

116TH CONGRESS }  
2d Session }

SENATE

{ S. Doc.  
116-18 }

**PROCEEDINGS OF THE  
UNITED STATES SENATE**

IN THE

**IMPEACHMENT TRIAL OF  
PRESIDENT DONALD JOHN TRUMP**

**VOLUME IV: STATEMENTS OF SENATORS**



VOLUME IV OF IV

JANUARY 31, 2020.—Ordered to be printed

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UNANIMOUS CONSENT AGREEMENTS RELATED TO  
PRINTING

*In the Senate of the United States*

*January 31, 2020*

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the Secretary be authorized to include statements of Senators explaining their votes, either given or submitted during the legislative sessions of the Senate on Monday, February 3; Tuesday, February 4; and Wednesday, February 5; along with the full record of the Senate's proceedings and the filings by the parties in a Senate document printed under the supervision of the Secretary of the Senate that will complete the documentation of the Senate's handling of these impeachment proceedings.

The CHIEF JUSTICE. Without objection, it is so ordered.  
[166 Cong. Rec. S769 (daily ed. Jan. 31, 2020)]

*February 3, 2020*

Mr. McCONNELL. Mr. President, I ask unanimous consent to modify the order of January 31 to allow the Senators to have until Wednesday, February 26, 2020—that would be the Wednesday after we come back—to have printed statements and opinions in the CONGRESSIONAL RECORD, if they choose, explaining their votes and include those in the documentation of the impeachment proceedings; finally, I ask that the two-page rule be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.  
[166 Cong. Rec. S805 (daily ed. Feb. 3, 2020)]

*February 25, 2020*

Mr. McCONNELL. Madam President, I ask unanimous consent to modify the order of January 31 to allow Senators to have until Thursday, February 27, 2020, to have printed statements and opinions in the CONGRESSIONAL RECORD, if they choose, explaining their votes and include those in the documentation of the impeachment proceedings; finally, I ask that the two-page rule be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.  
[166 Cong. Rec. S1160 (daily ed. Feb. 25, 2020)]

## FOREWORD

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By unanimous consent, the United States Senate has directed the creation of this publication, Senate Document 116–18, which contains, in four volumes, the official record of the Senate proceedings in the impeachment trial of President Donald John Trump in the 116th Congress. The purpose of these volumes is to preserve for future reference the formal record of the third presidential impeachment trial in the nation’s history. Together with the 18 volumes contained in Senate Document 116–13, which includes all publicly available material submitted to the Senate by the House of Representatives as their evidentiary record, these volumes represent the complete official record of the impeachment actions against President Trump in the 116th Congress.

The volumes are:

Volume I: Preliminary Proceedings

Volume II: Floor Trial Proceedings

Volume III: Visual Aids From the Trial

Volume IV: Statements of Senators

More than 20 years after the last presidential impeachment trial in the Senate, technology was a major difference in the conduct of these proceedings and how the record was presented. Audio and video recordings, as well as visual aids (slides) were used by both the House managers and counsel for the President throughout the course of their arguments. In Volume I and Volume II of this Document, the text of what was heard on audio and video proceedings is included in the record. However, visual aids are not reproduced in the *Congressional Record*; therefore references have been inserted in this record where such aids were used by the speaker. Those references indicate a slide number and each such slide can be found in Volume III.

### VOLUME I: PRELIMINARY PROCEEDINGS

Volume I contains all preliminary impeachment proceedings prior to opening presentations by the House managers and counsel for the President and commencement of the evidentiary portion of the trial.

On December 18, 2019, the House of Representatives adopted two articles of impeachment against President Trump (House Resolution 755, 116th Congress). A subsequent resolution, adopted on January 15, 2020, appointed managers on the part of the House of Representatives (House Resolution 798, 116th Congress).

On January 15, 2020, Majority Leader Mitch McConnell and Democratic Leader Charles E. Schumer addressed the Senate on the issue of impeachment. Following recognition of Senate leaders, the Clerk of the House informed the Senate in open session that

the House of Representatives had passed House Resolution 798, authorizing and appointing managers for the impeachment trial of President Trump. Subsequently, the Senate unanimously agreed to receive the managers, request the attendance of the Chief Justice of the United States, appoint an escort committee for the Chief Justice, and provide necessary access to the Senate Chamber. The Senate notified the House of Representatives that it was ready to receive the managers and begin the trial.

On January 16, 2020, Majority Leader McConnell and Democratic Leader Schumer addressed the Senate on the issue of impeachment. At 12:00 noon on January 16, the managers on the part of the House of Representatives appeared at the bar of the Senate to exhibit the articles of impeachment, set forth in House Resolution 755. Following exhibition of the articles of impeachment, the president pro tempore of the Senate, by unanimous consent, was authorized to appoint a committee consisting of four senators to escort the Chief Justice of the United States to the Senate Chamber. On January 16, the president pro tempore of the Senate appointed Senators Roy Blunt, Patrick Leahy, Lindsey Graham, and Dianne Feinstein to serve as the escort committee.

At 2:00 p.m. on January 16, the Chief Justice, as presiding officer of the presidential impeachment trial, took the prescribed oath and then administered the oath to all senators present. With the Chief Justice presiding, the Senate unanimously agreed that a summons be issued to President Trump, that his answer to the articles of impeachment be filed with the Secretary of the Senate by 6:00 p.m. on January 18, 2020, and that the House of Representatives file its replication to the President's answer with the Secretary by 12:00 noon on January 20, 2020. The Senate also agreed that trial briefs, if desired, should be filed by the House of Representatives with the Secretary by 5:00 p.m. on January 18 and by the President by 12:00 noon on January 20, and any rebuttal brief may be filed by the House by 12:00 noon on January 21, 2020. These agreements also authorized the Secretary to print all of these preliminary matters as a Senate document to be made available to all parties. These documents were published within 24 hours of their filing as Senate Document 116-12, and are also reprinted in this Document in Volume I, both in their original form and as they were published in the *Congressional Record* on January 21, 2020.

On January 21, Majority Leader McConnell and Democratic Leader Schumer again addressed the Senate on the issue of impeachment. After one remaining Senator was sworn in to the impeachment proceedings and additional preliminary matters were addressed, Leader McConnell introduced Senate Resolution 483 (116th Congress) to set forth procedures for consideration of the articles of impeachment against President Trump. Counsel for the President and then the House managers were each given up to one hour to debate the Resolution, presenting the first arguments by each side in these proceedings. After initial debate on the Resolution, Democratic Leader Schumer proposed Amendment Number 1284 to subpoena certain White House documents and records. After up to two more hours divided by the parties, the amendment was tabled (roll call vote number 15). Ten additional amendments

(numbers 1285–1294) were proposed by Democratic Leader Schumer (one on behalf of Senator Van Hollen) dealing with the subpoenaing of documents and records, the calling of witnesses, and the timing of trial proceedings. After further debate on each amendment, each was tabled by a roll call vote. After all amendments had been disposed of, the Senate adopted Resolution 483 by a vote of 53 yeas to 47 nays (roll call vote number 26).

#### VOLUME II: FLOOR TRIAL PROCEEDINGS

Volume II reproduces the official record of the Senate floor proceedings in the impeachment trial of President Trump, beginning with opening arguments by House managers and counsel for the President, as ordered under Senate Resolution 483. The managers presented their case on behalf of the House of Representatives on January 22, 23, and 24, 2020. Counsel for the President presented their case on January 25, 27, and 28. On January 29 and 30, senators posed questions to House managers and to counsel for the President.

On January 31, 2020, pursuant to Senate Resolution 483, the Senate considered whether it would be in order to consider and debate under the impeachment rules any motion to subpoena witnesses or documents. The House managers' argument was presented first, followed by counsel for the President. After argument, the Chief Justice put the question to the Senate for its decision, and by a vote of 49 yeas to 51 nays (roll call vote number 27) the Senate determined it would not permit motions to subpoena witnesses or documents. Majority Leader McConnell then introduced Senate Resolution 488, proposing procedures for the remainder of the impeachment trial. Democratic Leader Schumer proposed 4 amendments to the Resolution. No argument was heard on the Resolution or the amendments. Each amendment was tabled (roll call vote numbers 28 through 31), and the Resolution was agreed to by the Senate by a vote of 53 yeas to 47 nays (roll call vote number 32).

No depositions were taken during the Senate proceedings, and no witnesses appeared at the trial. The House managers and counsel for the President presented closing arguments on February 3.

Volume II concludes with the February 5, 2020, vote and judgment of the Senate to acquit President Trump on two articles of impeachment (roll call vote numbers 33 and 34).

#### VOLUME III: VISUAL AIDS FROM THE TRIAL

Volume III reproduces the complete set of visual aids used by House managers and counsel for the President during the preliminary and trial proceedings. A notation indicating the use of a visual aid is embedded in the transcript of the proceedings (Volumes I and II) with citation information for items included in Volume III.

#### VOLUME IV: STATEMENTS OF SENATORS

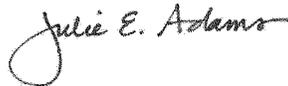
On January 31, 2020, the Senate unanimously agreed to provide each senator an opportunity to place in the *Congressional Record* a statement explaining his or her vote on the articles of impeachment, and to include those statements in the official record of the

Senate's impeachment proceedings. Modified on February 3 and again on February 25, the unanimous consent agreement set a deadline of February 27, 2020, for submission of statements. Those statements are included in Volume IV.

The publication of these volumes, supplemented with Senate Document 116-13, sets forth a complete record of this historic impeachment trial and will provide for a fuller understanding of the way in which the Senate conducted these proceedings.

#### ACKNOWLEDGEMENTS

I want to thank my staff from the Executive Office, Legislative Offices, Office of the Parliamentarian, Office of Printing and Document Services, Senate Historical Office and Senate Library for their work on both the trial and the execution of this Document.

A handwritten signature in cursive script that reads "Julie E. Adams". The signature is written in dark ink and is positioned above the printed name.

JULIE E. ADAMS,  
*Secretary of the Senate.*

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<sup>1</sup>For ease of reference, the documents contained in S. Doc. 116–12, i.e., the pertinent constitutional provisions, the Senate Impeachment Rules, the Articles of Impeachment, the Answer of President Trump, and the Replication of the House of Representatives, are reprinted in this publication.

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[From the CONGRESSIONAL RECORD, February 3, 2020]

STATEMENT OF SENATOR MARTIN HEINRICH

Mr. HEINRICH. Mr. President, and all of my colleagues in the Senate, throughout this impeachment trial, I thought a lot about what this country stands for. For me, as the son of an immigrant whose family came to the United States from Germany in the 1930s, America stands as a beacon of liberty, equal justice, and democracy.

We are a nation forged by a revolution against a monarchy and its absolute power. We are a nation founded by the ratification of the most radically democratic document in history, the Constitution of the United States of America.

Under the Constitution, we are governed not by monarchs—who act with impunity and without accountability—but by elected officers who answer to, and work for, “We the People.”

Generations of Americans have struggled and sacrificed their lives to defend that audacious vision. The Senate has a duty and a moral responsibility to uphold that vision.

Over the last 2 weeks, I fear that the Senate has failed in that duty. I am deeply disappointed that nearly all of my Republican colleagues refused to allow for the kind of witness testimony and documentary evidence that any legitimate trial would include. You cannot conduct a fair trial without witnesses.

In my view, you also can’t have a legitimate acquittal without a fair trial; that the Senate refused to shed more light on the facts is truly astonishing. Despite this, the facts as we know them are clear and plain. President Trump pressured the Government of Ukraine, an American ally, not for our national security interests but for his own selfish and corrupt political interests. When he was caught, he sought to cover it up by suppressing documents and preventing witnesses from testifying before Congress and the American people.

The President’s defense team had every opportunity to present us with evidence that would explain his actions or give us reason to doubt this clear pattern of fact. Instead, they shifted their defense away from the damning facts and embraced an extreme legal philosophy that would allow any President to abuse their power and ignore the law.

This dangerous argument is not new. It was used by President Richard Nixon when he said: “Well, when the president does it, that means it is not illegal.”

President Nixon also strayed far from his duties to our Nation for his own personal and political gain. It was only after courageous Members of the U.S. Senate, in his own political party, put their country first and stood up to him that President Nixon finally resigned.

We are now in yet another time when our Chief Executive has failed us, and our Nation requires more leadership and conscience from the U.S. Senate. Unfortunately, my Republican colleagues are unwilling to deliver that kind of moral leadership.

President Donald Trump has proven to be unfit for the office he occupies. He abused his powers and continues to engage in a cover-up. He presents a clear and present danger to our national security and, more fundamentally, to our democracy itself.

That is why my conscience and my duty to defend our Constitution compel me to vote to convict Donald Trump. I hope the rest of you will join in this vote, but I am not naive. I understand how President Trump operates. I know how ugly it can become if you dare to challenge him. But your fear of this bully cannot outweigh your duty to the American people. Your fear cannot blind you to how you will be viewed by history. What you should really fear is what will happen when there are no limits on any President, even when he is risking our national security and our foreign alliances to illegitimately maintain his grip on power.

What we should all fear is what President Trump will do next if the Senate does not hold him accountable for the clear abuses of power he has already committed. This is the same President who praises dictators and despots and jeopardizes our international alliances. This is the same President who stole billions of dollars from military construction funds to pay for his monument to division and racism. This is the same President who is more focused on lobbying insults and spreading Russian conspiracy theories on Twitter than he is on his own intelligence briefings.

Let me just say that I pay close attention to the intelligence that I am allowed to see, and from my seat on both the Armed Services and Intelligence Committees, I am acutely aware of the threats that our Nation faces. They include an emboldened North Korea, the Iranian regime, and terrorist organizations across several continents.

Russia and China are acting aggressively to assert their authoritarian influence and provoke American interests and our allies, including the Ukraine. Finally, with the 2020 Presidential election mere months away, Russia is once again targeting our election systems and manipulating our democratic discourse.

Right now, patriotic Americans working in the State Department, for our intelligence agencies, and serving in the military are defending us from those very threats. These Americans pledge to obey the orders of their Commander in Chief. They trust that their Commander in Chief's loyalty and sole focus is squarely on the best interests of the United States of America. I don't say this lightly: President Trump has betrayed that trust. He promised us that he would put America first. Instead, he put himself first.

Throughout our history, the defense of our Nation has depended on the leadership of men whose names we now remember when we visit their memorials, names like Lincoln and Washington and Roosevelt. These men all swore the same oath that President Trump did when they assumed our Nation's most powerful office. Our Presidents swear to "faithfully execute the Office of President of the United States" and to "preserve, protect, and defend the Con-

stitution of the United States.” President Trump has violated that oath.

So I will ask us once again, what does America stand for? In considering that question, I think of Dr. Martin Luther King, Jr.—the only man who did not serve as President whom we recognize with a memorial on our National Mall. More than 50 years after his assassination, Dr. King’s life’s work to make our Nation more fully live up to our founding principles still resonates. These are the same principles that compelled my father’s family to come to this country: liberty, equal justice, democracy.

While fighting for those principles, Dr. King wrote in his letter from a Birmingham jail: “The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands in times of challenge and controversy.” My colleagues, this is one of those times.

Two years after writing the Birmingham Jail letter, Dr. King led thousands on a 5-day, 54-mile march from Selma to Montgomery for our fundamental American right: the right to vote in free and fair elections. Remember, that right is what President Trump has threatened by inviting foreign interference in our elections. Upon reaching the steps of the Alabama State Capitol, Dr. King proclaimed: “We must come to see that the end we seek is a society at peace with itself, a society that can live with its conscience.” I sincerely hope that those of us in this body can keep seeking that society, that America.

Before I finish, I also want to address Americans who have watched this trial unfold and are rightly disappointed by the cover-up that it has become. I would urge you to remember what Dr. King said about accepting finite disappointment but never losing infinite hope. Despite what the Senate is about to do and the danger I fear it will bring about, I will never lose hope in what America stands for because we the people—not any King or dictator—still hold immense power in this Nation, and it is up to all of us now to wield that power.

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[From the CONGRESSIONAL RECORD, February 3, 2020]

STATEMENT OF SENATOR CHUCK GRASSLEY

Mr. GRASSLEY. Mr. President, as Senators, we cast many votes during our time here. I have cast over 13,200. Each one of those votes is important, but a vote to convict or acquit the President on charges of impeachment is perhaps the most important vote a Senator could ever cast. Until now, it has happened only twice in our Nation’s history, and it is something that should never be taken lightly.

President Trump has been charged of committing, according to the Constitution and in these articles, “high Crimes and Misdemeanors” for requesting that a foreign leader investigate his potential political opponent and, No. 2, obstructing Congress’s inquiry into those actions. For this, we are asked to permanently remove him from office.

As a judge and juror, as we all are, I first ask whether the charges rise to an offense that unquestionably demands removal

from office. If so, I then ask whether the House proved beyond a reasonable doubt that it actually occurred.

The House's case fails on the first of those questions. The President's request is not impeachable conduct under our Constitution. A President isn't prohibited by law from engaging the assistance of a foreign ally in an anti-corruption investigation.

The House tries to make up for this hurdle by suggesting that subjective motive—in other words, political advantage—can turn an otherwise unimpeachable act into an act that demands removal from office. I won't support such an irreversible break from the Constitution standard for impeaching a President.

The Senate is an institution of precedent. We are informed and guided by history and the actions of our predecessors, but our choices also actually make history. These days, that can be difficult to keep in mind. A rush to convict or acquit can lead to cut corners and overheated rhetoric.

We are each bound by our oath to "do impartial justice." As President pro tempore of this institution, I recognize that we must also do justice to the Senate and to the Republic that this Senate serves.

This trial began with a full and fair debate on the rules to guide our process. We considered and voted on 11 amendments over nearly 13 hours. Consistent with precedent, the Senate adopted rules allowing the same length of time for arguments and questions as was agreed to unanimously in the 1999 Clinton impeachment. Consistent with precedent, we engaged in a robust debate on calling witnesses and pursuing additional evidence. We sat as a Court of Impeachment for over 70 hours. The final vote will be the product of a fair and judicial process consistent with precedent of the Senate.

I cannot say the same of the Articles of Impeachment that we are considering today from the House of Representatives, which has the sole power of impeachment. After 9 days of presentation and questions and after fully considering the record, I am convinced that what the House is asking the Senate to do is constitutionally flawed and dangerously unprecedented.

The House's abuse of power article rests on objectively legal conduct. Until Congress legislates otherwise, a President is within his authority to request that a foreign leader assist with anti-corruption efforts. To make up for this, the House of Representatives' abuse of power theory rests entirely on the President's subjective motive. This very vague standard cannot be sustained.

The House offers no limiting principle of what motives are allowed. Under such a flexible standard, future House of Representatives could impeach Presidents for taking lawful action for what a majority thinks are the wrong reasons.

The House also gives no guidance whatsoever on whether conviction rests on proving a single, corrupt motive or whether mixed motives suffice under their theory. In its trial brief, the House of Representatives argues that there is "no credible alternative explanation"—those are their words—for the President's alleged conduct, but once the Senate heard from the President's counsel in defense, then all of a sudden, the House changed its tune. Now, even a cred-

ible alternative explanation shouldn't stop the Senate from removing the President.

Reshaping their own standard midtrial only serves to undercut their initial arguments. And simply asserting—at least 63 times that I counted—that their evidence was “overwhelming” doesn't make the House of Representatives' allegations accurate or prove an impeachable offense. Even after arguments had concluded, the House managers started repeating the terms “bribery” and “extortion” on the floor of the Senate, while neither term appears anywhere in their Articles of Impeachment.

So you get down to this point. It is not the Senate's job to read into House articles what the House failed or didn't see fit to incorporate itself. Articles of Impeachment shouldn't be moving targets like moving a goalpost. The ambiguity surrounding the House's abuse of power theory gives this Senator reason enough to vote not guilty. If we are to lower the bar of impeachment—and that is what the House of Representatives is trying to do—we better be clear on where the bar is being set.

The House's second article impeaching the President for what they call obstruction of Congress is equally unprecedented and equally patently frivolous. This Senator takes great pride in knowing a thing or two about obstruction by the executive branch from both Republican Presidents and Democratic Presidents in the 40 years that I have been doing oversight. Congressional oversight—like rooting out waste, fraud, and abuse—is central to my role as a Senator representing Iowa taxpayers. In the face of obstruction, I use the tools the Constitution provides to this institution. Now, that is the very core of the checks and balances of our governmental system.

For example, I fought the Obama administration to obtain documents related to Operation Fast and Furious. Under the House's obstruction standard, should President Obama have been impeached for his failure to waive privileges during the course of that investigation? We fought President Obama on this for 3 years in the courts, and we still didn't end up with all that we asked for. We never heard a peep from the Democrats when Obama pulled that trick.

The hypocrisy here by the House Democrats has been on full display for the last 2 weeks. In the case before us, the House issued a series of requests and subpoenas to the executive branch, but the House failed to enforce those requests. When challenged to stand up for its subpoenas in court, the investigating committee simply retreated.

The House may cower at defending its own authority, but the Senate shouldn't have to clean up the mess of the House's own making. For the many ways in which the House failed in the fundamentals of oversight and for the terrible new precedent this obstruction article would set, I will vote not guilty.

Another point: There has been debate about the whistleblower, whose complaint motivated the House's impeachment inquiry. I have worked for and with whistleblowers for more than 30 years. I have sponsored numerous laws to strengthen whistleblower protections. Attempts by anyone to “out” a whistleblower just to sell an article or to score a political point are not helpful at all. It is

not the treatment any whistleblower deserves. However, it is important for investigators to talk to whistleblowers and to evaluate their claims and credibility because those claims form the basis of an inquiry under checks and balances of government.

My office does this all the time. When whistleblowers bring significant cases of bipartisan interest, we frequently work closely with the Democrats to look into those claims. I know the House committees have followed that course in the past. Both parties understand how to talk to whistleblowers and respect confidentiality.

Why no efforts were taken in this case to take these very basic, bipartisan steps is very baffling to me. I fear that, to achieve its desired goal, the House majority weaponized and politicized whistleblowers for purely partisan purposes. I hope that the damage done will be short-lived. Otherwise, the separation of powers under our Constitution will be weakened.

Finally, I have always made it a priority to hold judicial nominees to a standard of restraint and fidelity to the law, and as judges in this case, which every Senator is, we should consider those factors which counsel restraint.

These articles came to the Senate as a product of a flawed, unprecedented, and partisan process. When the articles were voted on by the full House, the only bipartisanship was of those in opposition. Moreover, tonight, the Iowa caucuses will be finished. The 2020 Presidential election is underway. Yet we are all asked to remove the incumbent from the ballot based on an impeachment that is supported by only one party of the Congress.

The Senate should take no part in endorsing the very dangerous new precedent that this would set for future impeachments. We need no new normal when it comes to impeaching a President. We have precedents of the past that should be followed, and they have not been followed. We have had more than 28,000 pages of evidence. We have had 17 witnesses and over 70 hours of open, transparent consideration by the Senate. The American people are more than adequately prepared to decide for themselves the fate of the President in November. This decision belongs to the voters. It is time to get the Senate back to work for the American people on issues of substance.

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[From the CONGRESSIONAL RECORD, February 3, 2020]

STATEMENT OF SENATOR PATTY MURRAY

Mrs. MURRAY. Mr. President, I have been in the Senate now for two Presidential impeachment trials, and I can tell you that this is never a situation I want to find our country in—not back then and certainly not today—when the odds of bipartisan cooperation, even on responsibilities as solemn as these, are brutally low.

In spite of this, I called for impeachment proceedings to begin in the House in July of this past year, and I did so because of the gravity of the threats to our democracy that has been outlined in Mueller's report. At the time, I felt, if we did not fully explore those threats, we would fall short of our constitutional duty and set a precedent of congressional indifference to potentially flagrant viola-

tions of our Constitution—ones that could jeopardize our core democratic institutions.

After hearing both sides' presentations and after reviewing every available source of information and testimony, I believe it is painfully clear that the President of the United States has abused his power and obstructed Congress and that he should be removed from office.

I want to talk about how I reached this conclusion, which I did not do lightly, and take a few minutes to reflect on the consequence of the decision each of us is individually about to make.

Throughout the trial, the contrast between the presentations by the House managers and the President's defense team could not have been starker or more damning for the President.

The House managers built an ironclad case that shows the President abused his power and obstructed Congress in ways that present grave, urgent threats to our national security and to the rule of law. Over the course of their arguments, it became undeniably clear: The corruption we have learned so much about in recent months starts at the very top—with the President of the United States.

President Trump demanded a foreign government to intervene in our elections for his own political gain, and he did so by withholding American taxpayer dollars and by ignoring congressional authority. The President's associates acted with his full knowledge and consent, and he himself pressured Ukraine's leader, knowing how much Ukraine depended on United States support. These actions have already made us less secure as a nation. By delaying vital military aid to Ukraine—a key partner—President Trump has emboldened Russia, one of our chief adversaries, and he has undermined our credibility with other allies worldwide.

Critically, the President has also given every indication he will continue to put his own interests ahead of American interests, including in our upcoming elections, and he has, time and again, refused to recognize Congress's constitutional authority to oversee the executive branch. In addition, information continues to come out that further implicates the President and demonstrates not only his intent to abuse the power of our highest office but his direct personal engagement and efforts to do so.

To summarize, the House's arguments made it impossible to ignore a reality our Founders deeply feared—a President who betrays our national security for his own personal benefit and disregards the system of checks and balances on which our democratic institutions depend, who believes he is above the law—contrary to the most fundamental American principles.

The President's defense did not directly refute those charges against the President or the thorough case that the House presented. In fact, the President's defense only served to illustrate how indefensible the President's actions were. We heard complaints from the President's defense about the House's process, which the President refused to engage in.

We heard a debunked conspiracy theory about Ukrainian election interference even though the President's own advisers repeatedly explained to him that Russia, not Ukraine, interfered in our 2016 election.

We heard the denial of a quid pro quo that, as the House managers laid out in excruciating detail, was borne out not only on the President's July 25 call with President Zelensky but in hundreds of documents from before and after that call.

We did not, however, hear any substantive defense of the President's actions. Tellingly, the President's defense vehemently opposed commonsense requests for the President's own key aides to testify and for the consideration of his aides' documents as part of this trial.

If the President were as innocent as he claims, surely, his aides and his administration's materials would bear those claims out, and he would want them considered. He and his team do not.

In 1999, I said that, if we were to remove a sitting President, none of us should have any doubts. Based on the facts we have heard today and the distraction and obfuscation that has been offered in response, none of us should have any doubts that the President committed the impeachable offenses of which he is accused.

What we now know is the President of the United States demanded that a foreign government interfere in our elections to help him win his upcoming campaign. That truth is indisputable. The question is, What does each of us as an individual do with that information?

In sitting here, I have been reminded that this trial is so much larger than any one of us—larger than any political party and much larger than President Trump. It is fundamentally about whether we will stand up for the institutions that secure our autonomy as a people—institutions we hope to leave stronger for our children and grandchildren.

To go a step further, really, this trial is about freedom in our country because, if the President feels he owes his office to a foreign government, not to Americans, then whom does the President truly serve? How can he be trusted? If foreign governments can skew our elections in their favor, if they interfere with Americans at the ballot box this November, then are Americans truly represented in the White House? Is there any American who is really free if a President can owe his election to an entity outside and aside from the American people and if foreign governments can help to decide who is in our highest office?

These questions and their chilling answers have led me to my final decision, and I hope others consider them carefully as they make their own.

I also want to speak for a minute about fear. There are really two different kinds at work in this moment. One is the fear of political consequences. I remember how many Members of Congress felt compelled to vote for the war in Iraq. The political pressure was palpable. That kind of political fear is palpable again today, but fear of political consequences must never supersede concern for our country, and we should be fearful for our country today.

We should be fearful for our future, for our safety, and the rule of law if the evidence we have heard cannot persuade this body to act on the painful truth before us. Our President has betrayed the public trust, flagrantly violated our laws, and proved himself a threat to our national security. So I ask my colleagues how they

want to feel not in this moment here today but in the years ahead and as part of our Nation's history as more information continues to come out about this administration—and it will—as we get closer to an election we still have a unique opportunity to help protect, and as we explain this difficult but pivotal time to our grandchildren. Looking back, whom or what will you want to have stood for—this President or our country?

I believe, as Representative SCHIFF said so simply and powerfully, that in America, “right matters.”

But I also note right matters only because so many people have, throughout our history, stood up for what is right, even when—especially when—it may be difficult.

Today each U.S. Senator is called to do the same.

Thank you, Mr. President.

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[From the CONGRESSIONAL RECORD, February 3, 2020]

STATEMENT OF SENATOR DEBBIE STABENOW

Ms. STABENOW. Mr. President, I rise today to speak during a sad and perilous moment in our Nation's history.

Our Nation was founded on important, basic principles that “all men” and women “are created equal” and “that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

With rights, of course, always come responsibilities. America is a nation of laws, and no person, not even the President of the United States, is above these laws. No person, not even the President of the United States, is above these laws. That has been true since our Nation was founded, and it is still true today.

Unfortunately, President Donald Trump has abused his power and acted as if he is above the law. He did this by holding up critical military aid to pressure a new foreign leader to investigate a political rival for his own political benefit. Then he did everything he could to try and cover it up after he got caught.

As U.S. Senators, it is our constitutional duty to fairly and thoughtfully consider Articles of Impeachment, listen to the evidence, and make a decision that honors our Nation's values and our fundamental belief that no one is above the law.

That is exactly what I did, and it is why I will vote to convict President Trump and remove him from office.

The facts show the President did everything he could to cover up the truth, put our elections under even greater risk of foreign interference, and damaged the constitutional checks and balances essential to our democracy.

Let's be clear. We are here because of one person. We are here because of one person—President Donald J. Trump. The President was provided multiple opportunities to prove his innocence, as he should be. The House made countless requests for documents during the impeachment inquiry. The White House ignored them.

The House issued 42 subpoenas. The White House refused to comply and even went so far as to threaten and intimidate those people who chose to appear.

Yet, even with this unprecedented level of obstruction, the House made a strong case for impeachment.

Once impeachment moved to the Senate, the President again had numerous opportunities to defend himself. The American people and the people of Michigan strongly supported having additional documents and relevant witnesses—firsthand witnesses who could speak to the Articles of Impeachment. That is what a trial is supposed to be about.

Yet the Senate did not hear from people who clearly have key, relevant information, including the former National Security Advisor, John Bolton, who is willing to testify, and, in fact, it is just a matter of time when we will hear publicly, all of us, what he would have said to the Senate; Acting White House Chief of Staff and Director of the Office of Management and Budget Mick Mulvaney; OMB Associate Director of National Security Programs Michael Duffy; and White House National Security Aid Robert Blair.

Common sense—common sense—says that if President Trump's top staff have evidence of his innocence, he would have insisted that we hear from them, as we should. They would have rushed into this Chamber.

Unfortunately, the exact opposite happened, lending strong support for the evidence presented by the House of Representatives.

Instead, the President's defense team argued that abuse of power is not a crime and, therefore, not an impeachable offense, and it became clear that they believe, as the President himself has said on many occasions, that he has power to do anything he wants under article II of the Constitution.

They also argued that if the President thinks his reelection is in the public interest, and if he does anything to benefit his reelection, including getting help from a foreign country, then that too is in the public interest and not an abuse of power.

Common sense would tell us otherwise.

Keep in mind that these are far from mainstream legal arguments, even in conservative legal circles.

These arguments have been made up to protect President Trump and cover up his wrongdoing. These arguments are nothing short of appalling, and I am alarmed at what they suggest President Trump could do next week, next month, in November, or what any President in the future could do.

Is it now OK for the President of the United States to ask a foreign leader to investigate a Member of Congress or any citizen if it helps him get reelected and, thus, in his mind, benefits the country? Is it now OK for the President of the United States to tell a Governor that they are not getting any critical disaster relief until they endorse him in the next election? Is it now OK for the President of the United States to ask foreign leaders to give campaign contributions or other political help in exchange for official visits?

I don't think any of this is OK. The people of Michigan don't think any of this is OK, and I intend to do everything I can to ensure that it doesn't become our new normal.

The Founders were smart. They had lived under a King, and they had no intention of doing so ever again. I have to wonder why so many of my Republican colleagues seem so, so eager to give it

a try. This is the United States of America. In our country, no President is above the law, and it is illegal for a candidate or any elected official to receive political help from a foreign government. Americans must decide American elections. This is fundamental to our democracy and worth continuing to fight for, which I intend to do.

Having said that, I am also deeply concerned about the divisions in our country, in our families, in our communities. It is critical that we find ways to listen to each other, respect differences, and find common ground so that we can address the important issues affecting our families and our country. These are indeed serious and perilous times. It is up to all of us to stand up for what we believe is right and to work to strengthen our democracy by coming together as Americans, by finding ways to work together to solve problems. Our children and our grandchildren are counting on us.

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[From the CONGRESSIONAL RECORD, February 3, 2020]

STATEMENT OF SENATOR RON WYDEN

Mr. WYDEN. For the past 2 weeks, the President's defense team has spun bizarre legal arguments, conspiracy theories, and flatout lies that are unbecoming of the Office of the President of the United States.

The country knows the facts. The President pursued his personal and political interests in a way that harmed the national security of America. He smeared our own Ambassador to Ukraine. He promoted Kremlin propaganda on 2016 election interference. He sent his personal lawyer and willing members of his administration to trade official acts in exchange for fabricated dirt on a political rival. He stopped \$391 million dollars in aid from going to Ukraine, and when the Ukrainians made clear they were desperate for that aid to come through, he made his demands—come up with dirt on the Bidens, find or invent the server.

Donald Trump's defense team has claimed the President wanted to fight corruption in Ukraine, but they have produced zero hard evidence to support that claim.

Never in the history of our government has the President pursued a policy end without generating what usually is mountains of paper, and yet here there are no memos, no meeting records, no communiques on anticorruption—nothing. This defense is fiction.

It is fiction because the President was not fighting corruption in Ukraine. He was causing it.

We also know the President was telling the people around him to do what he wanted with respect to Ukraine. He was telling them to talk to his personal lawyer—talk to Rudy. Because the President had forgotten what is good for the American people, he ignored the needs of our allies and forgiven the attacks on American democracy.

What the American Government under this President was after—the only thing it was after—was a corrupt favor for the personal benefit of Donald Trump. This favor was to get a foreign government to target an American citizen when our own intelligence services were legally prohibited from doing so—an action that even

Trump's own Secretary of State, Mike Pompeo, once admitted is illegal. Mike Pompeo said: "It is not lawful to outsource that which we cannot do." Yet that is what the President was seeking.

And that was not the only illegal action. The GAO has said that holding up Ukraine aid was a violation of the Impoundment Control Act. And when the aid eventually went through in September of last year, it wasn't because they suddenly had a whole lot of new respect for the constitutional powers of the Congress; it was because they got caught.

When this abuse came to light, Donald Trump's response was: I pretty much can do what I want. I am above the law.

On the south lawn of the White House, he confirmed that he wanted Ukraine to smear the Bidens, smear them by announcing investigations. He said he wanted the same thing from China.

In a White House press briefing, Mick Mulvaney, the Chief of Staff, confirmed that the scheme had been politically motivated. A reporter who was clearly stunned at the Mulvaney admission asked for some clarification, and Mulvaney said: "I have news for everybody: Get over it."

And that, I would submit, is what this trial is all about, whether the Senate and the country have to simply get over it. I know some Senators are apparently prepared to do exactly that, but let's consider the precedent that just "getting over it" sends.

If this ends in an acquittal, it will signal that politicians can get away with selling out American interests to foreign coconspirators to rig an election. What is to stop the Russians from approaching a future President with their own proposition: Dial back your support for the Baltic States, and we will take down your opponent. What would prevent the Chinese Government from approaching a Senator and offering fabricated dirt on Senators of the other party in order to smooth the way for a sweetheart trade deal? What if the President hands the Saudis an enemies list of political opponents to hack in exchange for military tech and a few regiments of American soldiers in Yemen?

Ending in acquittal without hearing from any witnesses or getting any new evidence will say that the President can rig impeachment trials as well. Every impeachment trial—every one—included witness testimony. That is just good government 101. It is what Americans expect. It is what I heard in open-to-all townhall meetings in Oregon from counties Donald Trump won and from counties Hillary Clinton won. The Republican Senate majority is apparently ready to acquit the Republican President without even going through the motions, ignoring what the American people expect.

How will we sustain a functioning democracy when our leaders are allowed to rig an election and there are no consequences? The Congress is going to struggle to unwind that precedent. It could outlive all of us.

After these long days of arguments and questioning, in my view, this comes down to two simple questions.

First, the President swears an oath, just like we do, to protect and defend our revered Constitution. Does the President's oath of office mean anything? When a President puts his own interests first, when he extorts fabricated dirt from a foreign government for his political gain, he is obviously in violation of his oath. He is not

protecting the constitutional right of Americans to choose their own leaders in free and fair elections. What he is doing is protecting himself and his own power.

What does the President's oath of office mean if violating it carries no consequences? If his oath means nothing and he cannot be charged with a crime, then he is bound by nothing. And if we will not hold him to his oath, are we not surrendering our own oath—our own oath to protect and defend the Constitution?

The second question is, Do we believe that this is a government of the people, by the people, and for the people? Because the President's lawyers stood on the floor right over there and said, in short, it is not.

Alan Dershowitz argued that nothing the President does to get reelected can be impeachable as long as he believes his reelection is in the public interest. The President's counsel continued to build on that argument even after they claimed it was misunderstood—this from the same administration that holds that the President cannot be charged with a crime, that he exists on a plane—literally a plane above the law, as it applies to everyone else.

If the President may commit crimes in office and cheat in an election to stay in power, then it is no longer a government of, by, and for the people. This is a government of, by, and for Donald Trump. The proposition of free and fair elections in America is gone, replaced by elections that happen on terms set by Donald Trump or on terms set by a future President with the same sort of boost from a foreign power.

Putting aside whatever political fallout there may be in the days and weeks ahead, we have to ask, how can the Senate accept this degradation of the sanctity and security of free elections? Isn't this institution supposed to protect our elections and defend our Constitution?

The President's attempt to cheat in the election and the extreme lengths he has gone to cover it up are obviously dangerously wrong. What he did is a violation of his oath. It is a betrayal of the system of democratic government left for us by the Founders. And we have no choice. He is guilty. He must be convicted.

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[From the CONGRESSIONAL RECORD, February 3, 2020]

STATEMENT OF SENATOR JOE MANCHIN, III

Mr. MANCHIN. Madam President, I rise today to speak on the impeachment trial of President Donald John Trump. I know this was not a difficult decision for many of my friends and colleagues on both sides of the aisle, but it is one that has weighed heavily on me. Voting whether or not to remove a sitting President is no easy decision, and it shouldn't be, as the consequences for our Nation are severe.

As a moderate, centrist Democrat from West Virginia with one of the most bipartisan voting records in the Senate, I have approached every vote I have cast in this body with an open mind and pride myself in working across the aisle to bring my Republican and Democratic friends together to do what is best for our country.

Where I come from, party politics is more often overruled by just plain old common sense, and I have never, in over 35 years of public service, approached an issue with premeditated thoughts that my Republican friends are always wrong and my Democratic friends are always right. Since the people of West Virginia sent me here in 2010, I have never forgotten the oath I took to defend the Constitution and faithfully discharge the duties of the office of which I am honored to hold.

It is by the Constitution that we sit here today as a court for the trial of impeachments. It is the Constitution that gives us what Hamilton called the “awful discretion” to remove the President from office.

At the start of this trial, my colleagues and I took an oath swearing—swearing—to do impartial justice.

I have taken this oath very seriously throughout this process, and I would like to think my colleagues have done the same, because, as the House managers and our former colleague Republican Senator John Warner from Virginia said: It is not just the President who is on trial here but the Senate itself.

The Framers of the Constitution chose the Senate for this grave task because, according to Hamilton, they expected Senators to be able to “preserve, unawed and uninfluenced, the necessary impartiality” to discharge this awesome responsibility fairly, without flinching.

The Framers knew this would not be easy, but that is why they gave the job to us, the Senators. They believed the Senate was more likely to be impartial and independent, less influenced by political passion, less likely to betray our oaths, and more certain to vote on facts and evidence.

This process should be based simply on our love and commitment to our country, not the relationship any of us might have with this President. I have always wanted this President and every President to succeed, no matter what their party affiliation, but I deeply love our country and must do what is best for the Nation.

The Constitution refers to impeachment “trials” and says the Senate must “try” impeachments. The Framers chose their words carefully. They knew what a trial was and what it meant to try a case. By using the term “standards of judicial fact finding,” it calls on us to do what courts do every day and receive relevant evidence and examine witnesses.

Sadly, the Senate has failed to meet its constitutional obligation, set forth by the Framers, to hold a fair trial and do impartial justice, and we have done so in the worse way, by letting tribal politics rule the day.

I supported President Trump’s calls for a fair trial in the Senate, which he suggested himself would include witnesses. But instead this body was shortchanged, with a majority of my Republican colleagues, led by the majority leader, voting to move forward without relevant witnesses and evidence necessary for a fair trial, as our Framers intended.

History will judge the Senate harshly for failing in its constitutional duty to “try” this case and do impartial justice, to defend the Constitution, and to protect our democracy. Sadly, this is the legacy we leave to our children and grandchildren.

Removing a President from the office to which the people have elected him is a grave step to take, but the Framers gave the Senate this solemn responsibility to protect the Constitution and the people of this Nation.

Over the duration of this trial, I have listened carefully as both the House managers and the White House Counsel made their case for and against the Articles of Impeachment. I commend both sides for their great and grueling work in defending their respective positions.

The House managers have presented a strong case, with an overwhelming display of evidence that shows what the President did was wrong. The President asked a foreign government to intervene in our upcoming election and to harm a domestic political rival. He delayed much needed security aid to Ukraine to pressure newly elected President Zelensky to do him a favor, and he defied lawful subpoenas from the House of Representatives.

