25, 2019), https://perma.cc/SSSB-FHF4; Email from Daniel S. Noble, Senior Investigative Counsel to the Special Counsel on Intelligence, to Mike Pianalto, Acting Chief of Staff to the Pres. (Nov. 7, 2019), https://perma.cc/A6P-5A7N.
298. See, e.g., Letter from Brian Buitalau, Under Sec’y of State for Mgmt., Dep’t of State, to Lawrence S. Robbins, Counsel to Ambassador Marie Yovanovitch 1 (Oct. 10, 2019), https://perma.cc/48UC-KJCM (“I write on behalf of the Department of State, pursuant to the President’s instruction reflected in Mr. Cipollone’s letter, to authorize subpoenas and testify about his concerns that the Department has the authority to compel an appearance by Mr. Cipollone’s letter, not to appear before the Committees.”); id. at 3–19 (enclosing Mr. Cipollone’s letter); Letter from David L. Norquist, Deputy Sec’y of Def., Dep’t of Def., to Daniel Levin, Counsel to Assistant Deputy Sec’y of Def. Laura K. Cooper 1–2 (Oct. 22, 2019), https://perma.cc/281L-GRUS.
300. See, e.g., Letter from Pat A. Cipollone, Counsel to the President, to William Burck, Counsel to Deputy Counsel to the President for Nat’l Security Affairs John Eisenberg (Nov. 5, 2019), https://perma.cc/5ACG.
301. See, e.g., Letter from Jason A. Yaworske, Associate Dir. for Leg. Affairs, Office of Mgmt. & Budget, to Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence (Nov. 4, 2019), https://perma.cc/4AYC-8SD9 (asserting OMB’s “position that, as directed by the White House Council of Economic Advisers on October 8, 2019, OMB will not provide documents in this partisan and unfair inquiry,” and that three OMB officials would therefore decline to appear for the OMB’s deposition).
303. See id. at 193–206 (describing and quoting from correspondence with each witness who refused to appear).
304. See H. Rep. No. 116–346, at 200, 365; see, e.g., Letter from Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence, et al., to Michael Duffy, Assoc. Dir. for Legislative Affairs, Office of Mgmt. & Budget (Oct. 25, 2019), https://perma.cc/SSSB-FHF4; Email from Daniel S. Noble, Senior Investigative Counsel to the Special Counsel on Intelligence, to Mike Pianalto, Acting Chief of Staff to the Pres. (Nov. 7, 2019), https://perma.cc/A6P-5A7N.
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1. By limiting impeachment to cases of "Treason, Bribery, or other High Crimes and Misdemeanors," the Framers restricted impeachment to specific offenses against "alleged violations of existing law—indeed, criminal law." House Democrats' newly invented "abuse of power" theory collapses at the threshold: it fails to allege any violation of law whatsoever.

2. House Democrats' concocted theory that the President lacked "lawful cause or excuse" to impeach a duly elected President. By contrast, upon tallying their votes, House Democrats jeered until they were scolded into silence by the Speaker. The aliens here violated every precedent and every principle of fairness followed in impeachment inquiries for more than 150 years. Even so, all that House Democrats have succeeded in proving is that the President did absolutely nothing wrong.

After focusing testing various charges for weeks, House Democrats settled on two flimsy Articles of Impeachment that allege no crime or violation of law whatsoever—much less "high Crimes and Misdemeanors"—as required by the Constitution. They do not remotely approach the constitutional threshold for removing a President from office. The Articles of Impeachment would permanently weaken the Presidency and forever alter the balance among the branches of government in a manner that offends the constitutional design established by the Founders. House Democrats jettisoned all precedent and principle because their impeachment inquisition was never really about discovering the truth or conducting a fair investigation. Instead, House Democrats were determined from the outset to find some way—any way—to corrupt the extraneous mechanics of impeachment for use as a political tool to overturn the result of the 2016 election and to interfere in the 2020 election. All of this is a dangerous perversion of the Constitution that the Senate should swiftly and roundly condemn.

I. The articles fail because they do not identify any impeachable offense

A. House Democrats' Theory of "Abuse of Power" Is Not an Impeachable Offense

House Democrats' Constitutional theory of "abuse of power" improperly supplants the standard of "high Crimes and Misdemeanors" with a made-up theory that would permanently weaken the Presidency by perpetuating impeachments based merely on policy disagreements.

1. The President lacked "lawful cause or excuse" to impeach a duly elected President. By contrast, upon tallying their votes, House Democrats jeered until they were scolded into silence by the Speaker. The aliens here violated every precedent and every principle of fairness followed in impeachment inquiries for more than 150 years. Even so, all that House Democrats have succeeded in proving is that the President did absolutely nothing wrong.

2. Defending the separation of powers is not an impeachable offense.

Contrary to House Democrats' claims, accepting that unprecedented approaches to the articles of impeachment now before the Senate are unconstitutional. In a government of laws, asserting legal defenses cannot be treated as obstruction; it is a fundamental right. As the Supreme Court has instructed: "[F]or an agent of the Executive Branch to pursue a course of conduct that objective is to penalize a person's reliance on his legal rights is patently unconstitutional." The same principles apply in the House, where a Speaker has already opined that the proceedings are "unlawful" and "unconstitutional."
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 of Impeachment 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 “ investigative” powers that the House has voted to delegate authority to the committee.2 Here, it was emblematic of the lack of seriousness that characterized this process that House Democrats cast law and history aside and started their purported inquiry with nothing more than a press conference.22 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 conference room by 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 to the public versions of the secret testimony to compliant 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 represented in his defense, nor could he present evidence or witnesses, and could not cross examine witnesses. This process not only violated every precedent from the Nixon and Clinton impeachment inquiries, it violated every principle of justice and fairness known to our legal tradition. 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 Democrats 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 would not get them there.

When the impeachment stage-show moved on to the Judiciary Committee, House Democrats again denied the President his rights. The Committee had already decided 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 fair trial. The constitution’s demand that evidence that did not matter, the process was rigged, and impeachment was a pre-ordained result.

22. This reflected shameful hypocrisy from House Democrat leaders, who for decades had insisted on the importance of due process protections in an impeachment inquiry. Chairman Nadler himself has explained that a House impeachment inquiry “demands a rigorous level of due process.”26 Specifically, the “investigation process must mean[s] . . . the right to confront the witnesses against you, to call your own witnesses, and to have the assistance of counsel.”28 Here, the process rights were denied to the President.

3. Chairman Schiff’s hearings were fatally defective for another reason—Schiff himself was in the room. He was paramount to create the false 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 contention after a 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 ICIG, the same person secretly shared his false account with Chairman Schiff’s HPSCI staff and asked “for guidance.”29 Here, Chairman Schiff was forced to admit that his staff had conferred with the so-called whistleblower before he filed his complaint. But the President never conferred with Schiff and his staff in playing out the complaint that launched this entire farce remains shrouded in secrecy to this day. By the time the Chairman Schiff shut down every effort to inquire into it.

4. The denial of basic due process rights to the President is such a fundamental error in factoring the House proceedings that the Senate could not possibly rely upon the corrupted House record to reach a verdict of conviction. As counsel to a defendant, 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 providing a “do-over” and developing the record itself.

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

House Democrats resorted to these unprecedented procedures because the goal was never to get to the truth. The goal was to impeach the President, no matter the facts. House Democrats’ 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 been going on for 22 months. . . . [t]wo and a half years, actually.”30 The moment the President was sworn in, the Washington Post reported that partisans had launched an investigation into him.31 The current proceedings began with a complaint prepared with the assistance of a lawyer who declared in 2017 that he would use “impeachment to effect a ‘coup’.”32 House Democrats originally pinned their impeachment hopes on the lie that the Trump Campaign had colluded with Russia during the President’s first term to bring the country the Mueller investigation. But after almost two years, $32 million, 2,800 subpoenas, and nearly 500 search warrants—along with incalculable damage to the Nation—the Mueller investigation thoroughly disproved Democrats’ Russian collusion 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 use it to obtain incriminating—including admissions and even outright lies to the Foreign Intelligence Surveillance Court and the fabrication of evidence by a committed party.33

House Democrats could not tolerate the findings of the Mueller Report debunking the collusion myth. Instead, they launched hearings and issued subpoenas strain to find wrongdoing where Special Counsel Mueller and the Department of Justice had found none. And they launched investigations, trying to rummage through the President’s tax returns and pushing fishing expeditions everywhere in the hope that they might find something. No other President has been subjected to a comparable barrage of investigations, subpoenas, and lawsuits, all in service of an inarticulate partisan desire to find any way to remove the President from office.

When those proceedings went nowhere, House Democrats seized on the next vehicle that could be twisted to carry their impeachment dream: a perfectly appropriate telephone call between President Trump and the President of Ukraine. House Democrats have pursued their newly concocted charges for two reasons. First, they have been obsessed with years for overturning the 2016 election. Radical left Democrats have never been able to come to grips with losing the election, and impeachment provides them a way to nullify the judgment of the tens of millions of voters who rejected their candidate. Second, they want to use impeachment to interfere in the 2020 election. It is no accident the impeachment is held under a presidential impeachment during an election year. Put simply, Democrats have no re- source to defeat the President—a re- member in restoring prosperity to the American economy, rebuilding America’s military, and confronting America’s adversaries abroad. Instead, they are held hostage by a radical left wing that has foisted on their party an agenda of socialism at home and appeasement abroad that Democrat leaders know will lose the American people.

For the Democrats, impeachment became an electoral imperative. Congressional Al Green summarized that thinking best: “[W]e defend the President by impeaching the [President], he will get re-elected.”34 In their scorched-earth campaign against the President, House Democrats view impeachment merely as the continuation of politics by other means.

The result of House Democrats’ pursuit of their obsessions—and their willingness to sacrifice every precedent and every principle standing in their way—is exactly what the Framers warned against: a wholly partisan impeachment. These articles were adopted without a single Republican vote. Indeed, there was bipartisan opposition to them.35 Democrats used to recognize that the mo- mentum of our electoral system is to elect by impeaching a President should never be done on a partisan basis. As Chairman Nadler explained:

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 poison our political system for years to come, and will call into question the very legitimacy of our political institutions.36

Senator Patrick Leahy agreed: “A partisan impeachment—cannot command the respect of the American people. It is no more valid than a stolen election.”37 Chairman Nadler, again, acknowledged that merely “having an impeachment” was not enough. “No other President in history has been impeached, without the “legitimacy of a national consensus,” is just an attempted “partisan coup d’etat.”38 Just last year, even Speaker Pelosi acknowledged that an impeachment “would have to be so clearly bipartisan in terms of acceptance of it.”39 All of these prior invocations of principle have now been all but ignored, adding to the sense that the wake of House Democrats’ impeachment at- all-costs strategy.
III. Article I fails because House Democrats have no evidence to support their claims

A. The Evidence Shows That the President Did Not Condition Security Assistance or a Presidential Meeting on Announcements of Any Investigations

House Democrats have falsely charged that the President supposedly conditioned military aid or a presidential meeting on Ukraine’s announcements of investigations. Yet despite running an entirely exeptional, one-sided process to gather evidence, House Democrats do not have a single witness who can swear under direct oath, knowledge, that the President ever actually imposed such a condition. Several undoubted, core facts make clear that House Democrats’ charges are baseless.

1. In an unprecedented display of transparency, the President released the transcripts of three meetings he had with Ukrainian officials, one the day after each transcript was completed—no one sided process, no withholding of evidence by any branch of government, and not even after a Politico article was published on August 28, 2019—over a month after the July 25 call and barely two weeks before the aid was released on September 11.

2. President Zelensky, his Foreign Minister, and other Ukrainian officials have repeatedly said there was no quid pro quo and no preconditions by any branch of government.

3. President Zelensky, his senior advisers, and House Democrats’ own witnesses have all confirmed that Ukraine’s senior leaders did not seek the aid and was paused until after a Politico article was published on August 28, 2019—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 entirely on: (i) statements from Ambassador to the European Union Gordon Sondland that he had come to believe (before talking to the President) that the aid was a quid pro quo and that the President was giving aid to investigations, and (ii) hearsay and speculation from others such as Volodymyr Zelensky, and it shows that the President did nothing wrong. The Department of Justice reviewed the transcript months ago and rejected the suggestion that the President ever actually imposed such a condition.

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

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 “corrections of longstanding concerns” and that the only reason for raising them was “to obtain an improper personal political benefit.” But that is obviously not so. Even if the President had raised those issues, there were legitimate reasons to do so.

1. Uncovering potential foreign interference in U.S. elections is always a legitimate goal, whatever the source of the interference and whether or not it fits with Democrats’ preferred narrative about 2016. House Democrats acknowledge that raising historical questions about the last election somehow equates to securing “improper interference” in the next election is nonsensical. Asking about the past cannot be twisted into interference in a future election. Even if facts uncovered about conduct in the last election were to have some impact on the next election, uncovering historical facts is not improper interference. Nor can House Democrats self-servingly equate asking any questions about Ukraine with advocating for the ouster of an official who was defeated in 2016.

2. Actors in more than one country can interfere in an election at the same time, in different ways and for different purposes.ident would have been improper. But former Vice President Biden did not immunize his past conduct (or his son’s) from all scrutiny simply by declaring his candidacy for the presidency.

Importantly, even under House Democrats’ theory, mentioning the matter to President Zelensky would have been entirely justified as long as there was evidence that it 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 acted in 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 possible grounds for conviction. The problem with offering such a menu of options is that, for a valid conviction, the Constitution requires two-thirds of Senators present to vote guilty on the specific ground for conviction. A vote on these articles, however, cannot ensure that a two-thirds majority agreed on a particular ground for conviction. Instead, a Senate vote on these articles would instead rest on a vote of a majority of members of each chamber, and thus votes resting on several different theories, no single one of which would have garnered two-thirds support if it had been presented separately. This structural defect cannot be remedied by dividing the different allegations within each article for voting, because
that is prohibited under Senate rules. 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 "perpetuation of an intemperate or设计的 majority in the House of Rep- presentatives" was a real danger in impeachments, and Jefferson acknowledged that impeachment provided "the most formidable weapon to enforce the supremacy of the Constitution over the House of Representa- tives" was a real danger in impeachments, and Jefferson acknowledged that impeachment provided "the most formidable weapon to enforce the supremacy of the Constitution over the House of Representa- tives."48 That is why the Framers entrusted the trial of impeachments to the Senate, an institution that, as the Senate saw the House as a "tribunal—removed from popular power and passions . . . and from the more dangerous influence of mere party spirit," and guided by "the deep responsibility to decide for itself all matters of law and fact bearing upon this trial."49 These decisions include whether the accusation presented by the House is sufficiently serious, and whether the President has breached the Constitution in issuing an impeachable offense. The Framers knew that the Senate had the power to try presidential impeachments and that this power was inherent in the Constitution's system of government.

A. The Senate Must Decide All Questions of Law and Fact.

The Constitution grants the Senate the power to "try all Impeachments."69 Under that charge, the Senate is instructed that "[w]here general words follow the specific offenses "Treason" and "Bribery,""70 the Senate may also support the argument that impeachments must be evaluated in terms of offenses against settled law. The Constitution refers to "Conviction" for impeachable offenses twice and "Judgment" once in Articles I and II.71 It directs the Senate to "try all Impeachments,"72 and requires the Chief Justice's participation when the Presi- dent is tried.73 The Framers clearly intended that high Crimes and misdemeanors be defined as "Crimes" and "Offenses" in the Jury Trial Clause and the Pardon Clause, respectively.74 Those are all words that indicate violations of established law.

The Framers likely intended for the Constitution’s use of the term “high” in the Impeachment Clause is also significant, and may reflect a concern with the common law definition of “high” crimes described in the text. Whether the Congress should supplant the will expressed by tens of millions of voters by removing the President from office is a question of breath- taking, momentous proportion.75 That question requires a clear understanding of the limits the Constitution places on what counts—and what does not count—as an impeachable of- fense.

1. Text and Drafting History of the Impeachment Clause.

Fearful that the power of impeachment might be abused, and recognizing that constitutional protections were required for the Executive, the Framers crafted a limited power of impeachment.76 The Constitution restricts impeachments to enumerated offenses: "Treason, Bribery, or other high Crimes and Misdemeanors."77 Treason and bribery are well defined offenses and are not at issue in this case. The operative text here is the more general adjective "other" to describe "high Crimes and Misdemeanors."78 The structure and language of the clause—the use of the adjective "other"—indicates that the "other high Crimes and Misdemeanors" in a list immediately following the specific offenses "Treason" and "Bribery"—calls for applying the ejusdem generis canon of interpretation. This canon instructs that "[w]here general words follow specific words in a statutory enumera- tion, the general words are construed to em- brace only objects sufficiently similar to those objects enumerated by the preceding specific words."79 Under that principle, "other high Crimes and Misdemeanors" must be understood to have a "limited, "techni- cal meaning.""80 In England, "high Crimes and Misdemeanors" referred to offenses that could be the subject of impeachment in parliament. No less an authority than Black- stone defined "high treason" to include only offenses against the "au- thority of the executive power of the king and his government," calling it the "highest civil crime."81 In addition, "high Crimes and Misdemeanors" had a technical meaning in English law,82 and there is evidence that the Framers were aware of this "limited, "technical meaning."83 In England, "high Crimes and Misdemeanors" referred to offenses that could be the subject of impeachment in parliament. No less an authority than Black- stone defined "high treason" to include only offenses against the "au- thority of the executive power of the king and his government," calling it the "highest civil crime."84 In addition, "high Crimes and Misdemeanors" had a technical meaning in English law,85 and there is evidence that the Framers were aware of this "limited, "technical meaning."86

The Framers considered a number of questions regarding the Constitution’s use of the term “other high Crimes and Misdemeanors” suggests that impeachment under the Constitution could reach offenses that are no more serious than a known offense defined in existing law.

Significantly, the records of the Constitu- tion’s Convention also indicate that, in important respects, the Framers extended the scope of impeachable offenses under the Constitution to be much narrower than under English practice. When the draft Constitu- tion had limited the grounds for impeach- ment to “Treason, or bribery,”92 George Mason argued that the provision was too narrow because “[a]ttempts to subvert the Constitution may not be Treason” and that the clause “will not reach many great and dangerous offenses.”93 He proposed the addi- tion of "maladministration," which had been a ground for impeachment in English practice. Madison opposed that change on the ground that it "[s]o vague a term" would make the President subject to “a tenure dur- ing [the] pleasure of the Senate,”94 and the Convention agreed on adding “other high crimes & misdemeanors” instead.95

By rejecting “maladministration,” the Framers significantly narrowed impeachment under the Constitution and made clear that impeachment was not a tool for adjusting political differences, making policy decisions, or perceiving misjudgments cannot constitutionally be used as the basis for impeachment. Indeed, at various earlier points in the debate over the Constitution had included as grounds for impeach- ment “malpractice or neglect of
duty”97 and “neglect of duty [and] malversation,”98 but the Framers rejected all of these formulations. The ratification debates confirmed the point that differences of opinion over differences over policy could not justify impeachment. James Iredell warned delegates to North Carolina’s ratifying convention that “[a] mere difference of opinion is not intended for the basis of impeachment.”99 The Framers intended to confer illimitable power to remove the head of the co-equal Executive Branch.100

Second, the terminology of “high Crimes and Misdemeanors” makes clear that an impeachment must arise from violations established law. The Impeachment Clause did not confer upon Congress a roving license to make up its own mind about what conduct by presidential officials and to permit removal from office merely on a conclusion that conduct was “bad” if there was not an existing law that said so.101

Third, by establishing that “other” impeachable offenses must fall in the same class as the specific offenses of “treason and bribery” the Framers intended to establish a requirement of particularly egregious conduct threatening the constitutional order. Justice Story recognized that “[o]ur history establishes that, as applied, the constitutional standard for impeaching the President has been distinctive, and properly so.”102

3. Practice Under the Impeachment Clause

The practical application of the Impeachment Clause by Congress supports the conclusion that an impeachable offense requires especially egregious conduct that threatens the viability of the constitutional order and, specifically, the Constitution’s role in the structure of the government. As “the grounds for the expulsion of the one President committed an impeachable offense be-

C. The Senate Cannot Convict Unless It Finds that the House Managers Have Proven 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 only if they are convinced beyond a reasonable doubt that the President committed an impeachable offense beyond a reasonable doubt.

As the Supreme Court has recognized in the Clinton impeachment, “[i]n making a decision of this magnitude, it is best not to err
The strength of our Constitution and not make the decision to remove a President from office. As Senator Barbara Mikulski put it then: “The U.S. Senate must not make the decision to remove a President based on the charge of treating the charges 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 “sole Power to try all Impeachments.”138 An impeachment is literally a “charge” of particular wrongdoing. 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 to the Senate.139 Those trying the case in the Senate must be confined to the specific conduct alleged in the Articles of Impeachment.

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, and not of finding the president guilty of something not charged by the House, any more than a trial jury can find a defendant guilty of something not charged in the indictment.” No 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.”140 As the Supreme Court has explained, it has been the rule for over 130 years that “the defendant must be permitted a reasonable opportunity to be tried on charges that are not made in the indictment against him.”141 Doing so is “fatal error.”

Under these 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, 2019.142 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, Chairman of the House Permanent Select Committee on Intelligence (HPSCI) raising complaints about the call.143 Although it is known that Chairman Schiff’s staff provided the IC staffer with “guidance,”144 the substance 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 the President’s “rebellion” to remove the President from office.145 On August 12, 2019, the IC staffer filed a complaint about the July 25 telephone call with the Inspector General of the Intelligence Community (IC)—the so-called whistleblower.146 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.”147

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” based on the anonymous complaint about the July 25 telephone call. There was no vote by the House to authorize such an inquiry.148

On September 25, pursuant to a previous announcement,149 the President declassified and released the complete record of the July 25 call.150

On September 26, HPSCI held its first hearing regarding the whistleblower complaint.151 And just one week later, on October 3, Chairman Schiff began a series of secret, closed-door hearings regarding the IC staffer some “guidance,” the extent of which had no first-hand knowledge of the call.152

On November 13, HPSCI held the first of seven public hearings featuring some of the witnesses who had already testified in secret. At this stage, too, the President and his counsel were not permitted to participate. HPSCI released a report on December 3, 2019.153

On December 4, the House Judiciary Committee held its first hearing, which featured presentations solely from fact witnesses.154 The President and his counsel were not permitted to participate. Hence, the Articles of Impeachment transpired.

On December 9, four days after Speaker Pelosi announced that articles of impeachment would be drafted, the Judiciary Committee held its first hearing, which featured presentations solely from staff members from HPSCI and the Judiciary Committee.155 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,156 and the Committee approved the articles on December 13 on a party-line vote.157

On December 18, 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.158

House Democrats justified their unseemly haste by claiming they had to move forward “without delay” lest the President would allegedly “continue to threaten the Nation’s security, democracy, and constitutional system if he is allowed to remain in office.”159 In fact, however, as soon as they had voted, they decided that there was no urgency at all. House Democrats took a leisurely four weeks to complete the formal process 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.160

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

1. The Articles Fail to State Impeachable Offense as a Matter of Law

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

The Framers’ standard for impeaching a President for “abuse of power” as a supposedly impeachable offense is constitutionally defective. It supplants the Framers’ standard of “high Crimes and Misdemeanors,”161 which requires a violation of established law 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 unspecified “forbidden reasons.”162 The Framers’ standard that requires a violation of established law to state an impeachable offense based on subjective motive alone:

House Democrats cannot salvage their unprecedented “abuse of power” standard with fuzzy claims that the Framers particularly intended impeachment to address “foreign entanglements” and “corruption of elections.”163 The Framers’ standard was designed to constrain the power of impeachment.

Under the Constitution, impeachable offenses must be defined under established law. And they must be based on objective wrongdoing. That is true even if the impeachment proceedings are conducted by a hostile faction in the House and superimposed upon a President’s entirely lawful conduct.

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 should 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 foul of some ill-defined conception of “abuse of power” finds no support in the text or history of the Impeachment Clause. As explained above,164 by limiting impeachment to cases involving “Treason, Bribery, and other high Crimes and Misdemeanors,”165 the Framers restricted impeachment to specific offenses against “already known and established law.”166 That was the Framers’ deliberate design to constrain the power of impeachment.167 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.168 As many constitutional scholars have recognized, the Framers were concerned with protecting the presidency from the encroachments of Congress...but 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 “hold [impeachments] as a rod over the Executive and by that means effectually destroy his independence.”175 One key voice at the Constitutional Convention, James Madison, 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 him dependent on the Legislature.”176 To limit the impeachment power, Morris argued that only “acts of the President, and not the conduct or speeches of the President, ought to be impeachable,” and the “cases ought to be emergerated & defined.”177

Indeed, the debates over the text of the Impeachment Clause clearly implicated 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 “[a] vague term will be equivalent to a tenor during [the] tenure of the Senate.”179 Madison rightly feared that a nebulous standard could allow Congress to “prosecute that against the President merely based on policy differences, making it function like a parliamentary no-confidence vote. That would cripple the independence of the Executive and reconstitute 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, summarized the framers’ 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 thereson 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 turns on a subjective intent.”182 In fact, they conspicuously fail to provide any citation for that assertion. Nowhere have they identified any contemporaneous definition delimiting this purportedly “well-defined” offense.

Nor can House Democrats shore up their theory by invoking English practice.183 According to the House Democrats, 400 years of parliamentary history suggests that the particular offenses charged in English impeachments can be abstracted into several categories, including one involving abuse of power.184 From there, they jump to the conclusion that “abuse of power” itself can be treated as an offense and that any fact pattern that could be described as showing abuse of power can be treated as an impeachable offense. But that entire methodology is antithetical to the approach the Framers used to give the impeachment power. The Framers sought to confine impeachable offenses within known bounds to protect the Executive from arbitrary exercises of power.185

In contrast, the Framers expressly rejected vague standards such as “maladministration” that had been used in England in order to constrain the impeachment power. Specifically, the Framers rejected vague standards involving general categories from ancient English cases and using those categories as the labels for new, more nebulously defined “offenses” is precisely counter to what the Framers’ approach. As the Republican minority on the House Judiciary Committee has repeatedly explained, “[t]he whole tenor of the Framers’ discussions, the whole purpose of their many careful departures from English impeachment practice, is the direction of limits and of standards.”186

House Democrats’ theory also has no foundation in the history of presidential impeachments. The House Judiciary Committee has never impeached a President of the United States without alleging a violation of law—indeed, a crime. The articles of impeachment that Clinton was charged with specified charges of perjury and obstruction of justice, both felonies under federal law.187 In the Nixon impeachment inquiry, the articles approved by the House Judiciary Committee accused the President of obstructing justice, among multiple other violations of the law. And as explained above,188 the impeachment of President Johnson provides the clearest evidence that a presidential impeachment requires alleged violations of existing law. When the House Judiciary Committee voted to impeach Johnson in 1867 based on allegations that included no violations of law, the House rejected the recommendation. A majority in the House voted to impeach President Clinton in 1998 based on articles of impeachment that did not include any specified charges of perjury or obstruction of justice, both felonies under federal law.189

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The Framers did not intend to expand the impeachment power indefinitely by allowing Congress to attack objectively lawful presidential conduct based solely on inquiries into subjective intent. Under the Framers’ plan, impeachment was intended to apply to objective wrongdoing as identified by Congress. As noted above, the Framers rejected maladministration as a ground for impeachment precisely because it was “(b) House Democrats’ unprecedented theory of impeachable offenses defined by subjective intent alone would permanently weak- en the presidency. House Democrats’ conception of “abuse of power” is especially dangerous because it rests on the even more radical claim that a President can be impeached and removed from office if he is “allowed to do, if he did it for the “wrong” subjective reasons. Under this view, impeach- ment can turn entirely on whether the President acted, on what he actually in his mind at the time, were legitimate.”192 That standard is so malleable that it would permit a partisan House—like this one—to attack virtually any presidential decision by questioning a President’s motives. By elimin- ating any requirement for wrongful conduct, House Democrats have tried to make thinking the wrong thoughts an impeachable offense.

House Democrats’ theory of impeachment based on subjective intent would be so vague and malleable that even highly permissible actions could lead to impeachment of a President (and potentially removal from office) based solely on a hos- tilizing the President.193 The Framers’ 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 jus- tice.194

House Democrats justify their focus on subjective motives based largely on a cherry- picked quotation from James Iredell made in the North Carolina ratification debates.195 Iredell observed that “the President would be liable to impeachment [if] . . . he had acted from some corrupt motive or other.”196 But nothing in that general statement suggests that Iredell—let alone the framers or those who ratified the Constitution in the states—subscribed to House Democrats’ current theory treating impeachment as a roving li- dership an impeachment standard. Such a stand- ard would be so vague and malleable that even highly permissible actions could lead to impeachment of a President and potentially removal from office solely on a hos- tilizing the President.195 The Framers’ 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.194

House Democrats exploit the尼克松弹劾案例，但该案例与本文所述不同。尼克松因滥用权力而被弹劾，但滥用权力在当时的法律框架内并不是一种罪行。在尼克松案中，众议院议长委员会最终没有对总统提出任何指控，因为没有足够的证据。相反，众议院的多数派在弹劾程序中提出了更多的指控，包括妨害司法和妨碍调查等。虽然这些指控在法律上是成立的，但它们并没有涉及到尼克松滥用权力的罪行。

在弹劾总统的过程中，众议院的多数派建议将总统弹劾到最高法院。然而，最高法院最终裁定总统不能被弹劾，因为总统在职务期间不能被弹劾。这一裁决对当时的宪法解释和弹劾程序产生了影响，直到1998年克林顿案。克林顿案中，众议院的多数派弹劾了克林顿总统，但参议院最终裁定总统无罪。

总的来说，本文探讨了弹劾总统的标准和界限，以及这些标准在实际操作中的应用。本文指出，滥用权力不是一个明确的罪名，它在法律上的定义和实施都受到了限制。滥用权力的标准在历史上也是一个模糊的概念，它被用来攻击总统的政策和行为，而不是具体的法律行为。因此，本文认为滥用权力的标准是一个危险的工具，因为它可能会被用来攻击总统的任何决策，而不仅仅是那些明显违反法律的决策。
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.” Nevertheless, it was widely believed that the House might impeach President Nixon because of his alleged conspiracies, and many of his actions might be interpreted, by the malignity of party, into a deliberate, wicked action. That he, argued, should not be a basis for impeachment.

House Democrats’ assertions that past presidential impeachments provide support for the House’s abuse-of-power theory—subjective-motives-alone theory are also wrong. 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—borders, “excessive and frivolous” or “unbridled power” or framed the charge in those terms. And it is simply wrong to say that the theory underlying the proposal of the article 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, which breaches the law. It claimed that President Nixon “violated the constitutional rights of citizens,” “contemporary and unambiguous embrace of the executive branch,” and “authorized and permitted to be maintained a secret investigative unit within the office of the President to unlawfully utilize the resources of the Central Intelligence Agency, [and] engaged in covert and unlawful activities.” 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 charged the violation of the Tenure of Office Act. 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, Reconstruction was actually a better reason to impeach him. For support, House Democrats cite a recent book co-authored by one of their leaders, Robert McElvaine. This is nonsense. Nothing in the Johnson impeachment involved charging the President with taking objectively permissible action for the wrong subjective reasons. Johnson was impeached for violating a law passed by Congress. Moreover, President Johnson was acquitted, despite whatever subjective motives he might have had. House Democrats cannot conjure a precedent out of thin air by simply imagining that the Johnson impeachment articles said something they said.

If the Johnson impeachment established any precedent relevant here, it is that the House refused to impeach the President until he was clearly violated the letter of the law. As one historian has explained, despite widespread anger among Republicans about President Johnson’s handling of Reconstruction, until Johnson violated the Tenure of Office Act, “[t]he House had refused to impeach him . . . at least in part because its obvious motives did not believe he had committed a specific violation of law.” Second, House Democrats’ theory raises particular problems because it misidentifies a “political benefit” as one of the “forbidden reasons” for taking government action. 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, the interests of the American people might reasonably be a motivating factor for the President’s actions. But it is not accurate to say that the President potentially consider the effect of his actions on the upcoming election. And there is nothing wrong with that.

By making “personal political gain” an illicit motive for official action, House Democrats’ radical theory of impeachment would permit—or require—the House to remove virtually any President by questioning the extent to which his or her action was motivated by political considerations rather than the Constitution. None of this has any basis in the constitutional text, which specifies particular offenses as impeachable conduct. Just as importantly, these theories would turn on unanswerable questions that ultimately reduce to policy disputes—exactly what the Framers saw as an impermissible basis for impeachment. For example, if it is impeachable conduct to act with too much of a view toward electoral results, how much of a focus on electoral results is too much, even accurately measured? And how accurately can the House or another branch of government disqualify a President’s actual motives? And how does one measure presidential motives? And what standard of a “right” policy result uninfluenced by considerations of political gain? That question, of course, quickly boils down to nothing more than the right policy in the first place. None of this provides any permissible basis for impeaching a President.

Third, any theory of impeaching a President on the ground that his or her foreign policy has not conformed 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 believe he is determined to disrupt the foreign policy status quo. He promised a new, “America First” foreign policy that would “drastically reduce” our commitments to NATO, China, Israel, 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 a purported “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 those who drafted the impeachment to guard against “foreign entanglements” and “corruption” of elections are makewights 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 Constitution. This novel accounting of the concerns animating the impeachment power conveniently allows House Democrats to claim that their allegations just happen to prove the perfect storm of impeachable conduct, as if their accusations show that “President Trump has realized the Framers’ worst nightmare.” That is, the President’s policies, far from consistent with the Constitution, were concerned about the possibility of treason and the danger that foreign princes with vast treasuries at their disposal might actually invade the United States. The fledgling, debt-ridden republic situated on the seaboard of a vast wilderness continent—most of which was still claimed by European powers—would be vulnerable to an attack. Their worst nightmare was not the President of the United States-as-supercpower having an innocuous conversation with the President of a smaller nation. It was the United States.”

3. House Democrats’ theory of impeachment 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. This ensures that the people will regularly and frequently have a say in the administration’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.

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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 historical analysis is baseless and provides 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 confuses two different concepts—entangling the country in disputes between European powers buying influence—and contorted to reach a particular ratchet to protect Executive Branch confidentiality interests.248 And House Democrats turn the law on its head with their unprecedented claim that it is “obstruction” for anyone to assert executive branch confidentiality interests to establish the validity of its subpoenas in court.249 House Democrats’ radical theories are especially misplaced where, as here, the legal positions invoked by the President and other Administration officials are critical for preserving the separation of powers—and based on advice from the Department of Justice.

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 treat itself as a court of law, independent of the President, and to compel the Executive with the power to make foreign policy to turn over documents and testimony without regard to a decision by the courts.250 And House Democrats turn the law on its head with their unprecedented claim that it is “obstruction” for anyone to assert executive branch confidentiality interests to establish the validity of its subpoenas in court.249 House Democrats’ radical theories are especially misplaced where, as here, the legal positions invoked by the President and other Administration officials are critical for preserving the separation of powers—and based on advice from the Department of Justice.

Second, House Democrats’ articles of impeachment rest on a non sequitur. They essentially say that the President’s actions or inactions are impeachable because they “correspond” with the Founders’ concerns about foreign influence and foreign entanglements.239 But the Framers feared, and contended to reach a particular ratchet to protect Executive Branch confidentiality interests.248 And House Democrats turn the law on its head with their unprecedented claim that it is “obstruction” for anyone to assert executive branch confidentiality interests to establish the validity of its subpoenas in court.249 House Democrats’ radical theories are especially misplaced where, as here, the legal positions invoked by the President and other Administration officials are critical for preserving the separation of powers—and based on advice from the Department of Justice.

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In the end, House Democrats’ historical arguments rest on a non sequitur. They essentially argue that because the Framers showed concern about foreign influence and foreign entanglements,239 they feared, and contended to reach a particular ratchet to protect Executive Branch confidentiality interests.248 And House Democrats turn the law on its head with their unprecedented claim that it is “obstruction” for anyone to assert executive branch confidentiality interests to establish the validity of its subpoenas in court.249 House Democrats’ radical theories are especially misplaced where, as here, the legal positions invoked by the President and other Administration officials are critical for preserving the separation of powers—and based on advice from the Department of Justice.

Second, House Democrats’ articles of impeachment make no allegations under any of these specific offenses for the types of foreign interference that they feared, there is no reason to think that the Impeachment Clause must be stretched and contorted to reach a particular ratchet to protect Executive Branch confidentiality interests.248 And House Democrats turn the law on its head with their unprecedented claim that it is “obstruction” for anyone to assert executive branch confidentiality interests to establish the validity of its subpoenas in court.249 House Democrats’ radical theories are especially misplaced where, as here, the legal positions invoked by the President and other Administration officials are critical for preserving the separation of powers—and based on advice from the Department of Justice.

The President’s proper concern for requiring the House to proceed by lawful measures and for protecting long-settled Executive Branch confidentiality interests is simply misplaced.250 For example, the Supreme Court has explained, the privilege protecting the confidentiality of presidential communications is “fundamental to the operation of the executive office, and protects in the separation of powers under the Constitution.”249 For future occupants of the Office of President, it was essential for the President, like past occupants of the Office, to comply with Executive Branch confidentiality against House Democrats’ overreaching initiatives.

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1. President Trump acted properly—and upon advice from the Department of Justice—by refusing to comply with subpoenas issued pursuant to a purported “impeachment inquiry” before the House of Representatives had authorized any such inquiry.251 Numerous witnesses and documents have been produced by the House of Representatives in response to these demands. The belated adoption of House Resolution 660 on October 31, 2019, purportedly to advance an “impeachment inquiry,” was unauthorized and invalid.252 The belated adoption of House Resolution 660 on October 31, 2019, purportedly to advance an “impeachment inquiry,” was unauthorized and invalid.252 The belated adoption of House Resolution 660 on October 31, 2019, purportedly to advance an “impeachment inquiry,” was unauthorized and invalid.252 The belated adoption of House Resolution 660 on October 31, 2019, purportedly to advance an “impeachment inquiry,” was unauthorized and invalid.252 The belated adoption of House Resolution 660 on October 31, 2019, purportedly to advance an “impeachment inquiry,” was unauthorized and invalid.252
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 2017, the House Democratic Steering and Policy Committee agreed that “[i]n the modern era, the impeachment process begins in the House of Representatives only after the House has voted to authorize the Judiciary Committee to investigate whether charges are warranted.” As current Judiciary Committee member Rep. Hank Johnson said in 2019, “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 “continue their investigation and did not even purport to ratify retroactively the nearly two dozen invalid subpoenas issued before it was adopted, as OLC has explained. 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.”
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 Compelled Congressional Testimony

The President also properly directed his senior advisers not to testify in response to subpoenas. Those subpoenas suffered from a second problem: they were unenforceable because the President’s senior advisers are immune from compelled testimony before Congress. Consistent with the longstanding understanding that the President’s Executive Branch, OLC advised the Counsel to the President that those senior advisers (the Acting Chief of Staff, the Legal Advisor to the National Security Council, and 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 2014. Similarly, during the Clinton administration, Attorney General Janet Reno told the White House that the President are immune from being compelled to testify before Congress, and that “the immunity such advisers enjoy from testifying before Congress is not waivable by a duly constituted 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 involves.”

This immunity exists because senior advisers “function as the President’s alter ego.” Allowing Congress to summon the President’s senior advisers is tantamount to permitting Congress to subpoena the President, which would be intolerable under the Constitution: “Congress may no more 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, specifically identified documents that House Democrats sought, including “briefing materials for President Trump,” a “presidential decision memo,” and presidential call records.

Courts have long recognized constitutional limits on Congress’s ability to obtain presidential communications document subpoena power without the President’s written consent to such a subpoena. As the Supreme Court has explained, executive decision-making requires the candid exchange of ideas, and “[h]uman experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests in maintaining the decision-making process.” Protecting the confidentiality of communications ensures the President’s ability to receive candid advice. This confidentiality is particularly justified where a senior official’s “duties concern national security” or “relations with a foreign government.” The Supreme Court has explained in United States v. Nixon, the “courts have traditionally shown the utmost deference to Presidential responsibilities for foreign policy and national security, and claims of privilege in this area thus receive a higher degree of deference than invocations of “a President’s generalized interest in confidentiality.”

The House’s inquiry involved communications with foreign leaders and members of the administration, Attorney General Janet Reno told the White House, “The President’s powers under the Constitution are greater and his obligation to protect internal Executive Branch deliberations more profound.” The House also improperly forced the Executive Branch to protect its Executive Privilege

Second, House Democrats were seeking declassified communications, for instance, the committees requested White House documents reflecting internal deliberations about foreign aid, the delegation to President Zelensky’s inauguration, and potential meetings with foreign leaders. Courts have long recognized that the “deliberative process privilege” applies across the Executive Branch and protects “materials that would reveal advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” The privilege prevents “injury to the quality of agency decisions by allowing government officials freedom to debate alternative approaches in private.”

Third, House Democrats were seeking materials reflecting the President’s discussions with foreign leaders. Courts have long recognized that “Executive Branch’s ability to protect its national security communications concerning Ukraine.” OLC has established that “immunity is particularly justified” where a senior official’s “duties concern national security.”

The House’s inquiry involved communications with foreign leaders and members of the administration, Attorney General Janet Reno told the White House, “The President’s powers under the Constitution are greater and his obligation to protect internal Executive Branch deliberations more profound.” The House also improperly forced the Executive Branch to protect its Executive Privilege

(c) Administration officials properly 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. The House 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 denying the presence of agency counsel “is an abuse of power that would undermine the separation of powers—turns the law on its head and would do permanent damage to the structure of our government.”

(a) Asserting Legal Defenses and Privileges Is Not “Obstruction.”

Under fundamental principles of our legal system, asserting legal defenses cannot be labeled unlawful “obstruction.” It is a fundamental right of law, asserting legal defenses is a constitutional 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 stifle information is , an abuse of power that she views as “obstruction .”