However, the President's counsel, too, defended their actions by laying out their case of the President's actions. They pointed to the unclassified transcript of President Trump's July 25 call with newly elected Ukrainian President Zelensky to make the argument that Trump discussed burden-sharing with other European countries and a mutual interest in rooting out corruption. They presented their views that the President was not given due process in the House of Representatives and highlighted the expedited nature of the House's proceedings. Finally, they argued: If a President does something which he believes will help him get elected and re-elected in the public interest, that cannot be the kind of quid pro quo that results in impeachment.

Over the long days and nights of this trial, I have listened to both sides present their case and answer our questions. I remain undecided on how I will vote, but these points I believe to be true. First, it was not a "perfect" call. A newly elected President Zelensky, with no experience in international politics, gets a call from the leader of the free world asking for a favor related to U.S. domestic political affairs.

No one—no one—regardless of political party, should think what he did was right. It was just simply wrong. Pressuring a NATO ally who is actively fighting off Russian aggression in his country is wrong. President Zelensky, or anyone else, should never feel beholden to the superpower of the world for a "favor" before they can receive military aid. It is not who we are as a country. We stand shoulder to shoulder with our allies and never, ever condition our support of democracy for a political favor.

Of all of the arguments we have heard from the House managers and White House Counsel during the long days and nights we have sat here, the most dangerous and the most troubling to me is the false claim that the President can do no wrong, that he is above the law, and if it is good for the reelection of the President, then, it is good for our country. That is simply preposterous. That is not who we are as Americans.

That is not how I was raised in the small coal mining town of Farmington, WV. Where I was raised, no one believed they were better than anyone else and could act with total disregard for the well-being of their neighbor if it was for their best interest. That

is not why, over 230 years ago, the founding generation rebelled against a King and refused to crown a new one in this Republic. So let me be clear. No one, not even the President, is above the law.

Finally, the purpose of impeachment is not to punish the President but to protect the public. The ultimate question is not whether the President's conduct warrants his removal from office but whether our Nation is better served by his removal by the Senate now with impeachment or by the decision the voters will make in November.

As Hamilton warned us, impeachments "seldom fail to agitate the passions of the whole community." They divide us on party lines and inflame our animosities. Never before in the history of our Republic has there been a purely partisan impeachment vote of a President. Removing this President at this time would not only further divide our deeply divided Nation but also further poison our already toxic political atmosphere.

In weighing these thoughts, and of all of the arguments brought forward in the case, I must be realistic. I see no path to the 67 votes required to impeach President Trump and haven't since this trial started. However, I do believe a bipartisan majority of this body would vote to censure President Trump for his actions in this manner. Censure would allow this body to unite across party lines and as an equal branch of government to formally denounce the President's actions and hold him accountable. His behavior cannot go unchecked by the Senate, and censure would allow a bipartisan statement condemning his unacceptable behavior in the strongest terms.

History will judge the Senate for how we have handled this solemn constitutional duty, and without bipartisan action, the fears of the great Senator Byrd will come true. As he said during the Clinton impeachment, the Senate will "sink further into the mire" because of this partisanship. "There will be no winners on this vote," Byrd said. "Each Senator has not only taken a solemn oath to support and defend the Constitution, but also do 'impartial justice,' to help the Nation, 'so help me God . . . . That oath does not say anything about political party; politics should have nothing to do with it."

I am truly struggling with this decision and will come to a conclusion reluctantly, as voting whether or not to remove a sitting President is the most consequential decision that I or any U.S. Senator will ever face.

But regardless of my decision, and in the absence of 67 votes, I am reminded again of the words of Senator Byrd: The House and Senate—Republicans and Democrats—and the President "must come together to heal the open wounds, bind up the damaged trust, and, by our example, again unite our people."

"For the common good, we must now put aside the bitterness that has infected our Nation . . . . We [must] begin by putting behind us the distrust and bitterness caused by this sorry episode, and search for common ground instead of shoring up the divisions that have eroded decency and good will and dimmed our collected vision."

It is not the legacy of the individual Senators we should be concerned about, but it is the legacy of this great institution, the U.S. Senate, that we leave for generations to come.

I thank you, and I ask the good Lord to continue to bless this great country of ours during this trying time.

[From the CONGRESSIONAL RECORD, February 3, 2020]

STATEMENT OF SENATOR MARSHA BLACKBURN

Mrs. BLACKBURN. Madam President, before I begin, I really want to take a moment to thank our friend and Majority Leader MCCONNELL for the manner in which he has worked to make this trial run so smoothly. I also thank our colleagues for their perseverance and, of course, the staff that has worked so diligently and has been so patient as we have worked through this process.

The impeachment trial of President Donald J. Trump was a moment in history that should have been shrouded in the gravity of its potential consequences. Instead, day by day, we endured hyperbole in its most unserious form.

It is easy to forget that America's appetite for scandal fades quickly once you exit the beltway around Washington, DC, but I encourage my colleagues to recognize that the enthusiasm with which the House managers have sought President Trump's removal is completely and inarguably divorced from reality in the heartland.

As it appeared to my fellow Tennesseans, the intentional mishandling of the House of Representatives' constitutional duty was nothing more than an attempt to prelitigate the 2020 election. That is correct—to prelitigate the 2020 election and to remove President Trump from office and thereby remove him from the ballot.

Our partisan friends had decided on the outcome that was necessary for them. They just needed to find a path that was going to get them there. So they had their outcome. They needed a path.

We saw House Democrats freeze out the President's counsel, refusing them an opportunity to fairly participate in the House Intelligence Committee's investigation.

House Manager SCHIFF created the supposed conversations he falsely attributed to the President and waited to see if his assertions would be questioned or if they were going to be accepted as fact.

Let me tell you something. I am a mom and I am a grandmother. I will tell you this. I don't think there is any mother on Earth who would stand for it if her child did such a thing to a coach or a teacher or a Scout leader or a minister. They would not stand for it, and yet the Senate was expected to indulge this unseemly behavior. This is something that is appropriate that we question.

The House managers relied heavily on the assertions of a whistleblower but refused to reveal anything about the circumstances that led to the whistleblower's report. So here we are at the end of the trial. Do we know if the whistleblower is a person or if it is a group of people? Does the report represent a consensus of ideas or just biased opinion? Was it prepared by an individual or prepared by a committee?

No one can answer that question except House Manager SCHIFF and his staff from the House Intel Committee, but that is not something they wanted to come down and talk about.

When it became clear that the White House would push back on witness subpoenas seeking testimony protected by executive privilege, House Democrats chose to move on rather than fight as hard as they could for their case. They looked at those subpoenas, thought about the evidence that might come from them, and decided: not worth the trouble. Instead, they tried to rely on the pandemonium created by a historic moment to convince their colleagues and the American people that justice demanded a do-over—a do-over for the House impeachment.

When that strategy failed, they blamed the Members of the U.S. Senate for our unwillingness to go in and clean up their mess. This wasn't a pressure tactic; it was a manipulation tactic aimed right at the hearts of the American people.

Unfortunately for the House managers, the people see with dazzling clarity what has transpired within the four walls of this Chamber. The House managers have asked us to go on the record and rubberstamp history's first—history's first—impeachment inquiry to be filed solely on the basis of partisan politics—first one. They have asked us to ignore how quickly they moved to impeach President Trump and to not compare their timeline to the timelines from the Nixon or the Clinton impeachment.

Colleagues, I did my constitutional due diligence. I have read the House managers' brief and those reports prepared by the House Republicans and the President's counsel. I saw it all in black and white, and it was my due diligence that has led me to support acquittal.

Now, when I was serving in the House, there were times when I became frustrated with President Bush or, then, with President Obama. And when we, as Members of the House, at that point in time were faced with President Obama's apology tour, his senseless pursuit of government-run healthcare, and his involvement in the Fast and Furious scandal or the DACA executive memo, my colleagues and I discussed the possibilities of impeachment: What are we going to do about this? We looked at all the facts, and ultimately we chose a different path, a different path that respected the American people. We litigated our policy differences in the courts, where those battles belong.

So, Madam President, I ask my colleagues that, when the time comes, they exercise the same restraint. I implore every Member of this body to recognize the supremacy of the Constitution over partisan spin. Vote to acquit. Vote to reject the two Articles of Impeachment.

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[From the CONGRESSIONAL RECORD, February 3, 2020]

STATEMENT OF SENATOR MARIA CANTWELL

Ms. CANTWELL. Madam President, I come to the floor to join my colleagues speaking about what has transpired over the last several weeks and also to say something that I think is maybe not as obvious as what people realize, and that is that election inter-

ference is the issue of our day. It is not because we just spent 11 days talking about it, and what might have happened in the Oval Office about interference in the upcoming 2020 election. It is the issue of our day because we live in an information age, and weaponizing misinformation has become a lethal campaign tool. That is to say that, if you tarnish your opponent enough with misinformation, accuse them of corruption, then you can either score by wounding them fatally—that is, by getting people not to vote for them or by disincentivizing people to vote at all.

Claiming corruption seems to be a pretty good tool these days to wound anybody, to wound institutions, the free press, legitimate government oversight, but most seriously, it wounds our democracy by sowing doubt into free and fair elections. Once voters believe the election results are corrupt, it is hard for them to have faith in the results, and it is hard to make tough decisions that we need to make as a society to move forward. Voting, in and of itself, does give us confidence as a nation, unless we know there are free and fair elections, we know the public has spoken and the results are legitimate.

I am personally grateful to my predecessor, Senator Slade Gorton, for how he handled the 2000 election. After a 3-week recount and a margin of less than one half of 1 percent, with control of the Senate, a 50–50 split to be decided, he conceded. Since then—and even at that time—some States tried to suppress provisional ballots. But Senator Gorton not only believed that provisional ballots were legitimate, but he believed that the election was correctly decided. That must have been a tough moment for him as he saw a shift in public sentiment in the State of Washington, as we have moved more toward a different direction.

But today we live in a world of disinformation, where distrust can be served up like your own personal cocktail. After consuming and analyzing endless amounts of personal data about you, someone knows exactly what disinformation tactic will work best with you. It is almost like disinformation on steroids.

Our adversaries, the Russians, are especially sowing these seeds of distrust into our democracy trying to dissuade people from even voting and more seriously trying to divide us as a Nation and tarnish our democracy. I don't know if this is some payback from President Putin, who believes that the United States helped in the demise of the Soviet Union, or if Russia is just trying to undermine American and European trust and free and open democratic systems; or if Russia is trying to divide Europe so it can dominate European energy supplies and exert its influence over European policies. I just know this: We are not the first act of this play.

This has been going on for many years and in many places. They have interfered in European elections. A 2018 report shows, “the Europeans launched several multilateral and regional initiatives to improve Europe’s reliance to improve Europe’s resilience to building collective defenses against disinformation and cyber-attacks, improving cross-border cooperation . . . and applying sanctions against malicious actors.”

The Russians interfered in our 2016 election, our own intelligence agencies agreed.

The Special Counsel's investigation "established Russia interfered in the 2016 election principally through two operations. First, a Russian entity carried out a social media campaign that favored Presidential candidate Donald J. Trump and disparaged Presidential candidate Hillary Clinton, and second, a Russian intelligence service conducted computer intrusions and operations against entities, employees, and volunteers working for the Hillary Clinton campaign and released stolen documents."

We must fight back against Russia or anyone who interferes in our elections. Protecting our elections should be a bipartisan effort. We should listen to what the intelligence community says, because they are warning us now that Russia will interfere again in the 2020 elections.

That is why I take so seriously the House charges that President Trump was involved in a scheme, over a long period of time, involving many people, to ask the Ukrainians to interfere in our election.

As Federal Election Commissioner Ellen Weintraub said, "let me make something 100% clear to the American people and anyone running for office. It is illegal for any person to solicit, accept, or receive anything of value from a foreign national in connection with a U.S. election. This is not a novel concept."

So why has President Trump continued to sow distrust in our elections? He thought it was okay to ask the Russians to interfere in 2016, and he seems to be inviting Ukrainian interference in 2020.

As one of my former campaign staffers asked last weekend, "are campaigns now going to be communications directors, fundraising directors, and foreign operations directors? You know, those people who go around and seek influence, perhaps dark money or endorsements from foreign governments? Will this become some sort of norm because we're not acting?"

We already know what the dark, murky world of Paul Manafort looks like. That is why it is so important for us to be clear here. Seeking, requesting, and accepting interference in a U.S. election campaign is wrong. It is not just inappropriate, it is not just improper, it is illegal. By calling it improper or turning a blind eye in this case, is enabling more election interference.

What is not clear is who are all the President's men in this administration who are helping him abuse his power. He is using his office for political gain. How are they accomplishing this task for him?

It is so disappointing to see that this might be happening in our Nation. Where will the abuse stop? I know this. As a young girl, I remember the Saturday Night Massacre, the time when Bill Ruckelshaus and Elliot Richardson stood up to illegal behavior. My father, at the time was definitely a Democrat, but he wanted me to understand this lesson. People of the other party might not share the same philosophy, but they did share the same Constitution, and the scales of justice are balanced.

Yes, there is probably no harder task than to stand up to the President of your own party, but that is what Bill Ruckelshaus and Elliot Richardson did.

I remember that lesson and called Bill Ruckelshaus after Jeff Sessions recused himself and was fired. Bill's advice was prophetic.

He said, “You should use this opportunity now to make sure the next Attorney General will be an independent and help rein in this president’s abuse of power.” Well, we obviously did not get that done, and we all know what that outcome has been.

It occurred to me last weekend that maybe the Saturday Night Massacre in this case has happened. Maybe John Bolton and Fiona Hill will turn out to be those people who stood up to the abuse of power. I know this: It is important to have listened to them.

Twice in this gallery over the last several weeks I heard a young baby cry. I thought how unusual that somebody would bring a child to an event like this. Probably their parents wanted to be part of history. And then I thought about what that child would say, probably over the rest of their life: that they had been at this impeachment trial.

But what I want to know is about the reflections 30 or 40 years from now. Will we be remembered for rooting out illegal activity, stopping interference in our elections or not, or will this moment have been forgotten?

I know my constituents have been clear about this—and I don’t mean my constituents that support the President or my constituents that don’t support the President. I mean my constituents who want to know that we are going to enforce the law. They don’t care about what the outcome is in the next election or how it might benefit either party. And it is clear that either party could overstep in this situation. They want to know if we are going to uphold the oath of office and hold people accountable for wrongdoings that they pursue.

I hope that we have taken this election interference issue seriously. I plan to work with my colleagues, on a bipartisan basis, to get more laws passed on election security and to stop interference. I have been a loud and consistent spokesperson for better cybersecurity in our Nation. I am not going to let our democracy be eroded by foreign interests that want to harm what is so precious in our Nation. I will be voting for both articles, and for impeachment.

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[From the CONGRESSIONAL RECORD, February 3, 2020]

STATEMENT OF SENATOR BRIAN SCHATZ

Mr. SCHATZ. Mr. President, the American experiment was a radical one. It imagined equal justice under the law. It imagined equal protection under the law. It imagined a cumbersome system in which tyranny could be avoided by the constant struggle between elected and appointed leaders, and it intentionally sacrificed speed, efficiency, and convenience to avoid the abuse of power. And so it is with unending regret that I see what is happening.

I grieve for the Senate, an institution both hallowed and flawed, an elite place in the worst sense of the word, and yet still the main place where American problems are to be solved. To paraphrase Winston Churchill, the Senate is the worst legislative body, except for all of the others.

There are millions of Americans who have formed a basic expectation about how a trial is to function based on hundreds of years of law and based on their common sense. Make no mistake—what

the Senate did was an affront to the basic idea of a trial. And for all of the crocodile tears of my colleagues, all of the fake outrage at the accusation, we must call this what it was—it is a coverup.

I don't know what Mulvaney or Bolton or Pompeo would say. I don't know what the documents would illuminate. And I believe it is normally very dangerous to ascribe motives to fellow Senators when criticizing their vote. But it is impossible for me to escape the conclusion that they don't want to know; that they wanted to get this over with before the Super Bowl, of all things. They are afraid of this house of cards falling all the way down.

As I look at the Republican side of the Chamber, I know this moment in history has made their particular jobs extraordinarily difficult, requiring uncommon courage. They have to risk the scorn of their voters, their social circle, their colleagues, and their President in order to do the right thing.

On one level, I knew the likely outcome, but the bitter taste of injustice lingers in my mouth.

On behalf of everyone who couldn't get away with an unpaid traffic fine, is in jail for stealing groceries so they could eat that night, who can't get a job because of medical debt, I say shame on anyone who places this President or any President above the law. The President is not above the law. No one is above the law. The President is guilty on both counts.

The Constitution gives extraordinary powers to the President under article II, and that makes sense because without a powerful magistrate, the government can't function. But in granting these powers, the Framers thought carefully about how to constrain them, and they decided that a President could be controlled to greater or lesser degrees by the legislature, by the judiciary, and by the voters. But the Framers couldn't contemplate this level of polarization where, even in the face of the overwhelming evidence of high crimes, one party would not just exonerate him for it but, in fact, ratify these crimes. They didn't imagine that one party would be so uniformly loyal to its President that it could maintain a hammerlock on the Senate, preventing the prospect of 67 votes from ever being available for removal.

I don't think we are in danger of the impeachment process becoming routine; I think we are in much greater danger of making the impeachment process moot. And if so, God help us all.

But all is not lost. We remain a government of, by, and for the people. If people across the country find this as odious to our basic values as we do, in 8 months the American public can render their own verdict on the Senate.

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[From the CONGRESSIONAL RECORD, February 3, 2020]

STATEMENT OF SENATOR JAMES M. INHOFE

Mr. INHOFE. Mr. President, nearly 20 years ago, I was here in this exact spot—I remember it so well—deliberating the guilt or innocence of a President. It happens that at that time, it was President Clinton from your State of Arkansas. At that time, I said that I thought it would probably be the most important vote I would cast as a Senator. I was wrong. I think my vote on Wednesday—

the day after tomorrow—to acquit President Trump will be the most important vote of my career. I really believe that.

Over the past few weeks, as we have considered impeachment, there has been a lot made of the fact that I was willing to vote to convict President Clinton 20 years ago and yet to vote the other way in the current process we are under right now. Putting the morality question from President Clinton aside, this supposed debate highlights the central point of the differences in the impeachment process and why President Trump should not be impeached.

Before Clinton was even impeached, he admitted to the crime of perjury. This is a big difference because we have a President right now who has not admitted that. In fact, there have not really been accusations of a crime. Our debate then was about whether perjury was a high crime or misdemeanor. I believe it was. As I said then, the President should be held to the highest standard.

But that was substantially different than the question before us today. The question put to us by the House managers is an evidentiary one. It is one that asks the question if, according to the evidence presented, there is a determination that President Trump is guilty of a crime, and the answer is no. Presidents should be held to the highest standard, but that standard can't be a false, moving standard that isn't based on evidence or is established by a court of public opinion.

Here is why I will vote to acquit the President. The whole impeachment inquiry was initiated on the basis that President Trump orchestrated the quid pro quo with Ukrainian's President during a phone call on July 25 of 2019. It is kind of confusing.

A lot of people don't really understand what it is all about, but Ukraine has had serious problems. You know what is happening. The Russians have been there mass murdering the Ukrainians for a long period of time. We have watched that happen. So they kind of put this thing together saying: Well, there was an arrangement made by President Trump that they would withhold military aid to Ukraine unless there was a deal they could make and have something investigated by the President of Ukraine. Now, the House managers spent 75 percent of their time on this point and driving home the importance of our partnership with Ukraine and talking about the Russian aggression. The facts weren't there, but, worse, it is hypocritical. There was nothing wrong with President Trump's phone call with President Zelensky.

You might wonder how I can be so sure. It is simple. The House Democrats' allegations were secondhand, and that means they were hearsay. There was not one direct witness. In fact, they had 17 witnesses in the House of Representatives and not one of them were firsthand. The transcript speaks for itself. There was no evidence of a quid pro quo or of any wrongdoing, whatsoever, just of a President who understands both the importance of Ukraine as an ally and the importance of rooting out corruption. President Zelensky said publicly that he felt no pressure. He testified about this and Trump asking to investigate anything in exchange for foreign aid.

You have to keep in mind we have a very conservative President. He doesn't just dish out foreign aid to everybody who needs it. In this case, there was a necessity to have military aid. We couldn't get any lethal military aid from President Obama. All he wanted

to send was blankets and K-rations. They don't have K-rations anymore; they call it something else. MREs. But, nonetheless, there was not going to be any military aid sent to them.

The Trump administration placed a brief, temporary hold on the aid to Ukraine to ensure that the American taxpayers were not going to be abused. This is very significant. He did this to Ukraine to make sure that the amount of money that was sent in there was going to be used properly and the amount of military aid that was going to be used.

But at the same time, you have to keep in mind he was doing that with everybody else too. He is just not a fast-spending President. He is going to make sure things have to be made in accordance with their needs. In fact, at other times, he withheld the same type financial aid to Afghanistan, South Korea, El Salvador, Honduras, Guatemala, Lebanon, and Pakistan. So the fact that he did it with Ukraine was consistent with his other policies. This is what he does and what he has always done.

I am confident about this because I talked to President Trump directly about it. I am the chair of the Senate Armed Services Committee, the committee is responsible for authorizing lethal aid to Ukraine. I have been working on securing that lethal aid for a long period of time, dating back to 2014. In 2014, we had a different President. It was President Obama. And then the Ukraine President Poroshenko—I can remember being in Ukraine with Poroshenko, and I talked to him about this. This was the same time Russia was in Ukraine and was mass killing the Ukrainians. We went to President Obama to get help, and he wouldn't do it. He didn't want to send any lethal military aid. And he said over and over again—we talked about blankets and K-rations. When President Trump came into office, he changed it. He is the first President to provide lethal aid to Ukraine. He has been a committed partner in the region helping them withstand Russian aggression.

I bring this up because during the first 3 days of the House managers' presentation, about 75 percent of that time was spent on this issue talking about his lack of support for Ukraine, when in reality, this President has been supporting Ukraine. The House managers who were serving in the House at that time—this is significant. Of the House managers—however many were sitting over here for the last week—they are all talking about things they want to do for Ukraine. Yet the first vote that was taken originated in the Armed Services Committee for FY 2016, and it happened to be that the Democrats—the very three Democrats who were serving at that time—voted against it. They didn't vote for it. This is the type of thing you get when this hate-motivated stuff was going on for such a long period of time.

The House didn't prove that Trump committed a crime. I am the first to admit I am not a lawyer. Sometimes I think that plays to my advantage. I look at things in a different way. I try to just inject a little bit of common sense. I listened to the lawyers and, frankly, I didn't even understand what some of them were saying, but I do know pretty much what is going on around here.

In this case, the reasons behind why the President should not be impeached are common sense. He didn't commit a crime. That

didn't come just from me. You would expect me to say that. That came from others who were the well-respected attorneys who were involved in each side of this case. Each of the past impeachment cases in the House of Representatives accused Presidents Johnson, Nixon, and Clinton of committing a crime. This President didn't commit a crime. But Clinton did, and he admitted that he did. It was perjury at that time. That is a crime. It was the same thing with Nixon and the same thing with Johnson. So all those things that have happened in recent history have been crimes but not with this President.

The Democrats wanted to impeach President Trump since he took office. I think there was a witness we had today—I believe it was today—they had a visual up here that showed all the people who have been trying to impeach President Trump ever since he took office. I am talking about the first week he was in office. It was all documented up there. They are still at it. I have no doubt they will continue to do that, but it is not going to work. It didn't work in this case.

Democrats have wanted to impeach him since he took office. The Washington Post reported the concerted effort by the leftwing advocacy groups to move toward impeachment of the President only minutes after his inauguration. So they have been looking for a reason to impeach President Trump.

I think one of the stars of the testimony that went on was Alan Dershowitz. He is someone who is held in the highest regard. He is a law professor at Harvard University, and he is a strong Democrat. He is not a Republican. First thing he did was admit he voted for Hillary Clinton in 2016, so that qualifies him in a different way than most of the people who were here as witnesses. He was direct in his presentation and shredded the Democrats' case. He made it clear that abuse of power should be a political weapon suited for a campaign, not impeachment, as abuse of power is not a crime or impeachable conduct.

Dershowitz also explained that virtually every President since President Washington could have been accused of impeachment if they used the criteria that the House managers—the ones who were sitting over here—were using. That was a level that could not be used or it would have affected every other President if it had been used at that time.

He also had an important comment on whether or not we needed to hear sworn testimony from John Bolton. This is what he said. This is a quote by Dershowitz. He said: "Nothing in the Bolton revelations, even if true, would rise to the level of an abuse of power or an impeachable offense." That is Alan Dershowitz.

It is clear that President Trump must be acquitted of the charge of abuse of power on its merits. A vote to convict in this case would be a dangerous precedent.

I would say, time and time again, that during the trial, the House managers have preached at us that the truth matters, that facts matter; that we must convict the President and remove him from office. In fact, the House managers' closing arguments—I tried to keep count of every time they made the accusations using the words "cheat," "obstruction," "crimes," and it was so many

times, I lost track—but truth matters. Just because you say the President has committed a crime doesn't make it true.

Here is what is true. This has been a partisan process from start to finish. Compare that to the past. The impeachment inquiry against President Nixon was authorized by a vote of 410 to 4 in the Congress, an overwhelming bipartisan vote. The same thing was true with Clinton. They had 31 Democrats who voted to impeach the President. Yet in the vote of this impeachment inquiry, the final vote to impeach President Trump was strictly partisan. Not a single House Republican voted to impeach the President. On the contrary, nearly every House Democrat did. The only bipartisan vote was against impeachment.

I listened to the facts and I have listened to the evidence and I am convinced President Trump has not committed a crime. All the legal minds who gave testimony pretty much agreed with that, including Dershowitz.

I think, though, it has to be said there is a hatred for Trump. We have to admit there is something about him that a lot of people don't like, whether it is his demeanor or it is his style. I understand that. But when you listen to the substance, look at what he has done right now rebuilding the military, including killing the top terrorists. I am particularly sensitive to this because this is my committee. We have watched what he has done to the military.

Back during the Obama administration, using constant dollars during the last 5 years of his 8-year tenure, he actually reduced the spending in military by 25 percent. I don't think that has ever been done in the history of this country, except maybe immediately following World War II. Yet there he is, rebuilding the military, and we are now back to where we are competitive. I have to admit, though, during those last 5 years of Obama, we really hurt ourselves in terms of our relationships in terms of China and Russia taking the leadership positions they have taken. He has been rebuilding the military. He has been confirming constitutional judges. Confirming 187 judges in the last 3 years is a record that hasn't been done before. Oddly enough, these are judges who have actually read the Constitution. That is a novel idea.

I would say that this is the best economy we have had in decades. Last week we went to 3.5 percent unemployment. We used to consider 4 percent unemployment as being fully employed, and yet I don't even have a memory to when it has been down to 3.5 percent.

The trade deal we did is new. It shows we are getting things done. We have more Americans working today than ever before, and the median household income is the highest it has ever been.

We are going to have a very significant vote on Wednesday. I think you know how I am going to vote. I am going to vote to acquit the President on both Articles of Impeachment. That will be a very significant vote.

[From the CONGRESSIONAL RECORD, February 3, 2020]

STATEMENT OF SENATOR BENJAMIN L. CARDIN

Mr. CARDIN. Mr. President, constitutional experts will be debating President Trump's misconduct for generations to come, but I think they will reach consensus as to the misconduct of the Senate in the Trump impeachment. This is the first time in the history of impeachment that no witnesses and documents were allowed to be called by the U.S. Senate. It violates the Constitution in the impeachment trial of Donald Trump by its failure to hold a constitutionally fair trial.

At one time, I had the opportunity to present as a House manager an impeachment case here in the U.S. Senate on a district court judge by the name of Nixon. I remember, when I appeared before the Senate, I was cautioned immediately, even though Judge Nixon had been convicted of a bribery type of an offense in a criminal court, that it was incumbent for us to present the witnesses and documents in the U.S. Senate and that the Senate would conduct its own record in regard to the proceedings. Yet, here, we are not having witnesses in the President's impeachment trial.

We had some help from the Supreme Court on this. In *Nixon v. United States*, 1993, pertaining to Judge Nixon's trial, Justice Byron White had a concurring opinion. Justice White said that the term "try," as used in article I, section 3, clause 6, meant that the Senate should conduct a proceeding in a manner that a reasonable judge would deem a trial.

We failed to conduct a constitutionally fair trial here in the U.S. Senate, and we can look to the President's own counsel here for help in evaluating our own conduct of this trial. The President's counsel, Philbin, said that you need to cross-examine witnesses in order to get to the truth. We had no witnesses under oath and no witnesses cross-examined. The tragedy here is, if the President is acquitted, there will always be a question as to whether this was a legitimate trial here in the U.S. Senate.

Let me just spend a moment comparing the impeachment proceedings of President Clinton's versus those of President Trump's.

With President Clinton, there was a trial in the Senate. It was acknowledged to be fair. Witnesses were called. President Clinton and his administration officials had testified under oath and had been subject to cross-examination. President Clinton showed remorse for his conduct and apologized for his misconduct, and President Clinton's misconduct was personal in nature.

Compare that to President Trump. He blocked all witnesses and documents and then, through counsel, prevented the Senate trial from calling any witnesses or producing any documents. He has never shown any remorse. Even though most Senators here know that what he did was wrong, he has shown no remorse whatsoever, and his misconduct was that of abusing his office for personal gain—getting a foreign power to help in his election campaign.

Let me briefly go through article I.

Article I states that he solicited a foreign government, Ukraine, to interfere in the 2020 elections by its publicly announcing investigations that would benefit his reelection, conditioned on official U.S. Government acts of significant value to Ukraine. The House

managers have submitted a voluminous amount of information that supports that, and I refer to that in my attached statement, so I will not spend the time here to go through that.

Yet, even though there is enough in the full record to establish the charges, there are other issues that add to the President's committing these acts.

First, as I mentioned before, the President issued a blanket obstruction for any witness with firsthand knowledge of the President's conduct to provide testimony on these articles here in the U.S. Senate. Yes, we can infer that, if the President had exculpatory witnesses, he would have produced those exculpatory witnesses.

Secondly, the President's impeachment attorney, Mr. Sekulow, said that you cannot view this case in a vacuum. I agree. The President has consistently misrepresented the facts and defamed anyone who challenges him.

Let me just give you one concrete example: the Mueller investigation, which has been cited in this impeachment trial. The President denies Russia's initial involvement in our elections. He resisted efforts to hold Russia accountable. He defamed the reputation of the special counsel. He willfully impeded the investigation. He attacked the integrity of our intelligence and law enforcement agencies. He also wrongfully claimed that the investigation exonerated him. He has done that over and over again. The findings in the report speak to a contrary conclusion. It says Russia interfered in our 2016 elections in a sweeping and systematic fashion. It reads: "If we had confidence that the president clearly did not commit a crime, we would have said so."

There are numerous instances in which the President may have obstructed justice, but we left the further pursuit of that to Congress or to a prosecutor after he leaves office.

Since he has taken office, the President's pattern has been to mislead and misstate facts and to act as a bully against those who have had anything to say against him that he has not liked. It makes it easier for us to understand how the illegal scheme in article I unfolded.

I have one additional fact of why this points to establishing the facts.

The President has consistently shown no remorse. He continuously tells us that the summary of the July 25 call shows a perfect call. We know how controversial that call was. It was far from perfect.

The next hurdle was, is this an impeachable offense? I concluded that it was. It is an abuse of power, which is an abuse of trust, which is clearly what our Founders intended as being a high crime and misdemeanor while in office.

The President's own analysis of this leads to the only conclusion, that being that abuse of power must be an impeachable offense. I say that because we had the President's counsel—once again, Professor Dershowitz—who told us that it was not an abuse of power and that it was not an impeachable offense. Professor Dershowitz said that if your election is in the public interest—if a President does something which he believes will help him get elected in the

public interest—that it cannot be the kind of quid pro quo that results in impeachment.

Well, that is an absurd situation if you adopt the logic of the President's counsel that abuse of power is not an impeachable offense. It is clearly an impeachable offense. The President's conduct has jeopardized America's global leadership in promoting our values. Our values are our strength.

I thought it was very telling, the conversation of Ambassador Volker with Mr. Yermak, who is the principal counsel to President Zelensky of Ukraine.

Ambassador Volker said: Don't start an investigation in Ukraine on your opponent in your election because that will sow division in your community.

Mr. Yermak responded: Do you mean like asking us to investigate Clinton and Biden?

President Trump's conduct has endangered our national security, our global leadership, and American values.

Article II is a lot easier—obstruction of Congress—because the facts clearly establish that the President's blanket obstruction, which he orchestrated, denied any access to individuals or to documents in order to facilitate a coverup of what was uncovered under article I of the Articles of Impeachment.

It is essential for Congress to carry out our responsibilities and to be able to get that type of information from the President. It is exactly what the Framers of our Constitution intended when they developed the checks and balances in our system—that there would be no branch that would have absolute power. We do not have a Monarch.

President Trump has crossed the line with his personal interests over the country's interests. He used the power of his office for his own personal benefit. No one is above the law. We must act to protect the Constitution and our democratic system of government. It is with a heavy heart that I will support both Articles of Impeachment.

Senators have a grave responsibility when it comes to the power of impeachment, particularly when it involves the President of the United States. This is a very profound responsibility in which Senators have to do what is right for our country. Our decision here will affect not only this President but the future of the Presidency itself.

The Constitution leaves to the Senate “the sole power to try all impeachments.” The Constitution clearly requires the Senate to conduct a trial. The Supreme Court, the ultimate interpreter of the Constitution, has given the Senate some guidance in carrying out its responsibility to conduct impeachment trials. Supreme Court Justice Byron White, in a concurring opinion in *Nixon v. United States*, 506 U.S. 224 (1993), found that the Framers of the U.S. Constitution clearly intended “that the term ‘try’ as used in article I, section 3, clause 6 meant that the Senate should conduct its proceeding in a manner that a ‘reasonable judge’ would deem a trial.” Justice White acknowledged that the Senate “has very wide discretion in specifying impeachment trial procedures,” but stated that the Senate “would abuse its discretion” if it were to “insist on a

procedure that could not be deemed a trial by reasonable judges.” Justice Blackmun concurred in Justice White’s opinion.

The Senate has the sole power to “try” impeachments. Yet how can the Senate hold an actual “trial” without hearing direct evidence from witnesses? The Senate chose not to hear additional relevant evidence and key witnesses with firsthand knowledge of the President’s conduct. However, the Senate is not bound solely to the House record when conducting an impeachment trial. The Senate should have heard new and relevant evidence that bore directly on the Articles of Impeachment, including testimony from former White House National Security Advisor John Bolton, Acting White House Chief of Staff and Acting OMB Director Mick Mulvaney, as well as various other OMB and DOD officials. The Senate should have demanded additional documents from the White House, State Department, OMB, and DOD that bore directly on the Articles of Impeachment. The Senate should have been able to receive further evidence before concluding its trial in this case, whether or not the additional evidence was incriminating or exculpatory. As one of President Trump’s counsel Mr. Philbin said during the trial, the best way to find out the truth is for witnesses under oath to be subject to cross-examination. The Senate therefore failed in its responsibility when it did not conduct a constitutionally fair trial. I suspect that Justice White in the Nixon case would have concluded that no “reasonable judge” would conclude these proceedings constitute such a trial.

The evident deficiencies of the Senate trial has made it more difficult for me to carry out my responsibility, and if the Senate fails to convict, that acquittal will always be questioned because of the absence of a fair trial. This process is not fair to the House, Senate, American people, or the President.

Now, in regards to the specific Articles of Impeachment, article I alleges “abuse of power” by the President, stating: “Using the powers of his high office, President Trump solicited the interference of a foreign government, Ukraine, in the 2020 United States Presidential election. He did so through a scheme or course of conduct that included soliciting the Government of Ukraine to publicly announce investigations that would benefit his reelection, harm the election prospects of a political opponent, and influence the 2020 United States Presidential election to his advantage. President Trump also 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 engaged in this scheme or course of conduct for corrupt purposes in pursuit of personal political benefit. In so doing, President Trump 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. He thus ignored and injured the interests of the Nation.”

I reluctantly conclude that the President has indeed engaged in the conduct alleged. I come to this conclusion based first on the record during this impeachment trial.

In weighing the facts and evidence in this case, I have listened carefully to all of the trial proceedings and taken extensive notes,

including during the managers' presentations and Senators' questioning period. Let me highlight a few key facts and pieces of evidence that were determinative for my thinking, with the understanding that this is not an exhaustive list.

First, President Trump indicated his strong interest in having Ukrainian President Volodymyr Zelensky open a political investigation into the Bidens, in a July 26, 2019, phone call between the President and U.S. Ambassador to the European Union Gordon Sondland.

Second, Acting Chief of Staff and Office of Management and Budget Director Mick Mulvaney admitted that a quid pro quo existed in terms of tying the release of U.S. funding to Ukraine to the opening of a political investigation to help President Trump.

Third, there are numerous examples in the record of direct pressure on the Ukrainian Government to open political investigations for the personal benefit of President Trump, including a September 1, 2019, Warsaw meeting between Ambassador Sondland and Andriy Yermak, a top adviser to the Ukrainian President, which directly tied U.S. military assistance to Ukraine to the opening of political investigations to hurt President Trump's political rivals. These accounts were later confirmed in testimony by other U.S. diplomats, and on September 7, Ambassador Sondland reiterated these themes following discussions with President Trump.

Fourth, before the July 25 phone call between Presidents Trump and Zelensky, former U.S. Special Envoy to Ukraine Kurt Volker communicates with Yermak and conditions a White House visit to the launching of a political investigation against the President's rivals in Ukraine.

Fifth, on July 10, 2019, the White House held a series of meetings with high-level Ukrainian defense officials, which conditioned a White House visit from the Ukrainian President with the opening of political investigations in Ukraine sought by President Trump. Notably, former National Security Advisor John Bolton refused to be part of any "drug deal" and asked his staff to report these meetings to National Security Council lawyers. It was explained by National Security Council Member Fiona Hill that, by "drug deal," Ambassador Bolton was referring to conditioning a White House meeting for the President of Ukraine with the Ukrainians starting the political investigations desired by the President.

Mr. Bolton should have testified before the Senate, and we should not have to wait for his book release, after this Senate trial concludes, to get a full accounting of firsthand conversations here that bear directly on the impeachment charges against the President. Press reports indicate that, in his upcoming book, Bolton will state that the President explicitly told him that he did not want to release \$391 million in aid to Ukraine until it announced investigations into his Democratic rivals, including former Vice President Joe Biden. Also, the President specifically asked Bolton to arrange a meeting for President Trump's personal attorney, Rudy Giuliani, with President Zelensky to further the illegal scheme. Notably, the former White House Chief of Staff at the time, John Kelly, believes Bolton's account.

Sixth, the language used in the July 25, 2019, phone call between Presidents Trump and Zelensky was a direct solicitation of

foreign interference (a “favor”) by using a political investigation to help President Trump’s campaign and hurt his Democratic rivals.

Seventh, why did the administration keep secret its hold on assistance to Ukraine in order to allegedly combat corruption? The U.S. has generally notified countries, Congress, and the public when it is withholding foreign aid in order to change the country’s behavior and let them know what steps they need to take to resolve the hold.

As the ranking member of the Helsinki Commission and as a senior member of the Senate Foreign Relations Committee, I know the importance of promoting American values in foreign policy. The President’s conduct has weakened America’s global leadership in fighting corruption, promoting democracy, and strengthening the rule of law.

President Trump’s corrupt use of his foreign policy power compromised America’s ability to help shape the global community that protects American values.

The record shows that Ambassador Volker tried to discourage Mr. Yermak and the Ukrainian Government from trying to prosecute the country’s previous President. Ambassador Volker says he warned it would sow deep societal divisions. Ambassador Volker says that Mr. Yermak quipped in response, “You mean like asking us to investigate Clinton and Biden?”

In addition to the record, I am supported in my conclusions by three other considerations. First, why hasn’t the President presented to the impeachment trial the testimony of the witnesses that have direct knowledge concerning the factual allegations in the Articles of Impeachment? I draw from the absence of such testimony that it would only corroborate the record presented by the House Managers. Secondly, counsel to President Mr. Sekulow acknowledged “you cannot view this case in a vacuum.” I agree. President Trump, during his Presidency, has consistently misrepresented the facts and defamed anyone who has challenged him.

One clear and relevant example of this is how he tried to obstruct the Mueller investigation and how, to this date, he mischaracterizes its conclusion. The President was not exonerated by the Mueller report, which found that Russia interfered in our 2016 Presidential election in a “sweeping and systematic fashion.” President Trump consistently took steps to deny Russia’s involvement in tampering in our elections, resisted efforts to hold Russia accountable, besmirched the reputation of the special counsel while trying to dismiss him or willfully impeded his investigation, and repeatedly attacked the integrity of our intelligence and law enforcement agencies.

Indeed, the Mueller report stated: “If we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state. Based on the facts and applicable legal standards, however, we are unable to reach that judgment.” At a press conference, Special Counsel Mueller reiterated: “If we had had confidence that the president clearly did not commit a crime, we would have said so.” The report detailed numerous instances in which the President may have obstructed justice, but left further pursuit of the matter to Congress or future prosecutors once the President leaves office.

With such a track record, it is easier to understand how the facts presented by the House managers tie together supporting an illegal scheme, orchestrated by the President, to get Ukraine involved in our 2020 elections to help Mr. Trump's reelection.

Third, the President has consistently failed to show any remorse for his conduct, leading to the conclusion that he will continue to violate the sacred trust of the office.

Having been satisfied that the President did commit the offenses in the first Article of Impeachment, the next hurdle is whether these constitute impeachable offenses. I conclude they do. President Trump is not a King or Monarch. The Founding Fathers wisely created a system of separation of powers and checks and balances so as not to concentrate power in only one office or department of government. The Senate must reject President Trump's statement on July 23, 2019, that his right under article II of the Constitution is "to do whatever I want as president."

As noted in the House Judiciary Committee report on constitutional grounds for Presidential impeachment (December, 2019), President Trump's claim here "is wrong, and profoundly so, because our Constitution rejects pretensions to monarchy and binds Presidents with law. That is true even of powers vested exclusively in the chief executive. If those powers are invoked for corrupt reasons, or wielded in an abusive manner harming the constitutional system, the President is subject to impeachment for 'high crimes and misdemeanors.' This is a core premise of the impeachment power." I agree.

The President's counsel notes that abuse of power could become too subjective a standard for Presidential impeachments. But as Representative William Cohen remarked in President Nixon's case, "It has also been said to me that even if Mr. Nixon did commit these offenses, every other President . . . has engaged in some of the same conduct, at least to some degree, but the answer I think is that democracy, that solid rock of our system, may be eroded away by degree and its survival will be determined by the degree to which we will tolerate those silent and subtle subversions that absorb it slowly into the rule of a few."

The premise that abuse of power being a too subjective standard belies common sense and could lead to the absurd conclusion given by Professor Dershowitz—one of President Trump's impeachment counsel—during the trial. He stated: "Your election is in the public interest. And if a president does something which he believes will help him get elected in the public interest, that cannot be the kind of quid pro quo that results in impeachment." Abuse of power, as used by President Trump, to further a scheme to get Ukraine to help in President Trump's campaign must be an impeachable offense if we believe our Constitution guarantees that no one, including the President of the United States, is above the law.

The President's counsel also observes that, when initiating Articles of Impeachment, the House should only proceed if there is bipartisan support, but that decision is left solely to the House. Once the House has acted, the Senate shall proceed to trial and must render a decision based upon the case presented.

There are clear distinctions between the Clinton and Trump impeachments. In Clinton, the trial was acknowledged to be fair; wit-

nesses testified before the Senate; President Clinton and members of his administration testified under oath; and documents were produced for review by the President. President Clinton showed remorse for his conduct and apologized. His misconduct was personal in nature.

In contrast, President Trump blocked all witnesses and documents, and the Senate called no witnesses to testify under oath. President Trump has shown no remorse, continuing to say that the controversial call with President Zelensky was “perfect.” Unlike President Clinton’s misconduct, President Trump has abused the power of his office for personal gain.

Turning to the second Article of Impeachment, obstruction of Congress, the House alleges, that, in response to their impeachment inquiry, President Trump “directed the unprecedented, categorical, and indiscriminate defiance of subpoenas issued by the House of Representatives . . . without lawful cause or excuse, President Trump directed Executive branch agencies, offices, and officials not to comply with those subpoenas. President Trump thus interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, and assumed to himself functions and judgments necessary to exercise of the ‘sole power of impeachment’ vested by the Constitution in the House of Representatives.”

In particular, the second article alleges that the President: No. 1, directed the White House to defy a lawful subpoena by withholding the production of documents; No. 2, directed other executive branch agencies and offices to defy lawful subpoenas and withhold the production of documents, including OMB and the Departments of State, Defense, and Energy; and No. 3, directed current and former executive branch officials not to cooperate with the investigating committees, including Mick Mulvaney and numerous other officials.

After reviewing the evidence, I believe that the Senate record supports conviction under article II as an impeachable offense.

President Trump carried out an extraordinary and unprecedented campaign of obstruction of Congress. Note that President Clinton provided evidence that was requested by the House and Senate during impeachment proceedings, and allowed multiple White House aides to testify in the underlying investigation. President Nixon cooperated to an extent in his investigation, allowing numerous White House officials to testify and providing substantial evidence to Congress in its inquiry. By contrast, President Trump issued an edict directing his administration to refuse to “participate” in all aspects of the House’s impeachment inquiry. In particular, the October 8, 2019, letter from the White House Counsel did not even attempt to assert any specific privileges.

This trial has been very difficult for the Senate and our Nation, but each Senator must in his or her own judgment carry out the oaths we have taken as Senators to support the Constitution as well as our special oath to do “impartial justice” as participants in this Senate impeachment trial, with Chief Justice Roberts presiding over the Senate.

Weighing the credibility of President Trump, I find a clear pattern of misconduct in office. President Trump’s obstruction of Con-

gress shows a deep and abiding disrespect for Congress and lack of appreciation for the separation of powers and system of checks and balances in our government.

As the President and Commander in Chief, President Trump used his power to compromise and corrupt America's values. Our values are our strength. In particular, President Trump has undermined the rule of law, weakened our efforts to fight corruption both at home and abroad, damaged our national security, and helped our adversary, Russia.

President Trump's conduct clearly crossed the line when he put his own personal interests over the country's interests, using the power of his office for his own personal benefit.

No one is above the law. We must act to protect the Constitution and our democratic system of government. It is with a heavy heart that I support both Articles of Impeachment, requiring the removal of the President from office as well as the disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

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[From the CONGRESSIONAL RECORD, February 3, 2020]

STATEMENT OF SENATOR KELLY LOEFFLER

Mrs. LOEFFLER. Mr. President, I am honored and humbled to stand before you today as Georgia's and our country's newest U.S. Senator.

As the 100th Senator, I have spent the least time in Washington, but as the least senior Senator, I am also the most recently attached to the private sector, where the vast majority of Americans live and work. I am intensely aware of the needs and the expectations that Americans hold for us.

Just 2 months ago, I left nearly a three-decade business career to serve the great people of Georgia and our Nation, but being here in this respected, historic Chamber is a very long way from where I started.

I was born and raised as the fourth generation of corn and soybean farmers, and I grew up working in our fields and with our cattle on the feedlot. I waitressed and sold watches and shoes to put myself through school. Then I moved around the country to pursue my dream of a business career. I have been a job seeker and a job creator. I haven't spent my life trying to get to Washington, but I worked hard to stand where I am today.

I have lived the American dream, and each day, I remember where I came from, and I am proud of my beginnings. While I am an outsider to politics, I am not new to getting results. I came here to get things done for the people of Georgia.

So why does all of this matter today, in this historic moment right now, just 2 days from my vote to acquit President Trump? Because for months and, sadly, years for many, Members of Congress who have meant to serve the American people have been tied up in a political game.

There is much to regret here—the House's false urgency to push through deficient articles, only to ask for more time, more evidence, more testimony; the deception of the House managers, who are

more focused on political power than they are on pursuing the facts; the media who ran with the narrative the Democrats planted, with selective, unlawful leaks.

For the last 132 days, Congress has been neglecting the American people. I came here to get things done for Georgians, but for the last 2 weeks, we have been stuck in the Senate Chamber, working on something that most Americans have little interest in.

As my notebooks filled up, I thought to myself, how did this case even make it to the Senate?

When I am around the State, it is very clear that this is not what people at home care about. Georgians aren't losing sleep over a call the President made or questioning his constitutional right to conduct foreign policy. They are concerned with taking care of their families, their jobs, and their freedom to achieve the American dream and live the lives they imagined. I think of young kids, whether in the inner city or on a farm or in the suburbs. What example are we setting in Washington? Why should employers feel that Washington cares about job creation when there is a neglect of the engine that makes America strong?

Why are we here? We are public servants, charged with protecting the Constitution and our country and I hope, in the process, bettering the lives of all Americans.

Despite this monumental distraction, this administration has worked tirelessly to move our country forward.

Last week, the President signed into law the United States-Mexico-Canada Agreement. Sadly, this sat on Speaker PELOSI's desk for 1 year, denying American farmers and workers untold economic opportunity.

Last month, the administration completed a phase one deal with China, now holding China accountable for unfair trade practices and adding to our thriving economy.

For 3 years, as the Democrats have focused on taking down a duly elected President, President Trump's pro-growth policies have given us a booming economy. These policies have resulted in record employment, 7 million new jobs, and a blue-collar boom that is lifting up hard-working Americans.

This administration charges on, but it needs Congress's support if America is to move on with the American dream for all.

With that in mind, I say: Enough. Let's put our trust in the American people. They are the ones who should make a judgment about the President, and they will do that in 9 months. Let's not be so arrogant as to take that decision away from the American people. Instead, let's focus all of our energies on improving their lives. Impeachment does not do that. It is time to move on.

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[From the CONGRESSIONAL RECORD, February 3, 2020]

STATEMENT OF SENATOR TOM UDALL

Mr. UDALL. Mr. President, I come before this body with a deep sadness that this institution has failed the Constitution and failed the American people.

We have reached a low point in our history. We have failed to hold a fair and honest impeachment trial, and we are nearing a

vote wherein we will fail to hold the President accountable for his abuse of power and a coverup. Thanks to the Senate's Republican majority, this body is complicit in that coverup in its refusing to call witnesses and obtain documents to get the full truth. How can we turn a blind eye to the truth as we cast one of the most important votes we will ever take?

Yes, we are approaching a sad day for this body and for this country, but to those across the country who feel profoundly angry and saddened by this miscarriage of justice, my message is this: Do not give up. Do not stop fighting to save our democracy because America is worth the fight. America is worth the fight.

Make no mistake—try as they might to cover it up, the full truth will come out. And the facts that have already been revealed are damning.

The President's handpicked Ambassador, Gordon Sondland, testified, "Everyone was in the loop." The more we find out, the more revealing his testimony becomes.

Not only is the President implicated, so is the Vice President and the Secretary of State and the Attorney General and the President's acting Chief of Staff and his former Energy Secretary and even the White House Counsel, the lead lawyer in this very proceeding.

This is a Pandora's box the Republican Party is fighting to keep shut, but it will not stay shut. The President's misdeeds and his wide circle of accomplices will go down as one of the ugliest episodes in American history.

Even now, the evidence gathered by the House—that the President abused his office and taxpayer funds for personal gain—is staggering. Ambassador Sondland didn't sugarcoat the truth. "Was there a quid pro quo? The answer is yes." That was his quote. Using official power for personal gain—that is the very essence of abuse of power, and that is precisely what this President did. That is hardly even in dispute. The evidence is overwhelming.

The President first withheld a coveted meeting until the Ukrainian President would announce investigations into the Bidens and the debunked conspiracy theory that Ukraine, not Russia, interfered in our 2016 election. The President next withheld congressionally appropriated military aid illegally to try to force the Ukrainian President into making the announcement of the investigations.

The independent Government Accountability Office confirmed that the President acted illegally.

The President threatened our national security, the security of an ally, and the integrity of our next Presidential election. How much more could be at stake?

Ukrainian officials began asking about the aid only hours after the President's now-infamous July 25 call with President Zelensky. That is according to Laura Cooper, the Deputy Assistant Secretary of Defense for Russia, Ukraine, and Eurasia. A former Deputy Foreign Minister in Ukraine reports Ukraine knew of the freeze in July, and the whole world knew once the story broke the news on August 28.

Fortunately, the President got caught and was forced to release the aid. He got caught red-handed and immediately commenced a

scorched-earth blockade in Congress and the courts to cover up his grave misdeeds.

Again, the facts are not in dispute.

So knowing that these are some of the most serious and solemn words I will ever say or utter on this floor, I will vote to convict the President on both Articles of Impeachment. He is guilty by any standard. If he is allowed to act with impunity, he will be a continuing threat to the sanctity of our democracy. He is patently unfit to hold the highest office in our land.

While the Senate may vote to acquit him, he will not be exonerated—not by this sham trial. While the Senate may vote to acquit the President, history will not.

Now, Senators on the other side of the aisle are publicly and not so publicly admitting that they believe the President is guilty, that the House managers proved their case. But these same Senators did not vote to hear witnesses and get documents. They will fail to hold the President accountable for the wrongdoing they now say he is guilty of.

This is one of the worst abuses of Presidential power in our Nation's history. This is as bad as or worse than President Nixon's. Nixon tried to corrupt the 1972 election and cover it up, but he didn't try to extort an ally or invite foreign interference into our election.

At that time, members of his party with courage refused to turn a blind eye. The Republican Party of today bears no resemblance to the party of Howard Baker, who insisted on getting to the truth. Howard asked: What did the President know and when did he know it? It bears no resemblance to the party of Barry Goldwater, John Rhodes, and Hugh Scott, who went to Nixon to tell him the Republican Party could no longer protect him from impeachment and removal.

I am grateful to the honorable officials who had the courage to act this time around, who defied the President's order not to come forward—Ambassador Yovanovitch, Lieutenant Colonel Vindman, Ambassador Taylor, Mr. Kent, and the others. They risked their careers and even their personal safety. We should at least—at least—show the same courage because the consequences of failing to hold this President to account could not be graver.

The guardrails have been taken off. The President invited Russian interference in the 2016 election and invited Chinese interference in the upcoming 2020 election. He said on national television he would probably take foreign interference again. He is unapologetic and unrepentant. What is he going to do next once the Senate Republicans let him get away with this abuse, once we show that we are no longer a coequal branch?

We have never ceded so much power to the Executive. You can rest assured that this President of all Presidents will use that power and abuse it. Take his word for it. He said, "Article II allows me to do whatever I want." Pulitzer Prize-winning Presidential historian Jon Meacham said the President is now, and this is his quote, "functionally a monarch." That is stunning.

Again, these are sad days for our Nation, but as I said at the outset, we cannot and will not concede our democracy. We cannot and will not concede the values and principles that make this Nation

strong. We must restore the balance of power in our government. We must restore accountability. Most importantly, we must start doing the work the American people sent us here to do. Our institutions are not representing what the American people want. Senate Republicans' refusal to hold a fair impeachment trial, which is what 75 percent of the American people wanted, is just the latest example.

While the Senate and the Constitution took a terrible battering the last 2 weeks, I am even more committed to breathing life into our shared principles of representative government. I am going to continue the fight to take obscene amounts of secret money out of our elections, to make it easier to vote, and to bring power back to the American people and not hand it over to an imperial Presidency.

The Senate will have future opportunities to restore our constitutional system. The only question is whether Senators will rise to the occasion.

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[From the CONGRESSIONAL RECORD, February 3, 2020]

STATEMENT OF SENATOR KIRSTEN E. GILLIBRAND

Mrs. GILLIBRAND. Colleagues, over the past few weeks, we have conducted the third impeachment trial in our entire Nation's history for a President.

Let's be perfectly clear about something: Democrats did not want to impeach President Trump. From the start, efforts to begin an impeachment inquiry in the House were met with resistance until the President's reckless behavior and unprecedented actions forced the Speaker's hand. The Speaker could not sit idly by after the President withheld congressionally approved military aid from a U.S. ally in order to orchestrate foreign interference in our upcoming election.

We have worked hard to find common ground with this President, and at times, Democrats have worked together to get good, bipartisan legislation accomplished. But President Trump's brazen misconduct forced this issue. His misdeeds posed a moral challenge to every single Member of Congress. How much corruption should we stomach? How much of our integrity should we sacrifice? How much malfeasance should we tolerate? Will we look the other way as the President flaunts our laws and ignores the Constitution?

Sometimes it can seem far easier to just stay silent. All of us know that it can be easier to avoid angry phone calls. But think about how much harder it would be to explain this moment in history to our children and our grandchildren. Think about how painful it will be to explain if you knew what President Trump did was wrong and you did nothing; if you knew what President Trump did was wrong under the Constitution that you swore to uphold; that you knew it was wrong, but you voted to acquit anyway because of your ambition, because of your political party.

Lest you think you can convince them otherwise, let me dispel this fiction. History's record of this time will be very clear. The American people can see through these lies. They recognize the inconsistencies and the double-speak. The American people are not

naive. They are not stupid. They are not ignorant. They are not immoral.

My Republican colleagues are not naive or ignorant or immoral either. They are good men and women. They love their children, their neighbors, and our country. I consider many of them my friends. When we have dinner together, when we go to visit the troops overseas, we don't do it as Democrats and Republicans. We do it as colleagues, friends, and as peers in this body. We do so as elected Members of Congress, as Senators representing our States and our country.

It should be the very same when we judge President Trump. In I John 2:21, John writes to a group of believers who are in turmoil. He wrote: "I do not write to you because you do not know the truth, but because you do know it and because no lie comes from the truth."

This trial had the goal of accomplishing one thing—to discover the truth, to know what happened, to hold the President accountable. We pledged to listen to receive that evidence fairly and to judge honestly. We swore to defend the Constitution, not to defend a man or a political party, and we should all remember this when we cast our votes, because President Trump is not like you. He is not honest, kind, or compassionate. He doesn't have integrity or moral conviction. He is neither fair nor decent.

We, as Senators who swore to uphold the Constitution, should, based on the facts laid before us, vote to convict. Hold President Trump accountable for what he has done. We have to show the American people, ourselves, that President Trump does not represent our values, that we still believe that we must fight for what is right, for truth, for justice, for honesty, for integrity, and that laws mean something, and we don't put ourselves before the law.

For those who lack courage in this moment, those who are unwilling to do what they know in their heart of hearts, in their conscience and in their deepest thoughts to be right, if they do not do what they know they should, they will be remembered as complicit. They will be remembered as not telling the truth. They will not be remembered well.

I urge you to vote your conscience.

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[From the CONGRESSIONAL RECORD, February 3, 2020]

STATEMENT OF SENATOR LISA MURKOWSKI

Ms. MURKOWSKI. Mr. President, I rise this evening to address the trial of Donald John Trump. The Founders gave this body the sole power to try all impeachments, and exercising that power—we all know—is a weighty, weighty responsibility. This was only the third time in the history of our country that the Senate convened to handle a Presidential impeachment and only the second in the past 150 years.

I was part of a small group that worked to secure a fair, an honest, and a transparent structure for the trial, and we based it on how this Chamber handled the trial of President Clinton some 20 years ago. So there were 24 hours of arguments for each side, 16

hours of questions from Members, with the full House record admitted as evidence.

That should have been more than enough to answer the questions: Do we need to hear more? Should there be additional process? Mr. President, the structure we built should have been sufficient, but the foundation upon which it rested was rotten. The House rushed through what should have been one of the most serious, consequential undertakings of the legislative branch, simply to meet an artificial, self-imposed deadline.

Prior Presidential impeachments resulted from years of investigation, where subpoenas were issued and they were litigated, where there were massive amounts of documents that were produced and witnesses deposed, where resistance from the Executive was overcome through court proceedings and through accommodations.

The House failed in its responsibilities. The House failed in its responsibilities. The Senate should be ashamed by the rank partisanship that has been on display here. We cannot be the greatest deliberative body when we kick things off by issuing letters to the media instead of coming together to set the parameters of the trial and negotiate in good faith on how we should proceed.

For all the talk of impartiality, it is clear to me that few in this Chamber approached this with a genuinely open mind. Some have been calling for the President to be impeached for years. Indeed, we saw just today clips that indicate headlines 19 minutes after the President was sworn into office calling for his impeachment. Others in this Chamber saw little need to even consider the arguments from the House before stating their intentions to acquit.

Over the course of the past few weeks, we have all seen the videos from 20 years ago where Members who were present during the Clinton trial took the exact opposite stance than they take today. That level of hypocrisy is astounding, even for a place like Washington, DC.

The President's behavior was shameful and wrong. His personal interests do not take precedence over those of this great Nation. The President has the responsibility to uphold the integrity and the honor of the office, not just for himself but for all future Presidents. Degrading the office by actions or even name-calling weakens it for future Presidents, and it weakens our country.

All of this rotted foundation of the process—all of this—led to the conclusion that I reached several days ago that there would be no fair trial. While this trial was held here in this Senate, it was really litigated in the court of public opinion. For half the country, they had already decided there had been far too much process; they considered the entire impeachment inquiry to be baseless, and they thought that the Senate should have just dismissed the case as soon as it reached us.

Then, for the other half, no matter how many witnesses were summoned or deposed, no matter how many documents were produced, the only way—the only way—the trial could have been considered fair was if it resulted in the President's removal from office.

During the month that the House declined to transmit the articles to the Senate, the demon of faction extended his scepter, the outcome became clear, and a careless media cheerfully tried to put

out the fires with gasoline. We debated witnesses instead of the case before the Senate. Rather than the President's conduct, the focus turned to how a lack of additional witnesses could be used to undermine any final conclusion. What started with political initiatives that degraded the Office of the President and left the Congress wallowing in partisan mud threatened to drag the last remaining branch of government down along with us.

Mr. President, I have taken tough votes before to uphold the integrity of our courts, and when it became clear that a tie vote here in the Senate would simply be used to burn down our third branch of government for partisan political purposes, I said "enough"—just "enough."

The response to the President's behavior is not to disenfranchise nearly 63 million Americans and remove him from the ballot. The House could have pursued censure and not immediately jumped to the remedy of last resort. I cannot vote to convict. The Constitution provides for impeachment but does not demand it in all instances. An incremental first step: to remind the President that, as Montesquieu said, "Political virtue is a renunciation of oneself," and this requires "a continuous preference of the public interest over one's own."

Removal from office and being barred from ever holding another office of honor, trust, or profit under the United States is the political death penalty. The President's name is on ballots that have already been cast. The voters will pronounce a verdict in 9 months, and we must trust their judgment.

This process has been the apotheosis of the problem of congressional abdication. Through the refusal to exercise war powers or relinquishing the power of the purse, selective oversight, and an unwillingness to check emergency declarations designed to skirt Congress, we have failed. We have failed time and again. We, as a legislative branch, cannot continue to cede authority to the Executive.

The question that we must answer, given the intense polarization in our country, is, Where do we go from here? Where do we go from here? I wish that I had that magic wand. Sadly, I have no definitive answers, but I do have hope because we must have hope.

As I tried to build consensus over the past few weeks, I had many private conversations with colleagues, and so many—so many—in this Chamber share my sadness for the present state of our institutions. It is my hope that we have finally found bottom here, that both sides can look inward and reflect on the apparent willingness that each has to destroy not just each other but all of the institutions of our government. And for what? Because it may help win an election? At some point, Mr. President—at some point—for our country, winning has to be about more than just winning, or we will all lose.

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[From the CONGRESSIONAL RECORD, February 3, 2020]

STATEMENT OF SENATOR TODD YOUNG

Mr. YOUNG. Mr. President, as a U.S. Senator, I swore an oath to uphold the Constitution, and, while sitting in this High Court

of Impeachment, I have fulfilled my duty to serve as an impartial juror.

After hearing all counsel arguments and reviewing all evidence in the voluminous record, including 17 witnesses, 192 witness video clips, and 28,578 pages of evidence, procedural rules, and constitutional concerns, I will vote to acquit the President, preventing his immediate removal from office and disqualification from the ballot.

A fair and accurate reading of this chapter in our Nation's history will conclude that, on the issues of fact and law presented to this High Court of Impeachment, reasonable and public-spirited Senators can disagree. This lends further support to the notion that the American people should be afforded the opportunity to register their opinions by participating in the coming national election.

While the Senate worked to remain impartial and open-minded throughout this trial, it must be acknowledged that a political fever permeated this process from the beginning, dating back not just to the start of the House of Representatives' impeachment efforts, but all the way back to November 2016. As a result, the House improperly impeached. Now, the Senate should exercise restraint. Here is why.

First and foremost, a fair legal process is fundamental to our democracy. The House managers have repeatedly emphasized that no Americans are above the law. I could not agree more: No private citizen, President, or assembled majority of Congress can violate the rights guaranteed to other Americans under the Constitution. Accordingly, the President is entitled to basic due process rights, and the House failed to afford him these rights. Due process includes the right to legal counsel, the right to review evidence, and the ability to confront your accusers—rights denied by the House majority. House managers breathlessly insist that “overwhelming” evidence already in the record proves “beyond any doubt” the President's continued service constitutes an imminent threat to the American people. The House's flawed and rushed process led to unfair proceedings and resulted in superficial, unspecific charges supported by a one-sided, improperly curated factual foundation.

Second, Separation of Powers is a cornerstone of our constitutional republic, and its preservation is essential to prevent abuse of power by one branch over another. A majority of the House should exercise extreme caution when it bases impeachment upon the President's exercise of his foreign relations prerogatives, which are expressly granted to him by the Constitution. Additionally, in developing its Articles of Impeachment, the House majority chose to circumvent the judicial branch of government in order to clarify an issue of unsettled law pertaining to Executive Privilege. Instead, the House simply arrogated to itself a novel and dangerous new legal authority: absolute power to define Executive Privilege, even when the President is exercising his foreign relations powers granted by the Constitution.

As with prior impeachment inquiries, following a formal request by the House, the Federal courts could have compelled the executive branch to provide sensitive documents and witnesses. The House chose to ignore this longstanding precedent because it conflicted with its political timeline. Astonishingly, Speaker PELOSI rushed the mismanaged process forward only to delay it, again for

political purposes, before finally sending the Articles of Impeachment to the Senate. Now the House, having failed to fully develop its evidentiary record, invites the Senate to act as an accomplice to its ramrod impeachment and create a dangerous new 51-vote Senate threshold to override executive branch claims of Executive Privilege.

To accept this invitation would be a violation of a long-established separation of powers.

Senators might be tempted by a burning curiosity or crass political calculation to further develop the House's vague and tainted articles, but the constitutional separation of powers dictates that our legal charge must be more narrowly confined. To act otherwise would violate our oaths and dangerously incentivize calculating and intemperate House majorities to promiscuously impeach rival Presidents. We must set aside our personal preference because, under the Constitution, we are duty-bound by the "sole power to try" the infirm articles before us.

Lastly, Americans should stand against any Senate action which abets the creation of a constitutional crisis through the politicization of impeachment. The House majority's misguided process created a precedent to weaponize impeachment, a new precedent that will lead to serial impeachments in a polarized America. If the House majority had its way and the Senate accepted its invitation to fix their broken articles, either political party would be tempted to impeach and potentially remove their political opponents from office by initiating slapdash impeachment investigations. This new precedent would reduce impeachment to a mere vote of no confidence, similar to that in the U.K. Parliament. During President Nixon's impeachment, then Democratic Chairman Peter Rodino of the House Judiciary Committee urged that, for the American people to accept an impeachment, it must be powerfully bipartisan. This has been dubbed the Rodino rule, and I embrace the standard.

A decent respect for the law and the opinions of fellow citizens and a concern for future precedent requires that I pointedly emphasize what I am not arguing, that a President can lawfully do "whatever he wants," that inviting foreign election interference is appropriate, that absolute immunity attaches to Executive Privilege, or that a statutory offense must be committed to impeach.

In summation, I have ineluctably arrived at a conclusion after impartially applying the law to all facts presented: House managers delivered tainted articles and failed to present requisite evidence to support their exceedingly high burden of proof. Therefore, I am duty bound to join my colleagues who would have the Senate resume the ordinary business of the American people.

The Founding Fathers, who warned of the political nature of impeachment, also provided us a means to address dissatisfaction with our Presidents: frequent elections. This week, Americans began the Presidential election process. For the sake of our Constitution and our Nation, the Court of the American People should render its verdict through an election to address its support of or opposition to the current administration.

[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR MITCH MCCONNELL

Mr. MCCONNELL. Mr. President, these past weeks, the Senate has grappled with as grave a subject as we ever consider: a request from a majority of the House to remove the President. The Framers took impeachment extremely seriously, but they harbored no illusions that these trials would always begin for the right reasons.

Alexander Hamilton warned that “the demon of faction” would “extend his sceptre” over the House of Representatives “at certain seasons.” He warned that “an intemperate or designing majority of the House” might misuse impeachment as a weapon of ordinary politics rather than emergency tool of last resort. The Framers knew impeachments might begin with overheated passions and short-term factualism. But they knew those things could not get the final say, so they placed the ultimate judgment not in the fractious lower Chamber but in the sober and stable Senate.

They wanted impeachment trials to be fair to both sides. They wanted them to be timely, avoiding the “procrastinated determination of the charges.” They wanted us to take a deep breath and decide which outcome would reflect the facts, protect our institutions, and advance the common good. They called the Senate “the most fit depository of this important trust.” Tomorrow, we will know whether that trust was well-placed.

The drive to impeach President Trump did not begin with the allegations before us. Here was reporting in April of 2016, before the President was the nominee: “Donald Trump isn’t even the Republican nominee yet . . . [but] ‘Impeachment’ is already on the lips of pundits, newspaper editorials, constitutional scholars, and even a few members of Congress.”

Here was the Washington Post headline minutes after President Trump’s inauguration: “The campaign to impeach President Trump has begun,” the Washington Post says.

The Articles of Impeachment before us were not even the first ones House Democrats introduced. This was go-around number, roughly, seven. Those previously alleged high crimes and misdemeanors included things like being impolite to the press and to professional athletes. It insults the intelligence of the American people to pretend this was a solemn process reluctantly begun because of withheld foreign aid. No, Washington Democrats’ position on this President has been clear literally for years. Their position was obvious when they openly rooted for the Mueller investigation to tear our country apart and were disappointed when the facts proved otherwise. It was obvious when they sought to impeach the President over and over.

Here is their real position: Washington Democrats think President Donald Trump committed a high crime or misdemeanor the moment he defeated Hillary Clinton in the 2016 election. That is the original sin of this Presidency: that he won and they lost.

Ever since, the Nation has suffered through a grinding campaign against our norms and institutions from the same people who keep shouting that our norms and institutions need defending—a campaign to degrade our democracy and delegitimize our elections from

the same people who shout that confidence in our democracy must be paramount.

We have watched a major American political party adopt the following absurd proposition: We think this President is a bull in a China shop, so we are going to drive a bulldozer through the China shop to get rid of him. This fever led to the most rushed, least fair, and least thorough Presidential impeachment inquiry in American history.

The House inquiry under President Nixon spanned many months. The special prosecutors' investigation added many more months. With President Clinton, the independent counsel worked literally for years. It takes time to find facts. It takes time to litigate executive privilege, which happened in both those investigations. Litigating privilege questions is a normal step that investigators of both parties understood was their responsibility. But this time, there was no lengthy investigation, no serious inquiry. The House abandoned its own subpoenas. They had an arbitrary political deadline to meet. They had to impeach by Christmas. They had to impeach by Christmas. So in December, House Democrats realized the Framers' nightmare. A purely partisan majority approved two Articles of Impeachment over bipartisan opposition.

After the Speaker of the House delayed for a month in a futile effort to dictate Senate process to Senators, the articles finally arrived over here in the Senate.

Over the course of the trial, Senators have heard sworn video testimony from 13 witnesses, over 193 video clips. We have entered more than 28,000 pages of documents into evidence, including 17 depositions. And our Members asked 180 questions. In contrast to the House proceedings, our trial gave both sides a fair platform. Our process tracked with the structure that Senators adopted for the Clinton trial 20 years ago.

Just as Democrats such as the current Democratic leader and then-Senator Joe Biden argued at length in 1999, we recognized that Senate traditions imposed no obligation to hear new live witness testimony if it is not necessary to decide the case—if it is not necessary to decide the case; let me emphasize that.

The House managers themselves said over and over that additional testimony was not necessary to prove their case. They claimed dozens of times that their existing case was “overwhelming” and “incontrovertible.”

That was the House managers saying their evidence was overwhelming and incontrovertible at the same time they were arguing for more witnesses.

But in reality, both of the House's accusations are constitutionally incoherent.

The “obstruction of Congress” charge is absurd and dangerous. House Democrats argued that anytime the Speaker invokes the House's “sole power of impeachment,” the President must do whatever the House demands, no questions asked. Invoking executive branch privileges and immunities in response to House subpoenas becomes an impeachable offense itself.

Here is how Chairman SCHIFF put it back in October. “Any action”—any action—“that forces us to litigate, or have to consider

litigation, will be considered further evidence of obstruction of justice.”

That is nonsense. That is nonsense. “Impeachment” is not some magical constitutional trump card that melts away the separations between the branches of government. The Framers did not leave the House a secret constitutional steamroller that everyone somehow overlooked for 230 years.

When Congress subpoenas executive branch officials with questions of privilege, the two sides either reach an accommodation or they go to court. That is the way it works.

So can you imagine if the shoe were on the other foot? How would Democrats and the press have responded if House Republicans had told President Obama: We don’t want to litigate our subpoenas over Fast and Furious. So if you make us step foot in court, we will just impeach you. We will just impeach you.

Of course, that is not what happened. The Republican House litigated its subpoenas for years until they prevailed.

So much for “obstruction of Congress.”

And the “abuse of power” charge is just as unpersuasive and dangerous. By passing that article, House Democrats gave in to a temptation that every previous House has resisted. They impeached a President without even alleging a crime known to our laws.

Now, I do not subscribe to the legal theory that impeachment requires a violation of a criminal statute, but there are powerful reasons why, for 230 years, every Presidential impeachment did in fact allege a criminal violation.

The Framers explicitly rejected impeachment for “maladministration,” a general charge under English law that basically encompassed bad management—a sort of general vote of no confidence. Except in the most extreme circumstances, except for acts that overwhelmingly shocked the national conscience, the Framers decided Presidents must serve at the pleasure of the electorate—the electorate—and not at the pleasure of House majorities. As Hamilton wrote, “It is one thing to be subordinate to the laws, and another to be dependent”—dependent—“on the legislative body.”

So House Democrats sailed into new and dangerous waters—the first impeachment unbound by the criminal law. Any House that felt it needed to take this radical step owed the country the most fair and painstaking process, the most rigorous investigation, the most bipartisan effort. Instead, we got the opposite—the exact opposite.

The House managers argued that the President could not have been acting in the national interest because he acted inconsistently with their own conception of the national interest. Let me say that again. The House managers were basically arguing that the President could not have been acting in the national interest because he acted inconsistently with their conception of the national interest, a conception shared by some of President’s subordinates as well.

This does not even approach a case for the first Presidential removal in American history. It doesn’t even approach it. Such an act cannot rest alone on the exercise of a constitutional power, combined with concerns about whether the President’s motivations

were public or personal, and a disagreement over whether the exercise of the power was in the national interests.

The Framers gave our Nation an ultimate tool for evaluating a President's character and policy decisions. They are called elections. They are called elections.

If Washington Democrats have a case to make against the President's reelection, they should go out and make it. Let them try to do what they failed to do 3 years ago and sell the American people on their vision for the country.

I can certainly see why, given President Trump's remarkable achievements over the past 3 years, Democrats might feel a bit uneasy about defeating him at the ballot box. But they don't get to rip the choice away from the voters just because they are afraid they might lose again. They don't get to strike President Trump's name from the ballot just because, as one House Democrat put it, "I am concerned that if we don't impeach [him], he will get re-elected."

The impeachment power exists for a reason. It is no nullity. But invoking it on a partisan whim to settle 3-year-old political scores does not honor the Framers' design. It insults the Framers' design.

Frankly, it is hard to believe that House Democrats ever really thought this reckless and precedent-breaking process would yield 67 votes to cross the Rubicon.

Was their vision so clouded by partisanship that they really believed—they really believed—this would be anywhere near enough for the first Presidential removal in American history?

Or was success beside the point? Was this all an effort to hijack our institutions for a monthlong political rally?

Either way, "the demon of faction" has been on full display, but now it is time for him, the demon, to exit the stage. We have indeed witnessed an abuse of power—a grave abuse of power—by just the kind of House majority that the Framers warned us about.

So tomorrow—tomorrow—the Senate must do what we were created to do. We have done our duty. We considered all the arguments. We have studied the "mountain of evidence," and, tomorrow, we will vote.

We must vote to reject the House's abuse of power, vote to protect our institutions, vote to reject new precedents that would reduce the Framers' design to rubble, and vote to keep factional fever from boiling over and scorching our Republic.

I urge every one of our colleagues to cast the vote that the facts in evidence, the Constitution, and the common good clearly require. Vote to acquit the President of these charges.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR CHARLES E. SCHUMER

Mr. SCHUMER. Mr. President, the majority leader can come up on the floor and repeat his talking points, but there are some salient points that are irrefutable.

The first, this is the first impeachment trial of a President or impeachment trial of anybody else that was completed that has no witnesses and no documents. The American people are just amazed

that our Republican friends would not even ask for witnesses and documents.

I thought the House did a very good job. I thought they made a compelling case. But even if you didn't, the idea that that means you shouldn't have witnesses and documents, when we are doing something as august, as important as an impeachment trial, fails the laugh test. It makes people believe—correctly, in my judgment—that the administration, its top people, and Senate Republicans are all hiding the truth. They are afraid of the truth.

Second, the charges are extremely serious. To interfere in an election, to blackmail a foreign country to interfere in our elections gets at the very core of what our democracy is about. If Americans believe that they don't determine who is President, who is Governor, who is Senator, but some foreign potentate out of reach of any law enforcement can jaundice our elections, that is the beginning of the end of democracy.

So it is a serious charge. Republicans refused to get the evidence because they were afraid of what it would show, and that is all that needs to be said.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR JOHN THUNE

Mr. THUNE. Madam President, tomorrow we will be voting on the two impeachment articles sent over to us by the House of Representatives, a process, as the leader pointed out, that really started from the very day this President took office.

I will be voting to acquit the President for several reasons. First and foremost, I do not believe the facts in this case rise to the high bar that the Founders set for removal from office. The Founders imposed a threshold for impeachment of "Treason, Bribery, or other high Crimes and Misdemeanors"—in other words, very serious violations of the public trust.

The Founders were deliberate in their choice of words. They wanted to be clear that impeachment was a severe remedy to be deployed only for very serious violations. When George Mason proposed adding the term "maladministration" to the impeachment clause during the Constitutional Convention, the Framers rejected the proposal because, as Madison pointed out, the term was too vague and would be "equivalent to a tenure during pleasure of the Senate."

The Founders recognized that without safeguards, impeachment could quickly degenerate into a political weapon to be used to turn over elections when one faction or another decided they didn't like the President. That is why the Founders split the impeachment power, giving the House the sole authority to impeach and the Senate the sole authority to try impeachments. As a final check, the Founders required a two-thirds supermajority vote in the Senate to remove a President from office. All of these things show just how seriously the Founders regarded removing a duly elected President. They intended it as an extreme remedy to be used only in very grave circumstances.

I do not believe that the charges the House has leveled against the President meet that high bar. The House managers' presentation, which stretched over 22 hours, included testimony from more than a dozen witnesses. We also heard from the House managers during more than 16 hours of questions from Senators—in all, about 180 questions—and we received more than 28,000 pages of testimony, evidence, and arguments from the House of Representatives.

I considered all the evidence carefully, but ultimately I concluded that the two charges presented by the House managers—abuse of power and obstruction of Congress—did not provide a compelling case for removing this President.

According to public reporting, House Democrats toyed with charging the President with bribery, believing that it polled well, but they didn't have the evidence to prove that charge or, indeed, to prove any actual crime.

While allegations of specific criminal conduct may not be constitutionally required, they anchor impeachment in the law, and their absence is telling. Lacking evidence of a specific crime, the House decided to use the shotgun approach and throw everything under the catchall "abuse of power" umbrella.

Abuse of power is vaguely defined and subject to interpretation. In fact, I don't believe there has been a President in my lifetime who hasn't been accused of some form of abuse of power. For that reason, abuse of power seemed to me a fairly weak predicate on which to remove a democratically elected President from office. During the Clinton impeachment, I voted against the abuse of power article precisely because I believed it did not offer strong grounds for removing the duly elected President.

With respect to the second article, obstruction of Congress, the House took issue with the President's assertion of legal privileges, including those rooted in the constitutional separation of powers. Of course, every President in recent memory has invoked such privileges—for example, when the Obama administration cited executive privilege to deny documents to Congress during the Fast and Furious gunrunning investigation.

The House could have challenged the President's privilege claims by going through the traditional channels to resolve disputes between the executive and legislative branches, that being, of course, the courts. That is what was done in previous impeachment inquiries, like the Clinton impeachment. But the House skipped that step in the hopes that the Senate would bail them out and compel testimony and documents that the House, in its rush to impeachment, was unwilling to procure. Again, it seemed like a very thin basis on which to remove a duly elected President from office.

The facts in the case are that aid to Ukraine was released prior to the end of the fiscal year. No investigation of the scandal-plagued firm Burisma or the Bidens was ever initiated. While we can debate the President's judgment when it comes to his dealings with Ukraine or even conclude that his actions were inappropriate, the House's vague and overreaching impeachment charges do not meet the high bar set by the Founders for removal from office.

My second consideration in voting to acquit the President is the deeply partisan nature of the House's impeachment proceedings.

The Founders' overriding concern about impeachment was that partisan majorities could use impeachment as a political weapon.

In Federalist 65, Alexander Hamilton speaks of the danger of impeachment being used by "an intemperate or designing majority in the House of Representatives." By limiting the House's power to impeaching the President and not to removing him from office, the Founders hoped that the Senate would act as a check on any attempt by the House to use the power of impeachment for partisan purposes.

Unfortunately, the Founders' concerns about partisanship were realized in this impeachment process. For the first time in modern history, impeachment was initiated and conducted on a purely partisan basis.

While the Nixon impeachment proceedings in the House are held up as an example of bipartisanship, even the impeachment of President Clinton was initiated with the support of more than 30 Democrats. By contrast, in this case, House Democrats drove ahead in a completely—completely—partisan exercise. Then they rushed through the impeachment process at breakneck speed, rejecting a thorough investigation because they wanted to impeach the President as fast as possible. Then they expected the Senate to take on the House's investigative responsibility.

House Democrats paid lip service to the idea that they regretted having to impeach the President, but their actions told a different story. The Speaker of the House—the Speaker—distributed celebratory pens when she signed the Articles of Impeachment and then went on TV and celebrated the impeachment with a fist bump.

It doesn't require much work to imagine the damage that could be done to our Republic if impeachment becomes a weapon to be used whenever a political party doesn't like a President. Pretty soon, Presidents would not be serving at the pleasure of the American people but at the pleasure of the House and the Senate.