(b) Legal Defenses and Privileges Cannot Be Penalized By Congress

Similarly, in 2006, 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 legal defenses is not illegal or impeachable by itself, a legal privilege, executive privilege.”

House Democrats, however, ran roughshod over constitutional principles by threatening 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 or the White House, shall constitute evidence of obstruction.”327 Even worse, Chairman Schiff made the remarkable claim that any action “that forces us to litigate the content of the subpoenas through the courts” would constitute 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 Congress” Would Do Grave Damage to the Separation of Powers

More important, in the context of House demands for information from the Executive Branch, House Democrats’ radical theory 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. On the contrary, they are precisely constitutional. The Founders anticipated that the branches might have differing interpretations of the Constitution and might disagree on matters of constitutional design. The Founders anticipated that the branches might have differing interpretations of the Constitution and might disagree on information to which the other branch is entitled. 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 by the Constitution itself, as interpreted in the light of its history.”330 Friction between the branches on such points is part of the separations 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, “in negotiation between the two branches” is “a dynamic process affirmatively furthering the constitutional scheme.”332

When the accommodation process fails, Congress has other tools at its disposal to address a disagreement with the Executive. Historically, Congress has turned to executive privilege and contempt proceedings to forestall demands from the Executive Branch.333 The process of holding a formal vote of the House on a contempt resolution ensures that the House itself has engaged in the proper discussion and weighs in on launching a full-blown confrontation with the Executive Branch.334 In addition, in recent times, the House of Representatives has taken the view that it has the power in court to obtain a judicial determination of the validity of its subpoenas and an injunction to enforce them.335

In the current House, Democrats had actually been interested in securing information (rather than merely adding aphony count to their impeachment charge sheet), the proper course would have been to engage with the Administration in one or more of these mechanisms for resolving the interbranch conflict.336 House Democrats rejected any effort to go to the courts, and instead they simply announced that constitutional accommodation, contempt, and litigation were all too inconvenient for their politically desired outcome and that they must impeach the President immediately.337

Permitting that approach and treating the President’s response to the subpoenas as an impeachable offense would gravely damage to 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 and that each branch is entitled to information which is subservient to the other. As Madison explained, where the Executive and the Legislative Branches come into conflict regarding “the necessity of pretending to an exclusive or superior right of settling the boundaries between their respective powers . . . 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.”338 In contrast, the House Democratic theory of 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.”341 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.”342

In the past, the House itself has agreed and has recognized that Executive Privilege is constitutionally mandated.343 The provision of impeachment is “essential to the . . . dignified conduct of the political processes that generate the constitutional protections.”344 Those provisions are grounded in the separation of powers and the need for scrupulous adherence to principles protecting the independence of each branch for protecting its own legitimate sphere of authority.

House Democrats’ insistence that the Constitution assigns the House the “sole Power of Impeachment”345 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.346 The fundamental Madisonian principle that each branch must place checks on the others—that “[a]mbition must be made to counteract ambition”—continues to apply even when the House invokes the power of impeachment.347 The mere fact that impeachment provides an ultimate check on the Executive Branch does not mean the privilege of impeachment inquiry heightens the need for scrupulous adherence to principles protecting each branch for protecting its own legitimate sphere of authority.

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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.\(^{322}\) As past history has explained, “[t]he refusal to adopt an abbreviated schedule for the investigation and not to seek to compel such testimony (in court) is a strategic choice of the press for leadership. It sets the grounds for an impeachment.”\(^{323}\) Nor is their claim about urgency credible. The only constraint on timing here came from House Democrats who had adhered to the ordinary timetable for something as momentous as a presidential impeachment and would have taken the time to work out disputes with the Executive Branch on subpoenas. House Democrats arbitrarily decided to skip that step.

Next, Democrats falsely claim that “the House has never before relied on litigation to compel witness testimony or the production of documents in a Presidential impeachment proceeding.”\(^{324}\) Nothing from the Nixon impeachment proceedings supports House Democrats either. As the Department of Justice advised at a press conference on September 24, 2019. The Constitution vests the “sole Power of impeachment” in the House of Representatives, not to protect governmental discourse or to go to court. Their claim about urgency was not arbitrary. House Democrats only pretended to provide the President any right after the entire factual record had been compiled in ex parte hearings and after Speaker Pelosi had predetermined the result by instructing the Judiciary Committee to draft articles of impeachment. Third, the House's factual investigatory role was supervised by 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 II.D. Nor is it the Senate's role to give House Democrats a “do-over” to develop the record anew in the Senate. These errors require rejecting the Articles and acquitting the President.

A. The Purported Impeachment Inquiry Was Unlawful and Premature

It is emblematic of the rush to judgment throughout the House's slap-dash impeachment inquiry that Chairman Schiff's investigating committees began issuing subpoenas and compelling testimony when they plainly had no authority to do so. House Democrats' committees built their one-sided record by purporting to compel testimony and documents using nearly two dozen subpoenas beyond the scope of the House's impeachment inquiry.\(^{325}\) But their only authority was Speaker Pelosi's announcement at a press conference on September 24, 2019. As a result, the inquiry and the almost two dozen subpoenas issued before October 31, 2019, came before the House delegated any authority under its “sole Power of Impeachment” to any committee.\(^{326}\) As OLC summarized:

The Constitution vests the “sole Power of Impeachment” in the House of Representatives. See United States v. Rumely, 345 U.S. 41, 44 (1953). Yet the House, by its rules, has authorized its committees to issue subpoenas only for matters within their legislative jurisdiction. Accordingly, no committee may undertake the momentous move from legislative oversight to impeachment without a delegation by the full House of such authority.\(^{327}\) As explained above, all subpoenas issued before the adoption of House Resolution 660 on October 31, 2019, purportedly to advance an “impeachment inquiry,” were not authorized by the controlling charter—the committee has received from the House. United States v. Rumely, 345 U.S. 41, 44 (1953). Yet the House, by its rules, has authorized its committees to issue subpoenas only for matters within their legislative jurisdiction. Accordingly, no committee may undertake the momentous move from legislative oversight to impeachment without a delegation by the full House of such authority.\(^{327}\) As explained above, all subpoenas issued before the adoption of House Resolution 660 on October 31, 2019, purportedly to advance an “impeachment inquiry,” were not authorized by the controlling charter the committee has received from the House. United States v. Rumely, 345 U.S. 41, 44 (1953).
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’s inquiry—whether an impeachment investigation for the last 150 years—has expressly preserved the accused’s rights to a fundamentally fair process and ensured the development of evidence. These included the rights to cross-examine witnesses, to call witnesses, to be represented by counsel at all hearings, to make objections to the examination of witnesses, and the admissibility of evidence, and to respond to evidence and testimony received. There is no reason to think that the Framers would have wanted a process so fundamentally disruptive of impeaching the President that could be accomplished through any unfair and arbitrary means that the House might invent.383

1. The Text and Structure of the Constitution Demand that the House Ensure Fundamentally Fair Procedures in an Impeachment Inquiry

(a) The Due Process Clause Requires Fair Process

The federal Due Process Clause broadly states that no person shall be deprived of life, liberty, or property, without due process of law” and applies to every part of the federal government. In any proceeding that may lead to deprivation of a protected interest, it requires fair procedures commensurate with the interests at stake.384 There is no exemption from the clause for Congress. Thus, for example, the Supreme Court has held that the process protections apply to congressional investigations and provide witnesses in such investigations certain rights.385 Congress’s “power to investigate is also subject to recognized limitations”—including those “found in the specific individual guarantees of the Bill of Rights.”386 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 impeachment investigations aimed at stripping individuals of their government positions. An impeachment investigation against the President potentially seeks to deprive the President of “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.387

Those actions plainly involve deprivations of property and liberty interests protected by the Due Process Clause.388 As a matter of fact, 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.”389 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 to protect the careers of low-level federal employees. The Constitution also explicitly gives the President (and every individual) a protected liberty interest in eligibility for election of President that cannot be lost as the individual meets the qualifications estabished by the Constitution.390 Finally, every federal officer has a protected liberty interest in his reputation that would be directly impaired by impeachment charges.391

Impeachment by the House alone has an imperatively forensic purpose.392 The House’s efforts to deprive the President of these constitutionally protected property and liberty interests necessarily concern, and thus they demand, 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 protection of the individual against arbitrary action.”393 There is no reason to think that protection was not intended to extend to impeachment proceedings. Similarly, the constitutionally significant impact of a presidential impeachment on the operation of the government suggests that the drafters of the Constitution expected the process to be governed by procedures that would ensure a fair assessment of evidence. The Bill of Rights guarantees due process, not out of an abstract, academic interest in process as an end in itself, but rather due to a belief, deeply rooted in the Anglo-American system of law, that procedural protections reduce the chances of error.394 The Framers surely did not intend to approve a process for determining impeachments that would be wholly cut loose from all traditional mechanisms deemed essential in our legal heritage for discovering the truth.

The sole judicial opinion to reach the question held that the Due Process Clause applies to impeachment proceedings.395 In Hastings v United States, the district court held that the Due Process Clause imposes an independent constitutional constraint on how the Senate “conducts its impeachment exercises” and “the impeachment proceedings.”396 In 1974, the Department of Justice suggested the same view, opining that “[w]hether or not capable of judicial enforcement, due process requirements seem to be relevant to the manner of conducting an impeachment proceeding” in the House—including “the ability of the President to be represented at the Inquiry of the House Committee, to cross-examine witnesses, and to offer witnesses and evidence,” completely separate from the trial in the Senate.397

(b) The Separation of Powers Requires Fair Process

A proper respect for the head of a co-equal branch of the government also requires that the House use procedures that are not arbitrary or capricious. We do not see any fair development of evidence. The Framers intended the impeachment power to be limited to “guard[ing] against the danger of persecution of persons factious in spirit.”398 The Constitution places the power of impeachment in the entire House precisely to ensure that a majority of the electorate—not merely a simple majority—decide to move an impeachment forward. That design would be undermined if a House vote were shaped by an investigatory process so lop-sided that the only one in a position to faction to develop evidence and foreclosed the ability of others—including the accuser—to develop the facts. Rather than promoting deliberation by a majority of the people’s representatives, that approach would foster precisely the factionalism that the Framers wished to prevent. Otherwise, the fact that impeachment is a constitutionally prescribed mechanism for removing federal officials from office does not make it any the less as a mechanism of deprivation within the ordinary ambit of the clause.

The gravity of the deprivation at stake in an impeachment—especially a presidential impeachment—justifies the conclusion 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 protection of the individual against arbitrary action.”399 There is no reason to think that protection was not intended to extend to impeachment proceedings. Similarly, the constitutionally significant impact of a presidential impeachment on the operation of the government suggests that the drafters of the Constitution expected the process to be governed by procedures that would ensure a fair assessment of evidence. The Bill of Rights guarantees due process, not out of an abstract, academic interest in process as an end in itself, but rather due to a belief, deeply rooted in the Anglo-American system of law, that procedural protections reduce the chances of error.400 The Framers surely did not intend to approve a process for determining impeachments that would be wholly cut loose from all traditional mechanisms deemed essential in our legal heritage for discovering the truth.

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(c) The House’s Sole Power of Impeachment and Right to Determine Its 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”413 undermines the House’s obligation to use fundamentally fair procedures in impeachment. Those provisions merely mean that no other entity, has these powers. The Supreme Court has made clear that independent constitutional constraints limit otherwise plenary powers of committees and other entities.414 For example, even though “[t]he [C]onstitution empowers each house to determine its rules of procedure,” each House may not by “constitutional restraints or violate fundamental rights.”415 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 Constitution.416 To get access to such information at all, it must show that the information “is demonstrably critical to the responsible fulfillment of the Committee’s functions.”417 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.418 Executive Privilege, which is itself grounded in the Constitution, similarly constrains the House’s ability to demand information “essential to its role as a coequal branch of government.”419

Nixon v. United States, in any case, does not suggest otherwise.420 Nixon addressed whether executive privilege applied to a Senate impeachment trial violated the direction in the Constitution that the Senate
shall have “sole Power to try all Impeachments.”419 The Court held that the challenge presented a non-justiciable political question specifically, that “[i]n the case before us, there is no provision of the Constitution that could be defeated by allowing the Senate final authority to determine the meaning of the word ‘try’ in the Impeachment Clause.” But Nixon’s attorneys hold that all questions related to impeachment are non-justiciable420 or that there are no constitutional constraints on impeachment, as it is not “a provision of the Constitution that could be defeated by allowing the Senate to determine the meaning of the word ‘try’ in the Impeachment Trial Clause.” By 1800, the House had afforded extensive rights to defendants, including the rights “to attend all hearings, including any held in executive session”; “to respond to evidence received and testimony adduced by the Committee”; “to submit written requests” for “the Committee to receive additional testimony or other evidence”; “to question any witness during the Committee’s proceedings to receive additional testimony or other evidence, objecting to witness examination and evidence, and exercising co-equal subpoena authority in pari delicto proceeding, and to overrule by the full Committee.” Both Presidents were thus able to present robust defenses before the Committee. Indeed, President Clinton’s counsel gave an opening statement, the House appointed experts to witness examination and evidence, and exercising co-equal subpoena authority in pari delicto proceeding, and to overrule by the full Committee. The case of Warren Hastings432, the House provided the accused with notice and an opportunity to be heard in the majority of cases stated.433

By Judge Peck’s impeachment in 1830, the House Members, explicitly acknowledging that “it was obvious that it had not yet been settled beyond a doubt whether the right of the House to submit 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.”440 The Judiciary Committee Chairman, James Buchanan, pointed out that “in the case of Warren Hastings” in England, “the House of Commons would hear the accused, and did permit him to produce testimony, before they voted an impeachment against him.”441 He explained that, in a prior impeachment inquiry against Vice President Calhoun, “a friend of the Vice President had been permitted to appear, and represent him, and 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 those preliminary proceedings, a right to be thus heard.”440 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.444 The debate was thus settled in favor of due process rights for Judge Peck.

By at least the 1870s, despite some unsettled practice in the interim, the House Judiciary Committee fulfilled the investigatory role that the House Judiciary Committee fulfilled in prior impeachments, and thus, those rights should have been available in the proceedings before the Intelligence Committee.

The two modern presidential impeachment inquiries also afforded due process protections that apply to the accused in an impeachment inquiry. In fact, every President who has asked to participate in an impeachment inquiry has been afforded extensive rights to defend themselves, including the rights “to attend all hearings, including any held in executive session”; “to respond to evidence received and testimony adduced by the Committee”; “to submit written requests” for “the Committee to receive additional testimony or other evidence”; “to question any witness during the Committee’s proceedings to receive additional testimony or other evidence, objecting to witness examination and evidence, and exercising co-equal subpoena authority in pari delicto proceeding, and to overrule by the full Committee.” Both Presidents were thus able to present robust defenses before the Committee. Indeed, President Clinton’s counsel gave an opening statement, the House appointed experts to witness examination and evidence, and exercising co-equal subpoena authority in pari delicto proceeding, and to overrule by the full Committee.
Depositions were conducted in a facility designated to ensure there would be no transparency. To do this, the House Committee on the Judiciary (HPSCI), the House Permanent Select Committee on Intelligence (HPSCI), and the House Committee on Oversight and Reform, worked together to create a system that would allow the Chief Executive and Commander-in-Chief of the armed forces to present evidence, question witnesses, and to make opening statements, as well as to present cross-examination, call witnesses, and present evidence. He was even afforded the right to present and cross-examine witnesses, and to make opening statements, as well as to present cross-examination, call witnesses, and present evidence.

4. The House Impeachment Inquiry Failed To Provide The Due Process Demanded By The Constitution

The first phase involved secret proceedings—the House impeachment investigation is the record of the House’s own past practice, as explained above. 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 use the evidence, to submit written questions and testimony, to question witnesses and object to evidence, and to make opening statements and closing arguments. Chairman Nadler himself admitted that he had allowed House Democrats, and then-Representative Schum-
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 White House that the Judiciary Committee would hold a hearing on December 4 vaguely limited to "constitutional basis of impeachment." The Committee provided no further information about the hearing, including the identities of the witnesses and the subject matter. The President was required to indicate whether he wished to participate by Sunday, December 1. Every aspect of the planning for this hearing departed from the Clinton impeachment, with the bipartisan Committee providing two-and-a-half months notice to coordinate with scholars in the Clinton impeachment, to begin drafting articles of impeachment on December 5. Hearings would be scheduled until after the close of business on Thursday, December 5. The President's attorneys would have no meaningful role in the planning for this hearing, and so little time to prepare a defense that the Administration assured the President a fair opportunity to participate.

The Committee ultimately announced the identities of the witnesses less than two days before the hearing. For a similar hearing with scholars in the Clinton impeachment, the Committee provided two-and-a-half weeks' notice to prepare and schedule the hearing. The Clinton President was represented by his own attorneys. President Trump understandably declined to participate in that bipartisan Committee hearing.

On December 2, 2019, Chairman Nadler asked the President to specify, by December 6, how he would participate in future undefined "proceedings" and which "privileges" in the Constitution the impeachment inquiry would confer on the President's counsel. The President's counsel declined to respond.

Meanwhile, in a separate letter on November 29, 2019, Chairman Nadler asked the President to specify, by December 6, how he would participate in future hearings. The hearing was "a matter of the President's own choosing." The President's counsel declined to respond.

As a backdrop to all of this, Chairman Nadler had previously unilaterally provided the Committee's Impeachment Inquiry Procedures Pursuant to House Resolution 660 that allowed the President to specify, by December 6, how he would participate in future proceedings, including the identities of the witnesses, or when any hearings would be held. The President's counsel did not even bother to respond.

And the Judiciary Committee continued to hide the ball. Throughout the week of December 2, the President's counsel were in contact with the President's counsel trying to get answers concerning what hearings were planned, so that the President could determine whether and how to participate. But all that the White House counsel were authorized to convey was: (i) a hearing on an unknown topic on December 9; (ii) before that hearing, the Committee would hold two days of testimony; (iii) on December 9, the President's counsel would be required to participate by Sunday, December 1; and (iv) there were no other questions about the subject of the December 9 hearing or whether any other hearings would be scheduled until after the close of business on December 5. The President's counsel might be issuing two additional reports (one based on the December 4 constitutional law seminar and one dredging up unspecified aspects of Special Counsel Mueller's report) and (i) those would not have been authorized to be called; (ii) he would not have a fact witness to be called; (iii) whether he would allow the "President's counsel the right to cross examine fact witnesses." The President's counsel would be required to discuss a plan for upcoming hearings. All to no avail—Chairman Nadler did not even bother to respond.

At the December 6 deadline, the President had been left with no meaningful choice but to abide under 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 the Committee counsel had finally confirmed that the Committee's plan was to hear solely those proceedings that the Committee had already addressed, that the President is not requesting any witnesses, when it was Chairman Nadler who delayed in order to assert another, the President to call witnesses in the first place.

As a backdoor to all of this, Chairman Schiff had already unilaterally unilaterally provided representation provision of the Committee's Impeachment Inquiry Procedures Pursuant to House Resolution 660 that allowed the President to specify, by December 6, how he would participate in future proceedings, including the identities of the witnesses, or when any hearings would be held. The President's counsel did not even bother to respond. The President was represented by his own attorneys. President Trump understandably declined to participate in that bipartisan Committee hearing.

As a result, by the December 6 deadline, the President had been left with no meaningful choice but to abide under 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 the Committee counsel had finally confirmed that the Committee's plan was to hear solely those proceedings that the President is not requesting any witnesses, when it was Chairman Nadler who delayed in order to assert another, the President to call witnesses in the first place.

The House's constitutionally deficient proceeding has 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: Chairman Schiff. His repeated falsehoods about the President leave him with no credibility whatsoever. In March 2017, Schiff boasted to CNN: "I'm not a 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 whistle-blower." As multiple media outlets concluded, that statement was "flat-out false." The Whistleblower Report was released and the entire Russian hoax Chairman Schiff had been peddling was disproved.

In this proceeding, Chairman Schiff violated the "fairness" by peddling was disproved. By presiding over the HPSCI report, had heard any fact witness, or heard a single word from the President in his defense. Late in the evening, Committee counsel informed the President's counsel that—other than a report addressing the meaning of "high Crimes and Misdemeanors," the President would not be given any meaningful opportunity to question fact witnesses or otherwise respond to the one-sided factual presentation. The concept of the Constitution and every principle of due process on a stage-managed show trial already hurtling toward a preordained result. 

The President continued to assert long-standing privileges and immunities to protect Executive Branch information and to challenge the President's counsel to participate by Sunday, December 1. Every aspect of the planning for this hearing departed from the Clinton impeachment, with the bipartisan Committee providing two-and-a-half months notice to coordinate with scholar witnesses, or otherwise respond to the one-sided factual presentation. The concept of the Constitution and every principle of due process on a stage-managed show trial already hurtling toward a preordained result.

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Instead, the Judiciary Committee simply relied on the ex parte evidence gathered by Chairman Schiff's show trial. But yes, we would love to talk directly with the whistleblower." As multiple media outlets concluded, that statement was "flat-out false." The Whistleblower Report was released and the entire Russian hoax Chairman Schiff had been peddling was disproved.

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"Could have had his counsel make a presentation of evidence or request that other witnesses, including the President, be heard. Under those circumstances, the President determined that he would not condone such Catch–22 choices and has made clear that it is "intolerable that one constitutional right should have to be surrendered in order to assert another." The President is not requesting any witnesses, when it was Chairman Nadler who delayed in order to assert another, the President to call witnesses in the first place.

As a result, by the December 6 deadline, the President had been left with no meaningful choice but to abide under 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 the Committee counsel had finally confirmed that the Committee's plan was to hear solely those proceedings that the President is not requesting any witnesses, when it was Chairman Nadler who delayed in order to assert another, the President to call witnesses in the first place.

The House is constitutionally deficient proceeding has 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.
contact with the whistleblower, but apparently played some still-unverified role in advising the whistleblower before the complaint was filed.515 And Chairman Schiff began this hearing by falsely implying that it was himself and not his staff who were the “investigators” of this matter by having once again and again reading a fabricated version of the President’s telephone conversation with President Zelensky to the American people.516

Given the role that Chairman Schiff and his staff apparently played in advising the whistleblower, Zelensky might well have acted on his own and independently of any other employees of the government.517 This is a fact that we will be looking into in the future.

The current proceedings began with a complaint that the President had withheld information in a way that he was not legally required to.518 The complaint alleged that the President had withheld information that he was not legally required to provide.519

Over the past three years, House Democrats have filed at least eight resolutions to impeach the President, alleging a vast range of potential crimes.520 They have repeatedly charged the President with obstruction of justice in connection with the Mueller investigation521—an allegation that the Department of Justice recently rejected.522 One solution to impeach the President for protecting national security interests by withholding security clearances from eight officials of eight countries523—an action upheld by the Supreme Court.524 Another attempt to impeach the President for publishing disparaging tweets about some officials in response to their own attacks on the President.525 Still another gathered a hodge-podge of absurd charges, including failing to nominate persons to fill vacancies and refunding the press.526

In this case, House Democrats ran the fastest presidential impeachment fact-finding on record. They were able to complete the process in less than three months from the beginning of their fact-finding investigation on September 24, 2019 to the adoption of articles of impeachment on December 18—meeting their deadline of impeachment by Christmas. That rushed three-month process stands apart from every other presidential impeachment and was among the fastest of which took place after a fact-finding period of nearly four times as long. Independent Counsel Ken Starr received authorization to investigate the charges that led to President Clinton’s impeachment in February 1998,527 almost a full year before the House impeached President Clinton in December 1998.528 The Senate began investigating President Nixon’s conduct in February 1973,529 more than one year before July 1974, when the House Judiciary Committee voted to recommend articles of impeachment. The investigation into President Johnson also extended 12 months. Except for a two-month break between a vote rejecting articles of impeachment in January and the authorization of a second impeachment530 President Johnson’s impeachment was investigated over 14 months.531 The adoption of articles of impeachment was executed in 113 days.532 The two inquiries were closely related,533 and one article of impeachment was carried over from the first impeachment inquiry.534 The second reason for Democrats’ fixations on a second impeachment535

President Johnson’s impeachment was investigated over 14 months from January 1867 to the adoption of articles of impeachment in March 1868.536 The two inquiries were closely related, and one article of impeachment was carried over from the first impeachment inquiry.537 The Democrats need for speed only underscores that, unlike prior impeachments, these proceedings were never about conducting a serious inquiry into the truth.

Although everything, Democrats pinned their impeachment dreams primarily on the Mueller investigation and their dogmatic faith in the myth that President Trump colluded with Russia.541 He played up the Mueller investigation to the American people, telling them that he would show wrongdoing “of a size and scope probably beyond Watergate.”542

The damage caused by Democrats’ Russian conspiracy delusion is not limited to anything directly attributable to the Mueller investigation. The Mueller investigation itself was consumed by an insatiable need to justify 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 oppose that against. Democrats have been fixated on impeachment and Russia for the past three years for two reasons. First, they have never accepted the results of the 2016 election and have been consumed by an insatiable need to justify their continued belief that President Trump could not “really” have won. Long before their dogma: that Donald Trump should not be President and that he is President only by virtue of foreign interference. The second reason for Democrats’ fixations is that they desperately need an illegitimate boost for their candidate in the 2020 election, and their Russian conspiracy theory has been the perfect vehicle for it. Democratic leaders 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 oppose that against. Democrats have been fixated on impeachment and Russia for the past three years for two reasons. First, they have never accepted the results of the 2016 election and have been consumed by an insatiable need to justify their continued belief that President Trump could not “really” have won. Long before their dogma: that Donald Trump should not be President and that he is President only by virtue of foreign interference. The second reason for Democrats’ fixations is that they desperately need an illegitimate boost for their candidate in the 2020 election, and their Russian conspiracy theory has been the perfect vehicle for it. Democratic leaders 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 oppose that against.
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 is wrong but are unwilling to defend. For Democrats, President Trump’s record of success made impeachment an electoral imperative. As Congressman Al Green explained, “the President will never impeach the President, he will get re-elected.”

The result of House Democrats’ relentless pursuit was nothing—and their willingness to sacrifice every precedent, every principle, and every procedural right standing in their way—is exactly what the Framers would not have wanted. The Articles of Impeachment before the Senate were adopted without a single Republican vote. Indeed, the only bipartisan articles were 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 overnight 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 first adhering consistently to the 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 abandoned those principles and left the Senate to fulfill the role of guardian of our political institutions. And as the vote closed, House Democrats’ phony claims about a quid pro quo were refuted by nothing more than 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 there was no quid pro quo.

Before they had even seen the transcript, though, House Democrats concocted all their charges based on distortions peddled by a so-called whistleblower 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 other benefits with the leverage to pressure Ukrainians to announce investigations on two subjects: (i) possible Ukrainian interference in the 2016 election; and (ii) possible European countries should be Ukraine’s biggest partner, but they surprisingly were not.

President Trump also raised concerns about corruption. He first raised these concerns in connection with reports of Ukrainian actions in the 2016 presidential election. Numerous media outlets have reported that Ukrainian officials took steps to influence and interfere in the 2016 election to undermine then-candidate Trump, and three Senate committee chairs have been investigating this interference.

President Trump raised “this whole situation” and noted that particularly the President Zelensky 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 Dr. Hill testified, many officials in the State Department and NSC were similarly concerned about individuals surrounding Zelensky.

President Trump also mentioned an incident involving then-Vice President Joe Biden and a corruption investigation involving Burisma. In that incident, a corruption investigation involving Burisma was “surrounding [himself] with some of the same people.” In that incident, a corruption investigation involving Burisma was “surrounding [himself] with some of the same people.” In that incident, a corruption investigation involving Burisma was “surrounding [himself] with some of the same people.”
Similarly, National Security Advisor to the Vice President Keith Kellogg said that he “heard nothing wrong or improper on the call.”592

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 Trump connect security assistance and investigations on the call. The Ukrainians’ official statement did not reflect any such link,593 and President Zelensky has been crystal clear about this in his public statements. He has explained that he “never talked to the President from the position of a quid pro quo” and stated that there did not exist any connection between investigations and any type of 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 President Trump was “very, very positive, they had good chemistry.”598

Other high-ranking Ukrainian officials confirmed that there was no connection between security assistance and investigations. Ukrainian Foreign Minister Vadym Prystaiko stated his belief that “there was no direct link between investigations and security assistance,” and “there was no clear connection between these events.”599 Similarly, President Zelensky’s aide, Andriy Yermak, was asked if “he had ever felt there was a connection between the U.S. military aid and the requests for investigations,” he was “adamant” that “[w]e never had that feeling” and “[w]e did not have the feeling that this aid was connected to any one specific issue.

3. President Zelensky and Other Senior Ukrainian Officials Did Not Even Know That the Security Assistance Had Been Paused

House Democrats’ theory 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 support their contention.

House Democrats’ claims are refuted first and foremost by the fact that there are only two people with statements on record who were in the room when the President explicitly told them there was no connection whatsoever between the security assistance and the request for investigations. Ambassador Volker 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.611

Similarly, Senator Ron Johnson has said that he asked the President “whether there was some kind of arrangement where we could take some action and the President would hold his hand and say ‘Okay, we’re good.’”612

The uniform and uncontradicted testimony from American officials who actually interacted with the President and the other senior Ukrainian officials was that they had no reason to think that Ukraine knew of the pause until more than a month after the call.613 Ambassador Volker testified that he “believe[s] the Ukrainians became aware of the delay on August 29 and not before.”614 Ambassador Taylor agreed and testified that “nobody in the Ukrainian Government became aware of a hold on military aid until . . . August 29th.”615 Mr. Morrison concurred, testifying that “I do not believe any of the Ukrainians had any knowledge of the review until August 28, 2019.”616 Deputy Assistant Secretary Kent and Ambassador Sondland agreed.617

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.618

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.619 President Trump did not raise the issue in meetings with Ambassador Taylor on either July 26 or August 27.620 And Volker—who was in touch with the highest levels of the Ukrainian government—explained that Ukrainian officials “would confide things” in him and “would have asked” if they had any questions about the aid.621 Things are reported to have been, and remain, “up the Sean’s alley.”622

The House Democrats’ entire theory falls apart because President Zelensky and other officials at the highest levels of the Ukrainian government did not know about the temporary pause until shortly before the President released the security assistance. As Ambassador Volker said: “I don’t believe we were aware of that fact, that there was no leverage implied.”623 These facts alone vindicate the President.

4. House Democrats Rely Solely on Speculation and Hearsay

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Although he did not speak to the President directly, Ambassador Volker also explained that President Trump never linked security assistance to investigations, and the Ukrainians never indicated that they thought there was any connection:

[Q.] Did the President of the United States ever say to you that he was going to cut off security assistance to Ukraine unless there were investigations into Burisma, the Bidens, or the 2016 elections?

[A.] No, he did not.624

[Q.] Did the Ukrainians ever tell you that they understood that they would not get a
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 under- took with regard to Burisma, the Bidens, or the 2016 elections?

[A] No, they did not.616

Against all of that unequivocal testimony, House Democrats base their case entirely on witnesses who offer nothing but speculation. Worse, it is speculation that traces back to one source: Sondland. Other witnesses repeatedly testified that Ambassador Sondland had said in a chain of hearsay that would never be admitted in any court. For example, Chairman Schiff’s leading witness, Ambassador Taylor, acknowledged that the extent he thought there was a connection between the security assistance and investigations, his information came entirely from things that Sondland said—or (worse) second-hand accounts of what Morrison told Taylor that Sondland had said.617 Similarly, Morrison testified that he “had no reason to believe that the release of the security-sec- tor assistance might be conditioned on a public statement reopening the Burisma in- vestigation until [his] September 1, 2019, con- versation with Ambassador Sondland.”618

Sondland, however, testified unequivocally that “the President did not tie aid to investiga- tions.” Instead, he acknowledged that “some link that had been made was an announce- ture on his own speculation, unconnected to any conversation with the President.”619

(Q) did the President have more/the aid? [Ambassador Volker] says that they weren’t tied, that the aid was not tied —

[A] And I didn’t say they were con- nected. I said I was presuming it

(Q) Okay. And so the President never told you they were tied.

[A] That is correct.

(Q) to your testimony and [Ambassador Volker’s] testimony is consistent, and the President did not tie aid to investigations.

[A] That is correct.620

Indeed, Sondland testified that he “did not recall any discussions with the White House on withholding U.S. security assistance from Ukraine in return for assistance with the President’s 2020 reelection campaign.”620 And he explained that he “did not know (and still do[es] not know) when, why, or by whom the aid was suspended,” so he just “presumed that he [had] not been privy to any conversation about the aid.”621

In his public testimony alone, Sondland used variations of “presume,” “assume,” “guess,” or “speculate” more than forty times. When asked if he had any “testimonial [that] ties Presi- dent Trump to a scheme to withhold aid from Ukraine in exchange for these investiga- tions,” he stated that he has nothing “[other than [his] own presumption,” and he conceded that “[n]o one on this planet told [him] that Donald Trump was tying aid to investigations.”621

This made-up narrative that the security assistance was conditioned on Ukraine tak- ing some action on investigations is further disproven by the straightforward fact that the aid was suspended on September 11, 2019, without the Ukrainians taking any action on investigations. President Zelensky never made a statement about investigations, nor did any Ukrainians take any action. Instead, the evidence confirms that the decision to release the aid was based on

entirely unrelated factors. See infra Part III.B. The paused aid, moreover, was entirely distinct from U.S. sales of Javelin missiles and thus had no effect on the supply of those arms to Ukraine.622

6. President Trump’s Record of Support for Ukraine Is Beyond Reproach

Part of House Democrats’ baseless charge is that the temporary pause on security as- sistance compromises the na- tional security of the United States by leaving Ukraine vulnerable to Russian aggression. This theory indis- proves that claim. In fact, Chairman Schiff’s hearings established beyond a doubt that the Trump Administration has been a stronger, not weaker, partner of Ukraine than the prior administration. Ambassador Yovanovitch testified that “our policy actu- ally got stronger” under President Trump, largely because, unlike the Obama adminis- tration, “this administration made the deci- sion to provide lethal weapons to Ukraine” to help Ukraine fend off Russian aggres- sion.623 Yovanovitch explained that “we all felt [that] was very significant.”627 Ambas- sor Taylor similarly explained that the aid package provided by the Trump Administra- tion “will kill Russian tanks.”628 Dep- uty Assistant Secretary Kent agreed that Javelins “are incredibly effective weapons at stopping armored advance, and the Russians are scared of them.”629 And Ambassador Volker explained that “President Trump ap- proved each of the decisions made along the way,” and as a result, “America’s policy to- wards Ukraine strengthened.”630 As Senator Johnson has noted, President Trump capital- ized on a longstanding congressional authori- zation that President Obama did not.631 In 2015, Congress authorized $300 million of security assistance to Ukraine, of which $50 million was to be available only for lethal defensive weaponry. The Obama administration never supplied the authorized lethal defensive weaponry, but President Trump did.631

Thus, any claim that President Trump put the security of Ukraine at risk is flatly in- correct. The pause on security assistance (which was entirely distinct from the Javelin sales) was lifted after the fiscal-year end, and the aid flowed to Ukraine without any preconditions. Ambassador Volker testified that the brief pause on releasing the aid was “not significant.”627 As Under Secretary of State for Political Affairs David Hale ex- plained that “this [was] future assistance. . . . not to keep the army going now” dis- proving the false claim made by House Democrats that the pause caused any harm to Ukraine over the summer.632 In fact, according to Oleh Savchuk, the Ukrainian Deputy Director General who oversaw U.S. aid shipments, “the hold came and went so quickly” that he did not notice any change.632

B. The Administration Paused Security As- sistance Based on Policy Concerns and Re- leased It After the Concerns Were Satisfied

What the evidence actually shows is that President Trump had legitimate policy con- cerns about foreign aid that Secretary Hale explained, foreign aid to all countries was undergoing a systematic review in 2019. As he put it, “the administration did not want to release arms, because the usual ap- proach to foreign assistance, a feeling that once a country has received a certain assis- tance package. . . . It’s something that con- tinued” to be discussed.636

Burden-sharing was reemphasized in the President’s 2020 budget when it advocated for reforms that would “prioritize the efficient use of taxpayer dollars and increased burden- sharing, recognizing that the United States is the only developed country among many where the United States currently pays more than its fair share.”638

Concerns about corruption in Ukraine were also entirely justified. As Dr. Hill affirmed, “eliminating corruption in Ukraine was one of, if (not) the central, goals of U.S. foreign policy” in Ukraine.639 Virtually every witness agreed that confronting corruption should be at the forefront of U.S. policy with respect to Ukraine.640

2. The President Had Legitimate Concerns About Foreign Aid Burden-Sharing, Includ- ing With Regard to Ukraine

President Trump had well-documented concerns regarding American taxpayers being forced to cover the cost of foreign aid while other countries refuse to pitch in. In fact, “another factor in the foreign affairs review” discussed by Under Secretary Hale was “appropriate burden sharing.”640 The President’s 2013 Budget discussed this precise issue.

The Budget proposes to reduce or end direct funding for international programs and organizations whose missions do not sub- stantially advance U.S. foreign policy inter- ests. The Budget also renews attention on the appropriate U.S. share of international spending at the United Nations, at the World Bank, and for major humanitarian issues where the United States currently pays more than its fair share.640

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that President Trump "never ordered a review of burden-sharing."549 These assertions are demonstrably false.

Mr. Morrison testified that he was well aware of President Trump's "skeptical view"550 on foreign aid generally and Ukrainian aid specifically. He affirmed that the President was "specifically interested in,"551 and "now, in some cases, for reasons that are still unknown just in the past year,"552 Dr. Hill similarly explained that "there was a focus on all kinds of foreign assistance because it was in the process at the time of an awful lot of reviews of foreign assistance."553 She added that, in her experience, "stops and starts are sometimes common with foreign assistance and that "OMB [Office of Management and Budget] holds up dollars all the time,"554 and that the number of dollars "is going to Ukraine."555 Similarly, Ambassador Volker affirmed that aid gets "held up from time-to-time for a whole assortment of reasons."556 The "something" that had happened in [his] career in the past,557

4. The aid was released after the President's concerns were addressed.

To address President Trump's concerns about corruption and burden-sharing, a temporary pause was placed on the aid to Ukraine. OMB represented that . . . the President was concerned about corruption in Ukraine, and he wanted to make sure that Ukraine was doing more.558 And indeed, at the time, OMB Deputy Associate Director for National Security Mark Sandy testified that he understood the pause to have been a result of the President's concerns about the contribution from other countries to Ukraine.559

Over the course of the summer and early September, two series of developments helped address the President's concerns: First, President Zelensky secured a majority in the new parliament and was able to begin reforms under his anti-corruption agenda. As Mr. Morrison explained, when Zelensky was first elected, there was real concern about whether he would be a genuine reformer and "whether he would genuinely try to root out corruption."560 It was also unclear whether President Zelensky's party would "be able to get a workable majority in the Ukrainian Parliament" to implement the corruption reforms he promised.561 It was only later in the summer that President Trump heard from a majoritarian in the Rada—the Ukrainian parliament. As Mr. Morrison testified, on "the opening day of the [new] Rada," the Ukrainians worked through a plan to move forward with concrete reforms.562 Indeed, Mr. Morrison and Ambassador Bolton were in Kyiv on August 27, and Mr. Morrison "observed that everybody on the Ukrainian side of the table was exhausted, because they had been up for days working on . . . reform legislation."563 President Zelensky "named a new prosecutor general—Mr. Kulyk—prize early on that the NSC was "specifically interested in."564 He also "had his party introduce a spate of legislative reforms, one of which was particularly significant: giving the Prime Minister [or his party] members of their parliamentary immunity."565 Additionally, the High Anti-Corruption Court of Ukraine commenced its work on September 4, 2019.566

As a result of these developments, Mr. Morrison affirmed that by Labor Day there had been "definitive developments" to demonstrate that President Zelensky was committed to the issues he campaigned on.567 Second, the President heard from multiple parties about Ukraine, including trusted advisors. Senator Johnson has said that he spoke to the President on August 31 urging release of the security assistance. Senator Portman made "the case . . . to the President that it was the appropriate and purposeful step to do with the pause of the aid."568 He testified that the Vice President (who had just returned from Europe on September 6 and Senator Portman thus "continued the conversation"

C. The Evidence Refutes House Democrats' Claims that President Trump Conditioned a Meeting with President Zelensky on Investigations

Lacking any evidence to show a connection between releasing the security assistance and the Vice President's conversations about having with European leaders about getting them to do more,569

Moreover, on September 11, 2019, the President and Vice President met with President Zelensky, Senator Portman.570 Mr. Morrison testified that Senator Portman made "the case . . . to the President that it was the appropriate and purposeful step to do with the pause of the aid."571 He testified that the Vice President (who had just returned from Europe on September 6 and Senator Portman thus "continued the conversation"

Contrary to House Democrats' claims, the evidence shows that a bilateral meeting between President Trump and President Zelensky was scheduled without any connection to any statement about investigations. Mr. Morrison—whose "responsibilities" included "helping arrange head of state visits to the White House or other head of state meetings"—testified that he was trying to schedule a meeting without any restrictions related to investigations. He testified that he understood that arranging "the White House visit" was a "do-out" that "came from the President" on the July 25 call.572 He also testified that the intra-agency conversations about a forthcoming trip to Ukraine and meeting with President Zelensky.573 But due to competing scheduling requests, "it became clear that the earliest opportunity for the two leaders to meet face-to-face was at the beginning of September."574 In other words, Mr. Morrison made it clear that he

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4. The aid was released after the President’s concerns were addressed.