We need to call a halt before we have gone too far to turn back. Endorsing the House's rushed, partisan, and slipshod work would encourage future Houses to use impeachment for partisan purposes. Both parties need to learn that partisan impeachments are perilous.

Finally, I believe that except in the most extreme circumstances, it should be the American people, and not Washington politicians, who decide whether a President should be removed from office. Presidential primary voting, as we learned yesterday in Iowa, is already underway. We have a Presidential election in November, when the people of this country can weigh in and make their voices heard. I think we should leave the decision up to them.

Indeed, given the deep divisions plaguing our country, as reflected in the starkly different views about this impeachment, removing the President from office and from the ballots for the upcoming election would almost certainly plunge the country into even greater political turmoil.

I am deeply troubled by the events of the past few months. I have always believed that we can differ here in Congress while still respecting and working with those who disagree with us, but Democrats have increasingly sought to demonize anyone who

doesn't share their obsession with impeaching this President. One of the House managers in this trial went so far as to suggest that any Senator who voted against them was treacherous.

At one point, a Senator asked whether the Chief Justice's constitutionally required participation in the trial was contributing to "the loss of legitimacy of the Chief Justice, the Supreme Court, and the Constitution," with the clear suggestion that the only way for the Supreme Court to maintain its legitimacy would be for it to agree with the Democratic Party. We have sunk pretty low when we have come to the point of suggesting that disagreement is unconstitutional.

But for all this, I remain hopeful. Congress has been through contentious times before, and we have gotten through them. There is no question that this partisan impeachment has been divisive, but I do believe we can move on from this. I am ready to work with all of my colleagues, both Democrat and Republican, in the coming weeks and months as we get back to the business of the American people. And for the Nation that we all love, I pray that proves possible.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR BILL CASSIDY

Mr. CASSIDY. Madam President, the Senate must determine whether to remove a President duly elected by the people. A decision of such magnitude deserves, first, full consideration of the procedures; second, the merits of the charges; and third, the ramifications removal would have on our Republic.

The Framers of the Constitution granted the House of Representatives impeachment powers yet cautioned against using that power unless absolutely necessary. Impeachment negates an election in which Americans choose their leader. If substantial numbers of Americans disagree with removing the President, removal damages civic society. It follows that the House should conduct thorough and complete investigations, even if time-consuming, before impeaching.

A thorough investigation educates Americans that a President should be impeached and removed. Failing to convince the people invites anger towards, disdain for, and abandonment of the democratic process.

The Framers also required a two-thirds Senate majority for removal to prevent partisanship, so that removal only occurs after the House convinces its own Members, the Senate, and the American people. The Watergate investigation, for example, convinced Americans that President Nixon committed crimes, forcing his resignation with overwhelming support for removal in the House and the Senate.

In the case against President Trump, the House declined to call witnesses it felt relevant, arguing that the courts would take too long and the President was an imminent threat to our Republic. House managers blamed legal resistance from the administration and witnesses. For example, Dr. Charles Kupperman threatened to sue. A congressional committee afraid of being sued while claiming

to be fearlessly pursuing truth for the good of the country rings hollow. It also rang hollow when ADAM SCHIFF said that we could not wait for the next election for voters to decide President Trump's fate after Speaker NANCY PELOSI held the articles for 37 days. That decision smacks of partisan political motivations.

The partisanship the Founders warned against was reflected in the House vote with the only bipartisan votes being against impeachment. House Managers SCHIFF, NADLER, and LOFGREN once said that party-line impeachment would divide the Nation. They never explained why their opinions changed.

The role of the Senate, though, is to judge the House's evidence. House managers stated their case was "overwhelming" and "compelling." Having not pursued further witness testimony in building their case, the House managers demanded the Senate call witnesses the House did not call.

Additional witnesses, however, would not have changed material facts, but allowing the House to poorly develop a case, sacrificing thoroughness for political timing, would have forever changed the dynamic of the Chambers respective to the role of each in the impeachment process. Should the Senate acquiesce in this manipulation of the process, it would welcome the House to use impeachment as a political weapon, whatever the merits of its case.

I have been speaking of procedure. I want to emphasize that procedure matters. Justice Frankfurter once wrote: "The history of liberty has largely been the history of the observance of procedural safeguards." If the appropriate use of impeachment is to be preserved, procedural safeguards must be observed.

Moving now to charges, in article II, House managers argued the President obstructed Congress by acting on the advice of legal counsel to resist subpoenas. The judiciary resolves disputes between the executive and legislative branches. The House should have exhausted judicial remedies before bringing this charge. I shall vote against article II.

On article I, abuse of power, three issues must be addressed: one, the legal standard of guilt by which to judge the President; two, whether the President committed a crime; and if so, three, whether that crime warrants removal from office.

First, the standard of guilt was never established. Legal standards for conviction vary from the lower—more probable than not—threshold to the higher, which is beyond a reasonable doubt, which is used in criminal cases.

Since House managers charged "something akin" to a crime, "beyond a reasonable doubt" seems most appropriate, the higher threshold. As Senator Jay Rockefeller stated during President Clinton's impeachment, beyond a reasonable doubt "means that it is proven to a moral certainty, that the case is clear, that the case is concise."

Second, House managers allege that the President held military aid to Ukraine to leverage an investigation into former Vice President Biden as a quid pro quo, although they did not charge President Trump with the crime of requiring a quid pro quo or bribery. The President's defense team cast reasonable doubt on this allegation.

For example, regarding the July 25 phone call, which was reported by the whistleblower and which triggered the House impeachment proceedings, the President raised the issue of corruption in Ukraine. President Trump has always been skeptical of foreign aid and especially when he thinks it is wasted. Hunter Biden was mentioned, but no connection was made with the release of aid to Ukraine.

Other defense arguments included that Ambassador Kurt Volker denied a connection between aid and corruption investigations; President Zelensky and Ukrainian officials denied feeling pressure; and President Trump denied a quid pro quo to Ambassador Sondland and told Senator RON JOHNSON, when asked if there was some sort of arrangement, “No way. I would never do that.”

Both aid to Ukraine was released before the statutory deadline and a meeting between Presidents Trump and Zelensky occurred without an announced investigation.

It is also important to note that the release of aid on September 11 followed new Ukrainian anti-corruption measures, which included swearing in a reformed Parliament and installing a new prosecutor general—August 29—and the newly established High Anti-Corruption Court meeting for the first time—September 5.

The third issue regarding article I, abuse of power, is that the term is a nebulous one which does not define a specific crime. Contrast this with the impeachment of President Nixon when the House drafted an Article of Impeachment alleging abuse of power which enumerated five specific criminal and noncriminal offenses against President Nixon.

The Constitution speaks of treason, bribery, or other high crimes and misdemeanors. Because high crimes and misdemeanors are not specifically defined, it is reasonable to assume that the Framers meant for impeachment to occur only if a crime approached levels as severe as treason and bribery.

Since the House managers allege President Trump committed something “akin to a crime,” in deciding whether abuse of power is a high crime or misdemeanor, the prudent decision is to apply the principle of lenity. This principle, relied upon by Supreme Court Justice Marshall and Justice Frankfurter, says that if a law is ambiguous, it is better to narrowly interpret the words of a law in favor of the defendant.

Although the preceding discussion finds that the House managers failed to prove their case beyond a shadow of a doubt, failed to define the crime, thereby invoking the principle of lenity, it is still a question that if a crime was committed, was it an impeachable crime?

In 1998, then-Democratic Congressman Ed Markey argued that even though President Clinton, as chief law enforcement officer of the land, lied under oath, the crime was not impeachable. The Senate agreed, establishing the precedent that to remove a President, the crime must reach a high threshold of severity. The allegation against President Trump was not proven beyond a reasonable doubt, and it does not meet that high threshold.

I shall vote against article I.

I end by speaking of the ramifications for our Republic. In 1998, then-Congressman CHUCK SCHUMER said of the Clinton impeachment:

I suspect history will show that we have lowered the bar on impeachment so much, we have broken the seal on this extreme penalty so cavalierly that it will be used as a routine tool to fight political battles. My fear is that when a Republican wins the White House, Democrats will demand payback.

Mr. SCHUMER was a prophet.  
This must stop.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR JONI ERNST

Ms. ERNST. Madam President, I want to first thank the House managers and the counsel for the President for their time and their hard work and patience these past few weeks.

Yes, folks, we have had a robust and at times a rancorous trial. Some days I left here feeling angry, and some days I left more hopeful. Frankly, it is likely that many Americans—and in my case, Iowans—from every political stripe will feel hurt by this process at some level. But we are all representatives of the ideals and beliefs of the people we are here to represent.

Like all of you, I have sworn an oath to uphold the Constitution, and I take that oath very seriously. There have been a lot of arguments presented about what the Constitution says regarding the threshold for impeaching a President. It is clear to me that the Constitution goes out of its way to make it a high bar for removing the President. This is because the Founders were rightfully concerned that impeachment might be used to upend the electoral will of the American people. Absent restraint, the impeachment process would be all too tempting for those who oppose a sitting President to simply use it as a tool to achieve political advantage.

Each of us had one job—one job—during this process: to decide, based on the evidence, whether the President committed an impeachable offense. Upon reviewing the record containing the testimony of 17 witnesses and over 28,000 pages, as well as hearing from both sides on their arguments presented throughout this process, I will vote against both Articles of Impeachment.

The arguments of the House managers simply did not demonstrate that the President's actions rise to an impeachable offense. Given the constitutional requirements, voting any other way on these articles would remove the ability of the American people to make their own decision at the ballot box in November.

This process was fraught from the start with political aims and partisan innuendos that simply cannot be overlooked.

The House managers' arguments have argued that the American people cannot be trusted to render their own judgment on this President. I reject this premise and the complete distrust of the American people with everything in my heart. To do this would set a new and dangerous precedent in American history.

As we sit here today, we believe we are experiencing a unique and historical event; however, if the case presented by the House of Representatives is allowed to be the basis for the removal of this

President, I am afraid that impeachment will become just another tool used by those who play partisan politics. This is not what the Founders intended, and this is a very dark path to go down.

Under the Constitution, impeachment wasn't designed to be a litmus test on every action of the President's; elections were designed to be that check. Further, the issue of foreign affairs has historically been fraught with peril for Presidents. Foreign affairs is an art, not a science, and trying to insert a formula into every Presidential interaction with a foreign leader is a path toward ineffectiveness.

The Senate is about to close this chapter in American history. I pray that we do not allow this to become the norm. I also pray earnestly that we will shift into a spirit of cohesiveness, coming together to get our work done for the American people. Our people, our Founders, our country, and my great State of Iowa deserve better than this.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR ROGER F. WICKER

Mr. WICKER. Madam President, tomorrow I will cast my vote against the removal of our duly elected President. I will do so based upon my understanding of the duty conferred upon me by the Constitution of the United States.

I do not believe the House managers have proved the allegations contained in the Articles of Impeachment, nor do I believe the articles allege conduct that may be used as grounds for removal. I find the President's counsel to be persuasive in this regard. Significantly, much of the American public, without the benefit of learned constitutional instruction, has come to the same conclusion.

During the 2½ weeks of this trial, we have received more than 28,000 pages of documents, we have seen 192 video clips of 13 different witnesses, we had the opportunity to question each side for a total of 16 hours, and we have listened to literally hours and hours of argument. Clearly, I am unable to discuss every aspect of the trial in the time allotted me. Some facts in this case are in dispute, but many are not. Here is what we all know beyond a doubt:

First, we know that voices on the left have been calling for the impeachment of Donald Trump since day one—literally day one. The Washington Post on January 20, 2017, published an article titled “The Campaign to Impeach President Trump Has Begun” on Inauguration Day.

Secondly, we know that the yearslong \$32 million Mueller investigation failed to reveal sufficient ammunition for those who desired impeachment.

Third, the impeachment of this President in the House was the result of a narrowly partisan vote, with no Republican Representatives—zero—voting in favor of the articles.

And fourth, a guilty verdict this week would not only immediately remove the President from office, but it would also remove his name from the ballot in an election, which is already going on, and the first caucuses of which were conducted only yesterday. The

words are right there in articles I and II, on pages 3 and 4 of the resolution: “disqualification to hold . . . any office.”

The Founders of this country entrusted Congress with the power of impeachment as a check and balance on the executive branch. This power was never intended to settle policy differences or political disagreements—even intense disagreements. It was not designed so that Congress could get rid of a President they found odious or obnoxious or with whom they vehemently disagree.

The Constitution gives Congress this extraordinary authority as a remedy only for what it calls “high Crimes and Misdemeanors.” And making it clear what an extreme action of impeachment is, the Framers required the support of two-thirds in this Chamber in order to convict.

These standards intentionally set a very high bar to prevent abuse of the impeachment process. Meeting these standards requires this process be used to try only the most serious allegations and requires broad consensus in the Senate. Members of both parties have, in the past, warned about the dangers of a narrowly partisan impeachment.

As late as last year, House Speaker NANCY PELOSI cautioned:

Impeachment is so divisive to the country that unless there’s something so compelling and overwhelming and bipartisan, I don’t think we should go down that path because it divides the country.

Congressman NADLER, one of the impeachment managers, said in 1998:

There must never be a narrowly voted impeachment or an impeachment substantially supported by one of our major political parties and largely opposed by the other. Such an impeachment would lack legitimacy, would produce divisiveness and bitterness in our politics for years to come.

This wide approach has been supported in the past by House Manager ZOE LOFGREN, by Senator and future Vice President Joe Biden, and by our own colleagues, Senator MENENDEZ and SCHUMER, who feared that impeachment would become a routine tool.

These leaders had good company in taking this position. In Federalist No. 65, Alexander Hamilton warned of the danger that the decision to impeach “will be regulated more by the comparative strength of the parties than by the real demonstrations of innocence or guilt.”

Many of our Democratic friends who once sided with Hamilton have apparently changed their minds. They have also reversed themselves on the urgency of doing so—a rather sudden and abrupt change of heart on that question.

House advocates of impeachment have argued that President Trump is willing to cheat in the ongoing election and amounting to such an imminent threat to our democracy that he must be removed at once. Unless he is out of office and out quickly, they assert, we cannot have any confidence that the 2020 election results will be trustworthy.

I ask: Does any Senator really believe that; that America cannot have a fair election if Donald Trump is in the White House? But that alleged danger was the reason for the abbreviated House procedure. The lead House manager, Congressman SCHIFF, said in an interview last year that the timing of impeachment was driven by the urgency of removing the President. Congressman NADLER

agreed, saying that “nothing could be more urgent.” Speaker PELOSI repeated the same argument many times to explain the rushed process in the House and why there was not time to give the President a fair hearing. Senators heard the words repeated and repeated on video clips shown during this trial—“urgent,” “urgency.”

What happened to that urgency once the House voted? Did the Speaker then rush the papers to the Senate so we could address this imminent threat? Hardly. Speaker PELOSI held the articles for more than a month. If this trial was so urgent, why not send the articles without delay? Some might conclude that by withholding the articles, the Speaker exposed that she did not, in fact, believe that this case was so urgent. Perhaps it was an effort to influence our procedural decisions. I do not impugn motives here. Our rules prohibit me from doing so. I merely note an obvious change for whatever reason.

As I consider the high bar of impeachment tomorrow, I will vote not to convict. I will do so because there is not overwhelming evidence, because no high crimes are shown, because there is not a broad consensus among my countrymen, only articles passed on a narrowly partisan basis, and because removing President Trump on these charges at this time would set a dangerous precedent.

I conclude by reminding my colleagues that we are the trustees of the Constitution of 1787. We have the privilege and responsibility of standing on the shoulders of our remarkably perceptive Founders, but we also act as trustees for our Republic on behalf of future generations. With that in mind, we have an enhanced obligation to be careful, to resist the passions of the moment, and to remember that what we do today establishes precedence for decades and centuries to come.

Manager SCHIFF closed his remarks yesterday with an ominous reference to nefarious midnight decisions somehow threatening the freedom or welfare of Americans. His hopeful conclusion was that it is midnight in America, but the Sun will rise tomorrow, a sentiment I happen to share, though my concept of what amounts to a beautiful sunrise may differ from his.

Over a century ago, during the depths of World War I, Vachel Lindsay composed “Abraham Lincoln Walks at Midnight,” imagining an agonized, sleepless Lincoln walking the streets of Springfield, dismayed over the carnage in Europe.

Let us ask ourselves today, do Hamilton and Madison and Franklin walk these venerable halls at midnight? Do these Founding Fathers traverse the stone corridors of these great building, this symbol of stability and rule of law? If they do, they caution us, as they always have, to be careful, to avoid rash decisions, to resist the urges of partisanship, and to let the Constitution work. I hope my colleagues will heed their counsel.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR RICHARD BLUMENTHAL

Mr. BLUMENTHAL. Madam President, as we think back over these last weeks, when we have sat together on the floor consid-

ering evidence and sitting in judgment as jurors and judges, spending countless hours deliberating, I often think about what I will remember from these days on a very personal level.

It has been a historic event, but in some ways, the human element strikes me as the most memorable. I will remember vividly the bravery of dedicated public servants who had everything to lose and nothing to gain by telling the American people the truth about Donald Trump and his scheme to corruptly use power for his personal benefit. Their courage, their grace under pressure, their dignity, and unshakeable honesty should be a model for all of us.

I will remember, for example, LTC Alexander Vindman, whose video appeared before us, a man who was brought to the United States at the age of 3 and grew to love this country so much that he put his life at risk in combat and then his career at risk by coming before the Congress.

I will remember Fiona Hill, the daughter of a coal miner and nurse, who proceeded to get a Ph.D., swear an oath to this country, serving in both Republican and Democratic administrations, warning us not to peddle the “fictional narrative . . . perpetrated and propagated,” as she said, “by the Russian security services themselves” about this supposed Ukrainian effort to meddle in our election. I will remember very vividly Ambassador William Taylor, West Point graduate and decorated Vietnam war veteran, who testified that he thought it was “crazy to withhold security assistance for help with a political campaign.”

I will remember the whistleblower who came forward to express shock and alarm that the President of the United States would attempt to extort a vulnerable, fledgling democracy to help him cheat in the next election in exchange for the foreign military aid they so desperately needed to fight their adversary, Russia, and our adversary, Russia, attacking and killing their young men and women.

I have met some of those young men and women who came to Connecticut to the Burn Center at Bridgeport Hospital, so badly injured they could barely talk, and the stories of their suffering and hardship came back to me, as I sat on the floor here, and their courage and their bravery and strength also will stay with me.

I will remember the moment that we raised our hands and took an oath to be impartial, all 100 of us—99—at the same time, in a historic moment when the weight of that responsibility shook me like a rock. I will also remember the shame and sadness that I felt when this body—supposedly, the greatest deliberative body in the history of the world—voted to close its eyes, to put on blinders to evidence, witnesses, and documents; firsthand knowledge, eyes and ears on the President, black and white—documents don’t lie—that were necessary to understand the complete story and give the American people the complete truth. That moment—unfortunately, a moment of dismay and disappointment—will stay with me as well, after aspiring for so long to be part of this body, which I respected and revered, so utterly failing the American people at this moment of crisis.

And I will remember audible gasps, some laughs, and raised eyebrows in this Chamber when Professor Alan Dershowitz made the incredible, shocking argument that a President who believes that his own reelection serves the public interest can do anything he

wants, and his actions are not impeachable. The implications of that argument for the future of our democracy are simply indescribable.

I have been a trial lawyer. I have spent most of my career in and out of the courtroom. So I can argue the legalities. But I am not here to rehash the legal arguments, because culpability here seems pretty clear to me. The President solicited a bribe when he sought a personal benefit and investigation of his political opponent, a smear of his rival, in exchange for an official act—in fact, two official acts: the release of military funding for an ally and a White House meeting—in return for that personal benefit. Those actions are a violation of section 201, 18 United States Code, today. They were a violation of criminal law at the time of the Framers, and that is why they put it in the Constitution.

Bribery and treason are specifically mentioned. Bribery is included as an abuse of power, as it was when Judge Porteous was convicted and impeached. Many of the Members of this Chamber voted to impeach him, although bribery was never mentioned in the articles charging him with abuse of power.

The idea that bribery or any crime has to be mentioned for there to be an abuse of power is clearly preposterous. In my view, the elements of bribery have been proved beyond a reasonable doubt, and there is no excuse for that criminal conduct. I am going to submit a detailed statement for the RECORD that makes the legal case, but, clearly, bribery has been committed by this President.

Looking beyond the legalities, what strikes me, perhaps, as most telling here is the constant theme of secrecy—the fact that the President kept his reasons for withholding aid a secret. Unlike other suspensions of aid to other countries—like the Northern Triangle in Central America or Egypt, where it was announced publicly and Congress was notified—here, he kept it secret. He operated through his personal attorney, Rudy Giuliani, in secret, not through the State Department, not through the Department of Justice. Despite all of his claims of corruption and wrongdoing by Hunter or Joe Biden, he either never went to the Department of Justice or they declined to investigate because there was no “there” there. Instead, he sought, secretly, the investigation of a political rival through a foreign government, targeting a U.S. citizen secretly.

His refusal to provide a single document to Congress, to allow a single witness to testify, keeping their testimony and that evidence secret, concealing it; his defiance of every subpoena in court, effectively neutering Congress’s oversight authority—our oversight authority—to check any of these abuses, all of it is for the purpose of secrecy.

His claim of absolute immunity is totally discredited and rejected by the court because, as the court said in the McGahn case, he is not a King.

His claim of executive privilege as the reason for keeping that evidence secret—well, he never really invoked executive privilege, but executive privilege cannot be invoked to conceal criminal conduct that fits within the crime of a fraud exception.

And while the President’s lawyers argued before this body that the House should have gone to court to enforce those subpoenas instead of resorting to the remedy of impeachment, they then had the

audacity to, simultaneously, at exactly the same time, argue in court that Congress cannot seek a judicial remedy to enforce subpoenas because it has the remedy of impeachment. They argued no jurisdiction because of impeachment, and at the same time no access to evidence necessary for impeachment because, supposedly, you can go to court. This duplicity is absolutely stunning.

Again, I will say, just on a personal note as a prosecutor, it is a dead giveaway. He is guilty. Regardless of what we do tomorrow, we know for sure, in this great democracy, the truth will come out. It always does. It is just a question of when. It comes out about all of us at some point. And, for this President, the truth is coming out in realtime, as we speak on this floor and as we vote tomorrow.

The revelations in the New York Times about what John Bolton has written in his book indicate the truth is going to come out in mid-March with John Bolton's book, assuming the President doesn't try to censor it and tie him up in court or exercise some prior restraint. It will come out in congressional investigations when John Bolton and others testify. It will come out because there are courageous men and women, like Ambassador Taylor, Fiona Hill, Colonel Vindman, and others, who are willing to put country ahead of their personal careers.

When my children grow up—and they are pretty well grown—I hope they will be more like them than like the President. I never, ever thought I would say that in the Senate of the United States, let alone anywhere, because this President has shown that he will take advantage of every opportunity for self-enrichment and self-aggrandizement. Whether it is violating the emoluments clause—and I, along with 199 of my colleagues, have sued him on that issue, making money from the Presidency, profiting and putting profit ahead of his official duties, or seeking to smear a political rival and soliciting a bribe. Even if the aid went through and even if the investigation was never announced, it is still a crime—putting that kind of self-benefit ahead of his duty to the country and our national security, the welfare and fight of an ally at the tip of the spear against a common adversary who is seeking to destroy Western democracies. He is someone who has said: Show me the boundaries of the law, and I will push them, and if I can successfully cross them, I will do it again.

And he will do it again. Everyone in this Chamber knows it.

So, as we make this momentous decision, I implore each of my colleagues to think about the gravity of what we will do if we fail to convict this President, the message that we send to countries struggling to overcome corruption, because America is more than just a country. America is an idea and an ideal. When we implore them to fight corruption, our credibility is shredded when we condone it at home.

The Framers, in their wisdom, knew that elections every 4 years were an inadequate check against any President who corruptly abuses power for personal gain. And this situation and this President are exactly what they feared when our young infant country was struggling to avoid foreign interference in our elections. It was their worst nightmare, foreign interference, the threat of foreign meddling—exactly what this President has invited.

It was delegate William Davie of North Carolina who said: "If he be not impeachable whilst in office, he will spare no effort or means whatever to get himself re-elected." It was precisely cheating in a future election, foreign interference in our domestic affairs, that the Framers established impeachment to prevent. That is why the remedy exists, and that is why we must use it now.

History will judge us harshly if we fail in this historic challenge. History will haunt the colleagues who fail to meet this challenge, who lack the courage that was demonstrated by those heroes: Taylor, Vindman, Hill, Cooper, and others. And they will continue to serve our country. The truth will come out.

The heroes of this darker era will be our independent judiciary and our free press. They will continue uncovering the truth. They will continue providing freedom of information material under the law. They will continue to protect civil rights and civil liberties. They will continue their vigilance, even if we fail in ours.

But we have this task now. History will sit in judgment of us, and the future of our Republic will be in jeopardy if we fail tomorrow to do the right thing.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR CHRIS VAN HOLLEN

Mr. VAN HOLLEN. Madam President, it is the constitutional duty of each Senator to weigh the evidence before us and render a final verdict on the two Articles of Impeachment.

On the charge of abuse of power, the House managers have presented overwhelming evidence, a "mountain of it," as Senator ALEXANDER has conceded. For anyone with eyes to see or ears to hear, President Trump undoubtedly used the power of the Presidency to withhold vital, taxpayer-funded military aid from Ukraine to extort its government into helping him in his reelection campaign. He did so even though fighting Russian aggression is in our national interest. And make no mistake, the fact that he got caught before his scheme succeeded is no defense.

The House has also proved its case on the charge of obstruction of Congress. President Trump has engaged in unprecedented stonewalling, a blanket coverup that makes President Nixon look like an amateur—not a single document produced nor a single witness. Those who did testify did so despite the President's order not to show up. They raised their right hands and swore to tell the truth. They included Trump political appointees and a major donor to his campaign, individuals who served our country in war, dedicated public servants who took an oath to defend the Constitution. Dismissing them as "anti-Trumpers" and "Democratic witnesses" is wrong, as were the President's attempts to bully and intimidate them.

With the facts proven, the Senate must now ask: Do these charges meet the standard for impeachment? The President claims impeachment requires charging him with a statutory crime, but that is a fringe view with patently absurd results. Their lead lawyer making this argument, Alan Dershowitz, did not hold this view during the Clinton impeachment; nor does Trump's Attorney Gen-

eral, William Barr; nor does Jonathan Turley, Trump's constitutional law expert at the House Judiciary Committee hearing—nor does the authority cited by the President's own lawyers here in the Senate and referenced nine times in their legal briefs. That authority, entitled "Impeachment: A Handbook" states that "the limitation of impeachable offenses to those offenses made generally criminal by statute is unwarranted—even absurd."

This suggested standard has been roundly dismissed because it leads to ridiculous conclusions—for example, that a President could withhold taxpayer-funded disaster assistance to the people of a State until their Governor endorsed the President for reelection.

Even Alan Dershowitz recognized the folly of his own argument, so he switched to saying impeachment requires "criminal-like" conduct. Well, the President's actions here have all the markings of criminal-like conduct, including what the Founders would consider bribery and extortion. Moreover, as made clear by the nonpartisan legal opinion I requested from the GAO, the President and his team broke the impoundment control law as part of his overall extortion scheme.

In fact, the toxic mix of misconduct we find here—a President corruptly using his office in a manner that compromises our national security to get a foreign government to help him stay in power—is exactly the kind of abuse of power our Founders most feared.

Yet the President shows no sign of remorse or regret. His refusal to acknowledge any wrongdoing is an ongoing threat to our country and our Constitution. Even as this impeachment process has proceeded, he has continued to solicit other countries, including China, to help his reelection efforts, as he says the Constitution gives him "the right to do whatever I want as President."

Let's be honest. President Trump sees the Constitution not as a check on his powers but as a blank check to abuse power, and he will not change. His ongoing betrayal of the oath of office represents a clear and present danger to our Constitution, our democracy, and the rule of law.

Those who argue we must not remove the President before the next election ignore the fact that the Founders included an impeachment clause in the same Constitution that establishes 4-year terms for the President. They wrote the impeachment clause for exactly this moment, to prevent a corrupt President from enlisting a foreign power to help him cheat in an election.

President Trump has committed high crimes and misdemeanors against the Constitution, and we must use the Founders' remedy. We must find him guilty and remove him from office. Failure to convict will send a terrible signal that this President and any future President can commit crimes against the Constitution and the American people and get away with it.

But it is not only the President who has violated his duty under the Constitution. So, too, has this Senate, not because of the ultimate conclusion expected tomorrow but because of the flawed way the Senate will reach that decision. While I strongly disagree with acquittal, that verdict might be accepted by most Americans if reached through a real and a fair trial. But this Senate did not

hold a real trial. It held the first impeachment proceeding in our history not to call a single witness or seek a single document.

President Trump's former National Security Advisor, John Bolton, offered us important information about the charges against the President. The Senate voted not to hear from him. President Trump said he wanted his Acting Chief of Staff, Mick Mulvaney, to testify at the Senate trial, but then he changed his mind and Senate Republicans voted not to hear from him. I offered to have the Chief Justice make decisions about relevant witnesses and documents, just as impartial judges do in trials every day across America. In fact, unlike in every other courtroom, it preserved the right of the Senate to overturn the Chief Justice's decision by a majority vote. That is obviously a fair process for the President, but every Republican Senator voted against it. And why? Because they are afraid of getting to the truth, the whole truth, and nothing but the truth. They know that, as more incriminating facts come out, it becomes harder to acquit. By joining the President's coverup, they have become his accomplices.

While the decision on the President will come tomorrow, the verdict on this Senate is already in—guilty, guilty of dereliction of its constitutional duty to conduct an impartial trial. And because the trial was a farce, the final result will be seen by most of the country as illegitimate, the product of a tainted trial.

President Trump must understand this: There is no exoneration, no vindication, no real acquittal from a fake trial. In failing to adhere to the principles of our Constitution and the values of our country, I fear we have done grievous injury to the nature of our democracy. I only hope America will find the resilience to repair the damage in the years to come.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR GARY C. PETERS

Mr. PETERS. Madam President, I swore an oath to defend the Constitution, both as an officer in the U.S. Navy Reserve and as a U.S. Senator. At the beginning of this impeachment trial, I swore an oath to keep an open mind, listen carefully to the facts, and, in the end, deliver impartial justice.

After carefully listening to the arguments presented by both House managers and the President's lawyers, I believe the facts are clear. President Trump stands accused by the House of Representatives of abusing his power in an attempt to extort a foreign government to announce a trumped-up investigation into a political rival and thereby put his personal interest ahead of national security and the public trust.

The President illegally withheld congressionally approved military aid to an ally at war with Russia and conditioned its release on Ukraine making an announcement the President could use to falsely discredit a likely political opponent.

When the President's corrupt plan was brought to light, the White House engaged in a systematic and unprecedented effort to cover up the scheme. The President's complete refusal to cooperate

with a constitutionally authorized investigation is unparalleled in American history.

Despite the extraordinary efforts by the President to cover up the facts, the House managers made a convincing case. It is clear the President's actions were not an effort to further official American foreign policy. The President was not working in the public interest. What the President did was wrong, unacceptable, and impeachable.

I expected the President's lawyers to offer new eyewitness testimony from people with firsthand knowledge and offer new documents to defend the President, but that did not happen. It became very clear to me that the President's closest advisers could not speak to the President's innocence, and his lawyers did everything in their power to prevent them from testifying under oath.

No one in this country is above the law—no one, not even the President. If someone is accused of a crime and they have witnesses that could clear them of any wrongdoing, they would want those witnesses to testify. In fact, not only would they welcome it; they would insist on it. All we need to do is use some common sense. The fact that the President refuses to have his closest advisers testify tells me that he is afraid of what they will say.

The President's conduct is unacceptable for any official, let alone the leader of our country. Our Nation's Founders feared unchecked and unlimited power by the President. They rebelled against an abusive Monarch with unlimited power and, instead, created a republic that distributed power across different branches of government. They were careful students of history. They knew unchecked power would destroy a democratic republic. They were especially fearful of an unchecked Executive and specifically granted Congress the power of impeachment to check a President who thought of themselves as above the law.

Two years ago, I had the privilege of participating in the annual bipartisan Senate tradition, reading President George Washington's Farewell Address to the Senate. In that address, President Washington warned that unchecked power, the rise of partisan factions and foreign influence, if left unchecked, would undermine our young Nation and allow for the rise of a demagogue. He warned that we could become so divided and so entrenched in the beliefs of our particular partisan group that "cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people and to usurp for themselves the reins of government."

I am struck by the contrast of where we are today and where our Founders were more than 200 years ago. George Washington was the ultimate rockstar of his time. He was beloved, and when he announced he would leave the Presidency and return to Mount Vernon, people begged him to stay.

There was a call to make him a King, and he said no. He reminded folks that he had just fought against a Monarch so that the American people could enjoy the liberties of a free people. George Washington, a man of integrity and an American hero, refused to be anointed King when it was offered to him by his adoring countrymen. He chose a republic over a monarchy.

But tomorrow, by refusing to hold President Trump accountable for his abuses, Republicans in the Senate are offering him unbri-

dled power without accountability, and he will gleefully seize that power. And when he does, our Republic will face an existential threat. A vote against the Articles of Impeachment will set a dangerous precedent. It will be used by future Presidents to act with impunity. Given what we know—that the President abused his power in office by attempting to extort a foreign government to interfere with an American election; that he willfully obstructed justice at every turn; and that his actions run counter to our Nation's most cherished and fundamental values—it is clear the President betrayed the trust the American public placed in him to fully execute his constitutional responsibilities. This betrayal is, by definition, a high crime and misdemeanor. If it does not rise to the level of impeachment and removal, I am not sure what would.

The Senate has a constitutional responsibility to hold him accountable. If we do not stand up and defend our democracy during this fragile period, we will be allowing the President and future Presidents to have unchecked power. This is not what our Founders intended.

The oath I swore to protect and defend the Constitution demands that I vote to preserve the future of our Republic. I will faithfully execute my oath and vote to hold this President accountable for his actions.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR SHELDON WHITEHOUSE

Mr. WHITEHOUSE. Madam President, may I say that it is a pleasure to speak to the Senate with the new Senator from Georgia presiding for the first time, at least, that I have had this occasion.

Well, here we are. The impeachment outcome is settled, as it was from day one. In my view, the facts are clear, the conduct impeachable, and the obstruction unprecedented.

In my view, this impeachment process ran into a partisan wall, and the Senate's part was to deny the American people the most basic elements of a fair trial: witnesses and evidence.

Alexander Hamilton, years ago, warned us of what he called the "greatest danger" in impeachments, "that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt."

In my view, that danger has met us.

As a boy I often sang a hymn with the stanza that "to every man and nation comes the moment to decide, in the strife of truth with falsehood, for the good or evil side."

In my view, the Senate chose the wrong side.

We are obviously going to disagree about a lot here, so let me focus on two thoughts that perhaps we can agree on.

One is that what we have done here should carry little weight as precedent. Politics cast very long shadows over this proceeding. This was not our finest hour, by any stretch, and much of what was said and done here should not be repeated, let alone treated as precedent.

I hope history treats this episode as an aberration, not a precedent.

Too many things that are right and proper had to be bent or broken to get to the preordained result, and too much of what was said by White House counsel was not only wrong but disgraceful.

The presentation in this Chamber by White House counsel was characterized by smarminess, smear, elision, outright misstatement, and various dishonest rhetorical tricks that I doubt they would dare pull before judges.

Knowing that we were a captive and silent audience, knowing the outcome was predetermined in their favor, and grandstanding for a TV audience, particularly an audience of one, they delivered a performance that leaves a stain on the pages of the Senate RECORD.

Perhaps there will be consequences for some of their conduct in our Chamber.

The conduct of White House counsel in the Trump impeachment trial raise grave concerns.

A staunch Republican friend, who is an able and eminent lawyer, emailed me about a White House counsel argument, calling it “the most shocking thing I have seen a ‘serious’ lawyer say in my entire legal career.” He referred to Professor Dershowitz, but the conduct of White House counsel in this matter has indeed been shocking far beyond the excesses of Professor Dershowitz.

In some cases, we do not know who pays them. Mr. Sekulow is evidently anonymously paid, with dark money, through a mail drop box. Who is he working for here? Does his secret benefactor create a conflict for him? We should know.

Among them are lawyers who appear to have grave professional conflicts. They represent the President although they are fact witnesses to conduct charged in the impeachment. This concern was brought to their attention by House letter on January 21, 2020, putting them on notice. They ignored the letter.

The House argued that members of the White House counsel team actually administered a massive cover-up, using extreme and unprecedented arguments to protect a blanket defiance against congressional inquiry into alleged Presidential misdeeds, with the intent to hide evidence of those misdeeds.

There is new evidence that counsel were not just fact witnesses, but present at meetings in which the scheme at issue was advanced, and the misconduct alleged was confessed to, by the President. Being present during the commission of the offense and witness to an overt act in furtherance of the alleged scheme is more grave than being a mere fact witness. This needs further inquiry, but it raises the question of actual participation in the crime or fraud or misconduct at issue, which would waive their attorney-client privilege.

They have not been candid about the law. They have argued over and over that they will delay the Senate proceedings by litigation in United States District Courts if we allow witnesses or subpoenas, mentioning only once, in their pretrial brief, the case of *Walter Nixon v. United States*, where the Supreme Court save the Federal Judiciary “no role” in Senate impeachment proceedings, warning “that opening the door of judicial review to the procedures used by the Senate in trying impeachments would ‘expose the polit-

ical life of the country to months, or perhaps years, of chaos," the very delay White House lawyers have threatened.

Further investigation may reveal whether various counsel made, or permitted cocounsel to make, arguments at odds with facts to which they were witness, thereby deliberately misleading the Senate. For a lawyer to participate in or be immediate witness to criminal or impeachable wrongful activity; and then practice as a counsel in matters related to that criminal or impeachable or wrongful activity; and then conceal from that tribunal what they knew about that criminal or impeachable or wrongful activity, and even affirmatively mislead that tribunal about the misconduct as they witnessed it, would be attorney misconduct of the gravest nature.

In light of these problems, one recurring argument by White House counsel takes on new meaning. In an often conflated argument, White House counsel insisted that no crime was alleged in the House of Representatives' Articles of Impeachment and that there was no crime committed. If, as recent evidence suggests, at least one White House counsel was present at and participated in a meeting in furtherance of the scheme at issue, the argument that the scheme was not criminal is deeply self-serving. That self-serving nature is precisely why counsel under that sort of conflict of interest should not appear in proceedings addressing conduct which they witnessed, which they aided or abetted, or in which they participated.

White House counsel used their time before us to smear non-parties; to present virtual political commercials; to misstate, exaggerate, or mislead about legal propositions; to misstate, exaggerate, or mislead about factual propositions; to misstate, exaggerate, or mislead about House managers' arguments; and to float conspiracy theories and unsupported political charges to the public audience. In some cases, arguments are deeply unfair: for instance, calling secondary witnesses' testimony hearsay and secondhand at the same time they are blocking the direct witnesses' testimony. It was in sum, a sordid spectacle, one that few if any courts would have tolerated. They came into our house and dirtied it.

So enough of my professional disgust with their performance, but let us agree that this ought not be precedent.

Let us also agree on something else. There is one particular argument the White House made that we should trample, discard, and put out into the trash: the notion that a U.S. district court can supervise our Senate impeachment proceeding. I truly hope we can agree on this.

As a Court of Impeachment, we are constituted at the Founders' command. The Chief Justice presided in that seat at the Founders' command. We convened as a body at the Founders' command. And at the Founders' command, the Senate—the Senate—has the sole power to try all impeachments.

Every signal from the Constitution directs that we try impeachments, and no part of the Senate's power to do so is conferred anywhere else in the government. It is on us.

The President's counsel proposed that they may interrupt the Senate's trial of impeachment, delay the Senate's trial of impeachment, in order to go down the street to the U.S. district court to

litigate our trial determinations about evidence and privilege—determinations in our proceeding.

There are three arguments against that proposition. The most obvious one is the Constitution. The Constitution puts the trial in the hands of the Senate sitting as a Court of Impeachment and makes no mention of any role for any court to supervise or pass on the Senate's conduct of this trial. It is simply not in the Constitution.

The second argument is the improbability—the improbability—that the Founders would convene the U.S. Senate as a Court of Impeachment, bring the managers of the U.S. House of Representatives over here to present their charges, put the Chief Justice of the U.S. Supreme Court into that chair to preside over the trial, give the Senate the sole power to try the impeachment, and then allow a defendant to run down the street to a district judge and interrupt the proceedings. That idea is contrary to common sense as well as constitutional order.

The impeachment provisions of the Constitution were adopted by the Founders in September of 1787, after that long, hot summer in Philadelphia, and ratified with the Constitution in 1788. The Judiciary Act establishing lower courts did not pass until 1789. It is hard to imagine that the Founders meant the proceedings and determinations of our Senate Court of Impeachment to be subject to the oversight of a judge down the road from us whose office did not even exist at the time.

The Founders in the Constitution put this squarely on us. No one else is mentioned. It is our “sole Power.” It is the duty of the Chief Justice under the Constitution to preside over the trial. It is his duty to make appropriate rulings. And it is on us to live with that, unless—as we may—we choose to overrule the Chief Justice as a body, by recorded vote, and live with that. We run this trial—the Senators, the Senate—no one else. We are responsible to the people of the United States to run this trial. We were trusted by the Founders to live up to those responsibilities.

When we sit as a Court of Impeachment, it is all on us. The Founders put it squarely on us. We took that job when we took our oaths. That means we control the trial rulings, the timing, the evidence determinations, and the privileges we will accept. We can accept the rulings of the Chief Justice or we can reverse them, but it is our job.