To address President Trump’s concerns about corruption and burden-sharing, a temporary pause was placed on the aid to Ukraine. OMB represented that . . . the President was concerned about corruption in Ukraine, and he wanted to make sure that Ukraine was doing more.558 And indeed, at the time, OMB Deputy Associate Director for National Security Mark Sandy testified that he understood the pause to have been a result of the President’s concerns about the contribution from other countries to Ukraine.559

Over the course of the summer and early September, two series of developments helped address the President’s concerns: First, President Zelensky secured a majority in the new parliament and was able to begin reforms under his anti-corruption agenda. As Mr. Morrison explained, when Zelensky was first elected, there was real concern about whether he would be a genuine reformer and “whether he would genuinely try to root out corruption.”560 It was also unclear whether President Zelensky’s party would “be able to get a workable majority in the Ukrainian Parliament” to implement the corruption reforms he promised.561 It was only later in the summer that President Trump heard from a majoritarian in the Rada—the Ukrainian parliament. As Mr. Morrison testified, on “the opening day of the [new] Rada,” the Ukrainians worked through a plan to move forward with concrete reforms.562 Indeed, Mr. Morrison and Ambassador Bolton were in Kyiv on August 27, and Mr. Morrison “observed that everybody on the Ukrainian side of the table was exhausted, because they had been up for days working on . . . reform legislation.”563 President Zelensky “named a new prosecutor general—Mr. Kulyk—prize early on that the NSC was “specifically interested in.”564 He also “had his party introduce a spate of legislative reforms, one of which was particularly significant: giving the Prime Minister [or his party] members of their parliamentary immunity.”565 Additionally, the High Anti-Corruption Court of Ukraine commenced its work on September 4, 2019.566

As a result of these developments, Mr. Morrison affirmed that by Labor Day there had been “definitive developments” to demonstrate that President Zelensky was committed to the issues he campaigned on.567 Second, the President heard from multiple parties about Ukraine, including trusted advisors. Senator Johnson has said that he spoke to the President on August 31 urging release of the security assistance. Senator Portman made “the case . . . to the President that it was the appropriate and purposeful step to do with the pause of the aid.”568 He testified that the Vice President (who had just returned from Europe on September 6 and Senator Portman thus “continued the conversation”
was trying to schedule the meeting in the ordinary course. He did not say that anyone told him to delay scheduling the meeting until President Zelensky had made some announced investigations.

Ultimately, the notion that a bilateral meeting between President Trump and President Zelensky was conditioned on a statement by President Zelensky is refuted by one straightforward fact: a meeting was planned for September 1, 2019 in Warsaw without the Ukrainians saying a word about investigations. Ambassador Volker testified that administration officials were “working on a bilateral meeting to take place in Warsaw on the margins of the commemoration on the beginning of World War II.”694 Indeed, by mid-August, U.S. officials expected the meeting to occur,695 and the Ukrainian government was making preparations.696 As it turned out, President Trump had to stay in the U.S. because Hurricane Dorian rapidly intensified to a Category 5 hurricane, so he sent the Vice President to Warsaw in his place.

Even that natural disaster did not put off the meeting between the Presidents for long. They were at the earliest possible date, September 25, 2019, on the sidelines of the United Nations General Assembly. President Zelensky confirmed that there were no preconditions for this meeting.697 Nor was there anything unusual about the meeting occurring in New York rather than Washington. As Ambassador Volker verified, “these meetings sometimes take a long time to get scheduled” and “[i]t sometimes just doesn’t happen.”698

House Democrats cannot salvage their claim that the high-profile meeting in New York City did not count and that only an Oval Office meeting would do. Dr. Hill explained that what mattered was a bilateral presidential meeting, not the location of the meeting:

[It] wasn’t always a White House meeting per se, but definitely a Presidential-level, you know, meeting with Zelensky and the President. I mean, it could’ve taken place in Poland, in Warsaw. It could’ve been, you know, a proper bilateral in some other context, not the Oval Office, a White House-level Presidential meeting.699

The Ukrainians had such a meeting scheduled for September 1 in Warsaw (until Hurricane Dorian). The meeting took place on September 25 in New York—all without anyone making any statement about investigations.

2. No Witness With Direct Knowledge Testified That President Trump Conditioned a Presidential Meeting on Investigations

House Democrats’ tale of a supposed quid pro quo involving a presidential meeting is further undermined by the fact that not even the President ever linked a presidential meeting to announcing investigations.

Once again, House Democrats’ critical witness—Sondland—actually destroys their case. The witness who spent the most time 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.”

Thereafter, Sondland stated that “the President never discussed” a link between investigations and a White House meeting,701 and 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 personal experience” and then not “speak 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 with President Zelensky 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 linkage” to the investigations, Sondland responded, “No.”705 And when asked if the President ever “told [him] anything” about any preconditions for a White House meeting, Sondland said “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-Vice 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 President Zelensky are also quite misleading. Moreover, as House Democrats frame their charges, to prove the element of “corrupt motive” at Article I, the House would have to establish (in their own words) 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 based on any legitimate national security or foreign policy interest.708 That is obviously incorrect. It would have been entirely proper for the President to ask about any role that Ukraine played in the 2016 presidential election. Uncovering potential foreign interference in U.S. elections absolutely squarely a matter of national interest. It is well settled that the United States has a compelling interest . . . in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the American democratic self-government.709 The American democratic self-government is a matter of national interest. It is well settled that the United States has a compelling interest . . . in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the American democratic self-government.710

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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 squarely a matter of national interest. In this case, moreover, there is abundant information already in the public domain suggesting that Ukrainian officials did not play any role in the 2016 election to support one candidate:

Hillary Clinton.

On the one hand, 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 reporters 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 on the Trump campaign in advance of the 2016 presidential election.713 And Nellie Ohr, a former high-ranking foreign policy aide to the late John S. H Denver, testifies that he and others were working to produce the Steele Dossier, testifying to Congress that Serhiy 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 have cast their case. For example, Arsen Avakov, Ukraine’s Minister of Internal Affairs, called then-candidate Trump “an even bigger danger to the US than terrorism.”715 And in the least two news outlets 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 report by The Financial Times confirmed Ukrainian election interference. The newspaper found that opposition to President Trump led “Kiev’s wider political leadership” to attempt to “undermine [Trump] and they would never have attempted before: intervene, however indirectly, in a US election.”717 These efforts were designed to undermine Trump’s chances. As one member of the Ukrainian parliament put it, the majority of Ukrainian politicians were “on Hillary Clinton’s side.”718

Even one 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 “if it had not been for 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, 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 limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the American democratic self-government.720 And President Trump made clear more than a year ago that “the United States will not tolerate any 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.\textsuperscript{723}

A request for Ukraine’s assistance in this case had been particularly apro priate because the Department of Justice had already opened a probe on a similar sub ject matter— specifically, Russian interference in the 2016 election— that led to the false Russian-collusion allegations against the Trump Campaign. In May of last year, Joseph M. 

Barr publicly announced that he had appointed U.S. Attorney John Durham to lead a review of the origins and conduct of the Department of Justice’s Russia-collusion targeting of then-Presi dent Zelensky clearly understood this to be a reference to Ukrainian officials who had sought to undermine him during the campaign, as he responded by im me diately noting that he “just recalled our ambass ador from [the] United States.”\textsuperscript{730} That ambassador, of course, had penned a harsh, undiplomatic op-ed criticizing then-candidate Trump, and it had been widely reported that a DNC operative met with Ukrainian embassy officials during the cam paign to dig up information detrimental to President Trump’s campaign.\textsuperscript{737} Notably, Democrats have not always believed that the Ukrainian assistance in uncovering foreign election interference constituted a threat to the Republic. To the contrary, as Senator John McCain, the late Senator of the United States to raise the appearance of a conflict of interest for his father.\textsuperscript{758}

On February 2, 2016, the Ukrainian Prosecutor General obtained a court order to seize Zlochevsky’s property.\textsuperscript{759} According to press reports, Vice President Biden then spoke with Ukraine’s President Poroshenko three times that February, on February 11, 18, and 19, 2016.\textsuperscript{760}

Vice President Biden has openly bragged that, around that time, he threatened Presi dent Poroshenko that he would withhold one billion dollars in U.S. loan guarantees unless the Ukrainians fired the Prosecutor General who was investigating the Bidens.\textsuperscript{761} Deputy Assistant Secretary Kent testified that the Prosecutor General’s removal “became a condition of the loan guarantee.”\textsuperscript{762} In September 2016, a Kiev court cancelled an arrest warrant for Zlochevsky.\textsuperscript{763}

In January 2017, Burisma announced that all cases against the company and Zlochevsky had been closed.\textsuperscript{764} As President Biden had no known qualifications or relevant experience to verify or supervise the investigation. In fact, on July 22, 2019—just days before the July 25 call—The Washington Post reported that the fired prosecutor “said he believes his ouster was in part his in terest in [Burisma] and [he] had remained in his post . . . he would have questioned [Hun ter Biden].”\textsuperscript{765} Even if the Vice Presi dent’s motives were pure, the possibility that a U.S. official used his position to derail a meritorious investigation made the Biden-Burisma affair a legitimate subject to raise. Indeed, any President would have wanted to make clear both that the United States was not placing any inquiry into the incident off limits and that, in the future, there would be no efforts by U.S. officials to anything as “horrible” as strong-arming Ukraine into dropping corruption investigations while operating under an obvious conflict of interest.\textsuperscript{766}

As the transcript shows, President Zelensky recognized precisely the point. He responded to President Trump by noting that a U.S. official used his position to derail a meritorious investigation made the Biden-Burisma affair a legitimate subject to raise. Indeed, any President would have wanted to make clear both that the United States was not placing any inquiry into the incident off limits and that, in the future, there would be no efforts by U.S. officials to anything as “horrible” as strong-arming Ukraine into dropping corruption investigations while operating under an obvious conflict of interest.\textsuperscript{766}

As the White House explained when the probe had shifted to a criminal investiga tion. President Trump introduced the topic by noting that “our country has been through a lot,”\textsuperscript{724} which referred to the en tire Mueller investigation and false allega tions about the Trump Campaign colluding with Russia. He then broadly expressed in terest in “find[ing] out what happened with the 

billion dollars in U.S. loan guarantees to

and the U.S. has such a treaty with

federal government—as well as the “sole organ of the federal government in the field of inter nationals”—requesting foreign assistance is well within his ordinary role.

Given the self-evident national interest at stake in identifying any Ukrainian role in the 2016 election, House Democrats resort to distorting the President’s words. They strain to recast his request to uncover historical truth about the last election as if it were something relevant only for the President’s personal political interest in the next election. Putting words in the President’s mouth, House Democrats pretend that, because it is known that the Ukrainian DNT server, he must have been pursuing a claim that Ukraine “rather than Russia” had interfered in the 2016 election— and that are well within a President’s ordinary role.\textsuperscript{725} The Washington
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 parties call—the leading figures of two sovereign nations—clearly understood the discussion to advance the U.S. foreign policy interest in ensuring that Ukraine’s new President is not 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 such rule of 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 Ukraine to fire its Prosecutor General, his family was not corruptly benefiting from his actions.

Impeachment trials are characterized by 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 would 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 or his son engaged in a “bunked conspiracy theories” and “without merit,”768 they lack any evidence to support those bald assertions, because they have steadfastly refused to respond to the Ukraine’s security assistance on these 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 Ukraine to fire its Prosecutor General, his family was not corruptly benefiting from his actions.

Impeachment is very different from calling a witness to an investigatory proceeding. 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 umbrela charge of “abuse of power,” Article I offers a menu of options that includes no less than ten different bases for conviction: (1) “corruptly” requesting that Ukraine announce an investigation into the Biden-Burisma affair; (2) “corruptly” conditioning the release of Ukraine’s security assistance on these investigations; and (4) “corruptly” conditioning a White House meeting on these investigations.769 Article II similarly invites Senators to pick and choose from a menu of at least ten different bases for obstruction including: (1) directing the White House and agencies, “without lawful cause or excuse,” not to produce documents in response to a subpoena; or (2) directing one or more of nine different individuals, “without lawful cause or excuse,” not to testify in response to a congressional subpoena. The only constitutional option is to reject the articles and acquit the President.

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 and to our system of government. The Articles are also the product of an unprecedented and unconstitutional process that denied the President every basic right guaranteed by the Due Process Clause. The process violated fundamental principles of fairness. These Articles reflect nothing more than the “persecution of an intemperate or designing majority in the House of Representatives” for “bone of the Framers warned against. The Senate should reject the Articles of Impeachment and acquit the President immediately.

Respectfully submitted,

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

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


ENDNOTES


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IV. The Articles Have a Structural Deficiency and Can Only Result in Acquittal

The Articles also suffer from a fatal structural deficiency. Put simply, the articles are impermissibly duplicitous—that is, each article seeks to impose different acts as physi- cal grounds for sustaining a conviction.771 The problem with an article offering such a menu of options is that the Constitution requires two-thirds of Senators present to agree on the specific basis for conviction. A vote on a duplicitous article, however, could therefore be an exercise in futility, even the leaders of the two-thirds majority had actually agreed upon a ground for conviction. Instead, such a vote would be the product of an amalgamation of votes resting on no single one of which would have garnered two-thirds support if it had been presented separately. Accordingly, duplicitous articles like those exhibited here are facially unconstitution- al.

A. The Constitution Requires Two-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 impeachment trials that acquittal is required when duplicitous articles are presented.

In the Clinton impeachment,773 for example, Senator Grassley noted his vote to acquit by pointing out that the House had “made a significant and irreparable mistake in the actual drafting of the articles.”774 Because of the use of multiple acts as wrongdoing, it would be “impossible” ever to determine “whether a two-thirds majority of the Senate actually agreed upon a particular allegation.” Senator Dole echoed those concerns, explaining that “the unconstitutional bundling of charges” in these ar- ticles “violates this constitutional require- ment of a conviction.”775

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 re- moval of the President if only 19 Senators agreed on each of the 7 separate sub- parts.”776 Senator Chris Dodd agreed, ex- plaining 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 proc- edural” or “conceptual” flaw in the Senate’s “without lawful cause or excuse,” not to testify in response to a congressional subpoena. The only constitutional option is to reject the articles and acquit the President.

CONCLUSION

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7. Letter from Sen. Ron Johnson to Jim Jordan, Ranking Member, H.R. Comm. on Oversight & Reform, and Devin Nunes, Ranking Member, H.R. Permanent Select Comm. on Intelligence (Nov. 20, 2019).

8. Memorandum of Tel. Conversation with President Zelensky of Ukraine, at 2 (July 25, 2019) (July 25 Call Mem.). The transcript is attached as Appendix A.


65. 2 Joseph Story, Commentaries on the Constitution §743 (1833).
70. Michael J. Gerhardt, The Lessons of Impeachment History, 67 Geo. Wash. L. Rev. 683, 617 (1999) ("[t]he division of impeachment authority between the House and the Senate, the Senate has . . . the opportunity to review House decisions on what counts as impeachable (and has rejected House judgments in the past)."
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.
73. "The . . . e.g., Raoul Berger, Impeachment: The Constitutional Problems 86 (1973)."
77. Background 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. Hearing on Background of Impeachment) (statement of Professor Matthew Holden, Jr., Univ. of Va., Dept. of Gov’t and Foreign Affairs) ("[It] seems that this late-added proviso refers to such ‘other high Crimes and Misdemeanors,’ as would be comparable in their significance to ‘treason’ and ‘bribery’."); Arthur M. Schlesinger, Jr., Reflections 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.").
78. U.S. Const. art. III, §3, cl. 1. This definition is repeated in the United States criminal code: "Whoever, owing allegiance to the United States, levies war against them or adjoins himself to their enemies, giving them aid and comfort within the United States or elsewhere of treason or bribery."
80. Proceedings of the U.S. Senate in the Impeachment Trial of President William Jefferson Clinton, Vol. IV: Statements of Senators Regarding the Impeachment of William Jef-
81. ferson Clinton, S. Doc. 106–4 at 2691 (1999) (Clinton Senate Trial) (statement of Sen. Patrick J. Leahy) ("[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 Commentaries on the Laws of England (1765–69). That was a work that was described by Madison in the Virginia convention as ‘nothing less than a book which is in every man’s hand.’").
82. 4 William Blackstone, Commentaries on the Laws of England ch. 34 (1769).
digm of bribery that the Framers had in mind as he cited King Louis XIV of France’s bribe of England’s King Charles II and ar-
gued, ‘no one would say that we ought to ex-
pose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard against it by disarming him.’"
85. 2 The Records of the Federal Convention of 1787, at 331 (1911).
86. U.S. Const. art. I, §3, cl. 6 (emphasis added).
87. Id.
88. U.S. Const. art. III, §2, cl. 3 ("The Trial of All Crimes, except in Cases of Impeachment, shall be by Jury . . . .") 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.").
89. See 4 Blackstone, Commentaries §§74–75.
90. See Berger, supra note 73, at 71.
91. Id. at 86–87. Shortly before the Convention agreed to the "high Crimes and Mis-
demeanors" standard, delegates rejected the use of "common treason" 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 86, at 466; see also Berger, supra note 73, at 74.
92. 4 Blackstone, Commentaries §256 (emphasis added). Blackstone, in fact, listed numerous "high misdemeanors" that might subject a person to an official to impeachment, including "mal-
administration." Id. at *121.
93. 2 Records of the Federal Convention, supra note 82, at 149.
94. Id. at 550.
95. Id.
96. See also id. at 556.
97. Id. ("The conscious and deliberate char-
acter of [the Framers'] rejection of [mal-
administration'] is accentuated by the fact that a good many state constitutions of the time did have ‘maladministration’ as an
impeachment ground." Black & Bobbitt, supra note 82, at 27.
98. 2 Records of the Federal Convention, supra note 82, at 64.
99. Id. at 337.
100. 4 The Debates in the Several State Conventions on the Adoption of the Federal Constitution, at 127 (Jonathan Elliot 2nd ed. 1877).
101. 3 The Debates in the Several State Con-
vocations on the Adoption of the Federal Con-
stitution, supra note 99, at 26 (2nd ed. 1897).
102. Berger, supra note 73, at 86.
103. Clinton Senate Trial, supra note 78, vol. IV at 2424 (statement of Sen. Patrick J. Leahy); see also id. at 2683 (statement of Sen. James M. Jeffords) ("The framers inten-
tion was this set at an extremely high level to ensure that only the most seri-
os offenses would justify overturning a pop-
ular election.").
104. 2 Joseph Story, Commentaries on the Constitution §749 (1830); see also 1 James Bryce, The Worth of Man (1888) ("Impeachment . . . 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.").
105. Black & Bobbitt, supra note 82, at 111.
106. The Declaration of Independence para. 2 (U.S. 1776).
ment).
111. Tribe, supra note 106, at 723. The unique importance of a presidential impeach-
ment 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.
113. U.S. Const. art. II, §3.
116. Memorandum from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel, Re: Amenable of the Presi-
dent, Vice President and other Civil Officers to Federal Criminal Prosecution While in Office, at 32 (Sept. 24, 1973).
118. H.R. Res. 611, 105th Cong. (1998); H.R. Counsel to the Judiciary Com-
nor, R-Penn.; Clinton sought to thwart the due administration of justice by repeatedly committing the felony crimes of perjury, witness tampering, and obstruction of justice.").
119. H.R. Comm. on the Judiciary, Impeach-
ment of Richard M. Nixon, President of the United States, H.R. Rep. No. 93–1365, 93d Cong. 1 (1974) (report of the House Judiciary Committee’s report de-
scribed Article II generally as involving “abuse of the powers of the office of Presi-
dent.” id. at 139, that was not the actual charge included in the articles of impeach-
ment. The actual charges in the rec-
commended article of impeachment included specific violations of the Lin
121. 25 Geo. 2d, 91, 93 (1952) (per cur).
128. U.S. Const. art. III, 1; see also John R. Labovitz, Presidential Impeachment 92–93 (1978) (The Good Behavior Clause “could be interpreted as a separate standard for the impeachment of judges, or it could be interpreted as an aid in applying the term ‘high crimes and misdemeanors’ to judges. Whichever interpretation was adopted, it was clear that there was a difference between the impeachment of judges and the impeachment of Presidents and Federal judges, confounding the application of these cases to presidential impeachment.”); Clinton Senate Trial, supra note 78, vol. IX at 2641 (statement of Sen. Max Cleland) (citing the “Good Behaviour” clause and explaining “that there is indeed a different legal standard for impeachment of Presidents and Federal judges.”); id. at 2611 (statement of Sen. Edward Kennedy) (“Removal of the President of the United States and removal of a Federal judge are different.”).

129. Sunstein, supra note 130, at 300; see also Clinton Judiciary Comm. Hearing on Background of Impeachment, supra note 78, at 350 (statement of Professors Frank O. Bowman, III, Stephen L. Seipinck, Gonzaga University School of Law) (“[C]omparative analysis suggests that Congress has applied a discernably different standard to the removal of judges.”).

130. To the extent that the Senate voted in the impeachment trial of Judge Clayborne not to require all Senators to apply the beyond-a-reasonable-doubt standard, see 132 Cong. Rec. 29,153 (1986), that decision in a judicial impeachment has little relevance here. Clinton Senate Trial, supra note 78, vol. IX at 2652 (statement of Sen. Tim Hutchinson) (“If we are to remove a President for the first time in our Nation’s history, none of us should have any doubts.”).

131. The Full Image: The Report of the impeachment trial of President William Jefferson Clinton, Volume II: Floor Trial Proceedings, S. Doc. 106–2 at 1876 (1999) (statement of Sen. Patty Murray) (“If we are to remove a President for the first time in our Nation’s history, none of us should have any doubts.”).


133. 2 The Records of the Federal Convention of 1787 at 68 (Max Farrand ed. 1911) (Records of the Federal Convention) (Charles Pinckney).

134. Id. at 69 (Gouverneur Morris).

135. Id. at 65.

136. See supra notes 92–100 and accompanying text.

137. 2 Records of the Federal Convention, supra note 175, at 550 (James Madison).

138. Alexander Hamilton’s description in Federalist No. 48, 105th Cong. No. 65, donating the “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, or the abuse or violation of some public trust” or “acts and proceedings which the House of Representatives should, by their own authority, consider as impeachable offenses.”

139. 1 John Ash, New and Complete Dictionary of the English Language (1775) (definition of “impeachment”: “[a] public charge of something criminal, an accusation.”).

140. See supra note 174, at 14.

141. See, e.g., 1 John Ash, New and Complete Dictionary of the English Language (1775) (definition of “impeachment”: “[a] public charge of something criminal, an accusation.”).

142. 1 John Ash, New and Complete Dictionary of the English Language (1775) (definition of “impeachment”: “[a] public charge of something criminal, an accusation.”).

143. 1 John Ash, New and Complete Dictionary of the English Language (1775) (definition of “impeachment”: “[a] public charge of something criminal, an accusation.”).

144. U.S. Const. art. I, § 3, cl. 5; id. at § 3, cl. 6.

145. 1 John Ash, New and Complete Dictionary of the English Language (1775) (definition of “impeachment”: “[a] public charge of something criminal, an accusation.”).

146. See, e.g., 1 John Ash, New and Complete Dictionary of the English Language (1775) (definition of “impeachment”: “[a] public charge of something criminal, an accusation.”).

147. Clinton Senate Trial, supra note 78, vol. IX at 2753 (statement of Sen. Joseph R. Biden, Jr.). Numerous other Senators distinguished the lower standard for judicial impeachments. See, e.g., id. at 2692 (statement of Sen. Max Cleland) (“After review of the record, historical precedents, and consideration of the different roles of Presidents and Federal judges, I have concluded that there is indeed a different legal standard for impeachment of Presidents and Federal judges.”); id. at 2611 (statement of Sen. Edward Kennedy) (“Removal of the President of the United States and removal of a Federal judge are different.”).

148. The resolution that the Senate passed to open the trial was virtually identical to the resolution that the House had passed. The Resolution (Dec. 18, 2019), http://perma.cc/9ERV–9PZX. The Senate’s impeachment trial opened at 10:00 a.m. (ET) on December 18, 2019. See supra note 132.

149. See, e.g., Batiste also reflected fear of Congress. Berger, supra, at 119.

150. The Full Image: The Report of the impeachment trial of President William Jefferson Clinton, Volume II: Floor Trial Proceedings, S. Doc. 106–2 at 1876 (1999) (statement of Sen. Patty Murray) (“If we are to remove a President for the first time in our Nation’s history, none of us should have any doubts.”).

151. 1 John Ash, New and Complete Dictionary of the English Language (1775) (definition of “impeachment”: “[a] public charge of something criminal, an accusation.”).

152. Id.

153. Id.

154. Id.

155. Id.

156. Clinton Senate Trial, supra note 78, vol. IV at 2758 (statement of Sen. Russell D. Feingold); id. at 2752 (statement of Sen. Tim Hutchinson) (“If we are to remove a President for the first time in our Nation’s history, none of us should have any doubts.”).

156. Id.

157. Id.

158. Id.


162. The Full Image: The Report of the impeachment trial of President William Jefferson Clinton, Volume II: Floor Trial Proceedings, S. Doc. 106–2 at 1876 (1999) (statement of Sen. Patty Murray) (“If we are to remove a President for the first time in our Nation’s history, none of us should have any doubts.”).

163. Id.

164. Id.

165. Id.


167. Id.

(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 legal governing agencies of the executive branch”).

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

189. III Hinds’ Precedents § 2407, at 843.


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


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

194. Id. at 296.


196. 2 Records of the Federal Convention, supra note 175, at 566.


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

200. Id.


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.” . . .)”); U.S. Const. art. II, § 2, cl. 1 (“[I]t shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.”).

206. The mere use 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.”). The Jeffersonian vision was that any lawful action may be treated as an impeachable offense based on a characterization of subjective intent alone.


209. 4 Elliot, Debates in the Several State Conventions on the Adoption of the Federal Constitution (1842 ed. 1888).

210. Id. at 127.

211. Id.

212. Id.


214. H.R. Rep. No. 93–1305, at 1 2. “This report is in part 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 illegal intrigues. Undue acquiescence in an expected perjury, destruction of evidence, obstruction of justice—all of which are crimes.” Id. at 335.

215. Id. at 325. 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 these 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 recommended article charged President Nixon with defying congressional subpoenas “without lawful cause or excuse” and asserted that the President “has 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. Id. at 47–48.

219. Id. at 244.


221. Even the source they cite undermines the case. See supra note 175, at 348.

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


224. Washington Fellowship Address, supra note 235.

225. 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.


227. 2 Records of the Federal Convention, supra note 175, at 68.

228. Id. at 69–70.

229. U.S. Const. art. I, § 9, cl. 8; 2 Records of the Federal Convention, supra note 175, at 389.

230. 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.

231. 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.

232. HJC Report at 92, 80.

233. Id.

234. 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 furnished a peculiar reason in favor of impeachments whilst in office.”). id. at 69 (Gouverneur Morris) (“The Executive ought therefore to be impeachable for . . . Corrupting his electors.”).


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 John M. Dion, Acting White House Chief of Staff, at 2 (Oct. 4, 2019). The language quoted by the court states that “various events have been credited for initiating the impeachment act in motion.” H. Doc. 114–192, 114th Cong. § 603 (2017). But that does not mean that any of these “various events” automatically confers authority to the committees to begin an impeachment inquiry. It merely acknowledges the historical fact that there is more than one way the House 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 ‘authorising’ 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 two separate resolutions that occurred weeks apart. The House first voted to authorize an investigation pursuant to which a resolution (the court missed) and then it voted to refer a second matter (the resolution cited by the court), which touched upon President John- son’s impeachment inquiry. The court missed, and it then voted to refer a second matter (the resolution cited by the court), which touched upon President John-

Second, the court misread III Hinds’ Precedents §2400 as showing that “a resolution ‘authorising’ 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 two separate resolutions that occurred weeks apart. The House first voted to authorize an investigation pursuant to which a resolution (the court missed) and then it voted to refer a second matter (the resolution cited by the court), which touched upon President John-

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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 §210 (1907) (Cannon’s Precedents); 3 Deschler’s Precedents ch. 14, §18.1. In some cases before 1870, such as the impeachment of Judge Pickering, the House relied on a letter presented directly to the House to impeach an official before conducting an inquiry, and then authorized a committee to draft specific articles of impeachment as a consequence of the investigation (and resulting consideration of the President’s death). H.R. Comm. on the Judiciary, Impeachment of Judge Harry E. Claiborne, H.R. Rep. No. 93–506, 93rd Cong. 18–20 (1973) (Janet Reno); supra note 283, at 54 (statement of Rep. Nadler); id. at 16 (statement of Rep. Nadler); Jerry Nadler (@RepJerryNadler). Twitter (Sept. 21, 2016, 7:01 AM) https://twitter.com/AVY-TFGM.

301. 2019 OLC Imunity Opinion, 38 Op. O.L.C. at *5 (citations omitted). See supra note 283, at 54 (statement of Rep. Nadler). (Like executive privilege, the immunity protects confidentiality within the executive branch that the Supreme Court has acknowledged is essential to presidential decision-making.” (emphasis added)).

302. 2019 OLC Imunity Opinion, 38 Op. O.L.C. at *6 (citations omitted). See 2014 OLC Imunity Opinion, 38 Op. O.L.C. at *1 (emphasis added). (Like executive privilege, the immunity protects confidentiality within the executive branch that the Supreme Court has acknowledged is essential to presidential decision-making.” (emphasis added)).


304. 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).


306. See, e.g., 2014 OLC Imunity Opinion, 38 Op. O.L.C. at *6 (citations omitted). See 2014 OLC Imunity Opinion, 38 Op. O.L.C. at *6 (citations omitted). See Assertion of Executive Privilege with Respect to Certain Documents Generated in Response to Congressional Subpoena, 457 U.S. 800, 812 (1982) (“For aides entrusted with discretionary authority in sensitive areas such as national security or foreign policy, absolute immunity might well be justified to protect the unhesitating performance of functions vital to the national security.”). See supra note 283, at 54 (statement of Rep. Nadler). (Like executive privilege, the immunity protects confidentiality within the executive branch that the Supreme Court has acknowledged is essential to presidential decision-making.” (emphasis added)).

307. See supra note 283, at 54 (statement of Rep. Nadler). (Like executive privilege, the immunity protects confidentiality within the executive branch that the Supreme Court has acknowledged is essential to presidential decision-making.” (emphasis added)).

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316. See supra note 283, at 54 (statement of Rep. Nadler). (Like executive privilege, the immunity protects confidentiality within the executive branch that the Supreme Court has acknowledged is essential to presidential decision-making.” (emphasis added)).

317. See supra note 283, at 54 (statement of Rep. Nadler). (Like executive privilege, the immunity protects confidentiality within the executive branch that the Supreme Court has acknowledged is essential to presidential decision-making.” (emphasis added)).
that do not implicate presidential decision-making”).

316. See, e.g., Letter from Eliot L. Engel, Chairman, H.R. Comm. on Foreign Relations, to Michael McFaul, Acting White House Chief of Staff, at 4 (Nov. 5, 2019) (explaining that House rules “do not permit agency counsel to participate in depositions”)


319. Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context, 43 Op. O.L.C. *10 (“[i]n many cases, agency employees will have only limited experience with executive privilege and may not have the necessary legal expertise to determine whether a question implicates a particular privilege.”)

320. See INS v. Chadha, 462 U.S. 919, 955 n.21 (1983) (Congress’s power to determine[re] specified internal matters is limited because they “are ‘only employees of the Congress to bind itself’”); United States v. Ballin, 144 U.S. 1, 5 (1892) (Congress “may not by its rules ignore constitutional restraints”); HJC Report on Executive Privilege and Deposition Views (“The Constitution’s grant of the impeachment power to the House of Representatives does not temporarily suspend the rights and powers of the other branches established by the Constitution.”)


322. Letter from Rep. Elijah E. Cummings, Chairman, H.R. Comm. on Oversight & Reform, to Carl Kline, at 2 (Apr. 27, 2019) (“Both your personal counsel and attorneys from the White House Counsel’s office will be permitted to attend.”); see also Kyle Cheney, Cummings Demands Contempt Threat Against Former White House Chief of Staff, Politico (Apr. 27, 2019), https://perma.cc/F77S-EJZV.

323. Bordenkircher v. Hayes, 434 U.S. 357, 363 (1978) (citations omitted); see also, e.g., United States v. Myers, 378 U.S. 50, 58 (1964) (“For an individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or constitutional right.”).


328. See History of Refusals by Executive Branch to Provide Information Directly Mandated by Congress, Part I—Presidential Invocations of Executive Privilege Vis-à-Vis Congress, 6 O.L.C. §1, 751, 753 (1982) (explaining that the refusal for purposes of a non-impeachment hearing relating to negotiation of the Jay Treaty with Great Britain, President Washington sent a letter to the House stating, “[t]o admit, then, a right in the House of Representatives to demand, and to have, as a matter of course, all the papers respecting a particular subject, would be inconsistent with a design to establish a dangerous precedent” (citation omitted)); Jonathan L. Entin, Separation of Powers, the Political Branches, and the Limits of Executive Power, 51 Ohio St. L.J. 175, 186-209 (1990).

329. Letter from James Madison to Mr. (1804), in 4 Letters and other Writings of James Madison (Monticello, 1949) (emphasis added).

330. Myers v. United States, 272 U.S. 52, 85 (1926) (“The purpose was not to avoid friction, but to avoid the friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.”); The Federalist No. 51, at 290(2) (Alexander Madison) (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”).

331. 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 accommodation . . . of the needs of the conflicting branches.”)

332. United States v. Am. Tel. & Tel. Co., 567 F.2d 121, 127 (D.C. Cir. 1977) (“[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 before a Congressional Committee refuses to give testimony or produce documents, the Committee cannot hold the witness in contempt.”). Rather, the established procedure 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 contempt.” H.R. Rep. No. 93–1305, at 484 (1974) (“H.R. Rep. No. 93–1305, at 484 (1974) (reversing Petitioner’s contempt of Congress conviction because “the subcommittee was without authority which can be vindicated by criminal sanctions”); United States v. Rumely, 345 U.S. 41, 47–48 (1953) (holding that the government’s production of all materials outside the scope of the authorizing resolution); United States v. McSorely, 473 F.2d 1178, 1194 (D.C. Cir. 1972) (reversing a congressional contempt conviction and applying Fourth Amendment protections to a congressional investigation).
Presidents have acknowledged their obligation to comply with an impeachment investigation." Id. at 32–33. OLC has clarified that, when read in context, President Ford's statement was "the continued availability of executive privilege" because President Ford explained that "even in the impeachment context, the Executive Branch's 'position is that it need not grant the grand jury access to communications and in some cases to any other executive privilege material because it can only be used to protect official functions.'" Id. at 84 (quoting Rep. Bob Goodlatte).

370. Id. at 103–04 (quoting President Nixon and Rep. Bob Goodlatte). "I want you to tell it, if it pleads the Fifth Amendment, let it over or anything else, if it'll save it—the plan. That's the whole point.""

373. Id. at 188 (reflecting note of 21–17).

374. 3 The Debates in the Several State Conventions on the Adoption of the Federal Constitution, at 401 (Jonathan Elliot 2nd ed. 1867).


378. Memorandum from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel, to Pat A. Cipollone, Counsel to the President, Re: House Committees’ Authority to Investigate for Impeachment, at 1 (Jan. 19, 2020) (emphasis in original) (Impeachment Inquiry Authorization, infra Appendix B (listing subpoenas)).

379. Impeachment is not just a political process unconstrained by law. "The subjects of an impeachment trial are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust"—that is, "POLITICAL, as they relate chiefly to injuries done immediately to the society itself." The Federalist No. 65, at 396 (Alexander Hamilton) (Clinton Rossiter ed., 1961). But "the President didn't say impeachment is entirely political. He said the offense has to be political." Alan M. Dershowitz, Hamilton Wouldn’t Impeach Trump, Wall St. J. (Oct. 9, 2019), http://perma.cc/97PH-QPGT (emphasis in original). "Hamilton’s description in Federalist 65 should not be taken to mean that impeachments have a conventional, political nature," emphasized the author, "but flowed from traditional criminal process." J. Richard Broughton, Conviction, Nullification, and the Limits of Impeachment As Politics, 68 Chi. Kent L. Rev. 275, 298 (2017). The Federalist No. 65 goes to "pains to show that the Senate can act in their judicial character as a ‘court for the trial of impeachments,’" and "the entire essay is written to show that the Senate can overcome its political nature as an elected body . . . , and act as a proper court for the trial of impeachments." Charles L. Black, Jr., & Philip Bobbitt, Impeachment: A Handbook 102 (2018) (emphasis in original). Hamilton emphasized that impeachment and removal of "the accuser’s authority," the charge must be based on "the affidavit of a parent, con- siderations involving ‘real demonstrations of innocence or guilt’ rather than purely political factors like ‘the comparative merits of parties.’" (noting The Federalist No. 65). Thus, "one should not diminish the significance of impeachment’s legal aspects, particularly as they relate to the House’s responsibility for the legis-

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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-... (The processes required by the Clause with respect to the termination of a protected interest will vary depending upon the importance attached to the interest and the particular circumstances under which the deprivation may occur.”); Mathews v. Eldridge, 424 U.S. 319, 394 (1976) (“Due process is flexible and calls for such procedural protections as the particular situation demands.”) (quoting Morrissey v. Brewer, 400 U.S. 471, 487 (1971)).


416. See Attempted Exclusion of Agency Coun-... 6 Reg. Deb. 737 (1818); III Hinds’ Precedents § 2491, at 1008 (Judge Thurston, 1837); id at 716 (Justice Calhoun, 1826); see, e.g. Letter from James Madison to Mr. Delahay, 1873).

425. See generally Board of Regents of State Colleges v. Roth, 408 U.S. 564, 571–72 (1972) (“The Court has also made clear that the property interests protected by procedural due process exceed well beyond actual ownership of real estate, chattels, or money.”); Bolling v. Sharpe, 347 U.S. 497, 499 (1954) (“Although the Court has not assumed to define liberty of property in any precise term, that term is not confined to mere freedom from bodily restraint.”).

438. See, e.g., Roe, 407 U.S. at 573; see also, e.g., Doe v. Dep’t of Just., 753 F.2d 1092, 1106–... 6 Reg. Deb. 737 (1830) (statement of Rep. Spencer Pettis).


456. See supra Part II.B.2.; see supra note 453–454 and accompanying text.


460. See supra Part II.B.2.; see supra note 453–454 and accompanying text.


463. See supra note 453-454 and accompanying text.


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545. Id. at 160, 256 n.400; see also Jerry Dunleavy, FBI Lawyer Under Criminal Investigation Altered Document to Say Carter Page Was Not a Source for Another Agency, Wash. Examin. (Dec. 9, 2019), https://perma.cc/3SX5-ZWGC.

546. OIG FISA Report, supra note 543, at xiii; Inspector General Report on Origins of FBI’s Whistle-Blowing Before the Select Committee on the Judiciary, C-SPAN at 1:19:22, 3:19:34 (Dec. 11, 2019), https://www.cspan.org/video/ 8466839-1/justice-department-ig-horowitz-de-fence-report-highlights-fias-problems/; id. at 4:59:16 (Inspector General Horowitz: “There is such a range of conduct here that is inexplicable. And the answers we got were not satisfactory. And I felt trying to understand how could all these errors have occurred over a nine-month period or so, among three teams, hand-picked, one of the highest profile, if not the highest profile, case in the FBI, going to the very top of the organization, involving a presidential campaign.”).


553. Id. at 190:18–24 (Opmal public hearing) (“The President was concerned that the United States seemed to—to bear the exclusive brunt of security assistance to Ukraine. He wanted to see the Europeans step up and contribute more security assistance. The offers we got were not satisfactory that we’re left trying to understand how could all these errors have occurred over a nine-month period or so, among three teams, hand-picked, one of the highest profile, if not the highest profile, case in the FBI, going to the very top of the organization, involving a presidential campaign.”).


556. July 25 Call Mem., infra Appendix A at 3.

557. See infra note 737 and accompanying text; July 25 Call Mem., infra Appendix A at 3.


559. See July 25 Call Mem., infra Appendix A at 4 (President Zelensky understood President Trump’s comments to be referring “specifically to the company.”).

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 100:22 (testifying that his knowledge of the holdup earlier, they said, the matter would have been raised with National Security Advisor John Bolton during his visit on Aug. 27).


611. Volker Interview Tr. at 124:14–17 ("To my knowledge, the holdup earlier, they said, the matter would have been raised with National Security Advisor John Bolton during his visit on Aug. 27.

612. Volker Interview Tr. at 313:2–9.


614. Croft Dep. Tr. at 117:7–12.


616. Volker-Morrison Public Hearing, supra note 563, at 68 ("I received a text message from one of my Ukrainian counterparts on August 29th forwarding that article, and that’s the first time that I raised it with me.


619. Sondland Interview Tr. at 149:21–23. ("[A. That's correct.]; Taylor-Kent Public Hearing, supra note 604, at 110:20–24 ("[Q.] But if I understand this correctly, you're telling us that Tim Morrison told you that Ambassador Sondland told him that the President told Ambassador Sondland that Zelensky would have to open an investigation into Biden?

[A.] That's correct."

620. D. Hale Dep. Tr. at 85:2–3 (Nov. 6, 2019). ("[Q.] And it wasn't until President Trump and his administration that you went through?

[A.] That is correct.").


627. Trial Mem. of the U.S. House of Representatives at 28.

628. Id.


630. Id. at 64.

Costs Should Pay 'Substantially More' for Defense

2.

224:19–225:6 ("[T]he President believed that the Europeans should be contributing more in security-sector assistance.").

The President (Sept. 1, 2019), https://perma.cc/2XNC-F8YF. See https://perma.cc/2XNC-F8YF.

15 (Oct. 19, 2018), https://perma.cc/E3YE-5RSZ. The Department of Justice has acknowledged that Mr. Durham's investigation is "broad in scope and multifaceted" and is "intended to illumine open questions regarding the activities of U.S. and foreign intelligence services as well as non-governmental organizations and individuals." See Letter from Stephen Halkas, Acting Assistant Attorney General, Depty of Justice, to Jerrold Nadler, Chairman, House Judiciary Comm. (June 10, 2019).

717.

716.

715.

Ukrainian Efforts to Sabotage Trump Backfire, supra note 565.

716. Id.

717. Ukraine's Leaders Campaign Against 'Open Trump,' supra note 566 (Hillary Clinton, the Democratic nominee, is backed by the pro-western government that took power after Mr. Yanukovych was ousted by street protests in February. A pro-Russian candidate [Donald Trump] loses in November, some observers suggest Kiev's actions may have played at least a small role.").


729. H.R. Res. 765 art. 1.


733. President Trump Meeting with Hunter Biden Served as Ceremonial Figure on Burisma Board for Month by Ukrainian Gas Company to be a "Made Way to Help Ukraine's Leaders Campaign Against 'Open Trump,' supra note 566 (Hillary Clinton, the Democratic nominee, is backed by the pro-western government that took power after Mr. Yanukovych was ousted by street protests in February. A pro-Russian candidate [Donald Trump] loses in November, some observers suggest Kiev's actions may have played at least a small role.").


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729. H.R. Res. 765 art. 1.

741. Kent Interview Tr. at 88:8–9.
745. Biden Fuses Conflict of Interest Questions in Anti-Corruption Investigation Fell Apart, supra note 572 (‘‘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 it. Hunter Biden isn’t an undistinguished corporate lawyer, with no previous Ukraine experience.’’); Will Hunter Biden Jeopardize His Father’s Campaign?, supra note 742.
748. Biden Fuses Conflict of Interest Questions That Are Being Promoted by Trump and Allies, supra note 572; Polina Ivanova et al., What Hunter Biden Did on the Board of Ukrainian Natural Gas Company Burisma (Oct. 18, 2019), https://perma.cc/7PL4-JMPY. Compare Hunter Biden Served as ‘‘Ceremonial Figure’’ on Burisma Board for ‘‘$90,000 Per Month’’, supra note 709 (reporting Hunter Biden’s monthly compensation to be $83,333 monthly, or nearly $1 million per year), with 2019 Proxy Statement, ConocoPhillips, at 30 (Apr. 1, 2019), https://perma.cc/4GPF-62WV (disclosing cash and stock awards provided to each active director with total compensation for the year ranging from $33,125 to $377,779). See also ’8827-CT24; Josh Rogin, ‘‘[o]nly the Trump- regional political cronies . . . would have been likely to care about a single offense in several counts.’’ 1A Charles Alan Wright et al., Federal Practice and Procedure §142 (4th ed. 2019); see, e.g., United States v. Saldivar, 565 F.3d 145, 150 (3d Cir. 2009); United States v. Chran, 529 F.2d 1236, 1237 n.3 (5th Cir. 1976).
750. Kent Interview Tr. at 227:1-8 (‘‘And when I was on a business trip with somebody from the Bidens in Ukraine/I must say he was . . . I raised my concerns that I had heard that Hunter Biden was on the board of a company owned by somebody that the US government had spent money trying to get to tens of millions of dollars back and that could create the perception of a conflict of interest.’’).
751. Impeachment Inquiry: Amb. Marie ‘‘Masha’’ Yovanovitch Before the H.R. Permanent Select Comm. on Intelligence, 116th Cong. 355-36 (Nov. 15, 2019) (Yovanovitch Public Hearing) (‘‘I think that it could raise the appearance of a conflict of interest.’’); Taylor: Kent Public Hearing, supra note 604, at 25, 94-95 (Kent raised concern that ‘‘concern . . . that Hunter Biden’s status as a board member could create the perception of a conflict of interest . . . 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); Sonlund: Public Hearing, supra note 614, at 117 (noting that there ‘‘is an appearance of a conflict’’); Hill-Holmes Public Hearing, supra note 636, at 89:20-90:3 (Hill affirming that ‘‘there were perceived conflicts of interest’’); Sondland: Public Hearing, supra note 614, at 206:17 (Sondland stating ‘‘it certainly creates the potential for the appearance of a conflict of interest’’).
752. Letter from Lindsey O. Graham, Chairman, S. Comm. on Judiciary, to Michael R. Pompeo, Secretary of State, at 1 (Nov. 21, 2019); see also S. Comm. on Judiciary, to Jerrold Nadler, Chairman, House Permanent Select Comm. on Intelligence (Nov. 9, 2019); Letter from Doug Collins, Ranking Member, H.R. Comm. on Judici- ary, to Adam Schiff, Chairman, H.R. Comm. on Judiciary (Dec. 6, 2019).
754. Kent Interview Tr. at 227:1-8 (‘‘And when I was on a business trip with somebody from the Bidens in Ukraine/I must say he was . . . I raised my concerns that I had heard that Hunter Biden was on the board of a company owned by somebody that the US government had spent money trying to get to tens of millions of dollars back and that could create the perception of a conflict of interest.’’).
755. Impeachment Inquiry: Amb. Marie ‘‘Masha’’ Yovanovitch Before the H.R. Perma- nent Select Comm. on Intelligence, 116th Cong. 355-36 (Nov. 15, 2019) (Yovanovitch Public Hearing) (‘‘I think that it could raise the appearance of a conflict of interest.’’); Taylor-Kent Public Hearing, supra note 604, at 25, 94-95 (Kent raised concern that ‘‘concern . . . that Hunter Biden’s status as a board member could create the perception of a conflict of interest . . . 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); Sonlund: Public Hearing, supra note 614, at 117 (noting that there ‘‘is an appearance of a conflict’’); Hill-Holmes Public Hearing, supra note 636, at 89:20-90:3 (Hill affirming that ‘‘there were perceived conflicts of interest’’); Sondland: Public Hearing, supra note 614, at 206:17 (Sondland stating ‘‘it certainly creates the potential for the appearance of a conflict of interest’’).
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758. HPSCI Report at 29-30, 38. See Letter from Devin Nunes, Ranking Member, H.R. Permanent Select Comm. on Intelligence, to Adam Schiff, Chairman, House Permanent Select Comm. on Intelligence (Nov. 9, 2019); Letter from Doug Collins, Ranking Member, H.R. Comm. on Judici- ary, to Jerrold Nadler, Chairman, H.R. Comm. on Judiciary (Dec. 6, 2019).
763. Id. with emphasis added.
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 future cooperation. We are ready to take a new page on cooperation in relations between the United States and Ukraine. For that purpose, I would like to say once again that our relations with United States and he will be replaced by a very competent and very experienced ambassador who will work hard on making sure that the friendship between two nations of Ukraine, you are a great teacher for us and in that.

President: Well it’s very nice of you to say that, so I’d like a lot for Ukraine. We spend a lot of effort and a lot of time. Much more than the European countries are doing and they should be helping you more. You must realize that does almost nothing for you. All they do is talk and I think it’s something that you should really ask them about. When I was speaking to Angela Merkel she talks Ukraine, but she doesn’t do anything. A lot of the European countries are the same way so it’s something you want to look at but the Ukraine has been very very cited to us. I wouldn’t say that it’s reciprocal necessarily because things are happening that are not good but the United States has been very very helpful to Ukraine. I don’t think that’s reciprocal necessarily because things are happening that are not good but the United States has been very very helpful to Ukraine. 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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 but I have the very fair prosecutor so good luck with everything. Your economy is going to get better and better and you have a lot of assets. It’s a great country. I have many Ukrainian friends, their incredible people.

President Zelensky: I would like to tell you that I have a few Ukrainian friends who live in the United States. Actually last time I traveled to the United States, I stayed in New York near Central Park and I was talking to 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 incredible work for the U.S. Government specifically Washington DC. On the other hand, I also want to ensure you that we will be very serious about the case and we 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 better future which will have more opportunities and more opportunities to discuss these 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 Attorney 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.

The President: Thank you. I am looking forward to going to Ukraine or we can take your plane, which is probably much better than mine.

President Zelensky: Thank you. I think we can have a beautiful country which would welcome 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 going to do something.

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 PURSUANT TO 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, Chief of Staff (Oct. 4, 2019)
3. Subpoena from Elijah E. Cummings to John D. Mulvaney, Acting White House Chief of Staff (Oct. 4, 2019)
5. Subpoena from Adam B. Schiff to Charles Kupperman, Special Advisor for National Security Programs, OMB (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, former 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)
17. Subpoena from Adam B. Schiff to Russell F. Vought, Acting Director of OMB (Oct. 24, 2019)
18. Subpoena from Peter DeFazio to Emily W. 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, Director, Special Assistant to the Secretary of State for European and Eurasian Affairs (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 Catherine Croft, Special Advisor for Ukraine Negotiations, Department of State (Oct. 30, 2019)
23. Subpoena from Adam B. Schiff to Christopher Anderson, former Special Advisor for Ukraine Negotiations, Department of State (Oct. 30, 2019)

APPENDIX C:

OFFICE OF LEGAL COUNSEL, MEMO- RANDUM ON THE HOUSE’S AUTHORITY TO INVESTIGATE FOR IMPEACHMENT (JAN. 19, 2019)


MEMORANDUM FOR PAT A. CIPOLLINE COUNSEL TO THE PRESIDENT

Re: House Committees’ Authority to Investigate for Impeachment

On September 24, 2019, Speaker of the House Nancy Pelosi “announced” at a press conference that “the House of Representatives is moving forward with an official impeachment inquiry” into the President’s actions and that she was “directing six committees to proceed” with several previously pending “investigations under that umbrella of impeachment inquiry.” Shortly thereafter, the House Committee on Foreign Affairs issued a subpoena directing the Secretary of State to produce a series of documents “related to the allegations of diplomacy by the United States and Ukraine.” See Subpoena of the Committee on Foreign Affairs (Sept. 27, 2019). In an accompanying letter, the Chairman stated that their committees jointly sought these documents, not in connection with legislative oversight, but “pursuant to the House of Representatives’ impeachment inquiry.” In the following days, the committees issued subpoenas to the Acting White House Chief of Staff, the Secretary of Defense, the Secretary of Energy, and several others within the Executive Branch. In light of these issuances, you asked whether these committees could compel the production of documents and testimony in furtherance of an asserted impeachment inquiry. We advised committees lacked such authority because, at the time the subpoenas were issued, the House had not adopted any resolution authorizing the House committees to conduct an impeachment inquiry. The Constitution vests the “sole Power of Impeachment” in the House of Representatives. The Constitution vests the “sole Power of Impeachment” in the House of Representatives. For precisely that reason, the House itself must authorize an impeachment inquiry, as it has been done in virtually every prior impeachment investigation in our Nation’s history, including every one involving a President. A congressional committee’s “right to exact testimony and to call for the production of documents” is limited by the “investigation charter” the committee has received from the House.

Subpoena from Adam B. Schiff to Marie Yovanovitch, former U.S. Ambassador to Ukraine (Oct. 21, 2019)

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

Subpoena from Adam B. Schiff to Michael A. Atkinson, the Director of the Office of the Inspector General of the Intelligence Community (Oct. 24, 2019)

Subpoena from Peter DeFazio to Emily W. Murphy, Administrator of General Services Administration (Oct. 24, 2019)

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

Subpoena from Adam B. Schiff to Philip Reeker, Director, Special Assistant to the Secretary of State for European and Eurasian Affairs (Oct. 26, 2019)

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

Subpoena from Adam B. Schiff to Catherine Croft, Special Advisor for Ukraine Negotiations, Department of State (Oct. 30, 2019)

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

The Constitution vests the “sole Power of Impeachment” in the House of Representatives. The Constitution vests the “sole Power of Impeachment” in the House of Representatives. For precisely that reason, the House itself must authorize an impeachment inquiry, as it has been done in virtually every prior impeachment investigation in our Nation’s history, including every one involving a President. A congressional committee’s “right to exact testimony and to call for the production of documents” is limited by the “investigation charter” the committee has received from the House.

The House adopted a formal resolution as a “necessary step” to confer the “investigative powers” of the House “to their full extent” upon the Judiciary Committee. 230 Cong. Rec. 2350-51 (1974) (statement of Rep. Rodino); see H.R. Res. 803, 93d Cong. (1974). As the House Parliamentarian explained, it had been “considered necessary for the House to specifically vest the Committee on the Judiciary with the investigatory and subpoena power to conduct the impeachment of President Clinton. After reviewing the Independent Counsel’s referral, the Judiciary Committee ‘decided that it must receive authority from the full House before proceeding on any further course of action.’” H.R. Rep. No. 105-795, at 24 (1998). The House again adopted a resolution authorizing the committee to issue compulsory process in support of an impeachment investigation. See H.R. Res. 581, 105th Cong. (1998). As Representative John Conyers summarized in 2016: “According to parliamentarians of the House and in the case of President Nixon, the House lacked such authority because, at the time the subpoenas were issued, the House had not adopted any resolution authorizing the committee to conduct an impeachment inquiry. The Constitution vests the ‘sole Power of Impeachment’ in the House of Representatives.” See also H.R. Rule X, cl. 2 (“General oversight responsibilities”); see also H.R. Rule X, cl. 2 ("General oversight responsibilities");
The House’s legislative power is distinct from its impeachment power. Compare U.S. Const. art. I, § 1, with id. art. I, § 2, cl. 5. Although committees had that same delegation during the Clinton impeachment investigation, it was materially similar one during the Nixon impeachment, the House determined on both occasions that the Judiciary Committee required a resolution to investigate. Speaker Pelosi purported to direct the committees to conduct an “official impeachment inquiry,” but the House Rules do not give the Speaker any authority to conduct impeachment investigation. The committees thus had no delegation authorizing them to issue subpoenas pursuant to the House’s impeachment power. In the absence of such a delegation, the committee subpoenas that were expressed by the Administration, by ranking minority members in the House, and by many Senators and others. On October 31, 2019, the House adopted Resolution 660, which “directed” six committees “to continue their ongoing investigations” as part of the practice the resolution was referred to the Judiciary Committee, See H.R. Doc. No. 115–177, Jefferson’s Manual § 605, at 324 (2019).

The Judiciary Committee did not act on the Sherman resolution, but it soon began an oversight investigation into related subjects that was the result of a Department of Justice investigation by Special Counsel Robert S. Mueller, III. On March 4, 2019, the committee served document requests on the White House and 80 other agencies, entities, and individuals, “unveill[ing] an investigation . . . into the alleged obstruction of justice, public corruption, and other abuses of power by President Trump, his associates, and members of his Administration.” Those document requests did not mention impeachment.

After the Special Counsel finished his investigation, the Judiciary Committee demanded his investigative files, describing its request as an exercise of legislative oversight authority. See Letter for William P. Barr, Attorney General, from Jerrold Nadler, Chairman, Committee on the Judiciary, U.S. House of Representatives at 3–4 (May 16, 2019) (describing the “legislative purpose” of subpoenas’ investigation) (capitalization altered).

Over time, the Judiciary Committee expanded the description of its investigation to claim that it was considering impeachment. The committee first mentioned impeachment in a May 8, 2019 report recommending that the committee was “weary of an attempt of Congress. In a section entitled “Authority and Legislative Purpose,” the committee stated that one purpose of the inquiry was to “recommend articles of impeachment with respect to the President or any other Administration official.” H.R. Rep. No. 116–105, at 12, 13 (2019). The committee is believed to be investigating impeachment when it petitioned the U.S. District Court for the District of Columbia to release grand-jury information related to the Special Counsel’s investigation.

Since the start of the 116th Congress, some members of Congress have proposed that the House investigate and impeach President Trump. On January 3, 2019, the first day of the new Congress, Representative Brad Sherman introduced a resolution to “urge Donald John Trump, President of the United States, for high crimes and misdemeanors.” H.R. Res. 13, 116th Cong. (2019). The Sherman resolution was called for adoption based upon the President’s firing of the Attorney General, William P. Barr. The committee formally claimed to be investigating impeachment when it petitioned the House’s General Counsel to release grand-jury information related to the Special Counsel’s investigation. See Application at 1–2, In re Application of the Comm. on the Judiciary, U.S. House of Reps., No. 19–c–48 (D.D.C. July 26, 2019); see also Memorandum for Members of the Committee on the Judiciary from Jerrold Nadler, Chairman, Re: Lessons from the Mueller Report, Part I: “Conduct Addressing Presidential Misconduct” at 3 (July 11, 2019) (advising that the committee would seek documents and testimony “to determine whether crimes committed by the President or any other Article I remedies, and if so, in what form”). The committee advanced the same reasoning in asking the district court to compel testimony before the committee by former White House Counsel Donald McGahn. See Compl. for Declaratory and Injunctive Relief at 1, In re Application of the Comm. on the Judiciary, U.S. House of Reps. v. McGahn, No. 19–cv–2379 (D.D.C. Aug. 7, 2019) (contending that the Judiciary Committee was “now determining whether to recommend articles of impeachment against the President or any other Article I remedies, and if so, in what form”). The committee advanced the same reasoning in asking the district court to compel testimony before the committee by former White House Counsel Donald McGahn. See Memorandum for Members of the Committee on the Judiciary from Jerrold Nadler, Chairman, Re: Lessons from the Mueller Report, Part I: “Conduct Addressing Presidential Misconduct” at 3 (July 11, 2019) (advising that the committee would seek documents and testimony “to determine whether crimes committed by the President or any other Article I remedies, and if so, in what form”). The committee advanced the same reasoning in asking the district court to compel testimony before the committee by former White House Counsel Donald McGahn. See id. at 12. That subpoena was invalid and unenforceable, see supra note 1; in an October 8, 2019 court hearing, the House’s General Counsel advised the Attorney General that his investigative files were not privileged.

On September 24, the day before the release of the call record, Speaker Pelosi “announced” that “the House of Representatives is moving forward with an official impeachment inquiry” and that she was “direct[ing] . . . six [c]ommittees to proceed with their investigations under that umbrella of impeachment inquiry.” Pelosi Press Release, supra note 1. In an October 8, 2019 court hearing, the House’s General Counsel advised the Attorney General that his investigative files were not privileged and unenforceable, see supra note 1; in an October 8, 2019 court hearing, the House’s General Counsel advised the Attorney General that his investigative files were not privileged and unenforceable, see supra note 1.

Following service of these subpoenas, you and other officials within the Executive Branch requested our advice with respect to the obligations of the subpoenas’ recipients. We advised that the subpoenas were invalid, among other reasons, the committees lacked the authority to conduct the purported inquiry and, with respect to several testimonial subpoenas, the committees lacked the authority to compel counsel from scheduled depositions. In reliance upon that advice, you and other responsible officials directed employees within your respective departments and agencies not to provide the documents and testimony requested under those subpoenas. On October 8, 2019, you sent a letter to Speaker Pelosi and the leaders of the Senate advising them that their purported impeachment inquiry was “constitutionally invalid” because the House had not authorized it.

Senator Lindsey Graham introduced a resolution on behalf of the Senate, co-sponsored by 49 other Senators, which objected to the House’s impeachment proceedings.
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 Judici ary Committee’s request for grand-jury information from the Special Committee’s investigation, holding that the committee was conducting an impeachment inquiry that was “preliminary[y] to . . . a judicial proceeding for purposes of the exceptions to grand-jury secrecy in Rule 6(e)(3)(D)(ii) of the Federal Rules of Criminal Procedure. See In re Application of the Comm. on the Judiciary, U.S. House of Representatives, 334 F. Supp. 2d 232, 252 (D.D.C. 2004).” The court ruled that the executive branch was required to provide the committee with grand-jury information for the purpose of determining the scope of the investigation.

The court’s decision was based on the House’s resolution authorizing the opening of an impeachment inquiry, which was found to be in “pursuance of legislative purposes” and therefore protected from the grand-jury secrecy provisions of Rule 6(e)(3)(E)(i).

The Court of Appeals for the D.C. Circuit later affirmed the district court’s decision, holding that the House’s resolution authorizing the impeachment inquiry was “sufficient to trigger the exception to grand-jury secrecy in Rule 6(e)(3)(D)(ii)” for purposes of the impeachment inquiry.

In a separate decision, the court also ruled that the House’s resolution authorizing the impeachment inquiry was “sufficient to trigger the exception to grand-jury secrecy in Rule 6(e)(3)(D)(ii)” for purposes of the impeachment inquiry.

With respect to both its legislative and its impeachment powers, the House has consistently asserted that it is entitled to investigate any and all matters pertinent to possible legislation concerning the administration of existing laws. See Mazzars USA, 940 F.3d 379 (2019) (en banc) (in an impeachment context).
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 authority was different 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 job of investigating grand jury, or any investigation engaged in like functions," such as the House Judiciary Committee, which had "begun an inquiry into presidential impeachment in the House."

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 792-93. Framers established a mechanism for Congress to hold even the highest officials accountable, if needed, and the Court has recognized the distinction 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 "[r]esolved" 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. See 3 Annals of Cong. 759-62 (1796). Washington refused to comply because the Constitution contemplates that only the Senate, not the House, may give "leave to treat." See 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 Representatives, except that of an impeachment." Id. at 760 (emphasis added). Because the House's "resolution ha[d] not expressed" any purpose of pursuing 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. 22–488, at 1 (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 relative to any purpose under the cognizance of the House of Representatives, except that of an impeachment, which the resolution has not expressed as a purpose in invoking the latter." See Charles A. Wickliffe, Chairman, Committee on Public Lands, U.S. House of Representa-

3. House members, too, have consistently recognized the difference between a legislative oversight investigation and an impeachment investigation. See, e.g., Watkins v. United States, 354 U.S. 187, 201 (1957). In 1846, a House select committee requested that the Secretary of War "be requested to lay before the House a copy of any part of the incomplete and unratified treaty." Id. at 201. The committee distinguished "investigations look[ing] to impeachment" and that "no dissent from the House's powers," and, therefore, the committee's actions must be "cheerfully admitted" that the House could not turn over requested information relating to an impeachment inquiry. See, e.g., id. at 201. The court recognized "a clear difference between investigations pursuant to the House's impeachment authority and those that serve its legislative authority (including oversight)."

4. As the Supreme Court has explained in the context of legislative oversight, "[t]he theory of a committee inquiry is that the congressional members are serving as representatives of the parent assembly in collecting information for a legislative purpose and, in such circumstances, committee members are endowed with the power of the House 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 effect . . . create the pre-existing factions" and "inlist all their animosities, partialities, influence and interest on one side, or on the other." Id. at 439. As such, they placed on the House to initiate an impeachment in the "representatives of the nation themselves." Id. at 440. In order to entice one of its committees to initiate an impeachment, the full House must "spell out that group's jurisdiction and purpose." Watkins, 354 U.S. at 201. Otherwise, a House committee could be "prompted by such a faction could laud open-ended and untested investigations without the sanction of a majority of the House." Because a committee may exercise the House's investigatory powers, only if authorized, the committee's actions must be within the scope of a resolution delegating authority from the House to the committee. Watkins, 354 U.S. at 200-01. The Constitution does not specify the standards for authorizing the House to delegate the impeachment function to committees or for committees to determine whether the Constitution would give Congress authority to issue a subpoena if Congress has given the issuing committee no such authority. See Dolan, Congressional Oversight Manual at 24 ("Committees of Congress only have the power to inquire into matters within the sphere of the authority given them by their parent body."). In evaluating a committee's authority, the House's resolution "is the controlling charter of the committee's powers," and the committee'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 is the committee that the House's committees are restricted to the missions delegated to them."). No witness can be compelled to make disclosures on matters within the district court's jurisdiction, but not within the House's. But the House's committee's authority to receive and review the House's instructions is embodied in the authorizing resolution.

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.

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 investigation. As John Labovitz, a House impeachment attorney during the Nixon investigation, explained: "[I]n impeachment investigations, because they are at the core of the power and the actual exercise of that power," 354 U.S. at 205. If the House wished to authorize the exercise of its investigatory 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 places "constitutional liberties" in "danger." Id.

The impeachment investigation of President Andrew Johnson. On January 7, 1867, the House adopted a resolution authorizing the appointment of a committee "to inquire into the official conduct of Andrew Johnson . . . and to report to this House whether, in their opinion, the President "has been guilty of any act, or has conspired with others to do acts, which, in contemplation of the Constitution, are high crimes or misdeeds." Cong. Globe, 39th Cong., 2d Sess. 320–21 (1867); see 3 Hinds' Precedents §2400, at 824. The resolution conferred upon the committee the "power to send for persons, papers, and records." 7 Annals of Cong. at 643–46, 466; 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 1879, it appears 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 many Presidents have been the subject of less-formal demands for impeachment investigations, the only impeachment resolutions introduced in the House for the purpose of initiating impeachment proceedings. In some cases, the House formally voted to reject opening a presidential impeachment investigation. In 1843, the House rejected a resolution calling for an investigation into the guilt of any act, or has conspired with others to do acts, which, in contemplation of the Constitution, are high crimes or misdeeds." Cong. Globe, 39th Cong., 2d Sess. 320–21 (1867); see 3 Hinds' Precedents §2400, at 824. The resolution conferred upon the committee the "power to send for persons, papers, and records." 7 Annals of Cong. at 643–46, 466; 3 Hinds' Precedents §2297, at 648. Shortly before that Congress expired, the committee reported that it had seen "sufficient testimony . . . to justify and demand a further prosecution of the investigation." H.R. Rep. No. 89–31, at 2 (1867). On March 7, 1867, the House in the new Congress adopted a resolution that authorized the committee "to continue the investigation." Cong. Globe, 40th Cong., 1st Sess. 18, 25 (1867); 3 Hinds' Precedents §2401, at 825. The resolution conferred upon the committee the "power to send for persons, papers, and records." 7 Annals of Cong. at 643–46, 466; 3 Hinds' Precedents §2297, at 648. Shortly before that Congress expired, the committee reported that it had seen "sufficient testimony . . . to justify and demand a further prosecution of the investigation." H.R. Rep. No. 89–31, at 2 (1867). On March 7, 1867, the House in the new Congress adopted a resolution that authorized the committee "to continue the investigation." Cong. Globe, 40th Cong., 1st Sess. 18, 25 (1867); 3 Hinds' Precedents §2401, at 825. The resolution conferred upon the committee the "power to send for persons, papers, and records." 7 Annals of Cong. at 643–46, 466; 3 Hinds' Precedents §2297, at 648. Shortly before that Congress expired, the committee reported that it had seen "sufficient testimony . . . to justify and demand a further prosecution of the investigation." H.R. Rep. No. 89–31, at 2 (1867). On March 7, 1867, the House in the new Congress adopted a resolution that authorized the committee "to continue the investigation." Cong. Globe, 40th Cong., 1st Sess. 18, 25 (1867); 3 Hinds' Precedents §2401, at 825.
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, 40th Cong., 1st Sess. 913, 960 (1867); 3 Hinds' Precedents §2408-09, 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 unconstitutional).


On October 7, 1998, the Judiciary Committee voted to initiate an impeachment inquiry against President Clinton. House Resolution 803, which "authorized and directed" the Judiciary Committee "to investigate fully and completely whether sufficient grounds exist to recommend to the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America." H.R. Res. 803, 93d Cong. § 1. The resolution specifically authorized the committee to "require . . . by subpoena or otherwise . . . the attendance and testimony of any person" and "the production of any papers or things" as "deemed 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 when it is important that the Committee, in the name of our responsibility under the Constitution, confirm our responsibility under the Constitution.

As part of the 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 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 confided to the full extent upon the Committee on the Judiciary.

120 Cong. Rec. 2350-51 (1974) (emphases added). During the debate, others recognized that the resolution would delegate the House's responsibility for 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 of this case.

Id. at 2361."

The impeachment investigation of President Clinton. On September 9, 1998, Independent Counsel Kenneth W. Starr, acting under 28 U.S.C. § 595(c), advised the House of Representatives that he had uncovered substan- tial and credible information that he believed could constitute grounds for the impeachment of President Clinton. 148 Deschler's Precedents app. at 548-49 (2013). Two days later, the House adopted a resolution that referred the matter, along with Starr's report, to the House Committee on the Judiciary. H.R. Res. 525, 105th Cong. (1998). The House directed that committee to "investigate fully and completely whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced." Id. § 1. The Rules Committee's initial resolution provided that the House would need to adopt a subsequent resolution if it decided to authorize an impeachment inquiry. "[T]his resolution does not authorize or direct an impeachment inquiry. It merely provides the appropriate parameters for the Committee on the Judiciary . . . to . . . make a recommendation to the House as to whether it should authorize an impeachment inquiry." 144 Cong. Rec. 20072 (1998) (statement of Rep. Solomon).

On October 7, 1998, the Judiciary Committee did recommend that there be an investigation for purposes of impeachment. As explained in the accompanying report: "[T]he Committee decided that if must receive authorization from the full House before proceeding on any further course of action. Because impeachment is delegated solely to the House of Representatives by the Constitu- tion and because a full House inquiry should be involved in critical decision making regarding various stages of impeachment ... H.R. Res. 525, 105th Cong. (1998).

The committee also observed that "a resolution authorizing an impeachment inquiry into the conduct of a president is consistent with past practice," citing the resolution for Presidents Johnson and Nixon and observing that "numerous other inquiries were authorized by the House directly, or were providing investigative authorities such as deposition authority, to the Committee on the Judiciary." Id. . . .

The next day, the House voted to authorize the committee to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States of America." 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 paper or thing," as "necessary to its investigation." As part of its investigation, "the Committee presented President Clinton with 81 requests for admission," which the Committee explained that "would only be compelled by subpoena" had President Clinton not complied. H.R. Rep. No. 105-830, at 77, 122

In a resolution precedent, the district court in In re Application of the Committee on the Judiciary treated the D.C. Circuit’s approval of the disclosure of Starr’s report as a binding-jury instruction as evidence that the Judiciary Committee may “commence an impeachment investigation” without a House vote. 2019 WL 5485221, at *27 n.36. But the D.C. Circuit did not authorize that disclosure because of any pending House investigation. It did so because a statutory provision required an independent counsel to report to the House of Representatives any substantial and credible information which such independent counsel receives “that may constitute grounds for an impeachment.” 28 U.S.C. § 595(c) (emphasis added). And the D.C. Circuit viewed the report as reflecting “information of the type described in 28 U.S.C. § 595(c).” In re Madison Guar. & Loan Ass’n v. In re Madison Guar. & Loan Ass’n, 915 F.2d 131 (4th Cir. Spec. Div. July 7, 1998), reprinted in H.R. Doc. No. 105-331, pt. 1, at 10 (1998). The order authorizing the transmission of that information not only implied that the committee was conducting an impeachment investigation. To the contrary, after the House received the information, “no person had access to” it until the House adopted a resolution referring the matter to the Judiciary Committee. H.R. Rep. No. 185–795, at 5. And the House then adopted a second resolution (Resolution 381) to authorize a formal investigation. In other words, the House voted to authorize the Judiciary Committee, which, in the case of Starr, evidenced its intent to conduct an impeachment investigation. Neither the D.C. Circuit nor the Judiciary Committee suggested that any committee could have taken such action on its own.

2.

The House has historically followed these same procedures in conducting impeachment resolutions against executive branch officers other than the President. In many cases, an initial resolution listing charges of impeachment or authorizing an investigation was referred to a select or standing committee. Following referral, the designated committee reviewed the matter and considered whether to pursue a formal impeachment inquiry—it did not treat the referral as a stand-alone authorization to conduct an investigation. When a committee concluded that the charges warranted investigation, it reported to the full House. When the full House approved the referral, witnesses, and a motion, the House authorized a select committee to draft articles of impeachment.

For example, in March 1867, the House approved a resolution directing the Committee on Public Expenditures “to inquire into the conduct of Henry A. Smythe, collector of the port of New York.” Cong. Globe, 40th Cong., 1st Sess. 3, 14 (1867). The same day, the House approved a resolution “that the resolution had been modified following debate “so as to leave out that part about bringing articles of impeachment.” Weeks later, the House voted to authorize an impeachment investigation. Id. at 290 (authorizing the investigating committee to “send for persons and papers”). The House followed this same procedure in 1912 for U.S. Attorney General William W. Belknap (who was then Secretary of War) in the course of another investigation, the House approved a resolution charging the Committee with the responsibility to “prepare and report without unnecessary delay suitable articles of impeachment.” 4 Cong. Rec. 1425, 1425 (1876). When a key witness left the country, however, the committee determined that additional investigation was warranted, and it asked to be authorized “to take further steps and to send for papers and witnesses” in its search for alternative evidence. Id. at 1514, 1566; see also 3 Hinds’ Precedents §§ 2444–

3.

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 “should lead to the arrest 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. Rec. 56th Cong., 1st 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. 3126–39 (1917) (impeachment resolution); H.R. Rep. No. 64–796, at 1 (1917). When a later referral of the impeachment resolution, the Committee had reviewed available information and determined that no further proceedings were warranted. In 1912, 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, 72d Cong. (1932); see also 3 Deschler’s Precedents ch. 14, § 14.11, at 2134–39. The following month, the House authorized the appointment of a committee continuing any investigation of the charges. 75 Cong. Rec. 3850 (1932); see also 3 Deschler’s Precedents ch. 14, § 14.2, at 2139–40.

In 1998, the House, following the example of the Senate, authorized a separate committee to investigate the malfeasance in office by General William C. multitility’s referral and proposed the constitutional power of this committee’s “opinion whether” each specific impeachment inquiry is reflected in the earliest impeachment investigations involving judges. In 1864, the House considered proposals to impeach two judges: Samuel Chase, an associate justice of the Supreme Court, and Richard Peters, a district judge. See 3 Hinds’ Precedents § 2312, at 711–16. There was a “lengthy debate” about whether the evidence was appropriate to warrant the institution of an inquiry. Id. at 712. The House then adopted a resolution appointing a select committee “to inquire into the official conduct” of Chase and Peters “and to report” the committee’s “opinion whether” each was guilty of judicial misconduct. The House considered whether, in the case of an impeachment resolution from the late 1980s departed from that pattern, but the House has returned during the past three decades to the practice of referring the case of an impeachment investigation to a select committee, repeatedly ensuring that the Judiciary Committee had a proper delegation for each impeachment investigation.

Because of this, the House authorize each specific impeachment inquiry is required to parliamentarians of the House past and present. John Labovitz observed that there were “few exceptions,” “mostly in the 1860s and 1910s.” Id. at 25–26. But the overwhelming historical practice to the contrary confirms the Judiciary Committee’s well-considered conclusions in 1974 and 1998 that a committee requires specific authorization from the House before it may use compulsory process to investigate for impeachment purposes.

3.

Most recently, in the 114th Congress, the House authorized a separate committee to conduct an impeachment investigation of the President. The House adopted a resolution appointing a select committee; “to inquire into the conduct of President Barack Obama”. 114th Cong. 2 (2016). The ranking minority member, Representative John Conyers, objected that the House did not have the constitutional power of this committee to compel the appearance of Koskinen or any other witness, it hardly be dignified for the Congress to proceed to an impeachment” based on the terri-
appointment of a committee “to inquire into the propriety of impeachment.” Id. at 984; see 18 Annals of Cong. 2069 (1888). The House then passed a resolution forming a committee to conduct an investigation, 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 (1888). The House approved the resolution, and the House continued, virtually without exception, to provide an express authorization to exercise investigative powers.22

Over the course of more than two centuries thereafter, members of the House introduced resolutions to impeach, or to investigate for potential impeachment, dozens more federal judges, and the House continued, virtually without exception, to provide an express authorization to exercise investigative powers.22 In one 1871 case, the Judiciary Committee realized only after witnesses had traveled from Arkansas that its preliminary resolution authorizing it compulsory powers to investigate previously referred charges against Judge William Story. See 2 Cong. Rec. 1825, 3438 (1874); 3 Hinds’ Precedents §2319, at 1023. In order to “cure” that “defect,” the committee reported a privileged 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 occurred. In 1901, 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. 760 (1949). Although the House authorized only a preliminary inquiry to determine whether an investigation would be warranted, in 1908, for instance, the House asked the Judiciary Committee to consider proposed articles impeaching Judge Lebbeus Wilfley of the U.S. Court for China. In the ensuing hearing, the Representative who had introduced the resolution acknowledged that the committee was not “authorized to subpoena witnesses” and had been authorized to conduct only “a preliminary examination,” which the Representative “ordinarily hold by the House,” but was instead dedicated solely to determining “whether you believe it is a case that ought to be investigated.” In many other cases, it is apparent that—even when impeachment resolutions had been referred to them—committees conducted no formal investigation.23

In 1970, in a rhetorical departure from well-established practice, a subcommittee of the Judiciary Committee described itself as investigating “the appointment of Justice William O. Douglas based solely upon an impeachment resolution referred to the Judiciary Committee.” See 116 Cong. Rec. 11920, 11924 (1970). Although the subcommittee’s resolution of 16–14, at 2151–64; see also Labovitz, Presidential Impeachment at 182 n.18 (noting that “[t]he Douglas inquiry was the first impeachment investigation in twenty-five years, and deviation from the older procedural pattern was not surprising”). Yet, the subcommittee did not resort to any compulsory process during its inquiry, and it did not recommend impeachment. 3 Deschler’s Precedents ch. 14, §§14.15–14.16, at 2158–63. Accordingly, the committee did not actually exercise any of the impeachment powers they purported to issue “pursuant to the asserted authority at the House itself.” See supra note 9. We therefore provided advice during that period about whether any of the committees had authority to issue those subpoenas because the House had adopted an impeachment resolution, the answer to that question turned on whether the committees could issue those subpoenas based upon any preexisting subpoena authority. In justifying the subpoenas, the Foreign Affairs Committee and other committees pointed to the resolution adopting the Rules of the House of Representatives, which establishes the committees and authorize investigations for matters within their jurisdiction. The committees claimed that Rule XI confers authority to “issue” subpoenas in connection with an investigation. Although the House has expanded its committees’ authority in recent decades, the House Rules continue to maintain the long-established distinction between legislative and non-legislative investigative powers. Those rules confer legislative oversight jurisdiction on committees and authorize issuance of 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 the resolution of Representative impeachment inquiry” were not in support of such oversight. We therefore conclude that they were unauthorized.

A. 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. 6, 116th Cong. (2019). The House Rules are more than 60,000 words long, but they do not include the word “impeachment.” The Rules’ silence on that topic is particularly notable given the extensive impeachment-related subpoenas. The Rules have adopted specific “Rules of Procedure and Practice” for impeachment trials. S. Res. 479, 99th Cong. (1986).24 The most obvious conclusion to draw from this silence is that the current House, like its predecessors, retained 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 affirms that the House authorizes committees to issue 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. 988, 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. 11(d)(1) (making clause 2 of Rule XI applicable to HResC). The committees therefore have subpoena power to carry out their authorities under three rules: Rule X, Rule XI, and clause 2 of Rule XI.

When a standing committee with jurisdiction over impeachment, Rule X establishes the “standing committees” of

III. Having concluded that a House committee may not conduct an impeachment investigation without a delegation of authority, we consider whether the House had properly delegated such a delegation to the Foreign Affairs Committee or to the other committees that issued subpoenas pursuant to the asserted impeachment inquiry. During the five weeks between the September 24 and the adoption of Resolution 660 on October 31, the committees issued numerous impeachment-related subpoenas. See supra note 9. We therefore provided advice during that period about whether any of the committees had authority to issue those subpoenas because the House had adopted an impeachment resolution, the answer to that question turned on whether the committees could issue those subpoenas based upon any preexisting subpoena authority.

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When a standing committee with jurisdiction over impeachment, Rule X establishes the “standing committees” of
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 has jurisdiction only "[i]n violate official Conduct of Conduct (Rule X, cl. 1(g)), the jurisdiction of the Foreign Affairs Committee spans seventeen subjects, including jurisdiction of the United States and foreign nations generally, "[i]intervention abroad and declarations of war," and "[i]n the American Armed Forces Overseas (Rule X, cl. 1(h)). The rule likewise spells out the jurisdiction of the Committee on Oversight and Reform (Rule X, cl. 1(i)), the jurisdiction of the Judiciary Committee (Rule X, cl. 1(l)). Clause 11 of Rule X establishes HPSCI and vests it with jurisdiction over "[i]ntelligence and intelligence-related activities of the various de-

activities will be referred to HPSCI and that

consistent with the foregoing textual analysis, Rule X has been seen as conferring legis-

lative oversight authority to the House's committees, without any suggestion that

impeachment authorities are somehow in-

cluded therein. The Congressional Research

Service has recognized, "[t]he Speaker’s referral authority to any of those committees to issue

subpoenas in connection with potential im-

peachment proceedings. In any event, no impeachment resolution was ever referred to the House Judiciary Committee, the Speaker did not expand that

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in the exercise of its responsibilities under rule X." Nor does Rule XII con-

for any additional jurisdiction. Clause 2(a) states that "[t]he Speaker shall refer each

bill, resolution, or other matter that relates to a subject listed under a standing com-

mittee's jurisdiction under Rule X." Rule XII, cl. 2(a). The Speaker’s referral authority under Rule XII is thus limited to matters within the House’s legislative jurisdic-

tion. See 18 Deschler’s Precedents app. at 578 ("All committees were empowered by ac-

tual language of the Speaker’s referral to consider only "such provisions of the measure-

as fall within their respective jurisdictions under Rule X."). Accordingly, the Speaker may not expand the jurisdiction of a standing committee by referring a bill or resolution falling outside the committee’s Rule X au-

thority.33

In reporting Resolution 660 to the House, the Speaker explained that the only way that clause 2(m) of Rule XI gave standing com-

mittees the authority to issue subpoenas in support of impeachment inquiries. See H.R. Rep. No. 116-266, at 18 (2019). But the com-

mittee did not explain which terms of the rule provide such authority. To the contrary, the committee simply asserted that the rule "enlarges the text of the standing committee’s subpoena authority" and that Resolution 660 departed from its predecessors on account of amendments to clause 2(m) that were adopted after the "Clinton and Bush investigations." Id. Yet clause 2(m) of Rule XI was adopted two decades before the Clinton inquiry. Even

with that authority in place, the Judiciary Committee's interpretation of "must" "must receive authorization from the full House be-

fore proceeding" to investigate President

Clinton for impeachment purposes. H.R. Rep. No. 105-795, at 24 (emphasis added). And, even before Rule XI was adopted, the House had referred on the Judiciary Committee a ma-

nual of the Constitution and the House's im-

peachment procedures in 1973. The Judici-

ary Committee nevertheless recog-

ized that those subpoena powers did not au-

torize the committee to conduct an im-

peachment investigation.