Previous impeachments record the Senate making just such rulings. Never has the Senate referred such a ruling to a court. Indeed, in *Walter Nixon v. United States*, 506 U.S. 224, a 1993 decision, the Supreme Court held that Federal courts have no power to review procedures used by the Senate in trying impeachments, that it was a nonjusticiable political question, and that “the Judiciary, and the Supreme Court in particular, were not chosen to have any role in impeachments.”

The Supreme Court in that decision even foresaw the delays that White House Counsel threatened us with and saw them as an argument against any judicial role. The Court said that “opening the door of judicial review to the procedures used by the Senate in trying impeachments would expose the political life of the country to months, or perhaps years, of chaos,” and the Court immediately

went on to particularly highlight that concern with respect to the impeachment of a President.

It would have been nice if White House Counsel, when they were in this Chamber arguing for their threatened delays, would have addressed this Supreme Court decision.

The Constitution, common sense, and our impeachment precedents all put the responsibility for a Senate trial of impeachment squarely on us. We should not—we should never—shirk that responsibility.

This has been a sad and sordid moment for the Senate. It has done harm enough. Let it not provide any credit to this false White House argument, and let this not be precedent for future Presidential misconduct.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR TINA SMITH

Ms. SMITH. Madam President, this morning, I let Minnesotans know that I will vote to remove President Donald Trump from office. I rise today because, on this historic vote, I want Minnesotans to understand why and where I think we go from here.

I was reluctant to go down the path of impeachment. While I strongly disagree with the President on many issues, I see impeachment as a last resort, and I feared that leaping to impeachment would only serve to drive us even further into our political corners. This changed when I read the whistleblower report, which alleged nothing less than the President's corrupt abuse of power, an abuse that had the potential to undermine our election in 2020. For me, this left no choice but for the House to fully investigate these allegations.

When the House sent the two Articles of Impeachment to the Senate, it became my job to "do impartial justice according to the Constitution and the laws," and I take that oath as seriously as anything I have ever done.

This impeachment trial has been about whether the President's corrupt abuse of power—power that he used for his own personal, political benefit while betraying the public trust—is a high crime and misdemeanor as defined by the Founders of our Constitution.

I believe that it is, and I also believe that to condone corrupt behavior such as this undermines the core values we stand for as a nation that no one is above the law, including and most especially the President.

Over the past several weeks, I have listened carefully to hundreds of hours of presentations, questions and answers, and read thousands of pages of documents. Through it all, the facts underlying the case against the President were never really refuted.

The President, working through his personal lawyer, Rudy Giuliani, withheld Ukrainian security assistance and a prestigious meeting in the White House in an effort to persuade President Zelensky to announce he was investigating Joe Biden and the theory that Ukraine interfered in our 2016 elections. In order to improve his prospects for reelection, Trump directed that vital assistance be withheld until Ukraine announced investigations into a

baseless conspiracy theory that originated as Russian propaganda, and he only released the aid when he was found out.

Then, when the House sought to investigate these actions, the Trump White House categorically blocked any and all subpoenas for documents and witnesses. No U.S. President has ever categorically rejected the power of Congress to investigate and do oversight of the executive branch—not Nixon, not Clinton. This obstruction fractures the balance of power between the legislative and executive branches.

How can our constitutional system work if we allow the President to decide if and how Congress can investigate the President's misconduct? It can't. If we say that the President can decide when he cooperates with a congressional investigation, we are saying that he is above the law.

While evidence of the President's wrongdoing is substantial, I advocated every way I could for a trial that would be fair for both sides, which means hearing from witnesses with direct knowledge of the President's actions. I am greatly disappointed that almost all of my Republican colleagues in the Senate abandoned the historical, bipartisan precedent of hearing from witnesses in every Senate impeachment trial.

Ultimately, when so many people know the truth of what happened, the complete truth will come out. Yet the Senate abandoned its responsibilities when it blocked efforts to get the complete truth here in this Chamber. As a result, there will be a permanent cloud over these proceedings. The President may be acquitted, but without a fair trial he cannot claim to be exonerated.

The core question of this impeachment trial is this: Do we say that it is OK for the President to use his office to advance his personal political interests while ignoring or damaging the public good? My answer is no.

Corruptly soliciting a foreign government to interfere in our elections and to announce an investigation to damage a political rival and an American citizen at the expense of free and fair elections and our national security—that is the definition of an abuse of power. This is what Alexander Hamilton was talking about when he wrote that impeachment proceedings should concern “the abuse or violation of some public trust.”

Some have argued that what the President did was wrong, but his conduct does not rise to the level of impeachment. They agree that the President used his power to secure an unfair advantage in our elections but think that this abuse of power isn't that bad. It isn't bad enough to remove him from office.

It is that bad. Trump's abuses of power are grave offenses that threaten the constitutional balance of power and the core value that no one, especially the President, is above the law. The President's abuse of power undermines the integrity of our next election and calls into question whether our elections will be free and fair. His abuses of power damage national security by undermining the moral stature of the United States as a trusted ally and as a fighter against corruption.

For me, one of the saddest moments of this trial was the testimony from American diplomats who urged Ukrainian leaders not to engage in political investigations. According to the testimony,

the Ukrainians responded by saying, in effect: Do you mean like the investigations you are asking us to do with the Bidens and the Clintons?

Some have said that we should wait and let the American people decide in the next election, only months away. But when the President has solicited foreign nations to influence our elections with disinformation and has prevented the American people from hearing a full and fair accounting of that effort, our duty to defend the Constitution requires that we act now. A vote to remove the President from office protects our next election.

When Leader MCCONNELL refuses to allow the Senate to consider election security legislation and when the President shows no remorse and says publicly that he is ready to do it again, we have no choice but to act. When the President says that the Constitution allows him to do whatever he wants, Congress must act.

The President's conduct is a threat to our elections and our national security. What is more, if we fail to check this President, future Presidents may be emboldened to pursue even more shameless schemes.

Lots of countries have high-minded constitutions full of powerful words and strong enunciations of rights that don't really mean anything. As House manager ADAM SCHIFF pointed out, Russia has a Constitution like this. Our Constitution is different. It is not some dry, historic document that we keep behind glass in a museum. It is the big idea of our system of government that no one is above the law, and people, not Monarchs, are the source of power. Everything—everything—flows from this great idea realized in the lives of Minnesotans who, every day, seek the freedom and the opportunities they need to build the lives they want.

There is nothing inevitable about democracy. It is not a natural state. It is a state that we have to fight for. The fight for democracy and our Constitution has chosen us in this moment, and it is our job to rise to this moment.

After the Senate vote, the work of reinforcing the American values of fairness and justice will continue. We have a lot of work to do. Democracy is hard work, and I know that Minnesotans are up to it. The truth is that I see more signs of common ground, hope, and determination in Minnesota than I do the fractures of division, distrust, and partisanship, and that is a foundation for us all to build on going forward.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR RAND PAUL

Mr. PAUL. Mr. President, the great irony of the last several weeks in the impeachment trial is that the Democrats accused the President of using his governmental office to go after his political opponent. The irony is, they then used the impeachment process to go after their political opponent. In fact, as you look at the way it unfolded, they admitted as much.

As the impeachment proceedings unfolded, they said: We didn't have time for witnesses. We had to get it done before Christmas because we wanted it done and ready to go for the election. We had

to get it done—the entire process needed to be completed—before the election.

They didn't have time for the process. They didn't have time for due process. They didn't have time for the President to call his own witnesses or cross-examine their witnesses.

The great irony is, they did exactly what they accused the President of. They used the government and the government's process to go after their political opponent.

What is the evidence that it is partisan? They didn't convince one Republican. Not one elected Republican decided that any of their arguments were valid or that the President should be impeached.

They made it into a sham. They made it into a political process because they didn't like the results of the election.

When did this start? Did the impeachment start with a phone call to the Ukrainian President? No, the impeachment and the attacks on the President started 6 months before he was elected.

We had something truly devastating to our Republic happen. We had, for the first time in our history, a secret court decide to investigate a campaign. At the time, when those of us who criticized this secret court for spying on the Trump campaign, they said: Oh, it is just a conspiracy theory. None of this is happening. There is no "there" there.

But now that we have investigated it—guess what—the FISA court admits they were lied to. The FBI has now been proven to have lied 17 times. We have a half a dozen people at the top level of our intelligence community who have admitted to having extreme bias. You have Peter Strzok and Lisa Page talking about taking down the President and having an insurance policy against him succeeding and becoming the President. You have McCabe, you have Comey, and you have Clapper.

You remember James Clapper, the one who came to the Senate, and, when asked by Senator WYDEN, "Are you storing, are you gathering information from Americans by the millions and storing it on government computers?" James Clapper said no. He lied to Congress. Nobody chose to impeach him, but he lied to Congress and committed a felony. Is he in jail? No, he is making millions of dollars as a contributor on television now, using and peddling his national security influence for dollars, after having committed a felony in lying to us.

These are the people who plotted to bring the President down. These are the people who continue to plot to bring the President down. Before all of this started, though, I was a critic of the secret courts. I was a critic of FISA. I was a critic of them abusing American civil liberties. I was a critic of them invading our privacy, recording the length of our phone calls, who we talk to, and sometimes recording conversations—all of this done supposedly to go after terrorists, but Americans, by the millions, are caught up in this web.

But now, for the first time, it is not just American civil liberties that are being abused by our intelligence agencies. It is an entire Presidential campaign, and it could go either way. This is why you want to limit power. Men are not angels, and that is why we put restrictions on government. We need more restrictions now. We can't allow secret courts to investigate campaigns.

This started before the election. It went on for the last 3 years, through the Mueller investigation. They thought they had the President dead to rights, and they would bring him down through this investigation. So, initially, the spying didn't work, and the Mueller investigation didn't work. They went seamlessly into the impeachment.

The question for the American public is now: Will they go on? Are they going to immediately start up hearings again in the House that will be partisan hearings again? I suspect they will. They have had their day in the Sun, and they loved it, and I think they are going to keep doing it time and time and time again.

Now, during the proceedings, I asked a question that was disallowed, but I am going to ask that question again this morning, because the Constitution does protect debate and does protect the asking of questions. I think they made a big mistake not allowing my question.

My question did not talk about anybody who is a whistleblower. My question did not accuse anybody of being a whistleblower. It did not make a statement believing there was someone who was a whistleblower. I simply named two people's names because I think it is very important to know what happened.

We are now finding out that the FISA investigation was predicated upon 17 lies by the FBI, by people at high levels who were biased against the President, and it turns out it was an illegitimate investigation. Everything they did about investigating the President was untrue and abused government to do something they never should have done in the first place.

So I asked this question. And this is my question—my exact question. We will put it up here:

Are you aware that the House Intelligence Committee staffer Sean Misko had a close relationship with Eric Ciaramella while at the National Security Council together? Are you aware and how do you respond to reports that Ciaramella and Misko may have worked together to plot impeaching the President before there were formal House impeachment proceedings?

Now, why did I ask this question? Because there are news reports saying that these two people—one of them who works for ADAM SCHIFF and one of them who worked with this person at the National Security Council—that they knew each other and had been overheard talking about impeaching the President in the first month of his office. In January of 2017, they were already plotting the impeachment.

And you say: Well, we should protect the whistleblower. The whistleblower deserves anonymity.

The law does not preserve anonymity. His boss is not supposed to say anything about him. He is not supposed to be fired. I am for that.

But when you get into the details of talking about whistleblowers, there is a variety of opinions around here. The greatest whistleblower in American history, in all likelihood, is Edward Snowden. What did people want to do with him? Half the people here want to put him to death and the other half want to put him in jail forever. So it depends on what you blow the whistle on, whether or not they are actually for the whistleblower statute.

I am not for retributions on the whistleblower. I don't want him to go to jail, and I don't want him to lose his job. But if six people, who all work together at the National Security Council, knew each other and gamed the system, knowing that they would get these protections—they gamed the system in order to try to bring down the President—we should know about that. If they had extreme bias going into the impeachment, we should know about that.

I think the question is an important one, and I think we should still get to the bottom of it. Were people plotting to bring down the President? They were plotting in advance of the election. Were they plotting within the halls of government to bring down the President? Look, these people also knew the Vindman brothers, who are still in government. So you have two Vindman brothers over there who know Eric Ciaramella, who also know Sean Misko, who also knew two people working on ADAM SCHIFF's staff, and ADAM SCHIFF throws his hands up and says: I don't know who the whistleblower is. I have never met him. I have no idea who he is.

So if he doesn't know who he is and the President's counsel doesn't know who he is, how does the Chief Justice of the United States know who the whistleblower is? I have no independent confirmation from anyone in government as to who the whistleblower is. So how am I prevented from asking a question when nobody seems to admit that they even know who this person is?

My point is, is by having such protections—such overzealous protection—we don't get to the root of the matter of how this started, because this could happen again. When the institution of the bureaucracy, when the intelligence community with all the power to listen to every phone conversation you have has political bias and can game the system to go after you, that is a real worry. It is a real worry that they spied on the President.

But what if you are an average ordinary American? What if you are just a supporter of President Trump or you are a Republican or you are a conservative? Are we not concerned that secret courts could allow for warrants to listen to your phone calls, to tap into your emails, to read your text messages? I am very concerned about that.

So we are going to have this discussion go on. It isn't really about the whistleblower so much. It is about reforming government. It is about limiting the power of what they can do as secret courts. I think the FISA Court should be restricted from ever investigating campaigns. If you think a campaign has done something wrong, call the FBI, go to a regular court, where judges get to appear on both sides, and if you want to subpoena somebody or tap the phone, all right, we can do it, but it has got to be an extraordinary thing.

Think about it. Think about the danger. The other side says it is a danger to democracy. Think about the danger to democracy of letting your government tap the phones of people you disagree with politically.

I don't care whether it is Republican or Democrat. We cannot allow the intelligence community and secret courts like the FISA court to go after political campaigns. And I mean that sincerely—Republican or Democrat. We need to change the rules. We cannot have secret courts trying to reverse the elections.

I feel very strongly about this. I was for this reform before Donald Trump ever came on the scene and before any of this happened. I have been for having more significant restrictions on these secret courts and more significant restrictions on the intelligence community to make sure they don't abuse the rights of Americans. This is a big deal, and if we are going to get something good out of this, if there is going to be some positive aspect to having to go through this nightmare we have been through over the last several months or years now, the blessing in disguise here would be that we actually reform the system so this never happens to anyone else ever again.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR DEB FISCHER

Mrs. FISCHER. Mr. President, I rise to voice my opposition to these Articles of Impeachment. I want the people of Nebraska to know how I will vote and why, as the Senate prepares for the trial's final vote.

I took an oath to uphold the Constitution, and I have a responsibility to be an impartial juror during the trial.

I have given fair and careful consideration to the evidence presented during this trial, and I have engaged in the questioning process. This is a process that should be about facts and fairness, and that is what the Senate has done its very best to do, but the reality is that the House of Representatives didn't do its job.

Under the Constitution and by precedent, the impeachment investigation is the responsibility of the House, not the Senate. Hearings in the House inquiry during the Nixon impeachment investigation lasted for 14 months. The Clinton impeachment House inquiry relied on years of prior investigation and overwhelming amounts of testimony from firsthand witnesses. President Trump's inquiry in the House was deeply partisan, and it lasted only 12 weeks.

Disturbingly, there was a lack of due process during this House investigation. The President was not allowed to have his lawyers cross-examine witnesses at the House Intelligence Committee hearings and depositions. This is the committee that was the lead on the investigative hearings. Shockingly, the President of the United States was prevented from participating in the House's impeachment for 71 of the 78 days of investigation. Our founding document protects the right of the accused. The Constitution explicitly states that no one should "be deprived of life, liberty or property without due process of law." Our blueprint for freedom protects all individuals' rights, whether that person is a truckdriver, a farmer, a businesswoman, or the President of the United States.

The third branch of government—our court system—is of foundational importance, and we have it for a reason. That reason is to provide every American with the opportunity to have justice in a fair way in accordance with the Constitution and the rule of law. But because House Democrats were in a rush to impeach the President before their holiday break, they decided to abandon the courts completely.

It was the House's constitutional right to subpoena witnesses. It was the President's constitutional right to assert privilege. And it was the court's constitutional right to enforce subpoenas. The House did not petition the court to enforce subpoenas. Short-circuiting the process led to an incomplete investigation by the House.

Article 1, section 3 of the Constitution provides that "the Senate shall have the sole Power to try all Impeachments." If the Senate were to become the factfinder in an impeachment investigation, it would completely change the role of the Senate from this point forward, this hallowed Chamber, the world's greatest deliberative body. It would become an investigative arm of the House. Setting this precedent would have a devastating effect on our political institution, transforming the very nature of the Senate during impeachment hearings for generations to come.

The Senate is supposed to conduct a fair trial, protect the Constitution, and guarantee due process of law.

My Republican colleagues and I understand the gravity of these proceedings. The record shows that President Clinton's impeachment trial was met with a motion filed by Senator Byrd to dismiss the Articles of Impeachment early on. This time, not a single Senator filed such a motion. We approached this process with the seriousness it deserves.

Senate Republicans supported a resolution that gave the House managers more than ample time to lay out their case. Since then, we have heard an extraordinary amount of information over the last 2 weeks. The House managers presented 192 video clips with testimony from 13 witnesses and submitted more than 28,000 pages of documents. Senators then submitted 180 questions. After 2 weeks of trial arguments, the House managers failed to make a compelling case that the President should be removed from office; therefore, I will vote for the President's acquittal.

I firmly believe it is time for the Senate to move forward and return to the people's business. It is time to refocus our attention on our bipartisan work: providing for our servicemembers, caring for our veterans, funding research to cure diseases that cut short too many lives, fighting the opioid addiction, and improving our criminal justice system.

So I speak to Nebraskans and to all Americans in urging every Senator in this Chamber to have the courage, the heart, and the vision to move past this process and work together toward a brighter future for generations to come. That should be our mindset at this pivotal moment. That should be our mindset in everything we do.

I urge my colleagues to take the long view and fulfill our constitutional role. Let's reunite around our common goals and our values. Let's bring this process to an end and advance policies that will make life better for Nebraskans and better for all Americans.

Thank you.

[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR SHELLEY MOORE CAPITO

Mrs. CAPITO. Mr. President, I rise today to discuss why I will be voting to acquit President Trump on both Articles of Impeachment tomorrow afternoon.

Our Constitution makes clear that only a particularly grave act—“treason, bribery, or other high crimes and misdemeanors”—would justify a Senate voting to reverse the will of the people, the voters, and remove from office the person they chose to lead this Nation.

Besides making clear just how serious an offense needs to be in order to warrant impeachment, our founding document allows the President to remain in office unless two-thirds of our body—the Senate—votes for impeachment. To me, that underscores the need for a national consensus that runs across partisan lines before undoing an election.

The Senate has never in our history removed a President from office following an impeachment trial.

Our Founding Fathers recognized that impeachment should not be used as a blunt partisan instrument.

President Trump was duly elected by the people of this country to be President of the United States in 2016. Nothing that I have heard in this process has come close to providing a reason that would justify my voting to overturn the choice made by nearly half a million West Virginians and tens of millions of other Americans and even further—even further—to remove him from the ballot in 2020.

There is no doubt that the House impeachment process was partisan, politically driven, and denied President Trump some of his most basic rights of due process. At the same time, the product that was brought to our Chamber was obviously flimsy, rushed, and contained incomplete evidence.

Time and again, House managers demanded that we do things here in the Senate that they neglected to do themselves during their House proceedings, such as calling witnesses they refused to call—witnesses they are now asking us to bring forward.

Regardless of the failings of the House managers, it is the Senate’s job and, indeed, our oath to do impartial justice. In keeping with that oath, I supported a trial process that was modeled after the Senate’s precedent in 1999, when it received the approval of 100 Senators. I am glad we conducted this trial under that process because I felt it was fair to both sides.

Both the managers and the President’s attorneys were given 3 full days in the Senate to present their respective cases, and Senators spent 2 full days—16 hours—asking questions and receiving answers from the parties. Actually, I found that very instructive. The Senate heard testimony from witnesses in 192 video segments—some of them repetitive—and received more than 28,000 pages of documents. The House record, which we received here in the Senate, included the testimony of 17 witnesses. So there were witnesses. The House brought witness testimony into the Senate.

I keenly listened to these presentations with an open mind, and I have concluded that the arguments and evidence do not provide me with a sufficient rationale for reversing the 2016 election and

removing President Trump from the ballot in 2020. That is especially true considering the partisan nature of this impeachment process.

In the cases of President Nixon and President Clinton, there was significant support from House Members of the President's party for opening impeachment inquiries. The impeachment inquiry into President Nixon was supported by more than 400 Members of the House, many of those—an overwhelming number of those—from his own party. And 31 House Democrats voted to open an impeachment inquiry into their President, the Democratic President, President Clinton.

By contrast, in this case, not a single Member of the President's party voted in the House of Representatives to start an impeachment inquiry or to adopt either Article of Impeachment against the President.

Many of the President's political opponents want—and have wanted for years—to have him removed from office, while virtually no one in his own party supports this impeachment.

We have a mechanism in this country for dealing with issues that divide along party lines. That mechanism is not impeachment or removal. That mechanism, quite simply, is an election, and we have one in 9 months. So, beginning yesterday, we think, and in 9 months, we will have the certainty everyone desires.

In the meantime, I am casting a “no” vote in this Chamber tomorrow. I am voting no on both of these articles. But do you know what? I am also going to do something else. I am going to take this opportunity to rededicate myself to the principles that this U.S. Senate stands for. I am going to take this opportunity to look at those principles and appreciate that these are the principles that are tied to making America better each and every day. Together we can do this, as Republicans and Democrats.

During the impeachment process, Republicans approached me all the time—West Virginians approached me all the time, regardless of party, to ask why we were spending all of this time on a wasted process. They asked me questions like, Why don't you just get on with the business of giving America the confidence that you are working on the things that we care about—this was the butcher in the grocery store who asked me this very question—our families, making our families stronger, our lives better, and our jobs more permanent?

When we rid ourselves of the shackles of politics, we can truly work together on issues like transportation, broadband, energy, ending the drug crisis, or strengthening our military. These are the issues that affect all of us. These are the issues that transcend the day-to-day lives of all the people we represent. They also transcend the day-to-day sound bites we hear from the constant barrage of both positive and negative media to which we are so attuned.

No one has been served by this intense—and, at times, sensationalized—and very divisive proceeding. When we rid ourselves of the poisonous venom of partisan politics, we see more clearly. We know that we don't always agree. That is pretty clear. But we can certainly find common ground, and we do, as was envisioned by our Founders.

So let's all just take a deep breath and move on from here. Let's listen to our better voices. Those are the Americans we represent, who remind us every day how important our freedom and our futures are to the country and to the constitutional institutions that gird our values.

We sure have work to do. The American public expects us to do better. We should expect that of ourselves. After these wayward few weeks, there is no question we will need to rebuild that confidence. Do you know what? I am in this for the long haul, as I know the Presiding Officer is—the one where West Virginians and Texans and Americans see better days ahead for themselves and their children; the ones where West Virginians, Texans, and Americans drive to work each day and hear that Congress is actually doing its job. We were sent to Congress to work for the American people, to deliver results, to renew their faith in our institutions, to rise above our own parties, and to make life better.

I have always been humbled by the confidence that has been placed in me by my fellow West Virginians. It is truly an honor to serve, and it is one that comes with great responsibility. We need to roll up our sleeves, stop the bickering, and deliver.

I am looking at a lot of young people here in the Hall of the Senate, and I am thinking: How can I do better for you all? That is where our future lies.

I am an eternal optimist. I always have been. I am optimistic that we can find the solutions that move our country forward. Sure, there will be differences of opinion. There will probably be some harsh and sharp words along the way and differences in our philosophies, but Americans and these young people expect that we will bridge those gaps. It is going to take a lot of hard work, but I am certainly ready for the challenge, and I hope you will join me.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR PAT ROBERTS

Mr. ROBERTS. Mr. President, tomorrow, on this floor, the Senate will reconvene again as a court to vote on two Articles of Impeachment against President Trump. Now, after performing my due diligence, along with many others, and considering all assertions by the House and Senate managers, I believe the President should be acquitted from both charges. I do not believe that removal from office is warranted, more especially during an election year.

I, like everyone in this body, listened to 12 days of debate and testimony covering nearly 90 hours. I spent time meeting with my fellow Senators in order to reach a conclusion that was, one, fair; and two, met our constitutional mandates; and three, what will best serve our Nation.

I did not seek that responsibility. However, I have tried to carry it out to the best of my ability. As a Senate juror, I was asked to weigh whether or not the House Articles of Impeachment charging the President with obstruction of Congress or abuse of power had merit and, if true, whether the offenses rose to a level that requires

the President to be removed from office—again, during an election year.

And like many of us, I am troubled by multiple factors. Quite frankly, I am troubled with the House managers' demand that we in the Senate fill in the gaps of their investigation and call more witnesses, something they failed to execute themselves. The job of the Senate is to be an honest jury, if you will, and not take up the role of prosecutor or prosecution. Nonetheless, after hearing House managers' statements, it is clear this is exactly the role they insisted we do.

I am troubled that countless times the House managers made Senators feel as if we were the ones on trial. I believe the House managers were both incorrect and demanding, constantly stating that Senators have no choice but to agree with their line of reasoning, and if we did not, then we would deal with the consequences—a veiled threat yet to be defined.

I served in the House 16 years. For 12 years before that, I was chief of staff for a House Member. I know the House. I truly enjoyed my service there. But you don't come to the Senate and point fingers at Senate Members and make the insinuation that we are on trial if we do not do the right thing, as they have concluded. Enough of that.

Additionally, my top concern was what precedent would be set for future Presidents and their expectations of privacy in conversation with their advisers, not to mention the future, with regard to this situation, once again, with our Nation finding itself in a whirlpool of partisan impeachment. I have been most troubled that the House managers have not put cause before personal animus. I would think, back in the day, perhaps, that they had a barrel—like a rain barrel to capture the excess water off of the roof. I know we had that in Dodge City. I think it probably sat right over there. It is flowing over with personal animus. It is a rain barrel to catch that and get rid of it and let us get back to our business. I deeply regret that.

As has been stated frequently, Alexander Hamilton described it best, that charges against the President “will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. In many cases it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence, and interest on one side or the other; and in such cases there will always be the greatest danger [to our Nation] that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt.”

I don't know how many Senators and, for that matter, the distinguished professor from Harvard, Professor Dershowitz, said that over and over again. Unfortunately, the warning of Alexander Hamilton and our Founders have come into fruition today. It is infectious and harming our ability to function as the United States Senate, where the threads of comity are already getting pretty frayed, threadbare.

In this regard, I appreciated yesterday when the White House counsel showed clips of major bills important to the American people that we have done in a bipartisan fashion, despite our dif-

ferences, despite the animus in the Senate, especially highlighting something called the farm bill, where we achieved 87 votes, with the support, by the way, of the distinguished Presiding Officer. We don't always agree on every issue on the Ag Committee, but we can work together to accomplish great things for America. We have done that with the farm bill. Along with Senator STABENOW and the entire Agriculture Committee, we are the least partisan committee in this distinguished body. That is what we do in the Senate; that is what we do on behalf of our farmers, ranchers, our growers—everybody throughout rural and smalltown America—and we are charged with certainty and predictability, and we had to get it done. That is what the White House has done on a number of occasions. We use the threads of comity to get things done. It needs a lot of restitching.

So I ask, have President Trump's actions risen to the level and vision by our Founding Fathers and the Constitution as high crimes and misdemeanors warranting removal from office? Our Constitution requires that the threshold for that judgment must be set by each Senator sitting as a juror.

All of us in this Senate have concerns about the direction this country is heading, but let me just stress that we have come through, time and time again, dark times. These are not the worst of times. When I first arrived here in the Senate as a chief of staff for Senator Frank Carlson, it was within weeks we had the horrible tragedy of the assassination of Martin Luther King. Washington was burning. Marines were on the Capitol steps with sandbags and live ammunition. That was tough. Vietnam tore the country apart, so did Watergate, so did the impeachment of Bill Clinton, so did Iran-Contra, just to name a few.

Today a charge of impeachment against the President has placed this Nation in jeopardy again. The House managers' assertions are exactly the kind of situation the Framers were trying to avoid—the remarks by Alexander Hamilton that I just read—as they devised the impeachment mechanism to remove a sitting President whose actions endangered the Republic.

However, as we did back then, we will once again come together. As I said, these are not the worst of times, and we have always pulled it together. We are a strong nation because we have strong people. We are a strong nation because it is in our nature to work together, even as we disagree among ourselves.

So I made my choice very clear, and my plea is, let us restore the threads of comity in this distinguished body. Work together, we must. We will emerge strong because we will.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR JOHN HOEVEN

Mr. HOEVEN. Mr. President, I rise today to speak regarding the impeachment of President Trump.

For more than 2 weeks now, the Senate has listened as both the House managers and the President's counsel presented their cases. Nearly 28,000 pages of documents, including testimony from 17 witnesses gathered as part of the House investigation, will be part

of the Senate record. Over the course of 2 days, Senators asked 180 questions of the House managers and the White House counsel. The Senate took its constitutional duty very seriously.

After carefully listening to the House managers, President's counsel, reviewing the documents and testimony, and asking questions, it is clear to me that the House should not have impeached President Trump, and the Senate should vote to acquit the President.

The House process did not provide the President with important due process rights. On the other hand, the Senate trial was conducted using past precedent of the Clinton trial as the framework. At the start of the Senate trial, the Senate agreed that the House evidence could be admitted into the record. We provided ample opportunity for both the House managers and White House counsel to make their arguments and ensure that Senators had substantial time to ask their questions. As I said, in fact, Senators asked 180 questions over 2 full days and received lengthy answers from both—and detailed answers from both President's counsel and the House managers.

The American public has seen the transcript of the call between President Trump and President Zelensky. President Zelensky has said on several occasions that he did not feel pressured to do anything in return for the security assistance. Further, the military aid was provided to Ukraine without any investigations being conducted. Given these facts, the House's allegations do not rise to the level of an impeachable offense.

Our Founding Fathers believed that impeachment should not be used as a partisan weapon and that the President serves at the will of the people. With an election to be held in coming months, it should be up to the American people to decide who will lead the country.

We need to put this impeachment behind us. We need to get back to work advancing measures to help improve the lives of Americans. These legislative priorities, delayed while the House and Senate focused its attention on partisan impeachment, include important items like addressing our Nation's infrastructure, lowering prescription drug costs, providing middle-class tax relief, promoting American energy development, supporting our military and veterans, upholding our trust and treaty obligations to our Tribal communities, securing our borders, and continuing to fight for our farmers and our ranchers. These should all be areas where we can work together on a bipartisan basis for the American people.

With these important priorities in mind, I look forward to getting back to work for the American people.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR ROBERT MENENDEZ

Mr. MENENDEZ. Mr. President, I rise today as an unwavering believer in the system of checks and balances laid out by our Framers in the Constitution, with three coequal branches of government at times working with each other and at times working as a check against each other. It is this system of checks and balances that

safeguards our Republic against tyranny and ensures that our government by the people, for the people, as Abraham Lincoln said, does not perish from the Earth.

My colleagues, what the facts of this trial have shown and what every Member of this body knows is that President Trump did exactly what the House has accused him of in these two Articles of Impeachment: abusing his power and obstructing Congress.

These articles strike at the very heart of a republic ruled not by men but by laws and the very notion of a government elected by and for the people.

I took my constitutional oath to do impartial justice seriously. I came to the trial with an open mind. I listened to both sides. I waited for the facts to persuade me. But in all the many hours I sat through this trial, not once did I hear the President's team make a compelling defense. Instead, I heard a damning case from the House managers detailing how President Trump subverted our national security and solicited foreign interference in our election for his own personal political benefit.

The facts show that the President used U.S. security assistance and an official White House meeting—two of Ukraine's highest priorities—not to advance our national security but, rather, his own 2020 reelection effort. In so doing, he violated the law known as the Impoundment Control Act and undermined Congress's constitutional authority.

As the ranking member of the Senate Foreign Relations Committee, I want to make something clear. When a foreign adversary like Russia interferes in our elections, it is not for the benefit of the United States; it is for the benefit of Russia.

The United States provides foreign assistance to countries all over the world because it benefits America's interests. We help Ukraine in their fight against Russian aggression because it is the right thing to do for our national security. But when U.S. officials tell Ukraine that in order to get the Oval Office meeting their President wants and the security assistance it urgently needs, their government must first announce investigation into President Trump's political opponents, that is not advancing our national security. That is corrupting it. That is forcing a foreign country to choose between their own security and getting perversely involved in another country's elections.

When we use U.S. foreign assistance as a political pawn, we weaken our standing and credibility in the world.

Ukraine needed our help. Yet, when it sought our military assistance, instead of sending it right away, the President of the United States said: Well, I would like you to do us a favor, though. The damage of that message cannot be undone. And if we don't hold this President accountable, then we are saying it is OK to do it again.

I fear the consequences of the President's actions, and I fear the consequences of our own inaction—not just for today or this year but for years to come when we have to explain to our allies "Trust us; we will be there" or when we tell the American people "Trust us; we are doing this in the name of U.S. national security" or when we press other countries about strengthening the rule of law and holding free and fair elections.

If we do not rein in this conduct, if we do not call it the abuse of power that it is, then we have failed to live up to the ideals of our Republic.

I fear we have already let the American people and our Constitution down by failing to hold a fair trial. There is no American across this country who would call a trial without witnesses and documents a fair trial. They would call it a sham. And by refusing witnesses and documents, the Senate is complicit in the President's obstruction of Congress—the essence of the House's second Article of Impeachment.

The House had a constitutional prerogative to conduct an impeachment and oversight investigation. Yet President Trump engaged in unprecedented obstruction in order to cover up his misconduct by blocking witnesses with firsthand knowledge, by denying access to any documents, by publicly disparaging and threatening—threatening—those with the courage to defy his orders and testify publicly, by casting aside a coequal branch of government, as if he can really do, as he himself has said, whatever he wants.

When a President tries to extort a foreign government for his own political aims and in doing so ignores the law and the Constitution, the only remedy can be that which our Framers gave us: impeachment and removal.

The Framers knew this day would come. They knew the threat of an Executive who welcomed or solicited foreign interference in our elections is real. What the Framers of our Constitution never could have imagined is that there would come a day when the U.S. Senate would shrink in the face of a President who would behave like a King, not out of principle but out of willful ignorance and blind party loyalty.

Our failure to conduct a fair trial casts doubt on the very verdict rendered by this body. This is not an exoneration of a President; it is a coronation of a King.

I believe that the day we fail to remove this President will go down in history as a day of constitutional infamy. It will be remembered as a dark day for our democracy, for our national security, and for our constitutional order.

I ask my colleagues, what future damage will we enable if this body says that it is OK for a President to subvert our national security interests and solicit foreign interference in our elections? What will be left of our system of checks and balances if there are no consequences for obstructing investigations, blocking witnesses, and withholding evidence from Congress? If we do not remove this President, can we pull ourselves back to a place where the rule of law matters? How much more shredding of the Constitution as a nation can we possibly endure?

We already know President Trump thinks he can go to war without congressional authorization. He believes he can misuse congressionally appropriated funds for whatever he wants, like taking billions from the Department of Defense to spend on a border wall that every day proves to be a colossal waste. And through it all, the compliant and complicit Republican majority has further emboldened this President by eliminating the 60-vote threshold for Supreme Court nominations, by refusing to call witnesses in this

trial, by further stripping the Senate of its David versus Goliath role in which we serve as a check on vast executive power.

If the Senate is prepared to say that this President and all future Presidents of either party can misuse congressionally appropriated funding to extract political favors from a foreign power, can deny all witnesses, can withhold all relevant documents, can openly threaten Ambassadors, career public servants, and Members of Congress—if a President can commit all of these gross abuses of power as if he were above the law, then the very essence of our democracy is broken, and what we must ask ourselves is, What is left? What is left of our Constitution if we are not prepared to defend it? What is left other than lawlessness?

We need Republicans of conscience and courage to say more than just “Yes, the President did it, and it was wrong.” We need our Republican colleagues to be intellectually honest. We need them to speak the truth and say it is impeachable so we can mount a bipartisan defense of the Constitution and all that America stands for.

I, for one, am prepared to defend our Constitution. I will vote guilty on the Articles of Impeachment, not because of loyalty to any party, not because of how it will or won't play in any upcoming election. I will vote for impeachment and removal not because I hate this President, because I don't, but because I love our country more.

I took an oath to uphold the Constitution, and with this vote, I intend to do so.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR EDWARD J. MARKEY

Mr. MARKEY. Madam President, I thank you.

Over the course of this trial, we have heard nothing less than a blistering, scalding indictment of President Trump's conduct. The House managers put forward a compelling—indeed, overwhelming—case that Donald Trump engaged in impeachable conduct. He withheld both congressionally approved aid to our ally Ukraine and an Oval Office meeting desperately sought by Ukraine's new President—two official acts—in exchange for personal favors that would benefit him politically.

Trump sought an announcement by Ukraine of baseless investigations into bogus corruption allegations against Joe Biden, whom Donald Trump most feared as an opponent in the 2020 Presidential election. He also wanted Ukraine to announce an investigation into the discredited and debunked conspiracy theory that Ukraine, not Russia, interfered in the 2016 Presidential election.

At every turn, Donald Trump refused to cooperate with and actively obstructed Congress's investigation into his wrongdoing. His obstruction was, in the words of the Articles of Impeachment, “unprecedented, categorical, and indiscriminate.”

I listened carefully to the President's lawyers as they presented their defense case. Like my colleagues, I took pages of notes. My colleagues were very patiently trying to hear each argument that was being made by the defense counsel. I took notes. They took notes.

As I sat at this desk, with the seriousness and sanctity of the proceedings thick in the air, I waited for the President's lawyers to rebut the avalanche of evidence against their client, and I waited and I waited. At the end of the case, I was still waiting. And that is because the President's lawyers did nothing to rebut any of the facts in this case—nothing. They knew what we all knew after we heard the House managers' case. Donald Trump did it. He did it. He did exactly what he was alleged to have done. He abused his power. He committed impeachable crimes. He is guilty. There is no question about it—no question at all.

There is no doubt that President Trump used his personal attorney, Rudy Giuliani, to solicit Ukraine's interference in the 2020 election. There is no doubt that President Trump froze the \$391 million of taxpayer dollars in Ukraine military aid and security assistance that Congress authorized and appropriated. There is no doubt that President Trump conditioned the release of that aid on the Ukrainian Government's announcement of politically motivated investigations.

There is no doubt that in a July 25, 2019, telephone call, President Trump directly solicited investigations from President Zelensky, as the partial transcript memorialized and as Acting White House Chief of Staff Mick Mulvaney admitted. There is no doubt that President Trump released the aid to Ukraine only after a patriot within the intelligence community blew the whistle on him and after several House committees announced a joint investigation into the President's coercive scheme. There is no doubt that the President directed and orchestrated a coverup and the wholesale obstruction of Congress's investigation into his wrongdoing.

Donald Trump has shown no remorse, no contrition, no recognition whatsoever that his conduct was wrong. Instead, he has doubled down on his abuses, gaslighting us repeatedly with the assertion that his call with President Zelensky was "perfect" and by publicly urging Ukraine and China to investigate his political rivals.

The question now before the U.S. Senate is not, What are the facts? We know the facts. No reasonable person can dispute them. No, the question for the Senate is, What in the pursuit of impartial justice, as our oaths require, must we do with these facts?

To me, the answer is clear. We must vote to convict Donald Trump and remove him from office. All the evidence shows that he has committed impeachable offenses and is a clear and present danger to our democracy and our national security.

But if we fail to remove Donald Trump from office, we are left with an equally consequential question: What would prevent an acquitted Donald Trump from abusing his power again? We all know that the answer is nothing—nothing will. That is the answer I received from the House managers when I asked this question during the trial. In fact, we know that an acquittal will only embolden him.

We know that Donald Trump's phone call with Ukrainian President Zelensky took place the day after Special Counsel Mueller testified in the House of Representatives. The special counsel found and explained in his House testimony that there was evidence of a criminal conspiracy between members of the Trump campaign

and Russia, but the evidence was not sufficient to bring charges. Robert Mueller never said there was no evidence of such a conspiracy. There was evidence. It was merely insufficient for a prosecution.

We know that Donald Trump took this as a green light to invite further foreign interference in our elections, which he did the very next day.

Donald Trump has no shame. He cannot help himself. If we acquit President Trump, he will believe himself to be accountable to no one, and when—not if, but when—he is again faced with a choice between the public interest and his personal interest, he will choose his personal interest, and it will, in part, be a reckoning of our own making. A majority in this Chamber will have made President Trump a dictator.

Then, what will we tell the American people? How will we convince them that we still have a democracy that they should have faith in, a system of checks and balances that ensures accountability, that no one is above the law?

This weekend I asked some of my constituents what they would say on the floor of the Senate if they could make remarks in this trial.

Jennifer Baker Jones of Woburn said it perfectly:

Wednesday's vote won't be a vindication of Trump, but an end to the right of Congress to push back on the President. They are giving up their balance of power.

It will be difficult because we have already ceded much of our authority and, indeed, betrayed the public's faith in us by the conduct of this trial.

Hope Anderson in Lowell, MA, told me:

We need to not only hold our leaders and ourselves accountable, but seek to maintain and repair the public's trust.

We are not here simply to protect one election in 2020. We are here to protect all elections.

At the beginning of this trial, we each took an oath to do impartial justice, but then we held the trial without witnesses and without documents. We moved to vote on the Articles of Impeachment without hearing from John Bolton, a witness whose firsthand knowledge directly cuts the heart out of the President's case; without hearing from Mick Mulvaney, whose fingerprints are all over this scheme; without the emails, texts, and other documents we know exist, writings that memorialize communications about the actions at issue here.

A trial is a search for the truth, the full truth, the whole truth. That search for the truth requires hearing from relevant witnesses and seeing relevant documents so that the fact finders understand the entire story. By not pursuing this evidence, the Senate—the fact finders—have told the American people that the truth does not matter.

They deserve better from us. Our Constitution demands it, our democracy demands it, and I believe the vast majority of my Republican colleagues do understand what Donald Trump did here and know that it is very, very wrong. They know the House managers proved their case. Some are even saying that out loud.

I believe the vast majority of my Republican colleagues recognizes that abuse of power is an impeachable offense and that the President is not above the law. But, unfortunately, I also believe that they are simply too afraid of Donald Trump to do what they know is right.

Every Senator needs to consider this question. If what Donald Trump did here is not impeachable—extorting foreign interference in our free and fair elections and then covering it up—then what is impeachable?

We have to have accountability. That is our duty. We cannot give future Presidents *carte blanche* to tear down our Constitution and interfere with free and fair elections, period. That has to be our standard.

I will end my remarks with the answer I got from my constituent Matthew Murray in Gloucester to what he would say if he were here. He said:

I urge you, my fellow Senators, to deliberate in accordance to your conscience and the oath you took when you were elected, and vote to remove this dangerous President from office.

This is the choice we must make: duty to this President or duty to democracy. For this reason, I will be voting to remove President Trump from office. This is an historic moment. I do not think that this body has a choice.

Thank you, Madam President.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR THOMAS R. CARPER

Mr. CARPER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CARPER. Madam President, 233 years ago, our Founding Fathers gathered in Philadelphia, just a few miles north of us in Delaware. Eleven years earlier, we had declared our independence from the British Crown, the most powerful empire in the world. Despite long odds, David overcame Goliath, and we won our independence, but would the government of this new Nation endure?

When the Founders gathered in Philadelphia that summer of 1787, they began debating a new form of government. At times, the differences between our Founders—Northern States, Southern States, small States, and large States—seemed irreconcilable. However, a great compromise was eventually reached, and an intricate system of checks and balances was written into a governing document, the Constitution of the United States.

Nebraska Senator William Jennings Bryan once remarked: “Destiny is not a matter of chance. It is a matter of choice.” Our Constitution has endured longer than any other on Earth, in large part because we did not leave our destiny to chance. Today, our Constitution remains the longest lasting Constitution in the world.

Our Founders, despite their many disagreements, made the crucial choice that this new Constitution would not lead to the creation of an all-powerful King. They came from places where they had done that, been there, and they didn’t want to go through that

again. Instead, the Constitution created three separate, coequal branches of government—an executive branch, a legislative branch, and a judicial branch. This ingenious system would ensure that a future President with the impulses of a King would be restrained by the other two branches.

The Constitution also provided another backstop against abuses from a future President who committed treason, bribery, or other high crimes and misdemeanors. That constitutional backstop is called impeachment.

As we consider the impeachment of Donald J. Trump, I ask my colleagues to remember that while we are here today because of the conduct of one man, the Constitution that guides us through these choppy waters some 233 years later is the triumph and wisdom of many men. We are here because of patriots like Washington, Adams, Jefferson, Franklin, Madison, Hamilton, and many others who lived under the harsh rule of a King and fought for the freedom to govern themselves.

Our Constitution gives the House of Representatives the sole power of impeachment, while the Senate has the sole power to conduct a trial in the event the House impeaches a sitting President.

We are now at the end of the impeachment trial of Donald J. Trump. It is not the trial that many of us had hoped for. We had hoped for a fair trial. The American people deserve a fair trial. A fair trial has witnesses. A fair trial has evidence.

I don't believe that history will be kind to those who have and continue to prevent the truth from coming to light during this trial. The American people deserve to know the truth, as does this jury, the Members of the United States Senate.

President Lincoln once said:

I am a firm believer in the people. If given the truth, they can be depended upon to meet any national crisis.

Thomas Jefferson said something very similar to that. He said that if the people know the truth, they won't make a mistake.

The same is true of the Senate. If given the truth, we, too, can be depended upon to meet this crisis and do the right thing. I believe the truth will not only set us free but keep us free.

We now have an obligation to consider the evidence presented by House managers and the President's defense team related to two Articles of Impeachment—one, abuse of power; two, obstruction of Congress.

The House managers have presented a case that is a result of a 3-month-long investigation during which the House Intelligence Committee issued scores of subpoenas for documents and testimony. Donald Trump obstructed this process from the start. No President—not even President Richard Nixon during Watergate—has ever issued an order to direct a witness to refuse to cooperate in an impeachment inquiry. As a result of this unprecedented obstruction, the Trump administration did not provide a single document to the House of Representatives—not one.

Fortunately, those 17 brave public servants, many of whom risked their careers, came forward to testify under oath, and here is what we learned from them.

Donald Trump used the powers of his office to pressure the Government of Ukraine to interfere in the 2020 election on his behalf

and to smear his most feared political opponent, our former colleague, former Vice President Joe Biden. Donald Trump did this by illegally withholding funds appropriated by Congress to help an ally, Ukraine, in the midst of a hot war against Russia. Donald Trump did this by withholding a coveted White House meeting from the newly elected President of Ukraine, President Zelensky.

This President illegally withheld the funds and a meeting until President Zelensky merely announced sham investigations involving Vice President Joe Biden and a debunked conspiracy theory that Ukraine, not Russia, interfered in the 2016 election. And when he got caught in the midst of this corrupt scheme, President Trump even called for other foreign nations to interfere on his behalf in the upcoming 2020 election.

While I believe the evidence against Donald Trump is overwhelming, like any criminal defendant, he is entitled to a robust defense.

Many of us listened carefully to the President's defense team over the course of his 2-week trial. Not once did the President's defense team rebut the facts of the case. Not once did they defend their client's character or call an eyewitness who could contradict the assertions made by witnesses who testified under oath. Not once did we hear the President's defense team say: Of course, the President wouldn't use the weight of the Federal Government to smear his political rival.

What did we hear? Instead, we heard distractions, conspiracy theories, unfounded smears about Vice President Biden—our former colleague—and his family. Instead, we heard a farfetched legal theory that Presidents cannot be impeached for soliciting foreign interference in our elections if they believe their own reelection is in the national interest.

I believe the House managers proved their case, and there now appears to be some bipartisan agreement that the President abused his power. Still, does this merit conviction and removal from office? Think about that.

Our Constitution, agreed to in 1787, sought to establish "a more perfect Union"—not a perfect union, "a more perfect Union." The hard work toward a more perfect union did not end when Delaware became the first State to ratify the Constitution on December 7, 1787. In truth, it had only just begun. We went on as a nation to enact the Bill of Rights, abolish slavery, give women the right to vote, and much, much more.

Throughout our history, each generation of Americans has sought to improve our government and our country because, after all, we are not perfect.

In the words of Senator Bryan, we do not leave our destiny to chance. We make it a matter of choice. And we choose to make this a more perfect union, a reflection that the hard work begun in Philadelphia in 1787 is never—never—truly complete.

Our Constitution has weathered a Civil War, World War I, World War II, Vietnam, Watergate, a Great Depression, a great recession, death of Presidents, assassination of Presidents, and, yes, impeachment of Presidents. Our Constitution will weather this storm too.

A vote to acquit this President does not exonerate this President. A vote to acquit effectively legalizes the corruption of our elec-

tions—the very foundation under our democratic process. A vote to acquit says to the President, and to all who follow, that you may use the powers of the office to solicit foreign interference in our elections—the very thing that the Founding Fathers feared. A vote to acquit is the realization of our Founders' worst fears: leaving a President with the impulses of a King, unchecked by the other co-equal branches of government and undeterred by the prospect of impeachment.

Donald Trump violated his oath. He broke the law. He attempted to cheat in the 2020 election, and when he got caught, he left little doubt that he will cheat again. That is not the conduct we expect of an American President. That is the conduct of someone who believes that he or she is above the law. Donald Trump is our President. He is not our King.

So colleagues, if our destiny is to remain the most enduring democracy in the history of the world, we must not leave this to be a matter of chance. We must choose to preserve and protect our Constitution, and, to do so, we must convict Donald Trump on both Articles of Impeachment and remove him from office.

As he left the Constitutional Convention in 1787, Benjamin Franklin was asked this question we heard asked several times in the last 2 weeks on this floor. He was asked: "What do we have, [what do we have here] a monarchy or a republic?" Franklin answered famously: "A republic, if you can keep it."

Today I want to pose the same question to all of us, to our colleagues, in this Chamber: What do we have here, a monarchy or a Republic? I guess we can all answer for ourselves, but I want to leave you with my answer today. Here it is. We have a Republic, and I intend to keep it.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR TIM KAINÉ

Mr. KAINÉ. Madam President, I rise also to discuss the pending matter, the serious matter of impeachment.

President Trump schemed to get Ukraine to help him win the 2020 election by strong-arming its new President to announce a bogus investigation against a political opponent. To carry out his scheme, he smeared, fired, and threatened a dedicated career ambassador, thwarted Congress by secretly withholding appropriated military aid over the advice of his national security team, violated two laws in order to hide his actions, outsourced critical foreign policy to a rogue private attorney, hurt an American ally, gratified an adversary, and overturned longstanding precedent regarding the relationship between the executive and legislative branches. The scheme was so repellant that numerous members of his own administration fought against it, and then, when they could not stop it themselves, courageously brought it to light.

The House managers have proven both Articles of Impeachment. But I have struggled during the Senate process—which cannot be called a trial due to the shocking refusal to allow key witnesses and documents—with a basic question: Is it an abuse of trust for a President to behave exactly as expected?

President Trump's behavior has been appalling, but it has not been a surprise. The American people knew that Donald Trump would seek foreign help to win an election. He publicly did so in 2016 by appealing to Russia for help at the same time as our Chairman of the Joint Chiefs of Staff said Russia was America's chief adversary. That he is doing so again is no surprise.

The American public knew that Donald Trump would target political opponents with false attacks. He publicly did so in 2016 by leading crowds in chants of "Lock her up." That he will again target perceived opponents, Democrats or Republicans, Ambassadors or whistleblowers, Representatives or Senators, war heroes or teenage environmental activists, is no surprise.

The American public knew that Donald Trump would obstruct the release of information. He publicly did so in 2016, when he violated longstanding practice by refusing to release his tax returns. That he will continue to obstruct Congress, the media, and the American public is no surprise.

His bigotry is no surprise. His lying is no surprise. His lack of ethics is no surprise. His xenophobia is no surprise. His misogyny is no surprise. His obsessive selfishness is no surprise. His hateful, divisive, and ignorant rhetoric is no surprise.

But Presidential impeachment was not designed to remove an amoral leader that the Nation had knowingly and willingly elected. It was designed to rescue the Nation from a leader who abuses the public trust. Can one abuse the public trust by behaving exactly as expected?

The Senate impeachment process answered my question. In 1974, Senators of both parties were willing to condemn extreme Presidential misconduct. In 1999, Senators of both parties were able to distinguish between unacceptable personal behavior and "high Crimes and Misdemeanors." But in 2020, the Senate majority engineered an effort to conceal the truth rather than find the truth. Some described their motives as "let the people decide," even as they voted to hide critical evidence from the American people.

While the President's actions have not been surprising, the Senate's capitulation has surprised me. And last Friday, as the majority repeatedly blocked the effort to consider witnesses and documents, I had a sad epiphany. Unchallenged evil spreads like a virus. We have allowed a toxic President to infect the Senate and warp its behavior, and now the Senate's refusal to allow a fair trial threatens to spread a broader anxiety about whether "impartial justice" is a hollow fiction. An acquittal will lead to worse conduct.

I will not be part of this continual degradation of public trust; thus, I will vote to convict.

An acquittal will, however, underscore a higher principle. The removal of a man will not remove the moral void he exemplifies. Instead, every day, people of good will must engage as never before and show to ourselves and to the world that Americans still have the capacity to choose right over wrong, service over self, fact over fiction, and decency over malice.

[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR TED CRUZ

Mr. CRUZ. Madam President, tomorrow afternoon, the Senate will vote to acquit President Trump in these impeachment proceedings. That is the right thing to do. That is the decision that comports with both the facts and the law.

These impeachment proceedings began in the House of Representatives in a thoroughly partisan affair, driven by House Democrats, without allowing the President to participate in cross-examining witnesses and calling defense witnesses.

When the matter came to the Senate, the Senate was obligated to do much better. We had an obligation under the Constitution to conduct a fair trial, and that is what the Senate has done. Over the course of the last 2 weeks, we have heard hour upon hour upon hour of argument. The House proceeding heard testimony from 18 different witnesses. The Senate saw 193 video clips of witness testimony presented here on the Senate floor. The Senate posed 180 separate questions from Senators to the House managers or the White House defense team. Within the record were over 28,000 pages of documents, including the single most important evidence in this case, which is the actual transcript of the conversation at issue between President Trump and the President of Ukraine. The Trump administration, to the astonishment of everyone, declassified that transcript and released it to the world so that we can read precisely what was said in that conversation.

The reason acquittal is the right decision is that the House managers failed to prove their case. They failed to demonstrate that they satisfied the constitutional standard of high crimes and misdemeanors. The text of the Constitution provides that a President may be impeached for "Treason, Bribery, or other high Crimes and Misdemeanors." The House managers fell woefully short of that standard. Indeed, in the Articles of Impeachment they sent over here, they don't allege any crime whatsoever. They don't even allege a single Federal law that the President violated.

An awful lot of Americans looking at these proceedings have heard a lot of noise, have heard a lot of screaming, but are left wondering, What was this all about?

If you examine the substance, there are two things that the House managers allege the President did wrong. One, they allege that the President wrongfully delayed aid to Ukraine, and, two, they allege that the President wrongfully asked for an investigation into a political rival. Both of those are legitimate ends.

Let me address them one at a time because there is a deep irony in the argument of the House managers. Both of those objectives are consistent with law, are permissible and legal, and both of those objectives have been done, by any measure, substantially worse by the preceding administration, by the Obama administration.

Let's take delaying aid to Ukraine. I am a big believer in America standing with Ukraine. Indeed, I traveled to Ukraine. I went to the Maidan Square and stood with protesters who had been shot down by their government as the protesters stood for freedom.

I believe military aid to Ukraine is a good thing, and it is true that the Trump administration temporarily delayed aid to Ukraine. That is their right to do so. Presidents have delayed foreign aid before. The Trump administration has done so with regard to a number of countries. The Obama administration did so before that. Previous administrations have done so.

But we heard hour upon hour of the House managers trying to establish the proposition that aid to Ukraine was delayed when President Trump admits aid to Ukraine was delayed. There is no dispute about it.

We heard testimony about how Ukrainians died because aid was delayed. Here is the irony: If you support aid to Ukraine, as I do, military aid to Ukraine as they stand up to Russia, there is no dispute whatsoever that, for the entirety of his Presidency, President Obama refused to give lethal military aid, defensive aid, to Ukraine, despite the fact that I and other Members of this body called on President Obama to give aid to Ukraine. I remember when we all went to the floor of the House of Representatives to hear a speech to a joint session of Congress from President Poroshenko, then the President of Ukraine, where the President of Ukraine called out the Obama administration because they were sending blankets and MREs—meals. And President Poroshenko rightly said that you can't fight a Russian tank with a blanket.

So if the House managers are right that there is something improper about delaying military aid, the Obama administration did so for the entirety of the administration. What did President Trump do? He did something Obama never did: He provided lethal defensive military aid—Javelin missiles that can take out Russian tanks.

The first ground they allege, of delaying aid, is legal and permissible, and by any measure, the Trump administration's record on it is much, much better than the Obama administration's.

How about the second ground: directing an investigation into your political rival. The most important legal question in this proceeding, the question that resolves this proceeding, is this: Does the President have the constitutional authority to investigate credible allegations of corruption?

The House managers built their case on the proposition that seeking an investigation into Burisma, the corrupt Ukrainian natural gas company, and Joe Biden and Hunter Biden—seeking any investigation into whether there was corruption was, in the words of the House managers, “baseless,” “a sham,” and utterly “without merit.” In their opening arguments, the House managers spent over 2 hours trying to make that case, and Madam President, I will say, on the face of it, that proposition is objectively absurd.

The White House legal defense team laid out, in considerable detail, that there was very substantial evidence of corruption. Burisma is a company that was built on corruption. The oligarch who started Burisma, Mr. Zlochevsky, was the sitting energy minister in Ukraine, and he amassed his billions by, as the sitting energy minister, giving gas licenses to his own company that he was head of. That is where Burisma made their money. It was a company built on corruption from day one.

Now, I think it is worth pausing and examining the timeline of what occurred because, remember, the House managers' case is that it is baseless and a sham to even investigate corruption.

In early 2014, Vice President Joe Biden was named the point person for the Obama administration on Ukraine. In April—on April 13 of 2014—Devon Archer, business partner of Hunter Biden, the son of Joe Biden, joined the board of Burisma and began being paid a million dollars a year. On April 28, Britain's securities fraud bureau freezes \$23 million in accounts controlled by Zlochevsky, the oligarch who owned Burisma. Then, just 2 weeks later, on May 12, Hunter Biden, the son of Joe Biden, is named to the board and paid a million dollars a year, despite having no background in oil and gas and no discernible background in Ukraine. Hunter Biden gets paid a million dollars a year, and Joe Biden actively, aggressively, vigorously leads the Obama administration's policies on Ukraine.

Now, the House managers were asked in questioning: What exactly did Hunter Biden do for his million dollars a year? They refused to answer that. That is a perfectly reasonable question to ask if you are investigating corruption. Joe Biden is seen on video not just admitting but bragging that he told the President of Ukraine he would personally block a billion dollars in foreign aid loan guarantees unless Ukraine fired the prosecutor who was investigating Burisma, the company paying his son a million dollars a year. As Joe Biden bragged on that video, "Well, son of a bitch," they fired him.

Now, that, on its face, raises significant issues of potential corruption. We don't know for sure if there was, in fact, corruption, but when President Trump asked that it be investigated to get to the bottom of what happened, the President has the authority to investigate corruption, and there was more than sufficient basis to do so.

Of course, the House managers are right that it is somehow illegitimate, it is somehow inappropriate—it is, in fact, impeachable—to seek the investigation of your political rival.

We know for a fact that the Obama administration not only sought the investigation but aggressively led an investigation marred by abuse of power, going after then-Candidate Trump, including wiretaps, including fraudulently obtained court documents and court warrants from the FISA Court.

Impeachment is an extraordinary remedy. It is not designed for when you disagree. It is not designed for when you have political differences or policy differences. It is designed for when a President crosses the constitutional threshold.

On February 6, 1974, the Democratic Judiciary Committee Chairman Peter Rodino, Democrat from New Jersey who led the impeachment inquiry into Richard Nixon, told his colleagues:

Whatever the result, whatever we learn or conclude, let us now proceed, with such care and decency and thoroughness and honor that the vast majority of the American people, and their children after them, will say: This was the right course. There was no other way.

That was the standard that led to an overwhelming bipartisan vote to open the impeachment proceeding against Richard Nixon. That standard was not remotely followed by the House managers.

This was a partisan impeachment, and we are right now in an election year. The voters are voting, and it is up to the voters to decide which policies they want to continue. The House managers have abused the constitutional process by trying to use impeachment to settle a partisan score. That is divisive to the country, and I am proud that this body will vote—and I hope in a bipartisan way—to reject these Articles of Impeachment, to acquit the President, and to find President Trump not guilty of the articles the House has sent over.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR JOHN KENNEDY

Mr. KENNEDY. Madam President, I will vote against each of the House Democrats' Articles of Impeachment, and I would like to explain why.

The House Democrats' impeachment proceedings and their Articles of Impeachment were and are fatally flawed. My friends, the House Democrats, say that the President is out of control. What they really mean is that the President is out of their control. And that is not grounds for impeachment.

First, the process. The House Democrats' impeachment proceedings were rigged. Speaker PELOSI and the House Democratic leadership decided before they even began to give President Trump a fair and impartial firing squad. Speaker PELOSI and the House Democrats' judicial philosophy from the very beginning was guilty. That is why much of the proceedings were held in secret.

Democracy, they say, dies in darkness, and I believe it. That is why the House Democrats hid the identity of the original accuser, the so-called whistleblower, thus prohibiting the American people from being able to judge the accuser's motives. That is also why the House Democrats prevented the President and his counsel from cross-examining the House Democrats' witnesses, from offering his own witnesses, from offering rebuttal evidence, and even from being able to challenge the House Democrats' evidence. The House Democrats wouldn't even allow the President or his counsel to attend critical parts of the impeachment proceedings.

The U.S. Senate cannot and should not consider an impeachment based on such a deficient record. It is true that in America no one is above the law, but no one is beneath it either. Fairness matters in our country.

The House Democrats' impeachment is also flawed because it is a partisan impeachment. Its genesis is partisan rage. Not a single, solitary House Republican voted for the Articles of Impeachment—not one.

The House Democrats made a conscious decision to turn impeachment into a routine Washington, DC, political weapon, to normalize it. Our country's Founders were concerned about impeachments based on partisan rage and our country's Founders were adamantly opposed. That is why in the Constitution they required a two-thirds vote of the Senate to impeach.

Now, a word about the substance of the House Democrats' Articles of Impeachment. The House Democrats accused the President

of obstruction of justice. Why? Because he chose to assert executive privilege and testimonial immunity when the House Democrats sought testimony and documents from some of the President's closest aides. Anyone who knows a lawbook from a J. Crew catalog does not take this charge seriously. Executive privilege and testimonial immunity are well-established, constitutionally based Presidential and executive branch privileges that every President at one time or another has asserted. The proper course by the House Democrats in the face of the assertion of these privileges was to seek judicial review—go see a judge to seek judicial review from our third branch of government, which then would have balanced the policies underlining the privileges against the public interest of overriding the privileges. But House Democrats chose not to do that. They cannot now complain.

The House Democrats also accused President Trump of abuse of power. If you listen carefully to their allegations, you will see that they don't really argue that the President of the United States did not and does not have the inherent authority to pause U.S. foreign aid to Ukraine until Ukraine agreed to investigate corruption. That is clearly within the authority of the President of the United States.

Instead, the House Democrats, claiming to be able to read the President's mind, say that the President did it with a corrupt motive because the investigation of corruption was against former Vice President Joe Biden, a political rival. But the President didn't get Joe Biden's name out of a phonebook. Why did the President ask for an investigation involving former Vice President Biden? Four words: Hunter Biden and Burisma.

Now, these are the facts. President Obama put Vice President Biden in charge of the foreign affairs of our country for two other countries, Ukraine and China. And in both instances, the former Vice President's son, Hunter Biden, promptly walked away with millions of dollars in contracts from politically connected companies in those two countries, including Burisma Holdings. The message that this behavior sent to the world was that America's foreign policy can be bought like a sack of potatoes. No fairminded person can argue that an investigation of this possible corruption was not in the national interest.

The House Democrats' impeachment proceedings and their Articles of Impeachment are an example of swamped-up Washington, DC, both procedurally and substantively. On the basis of partisan rage—partisan rage coursing through their veins—the House Democrats seek to annul the 134 million Americans who voted in the 2016 Presidential election, which resulted in the Trump Presidency, and to do so when a new Presidential election is just 10 months away. No one in the Milky Way who is fairminded can believe this is good for America. A nation as great as ours deserves better.

So to my Democratic friends, here is what I say. The 2016 Presidential election is over. Let it go. Put aside your partisan rage. Stop regretting yesterday, and instead, let's try working together and creating tomorrow, because, after all, the future is just a bunch of things we do right now strung together.

[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR DAVID PERDUE

Mr. PERDUE. Madam President, in Federalist Papers No. 65, which we have heard referred to quite a bit in the last 2 weeks, Alexander Hamilton warned that the impeachment process should never be used as a partisan political weapon. He said that impeachment can “connect itself with the pre-existing factions and will enlist all their animosities, partialities, influence, and interest on one side or on the other . . . in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of the parties, than by the real demonstrations of innocence or guilt.”

Today, unfortunately, over two centuries later, Hamilton’s fears have become reality. This current impeachment process has never been about the truth, justice, or the rule of law. For my colleagues across the aisle, this is only about overturning the 2016 election, impacting the 2020 election, and gaining the Senate majority.

From the start, this House process has been totally illegitimate. The Articles of Impeachment that the House of Representatives presented to us last month were nothing more than the fruit of a poisonous tree.

In America, we believe in the rule of law. In America, we believe in due process. In America, we believe anyone has the right to a fair trial. In America, we believe anyone is innocent until proven guilty. However, House Democrats violated each of these foundational precepts in using the impeachment process as a partisan political weapon.

Throughout the course of the House impeachment investigation, Democrats repeatedly denied President Trump due process and the fundamental rights of the accused in America. Simply put, what they did was not fair. They denied him the right to have counsel, the right to have witnesses, the right to cross-examine their witnesses, the right to see the evidence, and, lastly, the right to face his accuser.

Contrast that with the last two Presidents to face impeachment. The grand jury investigation of Clinton and the Watergate investigation of Nixon were conducted in a fair manner, with rights for the accused. No action was taken by the House of Representatives until the facts were clear and indisputable in both of those trials. When these investigations were complete and those two Presidents were found to have committed a crime, impeachment had bipartisan support, unlike this time.

This investigation is entirely different. It was rushed and was totally partisan, with not one single House Republican voting for these two pitiful Articles of Impeachment.

The impeachment trial in the Senate has been going on for the past 11 days. Unlike in the House, the Senate upheld its constitutional duty to conduct a fair trial. The Democratic House managers had the opportunity to present their case. Then, for the first time in this sad affair, the President and his team—his lawyers—had an opportunity to present their case, their defense.

Neither article I, “abuse of power,” nor article II, “obstruction of Congress,” qualify as constitutional reasons for impeachment.

It is pretty simple. I am not a lawyer, but if you look at the facts, it is very direct. The Constitution clearly lays out four explicit reasons for impeaching a President. Even corruption does not qualify under these definitions. It is very clear. They itemized treason, bribery, high crimes, and misdemeanors. And they explained to us in the hearings: Another translation in modern terms, using the Old English for misdemeanors, is crimes. It is another word for crime.

The charges against President Trump don't come close to any of these specified requirements. It is as simple as that. The House really was beginning to make up new constitutional law. Each of the other three Presidents who has faced impeachment was charged with committing a crime.

President Trump is the first President ever to face impeachment who was never accused of any crime in these proceedings, whatsoever. These two Articles of Impeachment simply do not qualify as reasons to impeach any President. Further, Democratic House managers did not prove their case for either of the two Articles of Impeachment.

The entire case for abuse of power is centered around the June 25, 2019, phone call between President Trump and President Zelensky of Ukraine. The Democrats allege President Trump only asked for help in investigating the Burisma situation for political gain. It is clear now, after hearing all the testimony, that the primary motivation to ask Zelensky to look into the Biden-Burisma corruption issue was to root out corruption in Ukraine. Ukraine has had a long history of corruption, and this President was well within his rights to ask for help in rooting out this fairly obvious example of corruption. Democrats completely failed to prove the President's request was for political gain only.

Regarding the obstruction of Congress article, every President has the right to exert executive privilege to protect our national interests and the separation of power. Honestly, this article should have never been received in the Senate in the first place. We should have dismissed this article out of hand. It simply is absurd.

Arguing that President Trump obstructed Congress by claiming his rights is unacceptable and would fundamentally weaken this right for future Presidents. When President Trump exerted executive privilege—his right under the Constitution—Democrats could simply have pursued the subpoenas. That is the way the Founders laid it out. They could have pursued the subpoenas in court. For some reason, the House Democrats chose not to do that.

House Democrats were in such a rush that they sent the Senate an incomplete case. That is why I believe the Senate should not have accepted them in the first place, because the process was illegitimate, inappropriate, and incomplete.

Bottom line: House Democrats simply did not do their job. In the Clinton investigation, the House investigated for over 400 days before they brought Articles of Impeachment. There was a conviction. In this case, it was barely 100.

The Democratic House managers brought the Articles of Impeachment and claimed they had overwhelming proof. Immediately in their opening statement, they had overwhelming proof. However, right away, even with that, they immediately demanded the Senate

call witnesses that the House had already chosen not to call, like John Bolton. They could have easily called him but chose not to, claiming it would take too long. Instead, they demanded that the Senate call additional witnesses who were not included in the House investigation.

The Constitution requires that the House conduct the investigation, including calling witnesses, taking depositions, collecting evidence, and the Senate is charged to rule based on the evidence the House provides.

This was designed this way for a very specific reason, a very practical reason. In the House, committees can investigate these charges while the rest of the House continues to do their legislative work. Unfortunately, in the Senate, when Articles of Impeachment are brought and sent to the Senate, the Senate, by constitutional law, must stop what it is doing, must open an impeachment hearing, and while in a formal impeachment hearing, the Senate cannot do anything else by law. It goes into legislative shutdown by law.

In this case, if we were to call additional witnesses, then we would be setting a dangerous precedent for every future case. The House could theoretically make up any flimsy charge they wanted, with no investigation, no witnesses, no testimony, no evidence whatsoever, and then send the articles to the Senate and expect the Senate to do their job. That is not what the Founders wrote. That is not what they had in mind. It would open up a Pandora's box, shut the Senate down indefinitely, and you can see why the Founders did not want to go down that road. That is not how they built this process. For the sake of our very system of government, we cannot yield to this unconstitutional effort.

The House actually did call 17 witnesses. They sent over 193 videos and 28,000 pages of documents. Ultimately, a majority in this body concluded it was unnecessary to hear from any of those witnesses again. On top of that, the impeachment rules do not require the Senate to call witnesses. That is the House's job. It is just that simple.

Let's be very clear. This entire impeachment process has been a purely partisan political stunt perpetrated by House Democrats. It truly is an embarrassment and exactly what Alexander Hamilton warned us all against.

It is no secret—Democrats have been trying to obstruct this President from day one. On the day President Trump was inaugurated, the headline of the Washington Post—right here in town—claimed “The Campaign to Impeach this President has Begun.”

House Democratic manager ADAM SCHIFF, in his opening remarks, said you can't trust elections. That is why we have impeachments. Really? Really? That is absurd.

The President has done nothing to warrant this impeachment process. He must be acquitted. If we let House Democrats get away with this today, we are setting a dangerous precedent for the future.

Already, we are in an era of impeachment. In the first 180 years, we only had one impeachment case that came to the Senate and was investigated in the House. In the last 45 years, we have had three investigated by the House, and two have actually made it to the Senate. If we let Democrats improperly use the impeachment

process as a partisan political weapon, then it will only get worse in the future.

I call on my colleagues today—I plead with my colleagues today—to reject this unconstitutional effort and vote to acquit Donald J. Trump of these illegitimate and unconstitutional Articles of Impeachment.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR STEVE DAINES

Mr. DAINES. Madam President, I rise today in the very Chamber where just three Presidential impeachment trials have been held over the course of our Nation's history—President Johnson in 1868, President Clinton in 1999, and now President Trump.

In fact, I sat at this desk the past 2 weeks listening to over 65 hours of trial proceedings, and during that time, we heard from 13 witnesses, and we viewed 193 video clips and 28,000-plus pages of documentation. Senators, over a 16-hour period, asked over 180 questions. In the Senate, we took our solemn duty seriously.

If there is one thing to be remembered from this trial for generations to come, it is this: Sadly, over the course of our country's 244-year history, never has our Nation faced such a partisan abuse of power. Never has the Senate been faced with Articles of Impeachment that allege no crimes in an attempt to remove a duly elected President of the United States from office. Never before have we seen such a partisan Presidential impeachment process.

In 1974, when President Nixon faced impeachment—Nixon, a Republican—177 House Republicans joined Democrats in support of the impeachment inquiry. During President Clinton's impeachment—a Democrat—31 Democrats joined House Republicans. But with President Trump, there were zero. Not one Republican supported it. In fact, there were some Democrats who opposed it. So, to be clear, there was actually bipartisan opposition.

This impeachment is an unprecedented, purely partisan threat to the Constitution. Our Founding Fathers, the Framers of our great Constitution, understood what the power of impeachment meant when they gave it to Congress after great deliberation.

Alexander Hamilton and James Madison feared—they feared—congressional abuse of power and legislative tyranny as they debated whether to include the power of impeachment in the Constitution because the Founders knew the removal of a President from office amounted to a political death sentence.

In Federalist 65, Hamilton warns that the House could be “intemperate,” was the word he used, and abuse their majority. He proclaimed that the Senate would be—and I use his words—“unawed and uninfluenced,” the “independent” institution to determine whether a House impeachment was warranted.

The Founders had the wisdom to establish a two-thirds Senate vote threshold to help ensure that removal could not be achieved by mere partisan politics. The Founders established that the thermonuclear option of impeachment must be bipartisan to safeguard not just the President from unwarranted removal but, importantly,

to protect the will of the American people who elected the President in the first place.

Unfortunately, NANCY PELOSI, ADAM SCHIFF, and House Democrats have done exactly what the Founding Fathers feared. They have ignored what House manager and the chairman of the House Judiciary Committee, JERRY NADLER, himself correctly observed during the 1998 Clinton impeachment when he stated:

There must never be a narrowly voted impeachment or an impeachment substantially supported by one of our major political parties and largely opposed by the other. Such an impeachment would lack legitimacy.

That was JERRY NADLER in 1998.

Unfortunately, NANCY PELOSI's House of Representatives discarded NADLER's very wise words, and they stubbornly defied historical precedent by rushing these Articles of Impeachment, driven by a Christmas deadline, on a purely partisan vote and sending it to the Senate.

The Democrats' decision was a mistake, and it has only further divided our Nation at a time when we need to be working together. It was wrong, and it has damaged our country. We now need to fear for future Presidents, Democrats or Republicans, who will hold the oath of office in this newly hyperpartisan era.

Importantly, for the first time in our Nation's history, the Articles of Presidential Impeachment passed by NANCY PELOSI's House accuse President Trump of no crimes, let alone demonstrate the President's actions warranted removal from office.

This partisan and weak case from the House managers proves what this impeachment has always been about—it is about purely partisan politics. This impeachment has been nothing more than an attempt to overturn the 2016 Presidential election and to severely impact the 2020 election.

By the way, if we were to convict the President of either one of these articles, one or both, he literally would be removed not only from office but from the 2020 ballot.

Speaking of the 2020 ballot, the 2020 election is already underway. Just yesterday, Americans cast their votes in Iowa for President of the United States. In fact, last Friday, Montanans submitted signatures and filed the paperwork to place President Trump on the Montana ballot for the 2020 election.

Sadly, it is no surprise that we are in this situation today. You see, the Democrats have been obsessed with impeaching President Trump since before he was even sworn into office. They could not accept the fact that Donald Trump won the 2016 election.

On December 15, 2016, just 5 weeks following the 2016 Presidential election, there was a headline from Vanity Fair, and I quote it: "Democrats are Paving the Way to Impeach Donald Trump."

On January 20—now, when I think of January 20, 2017, I think about the day the President was inaugurated, which it was—the Washington Post headline read "The campaign to impeach President Trump has begun." This article was posted 19 minutes—just 19 minutes—after President Trump was sworn into office.

It gets worse. Ten days later, on January 30, 2017, the attorney for the whistleblower who was talked about during the trial—the whistleblower's attorney, 10 days after President Trump was inaugurated back in 2017, said this in a tweet: "Coups have started. First

of many steps. Rebellion. Impeachment will follow immediately.” That was the attorney for the whistleblower who really started this entire impeachment process.

We have even seen some House Democrats publicly state that the only way to beat President Trump in the next election is to impeach him.

Our Founding Fathers would be grieved by the careless use of this most powerful tool against the Presidency. Impeachment is not a tool to overturn the results of a past election. It is not a tool to change the outcome of an upcoming election.

You see, in America, the power of our government doesn’t come from 100 Senators in this body or a handful of lawmakers; our power is derived from the people whom we serve. This grand American experiment of our democratic Republic is built upon the idea of a government of, by, and for the people.

Montanans elected me to represent them in the U.S. Senate, to be their voice on this floor and in Washington, DC. Montanans overwhelmingly oppose this impeachment. Montanans stand with President Trump. In fact, President Trump won Montana by over 20 points in the 2016 election. Supporting this impeachment means ignoring the voices of Montanans who voted for President Trump in the last election, and it means silencing Montanans who plan to vote for President Trump in the 2020 election.

Keep in mind—never before has the U.S. Senate ever removed a President from office, and it is not going to happen now.

I am voting to acquit President Donald J. Trump.

For the good of our country, let it be seared in our minds forevermore: Impeachment must never ever again be used as a partisan weapon.

I encourage my colleagues on both sides of the aisle to fully understand the magnitude of what this would mean for our country. This is the first purely partisan impeachment in our Nation’s history, and it must be our last. It should be up to the American people to decide who their next President is, not the U.S. Senate.

The answer is an election, not impeachment.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR MIKE ROUNDS

Mr. ROUNDS. Madam President, today, I rise to discuss the decision on whether to remove the President from office based on the Articles of Impeachment sent to us by the House of Representatives.

Our Founding Fathers included impeachment—effectively overturning the will of the American electorate—to be used only as a last resort. They trusted the Senate, requiring more solemn judgment than their counterparts in the House, to decide whether an allegation by the House has the substantiality to require removal from office.

According to “Commentaries on the Constitution” by Joseph Story, the Framers saw the Senate as a tribunal “removed from popular power and passions . . . and from the more dangerous in-

fluence of mere party spirit,” guided by “a deep responsibility to future times.”

This impeachment process, driven by partisan desire, was rushed and lacked any proper form and substance. This is an attempt by the House to undo the results of the 2016 election and impact the 2020 election.

Article II, section 4 of the Constitution states: “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”

During the debates at the Federal Convention of 1787, James Madison, Alexander Hamilton, and others relied heavily on Sir William Blackstone’s work, “Commentaries on the Law of England,” which Madison described as “a book which is in every man’s hand.”

Within his work, Blackstone discussed “high misdemeanors,” which included many crimes against the King and government, including maladministration. According to Blackstone, maladministration applied to high officers in public trust and employment and was punished by the method of parliamentary impeachment. It is from this understanding that the Framers selected “high Crimes and Misdemeanors” for the impeachment clause in our Constitution.

The term “high Crimes and Misdemeanors” had a limited and technical meaning that was well known to the Framers. It was a term of art. As early as 14th century England, high crimes and misdemeanors were a category of political crimes against the State and were tried in parliamentary impeachments. It should be understood that the word “high” in high crimes and misdemeanors is a modifying adjective and also applies to the word “misdemeanors.”

“High misdemeanors” was applied in impeachment proceedings conducted by Parliament long before there was such a crime as a misdemeanor as we know it today. Misdemeanors alone referred to criminal sanctions for private wrongs. High crimes and misdemeanors were charged against officers of the “highest rank and favor with the crown” or who were in “judicial or executive offices” and, because of their stations, were unindictable by ordinary rules of justice.

For those individuals who were not indictable by the ordinary rules of justice, the Founding Fathers, in their subtle brilliance, sought to have something akin to crimes and misdemeanors that allowed them to impeach for great and dangerous crimes committed against the State.

As we know, the Founding Fathers specifically adopted the phrase “high crimes and misdemeanors.” The emphasis on high misdemeanors is important in this context because the House of Representatives has not alleged treason, and they have not alleged bribery. Their case rests on whether the articles charged are the types of high crimes and high misdemeanors intended by our Framers.

In defining high misdemeanors, Blackstone stated that “the first and principal is the mal-administration of such high officers.” However, the Founding Fathers specifically chose not to include mal-administration as a basis for impeachment.

When George Mason and James Madison debated the specific language of the impeachment clause, Mason stated:

Why is the provision restrained to treason and bribery only? Treason as defined in the Constitution will not reach many great and dangerous offences. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined.

Mason then moved to add after bribery, “or maladministration,” to which Madison replied and I quote: “So vague a term will be equivalent to a tenure during pleasure of the Senate.”

The Framers knew what they were adopting when they chose “high crimes and misdemeanors.” They explicitly rejected maladministration and other vague terms in favor of more specific allegations, which had a limited and technical meaning.

In the first Article of Impeachment before the Senate, the question is whether abuse of power as a charge on its own is an impeachable offense.

The answer is no. Abuse of power does not have a limited meaning and is as vague as maladministration. The Framers actually discussed abuse of power and rejected it.

At the Virginia ratifying convention, James Iredell, one of the first Supreme Court Justices, stated:

No power of any kind or degree can be given but what may be abused; we have, therefore, only to consider whether any particular power is absolutely necessary. If it be, the power must be given, and we must run the risk of abuse.

In the first Article of Impeachment, the House has claimed that the abuse of power is within the scope of high crimes and misdemeanors. I believe the Founding Fathers saw abuse of power as an inherent risk within the delegation of that authority. The Framers did not intend impeachment proceedings to be brought every time an abuse of power is alleged.

In the second Article of Impeachment, the House alleges the President obstructed Congress when he refused to comply with congressional subpoenas. The President rejected the legitimacy of those subpoenas. The House then failed to pursue redress through the courts, rejecting the court’s rightful role in settling disputes between the two branches of government.

The separation of powers doctrine recognized executive privilege as a lawful exercise for the President to protect both Presidential and deliberative process communications. The House showed a deliberate disregard for the proper role of the judicial branch and now expects the Senate to gather evidence after they have already impeached.

Alleging an obstruction of Congress charge before the House exhausted its remedy for judicial relief would change the balance of power between our co-equal branches of government and ignore the rightful place the courts hold in arbitrating differences between the executive and legislative branches.

No branch of government is above the Constitution. We are obligated under oath of office to support and defend it.

Article I, sections 2 and 3 of the Constitution state “the House shall have the sole Power of Impeachment,” and “[t]he Senate shall have the sole Power to try all Impeachments.” The Framers intentionally separated these authorities.