In modern practice, the Speaker has re-

ferred proposed "censure and impeachment of a civil officer to the Judici-

ary Committee. See Jefferies’s Manual § 605, at 324. Consistent with this practice, the

Speaker referred the Sherman resolution (H.R. Res. 13, 116th Cong.) to the Judici-

ary Committee, because it called for the im-

peachment of President Trump. Yet the re-

solved resolution did not authorize the House to con-

duct an impeachment investigation. House committees have regularly received referrals to conduct investigations that do not rise to the level of a full-scale

 extra, compulsory process, for the purpose of determining whether to recommend that the House open a formal impeachment investiga-

tion. In reaching this conclusion, we do not question the House’s authority to open an impeachment investigation. In any event, no impeachment resolution was ever

referred to the House Judiciary Committee, the Speaker did not expand that

commitees subpoena authority to cover a

formal impeachment investigation. In any

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formal impeachment investigation. In any

event, no impeachment resolution was ever

referred to the House Judiciary Committee, the Speaker did not expand that

the question presented is of necessity a judicial one.”). Statements by the Speaker or by committee chairmen are not statements of the Senate itself, as reflected in the Journal of the Senate and the Congressional Record, to determine when the Senate was “in session,” beyond the question whether any act, under its own rules, is not in session even if it so declares.”). Thus, the Supreme Court has repeatedly made clear that a target of the House’s compulsory process may question whether a House resolution has actually conferred the necessary powers upon a committee, because the committee’s “right to exact testimony and to call for the production of documents and testimony that each witness had failed to comply with the obligations imposed by the subpoena. Id.

Here, the House committees claiming to investigate an impeachment-related authority and in furtherance of an impeachment inquiry. There was, however, no House resolution actually delegating such authority to any committee, let alone one that could compel witnesses to respond. Watkins, 534 U.S. at 201; cf. Gooyck v. United States, 384 U.S. 702, 716-17 (1966). At the opening of this Congress, the House did not redelegated 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.

Lacking a delegation from the House, the committees could compel the production of documents or the testimony of witnesses for purposes of an impeachment inquiry. Because the first impeachment-related subpoenas were issued before they had received any actual delegation of impeachment-related authority from the House, before October 31, the committees relied solely upon statements of the Speaker, the committee chairmen, and the Judiciary Committee, all of which merely asserted that one or more House committees had already been conducting a formal impeachment inquiry. There was, however, no House resolution actually delegating such authority to any committee, let alone one that could compel witnesses to respond. Watkins, 534 U.S. at 201; cf. Gooyck v. United States, 384 U.S. 702, 716-17 (1966). At the opening of this Congress, the House did not redelegated 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.

In reaching this 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 legitimate legislative jurisdiction, in which event the requests would have been evaluated consistent with the long-standing confidentiality interests of the Executive Branch. The Watkins, 534 U.S. at 187 (recognizing that Congress’s general investigatory authority “comprehends probes into departments of the Federal Government to establish incompetence, inefficiency or waste’’); McGrain, 273 U.S. at 179-80 (observing that it is not “a valid objection to the investigation that it might possibly disclose crime or improper action by a general[al] part’’). Should the Foreign Affairs Committee, or another committee, articulate a legitimate oversight purpose for a future investigation, the Executive Branch would assess that request as part of the constitutionally required accommodation process.
the committees’ investigative authority and lacked compulsory power, the committees were mistaken in contending that the recipients’ “failure or refusal to comply with the subpoenas constituted evidence of obstruction of the House’s impeachment inquiry.” Three Chairmen’s Letter, supra note 1, at 1. As explained at length above, when the subpoena was the product of the Executive Branch’s own investigation and was compelling additional information about impeachable conduct, the House lack of authorization and the improper purpose of the subpoena provided a basis for invalidation. Further, the House lack of authorization and the improper purpose of the subpoena provided a basis for invalidation. To the extent that the committees’ subpoenas sought information in support of an unauthorized impeachment inquiry, the committees were mistaken in contending that those subpoenas were no more punishable than were the failures of the witnesses in Wolf v. Kilbourn, and therefore no more guilty of contempt than the answer questions that were beyond the scope of those committees’ authorized jurisdiction. See Watkins, 394 U.S. at 208, 215 (holding that conviction of Congress for contempt of Congress was not a misdemeanor punishable as a crime). Thus, even when the House takes the steps necessary to authorize a committee to investigate and to use compulsory process to obtain the production of needed information, the Executive Branch continues to have legitimate interests to protect. The Constitution does not oblige either branch to surrender its prerogatives to the other, expect that each branch will negotiate in good faith with mutual respect for the needs of the other branch. See United States v. Am. Tel. & Tel. Co., 567 F.2d 121, 127 (D.C. Cir. 1977) (“[E]ach branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation.”); see also Memorandum for the Heads of Executive Departments and Agencies from President Ronald Reagan, Re: Procedures Governing Responses to Congressional Requests for Information (Nov. 4, 1982). The two branches should work to identify arrangements in the context of the particular requests of an investigating committee that accommodate both the committee’s needs and the Executive Branch’s interests.

For these reasons, the House cannot plausibly claim that any executive branch official engaged in “obstruction” by failing to comply with committee subpoenas, or directing subordinates not to comply, in order to protect the Executive Branch’s legitimate interests conflicting with the House’s separation of powers. We explained thirty-five years ago that “the Constitution does not permit Congress to make it a crime for an official to assist the President in asserting a constitutional privilege that is an integral part of the President’s responsibilities under the Constitution.” Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege, 8 Op. O.L.C. 101, 140 (1984). Nor may Congress “utilize its inherent ‘civil’ contempt powers to arrest or punish an executive official who asserts a Presidential claim of executive privilege.” Id. at 140 n.42. We have reaffirmed those fundamental conclusions more than five decades.

The constitutionally required accommodation process, of course, is a two-way street. In connection with this investigation, the House committees took the unprecedented steps of investigating the impeachment of a President without any authorization from the full House; without the procedural protections provided Nixon and Clinton, see supra note 12; and with express threats of obstruction charges and unconstitutional demands that officials appear and provide closed, but privileged, matters without the assistance of executive branch counsel. Absent any effort by the House committees to accommodate the Executive Branch’s interests with the unprecedented nature of the committees’ actions, it was reasonable for executive branch officials to decline to comply with the subpoenas addressed to them.

V.

For the reasons set forth above, we conclude that the House must expressly authorize a committee to conduct an impeachment inquiry and then to use compulsory process in that investigation before the committee may compel the production of documents or 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 process. The House adopted Resolution 660 on October 31, 2019, and the subpoenas therefore had no compulsory effect. The House’s adoption of Resolution 660 did not alter the legal status of the subpoenas. That 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.


2. Letter for Michael R. Pompeo, Secretary of State, from Eliot L. Engel, Chairman, Committee on Foreign Affairs, U.S. House of Representatives, Adam Schiff, Chairman, Permanent Select Committee on Intelligence, U.S. House of Representatives, and Elijah Cummings, Chairman, Committee on Oversight & Reform, U.S. House of Representatives at 1 (Sept. 27, 2019) (“Three Chairmen’s Letter”).

3. Although volume 3 of Deschler’s Precedents 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-the-vice-president-and-cabinet-officers-

4. Impeachment Articles Referred on John Koskinen (Part III); Hearing Before the H. Comm. on the Judiciary, 114th Cong. 3 (2016).

5. This opinion memorializes the advice we gave about subpoenas issued before October 31. We separately addressed some subpoenas issued on the day of, or after, 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 the House of Representatives Committee on the Judiciary, Press Release: House Judiciary Committee Unveils Investigation into a Court of Impeachment"), 43 Op. O.L.C. _ (Nov. 4, 2019), judiciary.house.gov/newspressreleases/press-releases-house-judiciary-committee-unveils-investigation-threats-against-rule-law; see also Letter for Pat A. Cipollone, from 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 enforce subpoenas against Attorney General William Barr and former White House Counsel Donald McGahn and permitted the House Judiciary Committee to use contempt powers to enforce those subpoenas.

7. On June 11, 2019, the House adopted Resolution 430. Its first two clauses authorized the Judiciary Committee to file a lawsuit to enforce subpoenas against Attorney General William Barr and former White House Counsel Donald McGahn and permitted the House Judiciary Committee to use contempt powers to enforce those subpoenas. On the same day, the House adopted Resolution 430, Speaker Pelosi stated that the House’s Democratic caucus was

8. While the House has delegated to the Bipartisan Legal Advisory Group the ability to “articulate political positions on an issue, before 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 grouped subsections, could assert the House’s authority in connection with an impeachment investigation, which is not a litigation matter.

9. E.g., Michael Balvanera, Acting Chief of Staff to the President, from Elijah E. Cummings, Chairman, Committee on Oversight & Reform, U.S. House of Representatives, Permanent Select Committee on Intelligence, U.S. House of Representatives, and Elliot 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 Elliot 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 Elijah E. Cummings, Chairman, Committee on Oversight & Reform, U.S. House of Representatives, and Elliot L. Engel, Chairman, Committee on Foreign Affairs, U.S. House of Representatives at 1 (Oct. 1, 2019).


12. The House Judiciary Committee permitted President Trump’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 presence of persons, and to question witnesses. See H.R. Rep. No. 93–1305, at 8–9 (1974); 3 Deschler’s Precedents ch. 14, § 6.5, at 2045–47. Later, President Clinton acknowledged that he was similarly permitted to attend all executive session and open committee hearings, “at which they were permitted to ‘cross examine witnesses,’ ‘make objections to the permission of persons, and to object to the presence of persons, and to question witnesses.’” See H.R. Rep. No. 105–795, at 25–26; [House] Staff for Michael Balvanera, Acting Chief of Staff to the President, from Elijah E. Cummings, Chairman, Committee on Oversight & Reform, U.S. House of Representatives, at 1–28 (May 1, 2019). See also H.R. Precedents app. at 549 (noting that, during the House impeachment investigation, the House made a “deliberate attempt to mirror the precedents of the Nixon investigation.”)

In a departure from the Nixon and Clinton precedent, the House committees did not provide President Trump with any right to attend, participate in, or cross-examine witnesses in connection with the impeachment-related executive depositions. The House Committee on the Judiciary and the Permanent Committee of the Senate, respectively, prior to October 31. Resolution 660 similarly did not provide any such rights with respect to any of the public hearings conducted by the House or Senate. Neither President Clinton’s counsel nor President Trump’s counsel had an opportunity to participate in the Judiciary Committee, which did not itself participate in developing the investigative record upon which the articles of impeachment were premised. See H.R. Res. 660, 116th Cong. § 4(a); 165 Cong. Rec. El1357 (daily ed. Oct. 29, 2019) (“Impeachment Investigation Procedures in the Committee on the Judiciary”).

13. In denying the congressional request before him, President Polk suggested, in the equivalent of dictum, that, during an impeachment inquiry, “all the archives and papers of the Executive departments, public or private, would be subject to the inspection and control of a committee of their body.” Cong. Globe, 29th Cong., 1st Sess. 698 (1846). That statement, however, dramatically understates the degree to which executive privilege remains available during an impeachment investigation to protect confidentiality interests necessary to preserve the essential functions of the Executive Branch.


15. The House’s impeachment inquiry by declining to comply with the pre-October 31 impeachment-related subpoenas. H.R. Rep. No. 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 committee’s subpoena authority under the House Rules (as we discuss in Part III.A).

16. After the House impeached Senator Blount, the Senate voted to dismiss the charges on the ground that a Senator is not subject to impeachment. See 3 Hinds’ Precedents 2138, at 678–80.

17. A 2007 overview concluded that “[t]here have been approximately 94 identifiable impeachments conducted by Congress.” H.R. Doc. No. 109–135, at 115 (2007). Since 2007, two more judges have been impeached following authorized investigations.


19. In 1860, the House authorized an investigation into the actions of President Buchanan, but that investigation was not styled as an impeachment investigation. See H.R. Res. 36–648, at 1–28 (1860) (resolution establishing a committee of five members to “investigate[] whether the President of the United States, or any other officer of the Executive Department of the government, or any person acting in their interest, shall have resorted to the use of the patronage, or any improper means, sought to influence the action of Congress” or “by combination or otherwise, . . . attempted to prevent or defeat, the execution of any law”). It appears to have been understood by the committee as an oversight investigation.
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] ac- cutorial functions” and take care that all the preliminary judicial proceedings preparatory to the vote of articles of impeachment the accused should enjoy the benefit of cross-examination of witnesses and other safeguards with which the Constitution surrounds every American citizen”); see also Muzza 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 Judi- cia ry Committee to Approv e Se dition of Rep. Moon) (“This committee con- sidered the question from [its] legislative to [its] ac- cutorial functions” and took care “to see that the districts courts, ’a resolution authoriz[ing]’ HJC to inquire into the official conduct of Andrew Johnson’ was passed after HJC ‘was already considering the subject.’”)

22. 9 Cong. Rec. 2627, 626, 627, 628, 636, and 638, 93d Cong. (1973) (impeachment); H.R. Res. 626, 627, 628, 636, and 637, 93d Cong. (1973) (Judi- cia ry Committee or subcommittee inves- tigation).

23. A New York Times article the following day characterized House Resolution 803 as “formally ratifying the impeachment inquiry into the President” and “seems to be the result of a resolution adopted by the Judiciary Committee in 1873” (statement of Rep. Edwards) (explaining the sub- poena). James M. Naughton, House, 410–4, Gives Subpoena Power in Nixon Inquiry, N.Y. Times, Feb. 7, 1974, at 1. But the resolution did not grant after-the-fact authorization for any prior action. To the contrary, the reso- lution “authorized and directed” a future in- vestigation, including by providing subpoena power. In the report recommending adoption of the resolution, the committee likewise de- scribed its plans in the future tense: “It is the intention of the committee that its inves- tigation into maladministration at the consulate in Shanghai during the terms of Consul-General George Seward and Vice-Consul-General George J. B. P. H. Grant and Secretary Theresa O’Donnell, the committee began to consider Seward’s im- peachment, serving him with a subpoena for cross-examining the witnesses and all the other papers supplied in response to which he asserted his privilege against self- incrimination. See 3 Hinds’ Precedents §2514, at 1023–24; H.R. Rep. No. 45–41, at 1–3 (1879).

24. The House had to decide whether it would authorize an investigation of potential impeach ment, but the House declined to act be- fore the end of the Congress. See 8 Cong. Rec. 2350–55 (1879); 3 Hinds’ Precedents §2514, at 877 (1878). The committee on Expenditures reported proposed articles of impeachment against Bradford but rec- ommended against a full investigation. H.R. Rep. No. 45–818, at 7 (1878). The House agreed to the refer- ral, but no further action was taken. 7 Cong. Rec. at 967.


27. In 1878, the Committee on Expenditures §2514, at 1017 (Henry Blodgett, 1877); id. §2517–18, at 1028, 1030–31 (Alexe Boarman, 1890–92); id. §2519, at 1032 (J.G. Jenkins, 1894); id. §2520, at 1035 (Andrew Ricks, 1895); id. §2521, at 1023–24; H.R. Rep. No. 45–2496, at 981–83 (George Turner, 1796; no apparent investigation, presumably because of the parallel criminal prosecution recom- mended by Attorney General Lee, as dis- cussed above); id. §2489, at 985 (Harry Toloumin, 1811; the House “declined to order a formal investigation”); 40 Annals of Cong. 463–69, 715–19 (1822–23) (Charles Tait, 1823; no apparent investigation beyond examination of documents containing charges); 3 Hinds’ Precedents §2495, at 981–92 (Benjamin John- son, 1806; no apparent investigation); id. §2511, at 1019–20 (Charles Sherman, 1873; the Judiciary Committee received evidence from the Ways and Means Committee, which had been investigating Congress, 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 investiga- tion); 3 Descher’s Precedents §44, at 2144–45 (Joseph Molyneaux, 1934; the Judiciary Committee took no action on the refer- ral of a resolution that would have author- ized their investigation).


31. In the post-1980 era, as before, most of the investigatory authorities that were referred to the Judiciary Committee did not result in any further investigation. See, e.g., H.R. Res. 916, 109th Cong. (2006) (noting that the 108th Congress disapproved of a committee effort to strictly the resolution establishing its investigatory powers;)


33. Nor do the Rules otherwise give the Speaker the authority to order an investigation or issue a subpoena in connection with impeachments, even when the Speaker herself issues an order. See Jefferson’s Manual §626, at 348.

34. Clause 2(m) of Rule XI was initially adopted on October 24, 1874, and took effect on January 3, 1975. See H.R. Res. 988, 93d Cong. The rule appears to have remained materially unchanged from 1975 to the present (including the Clinton impeachment), see H.R. Rule XI, cl. 2(m), 105th Cong. (Jan. 1, 1998) (version in effect during the Clinton investigation); Jefferson’s Manual §65, at 586–89 (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 provision] of the Rules of the House of Representatives, and to hold hearings to obtain evidence, to take depositions, to examine books, records, papers, and documents, as it deems necessary.” H.R. Res. 74, 93d Cong. §§ 1, 2(a) (1973); see also Cong. Research Serv., R45709, The Impeachment Process in the House of Representatives 4 (updated Nov. 14, 2019) (noting that, before Rule XI vested subpoena power in standing committees, the Judiciary Committee and other committees had often been given subpoena authority “through resolutions providing blanket investigatory authorities that were agreed to at the start of a Congress”).

36. The Judiciary Committee has also invoked House Resolution 430 as an independent source of authority for an impeachment inquiry. See Tr. of Mot. Hrg. at 91–92, In re Application of the Comm. on the Judiciary, see also Majority Staff of H. Comm. on the Judiciary, 110th Cong. Committee Considerations for Presidential Impeachment 39 (Dec. 2019). As discussed above, however, that resolution did not confer any investigatory authority under Article I’s “in connection with” certain “judicial proceeding[s]” in federal court. H.R. Res. 430, 110th Cong. (2019). The resolution also purported to give the Speaker authority under Article I’s only “in connection with” certain “judicial proceeding[s]” in federal court. H.R. Res. 430, 110th Cong. (2019). The resolution also purported to give the Speaker authority under Article I’s only “in connection with” certain “judicial proceeding[s]” in federal court.

37. Even if the House had sought to ratify a previously issued subpoena, it could give the subpoena effect only if and when it accepted it. As discussed above, the Supreme Court has recognized that the House may not cite a witness for contempt for failure to comply with a valid subpoena issued before the delegation of authority at the time it was issued. See Rumely, 345 U.S. at 48; see also Exxon, 599 F.2d at 952 (“To issue a valid subpoena, . . . witness and the production of such books, records, papers, and documents, as it deems necessary.’’

38. The Supreme Court, in several other subpoenas, see supra note 9, contained similar threats that the recipients’ “failure or refusal to comply with the subpoena, including the production of the documents requested, would constitute ‘evidence of obstruction of the House’s impeachment inquiry.”’


LETTER OPINIONS FROM THE OFFICE OF LEGAL COUNSEL TO COUNSEL TO THE PRESIDENT REGARDING ABSOLUTE IMMUNITY OF THE ACTING CHIEF OF STAFF, LEGAL ADVISOR TO THE NATIONAL SECURITY COUNSEL, AND DEPUTY NATIONAL SECURITY ADVISOR


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

DEAR MR. CIPOLLINE: Today, the Permanent Select Committee on Intelligence of the House of Representatives issued a subpoena to Mr. William H. Rehquist, Assistant Attorney General, Office of Legal Counsel, Re: Power of Congressional Committee to Compel Appearance or Testimony of ‘White House Staff’ at 7 (Feb. 5, 1971). Your office has informed us that Mr. Kupperman serves as the sole deputy to National Security Advisor John R. Bolton, and as the head of the national security adviser after Mr. Bolton’s departure. As Deputy National Security Advisor, Mr. Kupperman generally met with the President multiple times per week, including on a wide range of national security matters, and he met with the President even more often
during the frequent periods when Mr. Bolton was traveling. Mr. Kupperman participated in sensitive internal deliberations with the President and other senior advisers, maintained an office in 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 daily brief and maintained an office in 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. at 812 n.19 (1982), that the successful conduct of international negotiations ‘‘is part of the President’s sensitive, particular mandate without delegating to Congress any power to intervene in presidential relations.’’ This means that 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. at 1 (Nov. 1, 2010) (footnotes omitted). Compelling testimony about these sensitive constitutional responsibilities would only deepen the very concerns the President has about the maintenance of confidentiality—that 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 inconsequential that Mr. Kupperman is now a private citizen. In Immunity of the Former Counsel to the President, 30 Op. O.L.C. at *16; see also Immunity of the Former Counsel to the President from the White House Staff’’ does not alter his immunity from compelled congressional testimony on matters related to his service 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. at 191, 192-93 (2007). It is sufficient if Congress seeks to compel testimony on matters related to Mr. 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 congressional testimony for such advisers, 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 unhindered exercise of functions vital to the national interest.” 457 U.S. at 812; see also id. at 812 n.19 (“a derivative claim to President’s immunity would be sustained where such ‘central’ Presidential domains as foreign policy and national security, in which the President could not discharge his singularly significant functions nearly as sensitively as his own”). Moreover, the Committee seeks Mr. Eisenberg’s testimony about the President’s conduct of relations with a foreign government. 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, control, and conduct all foreign relations.” Siller, Chairman, House Permanent Select Committee on Intelligence, et al. (Nov. 5, 2019). And as recently as this past week, the Office of the Chief of Staff, is a “top presidential adviser.” See In re Sealed Case, 121 F.3d 729, 757 (D.C. Cir. 1997), which works closely with the President in supervising the conduct of international diplomacy and national security, in which he cannot discharge his singularly valuable functions nearly as sensitively as his own”).

Moreover, the Committee seeks Mr. Mulvaney’s testimony about the President’s conduct of relations with a foreign government. 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, control, and conduct all foreign relations.” Siller, Chairman, House Permanent Select Committee on Intelligence, et al. (Nov. 5, 2019). And as recently as this past week, the Office of the Chief of Staff, is a “top presidential adviser.” See In re Sealed Case, 121 F.3d 729, 757 (D.C. Cir. 1997), which works closely with the President in supervising the conduct of international diplomacy and national security, in which he cannot discharge his singularly valuable functions nearly as sensitively as his own”).

Please let us know if we may be of further assistance.

STEFAN T. ENGEL,
Assistant Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGAL COUNSEL.
Washington, DC, November 7, 2019.

PAT A. CIPOLLONE
Counsel to the President, The White House,
Washington, DC.

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 Privilege of Former Counsellor to the President, 43 Op. O.L.C. _, at *1 (May 20, 2019). The immunity applies to those “immediate advisers . . . who counsel with the President on 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 of Testifying Adviser, for All purposes, by Levitz v. Fitzgerald, 457 U.S. 800, 812 n.19 (1982) (“[A] derivative claim to President’s immunity would be sustained where such ‘central’ Presidential domains as foreign policy and national security, in which the President could not discharge his singularly valuable mandate without delegating functions nearly as sensitively as his own”).

Please let us know if we may be of further assistance.

STEFAN T. ENGEL,
Assistant Attorney General.
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 finds and holds every assertion in 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 the affirmative offense alleged by the President was an impeachable offense under the Constitution, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate in an article of impeachment.

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. Ukraine, not Russia, interfered in the 2016 election. President Trump sought to coerce Ukraine into making these announcements to continue United States military and diplomatic support. He has powerful incentives to continue United States military and diplomatic support by pressing him to "do us a favor"—a demand that the President blurted out, unprompted, to Ambassador Gordon Sondland, that Ukraine execute the very this-for-that corruption exchange that is alleged in Article I. As to the second investigation, 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 the affirmative offense alleged by the President was an impeachable offense under the Constitution, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate in an article of impeachment.

President Zelensky remains critically dependent on continued United States military and diplomatic support by pressing him to "do us a favor"—a demand that the President blurted out, unprompted, to Ambassador Gordon Sondland, that Ukraine execute the very this-for-that corruption exchange that is alleged in Article I. As to the second investigation, 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 the affirmative offense alleged by the President was an impeachable offense under the Constitution, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate in an article of impeachment.

Lastly, the President notes the impact of the whistleblower complaint at the Ukraine, which Ukraine, not Russia, interfered in the 2016 election. President Trump sought to coerce Ukraine into making these announcements to continue United States military and diplomatic support. He has powerful incentives to continue United States military and diplomatic support by pressing him to "do us a favor"—a demand that the President blurted out, unprompted, to Ambassador Gordon Sondland, that Ukraine execute the very this-for-that corruption exchange that is alleged in Article I. As to the second investigation, 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 the affirmative offense alleged by the President was an impeachable offense under the Constitution, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate in an article of impeachment.

**ARTICLE II**

The House denies each and every allegation in the Answer to Article II that denies the acts, knowledge, intent, or wrongful conduct charged against President Trump. The House finds and holds every assertion in Article II is true, and that any affirmative defenses set forth in the Answer to Article II are wholly without merit. The House further states that the affirmative offense alleged by the President was an impeachable offense under the Constitution, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate in an article of impeachment.

President Trump got caught. President Trump then demanded to Ambassador Sondland that Ukraine execute the very this-for-that corruption exchange that is alleged in Article I. As to the second investigation, 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 the affirmative offense alleged by the President was an impeachable offense under the Constitution, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate in an article of impeachment.

President Trump engaged in a cover-up that, by design, obstructed the impeachment inquiry by preventing the White House from complying with the Constitution. This is not necessary to establish an article of impeachment, which, in fact, expose his guilt—hardly mitigating his obstruction.

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Finally, the President’s invocation of “absolute 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 understanding by prior Presidents; and it offers no explanation for his across-the-board refusal to turn over every single document subpoenaed.
which amount to the frightening assertion brief do not meaningfully attempt to defend rather discuss anything other than what he response that President Trump would grievances, but entirely lacks a legitimate Senate is heavy on rhetoric and procedural victory in the 2020 Presidential election, and now because he is trying to cheat his way to investigation. President Trump's efforts to hide Representatives in its impeachment inves-tigation. President Trump's lengthy brief to the

President Trump's assertion that abuse of power is not an impeachable offense is wrong—and dangerous. That argument would mean that the House's recitation of the facts is correct—which it is—the House lacks authority to re-move a President who sells out our democ-acy and national security for personal political favor. The Framers of our Constitution took pains to ensure that such egregious abuses of power would be impeach-able offenses in a presidential impeachment trial. They included a kind of “sole Power of Impeachment.” No amount of legal rhetoric can change the fact that Presi-dent Trump's argument is that the President could not be impeached even if he allowed an enemy power to invade and conquer American terri-tory. The absurdity of that argument demon-strates why every serious constitutional scholar to consider it—including the House of Representatives and shifts power to an imperial President.

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and political interests above those of our Nation, and they understood that foreign interference in our elections was one of the gravest threats to our democracy. The Framers provided that periodic democratic elections cannot serve as an effective check on a President who seeks to manipulate the those elections. The ultimate check on Presidential power was provided by 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 argues that he cannot be impeachable, except in an election he seeks to fix in his favor, underscores the need for the Senate to exercise its constitutional duty to judge President Trump's conduct. If the Senate does not convict and remove President Trump, he will have succeeded in placing himself above the law. Each senator should 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 contends that he can abuse his 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—of offenses that the Framers termed “high Crimes and Misdemeanors”—that threaten our democratic system are impeachable.

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 re-election—even if 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 check on his conduct. The Senate should reject that dangerous position.

1. The Framers Intended Impeachment as a Remedy for Abuse of High Office. President Trump’s argument conflicts with the Framers’ intent that the Framers intended impeachment to be a check on the President’s conduct. The Framers understood that impeachable offenses are offenses that are “‘high Crimes and Misdemeanors’” because they subvert the Constitution. The Framers considered and rejected the notion that a President’s conduct is impeachable, or “susceptible of impeachment,” if it does not violate a known offense defined in existing law. The Framers’ understanding of impeachable offenses is well-supported by the history of impeachment cases 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 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. 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 with statutory definitions.” The American precedent confirms that the Impeachment Clause is not confined to a statutory code. The articles of impeachment against President Nixon, which alleged his misuse of power, not on his commission of a statutory offense. Many of the specific allegations set forth in those three articles did not involve any crimes. Instead, 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” but expressly stated that his abuses of power warranted removal regardless whether they violated a specific statute.

Previous impeachments were in accord. In 1912, for example, Judge Archibald was impeached and convicted for using his position as a judge to get personal gain with potential litigants in his court, even though this behavior had not been shown to violate any existing law. 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.” As early as 1803, Judge Pickering was impeached and then removed from office by the Senate for refusing to allow an appeal, declining to adjudicate, and appearing on the bench while intoxicated and thereby “degrading the honor and dignity of the United States.”

President Trump’s argument conflicts with a long history of scholarly consensus, including among “some of the most distinguished members of the [Constitutional] convention.” As an example, in his Federalist No. 57, Alexander Hamilton wrote that the Constitution explained, impeachable offenses “are not necessarily offenses against the general laws . . . [for] it is often found that offenses of this character are not violations of existing laws; that when high officers are not offenses against the criminal code, but consist in abuses or betrayals of trust, or inexcusable neglects of duty.” In 1999, the Chief Justice of the United States, Justice Joseph Story similarly explained that impeachment encompasses “misdeeds... as peculiarly injure the commonwealth by the abuse of high offices of trust,” whether or not those misdeeds violate existing statutes intended for other circumstances.

B. Impeachable Conduct Need Not Violate Established Law. President Trump’s conduct is impeachable only if it violates a “known offense defined in existing law.” That contention conflicts with constitutional precedent, and the overwhelming consensus of constitutional scholars.

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The fact that impeachment is not limited to violations of “established law” reflects its basic function as a remedy for offenses that undermine the fear that Presidents would abuse their power. Statutes of general applicability do not address the ways in which those who abuse that power may use their unique positions. Limiting impeachment only to those statutes would defeat its basic purpose.

C. Constitutional Scholars Overwhelmingly Agree. That includes one of President Trump’s own attorneys, who argued during President Clinton’s impeachment that a crime, if you have somebody who completely corrupts the office of president, and who abuses trust and who poses great danger to our democracy, then the [President] cannot be impeached for, precisely, being a liar.” More recently, that attorney changed positions and now maintains that a President cannot be impeached even for allowing a foreign country to meddle in an American election. 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 “[t]he Framers agreed that impeachments encompass conduct that is akin to the terms that are commonly used to define the offenses of treason and bribery.” Hence, the case for reasonable doubt that his misconduct is close akin to bribery. “The corrupt exercise of power in exchange for a personal benefit defines impeachable bribery.”

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 under common law, as well as under American precedents familiar to the Framers. It would be all the more wrong in their view because it involves a solicitation to a foreign government to manipulate an Athenian process. And President Trump did actually violate an “established law”: the Impoundment Control Act. Thus, even under his own standard, President Trump’s conduct is impeachable.

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. The President’s argument is that if he could perform an act for legitimate reasons, then he necessarily could perform the same act for corrupt reasons.

This argument is obviously wrong. The Impeachment Clause itself forecloses President Trump’s argument. The specific offenses of treason, bribery, and corruption of foreign officials—treason and treason—both turn on the subjective intent of the actor. Treason requires a “disloyal mind” and bribery requires corrupt intention. It is clear that a President’s relationship with a foreign nation because he believes that doing so is in the Nation’s strategic interests, but if the President’s reason for taking up arms and overthrowing the Congress, his conduct is treasonous. Bribery...
turns on similar considerations of corrupt intent. And, contrary to President Trump’s assertion, past impeachments have concerned “permissive conduct that had been simply wrong, not subjectively wrong.” The first and second articles of impeachment against President Nixon, for example, charged him with using the powers of his office in a “criminal” manner in the pursuit of political ends without “unquestionable moral wrong.”

There are many acts that a President has “objective” authority to perform that would constitute grave abuses of power if done for corrupt reasons. For example, a pardon because the applicant demonstrates remorse and meets the standards for clemency, but if a President issued a pardon in order to cover up a quid pro quo against him, or in exchange for campaign donations, or for other corrupt motives, his conduct would be impeachable—as our Supreme Court unanimously recognized nearly a century ago. The same principle applies here.

President Trump withheld hundreds of millions of dollars in military aid and an important announcement from Ukraine, a vulnerable American ally, in a scheme to extortion the Ukrainian government into announcing investigations that would help President Trump and smear a potential rival in the upcoming U.S. Presidential election. He has not come close to justifying that misconduct.

1. President Trump principally maintains that he did not in fact condition the military aid and Oval Office meeting on Ukraine’s announcement of the investigations—repeatedly asserting that there was “no quid pro quo.” The overwhelming weight of the evidence refutes that assertion. And President Trump has effectively muzzled witnesses who could shed additional light on the facts.

Although President Trump argues that he “did not make any connection between the assistance and the Oval Office meeting,” Acting Chief of Staff Mick Mulvaney, admitted the opposite during a press conference—conceding that the investigation into Russian 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, “[W]e do this all the time with foreign policy.”

President Trump’s denial of a quid pro quo during an Oval Office meeting that “the meeting President Zelensky want[ed] was on 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? We answered yes.” Ambassador Taylor reaffirmed this position regarding the Oval Office meeting, testifying that “the meeting President Zelensky wanted was conditioned on the investigations of Burisma and alleged Ukrainian interference in the 2016 U.S. 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 Richard Johnson that there was “no quid pro quo.” Both conversations occurred after the President had been informed of the whistleblower’s complaint against him, at which point he obviously had a strong motive to come up with seemingly innocent cover stories for his misconduct.

In addition, President Trump’s brief omits testimony by Ambassador Sondland during their call. Immediately after declaring that there was “no quid pro quo,” the President insisted that “President Zelensky was entirely confident of the investigations and he should want 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. And, indeed that statement shows his conscious guilt.

President Trump also asserts that there cannot have been a quid pro quo because President Zelensky has denied that “President Trump gave any promise to Zelensky that he would announce sham investigations and he would do that all the time with foreign policy.”

This is false stimulation, an explanation that is later shown to be false, such a statement tends to show the defendant’s consciousness of guilt. President Trump’s denial of the quid pro quo underscores that he knows his scheme to procure the sham investigations was improper, and that he is nowlying to cover it up.

2. President Trump next argues that he withheld urgently needed support for Ukraine for reasons unrelated to his political interest. But President Trump’s asserted reasons for withholding the military aid and Oval Office meeting are implausible on their face.

President Trump never attempted to justify the decision to withhold the military aid and Oval Office meeting on foreign policy grounds when it was underway. To the contrary, President Trump’s lawyer Rudy Giuliani acknowledged about his Ukraine policy: “The reason that I wanted this done was to get the investigations and he should want to do it.” President Trump sought to hide the scheme from the public and refused to give any explanation for it even within the U.S. government. After his own Defense Department warned—correctly—that withholding military aid appropriated by Congress would violate federal law, and after his National Security Advisor likened the arrangement to a “drug deal.” And he released the military aid shortly after announcing the investigations and he should want 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. And, indeed that statement shows his conscious guilt.

The Anti-Corruption Pretext. The evidence shows that President Trump was actually indifferent to corruption in Ukraine before Vice President Biden became a candidate for President. After Biden’s candidacy was announced, President Trump remained uninterested in anti-corruption efforts. President Trump never attempted to justify this aid withhold because the aid would help him personally.

In fact, he praised a corrupt prosecutor and released U.S. Ambassadors who her earlier anti-corruption efforts. President Trump did not seek investigations into alleged corruption— as one would expect if anti-corruption efforts were the reason for the aid withhold. And he repeatedly announced of investigations—because those announcements are what would help him politically.

Ambassador Sondland testified, President Trump “did not give a [expletive] about Ukraine,” and instead cared only about “big [expletive] benefits like the Bidens.” While President Trump asserts that he released the aid in response to Ukraine’s actual progress on corruption, in fact he released the aid two days after Congress announced an investigation into his misconduct. And President Trump’s claim that the removal of the 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 and then called to meet with that prosecutor to try to dig up dirt on Vice President Biden to this day. The Burden-Sharing Pretext. Until his extraordinary reversal in the mid-november, President Trump never attempted to attribute 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 2014, the United States and European financial institutions have committed over $16 billion to Ukraine. 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 contributions, and released any change in Europe’s contribution only days after an investigation into his scheme commenced.

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 pro-
tect his son. To the contrary, Biden was car-
ying out the policies of the Trump administra-
tion and Senate bipartisan support—when he sought that prosecu-
tor’s ouster because the prosecutor was known to be corrupt.\textsuperscript{72} In any event, the prosecutor issue is crucial to the produc-
tion of evidence that Ukraine would investigate Burisma, not a fact that is occurring.

\section*{The Ukrainians-Elect: Interference Protocols}

\subsection*{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 Direc-
tor confirmed that American law enforce-
ment has “no information that indicates that \textit{any} Ukrainian official or entity com-
mitted interference.”\textsuperscript{73} In the theory of Ukrainian interference is itself an im-
peachable offense.\textsuperscript{84} But this argument distorts the categorical nature of his refusal to comply with the impeachment in-
vestigation. President Trump has refused \textit{any and all} cooperation and ordered his Ad-
ministration to do the same. No President in our history has so flagrantly undermined the impeachment process.

\section*{Secrets of the Trump Administration}

President Trump has answered the House’s constitutional mandate to enforce its “sole power of Impeachment”\textsuperscript{85} with open defi-
cance.\textsuperscript{86} In the phraseology of the establishment, he has refused complete sub-
poenas on executive privilege grounds.

\section*{The House conducted a constitutionally valid impeachment inquiry}

As explained in the House Managers’ open-
ing brief, the House conducted a full and fair impeachment proceeding. It authorized proce-
dural protections for President Trump, which he tellingly chose to ignore. The Com-
mittees took 100 hours of deposition testi-
mony from 17 witnesses, and all Members of the Committees as well as Republican and Democratic staff were permitted to attend and given equal opportunity to ask ques-
tions. The Committees heard an additional 30 hours of public testimony from 12 of those witnesses, including three requested by the Republicans. Both Republican and Democratic lawyers were invited to participate at the public hearings before the Judiciary Committee.\textsuperscript{88} Rather than do so, he urged the House: “if you determine to impeach, do it fast, so we can have a fair trial in the Senate.”\textsuperscript{89}

But faced with his Senate trial, President Trump now cites a host of procedural hurdles that could potentially obstruct the impeachment proceeding. Nobody should be fooled by this obvious gamesmanship.
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 disregards the text of the Constitution, which gives the House the “sole Power of Impeachment,” and empowers it to “determine the Rules of its Proceedings.” As the Supreme Court has observed, “the word ‘sole’—which appears only twice in the Constitution—is of considerable significance.” In the context of the avoidance of constitutional over impeachment trials, the Court stressed that this term means that authority is “reposed in the Senate and nowhere else” and that the House “shall have authority to determine whether an individual should be acquitted or convicted.” The House’s “sole Power of Impeachment” likewise vests it with the independent authority to structure its impeachment proceedings in the manner it deems appropriate. The Constitution leaves no room for President Trump to object to how the House, in the exercise of its “sole” power to determine, conducted its proceedings here.

President Trump has no basis to assert that the inquiry was “flawed from the start” because it began before a formal House vote was taken. Neither the Constitution nor any House rule requires such a vote. And notwithstanding President Trump’s refrain that the House’s inquiry “violated every precedent and every principle,” the House has imposed several federal judges without ever passing such a resolution—and the Senate then convicted and removed them from office. Here, by contrast, the House adopted a resolution confirming the investigating Committee’s authority to conduct their inquiry into “whether sufficient grounds exist for the House to exercise its Constitutional power to impeach Donald John Trump, President of the United States of America.”

President Trump is similarly mistaken that a formal “delegation of authority” to the Committees was needed at the outset. The House adopted its Rules 115—“a power that the Constitution reserves to each House alone”—but did not specify rules that would govern impeachment inquiries. It is thus difficult to understand why President Trump’s impeachment inquiry could violate its rules or delegation authority. Not only did Speaker Pelosi instruct the Committees to proceed with an “impeachment inquiry”116 but in her letter to the House Res. 660, the full House “directed” the Committees to “continue their ongoing investigations as part of the existing House of Representatives inquiry into impeachment.”

President Trump is wrong that the subpoenas were “unauthorized and invalid” because they were not adopted by the House.117 There is no requirement in either the Constitution or the House Rules that the House vote on subpoenas. Indeed, such a requirement would be inconsistent with the operations of the House, which in modern times largely functions through its Committees.118 The absence of specific procedures for the House to authorize Committees to conduct impeachment inquiries allows those extraordinary inquiries to be conducted in the manner the House deems most fair, efficient, and appropriate. But even assuming a House vote on the subpoenas was necessary, there was such a vote. When the House adopted Resolution 660 it understood that numerous subpoenas had already been issued as part of the impeachment inquiry. As the Report accompanying the Resolution explained, “the authorized subpoenas” issued to the Executive Branch “remain in full force.”119

B. President Trump Received Fair Process

As his lawyers well know, the various criminal punishments President Trump demands have no place in the House’s impeachment process. It is not a trial, much less a criminal trial to which Fifth and Sixth Amendment rights apply. The rights President Trump has demanded have never been recognized in any prior Presidential impeachment investigation, just as there has never been a person under investigation by a grand jury—a more apt analogy to the House’s proceedings here. Although President Trump faults the House for not allowing him to participate in depositions and witness interviews, no President has ever been permitted to participate during this initial fact-finding process. For example, the Articles of Impeachment during the Nixon impeachment found “[i]n no record . . . of any impeachment inquiry in which the official under investigation participated in the investigation preceding commencement of Committee hearings.” In both the President Nixon and President Clinton impeachment inquiries, the President’s counsel was unable to participate in or even attend depositions and interviews of witnesses. And in both cases, the House relied substantially on investigative findings by special counsel or independent counsel, neither of which allowed the participation of the target of the investigation. Indeed, the reasons grand jury proceedings are kept confidential—to “prevent subornation of perjury and witness intimidation.” In the litany of process complaints, President Trump faults the House for failing to have his counsel participate in or even attend depositions and witness examinations, cross-examined witnesses, and submitted evidence of his own. President Trump—“by his own conduct—do so. Having deliberately chosen not to avail himself of these procedural protections, President Trump cannot now pretend they did not exist.