The Senate does not have the authority to impeach; however, the Senate does have the authority to judge the sufficiency of articles presented to it. The Senate, as a trier of facts, should not overstep its role. It is the House's responsibility to bring the evidence to make their case, not simply make an allegation.

This does not mean that the Senate cannot call witnesses, but it most certainly should not be the Senate's obligation to do so because the House failed to do so in the first place.

Upon the founding of the Senate, James Madison explained that the Senate would be a "necessary fence" against the "fickleness and passion" that tended to influence the attitudes of the general public and Members of the House of Representatives.

George Washington is said to have told Thomas Jefferson that the Framers had created the Senate to "cool" House legislation, just as a saucer was used to cool hot tea. For impeachment, there can be no difference.

When the House is ignited by partisan passions, eager to reach a desired result, the Senate must be cool and firm in its heightened review. In recognizing the haste and half-hearted attempt by our colleagues in the House, the Senate must also recognize these Articles of Impeachment to be wholly insufficient and not warranting a removal from office.

Let this decision lie in its rightful place, with the electorate. The Senate has conducted a fair, impartial trial. We did our due diligence and fulfilled our constitutional duty. Now it is time to bring this process to a close and get on with the business of the American people who sent us here.

I will vote against the Articles of Impeachment, in keeping with the constitutional intent our Framers expected.

Madam President, I ask unanimous consent that citations to my remarks be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### CITATIONS

1. According to Commentaries on the Constitution by Joseph Story, the Framers saw the Senate as a tribunal "removed from popular power and passions . . . and from the more dangerous influence of mere party spirit," guided by "a deep responsibility to future times." 2 Joseph Story, Commentaries on the Constitution §743 (1833).

2. During the debates of the Federal Convention of 1787, James Madison, Alexander Hamilton and others relied heavily on Sir William Blackstone's work, Commentaries on the Laws of England, which Madison described as "a book which is in every man's hand." 3 The Debates in the Several State Conventions on the Adoption of the Federal Constitution, at 501 (Jonathan Elliot 2nd ed. 1987).

3. According to Blackstone, maladministration applied to high officers in public trust and employment and was punished by the method of parliamentary impeachment. 4 William Blackstone, Commentaries on the Laws of England, \*122.

4. The term "high crimes and misdemeanors" had a limited and technical meaning that was well-known to the framers. Raoul Berger, Impeachment: The Constitutional Problems 74 (1973).

5. "High misdemeanors" was applied in impeachment proceedings conducted by parliament long before there was such a crime as a 'misdemeanor' as we know it today. 4 Blackstone at \*121.

6. "High misdemeanors" was applied in impeachment proceedings conducted by parliament long before there was such a crime as a 'misdemeanor' as we know it today. Misdemeanors alone referred to criminal sanctions for private wrongs. Berger at 61.

7. High crimes and misdemeanors were charged against officers of the “highest rank and favor with the crown” or who were in “judicial or executive offices” and because of their stations, were un-indictable by ordinary rules of justice. Berger at 60; See also *id.* “The House of Lords was reminded of this history by Serjeant Pengelly during the impeachment of Lord Chancellor Macclesfield in 1725: your lordships are now exercising a power of judicature reserved in the original frame of the English constitution for the punishment of offenses of a public nature, which may affect the nation; as well in instances where the inferior courts have no power to punish the crimes committed by ordinary rules of justice; as in cases within the jurisdiction of the courts of Westminster Hall, where the person offending is by his degree, raised above the apprehension of danger, from a prosecution carried on in the usual course of justice; and whose exalted station requires the united accusation of all the Commons.”

8. In defining high misdemeanors, Blackstone stated “. . . the first and principal is the mal-administration of such high officers . . .” 4 Blackstone at \*122.

9. When George Mason and James Madison debated the specific language of the impeachment clause, Mason stated: “Why is the provision restrained to treason and bribery only? Treason as defined in the Constitution will not reach many great and dangerous offences. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined.” 2 The Records of the Federal Convention at 499. See also *id.*: The impeachment of Warren Hastings was a failed attempt between 1788 and 1795 to impeach the first Governor-General of Bengal in the Parliament of Great Britain. Hastings was accused of misconduct during his time in Calcutta particularly relating to mismanagement and corruption.

10. Mason then moved to add after bribery, “or maladministration,” to which Madison replied, “So vague a term will be equivalent to a tenure during pleasure of the Senate.” 2 The Records of the Federal Convention at 499.

11. At the Virginia ratifying convention, James Iredall, one of the first Justices of the Supreme Court, stated: “No power of any kind or degree can be given but what may be abused; we have, therefore, only to consider whether any particular power is absolutely necessary. If it be, the power must be given, and we must run the risk of abuse.” 4 The Debates in the Several State Conventions on the Adoption of the Federal Constitution, at 95 (Jonathan Elliot 2nd ed. 1987).

12. Upon the founding of the Senate, James Madison explained that the Senate would be a “necessary fence” against the “fickleness and passion” that tended to influence the attitudes of the general public and members of the House of Representatives. George Washington is said to have told Thomas Jefferson that the framers had created the Senate to ‘cool’ House legislation, just as a saucer was used to cool hot tea. U.S. Senate, “Senate Created,” at [http://www.senate.gov/artandhistory/history/minute/Senate\\_Created.htm](http://www.senate.gov/artandhistory/history/minute/Senate_Created.htm) (January 3, 2020).

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR JEANNE SHAHEEN

Mrs. SHAHEEN. Madam President, I come to the floor this afternoon to express my profound disappointment. This is a sad moment in our Nation’s history. I, like all of us in the Senate, came to this body to try and make a difference for our constituents, to address the kitchen table issues that affect their everyday lives—lowering prescription drug costs, rebuilding our crumbling infrastructure, making college more affordable, protecting our environment, helping our veterans, supporting our small businesses—so many of the things that I and others here have worked on.

Critics have argued that the impeachment process is nothing more than a political attack orchestrated by those who have wanted to remove this President since his election. I flatly reject that argument.

I have repeatedly expressed my reluctance to the use of impeachment. Unfortunately, it is this President’s disturbing actions that have put us in this position.

President Trump went to great lengths to try and force the Ukrainian President to help smear Joe Biden, his political rival. This scheme included withholding military aid and withholding a meeting at the White House with the Ukrainian President.

Each of us here took an oath to support and defend the Constitution. The Constitution requires us to do this job. It tells us that the Senate shall have “the sole Power to try all Impeachments.” After the power to declare war, the power to impeach is among the most serious and consequential powers granted to Congress by our founding document.

When we all stood here at the beginning of this trial, we took an oath to do “impartial justice.” That should mean a commitment to seek all of the facts. A fair trial means documents and witnesses, facts that will help us better understand the truth.

Previous Senates understood this. In fact, every Senate impeachment trial in history included witnesses. Most recently, in the Judge Porteous impeachment trial in 2010, when I was one of the Senators who served on that impeachment committee, we heard from 26 witnesses, 17 of whom had not testified before in the House. We believed then that Senate witnesses were important for impeachment of a Federal district court judge. So why wouldn't we want witnesses in something as important as an impeachment of a sitting President?

We know that documents exist that could help shed more light on this case. We also know of other witnesses with additional firsthand information whom we have yet to hear from. We have one witness, in particular—former National Security Advisor John Bolton, who has told the world he has relevant information and he is willing to testify.

Yet, despite all of that, the Senate, on a partisan vote, refused to listen to Ambassador Bolton or any other witnesses. Members of this institution have willfully turned their back on important, relevant, firsthand information.

On the Articles of Impeachment before us, I have listened to the extensive arguments from both the House managers and the defense counsel for the President. I believe the evidence clearly shows that the President abused his power—which has been acknowledged by several Republican Senators—and he obstructed Congress, which is why I will be supporting both Articles of Impeachment.

On the first Article of Impeachment, it is my strong view that the House managers have proved that President Trump withheld military aid and a White House meeting from the Government of Ukraine to further his own political interests in the upcoming Presidential election and to damage the candidacy of his opponent. The evidence presented to the Senate was overwhelming.

Further supporting the House managers' case, the independent Government Accountability Office, the GAO, concluded that the withholding of military aid to Ukraine was improper and illegal under the law. The nature of the President's offenses outlined in the articles strike at the very heart of our democratic system.

Our Founding Fathers were very concerned about both foreign interference in our democracy and the executive abusing the pow-

ers of the office for electoral gain. James Madison warned of a President who “might betray his trust to foreign powers.”

George Washington, in his Farewell Address, warned us all “to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government.”

As a Senator who sits on the Armed Services and Foreign Relations Committees, I am keenly aware of the serious national security interests that are at stake here. This body, the Senate, has been deeply supportive of an independent Ukraine and a strong U.S.-Ukraine relationship. I join with Senators from both sides of the aisle in support of providing lethal assistance to help Ukraine better defend itself from Russian aggression. We continue to do so because it is in our direct national security interest to support our partner in the midst of an active war with Russia, our adversary.

We know that Russia has serious designs on Eastern Europe. They are looking at ways to influence European countries—former Soviet republics where they think they can make inroads—and Ukraine is standing at the wall between Eastern Europe and Russia.

I also joined the bipartisan leadership of the Ukraine Caucus in writing a letter expressing deep concerns over reports that aid to Ukraine was being held up. This September 2019 letter clearly stated that the administration’s hold on assistance would do lasting damage to the Ukrainian military and would undo the progress made by Ukraine to defend itself. That was a bipartisan letter.

Putting our national security at risk in order to secure personal political favors is an unacceptable abuse of power, and that is why we are here today. In response to the overwhelming evidence presented by the House managers, the President’s counsels failed to refute these serious allegations. Their arguments that President Trump was focused only on the national interest are not supported by the facts. The President has never demonstrated an interest in rooting out corruption in Ukraine and has a troubling pattern of personally seeking political dirt from foreign governments. I worry that this behavior will continue.

The 2020 election is 9 months away, and the President continues to suggest that he would consider receiving political help from foreign governments. Just recently, the President suggested that China should also investigate the Bidens.

Now, with respect to the second article dealing with obstruction of justice, the House managers have also presented overwhelming evidence that President Trump obstructed the investigation into his conduct toward Ukraine. The President has repeatedly denied the House of Representatives’ constitutional authority to conduct an impeachment inquiry. The President ordered Federal agencies and officials to ignore all requests for documents and all subpoenas. Those agencies obeyed the President’s order, and not a single document was turned over to the House. In total, nine witnesses called by the House followed President Trump’s order and refused to testify under subpoena in the impeachment proceedings. This is an unprecedented attempt to thwart Congress’s constitutional authority to exercise the impeachment power. Even Presi-

dent Nixon instructed his White House staff to voluntarily appear before Congress and to testify under oath.

Despite the administration's stonewalling, many courageous officials did come forward to testify at great personal and professional expense. I want to thank those who testified. Their bravery and commitment to the truth should be commended. But if the President is allowed to completely stonewall congressional impeachment investigations into executive branch abuses, then the congressional power of impeachment is meaningless.

As a Senator, I never imagined I would have to participate in an impeachment trial of a sitting President. These proceedings cause strain and division not just here in Congress but across the country. I would much prefer that Congress be engaged in the critical bipartisan work that is needed on important issues, things that can improve lives across this country and move our Nation forward. I hope that this body will move on from this disappointing day and will get back to the business of the country.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR DIANNE FEINSTEIN

Mrs. FEINSTEIN. Madam President, the decision to remove a President at any point in their term—particularly 9 months before an election—is not something we should take lightly. Impeachment should not be a tool that Congress uses to settle policy or personal disagreement. Instead, it should only be used if a President engages in misconduct so egregious that their conviction and removal is necessary and in the Nation's best interest.

Alexander Hamilton wrote in Federalist 65 that the Founders chose the Senate as “the most fit depository of this important trust” to make such a weighty decision. They actually had faith that this body could rise above pure partisanship to conduct a fair trial and reach a just verdict.

In this case, however, we could not reach bipartisan agreement—not even on how to conduct the trial. It is a fact that, for the first time in this Nation's history, the Senate will render a verdict in an impeachment hearing without hearing from a single witness and without reviewing key documents that have been withheld by the executive branch.

As recently as last Friday, OMB admitted it continues to withhold key documents. Let me provide an example. In a court filing, an OMB lawyer wrote that 24 White House emails were being withheld because they “reflect communications” by the President, Vice President, or top advisers on the “scope, duration, and purpose of the hold on military assistance to Ukraine.”

Proceeding without such vital evidence is a real mistake. I came to this trial with an open mind, to listen to the case presented by both sides and then to make a determination based on the facts. After hearing the House managers' case, it is clear that President Trump withheld U.S. aid in an effort to obtain Ukraine's assistance to win reelection by asking that Ukraine launch and make public an investigation into Joe Biden, Mr. Trump's political opponent.

The President's legal team tried to argue that this didn't happen, but without seeing key documents and hearing from key fact witnesses such as John Bolton and Mick Mulvaney, top advisers with firsthand knowledge of the President's conduct and motives, their arguments were not persuasive.

So, after weighing the evidence available to us and considering the President's pattern of similar misconduct, I will vote yes on the Articles of Impeachment.

The House presented a compelling factual case. Congress appropriated nearly \$400 million in foreign aid to Ukraine, an ally engaged in a war with a major power, Russia. It was signed into law by President Trump, who knew what he was signing and what it entailed. President Trump also knew that Ukraine desperately needed the aid and America's partnership in its efforts against the huge power, Russia.

He used that vulnerability to his advantage. He privately demanded that, in exchange for U.S. aid and a White House meeting for Ukraine's newly elected President, Ukraine's leaders had to publicly announce an investigation that would damage his political rival, Vice President Joe Biden. The President relayed those same demands to senior Ukrainian officials through both private and official government channels. This was a clear quid pro quo, and it is at the heart of the argument in the first Article of Impeachment: abuse of power.

President Trump took this action to benefit himself personally and not for the good of the Nation. He violated the law by withholding appropriated funds in order to benefit himself and not our country. President Trump did not withhold these funds because of concern about corruption generally. Instead, he demanded just two specific investigations—Burisma and Biden—both intended to help him win reelection in 2020.

After hearing the House managers' presentation, I think we have got to really ask ourselves, How can this President deal with any foreign nation after compromising himself in such a fashion? How can he be trusted to ensure that American elections are free from foreign interference? Other countries are watching. After the President compromised himself this way with Ukraine, what is to keep them, or any other country, from seeking benefits from the President in exchange for political or personal assistance? So, if the Senate refuses to correct this precedent now, the door to foreign political influence in our elections will be opened.

The House managers also presented a strong case on the second Article of Impeachment: obstruction of Congress. Here, the facts themselves are not in dispute. President Trump ordered his administration to withhold all documents and ordered executive branch witnesses not to testify before the House began its inquiry. The President's legal team countered that he has a right to defy congressional subpoenas as a matter of executive privilege, but there is no precedent for their sweeping claim of absolute immunity from congressional oversight, particularly in the context of impeachment proceedings.

President Trump has taken the position that there are no checks on his Presidential authority, effectively placing himself above the law, and I don't believe the Senate can let this stand. Unfortu-

nately, the President's actions are not isolated incidents. Both Articles of Impeachment point to this. The articles note: "These actions were consistent with President Trump's previous invitations of foreign interference in U.S. elections" and with "previous efforts to undermine United States Government investigations into foreign interference in United States elections."

During the 2016 campaign, President Trump welcomed Russia's assistance to defeat his opponent, Hillary Clinton. The Mueller report detailed exactly how the Trump campaign sought to work with Russia to improve his electoral chances, including providing internal campaign polling data to a Russian operative, inviting Russia to hack Hillary Clinton after Russia had already successfully hacked the Democratic National Committee, and obtaining information about upcoming releases of emails stolen by Russian agents and weaponizing these stolen documents to harm Hillary Clinton.

When this conduct came under question, President Trump obstructed the investigation. Special Counsel Mueller catalogued not 1 or 2 but 10 clear instances where President Trump sought to interfere in this investigation. This isn't my view. This isn't anyone else's view; it is a catalogue of a group of legal professionals indicating 10 clear instances where Trump sought to interfere in the investigation.

This egregious pattern of soliciting foreign interference and blocking any effort to investigate continues to this day. As recently as October, while the House impeachment inquiry was going on, President Trump stood on the White House lawn and asked China to investigate the Biden family.

This trial must do impartial justice as is required by the oath we all took. After listening to the arguments of both sides, it is clear the House managers have proven their case. The President's conduct with respect to Ukraine has mirrored other parts of his Presidency, and it is all about what is best for President Trump. If we vote to acquit and allow President Trump's behavior, we will set a dangerous precedent, one that has the strong possibility of inflicting lasting damage on our country.

We will be saying that any President, Republican or Democratic, can leverage their office for personal political gain. We will be inviting more foreign interference into our elections and saying it is acceptable to use the Presidency to solicit that assistance. His defense counsel admitted as much.

And we will be accepting the President's extreme view that article II of the Constitution gives him the right to do whatever he wants.

I am convinced this is a rare instance where this Senate has no choice but to vote to convict and remove this President. I reach this conclusion reluctantly and with deep concern but with the belief that this action is necessary and cannot and should not be ignored.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR MARK R. WARNER

Mr. WARNER. Madam President, before I get started on my comments, I want to commend my colleague from California, who

has served in this body with great distinction for a long time, who was present during the preceding impeachment proceedings under President Clinton, and who, time and again—and I have had the honor of following in her shoes on the Intelligence Committee—has always been a voice who stood up for what is right, for what is correct, oftentimes what may not be politically expedient but what she thinks is right and appropriate.

It is with great honor that I follow her as I make my statement as well on this most serious of matters, the impeachment of Donald J. Trump. So I thank my friend, the senior Senator from California, for her comments.

Mrs. FEINSTEIN. I thank Mr. WARNER.

Mr. WARNER. I will echo many of her thoughts.

Madam President, I want to begin my remarks the way we began this trial: with the oath we each took to do impartial justice. Now, any other day, we walk into this Chamber as Republicans and Democrats, but in this trial we have a much greater responsibility.

The allegations against this President are grave. The House managers presented a compelling case, based on the testimony of more than a dozen witnesses. And the remarkable thing about the dozen witnesses that we saw clips of: all of these witnesses were either appointees—political appointees—of President Trump or career public servants. The fact that these dozen-plus witnesses had the courage to speak truth to power when they knew that their careers, their reputations would be sullied in many ways speaks volumes.

Their testimony and the House managers' case presents a clear fact pattern, a fact pattern that even many of my Republican colleagues acknowledge is true.

This evidence reflects a corrupt scheme to solicit foreign interference in support of this President's reelection. The President both unlawfully withheld aid to an ally at war with Russia and he withheld a White House meeting that would have strengthened our relationship with a democratically elected leader of Ukraine, a leader who was trying to prevent further Russian occupation of his country.

The President used these powerful tools of American foreign policy as leverage—not leverage to further advance America's national interests but leverage to secure investigations into a political opponent. He also used these as an opportunity to try to expound on the so-called CrowdStrike conspiracy theory, a notion that has been repeatedly debunked by Mr. Trump's own law enforcement and intelligence agencies; a theory that somehow it was Ukraine, not Russia, that attacked our democracy in 2016. It is a theory, by the way, that currently has been and continues to be promoted by the Russian spy services.

Since this information came to light, the President has attempted to confound the House of Representatives' constitutional role in the impeachment process. The White House issued a blanket refusal to provide any witnesses or documents without any historical precedent or sound legal argument to support this position. For this reason, President Trump is also charged with obstruction of Congress.

Frankly, I understand some of the points the President's defense team has raised concerning this second Article of Impeachment.

There are legitimate questions to consider about executive privilege and separation of powers, but we cannot accept the absolute immunity argument this White House has invented. This absolute stance and the evidence we have seen about the President's corrupt actions and intentions do not reflect a principled, good-faith defense of executive privilege. Rather, it suggests an effort to deny Congress the constitutional authority to investigate Presidential wrongdoing and, ultimately, to prevent exposure of the President's conduct.

In reviewing this evidence, I have tried to stick to my oath of impartiality. I have tried to keep an open mind about what witnesses like John Bolton and Mick Mulvaney—people who were in the room with the President—could tell us. If anyone can provide new information that further explains the President's actions, it is they. But I don't see how the White House's desperate efforts to block witnesses is anything but an admission that what they would say under oath would not be good for this President. And I am deeply disappointed that the Senate could not achieve the majority necessary for a full, fair trial. Consequently, the defense of the President that we are left with is thin, legalistic, and, frankly, cynical.

Instead of disputing the core facts, which are damning on their own terms, the President's lawyers have resorted to remarkable legal gymnastics. The notion that even if the President did what he is accused of, abuse of power is not impeachable; that foreign interference is not a crime; that even calling witnesses to seek the truth about the President's actions and motivations might somehow endanger the Republic. And then when Professor Dershowitz made his bizarre argument that abusing Presidential power to aid your reelection cannot be impeachable if you believe your own election to be in the national interest, I paid close attention. Frankly, I paid closer attention to what Professor Dershowitz said in this Chamber than I paid when I was in his class back in 1977. But you don't need a Harvard Law School degree to understand what utter nonsense that argument is and where it could take us if we followed it to its logical conclusion.

The Framers wrote impeachment into the Constitution precisely because they were worried about the abuse of Presidential power. And if an abuse of power is what the Framers had in mind when they crafted impeachment, then, the two questions remaining in our deliberations are simple: Did President Trump abuse his power and should he be removed from office?

The House managers have presented a compelling case that the President did pressure Ukraine to announce politically motivated investigations. Again, a number of my Republican colleagues have acknowledged these facts, acknowledged that what the President did was wrong. And, frankly, it is clear why he did it. Does anyone here honestly believe that Donald Trump wanted an investigation into the Bidens for any other reason than to damage Joe Biden politically and, therefore, aid in his own reelection? Time and again, this President has shown a willingness to attack anyone who stands in his way. And on this he is ecumenical—Republicans, Democrats, members of his staff, Members of this body. Nobody is off limits. There is nothing out of character about this President

using every available tool to damage an opponent regardless of their political party.

I don't find fault for the President in his unorthodox style. That is not an impeachable offense. The long list of things I disagree with this President on are not impeachable offenses either. But the Constitution draws a line that is much clearer than the President's lawyers have tried to argue. The President crossed it. He abused his power. He commandeered America's foreign policy, not to advance America's interest but to advance Donald Trump's political interest. And despite his efforts to cover it up, he got caught.

Now, each one of us must vote guilty or not guilty. I will vote to convict the President because I swore an oath to do impartial justice and the evidence proves the charges against him are true. There must be consequences for abusing the power of the Presidency to solicit foreign interference in our elections.

If the Senate fails to hold him accountable, we will be setting a dangerous precedent. We will be giving the green light to foreign adversaries and future Presidents that this kind of behavior is OK. I will vote to convict the President because it is the Senate's constitutional responsibility to uphold this bedrock American principle that no one is above the law, not even the President, and especially not the President.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR JON TESTER

Mr. TESTER. Madam President, I am going to read a statement and then I am going to go back through the information that I used to make the decision to be able to write this statement.

Montanans sent me to the U.S. Senate to hold government accountable. I fought to allow this trial to include documents and testimony from witnesses with firsthand knowledge of the allegations against the President, regardless of whether they were incriminating or exculpatory, so that the Senate could make its decision based on the best information available.

Unfortunately, my Republican colleagues and the administration blocked this information, robbing the American people of their legitimate right to hold their elected officials accountable.

Based on the evidence that was available to me during this trial, I believe President Trump abused his power by withholding military aid from an ally for personal political gain and that he obstructed legitimate oversight by a coequal branch of government.

It is a sad day for this country and for all Americans who believe that no one—not even the President of the United States—is above the law.

So how did I get to this point? Well, just a little over 2 weeks ago, we came into this Chamber, and we started hearing testimony. That testimony resulted in these two notebooks full of notes because, quite frankly, the House managers laid out a compelling case. The defense made their arguments, but the case of the House was incredibly compelling.

An impeachment is a solemn time. It is not something we should be taking without the deepest and most serious consideration. I

compare it to a vote to send our people to war. But in this particular case, there was very little transparency, and none, if the President would have had it his way, of information coming to this body during this trial. This, in fact, is the shortest impeachment trial of a President ever. If we are going to have information to make good decisions—and I always said if you have good information, you can make good decisions—then the President really needed to open up and cooperate just a little bit.

This is the first time ever that we had a trial with no witnesses and no documents—a trial in the Senate with no information from the executive branch. And I get it. I get “executive privilege,” and I think there are times when executive privilege has to be used because the information is sensitive.

But I have to tell you that the Williams letter is a prime example. I went down to the SCIF. I read it. I have to tell you something. If there is something in there that needs to be classified, you have me. The information in that letter was information that I knew before I went in the SCIF. It is the same with many of the emails—if not all of the emails—that the President has requested to be classified and kept away from this body and kept away from the press.

That is not the way this democracy should work. It should be open. If things are done, the people should be allowed to know.

There are moments in time when documents have to be classified on sensitive information, but I am here to tell you I have seen none of that. I think many of the FOIA requests that have been brought forth show heavily redacted email messages, and then when we find out what was really in them, there was no need for that redaction.

So when it comes to the obstruction of Congress, the article II impeachment, I don't think there is any doubt that the President obstructed our ability—the Senate of the United States—to do its job as a coequal branch to make sure that the executive branch is being honest and forthright.

Let's talk about the abuse of power. There is a lot of information that was brought forth during this trial about what the President did. It has been stated many times on this floor over the last nearly 3 weeks. The fact of the matter is, there is little doubt that the President withheld the aid to an ally for the purpose of creating a position where they had to do an investigation if they were going to get that money, or at least announce that investigation on a U.S. citizen who happened to be a political foe, to corrupt our next election.

There is no doubt about that. Many of the folks who are not going to vote for impeachment have already said that the President has wrongdoing, but it is not an impeachable offense. And I am here to tell you, if anybody in this country—especially the President of the United States—corrupts an election and that is not an impeachable offense for the President of the United States, I don't know what is. Fair elections are a foundational issue for this country, and to corrupt our elections is something that we need to hold people accountable for if they have done it. And I will tell you that the prosecution proved that point beyond a shadow of a doubt.

I would also say that if you take a look at the episodes that happened before we got to this point that have actually nothing to do with the impeachment, but it does have something to do with the point that the defense said about folks having been calling for impeachment since this President got in office, I offer you this: Freedom of speech is something that is very important to this country. And I can tell you that when the President first got into office and he got in a fight with the Prime Minister of Australia and the Prime Minister of Sweden and got in a fight with the Prime Minister of the best friend the United States has, Canada, I was critical of the President. When the President pushed back on NATO and embraced every dictator in the world, from Putin, to Erdogan, to Xi, to Kim Jong Un, yes, I was critical of the President. When the President pulled troops out of northern Syria and left our allies the Kurds on the field alone, I was critical of the President. When the President did his trade wars that put American family farmers and Main Street businesses at risk of closure, I was critical of the President. And we should be. That had nothing to do with the impeachment, but it absolutely has everything to do with your freedom of speech.

Today—tomorrow, I should say—we are going to vote on whether to convict or acquit the President on taking taxpayer dollars and withholding them from an ally that is at war with an adversary for his own personal and political good, and we are going to vote on whether to convict a President of withholding information from the entire executive branch. And the only ones who testified were those patriotic Americans who defied his order. We are going to vote whether he obstructed Congress. This is a no-brainer. He absolutely, unequivocally is guilty of both article I and article II of the impeachment.

So the question is this: If it goes as predicted tomorrow and the President gets acquitted, where do we go from here? I am very concerned about where we go from here because the next President will use this precedent to not give any information to a coequal branch of government when we question them. The next President will use this as, geez, if it is good for me and my election, it is good for the country, as Dershowitz said. So, Katy, bar the door.

As Chairman SCHIFF said yesterday, if you think this President is going to stop doing these actions, you are living on a different planet than I am living on. This will empower him to do anything he wants.

At some point in time—if we want to listen to what the Framers said—at some point in time, we are going to have to do our constitutional duty. It doesn't appear we are going to do it this time.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR SUSAN M. COLLINS

Ms. COLLINS. Madam President, for more than 200 years after our Constitution was adopted, only one President faced an impeachment trial before the Senate. That was Andrew Johnson in 1868. But now we are concluding our second impeachment trial in just 21 years.

While each case must stand on its own facts, this trend reflects the increasingly acrimonious partisanship facing our Nation. The Founders warned against excessive partisanship, fearing that it would lead to “instability, injustice, and confusion,” ultimately posing a mortal threat to our free government.

To protect against this, the Founders constructed an elaborate system of checks and balances to prevent “factions” from sacrificing “both the public good and the rights of other citizens.” Impeachment is part of that elaborate system. The Founders set a very high bar for its use, requiring that the President may only be removed by a two-thirds vote of the Senate.

The Framers recognized that in removing a sitting President, we would be acting against not only the officeholder but also the voters who entrusted him with that position. Thus, the Senate must consider whether misconduct occurred, its nature, and the traumatic and disruptive impact that removing a duly elected President would have on our Nation.

In the trial of President Clinton, I argued that in order to convict, “we must conclude from the evidence presented to us with no room for doubt that our Constitution will be injured and our democracy suffer should the President remain in office one moment more.” The House managers adopted a similar threshold when they argued that President Trump’s conduct is so dangerous that he “must not remain in power one moment longer.”

The point is, impeachment of a President should be reserved for conduct that poses such a serious threat to our governmental institutions as to warrant the extreme step of immediate removal from office. I voted to acquit President Clinton, even though the House managers proved to my satisfaction that he did commit a crime, because his conduct did not meet that threshold.

I will now discuss each of the articles.

In its first Article of Impeachment against President Trump, the House asserts that the President abused the power of his Presidency. While there are gaps in the record, some key facts are not disputed.

It is clear from the July 25, 2019, phone call between President Trump and Ukrainian President Zelensky that the investigation into the Bidens’ activities requested by President Trump was improper and demonstrated very poor judgment.

There is conflicting evidence in the record about the President’s motivation for this improper request. The House managers stated repeatedly that President Trump’s actions were motivated “solely” for his own political gain in the 2020 campaign. Yet the President’s attorneys argued that the President had sound public policy motivations, including a concern about widespread corruption in Ukraine.

Regardless, it was wrong for President Trump to mention former Vice President Biden on that phone call, and it was wrong for him to ask a foreign country to investigate a political rival.

The House Judiciary Committee identified in its report crimes that it believed the President committed. Article I, however, does not even attempt to assert that the President committed a crime. I sought to reconcile this contradiction between the report and the

articles in a question I posed to the House managers, but they failed to address that point in their response.

While I do not believe that the conviction of a President requires a criminal act, the high bar for removal from office is perhaps even higher when the impeachment is for a difficult-to-define, non-criminal act.

In any event, the House did little to support its assertion in article I that the President “will remain a threat to national security and the Constitution if allowed to remain in office.”

As I concluded in the impeachment trial of President Clinton, I do not believe that the House has met its burden of showing that the President’s conduct, however flawed, warrants the extreme step of immediate removal from office, nor does the record support the assertion by the House managers that the President must not remain in office one moment longer. The fact that the House delayed transmitting the Articles of Impeachment to the Senate for 33 days undercuts this argument.

For all of the reasons I have discussed, I will vote to acquit on article I.

Article II seeks to have the Senate convict the President based on a dispute over witnesses and documents between the legislative and executive branches. As a general principle, an objection or privilege asserted by one party cannot be deemed invalid, let alone impeachable, simply because the opposing party disagrees with it.

Before the House even authorized its impeachment inquiry, it issued 23 subpoenas to current and former administration officials. When the House and the President could not reach an accommodation, the House failed to compel testimony and document production. The House actually withdrew a subpoena seeking testimony from Dr. Charles Kupperman, a national security aide, once he went to court for guidance. And the House chose not to issue a subpoena to John Bolton, the National Security Advisor, whom the House has identified as the key witness.

At a minimum, the House should have pursued the full extent of its own remedies before bringing impeachment charges, including by seeking the assistance of a neutral third party—the judicial branch.

In making these choices, the House substituted its own political preference for speed over finality. The House managers described impeachment as a “last resort” for the Congress. In this case, however, the House chose to skip the basic steps of judicial adjudication and instead leapt straight to impeachment as the first resort. Therefore, I will vote to acquit on article II.

This decision is not about whether you like or dislike this President, or agree with or oppose his policies, or approve or disapprove of his conduct in other circumstances. Rather, it is about whether the charges meet the very high constitutional standard of “Treason, Bribery, or other High Crimes or Misdemeanors.”

It has been 230 years since George Washington first took the oath of office, and there are good reasons why during that entire time the Senate has never removed a President. Such a move would not only affect the sitting President but could have unpredictable and potentially adverse consequences for public confidence in our electoral process.

It is my judgment that, except when extraordinary circumstances require a different result, we should entrust to the people the most fundamental decision of a democracy; namely, who should lead their country.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR CORY A. BOOKER

Mr. BOOKER. Madam President, in 1974, after the House Judiciary Committee voted to approve Articles of Impeachment against President Nixon, Chairman Peter Rodino, of my home State of New Jersey, a lifelong Newark resident of my home city who had been thrust into the high-profile position only the previous year, returned to his office and called his wife. When she answered the phone, this chairman, this longtime Congressman broke down in tears and cried.

Forty-six years later, our Nation has found itself under similar duress, and I agree with my fellow Newarker—impeaching a President is a profoundly sad time for our Nation. It is a painful time. No matter what party, if you love your country, then this is heart-breaking.

When we think about our history as Americans, so many of us have reverence for our Founding Fathers and our founding documents. They represented imperfect genius. We talk about the Declaration of Independence. We hail the Constitution. These documents literally bent the arc of not just our own history but human history for democratic governance on the planet. While these were milestones in the path of our Nation's relatively brief existence, the governing document that came between the Declaration of Independence and our Constitution is often overlooked—the Articles of Confederation.

With the benefit of hindsight, it is easy to view the development of our Nation as preordained, inevitable—as if it were an expected march toward the greatness we now collectively hail, that this was somehow a perfectly plotted path toward a more perfect union. But it wasn't.

In 1787, as our Founders gathered in Philadelphia, our fledgling country was at a crisis and at a crossroads. Its future, as in so many moments of our past, was deeply uncertain.

You see, when the Framers designed our system of government in the Articles of Confederation, you can say they overcompensated. With the tyranny of King George III fresh in their minds, they created a government with powers so diffuse and decentralized that nothing could really get done. Instead of one Nation, we were operating essentially as 13 independent States. The Federal Government could not tax its citizens. It could not raise money. It lacked a judiciary and an executive branch.

So when our Framers arrived in Philadelphia that hot summer, they would have to thread a difficult needle, providing for a strong central government that represented the people and one that also guarded against the corrupt tendencies that come when power is concentrated, as they well knew was so in a monarchy.

Our democratic Republic was their solution. The Nation needed a powerful Executive, yes, but that Executive needed guardrails, and his power needed to be checked and balanced. So the Framers created what we now almost take for granted—three coequal branches of government: the legislative, the executive, and judicial branches. Each branch would have the ability to check the power of the other branches to ensure, as James Madison so profoundly argued, that ambition would “be made to counteract ambition.”

But this system of checks and balances was not enough for our Founders. Still reeling from their experience under the oppressive rule of the King, many feared an unaccountable, autocratic leader. So the Founders created a mechanism of last resort—impeachment.

George Mason prophetically asked the Founders to wrestle with the concept of impeachment at the Constitutional Convention, saying: “Shall any man be above Justice?”

The Founders answered that question with a resounding no. The Constitution made clear that any Federal officer, even the President, would be subject to impeachment and removal. No one—no one—no one is above the law. This was seen as the ultimate safeguard, and it has only been invoked twice before in American history. This is the third.

I sat in this very spot and listened to the evidence presented, honoring my oath to be objective, and based on the evidence that was presented in hour after hour after hour of presentations, I concluded that the President, Donald John Trump, is guilty of committing high crimes and misdemeanors against the United States of America, against the people. I believe he abused the awesome power of his office for personal and political gain to pressure a foreign power to interfere in the most sacred institution of our democracy, our elections. He then engaged in a concerted, far-reaching, and categorical effort to cover up his transgression and block any efforts for the people’s representatives to have the truth.

It brings me no satisfaction to come to this conclusion. I feel that sadness of my predecessor. Yet we have sworn an oath to protect and defend the Constitution of the United States.

This is not a moment that should call for partisan passions. It is not a moment that we think of in terms of the limitlessness of personal ambition. This is a patriotic moment. It is about putting principle above party. It is about honoring this body and the Senate’s rightful place in our constitutional system of checks and balances. It is about fulfilling the enormous trust the Founders placed in this body as an impartial Court of Impeachment and a necessary check on what they foresaw as the potential for “grave abuses” by the Executive.

If we fail to hold this President accountable, then we fail the Founders’ intent; we fail our democracy; and I fear the injury that will result.

When our grandchildren and their children read about this chapter in the history books at a time far into the future, when this President is a memory along with those of us serving in this Chamber, it will not be seen through the eye of politics or partisanship. They will read about how this body acted in their moment of constitutional crisis. I fear that their unflinching eyes, at a time when the full body of evidence will be out in the public domain, will see

clearly how this body abdicated its constitutional responsibilities, surrendering them to partisan passions. They will read about how the Senate shut its doors to the truth, even though it was within easy reach; how, for the first time in our history of impeachment proceedings for judges and for past Presidents, the world's greatest deliberative body conducted an impeachment trial without demanding a single witness and without subpoenaing a single document; how, even as new evidence during the trial continued to be uncovered, the Members of this body failed to even view it. They failed to pursue with even the faintest effort those things that would have easily and more perfectly revealed the breadth and depth of the President's misconduct.

We know across the street, in the Supreme Court, the saying is that justice is blind, but that means that no one is above the law. It does not mean that this body should abdicate its responsibilities and it should abandon its senses and even abandon common sense. If there is evidence we know about that could speak beyond a reasonable doubt to this President's alleged crimes and misconduct, it makes no sense whatsoever that we should deny, in this deliberative body, the truth—the truth.

This kind of willful ignorance, this metaphorical closing of our eyes and ears, is a grave danger to any democracy. It is the rot from within, when the ideals of truth and justice fall victim to the toxic tyranny of absolute partisanship.

This President has claimed authoritarian power that our Constitution was explicitly designed to prevent. He has literally said that article II allows him to do whatever he wants. That outrageous statement tomorrow could be given life within this democracy.

He has declared himself unaccountable to and above the law. He has shredded the very governing ideals of this great Republic, and we, the Senate, the body designed to check such abuses of power, that “dignified . . . independent . . . unawed and uninfluenced” tribunal, as Hamilton so famously wrote in Federalist Paper No. 65, have been enablers to this destructive instinct.

This is a sad day. This is a sad moment in the history of this body and in our Nation, and I fear that it is emblematic, that it is a symptom of deeper challenges to this Nation, challenges that are being exploited by our enemies abroad and by opportunists here at home.

The factionalism that our Founders warned us of has deepened beyond mere partisanship to a self-destructive tribalism. The “cunning, ambitious, and unprincipled men” seeking to subvert the power of the people, as Washington predicted in his profound and prophetic Farewell Address, have found their season to flourish here in our time. Many in our society now hate other Americans, not because of the content of their character or their virtue and the values they hold dear, but we, as Americans, now more and more see hate proliferating in our country between fellow Americans because of what party we belong to.

We have failed to listen to the words that come out of each other's mouths, failed to listen to the ideals or the principles or the underlying facts because we now simply listen to partisanship. This Nation was founded with great sacrifice. The blood, sweat, and

tears of our ancestors, which gave life and strength to this Nation, are now being weakened and threatened, as our very first President warned.

And, yes, today is a sad moment, but we, as a nation, have never been defined by our darkest hours. We have always been defined by how we respond to our challenges, how we have refused to surrender to cynicism, and how we have refused to give in to despair.

As Senator after Senator today gets up and speaks, I fear that mere words in this time are impotent and ineffective. It may mark where we as individuals stand for the record, but the challenge demands more from all of us in this time. We have already seen on this Senate floor that sound arguments have been dismissed as partisanship. We have heard speech after speech and seen how they will not cure this time. They will not save this Republic from our deepening divides.

So I ask: What will? How? How do we heal? How do we meet this crisis? I know that this President is incapable of healing this Nation. I have never seen a leader in high office ever take such glee in meanness. He considers it some kind of high badge of virtue in the way he demeans and degrades his political adversaries. He demonizes others, often the weak in our society, and I firmly believe that he has shown that he will even conspire with foreign nations to defeat his adversaries, and then defend himself not with any truth or transparency but by trying to heighten and ignite even more partisan passions.

So the question is really, How do we heal this Nation? How do we meet this challenge that is not embodied in any individual?

It was a man far greater than me named Learned Hand who said:

Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias.

I continue to quote this great judge.

Our dangers, as it seems to me, are not from the outrageous but from the conforming; not from those who rarely and under the lurid glare of obloquy upset our moral complaisance, or shock us with unaccustomed conduct, but from those, the mass of us, who take their virtues and their tastes, like their shirts and their furniture, from the limited patterns which the market offers.

I love our Nation's history. I am telling you right now we have seen that the true test of our democracy will not come simply from the low actions from our leaders on most high. The true test of our democracy will not turn alone on the actions of this body because Presidents before and this body before have failed us in dark times. They failed the ideals of freedom when time and again they defended slavery. This body has failed the ideals of liberty when time and again it rejected civil rights. This body has failed the ideals in the past of equality when it voted down, again and again, suffrage for women. Lo, Presidents before and the Senate before has failed this Nation in the darkest of times. As the songs of my ancestors have said, our path has been watered with the tears and blood of ancestors.