Nor is the President entitled to have the charges against him proven beyond a reasonable doubt. That burden of proof is applicable in criminal trials, where “life and liberty are at stake, not in impeachments. For this reason, the Senate has rejected the proof—beyond-a-reasonable-doubt standard in impeachment proceedings.” The House has “left the choice of the applicable standard of proof to each individual Senator.” Once again, President Trump’s lawyers well know this fact.

President Trump’s contention that the Articles of Impeachment must fail on grounds of “duplicity” is wrong. President Trump alleges that the Articles are “structurally deficient” because they “charge[] multiple different acts as possible grounds for sustaining a conviction.” But this simply repeats the ground of presidential immunity of a President Clinton, which differed from President Trump’s impeachment in this critical respect. Where the articles charged President Clinton with engaging in “one or more” of several acts, the Articles of Impeachment against President Trump do not. This difference avoided the possible problem raised in the impeachment proceedings against President Clinton.

There was no procedural flaw in the House’s impeachment inquiry. But even assuming there were, that would be irrelevant to the Senate’s separate exercise of its “sole Power of Impeachment.” Any imagined defect in the House’s previous proceedings could be cured when the evidence is presented to the Senate at trial. President Trump, after all, touted his desire to “have a fair trial in the Senate.” And as President Trump admits, it is the Senate’s “constitutional duty to decide for itself all matters of law and fact bearing upon this trial.” Acquiring President Trump on baseless objections to the House’s process would be an abdication of the Senate’s duty.

Respectfully submitted,
United States House of Representatives

ADAM B. SCHIFF, JERROLD NADLER, ZOE LOFREN, HAKEEM S. JEFFRIES, VAL. BUTLER DEMINGS JASON CROW, SYLVIA R. GARCIA,
U.S. House of Representatives Managers.


The House Managers wish to acknowledge the assistance of the following individuals in preparing this reply memorandum: Douglas N. Letter, Megan Barbero, Josephine Morse, Adam A. Grogg, William E. Havemann, Jonathan B. Schwartz, Christine L. Googly, Lily Hsu, and Nate King of the Office of General Counsel; Daniel Noble, Daniel S. Goldman, and Maher Bitar of the House Permanent Select Committee on Intelligence; Norman L. Eisen, Barry H. Berke, Joshua Matz, and Sophia Brill of the House Committee on the Judiciary; the investigative staff of the House on Oversight and Reform; and David A. O’ Neil, Anna A. Moody, David Sarratt, Laura E. O’ Neill, and Elizabeth Nielsen.

ENDNOTES
5. Statement of Material Facts ¶121 (Jan. 18, 2020) (Statement of Facts) (filed as an attachment to the House’s Trial Memorandum).
7. As the then-House Managers explained in President Clinton’s impeachment trial, “[t]he 25th Amendment to the Constitution empowers the President to Second Guess the President would not overturn an election because it is the elected Vice President who

9. Opp. at 57 n.383.
10. Opp. at 1–2.

13. Id. at 550.
15. Opp. at 14–16.
17. 2 Joseph Story, Commentaries on the Constitution of the United States § 762 (1833). The President’s brief selectively quotes Blackstone’s Commentaries for the proposition that impeachment in Britain required a violation of “common and established law.”

18. Impeachment of Richard M. Nixon, Presi-

19. See id. at 136.
21. Extracts from the Journal of the U.S. Sen-
25. Id. §762.
27. Dershowitz at 28–27.

29. Impeachment of Donald J. Trump, Presi-
30. See, e.g., Gilmore v. Lewis, 1 Ohio 281, 286 (1843) (For “public officers, . . . [i]t is an indictable offence, in them, to exact and receive any thing, but what the law allows, for the performance of their legal duties,” because “at common law, being against sound policy, and, quasi, extortion.”); accord Kick v. Merry, 23 Mo. 72, 75 (1856); United States v. Matthews, 173 U.S. 381, 384–85 (1899) (collecting cases).
32. Opp. at 22.
33. Cramer v. United States, 325 U.S. 1, 30–31 (1945) (Treason); United States v. Sun-
Diamond Growers of California, 335 U.S. 386, 404–05 (1949) (Espionage).
34. Opp. at 30.
36. Ex Parte Heffron, 267 U.S. 87, 122 (1925) (the President could be impeached for using his pardon power in a manner that destroys the Judiciary’s power to enforce its orders).
38. Opp. at 81.
40. Id.
41. Id. §118.
42. Id. §101.
43. Id. §52.
44. Transcript, Impeachment Inquiry: Ambas-
sador William H. Taylor and George Kent: Hear-
ing Before the H. Permanent Select Comm. on Intelligence, 116th Cong. 33 (Nov. 13, 2019) (statement of Ambassador Taylor).
45. Transcript, Impeachment Inquiry: Fiona Hill and David Holmes: Hearing Before the H. Permanent Select Comm. on Intelligence, 116th Cong. 18-19 (Nov. 21, 2019) (statement of Mr. Holmes) (“[I]t was made clear that the home sec-
tion on Burisma/Biden investigation was a precondition for an Oval Office visit.”).
46. See Opp. at 12.
47. Statement of Facts §114.
48. Opp. at 84–85.
49. Statement of Facts §168.
50. Opp. at 87.
52. See, e.g., id. §52.
53. See, e.g., id. §49.
56. Opp. at 109.
57. As the Supreme Court reiterated in re-
jecting a different pretextual Trump Admin-
istration scheme, when reviewing the Execu-
tive’s act not appropriate “to ex-
58. Statement of Facts §18. President Trump’s brief here assigns the role of a Gliallian, who served as President Trump’s principal auction in seeking an announcement of the investiga-
tions.
59. Id.
60. Id. §131.
61. After Congress began investigating Presi-
dent Trump’s conduct, the White House Coun-
sellor’s Office reportedly conducted an in-
ternal review of “hundreds of documents,” which “reveal[ed] extensive efforts to gen-
63. Id. ¶ 147.
64. Opp. at 94–95.
65. Opp. at 94.
98. See Statement of Facts ¶ 176.
100. U.S. Const., Art. I, § 2, cl. 5.
103. Id. at 229.
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 Representa- tives, 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).
108. Opp. at 11.
111. H. Res. 660, 116th Cong. (2019); Statement of Facts ¶ 130.
112. See Opp. at 37–38.
113. See H. Res. 6, 116th Cong. (2019).
116. Id. ¶ 162; see H. Res. 660.
117. Opp. at 37; see id. Opp. at 1.
118. See, e.g., House Rule XI(b)(1)(b) (authorizing standing committees of the House to “conduct at any time such investigations and studies as they consider[ ] necessary or appropriate”); see also id. XI(2)(b)(A) (authorizing committees to “require, by subpoena or otherwise, the attendance and testi- mony of 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.
133. H. Rep. 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)).
135. The CHIEF JUSTICE. I note the pres- ence 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.
136. The majority leader is recognized.
137. 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.
138. The District Court Clerk.
139. The CHIEF JUSTICE. Without objec- tion, it is so ordered.
140. FLOOR PRIVILEGES DURING CLOSED SESSION Sharon Soderstrom, Chief of Staff, Major- ity Leader Scott Raab, Deputy Chief of Staff, Major- ity Leader Andrew Ferguson, Chief Counsel, Majority Leader Robert Kareem, National Security Advisor, Majority Leader Stefanie Muchow, Deputy Chief of Staff, Majority Leader (Chief of Staff)
141. Nick Rossi, Chief of Staff, Assistant Major- ity Leader Mike Lynch, Chief of Staff, Democratic Leader Erin Vaughn, Deputy Chief of Staff, Demo- cratic 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
142. Mike DisisVestro
143. Pat Bryan, Senate Legal Counsel
144. Morgan Frankel, Senate Legal Counsel
145. Krista Beal, ASAA, Capitol Operations, (Bob Shelton will substitute for Krista Beal if needed)
146. Jennifer Hemminger, Deputy SSA
147. Terrence Liley, General Counsel
148. Robert Duncan, Assistant Majority Secre- tary

PROVIDING FOR RELATED PROCE- DURES CONCERNING THE ARTI- CILES 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 mate- rial provided by the House Judiciary Committee to 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 objec- tions that the President may make after opening presentations are concluded. All ma- terials filed pursuant to this paragraph shall be filed 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 evi- dentiary 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
We support this resolution. It is a fair way to proceed with this trial. It is long past time for us to start this proceeding, and we are here today to do it, and we hope that the Senate will agree to start 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 of Congress. 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 benefiting Ukraine. He sought to get Ukraine to help him in the next election; and we will prove—that he sought to get Ukraine to help him cheat in the next 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 a guise that looks benign.

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 the intentional refusal to cooperate in any way—to refuse to testify, refuse to answer subpoenas for documents, and through every other means.

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 deemed 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 every other decision you will make must rest.

If you only get to see part of the evidence, if you are given one side, and 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 House is not allowed to call witnesses, to introduce documents and evidence, it is not a fair trial. It is not really a trial at all.

Americans all over the country are watching us right now, and imagine they are on jury duty. They want to know that the judge walks into that courtroom and says that she has been talking to the defendant, and at the defendant’s request, the judge has agreed not to let the prosecution call any witnesses or introduce any documents. The judge and the defendant have agreed that the prosecutor may only read to the jury the dry transcripts of the grand jury proceedings. That is it.

Has anyone on jury duty in this country ever heard a judge describe such a proceeding and call it a fair trial? Of course not. That is not a fair trial. It is a mockery of a trial.

Under the Constitution, this proceeding, the one we are in right now, is the trial. This is not the appeal from a trial. You are not appellate court judges. OK, one of you is. And unless this trial is going to be different from any other impeachment trial or any other kind of trial, for that matter, you must prosecute it as you must prosecute impeachment proceedings, the House managers and the President’s lawyers, to call relevant witnesses. You must subpoena documents that the President has blocked, but which bear on his guilt or innocence. You must impartially do just as your constituents demand that you do—first, not last—because the documents will inform the decision about which witnesses are most important to call. And when the witnesses are called, the documentary evidence will be available and must be available to question them with. Any other order makes no sense.

Next, the resolution should allow the House managers to call their witnesses, which every other decision you will make be more important 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 as to whether 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. If the House calls witnesses and asks the managers to admit them before the trial, the managers or even to the Chief Justice. You have sworn an oath to do impartial justice. That oath binds you. That oath superseded all else.

Many of you in the Senate and many of your constituents have stated 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 what 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 that the result is predetermined. 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 con-
vincing 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 own 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 impeach-
ment trials, and what fairness and impartiality require.

Although we have many concerns about the resolution, I will begin with 
it’s single biggest flaw. The resolution does not ensure that subpoenas will, in 
fact, be issued for additional evidence that the Senate and the American peo-
ple should have—and that the Presi-
dent continues to block—to fairly de-
side the President’s guilt or innocence. Moreover, it guarantees that such sub-
poenas will not be issued now, when it would be impossible to resolve it, the par-
ties, and the American people.

According to the resolution the lead-
er introduced, first the Senate re-
ceives briefs and filings from the par-
ties. Next the Senate receives lengthy presen-
tations from the House and the Presi-
dent. Now my colleagues, the Presi-
dent’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 presen-
tations 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 wit-
ness testimony that, unlike the Clin-
ton trial, have not yet been seen or 
heard. It is true that the record compiled by the House is overwhelming. It is true 
that the record already compels the convic-
tion of the President in the face of un-
precedented resistance by the Presi-
dent. The House has assembled a pow-
erful case, evidence of the President’s 
high crimes and misdemeanors that in-
cludes direct evidence and testimony of 
officials who were unwilling and unwit-
ting to testify. But I did see it, and I 
was. Yet there is still more evi-
dence—relative and probative evi-
dence—that the President continues to 
block that would flesh out the full ex-
tent of the President’s misconduct and 
theses around him.

We have seen that, over the past few 
weeks, new evidence has continued to 
come to light as the nonpartisan Gov-
ernment Accountability Office has de-
determined that the hold on military aid 
to Ukraine was illegal and broke the 
law; as John Bolton has offered to tes-
tify in the trial; as one of the Presi-
dent’s agents, Lev Parnas, has pro-
duced documentary evidence that 
the scheme operated on behalf of the 
President and corroborates Ambassador Sondland’s testimony that 
everyone was in the loop; as documents 
released under the Freedom of Infor-
matión Act have documented the 
alarm at the Department of Defense 
that the President illegally withheld 
support for Ukraine, an ally 
at war with Russia, without expla-
nation; as the senior Office of Manage-
ment and Budget official, Michael 
Duffey, a senior Department of De-
fense officials on July 25, 90 minutes 
after President Trump spoke by phone 
with President Zelensky, that the De-
fense Department should pause all obli-
gation of Ukraine military assistance 
under its purview—90 minutes after 
that call.

Duffey added, “Given the sensitive 
nature of the request, I appreciate your 
keeping that information closely held 
to those who need to know to execute 
the direction.

Although the evidence is already 
more than sufficient to convict, there 
is simply no rational basis for the Sen-
ate to deprive itself of all relevant in-
formation in making such a hugely 
consequential judgment.

Moreover, as the President’s answer 
to his summons and his trial brief 
made clear, the President intends to 
contest the facts in false and mis-
leading ways.

But the President should not have it 
both ways. He should not be permitted 
to claim that the facts uncovered by 
the House are wrong while also con-
cealing mountains of evidence that 
bear precisely on those facts.

If this body seeks impartial justice, 
should it ensure that subpoenas are 
issued and that they are issued now, 
before the Senate begins extended pro-
ceedings based on a record that every 
person in this room and every Amer-
ican watching at home knows does not 
include documents and witness testi-
mony it should because the President 
would not allow it to be so.

Complying with these subpoenas 
would not impose a burden. The sub-
poenas cover narrowly tailored and 
targeted documents and witnesses that 
the President has concealed.

The Senate deserves to see the docu-
ments from the White House, the State 
Department, the Office of Management 
and Budget, and the Department of De-
fense that it wishes to have collected and at least preserved these documents in response to House subpoe 

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, Mick Mulvaney; the Presi-
dent’s National Security Advisor, John Bolton, 
who has publicly offered to testify— 
two senior officials integral to imple-
menting the President’s freeze on 
Ukraine’s military aid also have very 
important testimony for the Senate to hear:— 
Robert Blair, who served as Mr. Mulvaney’s 
secretary, and Mr. Mulvaney, now former 
Secretary of Defense, and others with 
direct knowledge whom we reserve the right to call 
—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 “love” to 
Secretary of State, Mr. Mulvaney, now former 
Secretary of Defense, and others with 
most people testify in the Senate trial: 
(Text of Videotape presentation:)

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 Rick, I’d love to have Rick 
Perry, and many other people testify.

Mr. Manager, if the Senate has an opportunity to take the Presi-
dent up on his offer to make such aides available, including Secretaries 
Trump and Perry. But now the President is changing 
his tune. The bluster of wanting 
these witnesses to testify is over-stri-
ting the fact that he has never as-
serted the claim of privilege in the 
course of the House impeachment pro-
cedings, he threatens to invoke one 
now in a last-ditch effort to keep the 
rest of the truth from coming out.

The President sends his lawyers here 
by breathlessly claim that these wit-
nesses or others cannot possibly testify 
because it involves national security. So 
that means that 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 na-
tional security because they will in-
volve other nations, and that mis-
conduct based on foreign entanglement 
is what the Framers feared most.

The President’s absurdist argument 
amounts to this: We must endanger na-
tional security to protect national secu-
rity. 

This is dangerous nonsense.

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 secu-
rity.

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 coequal 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 portable order of 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 10.

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 nonstarter and designed to be so. The President was determined to obstruct Congress no matter what we did, and his order on his 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 orders violated the law; Defense Department 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 with whom 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 testimony, 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 violation of 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 the Constitution’s clear decision of a single judge between the House and the power to impeach. Moreover, it would invite the President to present his own impeachment by endlessly litigating the matter in court—appealing endlessly in any frivolous motion or device. 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 or 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 President’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—although, 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 document or a single witness 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 American public of your 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 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 holding a fair 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 Senate has heard 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 has always 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 and determining a final resolution 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 of evidence 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. It did 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 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 matters to you and some of us know well. It, too, is consistent with this longstanding practice. There, the Senate heard testimony from 28 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 testimony 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 impeachments, especially from a public and official. 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—which there should be none left—is 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 on any potential trial when sitting as a Court of Impeachment. At every turn, they reject the notion that the Senate 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 obdience to its own order. 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 receiving 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 role 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—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 witnesses, including the FBI—with whom the White House had dealt—to testify before 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 that 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 seriously 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 not refuse to 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. 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 can be 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 effect.

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 Pompeo and others to testify and that his interactions with Ukraine have been perfect. Counsel has confirmed today that would be the President’s defense: His conduct was perfect. It was perfect. It was perfectly fine to coercer an ally by 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 to work out so well, and here we are. 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 provided the most compelling body of evidence by a President who wishes to conceal it. It should be fair to the President, who will not benefit from an acquittal or dismissal if the trial is not viewed as fair, if it is not viewed as impartial. It should be fair to Senators, who are tasked with the grave responsibility of determining whether to convict or acquit and should do so with the benefit of all the facts. And it should be fair to the American people, who deserve to know the truth and who deserve representatives who will seek it on their behalf.

With that, Mr. Chief Justice, I yield back.

The CHIEF JUSTICE, Mr. Cipollone, Mr. Sekulow, you have 57 minutes available.

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, Leader McConnel, and Democratic Leader SCHUMER, it is also my privilege to represent the President of the United States before this Chamber.

Senator SCHUMER said earlier today that the eyes of the Founders are on these proceedings. Indeed, that is true, but it is the heart of the Constitution that governs 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. Why? Because President Obama asserted executive privilege.

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 comply with 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, I am not today going to take the time 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 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 President's opponents, 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 there is no impervious 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 Congress 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, more importantly, 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 against the oath 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 new complaints 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. The President of the United States declassified 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.

Witnesses were threatened. Good public servants were told that they would be held in contempt. They were told that they were obstructing.

What does SCHIFF 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 for a second. There are these articles for 33 days. We heard 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 the White House should be denied its 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. SCHIFF wants you to forget, but you have to remember how we got here. They threatened him. They sent him a subpoena. 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. SCHIFF 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. SCHIFF. What do I do?

You know what Mr. SCHIFF 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 asked 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. That 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, then 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 them, 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. SCHUMER.

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. SCHUMER 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 whistleblower.

We said: Let us 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 put the pressure on you. 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. The Senate is not 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 months. That is exactly what should happen here. That is exactly what should happen here.

It is too much to listen to almost—turning our heads, 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 advice from the bigger picture. It is a partisan impeachment. It is a partisan impeachment. It is a partisan impeachment. It is a partisan impeachment. 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 for it. I will tell you that right now. They are not here to steal one election. They are not here to steal two elections. 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 get rid of� by voting for 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.

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 1284.

(Purpose: To subpoena certain White House documents and records)

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

Sec. 3. Notwithstanding any other provision of this resolution, pursuant to the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials—

(i) the Chief Justice of the United States, through a staff member of the Senate, 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 notes related to, or created in connection with, American involvement in or 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 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 “Bush Co.”);

(iv) interference or involvement by Ukraine in the 2016 United States election;

(v) the Democratic National Committee; or

(vi) CrossFire.

(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 (USAPI) and Foreign Military Financing (FMF);

(D) all documents, communications, notes, and other records created or received by Acting National Security Advisor John Bolton, Senior Advisor to the President 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 Ambassadors 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 around July 10, 2019, involving Ukrainian official Andriy Yermak and United States Government officials, including, but not limited to, then-National Security Advisor John Bolton, Secretary Perry, Ambassador Volker, and Ambassador Sondland, to include at least a meeting in Ambassador Bolton’s office and a subsequent meeting in the Ward Room;

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

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

(vi) a meeting at the White House on or around September 11, 2019, involving President Trump, Vice President Pence, and Mr. McFarlane 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 and other White House officials reported concerns to National Security Council lawyers, including but not limited to National Security Council Legal Advisor John Dean, regarding any actions related to Ukraine, including but not limited to—

(i) the decision to delay military assistance to Ukraine;

(ii) the President’s 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 1, 2019 meeting between Ambassador Sondland and a Ukrainian official; and

(v) the President’s September 7, 2019 call with Ambassador Sondland and;

(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 Senate 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. There was a scheduling of a White House meeting for the president of Ukraine, and any requests for investigations by Ukraine; (H) the complaint submitted by a whistle-blower within the Intelligence Community on or around August 12, 2019, to the Inspector General of the Intelligence Community; (I) all meetings or calls, including requests for or records of meetings or telephone calls, scheduling items, calendar entries, White House visitor records, and email or text messages using personal or work-related devices between or among—
(i) current or former White House officials or employees, including but not limited to President Trump; and
(ii) Rudolph W. Giuliani, Ambassador Sondland, Victoria Toensing, or Joseph diGenova; and
(J) former United States Ambassador to Ukraine Yovanovitch, including but not limited to the decision to end her tour or recall her from the United States Embassy in Kiev; and
(2) the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the United States Senate in serving the subpoena authorizing the subpoena to be issued by this section.

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

RECESS SUBJECT TO THE CALL OF THE CHAIR
Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, at 2:49 p.m., the Senate, sitting as a Court of Impeachment until 3:36 p.m., whereupon the Senate reassembled when called to order by the Chief Justice.

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

Mr. SCHIFF, do you wish to be heard on the amendment, and as the proponent or as the opponent?
Mr. Manager SCHIFF, Mr. Chief Justice, we wish to be heard and are a proponent of the amendment.

The CHIEF JUSTICE. Very well.
Mr. Clpollone.
Mr. Counsel CIPOLLINE, Mr. Chief Justice, we are an opponent of the amendment.

The CHIEF JUSTICE. Mr. SCHIFF, you have an hour.
Mr. Manager SCHIFF. Thank you, Mr. Chief Justice.

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

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

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

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

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

And why didn’t they invoke privilege? Why are we now? And even now they haven’t quite invoked it? Why are we now? Why not in the House? Because they knew, as they know, because they are good lawyers, you have to specify which document, which line, which conversation, and they didn’t want to do that because to do that the President would have to reveal the evidence of his guilt. That is why they made no invocation of privilege.

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

Why didn’t the Founders require the exhaustion of legal remedies? Because they didn’t want to put the impeachment process on hold. And you know what is interesting is that while these lawyers for the President are here before you today saying the House should have gone to court, they were in court saying the House may not go to court to enforce subpoenas. I kid you not.

Other lawyers—maybe not the ones at this table—but other lawyers for the President are in court saying the exact opposite of what they are telling you today. They are saying: You cannot enforce congressional subpoenas. That is nonjusticiable. You can’t do it.

Counsel brings up the case involving Charles Kupperman, Dr. Kupperman—went to court—and they applauded him for doing that—his boss, John Bolton, now says there is no necessity for him to go to court. He doesn’t have to do it. He is willing to come and talk to you. He is willing, he says, to be questioned by you what he knows. The question is, Do you want to hear it? Do you want to hear it? Do you want to hear it? Do you want to hear from someone who was in the meetings, someone who described what the President did—this Charles Kupperman— as a drug deal? Do you want to know why it was a drug deal? Do you want to ask him why it was a drug deal? Do you want to ask him why he repeatedly told people: Go talk to the lawyers? You should want to know. They don’t want you to know. They don’t want you to know. The President doesn’t want you to know.

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

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

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

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

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

...Maybe if we attack House managers, the July 25 call, of course, that word doesn't make sense. And why? Because the only corruption he cared about was the corruption that he could help bring about.

Now, Mr. Cicillone 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. Cicillone 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 is mistaken.

Every Republican on the three investigative committees was allowed to participate in the depositions, and, more importantly, 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 depositions in these other impeachment proceedings, 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. What would they 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 Chair-...
his administration’s categorical commitment to hide all the evidence at all costs, and we will address the specific need for these subpoenaed White House documents. I will tell you why these documents are needed now, not at the end of the trial, in order to ensure a full, fair trial based on a complete evidentiary record.

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

Over the past two centuries, the Senate has always understood that its sole power under the Constitution to try all impeachments requires the Senate to sit as a Court of Impeachment and hold a trial. In fact, the founders assigned sole authority only twice in the Constitution. The Senate is assigned 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 1808 against President Andrew Johnson allowed the House managers to spend the five-day 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 new evidence. The Senate admitted this evidence at trial. After that evidence was admitted, the Senate held its trial.

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

The Clinton impeachment precedent also shows how President Trump’s refusal to produce any relevant documents in the current 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 cooperate with an impeachment investigation. Not a single President has issued a blanket direction to his administration to produce no documents and no witnesses. These are the precedents the Senate is privy to.

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 account for those documents in their presentations and deliberations.

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

In this case the House sought White House documents. Why don’t we have them? It is not because we didn’t try. It is because the White House refused to give them to us. The President’s defense team seems to believe that the White House is permitted to completely refuse to provide any documents without regard to whether or not it is needed.

We apparently believe that Congress’s authority is subject to the approval of the President. But that is not what the Constitution says. Our Constitution sets forth a democracy with a system of checks and balances to ensure that no one, and certainly not the President, is above the law. Even President Nixon produced more than 30 transcripts of White House recordings and notes in the meetings with President Ford.

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

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

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

On October 4, the House Committee on Oversight Reform sent a subpoena to the White House Acting Chief of Staff, Mick Mulvaney, this time compelling the production of documents from the White House by October 18. On October 8, before the White House documents were due, the White House Counsel sent a letter to Speaker PELOSI, stating the President’s position that President Trump and his administration cannot participate in this partisan inquiry under the circumstances. The President simply declared that he will not participate in an investigation held just like.

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

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

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

With all the back-and-forth about these documents, we have heard the phrase “executive privilege.” The President and his lawyers keep saying—they talk about a vast legal right to justify hiding the truth, withholding information. But that is a distraction. 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. This is the truth. The President, Members of Congress, judges, and the Supreme Court have recognized throughout our Nation’s history that Congress’s investigative powers are at their absolute peak during impeachment proceedings—your powers. Executive privilege cannot be a barrier to give absolute secrecy to cover up wrongdoing. If it did, the House and the Senate would see their powers disappear.

When President Nixon tried that argument by refusing to produce tape recordings to prosecutors and to Congress, he was soundly rebuked by the other two branches of government. The
Supreme Court unanimously ruled against him. The House Judiciary Committee voted that he be impeached for obstruction of Congress.

It would be remarkable for the United States Senate to declare for the first time in our Nation's history that the President has an absolute right to decide whether his own impeachment trial is legitimate. It would be extraordinary for the Senate to refuse to seek important documentary evidence, especially when the President has yet to assemble 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 others held in 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 Ukraine would include the phone calls during the calls and meetings. We know, for example, that Lieutenant Colonel Vindman, Mr. Morrison, and Jennifer Williams all testified to talking points that White House officials generated during the calls and meetings.

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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 would not. Indeed, as the news article explains, White House lawyers are reportedly worried about "unfavorable exchanges and facts that could at a minimum embarrass the president." Perhaps they should be worried about that, but the risk of embarrassment cannot outweigh the constitutional interest 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.

Mr. Mulvaney and White House budget officials seeking to provide some explanation for withholding the funds the President had already ordered a hold on.

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

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

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

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

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

(Text of videotape presentation:)

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

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

Ms. HILL. Well, I just want to highlight, first of all, that Ambassador Bolton wanted...
me to hold back in the room immediately after the meeting. Again, I was sitting on the sofa with a colleague—
Mr. GOLDMAN. Right. But just in that second, did he say?
Ms. HILL. Yes, but he was making a very strong point that he wanted to know exactly what had happened and when I went back and related it to him, he had some very specific instruction for me. And I’m presuming that that’s—
Mr. GOLDMAN. What was that specific instruction?
Ms. HILL. The specific instruction was that he had to go to the lawyers—John Eisenberg, the senior counsel for the National Security Council, to basically say: You tell Eisenberg Ambassador Bolton told me this—whatever drug deal that Mulvaney and Sondland are cooking up.
Mr. GOLDMAN. What did you understand it to mean by the drug deal that Mulvaney and Sondland were cooking up?
Ms. HILL. I took it to mean investigations for a meeting?
Mr. GOLDMAN. Did you go speak to the lawyers?
Ms. HILL. I certainly did.
Mr. GOLDMAN. And you relayed everything that you just told us and more?
Ms. HILL. I relayed it, precisely, and then more. How the meeting had unfolded, as well, which I gave a full description of this in my October 14 deposition.
Ms. Manager LOPFRENGER. There was something wrong going on here, and White House officials were told repeatedly:
Go tell the lawyers about it—Dr. Hill, Lieutenant Colonel Vindman, and Mr. Morrison, who reported to Mr. Eisenberg at least two conversations.
We need the notes of those documents to find out what was said. Again, in any lawyer-client privilege cannot shield information about misconduct from the impeachment trial of the President of the United States.
It is interesting. This amendment is supported by 200 years of precedent. It is needed to prevent the President from continuing to hide the evidence, and that is why the specific documents requested are so important for this case. It is faithful to the Constitution’s provisions that declare that the sole power to try all impeachments.
The final point I will make today concerns urgency. The Senate should act on this subpoena now, at the outset of the trial. In 14 of the Senate’s 15 full impeachment trials, threshold evidentiary matters, including the timing, nature, and scope of witness testimony, and the gathering of all relevant documents were addressed at the very outset of the proceedings. Rushing to render a verdict without setting aside the sole power to try all impeachments.
A fair trial is essential in every way. It is important for the President, who hopes to be exonerated, not merely acquitted, and so should we. It is important for the Senate, whose 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.
Mr. Chief Justice. Thank you, counsel.
Mr. Dipollone.
Mr. Counsel CIPOLLONE, Mr. Chief Justice, Patrick Philbin will present our opposition.
Mr. Chief Justice. Very well.
Mr. Philbin.
Mr. Counsel PHILBIN. Thank you.
Mr. Chief Justice, Majority Leader McCONNELL, Democratic Leader SCHUMER, and Senators, it is remarkable that after knowing 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 charges. We need to do more work; we need to do more discovery because we don’t have the evidence we need to support our case.
This is stunning. It is a stunning admission of the inadequate and broken process that the House 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 work; we need some more time,” 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.
Mr. Chief Justice, Majority Leader McCONNELL, we have just heard that this is so important. Let’s consider what is really at issue in the resolution here and the amendment. It is a matter of timing. It is a matter of when this body will consider whether there should be witnesses or subpoenas.
Why is it that the House managers are so afraid to have to present their case? Remember, they have had weeks of a process that they entirely controlled. They had 17 witnesses who testified first in secret and then in public. They have compiled a record with thousands of pages of reports, and they are apparently afraid to just make a presentation based on the record that they compiled and then have you decide whether there is 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.
I want to unpack a couple of aspects of what they are asking this body to do. Part of it relates to the broken process in the House and how that process was inadequate and invalid and compiled an inaccurate record, and part of it has to do with what accepting their request to have this body do their job for them would do to this institution going forward and how it would forever alter the relationship between the House and the Senate in impeachment proceedings.
First, as to the process in the House. What the House managers are asking this body to do now is to really do...
their job for them because they didn’t take the measures to pursue these documents in the House proceedings. There have been a number of statements made that they tried to get the documents and no executive privilege was asserted, and things like that.

Let’s look at what actually happened. They issued a subpoena to the White House, and the White House explained. And we were told a few minutes ago that the White House provided no response, provided no rationale. That is not true. In a letter of October 18, White House Counsel Pat Cipollone explained in three pages of legal argument why that subpoena was invalid. That subpoena was invalid because it was issued without authorization. We have heard a lot today about how the Constitution assigns the sole power of impeachment to the House. That is right. That is what Article I, Section 2, says, that it assigns the sole power of impeachment to the House, not to the Speaker or 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, in September 24, to delegate the authority of the House to Manager SCHIFF and several other committees and have them issue subpoenas. All of those subpoenas were invalid. That was explained to the House, to Manager SCHIFF, and the other chairmen of the committees at the time in that October 18 letter.

Did the House take any steps to remedy that? Did they try to dispute that? Did they go to court? Did they do anything to resolve that problem? No, because, as we know, all that they wanted to do was issue a subpoena and move on. We heard Manager LOFGREN explain about that: “...the immunity of senior advisers to the President, of course, is rooted in the same principles of executive privilege that has been asserted by all Presidents since the 1970s, and that was the basis on which a number of these advisers whose pictures they put up were directed not to testify.” Did they try to challenge that inquiry? Did they go to court on that one? Did they try to go through the constitutionally mandated accommodations process to see if there was a way to come up with some aspect of testimony to be provided? No, none of that. They just wanted to forge ahead, rush through the process, not have the evidence, and then use that as another charge in their charging sheet for the impeachment, calling it obstruction of Congress.

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

We just heard Manager LOFGREN refer to executive privilege as a distortion. She was asserting that these issues of executive privilege are just a distraction that shouldn’t hold things up. She asserted that the 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 Leader MCCONNELL pointed out, if you look at the process they pursued in the House abandoned any effort beyond issuing the first subpoena that was invalid to work out an accommodation with the White House and, instead, just tried to rush ahead to have the impeachment done by Christmas. What does that lead to now? They are coming to this body after a process that was half-baked, that didn’t compile records sufficient to support their charges, and asking this body to do their job for them. Now, as Leader MCCONNELL pointed out in some comments earlier today, to allow that, to accept the idea that the House can bring in an impeachment here that is not adequately supported, that has not been investigated, that has not got a record to support it, and turn this body into the investigatory body would permanently alter the relationship between the House and the Senate and the operation of the Senate. It is not the role of the Senate to have to do the House’s job for them. It is not the role of the Senate to be doing an investigation and to be doing discovery in a matter like the impeachment of a President of the United States if the House has not done the investigation and cannot support its case, it is not the time, once it arrives here, to start doing all that work. That is something that is the House’s role.

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

Again, what is at issue here—and I think it is important to recall—on the issue of this amendment, is whether or not, whether this body, will be considering whether there should be witnesses or not but when that should be considered. There is no reason to take the approach that was done in the Clinton impeachment. One hundred Senators agreed then. 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 case would take that commonsense approach and hear what it is that the House managers have to say.

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

The one point that I will close on is we heard Manager SCHIFF say several times that 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 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 advisers whose pictures they put up were directed not to testify. If you lock the President out.

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 witnesses. Then there was a second round in public where, again, they locked the President out.
Mr. Chief Justice, I would yield now to my colleague Mr. SCHIFF. 

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

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

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

You know who would get thrown out of court? The judge. The judge would be taken out in handcuffs. So let’s step out of this body for a moment and imagine what a real trial would be like. A fair trial would be, when you come to the day of trial, be ready to start the trial and present your case and not ask for more discovery.

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

This amendment should be rejected.

Thank you.

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

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

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

This isn’t about helping the House. This isn’t about helping the American people. 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.

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This isn’t about helping the House. This isn’t about helping the American people. 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.
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 called the roll.

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

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

[Rollcall Vote No. 15]

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

The CHIEF JUSTICE. The Democratic leader is recognized.

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

The CHIEF JUSTICE. The clerk will read the amendment.

The senior assistant legislative clerk read as follows:

The Senate 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. 2. 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 for the Secretary of State commanding him to produce, for the time period from January 1, 2019, to the present, all documents, communications, and other records within the control of the Department of State, referring to or relating to—

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

(B) the actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or economic assistance, or anything else that is related to or akin to Ukraine, including but not limited to the Ukraine Security Assistance Initiative (USAI) and Foreign Military Financing (FMM), 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 26, 2019, of any actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance to Ukraine, including all meetings, calls, or other communications 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, and with, and related to, Secretary Michael R. Pompeo, Counselor T. Ulrichick, former Special Representative for Ukraine Negotiations Ambassador Kurt Volker, Deputy Assistant Secretary George Kent, then-United States Embassy in Ukraine Chargé 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 United States 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 make a substantive decision about the composition of the delegation of the United States;

(ii) a meeting at the White House on or around August 26, 2019, in Kiev, Ukraine, including but not limited to President Trump, then-Special Representative for Ukraine Negotiations Ambassador Kurt Volker, then-Energy Secretary Rick Perry, and Ambassador to the European Union Gordon Sondland, as well as any private meetings or conversa-

The CHIEF JUSTICE. The majority leader is recognized.

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

RECESS SUBJECT TO THE CALL OF THE CHAIR

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

There being no objection, at 4:48 p.m., the Senate, sitting as a Court of the Chair.

I ask unanimous consent that the Senate reassemble when called to order by the Chief Justice.

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

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

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

The CHIEF JUSTICE. Thank you. And Mr. Cipollone?

Mr. Counsel CIPOLLONE. Opponent. The CHIEF JUSTICE. Mr. Schiff, you have an hour, and you will be able to reserve time for rebuttal.

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

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

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

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

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

Notwithstanding this effort to stonewall our inquiry, the House amassed powerful evidence of the President’s high crimes and misdemeanors—17 witnesses, 130 hours of testimony, combined with the President’s own admissions on phone calls and in public comments, confirmed and corroborated by hundreds of texts, emails, and documents.

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

This testimony was particularly compelling because the State Department is at the very center of President Trump’s wrongdoing. We heard firsthand from diplomatic officials who saw and heard 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 that the President instructed him to use his leverage to force Ukraine to comply; and his withholding of a meeting desperately sought by the newly-elected President of Ukraine.

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

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

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

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

Ambassador Sondland referred by date and recipient to emails regarding the President’s demand that Ukraine announce political investigations. As we will see, those emails were sent to some of President Trump’s top advisors, including Acting White House Chief of Staff Mick Mulvaney, Secretary of State Michael Pompeo, and Secretary of Energy Rick Perry. Deput 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 other 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 officials in the Trump administration—officials understood the corrupt nature of President Trump’s demand. They would further expose the extent to which Secretary Pompeo, Acting Chief of Staff Mick Mulvaney, and other senior 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 turn over, at the President’s order, to let them see the light of day. This is an affront to the House, which has full power to see these documents. It is an affront to the Senate, which has been denied a full record on which to judge the President’s guilt or innocence. It is an affront to the Constitution, which makes clear that nobody, not even the President, is above the law. It is an affront to the American people, who have a right to know what the President and his allies are hiding from them and why it is being hidden.

In prior impeachment trials, this body has issued subpoenas requiring
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 directed 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 Committee, 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 27.

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 had 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 captured 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 records 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 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 it because President Trump directed the State Department to conceal these text records. These records show 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 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 President Trump’s political opponents, a Ukraine 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 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 2016 he will not make visit 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 Ambassadors Volker and Sondland and Mr. Giuliani were pressuring President Zelensky’s top aide 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.
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 Mulvaney, 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 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 Videotape presentation:)

Everyone was in the loop. It was no secret. Everyone was informed via email on July 19th, the day of 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 investigatory announcements 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 were 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 his corrupt plot. 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 former 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 those efforts were backed by the White House, given the involvement of President Trump’s personal secretary.

This body and the American people need to see these emails and other files to obtain the clear and important—and, of course, undeniably, 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 that 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 and importantly—relevant and important 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 Ukrainians were defending their country from Russian aggression. Ambassador Bolton recommended that I send a first-person cable to Secretary Pompeo directly reelaying 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

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 the President’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:)

Mr. Maddow. 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. Maddow. 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 that 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 and importantly—relevant and important documents to the President’s scheme. If we want the full and complete truth, then we need to see those emails.

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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 on the same morning that 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 know 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 pertaining 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 advantage. Second, it shows that the cable was sent, President Zelensky's senior aide told Ambassador Taylor that he was "very concerned" about the hold on military assistance. He added that the Ukrainians were "justifiably outraged." And third, 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. There, perhaps, 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 reality 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 you did 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 efforts, leveraging President Zelensky's desire for a White House meeting." Mr. Kent, did you actually write a memo documenting your concerns that there was an effort under way to pressure Ukraine to open an investigation to benefit President Trump?

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 a 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.

Ms. ANNDY RAY. Then Andrew Ray asked: 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 corruption of this President'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, email, 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 significant 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
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 to win. 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 when there’s pressure from the parties, the Senate, and 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.

Mr. Counsel CIPOLLONE. 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 co-counsel. 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 a letter here 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 subpoena the testimony of Dr. Kupperman and Ambassador Bolton, let the record be clear: that is the House’s decision.”

The House’s decision. The House 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 testimony and Ambassador Volker’s testimony is consistent, and the President did not tie investigations, aid to investigations.

Answer. That is correct.

Ambassador Sondland also 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 executive privilege. Communications made by Presidential advisers in the performance of a President’s responsibilities. The Presidential communication privilege has constitutional origins. Courts have recognized a considerable public interest in preserving the confidentiality of communications 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 those 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?

Courts demand that Congress be cops to avoid lawyer lawsuits. 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 solicited and received from others, 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 in most instances received by them 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 Executive Office of the United States 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: I have no case. I don't have any lawsuits. That argument cannot be made in both directions.

What is more, in the McGahn issue, which tested this same bogus theory of absolute immunity, against what lawsuit involving the President's lawyer, Don McGahn, the one who was told to fire the special counsel and then to lie about it, that lawsuit to get his testimony—Judge Jackson ruled on that very recently when they made the same bogus claim, saying that he is absolutely immune from showing up.

The judge said:

That is nonsense. There is no support for that—not in the Constitution, not in the case, but you are telling a whole cloth.

But the judge said something more that was very interesting. What we urged John Bolton's lawyer was, you don't need to file a lawsuit. Dr. Kupperman, you don't need to file a lawsuit. There is one already filed involving Don McGahn that is about to be decided. So unless your real purpose here is delay, unless your real purpose here is to avoid testimony and you just wish to give the impression of a willingness to come forward, you just want to hold it over their head, just make sure they don't talk. If it's really true, agree to be bound by the McGahn decision.

Well, of course, they were not willing because they didn't want to testify. Now, for whatever reason, John Bolton is now willing to testify. I don't know what you don't need to file a lawsuit. I don't know what they are willing to testify to. Do you know why that is? Maybe it is because he has a book coming out. Maybe it is because it would be very hard to explain why he was unwilling to share important information with the Senate; that he could have been called to a House investiga-
tion or interview because he would need court permission to do it, but he could put it in the book. I don't know. I can't speak to his motivation. I can tell you he is willing to come now, if you are willing to hear him.

Of course, they weren't willing to be bound by that court decision in McGahn, but the court said something very interesting, because one of the arguments they happened to make—one of the arguments is that John Bolton's lawyer had been making as to why they needed their own separate litigation was, well, John Bolton and Dr. Kupperman, they are national security people, and Don McGahn is just a White House Counsel. No offense to the White House Counsel, but apparently he had nothing to do with the national security so they couldn't be bound by what the court in the McGahn case said. Well, the judge in the McGahn case said this applies to national security suits also.

So we do have the court decision. What is more, we have the court decision in the Harriet Miers case, in the George W. Bush administration, where, likewise, the court made short shrift of this claim of absolute, complete, and total immunity.

Now, there were also comments made about Ambassador Volker's testimony about Mr. Cipollone, and there along those lines the White House lawyer said the President never told him that the aid was being conditioned or that the meeting was being conditioned on Ukraine doing the sham investigation. So I guess that is case closed—unless the President told 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 not Russia; it wasn't Ukraine, it was 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, but 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?

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 to 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. He 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 it is. And the other half of it, the other side needs to go to the mike, and he should want to do it. That is their 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 President tells this: 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 did 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 the President's argument that there was no quid pro quo? He 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
three amigos. My colleague has mentioned two of the three amigos: Amigo Volker and Amigo Sondland. These are two of the three people whom the President put in charge of Ukraine policy. The third amigo is Secretary Rick Perry, former Secretary of Energy. We know about Amigo Sondland from Ambassador Volker’s testimony and his text messages and his WhatsApps that that amigo was in the loop.

What about the third amigo? Wouldn’t you like to know if the third amigo was in the loop? Now, as my colleagues will explain when we get to the Department of Energy records, well, surprisingly, we didn’t get those either. Any communication between the Department of Energy and the Department of State is covered by this amendment. Wouldn’t you like to know? Don’t you think the American people have a right to know what the third amigo knew about this scheme? I would like to know. I think you should be able to ask questions about it in your 16 hours.

At the end of the day, I guess I will finish with something Mr. Sekulow said. He said this was a dangerous moment because we are trying to rush through this somehow. It is a dangerous moment, but we are not trying to rush through this trial. We are actually trying to have a real trial here. It is the President who is trying to rush through this.

I have to tell you that whatever you decide here—maybe this is a waste of time and maybe it is already decided, but whatever you decide here—I don’t know who the next President is going to be; maybe it will be someone in this Chamber, but I guarantee you this: Whoever that next President is, whether they did something right or they did something wrong, there is going to be a time where you, in this body, are going to subpoena that President and that administration. You are going to want to get to the bottom of serious allegations. Are you prepared to say that that President can simply say: I am going to fight all the subpoenas. Are you prepared to say and accept that President saying: I have absolute immunity. You want me to come testify? Senator, do you want me to come testify? No, no. I have absolute immunity. You can subpoena me all you like. I will see you in court. And when you get to court, I am going to tell you, you can’t have me in court.

Are you prepared for that? That is what the future looks like. Don’t think this is the last President, if you allow this to happen, who is going to allow this to take place.

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.

The clerk will call the roll.

The legislative clerk called the roll.

THE CHIEF JUSTICE. Are there any Senators in the Chamber wishing to vote or change their vote? The result announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 16]

YEAS—53

Alexander  Fischer  Perdue  
Barrasso  Gardner  Portman  
Barrasso  Graham  Rounds  
Blunt  Grassley  Roberts  
Boozman  Hawley  Romney  
Burr  Hyde-Smith  Rubio  
Capito  Inhofe  Scott  (FL)  
Cassidy  Johnson  Scott  (IA)  
Collins  Kennedy  Shelby  
Cornyn  Lankford  Sullivan  
Cotton  Lee  Thune  
Cramer  Loeffler  Thune  
Crapo  McCain  Tillis  
Cruz  McSally  Toomey  
Daines  Moran  Young  
Durbin  Moskwowitz  Young

NAYS—47

Baldwin  Hassan  Rosen  
Bennet  Heinrich  Sanders  
Bishop  Hirono  Schatz  
Booher  Jones  Schumer  
Brown  Kaine  Shaheen  
Cassell  Klobuchar  Sherman  
Cardin  Klusman  Sinema  
Carper  Leahy  Smith  
Casey  Manchin  Stabenow  
Cosons  Markley  Tester  
Cortez Masto  Merkley  Udall  
Durbin  Murphy  Warner  
Feinstein  Murray  Whitehouse  
Gillibrand  Páez  Wyden  
Harris  Reed

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

The CHIEF JUSTICE. The Democratic leader is recognized.

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 Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1286.

(Purpose: To subpoena certain Office of Management and Budget documents and records)

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

Sec. 1(c). 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 Acting Director of 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 within the possession, custody, or control of the Office of Management and Budget, referring or relating to—

(A) the actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign, military, or security assistance, or security assistance of any kind to Ukraine, including but not limited to the Ukraine Security Assistance Initiative (referred to in this section as ‘‘USAID’’), and the Office of Foreign Military Financing (referred to in this section as ‘‘FMF’’), including but not limited to:

(1) communications among, between, or referring to Director Michael John ‘‘Mick’’ Mulvaney, Assistant to the President Robert Blair, Acting Director Russell Vought, Associate Director Michael Duffey, or any other Office of Management and Budget employee;

(ii) communications related to requests by President Trump for information about Ukraine security or military assistance and responses to those requests;

(iii) communications related to concerns raised by any Office of Management and Budget employee related to the legality of any hold on foreign assistance, military assistance, or security assistance to Ukraine;

(iv) communications related to the Department of State regarding a hold or block on congressional notifications regarding the release of FMF funds to Ukraine;

(v) communications related to—

(I) officials at the Department of Defense, including but not limited to Undersecretary of Defense Elaine McCrystal and

(II) Associate Director Michael Duffey, Deputy Associate Director Mark Sandy, or any other Office of Management and Budget employee;…

(vii) the July 23, 2019, memorandum prepared by the National Security Division, International Affairs Division, and Office of General Counsel of the Office of Management and Budget about the release of foreign assistance, security assistance, or security assistance to Ukraine;

(viii) the Ukrainian government’s knowledge prior to August 28, 2019, of any actual or potential suspension, withholding, delaying, freezing, or releasing of security assistance to Ukraine including legality under the Impeachment Control Act;…

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to—

The CHIEF JUSTICE. The amendment is tabled.

On the resolution, insert the following:

Sec. 1(c). 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 Acting Director of 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 within the possession, custody, or control of the Office of Management and Budget, referring or relating to—

(A) the actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign, military, or security assistance, or security assistance of any kind to Ukraine, including but not limited to the Ukraine Security Assistance Initiative (referred to in this section as ‘‘USAID’’), and the Office of Foreign Military Financing (referred to in this section as ‘‘FMF’’), including but not limited to:

(1) communications among, between, or referring to Director Michael John ‘‘Mick’’ Mulvaney, Assistant to the President Robert Blair, Acting Director Russell Vought, Associate Director Michael Duffey, or any other Office of Management and Budget employee;

(ii) communications related to requests by President Trump for information about Ukraine security or military assistance and responses to those requests;

(iii) communications related to concerns raised by any Office of Management and Budget employee related to the legality of any hold on foreign assistance, military assistance, or security assistance to Ukraine;

(iv) communications related to the Department of State regarding a hold or block on congressional notifications regarding the release of FMF funds to Ukraine;

(v) communications related to—

(I) officials at the Department of Defense, including but not limited to Undersecretary of Defense Elaine McCrystal and

(II) Associate Director Michael Duffey, Deputy Associate Director Mark Sandy, or any other Office of Management and Budget employee;…

(vii) the Ukrainian government’s knowledge prior to August 28, 2019, of any actual or potential suspension, withholding, delaying, freezing, or releasing of security assistance to Ukraine including legality under the Impeachment Control Act;…
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 OMB. These documents include communications with the Department of Defense related to concerns about the accuracy of the talking points; and

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.

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. Chief Justice. Senators, counsel to the President, Senators, counsel to 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 personal 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.

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. Members of 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 the decision-making process and show 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 own 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 from press reports for which 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 this evidence. If the President had nothing to hide, he would show the documents. 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 by every President, and 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.

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 officials that OMB blocked it from dispensing $414 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 12 email raised concerns 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 this body.

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.

Ambassador Taylor, our most senior diplomat to Ukraine, participated in that meeting, and he described his reaction at his own hearing.

(Transcript of Videotape presentation:)

Mr. TAYLOR. In a regular NSC secure video conference call on July 18, I heard a senior diplomat to Ukraine, participating in that meeting, say why. Toward the end of an otherwise normal meeting, a voice on the call—the person was off-screen—said that he was from OMB and her predecessor had 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 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 all participation, preparation, or followup from any of these meetings.

Did these meetings 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 key facts about 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 reelection campaign. That call was at 9 a.m. Just 90 minutes after President Trump hung up the phone, Duffey, the political appointee who had called Vought on June 19 and said “We need to hold it up,” sent an email to DOD to “for－malize” 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 on hold. “Meaning, don’t tell anybody about 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. And something—nothing—had never 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. How is this scheme worked. OMB asked DOD to implement a memorandum 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, “to 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 on the hold 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 rational explanation for a 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 in violation of the law? 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 executive branch are 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 insetting those footnotes throughout the apportionment documents, stating 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 they kept pretending it wasn’t so that they could avoid any 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 to know how and why it ensured 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 an opportunity to respond to the President’s argument.

The CHIEF JUSTICE. Thank you, Mr. Sekulow.

Mr. 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 fiscal year 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 outcry against President Morsi was not officially on hold as, 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 that there have been pauses on foreign aid in a variety of contexts.

In September of 2018, 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 it actually backed “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.”

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 and days 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. Congress actually passed 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 also 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. SCHIEFF.

The CHIEF JUSTICE. Mr. SCHIEFF.

Mr. Manager SCHIEFF. 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 the President of the United States is an independent watchdog 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 of the country?

Now, counsel also says, well, he is not the first President to withhold aid. And that is true. After all, counsel says: Well, President Obama withheld aid to Egypt, Yes. It was at the urging of the Members of Congress. Senators McCain and GRAHAM urged that that aid be withheld. And why? Because there was a revolution in Egypt after it was appropriated. It was not something that was hidden from Congress. That was a pretty good reason to think, do we still want to give aid to this government after this revolution? We are not saying that aid has never been withheld—that is absurd—but I would hope and expect this is the first time aid has been withheld by a President of the United States to coerce an ally at war to help him cheat in the next election. I think that is a first, but what we do here may determine whether it is the last.

There is one other thing about this pause in aid, right? It is the argument: Well, no harm, no foul. OK. You got caught. They got the aid. What is the big deal?

Well, as we heard during the trial, it is not just the aid. Aid is obviously the most important thing, as Mr. Crow mentioned—you know, without it, you can’t defend yourself—and we will have testimony as to just what kind of military aid the President was withholding. But we also had testimony that it was the last of the aid that was so important to Ukraine, the fact that the United States had Ukraine’s back. And why? Because this

new President of Ukraine—this new, untested, former comedian President of Ukraine who was at war with Russia was going to be going into a negotiation with Vladimir Putin with an eye to ending that conflict, and whether he could get the President of the United States to provide a position of strength or a position of weakness would depend on whether we had his back.

And so when the Ukrainians learned and the Russians learned that the President of the United States had 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 if the aid is delivered, 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 attorneys than I am—and I am sure you had the experience in cases you tried where you combined the vignette, 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 and 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 is Gordon Sondland who said there was absolutely quid pro quo and two plus two equals four. This is not some Never Trump. This is a million-dollar donor to the Trump inauguration and this is a guy who picked up his cell phone, and he can call the President of the United States from a restaurant in Kyiv, and he does.

Sondland holding for 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? He 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 explosive—says 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 was afraid 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 revo-

lution 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

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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 to them to help us cheat in an election, that will only embolden them to do worse.

You said it as often as I have—the only thing he respects 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 cocktail 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 and not 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.

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.

I yield back.

Mr. MCCONNELL. Mr. Chief Justice.

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, and I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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The CHIEF JUSTICE. On this vote, the yeas are 53, the nays are 47. The motion to table is agreed to; the yeas are 53, the nays are 47. The result was announced—yeas 53, nays 47.
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 Duff, director of National Security Council legal counsel Michael McKinley, and director of National Intelligence Nominee Dan Coats—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. He issued a blanket executive order blocking not just one 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 it is crucial to 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 the White House meeting on Ukraine’s announcement of investigations beneficial to the President’s re-election 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. It is not just 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 geo-political shakedown, it is important to note that an impeachment trial without witnesses would be a stunning departure from this institution’s past practice.

The 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 for 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 a full and open抗击疫情 that is unparalleled in American history.

As we have explained in detail today, despite considerable efforts by the White 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 co-equal branch of government to investigate his own 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. Whether in 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 fail 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 addressing 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. During various investigations in 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 by depriving them of their constitutional rights. 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 me review some 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 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 1600 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 concluded.

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 “potus personae.” He 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:

(Video tape presentation)

Mr. GOLDMAN. What was that specific in-kind? Mr. Manager JEFFRIES. The reference agreement which Ambassador Sondland and Mick Mulvaney was so upsetting that Dr. Hill reported it to National Security Council legal advisors. Here is the testimony of Dr. Hill explaining these particular concerns:

(Video tape presentation)

Mr. Manager JEFFRIES. The reference agreement between Ambassador Sondland and Mick Mulvaney was so upsetting that Dr. Hill reported it to National Security Council legal advisors. Here is the testimony of Dr. Hill explaining these particular concerns:

(Video tape presentation)
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 shakedown.

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 had to meet.

Mr. SONDLAND. Yeah. A lot of people were aware of it.

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 was involved in keeping Mr. Zelensky to help prepare him for a call with President Trump, and he reported that President Zelensky planned to assure President Trump that he intends to run a fully transparent investigation and will turn over every stone.

 Ambassador Sondland made clear in his testimony that he was referring to the Burisma/Biden and 2016 interference investigations that were explicitly tied only to President Zelensky on the July 25 phone call.

Mr. Mulvaney wrote in a response: I asked NSC to set it up.

What exactly did Mr. Mulvaney know about the Ukrainian commitment to turn over every stone? And when did he know it?

These are many of the questions that require answers, under oath, from Mr. Mulvaney. Mr. Mulvaney is also 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 with implementing the scheme, including the unlawful White House freeze on $391 million in aid to Ukraine.

This isn’t just other people fingering 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 report, 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 that 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 justified.

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 briefing 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 the 2020 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—no 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. That’s it. And that’s why we held up the money. Now there was a report—

Question. So the demand for an 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 Democracy—

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 to not release unless the investigation into the Democratic server happens as well.

Answer. We do 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—that was his name? I don’t know him. He testified yesterday. And if you go—and if you look at 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. They were one of the stories he was 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 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.

But 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 hindering and total blockage 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 proper assertion of 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 can be 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 a final point bears mentioning. If the President were to make 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. 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 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 seen 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 President already made an offer in the Articles for impeachment 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 even started yet.

We are here today. We came hoping to have a trial. They spent the entire day telling you and the American people that they can't prove their case. I could have told you that in 5 minutes and saved us all a lot of time.

They came here talking about the GAO. It is an organization that works for Congress. Do you know who disagrees with the GAO? Don't take it from me; they do. They sent you Artic...
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 the 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 him. And he has been impeached by 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 asking some of you Senators to do. 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. We are honest with you; 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 start 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. Chair.

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 that the Constitution were concerned about—be-trayal of one’s oath of office for per-sonal gain and the corruption of our democracy. High crimes and mis-deemeanors 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 oust 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 are working 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 dis-tricted body: Why? Why are we here?

Let me see if I can just posit an an-swer 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 inter-ference in the 2020 election and cor-rupted our democracy. We are here, sir, because President Trump withheld $391 million in military aid from a vulner-able Ukraine without justification in a manner that has been deemed unlaw-ful. 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 fol-low 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 Presi-dent Trump and President Zelensky. That’s a serious issue. 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 Jav-elin anti-tank weapons and says they are ready to order some more. And what does President Trump’s im-mEDIATE 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 conversa-tion.

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 other 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 Wash-ington. She said she was really im-pressed with her diplomatic tradecraft. What does that mean? It means she was really impressed with how quickly the Ukrainians found out about some-thing that the administration was try-ing 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 Presi-dent Zelensky—Ukraine’s Foreign Mini-stery 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 the cable was simultaneously provided to Presi-dent Zelensky’s office, but Andrii Derkach, whom you will hear more about later—a top aide to President
Zelensky—reportedly directed her to keep silent and not discuss the hold with reporters or Congress.

Now, we heard testimony about why the Ukrainians wanted to keep it secret that they knew about the hold. You may say Zelensky didn't want his own people to know that the President of the United States was holding back aid from him. What does that look like for a new President of Ukraine who is trying to make the case that he is going to be able to defend his own country? He has such a great relationship with the great patron, the United States? He didn't want the Ukrainians to know about it. But do you know? Even more than that, he didn't want the Russians to know about it for the reasons we talked about earlier. So, yes, the Ukrainians kept it close to the vest.

Mr. Purpura also went on to say: Well, the Ukrainians say they don't feel any pressure.

That is what they say now. Of course, we know that it is not true.

We have had testimony that they didn't want to be used as a political pawn in U.S. domestic politics. They resist it. You will hear more testimony about that, about the effort to push back on this public statement—how they tried to water it down and how they tried to leave out the specifics of how Giuliani, at the President's behest, forced them: You know, no, this isn't going to be credible if you don't add in Burisma and if you don't add in 2016.

You will hear about the pressure. They felt it. So why isn't President Zelensky now saying he was pressured? Well, can you imagine the impact if President Zelensky were to acknowledge today: Hello, yes, we felt pressured. You would, too. We are at war with Russia for crying out loud. Yes, we felt pressured. They needed those hundreds of millions in military aid. Do you think I am going to say that now? I still can't get in the White House door. They let Lavrov in, the Russian Foreign Minister. They let him in, but I can't even get in the White House door. Do you think I am going to go out now and admit to this scheme? I mean, anyone who has watched this President in the last 3 years knows how vindictive he can be. Do you think it would be smart for the President of Ukraine to contradict the President of the United States so directly on an issue he is being impeached for? That would be the worst form of malpractice for the new President of Ukraine. We shouldn't be surprised he would deny it. We should be surprised if he were to admit it.

Let me just end with a couple of observations about Mr. Cipollone's comments.

He says: This is no big deal. We are not talking about when we are going to have witnesses—or if we are going to have witnesses. We are just talking about when. We are just talking about when, as if, well, later, they are going to say: Oh, yes, well, we are happy to have the witnesses now. It is just a question of when.

OK. As my colleague said, let's be real. There will be no "when." Do you think they are going to have an epiphany a few days from now and say: OK, we are ready for witnesses? No. No, their goal is to get to you to say no now, to get you to have the trial, and then argue to "make it go away." Let's dismiss the whole thing. A vote to delay is a vote to deny. Let's make no mistake about that. They are not going to have an epiphany a few days from now and suddenly say: OK, the American people do deserve the answers. Their whole goal is that you will never get to that point. You will never get to that point. When they say when, they mean never.

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 results was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 18]

YEAS—53

Alexander  Fargo  Perdue
Barrasso  Gardner  Portman
Blackburn  Gardner  Risch
Blunt  Grassley  Roberts
Boozman  Hawley  Romney
Brown  Hoeven  Rounds
Burr  Hyde-Smith  Rubio
Capito  Inhofe  Sasse
Cassidy  Kennedy  Scott (FL)
Coryn  Lankford  Scott (SC)
Cotton  Lee  Shelby
Cramer  Loeffler  Sullivan
Crosp  McConnell  Thune
Cruz  Miranda  Tillis
Daines  Moran  Wicker
Ezzi  Murkowski  Young

NAYS—47

Baldu  Hassan  Rosen
Benet  Reindich  Sanders
Blumenthal  Risch  Schatz
Booker  Jones  Schumer
Brown  Kaine  Shaheen
Castell  Kaine  Sinema
Card  Klobuchar  Smith
Carper  Leahy  Stabenow
Casey  Machin  Tester
Coons  Markey  Tester
Cortez Masto  Menendez  Van Hollen
Duckworth  Menendez  Warner
Durbin  Murphy  Warner
Finkmant  Murray  Whitehouse
Gillibrand  Peters  Wyden
Harris  Reed  Wyden

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

The CHIEF JUSTICE. The majority leader is recognized.

UNANIMOUS CONSENT REQUEST

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent to ask the Democratic leader, as there are certain similarities to all of these amend-
Mr. Manager SCHIFF, are you a proponent or opponent?

The CHIEF JUSTICE. Mr. Cipollone? Mr. Counsel CIPOLLINE. Mr. Chief Justice, we are an opponent.

Mr. Manager CROW. Mr. Chief Justice, the House managers will be reserving the balance of our time to respond to the release of the document 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. Let's get the show on the road. Let's get moving.

The whole time, the only thing I can think about is where is it? Are we 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 we are.

That is why the House managers strongly support this amendment to subpoena key documents from the Department of Defense, because just like the documents DOD speaks directly to one of President Trump's abuses—his withholding of critical military aid from our partner Ukraine to further his personal political campaign.

In fact, 25% of the taxpayer-funded military aid for Ukraine was managed by the Department of Defense as part of the Ukraine Security Assistance Initiative. These funds, approved by 87 Senators in this very room, would purchase additional training, equipment, and advising to strengthen the capacity of Ukraine's Armed Forces.

The equipment approved for Ukraine included sniper rifles, rocket-propelled grenade launchers, counter-artillery radar, counter-mortar radars, medic supplies. This equipment was to be purchased almost exclusively from American businesses. This equipment, along with the training and advising provided by DOD, was intended to protect our national security by helping our friend Ukraine fight against Vladimir Putin's Russia.

Earlier, counsel for the President tried to make the argument: Well, it made it there. The aid eventually made it there. The delay doesn't really matter.

You heard me talk about why the delay does matter, but what counsel for the President didn't say is that all of their aid has not made it there. Congress had to pass another law so that $35.2 million of that aid wouldn't expire and lapse. We did, but to this day, $18.3 million of that money remains outstanding and hasn't made its way to the battlefield.

It was DOD that repeatedly advised the White House and OMB of the importance of security assistance not only for Ukraine but also for our national security. It was DOD in August of 2019 that warned OMB that the freeze was unlawful and that the funds could be lost as a result. It was DOD that scrambled, after the hold was lifted, the explanation on September 11, to spend the funds before they expired at the end of the month.

Without a doubt, DOD has key documents that the President has refused to turn over to Congress—key documents in which the President abused his power. It is time to subpoena those documents.

DOD documents would provide insight into critical aspects of this hold. They would show the decisionmaking process and motivations behind President Trump’s freeze. They would reveal the concerns expressed by DOD and OMB officials that the hold was violating the law. 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. We are not guessing about what they might show because during the course of the investigation in the House, witnesses who testified before the committees identified multiple documents directly related to the inquiry that DOD continues to withhold. 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 draw you through what 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 this 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 today’s testimony, 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 produced documents claiming that any emails concerning the President’s hold had been destroyed. However, DOD produced 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 security assistance was crucial for both the security of 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 and early August 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 Trump administration 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 "The Hill" knew 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. Ms. Cooper testified that she was informed that the Ukrainian Embassy and House Foreign Affairs Committee staff were asking "about the military aid" and that "The Hill" knew 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.

Agreeing to 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 concerns 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 Ukraine and review the full record that can further demonstrate how and why the White House is helping hide the funds before the end of the fiscal year.

Let me just explain what is going on 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 concerned about the legality of the hold. According to data from an interagency meeting on July 31, Laura Cooper, one of the officials at DOD, announced that because there were two legally available options to continue 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 that email.

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. Your DOD explanation, and nobody wants to be left holding the bag. 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 concerned about the legality of the hold. According to data from an interagency meeting on July 31, Laura Cooper, one of the officials at DOD, announced that because there were two legally available options to continue 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.

McUSker responded: “You can’t be serious. I am speechless.

It will come as no surprise, then, that the administration entirely blacked out this email, too, when it produced the documents in connection with the Freedom of Information Act lawsuit. Thanks to public reporting, though, we do know its contents, but what is being hidden from the American people? What other reactions did this exchange set off within DOD? And were those concerns brought back to the White House?

The Department of Defense’s documents would shed light on these questions. The American people deserve answers.

Make no mistake, the record before the House fully supports the conclusion that President Trump froze vital military aid to pressure Ukraine into helping the President’s political campaign. The DOD documents would provide further evidence of this scheme. They
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 earlier, 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 they brought up the 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 there to ensure our security and deter the kind of aggression that we saw 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 do their job.

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 67 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 something 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 our friends in Ukraine.

We had a meeting with the defense minister. It was the first meeting of the day. We went over there. They invited us to a ceremony that they had in front of their ministry every day. Every day they have this ceremony, and it is about a half-an-hour ceremony where soldiers are in formation, the defense minister and the families of soldiers who have been killed are all there. The selection of which soldiers who have been killed are honored is on the date of it.

So whatever today’s date is, you know if we were there today, 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 argument.

The CHIEF JUSTICE. Mr. Cipollone?

Mr. Counsel CIPOLLONE. Mr. Chief Justice, Mr. Philbin. Mr. Counsel PHILBIN. Mr. Chief Justice, Members of the Senate, I will be brief. This may seem like some déjà vu all over again because we have been arguing about the same issues, really, really, really over a long 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 and documents.

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 decide that issue to subpoena documents or witnesses 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 before deciding what more was necessary. Why is it so 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 to issue subpoenas.

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 without any vote from the House. It had never happened before in our history. 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 swear in 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 more needs to be done before 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 say 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 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 Washington. Well, I haven’t been here very long, but I can tell you that the American people don’t understand how the government works. Well, I think you need to have these debates again and again, and it is time 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 Washington. Well, I haven’t been here very long, but I can tell you that the American people don’t understand about Washington. Well, I haven’t been here very long, but I can tell you that the American people don’t understand about Washington. Well, I haven’t been here very long, but I can tell you that the American people don’t understand about Washington. Well, I haven’t been here very long, but I can tell you that the American people don’t understand about Washington. Well, I haven’t been here very long, but I can tell you that the American people don’t understand about Washington. Well, I haven’t been here very long, but I can tell you that the American people don’t understand about Washington. Well, I haven’t been here very long, but I can tell you that the American people don’t understand about Washington. Well, I haven’t been here very long, but I can tell you that the American people don’t understand about Washington. Well, I haven’t been here very long, but I can tell you that the American people don’t understand about Washington.
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.

The CHIEF JUSTICE. Thank you.

Mr. Manager SCHIFF, Senators, I will be brief, but I do want to respond to a couple of points of 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 applauding what 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 invalid. 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. Could it be that we are going through all of these documents? Aren’t all of these motions the same? The fact is, we are not talking about the same documents here. They would like nothing better than for you to know nothing about the documents we seek. They don’t want you to know what Defense Department documents they are withholding. Of course, they don’t want you to hear that. They don’t want you to know what State Department documents they are withholding. 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 the other 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. We want the Senators to have their 16 hours of questions before they can see any of this stuff. And do you know why? Then we are going to move to dismiss the case. As I said earlier, the “when” means never.

Finally, the Clinton precedent. President Clinton turned over 90,000 pages of documents before the trial. I agree. Let’s follow the Clinton precedent. It is not going to take 90,000 documents. The documents are already collected. You heard the testimony on the screen of Ambassador Taylor saying: Oh, they are going to turn them over shortly. But we are still waiting. They are still sitting there at the State Department.

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 want to see these people. I don’t want to see these documents.

We are making it hard. It is not our job to make it easy for you. It is our job to make it hard to deprive the American people of a fair trial, and that is why we are taking the time to do it.

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 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:

[Rollcall Vote No. 19]

YEAS—53

Alexander
Barbour
Baucus
Biden
Boozman
Braun
Burr
Capito
Cardy
Collins
Correa
Cotton
Cramer
Crapo
Cruz
Daines
Kaine
Johnson
Kennedy
Lankford
Lee
Loeffler
McConnell
McSally
Morrison
Murray
Murphy
Nunes
Paul
Perdue
Portman
Risch
Roberts
Romney
Rounds
Rubio
Sasse
Scott (FL)
Scott (SC)
Shelby
Sullivan
Thune
Tillis
Toomey
Wicker
Young

NAYS—47

Baldwin
Bennet
Bentinel
Booker
Brown
Cantwell
Cardin
Capon
Coons
Cortez Masto
Duckworth
Durbin
Feinstein
Gillibrand
Harrington
Hassan
Heinrich
Hirono
Jones
Kaine
King
Klobuchar
Leahy
Manchin
Markley
Mendez
Merkley
Murphy
Nelson
Peters
Reed
Rosen
Sanders
Schatz
Schumer
Shelby
Sinema
Smith
Stanefon
Tester
Udall
Van Hollen
Warren
Wierenga
Whitehouse
Wyden

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

Mr. SCHUMER, Mr. Chief Justice, The 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 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.

The CHIEF JUSTICE. The amendment is disagreeable with 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 CIPOLLINE. 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 Congressmanwoman 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, every single day, we 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 a legal basis to freeze aid, because if it were they who were accused or alleged to have done something, they would want the same thing.

So, for me, it is about making sure we get a fair trial, which is why I am here representing the House managers to strongly support this amendment to subpoena Robert Blair and Michael Duffey. Blair and Duffey are the two officials who carried out President Trump’s order 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 Defense Department. They stood at the center of this tangled web.

Some of their communications are known to us from the testimony of other witnesses, and from their forensic communiques. 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. As we learned from President Trump himself, information is a vulnerable strategic partner. 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 effort to hide all evidence, Blair and Duffey have defied the House’s subpoenas at the President’s direction.

To explain, 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 June 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 tested 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. According to public reports, Blair told Vought: “We need to hold it up.”

Duffey抄了Mark Sandy, a career official who reports to him and who testified before the House about this freeze. After Sandy was notified, he asked OMB for the requested information to him, which he shared with Duffey.

These communications raised many questions about Blair and Duffey, and they are in the best position to provide answers. For example, who or what prompted Blair to tell Vought that OMB needed to freeze the aid? Why? What was the legal basis? What was the reason? What was the purpose? What was the goal?

These questions are critical because the American people deserve to know these answers by hearing from these witnesses directly.

On July 3, the State Department told various officials that OMB was blocking it from spending its $141 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 have a legal basis? Did they have a legal basis?

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 implies it was so important it was so important that Blair and Duffey had communications about the military aid to Ukraine with the President? with Acting Chief of Staff Mick Mulvaney? between themselves? What about the funding release and the President’s so-called questions? Blair and Duffey could provide the answers. They could explain what directions they received, when they were provided, and who provided them. The American people deserve to know these facts.

The next significant event in our timeline happened at the end of June. On June 27, Blair got an email from his boss, Mulvaney. Mulvaney was on Air Force One with President Trump. According to public reports, Mulvaney asked Blair: “Did we ever find out about the money for Ukraine and whether we can hold it back?” Blair responded it would be possible, but he said they should “expect Congress to become unhinged.”

When did Mulvaney and Blair first discuss the President’s freeze on military aid? Was there further discussion about the issue in this email? Did Mulvaney explain why it was so important to freeze the money, even if it would cause Congress “becoming unhinged”? Did they discuss why Congress would have such a strong reaction and whether it would be justified? Did Blair raise any objections to this seemingly unexplained decision to freeze the funds? The Senate could obtain these answers by hearing from these witnesses directly.

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 $141 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 directive certainly 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 implies it was so important it was so important.
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, and Duffey said 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 Blairs’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 and the OMB’s role in it. 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.

In the House, we heard testimony from multiple officials, including Ambassador Taylor, who was until very recently our top diplomat in Ukraine, our ambassador. 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. Not one.

On July 26, Duffy attended a meeting of high-level executive branch officials convened by the In the Situation Room, listening in 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 vice President Biden.

The House heard the testimony of three of the other officials who listened into the President’s July 25 call—Director Colonel Vindman, Tim Morrison, and Jennifer Williams—each of them expressed concerns about the call. Lieutenant Colonel Vindman and Tim Morrison immediately reported that call to NSC lawyers. Jennifer Williams said the call “struck her as unusual and inappropriate,” and further, “more political in nature.”

For 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 lies became common knowledge.

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 why Mulvaney’s team led an effort to cover up the President’s conduct and to manufacture misleading pretextual explanations to hide the corruption.

Senators, there is still more. Blair and Duffey were also involved in the events surrounding President Trump’s July 25 phone call with President Zelensky. On July 19, Blair, along with other officials, received an email from Ambassador Taylor, who was until very recently America’s ambassador to Ukraine. 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 investigation. 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 the need for OMB’s 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 vice President Biden.

The House heard the testimony of three of the other officials who listened into the President’s July 25 call—Director Colonel Vindman, Tim Morrison, and Jennifer Williams—each of them expressed concerns about the call. Lieutenant Colonel Vindman and Tim Morrison immediately reported that 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? Did he know exactly what 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 that the military aid to Ukraine, repeatedly tried to get Duffy to provide an explanation for the freeze. He was unsuccessful.

Sandy and other officials from OMB and the Pentagon also raised questions about Duffey’s handling of the freeze, including 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 military aid, repeatedly tried to get Duffey to provide an explanation for the freeze. He was unsuccessful.

In fact, two career OMB officials ultimately resigned, in part, based on concerns about the handling of the Ukraine military aid freeze. These concerns were not unfounded.

Just last week, the nonpartisan Government Accountability Office issued a detailed legal opinion finding that OMB had violated Federal law by executing the President’s order to freeze military aid to Ukraine. Remarkably, on July 29, after Sandy had expressed concerns about the freeze, Duffey removed Sandy from responsibility for Ukraine military aid. Instead, Duffey took over responsibility for withholding the aid himself. He was a political appointee. He had no relevant experience. He had no demonstration of interest in such matters. His last job had been as a State-level Republican Party official.
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 DOD 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, a freeze continued. 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 would not preclude timely execution of the aid for Ukraine. Her email read:

“As we discussed, as of 12 August, I don’t think we can agree that the pause will not preclude timely execution. We hope it won’t, but we don’t.”

Then, again, on August 12, McCusker warned Duffey in an email: The footnotes needed to include a caveat that “execution risk increases continued delays.”

The House never received these documents from OMB or DOD. We know what they contain because of public reporting, despite persistent efforts by the Trump administration to keep them from Congress and the public.

The Pentagon’s alarm should have raised concerns for Duffey. Did he share DOD’s concerns with anyone else? Did he agree with those concerns or take any actions in response? Did he take direction from Blair, the White House political appointee? There are questions that Duffey should answer.

Despite his actions executing the President’s freeze, Duffey internally expressed reservations about it. In August, he signed off on a memorandum to Acting Director Vought that recommended releasing the aid. That memo stated that the military aid was consistent with the United States’ national security strategy in the region, that it supported Ukraine against Russian aggression, and that the aid was rooted in bipartisan support in Congress. This is contrary to Duffey’s actions leading up to the memo. What changed? What caused Duffey to disagree with the President and continue to withhold the aid? Duffey should be called to explain why he recommended that the President release the aid, what other steps he took to advocate for the release. Does he know why Vought and the White House apparently disregarded the recommendation?

Based on public reporting, we know, after the press reported the freeze in late August, OMB circulated talking points. One of the points was “the action has been taken by OMB that would preclude the obligation of these funds before the end of the fiscal year.”

According to public reporting, McCusker responded with an email to Duffey telling him that this was “just not accurate” and that DOD had been “consistently conveying” that for weeks. Due to the public release of these emails and recent reporting, we also know that Duffey emailed McCusker on August 30 and told her there was a “clear direction from POTUS” to continue the freeze.

McCusker continued to warn that the freeze was having real effects on DOD’s ability to spend the military aid, and the impact would keep growing if the freeze continued. According to recent reports, around September 9, after the President’s scheme had been exposed and the House had launched its investigations, Duffey responded to McCusker saying his “position was to provide a formal and lengthy email. He asserted it would be DOD’s fault, not OMB’s, if DOD was unable to spend funds in time. Deputy Under Secretary of Defense Elaine McCusker reportedly responded: “I am speechless.”

We now know that DOD’s concerns were well-founded. The President’s freeze on the security aid was illegal. Duffey should be called to testify about why DOD’s repeated warnings went unheeded. What prompted his email that attempted to shift blame to DOD about the fact that the President released the aid only after his scheme was exposed?

Senators, make no mistake. We have a detailed factual record to bring the freeze was President Trump’s decision and that he did it to pressure Ukraine to announce the political investigations he wanted.

But President Trump’s decisions also set off aclassic pattern of confusion and misdirection within the executive branch. As the President’s political appointees carried out his orders, career officials tried to do their jobs—or, at the very least, not break the law. Blair and Duffey would help shed more light on how the President’s orders were carried out. That is why committees of the House issued subpoenas for both of their testimony, but Blair and Duffey, as I said earlier, like many other Trump officials, refused to participate because the President ordered them not to appear. I might add, as a former judge, I have never seen anything like this before, where someone is ordered not to appear by one party and the witness just don’t appear.

The Senate should not allow the President and his administration to continue to evade accountability based on these ever-shifting and ever-meritorious excuses. We need to hold him accountable because no one is above the law.

(English translation of statement made in Spanish is as follows:)

No one is above the law. Blair and Duffey have valuable testimony to offer. The Senate should call upon them to do their duty by issuing this subpoena.

Mr. Chief Justice, the House managers reserve the balance of our time for an opportunity to respond to the President’s arguments. The Senate should call upon them to do their duty by issuing this subpoena.

The CHIEF JUSTICE. Mr. Cipollone. Mr. Counsel CIPOLLONE. Mr. Chief Justice, Pam Bondi, Special Advisor to the President, former attorney general of Florida.

The CHIEF JUSTICE. Ms. Bondi. Ms. Counsel BONDI. Honorable Senators, just to fact-correct, please, a few things. Mr. Duffey didn’t come from a State job. Mr. Duffey came from Deputy Chief of Staff at DOD before he went to OMB. There is a big difference there.

Manager Garcia said he failed to appear. Well, the House committee would not allow agency counsel to appear with Mr. Duffey or Mr. Blair. They won’t let agency counsel appear with either of them.

Office of Legal Counsel determined, of course, that the exclusion of agency counsel from House proceedings is unconstitutional. It is a pretty basic right. So what did they do? They took no action on the subpoenas, but now they want you to take action on them.

What the House managers have been telling you all day is that the White House is trying to hide from American law. Witnesses they had to say. They have been saying we want to bury evidence; we want to hide evidence. That hypocrisy is astounding. They have been saying: Let’s not forget why we are here.

Well, we are here tonight because they threw due process, fundamental fairness, and our Constitution out the window in the House proceedings. That is why we are here—because they started in the secret bunker hearings where the President and his counsel weren’t even allowed to participate when they were trying to impeach him.

Intel and Judiciary Committee was a one-sided circus. Ranking Member
NUNES asked to call witnesses. He explained why in detail. It was denied by Manager SCHIFF. Ranking Member COLLINS asked to call witnesses, which was denied by Manager NADLER. And that is what they call fairness? That is not how our American justice system works. The American justice system cannot allow its impeachment process is designed by our Constitution.

The House took no action on the subpoenas issued to Mr. Duffey and Mr. Blair because they didn’t want a court to tell them how they were trumping on their constitutional rights. Now they want this Chamber to do it for them.

Mr. Counsel CIPOLLONE, Mr. Chief Justice, we yield the remainder of our time.

Mr. Manager SCHIFF. Mr. Chief Justice, a couple of fact checks, once again.

First of all, the complaint is made that, well, the House wouldn’t allow agency counsel. Why wouldn’t the House allow agency counsel to be present in those secret depositions that you have been hearing so much about? As I mentioned earlier, those secret depositions allowed 100 Members of the House to participate. There are 100 Members of the Senate. We could have had the secret deposition on the Senate floor. During those depositions, the House and the Senate parties were given equal time to ask questions of these witnesses.

By the way, where did Democrats get that rule of no agency counsel during these depositions? We got it from the Republicans. This was the Republican deposition rule, and we can cite you ad-abundant explanations by Trey Gowdy and others about how these rules are so important that the depositions not be public, that agency counsel be excluded.

And why? Well, you get a good sense of it when you see the testimony of Deputy Assistant Secretary George Kent. Kent describes how he is at a meeting with some of the State Department lawyers and others, and they are talking about the document request from Congress and what are they going to do about these and what documents are responsive and what documents aren’t responsive. The issue came up in a letter the State Department sent to Congress saying: You are intimidating the witnesses. Secretary Kent testified: No, no, no. The Congress wasn’t intimidating witnesses; it was the State Department that was intimidating witnesses to try to prevent them from testifying.

My colleagues at the other table say: Why aren’t you allowing the Members from the State Department to sit next to those witnesses and hear what they have to say in the depositions? We have seen a much witness intimidation in this investigation, to begin with, without having an agency minder sitting in on the deposition.

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 who 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 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. How dare we subpoena administration officials—right?—because Congress never does that. How dare we do that. How dare we subpoena them. Well, the court heard that argument in the case of Don McGahn, and you should read the judge’s opinion in finding that this claim of absolute immunity has no support, no substance: it would have resulted in a monarchy. It is essentially the judicial equivalent of: Don’t let the door hit you in the backside on the way out. Counsel. There is no merit there.

Counsel can repeat that argument as often as they like, but there is no support in the courts for it. There should be no support for it in this body, not if you want any of your subpoenas in the future to mean anything at all.

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 the amendment.

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

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

[Rollcall Vote No. 20]

YEAS—53

Alexander    Boozman    Cassidy
Barrasso    Braun    Collins
Blackburn    Burr    Cory Gardner
Blunt    Capito    Cotton

NAYS—47

Baldwin    Blumenthal    Booker
Bernie Sanders    Blunt    King
Cantwell    Cardin    Leahy
Casey    Coons    Klobuchar
Cortez Masto    Duckworth    Merkley
Durbin    Feinstein    Murray
Gillibrand    Grassley    Peters
Harris    Coons    Merkley

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

The CHIEF JUSTICE. The Democratic leader is recognized.

AMENDMENT NO. 1290

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to prevent the selective admission of evidence and provide for the appropriate handling of classified and confidential materials, and I ask that it be read. It is short.

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 1290.

On page 2, between lines 4 and 5, insert the following:

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 responsive 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 CHIEF JUSTICE. The majority leader is recognized.

Mr. MCCONNELL. Let’s take a 5-minute break. I ask everybody to stay close to the Chamber. We will go with a hard 5 minutes.

RECESS SUBJECT TO THE CALL OF THE CHAIR

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

There being no objection, 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 of the amendment, Mr. Counselor CIPOLLONE. Mr. Chief Justice, we are opposed.

The CHIEF JUSTICE. 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 be allowed and that is what the Schumer amendment addresses.

The amendment addresses the 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 has the right to do around the country. But this amendment does make sure that he does it in a fair way and that his obstruction cannot be used as a weapon.

It is an amendment based on simple fairness, and it will help the Senate and the American people get to the truth.

House managers are not afraid of the evidence, whatever it may be. We want the select process designed to get to the truth, no matter whether it helps or hurts our case. That is what the Senate should want, and that is what the American people certainly want.

This amendment helps that process of getting more evidence so we can get to the truth, and we urge you to vote for it.

The amendment also addresses another omission in the majority leader's resolution by providing for the proper handling of confidential and classified information for the record. This amendment seeks to balance the public's interest in transparency with the importance of protecting limited, sensitive information, whatever it may be. We want a fair trial that is not subject to objections.

As for confidential information, some of the evidence in this case includes records of phone calls. They establish important patterns of conduct, as we explain in the Ukraine impeachment report.

But the original phone records, including a great deal more information in context, should be available for this body to evaluate if needed in a confidential setting. It contains personally sensitive information concerning individuals who are not at issue in this trial and would potentially subject them to intrusions on their privacy.

The Secretary of the Senate has the capacity to handle such material and make it available to you as needed.

The amendment allows the privacy interests of many individuals to be protected, while allowing the Senators access to the full record.

As for the classified information that this amendment addresses, there may be several very relevant classified documents. Let me just highlight 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 she and the House managers believe that it would be of value to this body to see, in trying the case.

Let me just start by saying that we have twice requested that the Vice President depose 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. And as it stands now, it remains classified. It must be handled like any other classified document by this body in a method that would allow them.

Let me just take a moment to go further. The public should see that supplemental testimony as well. That supplemental testimony—that classified testimony—was added to the record by the Vice President's aide because she believed, I think, on further reflection, that it would add additional light on what she has said publicly. You should see it and you should evaluate it for what it has to say, but, what is more, so should the American people.

So I would urge that you support this amendment to make sure that you can handle the classified information, there is a mechanism for it, and personal identifiable information need not be made public, but also information that is improperly classified and that is what the amendment addresses should be accessible to you and should be accessible to the American people.

I reserve the balance of our time.

The CHIEF JUSTICE. Mr. Cipollone. Mr. Counselor CIPOLLONE. Thank you, Mr. Chief Justice. Mr. Philbin and Mr. Sekulow will argue.

The CHIEF JUSTICE. Mr. Philbin, Mr. Counselor PHILBIN. Mr. Chief Justice and Members of the Senate, the President opposes this amendment, and I can be brief in explaining why.

This amendment does just that. It is that any subpoena that was issued pursuant to the House's impeachment inquiry—any subpoena that they issued at all—becomes defined as a duly authorized subpoena for purposes of this amendment.

And they have explained several times today, because the House began this inquiry without taking a vote, it never authorized any of its committees to issue subpoenas pursuant to the impeachment power.

But the original phone records, in-
With that, I will yield the remainder of my time to Mr. Sekulow.

The CHIEF JUSTICE, Mr. Sekulow.

Mr. Counsel SEKULOW. Thank you, Mr. Chief Justice and Members of the Senate. I will be brief. This amendment to the resolution we oppose, as Mr. Philbin just said, because it is in essence an unconstitutional attempt to cure a defect—a defect in their own proceeding.

To be clear, we are reserving our objections as it relates to hearsay, which is what the record primarily consists of.

I also want to respond very briefly to what Manager SCHIFF said regarding the proceedings in the House of Representatives and the lack of agency counsel. He said it is much like the grand jury. He best be glad and the Members of his committee best be glad that it is not like a grand jury, because if it was a grand jury and information was leaked, which it was consistently throughout this process, they could be subject to felony.

So I want to be clear. Utilizing this amendment to cure a constitutional defect—and that is what this is—is exactly what we have been arguing about now for almost 11 hours. It is changing the rules. It is different rules.

I can’t determine if we are dealing with a trial, an appeal, or a constitutional defect—but we have now have spent 11 hours arguing about something that we will be arguing again next week.

But the idea that you can cure in three paragraphs a constitutional defect does not pass constitutional muster.

We yield the rest of our time.

The CHIEF JUSTICE. The House managers have 54 minutes remaining.

Mr. Manager SCHIFF. Well, first of all, the counsel makes the argument once again that with subpoenas, the President gets to decide which are valid and which are invalid, and any subpoena the President doesn’t like, he may simply declare invalid, and it is the end of the story. Therefore, it is invalid, and no documents are required, and no witnesses need to show up, and, therefore, you don’t need to consider whether the President should be able to game the system by showing you a handful of documents to mislead you and deprive you of seeing all of the other documents relevant to that same subject. That is their argument. The President didn’t like the way the subpoenas were issued, even though the Court has already ruled on this issue and said: No, Mr. President, you don’t get to decide whether a subpoena is valid or not in an impeachment proceeding. That is the sole responsibility of the House.

But if you guess they would suggest to you the President would never mislead you about documents. If they seek to introduce something, you can be assured that that document tells the complete truth.

But we already know you can place no such reliance on the President. How do we know this? We have already seen it.

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 that 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 know it is late, but I have to be clear. Utilizing this 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 turnover selective documents, and they say they should not. It is a delaying tactic, therefore, you don’t need to consider 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. Finally, 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 they are trying to do the same thing as any other trial that they are used to. People watching—they are confused, too, because they would think if this was a trial, there would be no debate about whether the party with the burden of proof could call witnesses. Of course, they could. Of course, they can.

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 why 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 amendment is arguable by the parties with 2 hours equally divided.

Mr. Manager SCHIFF, are you a proponent?

Mr. SCHIFF. Yes, I am.

The CHIEF JUSTICE. Mr. Cipollone, are you an opponent?

Mr. 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 support 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.

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 that story. 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 behavior.

In fact, extensive evidence collected by the House makes clear that Ambassador Bolton not only had firsthand knowledge of the Ukraine scheme but that he was deeply concerned with it. He described the scheme as a "drug deal" to a senior member of the staff. He warned that President Trump's personal lawyer, Rudy Giuliani, would "blow everybody up." Indeed, in advance of the July 25, 2019, call, Ambassador Bolton expressed concern that President Trump would ask the Ukrainian President to announce these political investigations, which is, of course, exactly what happened. Of course, there weren't to be any investigations. All he cared about was an announcement of a political rival in the United States. He repeatedly urged his staff to report their own concerns about the President's conduct to legal counsel—that is, Ambassador Bolton did not, the President—as the scheme played out.

Finally, as National Security Advisor, he also objected to the President's freezing of military aid to Ukraine and advocated for the release of that aid, including directly with the President, Of course, as we all know, the Impoundment Control Act makes illegal the President's withholding of that aid after Congress had voted for it, but the President ignored the warnings about that because all he cared about was smearing a political rival. The law meant nothing to him.

Ambassador Bolton has made clear that he is ready, willing, and able to testify about everything he witnessed, but President Trump does not want you to hear from Ambassador Bolton, who you have never heard of. And the reason has nothing to do with executive privilege or this other nonsense. The reason has nothing to do with national security. If the President cared about national security, he would not have blocked military assistance to a vulnerable strategic ally in the attempt to secure a personal political favor for himself.

No, the President does not want you to hear from Ambassador Bolton because the President does not want the American people to hear firsthand testimony of misconduct at the heart of this trial. The question is whether the Senate will be complicit in the President's crimes by covering up his misconduct. That is what this trial is all about. Any Senator who votes against Ambassador Bolton's testimony or any relevant testimony shows that he or she wants to be part of the coverup. What other possible reason is there to prohibit a relevant witness from testifying here? Unfortunately, so far, I have seen no Senator, even the Sen-ator who has shown that they want to be part of the coverup by voting against every document and witness proposed.

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 key witnesses with responsibility for Ukraine matters. Ambassador Bolton has knowledge of the facts, and he has new evidence we have yet to hear. That is precisely what the Senate is supposed to do. We cannot afford to hear from Ambassador Bolton—because they are afraid to hear from Ambassador Bolton—because they are afraid to hear from Ambassador Bolton. The law means nothing to the President.
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 talk to 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, Ambassadors Sondland and Volker, and Energy Secretary Rick Perry. As they did in every meeting, they went to the lawyers—to John Eisenberg, the senior counsel for the National Security Council, to basically say: “I am not part of that—whatever drug deal that Mulvanev and Sondland are cooking up.”

Mr. GOLDMAN. Did you go speak to the lawyers?
Ms. HILL. I certainly did.

Mr. Manager NADLER. These statements of events are reason 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. Mulvanev, 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 repeatedly expressed 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 expressed strong concerns about Mr. Giuliani’s involvement in Ukraine matters.

When Ambassador Bolton described Mr. Giuliani as “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 plot as to why people were meeting with Giuliani.

Dr. Hill also testified that Ambassador Bolton was “closely monitoring what Mr. Giuliani was doing and the messaging that he was sending out.” But Ambassador Bolton was keenly aware that Mr. Giuliani was doing the President’s bidding. That is also why the President fears his testimony.

During a meeting on June 13, 2019, Ambassador Bolton made clear that he supported more engagement with Ukraine by senior White House officials but questioned that “Mr. Giuliani was a key voice with the president on Ukraine.” He joked that “every time Ukraine is mentioned, Giuliani pops up.”

Ambassador Bolton also communicated directly with Mr. Giuliani at key junctures. According to call records obtained by the House, Mr. Giuliani connected with Ambassador Bolton’s office 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 everything up.” We can also ask why, when there are approximately 1.8 million companies in Ukraine—several hundred thousand 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. Can you believe that he was concerned with corruption and only knew about one company, when there are hundreds of thousands that were accused of corruption.

Although Ambassador Bolton did not listen in on the July 25 call between President Trump and President
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 the release of 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 it was in America’s best interest and necessary for 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 subsequendy had a direct, one-on-one conversation with the President in which he tried but failed to convince him to release the hold.

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 229?

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, 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, if you will, 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 to grips with the situation. It is embarrassing to realize 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, he 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 would talk about this today.

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 that details 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 and calling on our conscience, 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 permit us to present to the Senate, and to the American people, 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 conduct, or will you, instead, choose to be complicit in the President’s cover-up?

So far, I am sad to say, I see a lot of Senators voting for a cover-up, voting to deny witnesses—an absolutely indefensible vote, an absolutely dishonest vote, a vote against an honest consideration of the evidence against the President, a vote against an 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 cover-up. History will judge. So will the electorate.

Mr. Chief Justice, we reserve the balance of our time—the managers.

The CHIEF JUSTICE. Mr. Cicillone.

Mr. Counsel CICILLONE. 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. Kupferman 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. Kupferman. 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 use you as a cover-up when 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 system.

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 NADLER talked about treachery, and 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 throw the Constitution on the floor of this body and say “executive privilege and other nonsense.” 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 11 months. 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 wrote in his book about not giving 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 is 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 have 27 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: 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—that subpoenaed Mr. Cipollone and told the American people that 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 said that the 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. This body has committed itself. It has written a 200-year rule of not 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 right to have it. 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 him 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 one, 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 Congress.

That is the same position that Congress has taken, the same position the administration is taking but, apparently, not the same position these lawyers are taking.

Here is the bigger problem with that. We subpoenaed Don McGahn, as I told you earlier. You should know we subpoenaed Don McGahn in April of 2019. It is January of 2020. We still don’t have a final decision from the court regarding him. In a couple of months, it will be 1 year since we issued that subpoena.

The President would like nothing more than for us to have to go through 1 year or 2 years or 3 years of litigation to get any witness to come before the House. The problem is, the President is trying to cheat in this election. We don’t have the luxury of waiting 1 year or 2 years or 3 years, when the very object of this scheme was to cheat in the next election. It is not like that threat has gone away.

Just last month, the President’s lawyer was in Ukraine still trying to smear his opponent and still trying to get Ukraine to interfere in our election. The President said, even while the impeachment investigation was going on, when he was asked: What did you want in that call with Zelensky, and his answer was: Well, if we are going to do that investigation, we should do that investigation of the Bidens. He hasn’t stopped asking them to interfere. Do you think the Ukrainians have any doubt about what he wants?

One of the witnesses, David Holmes, testified about the pressure that Ukraine feels. He made a very important point: It isn’t over. It is not like they don’t want anything else from the United States.

This effort to pressure Ukraine goes on to this day, with the President’s lawyer continuing the scheme, as we speak, with the President inviting other nations to also involve themselves in our election.

Congress has to now investigate the Bidens. This is no intangible threat to our elections. Within the last couple of weeks, it has been reported that the Russians have tried to hack Burisma. Why do you think they are hacking Burisma? Because, NADLER says, everybody seems to be interested in this one company out of hundreds of thousands Ukrainian companies. It is a coincidence that the same company that the President has been trying to smear Joe Biden over happens to be the company the Russians are hacking.

Why would the Russians do that? If you look back to the last election, the Russians hacked the DNC, and they started to leak campaign documents in a drip, drip, drip, and the President was only too happy—over 100 times in the last couple of months in the campaign—to cite those Russian-hacked documents and now the Russians are at it again.

This 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 on Burisma? I am over here; I am happy to 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: Well, this 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 you 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 1965 Swain 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.

Mr. Counsel SCHIFF, you have an objection to the waiving of its reading.

The CHIEF JUSTICE. Does any Senator have an objection to the waiving of the reading?

Mr. Counsel SCHIFF. I withdraw my request for a waiver.

The CHIEF JUSTICE. The clerk will read the amendment.

The legislative clerk read as follows:

"The Senate shall decide after deposition which witnesses shall testify'' and insert ''and then that 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 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 now 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 set the likely votes 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,” then 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 directly. The McConnell resolution says that we deposed, 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 trial of facts, 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. Cipollone. Mr. Cipollone.

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 day in which they have to determine whether to hear from the witness live, if there are witnesses at some point, or not.

But, more fundamentally, the preliminary question has to be overcome, which is there will be 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 this 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, counsel. Mr. SCHIFF, you have 57 minutes. 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’s counsel 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 the President should testify in this 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 majority leader is recognized.

MOTION TO TABLE

Mr. McCONNELL. 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:

[Rollcall Vote No. 23 Leg.]

YEAS—53

Alexander
Barrasso
Blackburn
Burr
Capito
Cassidy
Collins
Cornyn
Cotton
Cramer
Crapo
Cruz
Daines
Enzi
Ernst

Perdue
Gardner
Grassley
Hawley
Hoeven
Hyde-Smith
Inhofe
Johnson
Lankford
Lee
Lott
Merkel
Murkowski
Paul

Portman
Risch
Roberts
Round
Romney
Rounds
Sasse
Scott (FL)
Scott (SC)
Shelby
Sinclair
Thune
Tillis
Toomey
Wicker
Young

NAYS—47

Baldwin
Benet
Blumenthal
Booher
Brown
Cantwell
Cardin
Carper
Casey
Caucus
Cortez Masto
Duckworth
Durbin
Feinstein
Gillibrand
Harris

Rosen
Heinrich
Hirono
Jones
Kaine
King
Kushner
Leahy
Manchin
Murray
Peters
Portman
Sanders
Schatz
Schumer
Shaheen
Sinema
Smith
Tester
Van Hollen
Warner
Whitehouse
Harrington

Mr. SCHIFF. 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 “Wednesday, January 22, 2020” and insert “Friday, 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 of this amendment. Mr. Counsel CIPOZZONE. Mr. Chief Justice, I am an opponent of this amendment.

The CHIEF JUSTICE. Okay. Mr. SCHIFF, you may proceed and reserve time for rebuttal if you wish. Mr. Manager SCHIFF. Thank you, Mr. Chief Justice.

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 CIPOLLONE. 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 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 that witness is likely to have probative evidence relevant 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 ourselves, 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, our counsel will be allowed to testify. If the Chief Justice finds that the testimony would be immaterial, that witness would not be allowed to testify.

Now, it still maintains the Senate’s tradition that if you don’t agree with 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 irrelevant.

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 57 minutes remaining.

Mr. Manager SCHIFF. Well, 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 not an appellate court and we are glad we have established that. This is the trial, not the appeal, and the appeal 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 this is not an 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 depos. 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 videotape 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 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, nothing. What does Hunter Biden know about why the President wouldn’t meet with President Zelensky? He can’t 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 succeed 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. 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 whom you should hear. Is that a fair trial?

If you can’t trust the Chief Justice, appointed by a Republican President, to make a fair decision about materiality, I think it betrays the weakness of our case.

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 doesn’t want 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:

YEAS—53

Baldwin
Bennet
Blumenthal
Booker
Brown
Cardin
Casey
Coons
Cortez Masto
Duckworth
Durbin
Feinstein
Gillibrand
Harris
NAYs—47

Baldwin
Bennet
Blumenthal
Booker
Brown
Cardin
Casey
Coons
Cortez Masto
Duckworth
Durbin
Feinstein
Gillibrand
Harris

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 advice and support, the backing of their community and access to information, resources, and quality care. In Iowa, programs like Ruth Harbor 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 Em-powers: 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 understood 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 babies are Micah Pickering of Iowa, born prematurely at 22 weeks gestation, who is now 7 years old, and Jaden Wesley Morrow, born at 23 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 others who were lost to abortion, and focus on how women are empowered by upholding the dignity of life.

IMPEACHMENT

Mrs. BLACKBURN. Mr. President, today the Senate begins in earnest our efforts to determine if our colleagues in the House of Representatives have compiled sufficient evidence to justify removing a sitting President from office. This is no small task, and it will be made more difficult by the swirl of commentary that has engulfed the impeachment inquiry since well before it was officially initiated.

Much has been made of our debate over the inclusion of additional witness testimony into the prosecution’s case against President Donald John Trump—so much, in fact, that many of my colleagues are inclined to allow that testimony in the name of bipartisan compromise. How misguided of them. Such a move would open the floodgates to a parade of politically-motivated testimony, a protracted legal battle, and ultimately unjustified impeachment proceedings in the U.S. Senate.

The Democratic Members of the House of Representatives spent a great deal of their time and energy holding hearings, interviewing witnesses, and putting together what they have insisted is their best, ironclad case against President Trump. I encourage my colleagues to resist allowing an additional, cathartic airing of grievances and instead accept that it is now the Senate’s turn to listen to the facts as they are presented, deliberate, and cast a final vote.

TRIBUTE TO DR. JAMES NARAMORE

Mr. ENZI. Mr. President, I rise today to acknowledge the retirement of my friend, Dr. Jim Naramore. Dr. Naramore is retiring after 40 years of service practicing family medicine in Gillette, WY. He has been an outstanding doctor to many patients in Gillette, including myself, and will be...
reminded 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 leaving Campbell County Memorial Hospital and went 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 then. I credit 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. 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, worship 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 Dr. Naramore. 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. Lilie 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 ‘Life 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 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 means 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 goals 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 and only three blocks from the Smithsonian National Museum of the American Indian. This is the first Tribally owned enterprise in Washington, DC.

Rick’s memory will be kept alive by his three sons, Richard Graham Lo’nikuluhiyo’stu, Jr., aka Lotni; Sage McKinney Loolihwaká.te Hill; and Dakota Graham Tehokaultu’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 and integrity of Native peoples he 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, that emerged in his career included praiseworthy journalism, architectural scholarship on Frank Lloyd Wright, and gay activism.

Ron McCrea came from a family of journalists. His grandfather, Archie McCrea, was editor of the Muskegon 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. Ron 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 1989, the paper that emerged in his career included praiseworthy journalism, architectural scholarship on Frank Lloyd Wright, and gay activism.

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, another graduate school in 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 movement sent out to classes on 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 collective bargaining 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 newspapers 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 was an accomplished storyteller, a humorous character, and a courageous pioneer. He leaves behind his legacy of humble but bold encouragement and thoughtful articles on 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 a legacy of humble but bold encouragement of the gay community. I am proud to honor his unflinching advocacy of the gay community. I am a legacy of a courageous pioneer. He leaves behind a legacy of humble but bold encouragement of the gay community. I am proud to honor his unflinching advocacy of the gay community. I am a legacy of a courageous pioneer. He leaves behind his legacy of humble but bold encouragement and thoughtful articles on 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.

Quick thinking and error-free execution from Neil Cóspito, 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

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 Speaker had signed the following enrolled bill:

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 Department 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. Cameron 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–3778. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Suspension of Community Eligibility” (64 CFR 240.8, with No. FEMA–2019–0003) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Banking, Housing, and Urban Affairs.

EC–3779. A communication from the Senior Legal Advisor for Regulatory Affairs, Financial Stability Oversight Council, transmitting, pursuant to law, the report of a rule entitled “Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies” (RIN 4990–ZAA0) received in the Office of the President of the Senate on January 15, 2020; to the Committee on Banking, Housing, and Urban Affairs.

EC–3780. A communication from the Acting General Counsel, Department of Transportation, transmitting, pursuant to law, a report relative to a vacancy for the position of Administrator, Federal Transit Administration, Department of Transportation, to the Office of the President of the Senate on January 15, 2020; to the Committee on Banking, Housing, and Urban Affairs.

EC–3781. A communication from the Secretary, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled “Adjustments to Civil Monetary Penalty Amounts” (Rel. Nos. 33–10740; 34–87905; 1A–5428; 1C–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–3782. A communication from the Secretary, Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled “Federal Housing Assistance: Final Rule” (Rel. No. 33–10740; 34–87905; 1A–5428; 1C–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–3783. A communication from the Secretary, Departments of Transportation, Commerce, and Urban Affairs, to the Committee on Banking, Housing, and Urban Affairs.

EC–3784. A communication from the Secretary, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Standard Instrument Approach Procedures; Miscellaneous Amendments (49); Amendment No. 3 (Docket No. RIN2120–AA69) (Docket No. 31280) 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; Airbus SAS Airplanes’’ ((RIN2120-AA64) (Docket No. FAA-2019-06144)) 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 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-AA64) (Docket No. FAA-2019-06144)) 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 (21); Amendment No. 3986’’ ((RIN2120-AA65) (Docket No. FAA-2019-03290)) 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 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 Management and Program Analyst, Federal Aviation Administration, 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 Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, a report relative to a vacancy in the position of Assistant Secretary for 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-3791. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, a report relative to a vacancy in the position of Assistant Secretary for Air Traffic, 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.

JCT-

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. WARREN, and Ms. KLOBUCHAR):

H.R. 3128. To amend the Federal Aviation Act of 1958 to establish a rebuttable presumption with respect to mental health or substance use disorder in cases involving accidents and fatalities that occur under circumstances that constitute a risk of serious injury or death to flight crew members, flight attendants, or passengers.

H.R. 3129. To amend the Federal Aviation Act of 1958 to establish a rebuttable presumption with respect to mental health or substance use disorder in cases involving accidents and fatalities that occur under circumstances that constitute a risk of serious injury or death to flight crew members, flight attendants, or passengers.

By Mr. BASS (for himself, Ms. EMILY CHAPIN, Ms. HARRISON, Mr. MURPHY, Ms. MILLER, and Mr. ROSEN):

H.R. 3130. To amend the Federal Aviation Act of 1958 to establish a rebuttable presumption with respect to mental health or substance use disorder in cases involving accidents and fatalities that occur under circumstances that constitute a risk of serious injury or death to flight crew members, flight attendants, or passengers.

By Mr. LEE (for himself, Ms. BUSTER ASHBY, Mr. BASS, Mr. BERNSTEIN, Mr. BONITAS, Ms. BURGESS, and Mr. CARBONI):

H.R. 3131. To amend the Federal Aviation Act of 1958 to establish a rebuttable presumption with respect to mental health or substance use disorder in cases involving accidents and fatalities that occur under circumstances that constitute a risk of serious injury or death to flight crew members, flight attendants, or passengers.

By Mr. ROS-LeWANN (for himself, Mr. MURPHY, Ms. MILLER, Mr. ROSEN, Ms. WARREN, and Ms. KLOBUCHAR):

H.R. 3132. To amend the Federal Aviation Act of 1958 to establish a rebuttable presumption with respect to mental health or substance use disorder in cases involving accidents and fatalities that occur under circumstances that constitute a risk of serious injury or death to flight crew members, flight attendants, or passengers.

By Mr. MURPHY (for himself, Ms. MILLER, Mr. ROSEN, Ms. WARREN, and Ms. KLOBUCHAR):

H.R. 3133. To amend the Federal Aviation Act of 1958 to establish a rebuttable presumption with respect to mental health or substance use disorder in cases involving accidents and fatalities that occur under circumstances that constitute a risk of serious injury or death to flight crew members, flight attendants, or passengers.

By Mr. MURPHY (for himself, Ms. MILLER, Mr. ROSEN, Ms. WARREN, and Ms. KLOBUCHAR):

H.R. 3134. To amend the Federal Aviation Act of 1958 to establish a rebuttable presumption with respect to mental health or substance use disorder in cases involving accidents and fatalities that occur under circumstances that constitute a risk of serious injury or death to flight crew members, flight attendants, or passengers.

By Mr. MURPHY (for himself, Ms. MILLER, Mr. ROSEN, Ms. WARREN, and Ms. KLOBUCHAR):

H.R. 3135. To amend the Federal Aviation Act of 1958 to establish a rebuttable presumption with respect to mental health or substance use disorder in cases involving accidents and fatalities that occur under circumstances that constitute a risk of serious injury or death to flight crew members, flight attendants, or passengers.

By Mr. MURPHY (for himself, Ms. MILLER, Mr. ROSEN, Ms. WARREN, and Ms. KLOBUCHAR):

H.R. 3136. To amend the Federal Aviation Act of 1958 to establish a rebuttable presumption with respect to mental health or substance use disorder in cases involving accidents and fatalities that occur under circumstances that constitute a risk of serious injury or death to flight crew members, flight attendants, or passengers.
S. Res. 479. A resolution designating January 23, 2020, as "Maternal Health Awareness Day"; to the Committee on the Judiciary.

By Mr. ERNST:
S. 2225. 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. 2226. 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 Mr. KLASICHAR (for herself, Ms. 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. TOOMEY (for himself, Mr. ROB Portman, and Mr. RUBEN)
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 (Ms. SULLIVAN) 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. 496. At the request of Mr. MERKLEY, the name of the Senator from Alaska (Mr. SULLIVAN) was added as a cosponsor of S. 496, 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. CARL) was added as a cosponsor of S. 1750, a bill to establish the Clean School Bus Grant Program, and for other purposes.

S. 1841. 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. 1989. At the request of Mr. BOOZMAN, the name of the Senator from Georgia (Mrs. LOEFFLER) 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. VARNEY) 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. 2085. At the request of Ms. ROSEN, the name of the Senator from Connecticut (Mr. BLUMENTHAL) was added as a cosponsor of S. 2085, a bill to enhance the rights of domestic workers, and for other purposes.

S. 2112. At the request of Mr. CARDIN, the name of the Senator from Maryland (Mr. CARL) 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. ROBERTS, the name of the Senator from Georgia (Mrs. LOEFFLER) 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. LOEFFLER) 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. 2699. At the request of Mr. MARKEY, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of
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. 2909

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 (Ms. Blackburn) were added as cosponsors of S. 2950, a bill to amend title 38, United States Code, to concede exposure to airborne hazards and toxins from burn pits under certain circumstances, and for other purposes.

S. 2973

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. 2973, a bill to amend the Fair Labor Standards Act of 1938 to harmonize the definition of employee with the common law.

S. 3080

At the request of Mr. Sullivan, the name of the Senator from North Dakota (Mr. Cramer) was added as a cosponsor of S. 3080, a bill to state the policy of the United States regarding the need for strategic placement of military assets in the Arctic, and for other purposes.

S. 3167

At the request of Mr. Booker, the name of the Senator from California (Ms. Harris) was added as a cosponsor of S. 3167, 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 (Ms. 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 (Mr. 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 70 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 other 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 severe maternal morbidity as are White women;

(5) women who live in rural areas have a greater likelihood of severe maternal morbidity in the Alliance compared to women who live in urban areas;

(6) nearly 1/3 of rural counties do not have a hospital with obstetric services;

(7) communities with more Black and Hispanic residents and lower median incomes are less likely to have access to hospital obstetric services;

(8) more than 50 percent of women who live in a rural area must travel more than 30 minutes to access hospital obstetric services, compared to 7 percent of women who live in urban areas; and

(9) American Indian and Alaska Native women living in rural communities are twice as likely as their White counterparts to receive late or no prenatal care;

Whereas more than 40 States have designated committees to review maternal deaths;

Whereas State and local maternal mortality review committees are positioned to comprehensively assess maternal deaths and identify opportunities for prevention;

Whereas more than 25 States are participating 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 collaborate 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” to raise awareness about maternal health and promote maternal safety; Now, therefore, be it

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 raising public and private support for maternal mortality, maternal morbidity, and disparities in maternal health outcomes; and
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; these services include programs tailored to meet the needs of victims of stalking;
Whereas individuals 18 to 24 years old experience the highest rate of stalking, 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”.

Whereas stalking affects victims of every race, age, culture, gender, sexual orientation, social dysfunction, and severe depression, some being than the general population;
Whereas many victims of stalking do not report their victimization to police or contact a victim service provider, shelter, or hotline; and
Whereas stalking is a crime under Federal law and the laws of all 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, police departments, and police departments stand ready to assist victims of stalking and are working diligently to develop effective and innovative responses to stalking, including laws against stalking; and
Whereas there is a need to improve the response of the criminal justice system to 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; and
Whereas the Auschwitz extermination camp symbolizes the extraordinary brutality of the Holocaust;

Whereas there is a need for an increase in the number and intensity of anti-Semitic incidents in the United States and around the world;
Whereas hate crime statistics collected by the Federal Bureau of Investigation demonstrate a marked rise in anti-Semitic incidents in the United States over the past several years, and the Special Envoy to Monitor and Combat Anti-Semitism of the Department of State recently stated that the Jewish people worldwide are facing the worst wave of anti-Semitism since the Holocaust;
Whereas, in 2018, the United States experienced the single deadliest attack against the Jewish community in the history of the United States with the murder of 11 individuals at the Tree of Life synagogue in Pittsburgh, Pennsylvania; and
Whereas especially in a period of rising anti-Semitism, commemoration of the liberation of the Auschwitz extermination camp will instill in all people of the United States a greater awareness of the Holocaust and knowledge of the horrors brought upon by the Nazi regime of systematic murder of 6,000,000 Jews and millions of other innocent individuals; Now, therefore, be it

Resolved, That the Senate—
(1) commemorates January 27, 2020, as the 75th anniversary of the liberation of the Auschwitz extermination camp by Allied Forces during World War II; and
(2) calls on all people of the United States to remember the 1,100,000 innocent victims murdered at the Auschwitz extermination camp as part of the Holocaust, the 6,000,000 Jews killed throughout Europe, and all of the victims of the Nazi reign of terror; and
(3) honors the legacy of the survivors of the Holocaust and of the Auschwitz extermination camp;
(4) calls on the people of the United States to continue to work toward tolerance, peace, and justice and to continue to work to end all genocide and persecution; and
(5) recommits to combating all forms of anti-Semitism.
SENATE RESOLUTION 482—SUPPORING THE CONTRIBUTIONS OF CATHOLIC SCHOOLS

Mr. TOOMEY (for himself, Mr. RUBIO, and Mr. MANCHIN) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

Whereas Catholic schools in the United States 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 life-long 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 where 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 week of January 26, 2020, to February 1, 2020, has been designated as “National Catholic Schools Week” by the National Catholic Education Association and the United States Conference of Catholic Bishops, and January 29, 2020, has been designated as “National Appreciation Day for Catholic Schools”;

Whereas National Catholic Schools Week was first established in 1974 and has been celebrated annually for the past 46 years;

Whereas 30 percent of Catholic schools have had religious education and new schools are opening across the United States; and

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 and 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.

SENNATE RESOLUTION 483—TO PROVIDE FOR RELATED PROCEDURES CONCERNING THE ARTICLES OF IMPEACHMENT AGAINST DONALD JOHN TRUMP, PRESIDENT OF THE UNITED STATES

Mr. MCCONNELL submitted the following resolution, which was considered and agreed to:

Resolved, That the House of Representatives shall have until 9:00 a.m. on Wednesday, January 22, 2020, to file any motions permitted under the rules of impeachment with the exception of motions to subpoena witnesses or documents or any other evidentiary motions. Responses to any such motions shall be filed no later than 11:00 a.m. on Wednesday, January 22, 2020, and all materials filed pursuant to this paragraph shall be printed and made available to all parties.

The President and the House of Representatives or the President to the Committee on Health, Education, Labor, and Pensions:

SA 1285. 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 to produce him to testify, commanding him to produce, for the time period from January 1, 2019, to the present, all documents, communications, and other records related to the White House meeting for the president of Ukraine, and any decisions or actions taken at that meeting or related to it;

(ii) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(iii) 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;

(iv) a meeting at the White House on or around September 25, 2019, involving, among others, National Security Advisor John Bolton, Secretary of Defense Mark Esper, and Secretary of State Mike Pompeo;

(v) a meeting at the White House on or around July 10, 2019, involving, among others, President Trump and Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(vi) a meeting at the White House on or around August 24, 2019, involving President Trump, Vice President Pence, and Mr. Mulvaney concerning the lifting of the hold on security assistance for Ukraine;

(vii) a meeting at the White House on or around July 25, 2019, involving, among others, President Trump, Vice President Pence, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(viii) a meeting at the White House on or around September 1, 2019, involving President Trump and Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(ix) a meeting at the White House on or around September 25, 2019, involving, among others, President Trump, Vice President Pence, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(x) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xi) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xii) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xiii) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xiv) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xv) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xvi) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xvii) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xviii) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xix) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xx) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xi) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xii) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xiii) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xiv) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xv) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xvi) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xvii) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xviii) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xix) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xx) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xi) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xii) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xiii) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xiv) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xv) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xvi) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xvii) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xviii) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xix) a meeting at the White House on or around August 20, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(xx) a meeting at the White House on or around August 20, 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 August 30, 2019, involving President Trump, Vice President Pence, and Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;
(v) a planned meeting, later cancelled, in Warsaw, Poland, on or around September 1, 2019, between President Trump, Vice President Pence, and Mr. Mulvany concerning the lifting of the hold on security assistance for Ukraine;
(vi) a meeting at the White House on or around September 11, 2019, involving President Trump, Vice President Pence, and Secretary of Defense Mark Esper, 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) the records related to the deadline for responses to the subpoena issued on August 17, 2019, including any records reflecting an official response thereto, including but not limited to:
(i) an August 27, 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; and
(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 Deputy Secretary Michael R. Pompeo, Ambassador Volker, Ambassador Sondland, Ambassador Taylor, and Deputy Assistant Secretary Kent, and the following: President Zeleny, Andry Yermak, or individuals or entities associated with or acting in any capacity as a representative, agent, or proxy for President Zeleny before and after election;
(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. 3. 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 Michael "Mick" Mulvaney, Assistant Director Michael Duffey, or any other Office of Management and Budget employee;
(iii) communications related to concerns raised by any Office of Management and Budget employee related to the legality of any hold on security assistance, military assistance, or security assistance to Ukraine; and
(iv) communications sent to the Department of State regarding a hold or block on congressional oversight regarding the release of FMP funds to Ukraine;
(v) communications between—
(i) officials at the Department of Defense, including but not limited to Undersecretary of Defense Elaine McCusker; and
(ii) Associate Director Michael Duffey, Deputy Associate Director Sandy, or any other Office of Management and Budget employee;
(vi) all draft and final versions of the August 7, 2019, memorandum prepared by the National Security Division, International Affairs Division, and Office of General Counsel of the Office of Management and Budget about the release of foreign assistance, security assistance, or security assistance to Ukraine;
(vii) the Ukrainian government’s knowledge prior to August 29, 2019, of any actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or security assistance to Ukraine including but not limited to
(iv) a meeting at the White House on or around September 11, 2019, to release appropriated funds to Ukraine, including but not limited to any notes, memoranda, document or correspondence related to the decision;
(F) all draft and final versions of talking points 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 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- tember 11, 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 1287. 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. 3. 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 Michael "Mick" Mulvaney, Assistant Director Michael Duffey, or any other Office of Management and Budget employee;
(i) communications among, between, or referring to Donald John Trump, Michael Mulvaney, Assistant to the President Robert Blair, Acting Director Russell Vought, Associate Director Michael Duffey, or any other Office of Management and Budget employee;
(ii) communications related to requests by President Trump for information about Ukraine security or military assistance and responses to those requests;
(iii) communications related to concerns raised by any Office of Management and Budget employee related to the legality of any hold on security assistance, military assistance, or security assistance to Ukraine; and
(iv) communications sent to the Department of State regarding a hold or block on congressional oversight regarding the release of FMP funds to Ukraine;
(v) communications between—
(i) officials at the Department of Defense, including but not limited to Undersecretary of Defense Elaine McCusker; and
(ii) Associate Director Michael Duffey, Deputy Associate Director Sandy, or any other Office of Management and Budget employee;
(vi) all draft and final versions of the August 7, 2019, memorandum prepared by the National Security Division, International Affairs Division, and Office of General Counsel of the Office of Management and Budget about the release of foreign assistance, security assistance, or security assistance to Ukraine;
(vii) the Ukrainian government’s knowledge prior to August 29, 2019, of any actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or security assistance to Ukraine including but not limited to
(iv) a meeting at the White House on or around September 11, 2019, to release appropriated funds to Ukraine, including but not limited to any notes, memoranda, document or correspondence related to the decision;
(F) all draft and final versions of talking points 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 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- tember 11, 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 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. 3. 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 within the possession, custody, or control of the Department of Defense, referred to in this section as "USDI" and Foreign Military Financing (referred to in this section as "USDI") and Foreign Military Financing (referred to in this section as "USDI") and Foreign Military Financing, or any other employee of the Senate in serving the subpoena authorized to be issued by this section.

CONGRESSIONAL RECORD — SENATE

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:

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

Spc. . 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 John Robert Bolton, and the

(B) issue a subpoena for the taking of testimony of Michael P. Duffy; 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:

Spc. . 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 all that follows through “rules” on line 12.

On page 3, line 11, 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 after deposition which witnesses shall testify” and insert “and then shall testify in the Senate”.

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 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”.

SA 1294. Mr. SCHUMER (for Mr. VAN HOLLEN) 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 Hickman, 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 Franklin during one of his most difficult stretches 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. Carroll 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: Eight bills and five resolutions were introduced, as follows: S. 3218–3225, and S. Res. 479–483. Pages S434–35

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.)

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.)

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.)

Schumer Amendment No. 1287, to subpoena John Michael “Mick” Mulvaney. (By 53 yeas to 47 nays (Vote No. 18), Senate tabled the amendment.)

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.)

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.)

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.)

Schumer Amendment No. 1291, to subpoena John Robert Bolton. (By 53 yeas to 47 nays (Vote No. 22), Senate tabled the amendment.)

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.)

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.)

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.)

Schumer Amendment No. 1295, to allow additional time to file responses to motions. (By 52 yeas to 48 nays (Vote No. 26), Senate tabled the amendment.)

Schumer Amendment No. 1296, 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. 27), Senate tabled the amendment.)

Schumer Amendment No. 1297, to allow additional time to file responses to motions. (By 52 yeas to 48 nays (Vote No. 28), Senate tabled the amendment.)

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:

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.

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.

Executive Communications: Pages S433–34
Additional Cosponsors: Pages S435–36
Statements on Introduced Bills/Resolutions:
Additional Statements:
Amendments Submitted:
Record Votes: Twelve record votes were taken today. (Total—26) Pages S394, S401, S406, S412, S416, S420, S422, S428–29, S430–31

Adjournment: Senate convened at 12:30 p.m. on Tuesday, January 21, 2020 and adjourned at 1:50 a.m. on Wednesday, January 22, 2020, until 1 p.m. on the same day. (For Senate’s program, see the remarks of the Majority Leader in today’s Record on page S441.)

Committee Meetings
(Committees not listed did not meet)
No committee meetings were held.

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. Page H334
Additional Cosponsors: Pages H334–35
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). Page H334
Speaker: Read a letter from the Speaker wherein she appointed Representative Butterfield to act as Speaker pro tempore for today. Page H333
Guest Chaplain: The prayer was offered by the Guest Chaplain, Rev. Benjamin Hogue, Lutheran Church of the Reformation, Washington, DC. Page H333
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 hearings 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.

House Committees
No hearings are scheduled.

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.
Next Meeting of the SENATE
1 p.m., Wednesday, January 22

Senate 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., E61
Cloud, Michael, Tex., E61
Davis, Susan A., Calif., E61
Simpson, Michael K., Idaho, E61