How do we heal? How do we move forward? I say on this dark day that the hope of this Nation lies with its people. As Learned Hand said: The spirit of liberty is not embodied in the Constitution. Other nations have constitutions and have failed. The hope of this Nation will always lie with its people.

So we will not be cured today, and, I tell you, tomorrow's vote—it is a defeat. But we, as a people facing other defeats in this body, must never be defeated. Just like they beat us down at Stonewall and they beat us back in Selma, the hope of this Nation lies with the people who faced defeats but must never be defeated.

So my prayer for our Republic, now yet in another crisis in the Senate, is that we cannot let this be leading us further and further into a treacherous time of partisanship and tribalism where we tear at each other and when we turn against each other. Now is the time in America where we must begin, in the hearts of people, to turn to each other and to begin to find a way out of this dark time to a higher ground of hope. This is not a time to simply point blame at one side or another. This is a time to accept responsibility.

Like our ancestors in the past so understood, that change does not come from Washington. It must come to Washington. As I was taught as a boy, we didn't get civil rights because Strom Thurmond came to the Senate floor one day and pronounced that he had seen the light. No, this body responded to the demands of people, and now is a time that we must demand the highest virtues of our land and see each other for who we are—our greatest hope and our greatest promise.

We are a weary people in America again. We are tired. We are frustrated. But we cannot give up. That flag over there and we who swear an oath to it and don't just parrot words or say them with some kind of perfunctory obligation—but those who swear an oath to this Nation—must now act with a greater unyielding conviction. We must act to do justice. We must act to heal harms. We must act to walk more humbly. We must act to love one another unconditionally. And now, more than ever, perhaps we need to act in the words of a great abolitionist, a former slave, who in a dark, difficult time when America was failing to live up to its promise, gave forth a sentiment of his actions captured in the poetry of Langston Hughes. He declared through his deed and through his work and through his sacrifice:

America never was America to me,  
And yet I swear this oath—  
America will be!

As a nation, in this difficult time where we face the betrayal of a President, the surrender of obligation by a body, may we meet this time with our actions of good will, of a commitment to love and to justice, and to yet again elevating our country so that we, too, may be like, as it says in that great text, “a light unto all Nations.”

[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR ROB PORTMAN

Mr. PORTMAN. Mr. President, I am here today to talk about the Senate trial and the factors I have considered in making my decision on the Articles of Impeachment from the House. I have now read hundreds of pages of legal briefs and memos, including the testimony of 17 witnesses. Here, on the Senate floor, I have reviewed more than 190 witness videos and listened carefully to more than 65 hours of detailed presentations from both the House managers and from the President's legal team.

As cofounder and cochair of the Ukraine Caucus and someone who is proud to represent many Ukrainian Americans in Ohio, I have been active for the past several years in helping Ukraine as it has sought freedom and independence since the 2014 Revolution of Dignity that saw the corrupt Russian-backed government of Viktor Yanukovich replaced with pro-Western elected leaders.

Since first seeing the transcript of the phone call between President Trump and President Zelensky 4 months ago, I have consistently said that the President asking Ukraine for an investigation into Joe Biden was inappropriate and wrong. I have also said, since then, that any actions taken by members of the administration or those outside the administration to try to delay military assistance or a White House meeting pending an investigation by Ukraine were not appropriate either.

But while I don't condone this behavior, these actions do not rise to the level of removing President Trump from office and taking him off the ballot in a Presidential election year that is already well under way.

I first looked to the fact that the Founders meant for impeachment of a President to be extremely rare, reserved for only "Treason, Bribery, or other high Crimes and Misdemeanors." Any fair reading of what the Founders meant in the Constitution and in the Federalist papers in the context of history and just plain common sense makes it clear that removing a duly elected President demands that those arguing for conviction meet a high standard.

As an example, for good reason there has never been a Presidential impeachment that didn't allege a crime. In the Clinton impeachment, the independent counsel concluded that President Clinton committed not one but two crimes. In this case, no crime is alleged. Let me repeat. In the two Articles of Impeachment that came over to us from the House, there is no criminal law violation alleged. Although I don't think that that is always necessary—there could be circumstances where a crime isn't necessary in an impeachment—without a crime, it is even a higher bar for those who advocate for a conviction, and that high bar is not met here.

What is more, even though it was delayed, the President ultimately did provide the needed military assistance to Ukraine, and he provided it before the September 30 budget deadline, and the requested investigations by Ukraine were not undertaken. It is an important point to make. The aid went. The investigations did not occur.

The military assistance is particularly important to me as a strong supporter of Ukraine. In fact, I was one of those Senators

who fought to give President Obama and his administration the authority to provide badly needed lethal military assistance to Ukraine in response to the Russian aggression that came right after the Revolution of Dignity in 2014.

I must say, I strongly urged the Obama administration to use that authority, and, like Ukraine, I was deeply disappointed when they did not. I strongly supported President Trump's decision to change course and provide that assistance shortly after he came into office. While visiting Ukrainian troops on the frontlines in the Donbas region of Ukraine, I have seen firsthand how much those soldiers need the military assistance President Trump alone has provided.

Beyond whether the President's conduct met the high bar of impeachment, there is also the underlying issue of the legitimacy of the House impeachment process. The House Democrats sent the Senate a flawed case built on what respected George Washington University constitutional law professor Jonathan Turley calls "the shortest proceeding, with the thinnest evidentiary record, and the narrowest grounds ever used to impeach a President."

Instead of using the tools available to compel the administration to produce documents and witnesses, the House followed a self-imposed and entirely political deadline for voting on the Articles of Impeachment before Christmas. After the rushed vote, the House then inexplicably stalled, keeping those articles from being delivered here in the Senate for 28 days, time they could have used to subpoena witnesses and resolve legitimate disagreements about whether evidence was privileged or not. They didn't even bother to subpoena witnesses they then wanted the Senate to subpoena for them.

The House process was also lacking in fundamental fairness and due process in a number of respects. It is incomprehensible to me that the President's counsel did not have the opportunity to cross-examine fact witnesses and that the House selectively leaked deposition testimony from closed-door sessions.

Rushing an impeachment case through the House without due process and giving the Senate a half-baked case to finish sets a very dangerous precedent. If the Senate were to convict, it would send the wrong message and risk making this kind of quick, partisan impeachment in the House a regular occurrence moving forward. That would be terrible for the country.

Less than a year ago, Speaker NANCY PELOSI said: "Impeachment is so divisive to the country that unless there's something so compelling and overwhelming and bipartisan, I don't think we should go down that path." She was right.

It is better to let the people decide. Early voting has already started in some States, and the Iowa caucuses occurred last night. Armed with all the information, we should let the voters have their say at the ballot box.

During the last impeachment 21 years ago, now-House Manager Congressman JERRY NADLER said:

There must never be a narrowly voted impeachment or an impeachment substantially supported by one of our major political parties and largely opposed by the other. Such an impeachment would lack legitimacy.

In this case, the impeachment wasn't just "substantially supported" by Democrats; it was only supported by Democrats. In fact, a few Democrats actually voted with all the Republicans to oppose the impeachment.

Founder Alexander Hamilton feared that impeachment could easily fall prey to partisan politics. That is exactly what happened here with the only purely partisan impeachment in the history of our great country. For all of these reasons, I am voting against the Articles of Impeachment tomorrow.

It is time to move on and to move on to focus on bipartisan legislation to help the families whom we represent. Unlike the House, the Senate is blocked from conducting its regular business during impeachment.

My colleague from New Jersey asked a moment ago, how do we heal? How do we heal the wounds? Our country is divided, and I think the impeachment has further divided an already polarized country. I think we heal, in part, by surprising the people and coming out from our partisan corners and getting stuff done—stuff that they care about that affects the families we were sent here to represent.

While in the impeachment trial, we were prevented from doing the important legislative work our constituents expect, like passing legislation to lower prescription drug costs, like rebuilding our crumbling roads and bridges, like addressing the new addiction crisis—the combination of synthetic opioids like fentanyl and crystal meth, pure crystal meth coming from Mexico. It is an opportunity for us to strengthen our economy with better skills training, including passing legislation to give workers the skills they need to meet the jobs that are out there. Those are just a few ideas that are ready to go—ideas the President supports, Republicans support, and Democrats support.

I have been working on bipartisan initiatives like the JOBS Act to provide that needed skills training, the Restore Our Parks Act to deal with the infrastructure that is crumbling in our national parks, the Energy Savings and Industrial Competitiveness Act, which promotes energy efficiency—something we should be able to agree on across the aisle. All of these have been sitting idle this year as we have grappled with impeachment.

How do we heal? How do we heal the wounds? In part, let's do it by working together to pass legislation people care about.

Back home, I have seen that the impeachment process has, indeed, further divided an already polarized country. A conviction in the Senate, removing Donald Trump from office and taking his name off the ballot, would dangerously deepen that growing rift. That is one reason I am glad we are not likely to see a conviction because I do care about our country and bringing it together.

Instead, my hope is that lessons have been learned; that we can heal some wounds for the sake of the country; that we can turn to the bipartisan work most Americans expect us to do; and that we can allow American voters, exercising the most important constitutional check and balance of all, to have their say in this year's Presidential election. I believe this is what the Constitution requires and what the country needs.

[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR ROBERT P. CASEY, JR.

Mr. CASEY. Mr. President, as I rise today to discuss this impeachment trial, I am reminded of an inscription above the front door of the Finance Building in Harrisburg, PA, from the 1930s. Here is the inscription: “All public service is a trust, given in faith and accepted in honor.”

I believe that President Trump and every public official in America must earn that trust every day. That sacred trust is given to us, as the inscription says, “in faith,” by virtue of our election.

The question for the President and every public official is this: Will we accept this trust by our honorable conduct? The trust set forth in the inscription is an echo of Alexander Hamilton’s words in Federalist No. 65, where Hamilton articulated the standard for impeachment as “offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.”

Over the past 2 weeks, I have listened carefully to the arguments put forward by the President’s defense lawyers and the House managers. In light of the substantial record put forth by the managers in this case, I have determined that the managers have not only met but exceeded their burden of proof.

President Trump violated his duty as a public servant by corruptly abusing his power to solicit foreign interference in the 2020 election and by repeatedly obstructing Congress’s constitutionally based investigation into his conduct.

President Trump’s clearly established pattern of conduct indicates that he will continue to be “a threat to national security and the Constitution if allowed to remain in office.” For these reasons, I will vote guilty on both article I and article II.

This impeachment was triggered by the President’s conduct. We are here because the President abused his power—the awesome power of his office—to demand that an ally investigate a political opponent, proving his contempt for the Constitution and his duties as a public official.

The House managers provided substantial evidence of wrongdoing. First, as to article I regarding abuse of power, many of the facts here are undisputed. For example, there is no dispute that the President has said, when referring to the Constitution itself: “Article II allows me to do whatever I want.” This is what the President of the United States of America said.

Then he withheld congressionally authorized military assistance to Ukraine in a White House meeting with President Zelensky and conditioned that military assistance and the meeting on Ukraine publicly announcing investigations into Vice President Biden and his son, as well as a debunked conspiracy theory about the 2016 election interference. The memorandum of the July 25 phone call in which President Trump asked President Zelensky “to do us a favor though,” after Zelensky brought up in the conversation military assistance, that evidence is compelling evidence of wrongdoing.

The President reiterated on the White House lawn on October 3 that Ukraine should “start a major investigation into the Bidens”

before adding that China should also “start an investigation into the Bidens.”

President Trump’s own politically appointed Ambassador to the European Union, Gordon Sondland, explicitly testified that the meeting and the assistance were conditioned on announcing—announcing—the investigations.

The President’s defense lawyers first insisted on this floor that he “did absolutely nothing wrong.” But later, after even Republican Senators would not make that claim, the new justification for his misconduct was “corruption” and “burden-sharing.”

If the President were so concerned about corruption in Ukraine, why did he dismiss one of our best corruption-fighting diplomats, Marie Yovanovitch? In May, the Department of Defense also certified—certified—that Ukraine had taken “substantial actions” to decrease corruption.

If there were legitimate foreign policy concerns about corruption, the President would not have released aid to Ukraine without delay in 2017 and in 2018, only to delay it in 2019, after Joe Biden announced his run for President.

If there were legitimate foreign policy concerns, the President would not have been interested in pursuing investigations based on—as Dr. Fiona Hill testified—a “fictional narrative that is being perpetrated and propagated by the Russian security services” to raise doubts about Russia’s own culpability in the 2016 election interference and to harm the relationship between the United States and Ukraine.

Furthermore, the President’s defense team would have us believe that he legitimately asserted executive privilege over the House’s well-founded impeachment inquiry, despite the fact that he never actually asserted a privilege over a single document or witness. Rather, he issued a blanket directive in which he refused to cooperate entirely with the House investigation. This action not only obstructed the House’s constitutional responsibility of oversight, it also sought to cover up the President’s corrupt abuse of power.

At the time of the drafting of the Constitution, the Framers’ understanding of “high Crimes and Misdemeanors” was informed by centuries of English legal precedent. This understanding was reflected in the language of Federalist No. 65 that I referred to earlier regarding “an abuse or violation of some public trust.” Based on this history, both Chambers of Congress have consistently interpreted “high Crimes and Misdemeanors” broadly to mean “serious violations of the public trust.”

The President’s defense lawyers argued that impeachment requires the violation of a criminal statute to be constitutionally valid. This argument is offensive, dangerous, and not supported by historical precedent, credible scholarship, or common sense about the sacred notion of the public trust.

When applying the impeachment standard of an “abuse or violation of some public trust,” it is clear that President Trump’s conduct exceeded that standard. Any effort to corrupt our next election must be met with swift accountability, as provided for in the impeachment clause in the Constitution. There is no other remedy to constrain a President who has acted time and again to advance his personal interests over those of the Nation.

Furthermore, as demonstrated through Special Counsel Mueller's report regarding Russian interference in the 2016 election and the substantial evidence presented in this impeachment trial and the House proceedings, President Trump has engaged in ongoing efforts to solicit foreign interference in our elections.

As the Washington Post reported on September 21 in a story written by three reporters who have covered the President for several years, the President's conduct on the Ukraine phone call revealed a "President convinced of his own invincibility—apparently willing and even eager to wield the vast powers of the United States to taint a political foe and confident that no one could hold him back."

This President will abuse his power again.

At the outset of this trial and throughout the proceedings, Senate Democrats and 75 percent of the American people have repeatedly called for relevant witnesses and relevant documents to be subpoenaed to ensure a full and fair trial for all parties. For example, we sought testimony from former National Security Advisor John Bolton, whose unpublished manuscript indicates that the President explicitly told Bolton that he wanted to continue the delay in military assistance to Ukraine until it announced the political investigations he was seeking. Fifty-one Senate Republicans refused to examine this or other relevant evidence, thereby rigging this trial to the benefit of the President. Fair trials have witnesses and documents. Coverups have neither.

This is the third Presidential impeachment trial in our country's history, and it is the only one—the only one—to be conducted without calling a single witness. In fact, every completed impeachment trial in history has included new witnesses who were not even interviewed in the House of Representatives. Senate Republicans slammed the door shut on relevant testimony, contrary to the national interest.

Our Founders had the foresight to ensure that the power of the President was not unlimited and that Congress could, if necessary, hold the Executive accountable for abuses of power through the impeachment process. This trial is not simply about grave Presidential abuse of power; it is about our democracy, the sanctity of our elections, and the very values that the Founders agreed should guide our Nation.

I go back to the beginning and that inscription: "All public service is a trust, given in faith and accepted in honor." President Trump dishonored that public trust and thereby abused his power for personal political gain. In order to prevent continuing interference in our upcoming election and blatant obstruction of Congress, I will vote guilty on both articles.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR JOHN BOOZMAN

Mr. BOOZMAN. Mr. President, I rise today to address the topic that has consumed this body for the past several weeks, which is, of course, the impeachment trial of the President of the United States.

After the passage of two Impeachment Articles in the House, Speaker PELOSI waited nearly a month to transmit the articles to the Senate. Once she finally did, the trial took precedence, and the wheels were set in motion to conduct the proceedings and render a verdict.

Since it became clear that the House would vote to impeach the President, I have taken my constitutional duty to serve as a juror in the impeachment trial with the seriousness and attention that it demands.

In light of the extensive coverage the situation received, it was impossible not to take notice of the process that unfolded in the House over the course of its investigation. Its inquiry was hasty, flawed, and clearly undertaken under partisan pretenses.

Having rushed to impeach the President ahead of an arbitrary deadline, as well as failing to provide adequate opportunities for the President to defend himself, the impeachment investigation in this case specifically was contrived, at least partially, and was a vehicle to fulfill the fierce desire among many of the President's detractors that has existed since before he was even sworn in to remove him from office.

Be that as it may, the Constitution makes clear that the Senate has a duty to try all the impeachments. As such, the chief concern I had, as I know many of my colleagues also shared, was for the process in this body to be fair. It was clear to me that what transpired in the House was incredibly partisan and unfair.

I believed the Senate must and would rise to the occasion to conduct a trial that was fair, respectful, and faithful to the design and intent of our Founders. I believed that the organizing resolution that we passed was sufficient in establishing a framework for the trial and also would address the outstanding issues at the appropriate times.

Throughout the course of the trial, I stayed attentive and engaged, taking in the arguments and the evidence presented to the Senate, which included the testimony of over a dozen witnesses and thousands of documents as part of the House investigation.

The House impeachment managers were emphatic that their case against the President was overwhelming, uncontested, convincing, and proven. The President's counsel made an equally forceful case in his defense, countering the claims made by the House and underscoring the grounds on which the Senate should reject the articles and, by necessity, the attempt to expel him from office and a future ballot.

Based on the work done by the House—or maybe, more accurately, the work not done and the inherently flawed and partisan nature of the product it presented to the Senate—I was skeptical that it could prove its case and convince anybody, apart from the President's longtime, most severe critics, that his behavior merited removal from office. After 2 weeks of proceedings in the Senate, my assessment of the situation has not been swayed, nor has it changed. That is why I will vote to acquit the President and reject the weaponization of Congress's authority to impeach the duly elected President of the United States.

To be clear, the partisan nature of this impeachment process potentially sets the stage for more impeachments along strictly par-

tisan lines—a development that would be terrible for our country. The Constitution lays out justifications for impeachment, which include “Treason, Bribery, or other high Crimes and Misdemeanors.”

As a U.S. Senator, there is perhaps no more important decision that I am asked to make aside from voting to send Americans to war. That is exactly why I treated this impeachment trial with the gravity and the thoughtfulness I believe that it deserved.

The accusations explicitly made by the House impeachment managers and echoed by some on the other side that the Senate is engaging in a coverup are wrong on the merits and further drag this process down into the rhetoric of partisan political warfare. I regret that it has descended to such a place. Fulfilling my constitutional obligation after drawing my own conclusions is far from a coverup.

The attempt to turn the impeachment power into a weapon of political convenience will be far more damaging than any other aspect of this chapter in our Nation’s history.

At the end of the day, this partisan, deficient process yielded a product built on inadequate foundation, in addition to being clearly motivated by the desire to remove the President, who some vocal activists have viewed as illegitimate since Election Day 2016.

Not even a year ago, Speaker PELOSI was still attempting to stem the push for impeachment within her own party, arguing that “impeachment is so divisive to the country that unless there’s something so compelling and overwhelming and bipartisan, I don’t think we should go down that path.” She was right, and this impeachment process has failed by each of these metrics. It has further divided the country.

The case is certainly not overwhelming, and it has been anything but bipartisan. In fact, the vote against impeaching the President in the House was bipartisan. As a result of Senate rules and precedents, it has also brought the legislative process nearly to a grinding halt.

But as the trial reaches its conclusion, I believe we must move on and return to doing the work of trying to get things done for the American people. The average Arkansan, like many other Americans, is looking for results and asking how the elected leaders they have chosen are trying to help make their lives better and move our country forward. They are not interested in the political games and theater that have consumed much of Washington since September. It is my hope that we return to that real, pressing work in short order.

In just a few months, the voters of this country will get to decide who they prefer to lead our country. I trust them to make that decision, and I trust that the process by which we choose our President and other leaders will remain free and fair and that the outcome will represent the will of the people. The hard-working men and women of our intelligence, law enforcement, and national security communities will continue to work tirelessly to ensure that this is the case, and I have every confidence they will succeed in that endeavor.

It is time to get back to the important work before us and to remember that those we represent are capable of judging for themselves how this impeachment was conducted and, maybe just as importantly, how we conducted ourselves as it unfolded.

We have a responsibility to lead by example. I implore my colleagues to join me in committing to getting back to doing the hard and necessary work before us when this impeachment trial reaches its conclusion.

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[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR JAMES LANKFORD

Mr. LANKFORD. Mr. President, we are in our third week of the impeachment trial right now. After thousands of documents being reviewed and over a dozen witnesses that we have heard, well over 100 video testimony clips that we have gone through, we are nearing the end.

The country is deeply divided on multiple issues right now, and the impeachment trial is both a symptom of our times and another example of our division.

The Nation didn't have an impeachment inquiry for almost 100 years, until 1868, the partisan impeachment of Andrew Johnson.

Another impeachment wasn't conducted for over 100 years after that, when the House began a formal impeachment inquiry into President Nixon with an overwhelmingly bipartisan vote of 410 to 4.

Just a little over two decades later, there was another partisan impeachment process—President Clinton, when he was impeached on an almost straight partisan vote.

Tomorrow I will join many others to vote to acquit the President of the United States. His actions certainly do not rise to the level of removal from office. This is clearly another one of our partisan impeachments, now the third in our history.

Over the past 3 years, the House of Representatives has voted four times to open an impeachment inquiry: once in 2017, once in 2018, and twice in 2019. Only the second vote in 2019 actually passed and turned into an actual impeachment inquiry.

For 4 months the country has been consumed with impeachment hearings and investigations. First, rumors of issues with Ukraine arose on August 28, when POLITICO wrote a story about U.S. aid being slow-walked for Ukraine, and then September 18, when the Washington Post released a story about a whistleblower report that claimed President Trump pressured an unnamed foreign head of state to do an investigation for his campaign.

Within days of the Washington Post story, before the whistleblower report came out, before anything was known, Speaker PELOSI announced the House would begin hearings to impeach the President, which led to a formal House vote to open an impeachment inquiry on October 31 and a formal vote to impeach the President on December 18.

The House sent over two Articles of Impeachment, asking the Senate to decide if the President should be removed from office and barred from running for any future office in the United States—one on abuse of power; the second on obstruction of Congress. Let me take those two in order.

The abuse of power argument hinges on two things: Did the President of the United States use official funds to compel the

Ukrainian Government to investigate Joe Biden's son and his work for the corrupt natural gas company in Ukraine, Burisma, and did the President withhold a meeting with President Zelensky until President Zelensky agreed to investigate Joe Biden's son?

To be clear, the theory of the funds being withheld from Ukraine in exchange for an investigation doesn't originate from that now-infamous July 25 call. There is nothing in the text of the call that threatens the withholding of funds for an investigation. The theory originates from the belief of Ambassador to the European Union Gordon Sondland's—what he said—presumption—and he repeated that over and over again—presumption that the aid must have been held because of the President's desire to get the Biden investigation done, since the President's attorney—his private attorney—Rudy Giuliani was working to find out more about the Biden investigation and Burisma.

Ambassador Sondland told multiple people about his theory. When he actually called President Trump and asked him directly about it, the President responded that there wasn't any quid pro quo. He just said he wanted the President of Ukraine to do what he ran on and to do the right thing.

Interestingly enough, that is the same thing that President Zelensky said and his Defense Minister said and his chief of staff said. The aid was held because there was legitimate concern about the transition of a brand-new President in Ukraine and his administration in the early days of his Presidency. An unknown on a world stage was elected, President Zelensky, on April 21. His swearing-in date was May 21. During his swearing-in, he also abolished Parliament and called for snap elections. No one knew what he was going to do or what was going to happen.

Those elections happened July 21 in Ukraine, where an overwhelming number of President Zelensky's party won in Parliament. There was an amazing transition in a relatively short period of time in Ukraine, and there were a lot of questions.

I will tell you, I was in Ukraine in late May of 2019, and our State Department officials there certainly had questions on the ground about the rapid transition that was happening in Ukraine. It was entirely reasonable for there to be able to be a pause in that time period. Those concerns were resolved in August and early September when the new Parliament started passing anti-corruption laws, and Vice President PENCE sat down face-to-face with President Zelensky on September 1 in Poland to discuss the progress and corruption and their progress on getting other nations to help supply more aid to Ukraine.

As for the meeting with the President being withheld, as I just mentioned, the Vice President of the United States met with President Zelensky on September 1. That meeting was originally scheduled to be with the President of the United States and all the planning had gone into it, and there was documentation for that. There was a meeting happening between President Zelensky, which was actually the place and date that he asked for to meet with President Trump, except in the final moments of that and the final days leading up to it, Hurricane Dorian approached the United States, and that meeting had to be called off by the President while he stayed here, so the Vice President went in his stead.

There was no quid pro quo in a meeting. The meeting that was requested actually occurred. It was interesting to note, as well, when I researched the record about the aid dates for Ukraine in the past 3 years, I found out that, in 2019, the aid arrived in September. It is interesting, from 2016 to 2018, the vast majority of military aid for each of those years—2016, 2017, and 2018—also went to Ukraine in September.

Well, it is easy to create an intricate story about the hold of foreign aid. It is also clear that President Trump has held foreign aid from multiple countries over the last 2 years, including Afghanistan, Pakistan, Honduras, Guatemala, El Salvador, Lebanon, and others. There is no question that a President can withhold aid for a short period of time, but it has to be released by September 30, which it was to Ukraine on time.

The hold did occur. There are messages back and forth about being able to hold, but it is entirely reasonable to have the hold, and it was such a short period of time—the aid arrived at the same time as it usually did each of the past 3 years—that the Minister of Defense for Ukraine actually stated that the hold was so short, they didn't even know it.

What is interesting about this is this is stretched from not just an "abuse of power," but also "obstruction of Congress." That is the second Article of Impeachment. The House argument was that the President didn't turn over every document and allow every witness without submitting everything to Congress immediately. They argued that, if the President challenged any subpoena, he was stalling, he was acting guilty, and so it was grounds for impeachment.

Remember how fast this all happened. The investigation started September 24. The official start of impeachment started October 31 and ended on December 18, with a partisan vote in the House for impeachment. If President Trump obstructed Congress because he didn't turn over documents that didn't even have a legal subpoena within 2 months, then I would say President Obama was not impeached, but maybe he should have been, though I don't think he should have been.

But you could argue in that same way because President Obama did not honor three subpoenas in 3 years on the Fast and Furious investigation when that happened. For 3 years, he stalled out, but there was no consideration for impeaching President Obama because he shouldn't have been impeached. He was working through the court system as things moved.

This was a serious issue that became even more serious when the House managers moved, not just to say that this is obstruction of Congress if the President doesn't immediately submit, but they took this to a different level by saying the President should not have access to the courts at all, literally stating: Does the Constitution give the legislative branch the power to block the executive branch from the judicial branch?

House managers said, yes, they can rapidly move through a trial, then bring the case to the Senate and have it only partially investigated and then try to use the power of the Senate to block the executive branch from ever going to court to resolve any issue. That has not been done in the past, nor should it be. The President, like every other citizen of the United States, should have ac-

cess to the courts, and it is not grounds for contempt of Congress to block the President from ever trying to go to court to resolve issues that need to be resolved. Every other President has had that right. This one should have had that right as well.

This tale that President Trump thinks he is a King and doesn't want to follow the law begs reality. Let me remind everyone of the Mueller investigation, where 2,800 subpoenas were done in over 2½ years, with 500 witnesses, including many of the President's inner circle. All of those were provided. None of those were blocked by the administration.

After 2½ years, the final conclusion was there was no conspiracy between the President's campaign and the Russians. The President did honor those subpoenas. The President has been very clear in multiple court cases that he did not like it and he did not agree with it. He has been outspoken on those, but he has honored each court decision. It would be a terrible precedent for the Senate to remove a President from office because he didn't agree that Congress couldn't take away his rights in court like every other American.

The difficulty in this process, as with every impeachment process, is separating facts and the politics of it. There are facts in this case that we took a lot of time to go through. Each of us in this body sat for hour upon hour upon hour, for 2½ weeks, listening to testimony and going through the record. We all spent lots of time being able to read, on our own, the facts and details. That was entirely reasonable to be able to do.

But we have to examine, at the end of the day, what is a fact-based issue that has been answered—and each of the key facts raised by the House all have answers—and what is a politics issue—to say in an election year, what is being presented by the House that says: What can we do to slow down this process and to try to give the President a bad name during the middle of an election time period? To separate out those two is not a simple process.

But we begin with the most basic element. Do the facts line up with the accusations made by the House? They do not. Are there plenty of accusations? Yes, there are. My fear is that, in the days ahead, there will be more and more accusations as we go. There have been for the last 3 years.

But at this moment and the facts at this time, in the partisan rancor from the House and into the Senate, I am going to choose to acquit the President of the United States. This certainly does not rise to the level of removal from office and forbidding him to run for any other office in the future. It certainly doesn't rise to that level.

In the days ahead, as more facts come out, all of history will be able to see how this occurred and the details of what happens next. I look forward, actually, for that to continue to be able to come out so all can be known.

[From the CONGRESSIONAL RECORD, February 4, 2020]

STATEMENT OF SENATOR ANGUS S. KING, JR.

Mr. KING. Mr. President, I would like to share my remarks, not only with my colleagues today, but more so with those who will come after us. I want to touch on four issues: the trial evidence; the President's actions as outlined in articles I and II of the Articles of Impeachment; and finally, and most importantly in my mind, the implications of our decision this week on the future of our government and our country.

First, the trial—weeks ago, I joined my colleagues in swearing an oath to “do impartial justice.” Since that time, I have done everything possible to fulfill that responsibility. I paid full attention, taken three legal pads' worth of notes, reviewed press accounts, and had conversations with my colleagues and citizens in my home State of Maine.

The one question I got most frequently back home was how we could proceed without calling relevant witnesses and securing the documents that would confirm or deny the charges against the President, which are at the heart of this matter.

But for the first time in American history, we failed to do so. We robbed ourselves and the American people of a full record of this President's misuse of his office. This failure stains this institution, undermines tomorrow's verdict, and creates a precedent that will haunt those who come after us and, indeed, will haunt the country. But now, we are here, left to make this decision without the facts, concealed by the White House and left concealed by the votes of this body last Friday.

This was not a trial in any real sense. It was, instead, an argument based upon a partial, but still damning, record. How much better it could have been had we had access to all the facts, facts which will eventually come out, but too late to inform our decisions?

As to the articles themselves, I should begin by saying I have always been a conservative on the subject of impeachment. For the better part of the last 3 years, I have argued both publicly and privately against the idea. Impeachment should not be a tool to remove a President on the basis of policy disagreements. The President's lawyers are right when they argue that this would change our system of government and dangerously weaken any President.

But this reluctance must give way if it requires my turning a blind eye to what happened last summer. The events of last summer were no policy disagreement. They were a deliberate series of acts whereby the President sought to use the power of his office in his own personal and political interests, specifically by pressuring a government of a strategic partner—a partner, by the way, significantly dependent upon our moral and financial support—pressuring that government to take action against one of the President's political rivals and, thereby, undermine the integrity of the coming American election.

This last point is important. In normal circumstances, the argument of the President's defenders that impeachment is not necessary because the election is less than a year away would be persuasive. I could understand that. But the President, in this matter,

was attempting to undermine that very election, and he gives every indication that he will continue to do so.

He has expressed no understanding that he did anything wrong, let alone anything reassembling remorse. Impeachment is not a punishment; it is a prevention. The only way, unfortunately, to keep an unrepentant President from repeating his wrongful actions is removal. This President has made it plain that he will listen to nothing else.

Article I charges a clear abuse of power, inviting foreign interference in the upcoming election. The President tasked his personal attorney to work with a foreign head of state to induce an investigation—or just the mere announcement of an investigation—that could harm one of the President's top political rivals.

And to compel the Ukrainians to do so, he unilaterally withheld nearly \$400 million appropriated by Congress to help them fend off Russia's naked and relentless aggression. The President's backers claim that this was done in an effort to root out corruption. So why not use official channels? Why did he focus on no examples of corruption generally other than ones directly affecting his political fortunes? And why did he not make public the withholding of funds, as the executive branch typically does, when seeking to leverage Federal moneys for policy goals?

No matter how many times the President claims his phone call with President Zelensky was perfect, it simply wasn't. He clearly solicited foreign interference in our elections. He disregarded a congressionally passed law. He impaired the security of a key American partner. He undermined our own national security. And, if he was simply pursuing our national interests rather than his own, why was his personal attorney Rudy Giuliani put in charge? Why was Rudy Giuliani mentioned in that phone call?

Put bluntly, no matter the defense, and as a majority of the Members of this body apparently now recognize, President Trump placed his own political interests above the national interests he is sworn to protect. And, as I mentioned, he has shown no sign that he will stop doing so when the next occasion arises, as it surely will.

The implications of acquitting the President on article I are serious. This President will likely do it again, and future Presidents will be unbound from any restraints on the use of the world's most powerful political office for their own personal political gain.

We are moving dangerously close to an elected Monarch—the very thing the Framers feared most.

Article II, to me, is even more serious in its long-term implications. Article I concerns an incident—an egregious misuse of power, to be sure, but a specific set of actions in time. A scheme is probably the most appropriate description, which took place over the course of the past year.

Article II, however, which concerns the President's wholesale obstruction of the impeachment process itself, goes to the heart of Congress's constitutionally derived power to investigate wrongdoing by this or any future President.

I do not arrive at this conclusion lightly. I take seriously the White House counsel's argument that there is a legitimate separation of powers issue here, that executive privilege is real—although

I have to note it was never actually asserted in this case, but that executive privilege is real—and that there must be limits on Congress's ability to intrude upon the executive function.

But in this case, despite counsel's questions about which authorizing resolution passed when or whether the House should have more vigorously pursued judicial remedies, the record is clear and is summarized in the White House letter to the House in early October—that the President and his administration “cannot participate” in the impeachment process—cannot participate.

To me, it is this ongoing blanket refusal to cooperate in any way—no witnesses, no documents, no evidence of any kind—that undermines the assertion that a categorical refusal, with overt witness intimidation thrown in, was based upon any legitimate, narrowly tailored legal or constitutional privilege.

No prior President has ever taken such a position, and the argument that this blanket obstruction should be tested in court is severely undercut by the administration's recent argument that the courts have no jurisdiction over such disputes and that the remedy for stonewalling Congress is—you guessed it—impeachment. They argued that in the Federal court in Washington this week.

Interestingly, the first assertion of executive privilege was by George Washington, when the House sought background documents on the Jay Treaty. Washington rested his refusal to produce those documents on the idea that the House had no jurisdiction over matters of foreign policy, but, interestingly, Washington, in his message to Congress, did specify one instance where the House would have a legitimate claim on the documents' release. What was the instance? You guessed it—impeachment.

If allowed to stand, this position that the President—any President—can use his or her position to totally obstruct the production of evidence of their own wrongdoing eviscerates the impeachment power entirely, and it compromises the ongoing authority of Congress to provide any meaningful oversight of the executive whatsoever.

For these and other reasons, I will vote guilty on both Articles of Impeachment.

A final point, the Congress has been committing slow-motion institutional suicide for the past 70 years, abdicating its constitutional authorities and responsibilities one by one: the war power, effectively in the hands of the President since 1942; authority over trade with other countries, superceded by unilateral Presidential imposed tariffs on friends and foes alike; and even the power of the purse, which a supine Congress ceded to the President last year, enabling him to rewrite our duly passed appropriations bill to substitute his priorities for ours—and now this.

The structure of our Constitution is based upon the bedrock principle that the concentration of power is dangerous, that power divided and shared is the best long-term assurance of liberty. To the extent we compromise that principle, give up powers the Framers bestowed upon us, and acquiesce to the growth of an imperial Presidency, we are failing. We are failing our oaths, we are failing our most fundamental responsibility, we are failing the American people.

History may record this week as a turning point in the American experiment—the day that we stepped away from the Framers’ vision, enabled a new and unbounded Presidency, and made ourselves observers rather than full participants in the shaping of our country’s future.

I sincerely hope I am wrong in all of this, but I deeply fear that I am right.

[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR JEFF MERKLEY

Mr. MERKLEY. Madam President, as Senators, our decisions build the foundation for future generations. I want those generations to know that I stood here on the floor of this Chamber fighting for equal justice under law. I stood here to defend our Senate’s responsibility to provide a fair trial with witnesses and documents. I stood here to say that when our President invites and pressures a foreign government to smear a political opponent and corrupt the integrity of our 2020 Presidential election, he must be removed from office.

As a number of my Republican colleagues have confessed, the House managers have proven their case. President Trump did sanction a corrupt conspiracy to smear a political opponent, former Vice President Joe Biden. President Trump assigned Rudy Giuliani, his personal lawyer, to accomplish that goal by arranging sham investigations by the Government of Ukraine. President Trump advanced his corrupt scheme by instructing the three amigos—Ambassador Volker, Secretary of Energy Rick Perry, and Ambassador Gordon Sondland—to work with Rudy for this goal. President Trump did use the resources of America, including an Oval Office meeting and security assistance, to pressure Ukraine, which was at war with Russia, to participate in this corrupt conspiracy. The facts are clear.

But do President Trump’s acts rise to the level the Framers envisioned for removal of a President, or are they, as some colleagues in this Chamber have said, simply “inappropriate,” but not “impeachable”? With respect to those colleagues, “inappropriate” is lying to the public; “inappropriate” is shunning our allies or failing to put your personal assets into a blind trust or encouraging foreign governments to patronize your properties. That is something you might call “inappropriate,” but that word does not begin to encompass President Trump’s actions in this case—a corrupt conspiracy comprising a fundamental assault on our Constitution.

This conspiracy is far worse than Watergate. Watergate was about a break-in to spy on the Democratic National Committee—bad, yes; wrong, definitely. But Watergate didn’t involve soliciting foreign interference to destroy the integrity of an election. It didn’t involve an effort to smear a political opponent. Watergate did not involve an across-the-board blockade of access by Congress to witnesses and documents.

If you believe that Congress was right to conclude that President Nixon’s abuse of power merited expulsion from office, you have no choice but to conclude that President Trump’s corrupt conspiracy merits his expulsion from office.

President Trump should be removed from office this very day by action in this very Chamber, but he will not be removed because this Senate has failed to conduct a full and fair trial to reveal the extensive dimensions of his conspiracy and because the siren call to party loyalty over country has infected this Chamber.

Every American understands what constitutes a full and fair trial. A full and fair trial has witnesses. A full and fair trial has documents. A full and fair trial does not begin with the jury foreman declaring that he is working hand-in-glove with the defendant. When discussing why the Senate tries impeachments, Alexander Hamilton stated: “Where else than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent” for that daunting responsibility?

Every American should feel the sadness, the darkness, the tragedy of this moment in which this Senate is neither sufficiently dignified nor sufficiently independent for that responsibility.

The Senate trial became a coverup when the majority voted on January 22 and again on January 31 to block all access to witnesses and documents. If this coverup goes forward, it will be the latest in a set of corrupt firsts this Senate has achieved under Republican leadership.

It has been the first Senate to ignore our constitutional responsibilities to debate and vote on a Supreme Court nominee in 2016. It became the first Senate to complete the theft of a Supreme Court seat from one administration giving it to another in 2017.

And now, it becomes the first Senate in American history to replace an impeachment trial with a coverup. President Trump might want to consider this: With a coverup in lieu of a trial, there is no “exoneration,” no matter how badly President Trump might want it. No matter how boldly he might claim it, there is no “exoneration” from a coverup.

If this Senate fails to convict President Trump when we vote later today, we destroy our constitutional responsibility to serve as a check against the abuses of a runaway President. It is a devastating blow to the checks and balances which have stood at the heart of our Constitution.

Our tripartite system is like a three-legged stool, where each leg works in balance with the others. If one leg is cracked or weakened, well, that stool topples over. If the Senate’s responsibility is gutted and the limits on Presidential power are undermined, then, there is lasting damage to the checks and balances our Founders so carefully crafted.

Let’s also be clear. The situation that we find ourselves in today didn’t spring out of nowhere. With respect to the Chief Justice, the road to this moment has been paved by decisions made in the Supreme Court undermining the “We the People” Republic, while Justice Roberts has led the Court—decisions like *Citizens United* in 2010, which corrupted our political campaigns with a flood of dark money, the equivalent of a stadium sound system drowning out the voice of the people; decisions like *Shelby County* in 2013, which gutted the Voting Rights Act, opening the door to voter suppression and voter intimidation—if you believe in our Republic, you believe in voter empowerment, not voter suppression—decisions like *Rucho v. Common Cause* in 2019, giving the green light to extreme par-

tisan gerrymandering, in which politicians choose their voters rather than voters choosing their politicians. It is one blow after another giving more power to the powerful and undermining the vision of government of, by, and for the people—blow after blow making officials more responsive to the rich and wealthy donors than the people they are elected to represent.

These Supreme Court decisions have elevated government by and for the powerful and trampled government by and for the people, paving the path for this dark moment in which the U.S. Senate chooses to defend a corrupt President by converting a trial into a coverup. A trial without access to witnesses and documents is what one expects of a corrupted court in Russia or China, not the United States of America.

We know what democracy looks like, and it is not just about having the Constitution or holding elections. Our democracy is not set in stone. It is not guaranteed by anything other than the good will and good faith of the people of this country. Keeping a democracy takes courage and commitment. As the saying goes, “freedom isn’t free.” It is an inheritance bequeathed to us by those who have fought and bled and died to ensure that government “of the people, by the people, for the people shall not perish from the Earth.”

Fighting for that inheritance doesn’t only happen on the battlefield. It happens when Americans everywhere go to the polls to cast a ballot. It happens when ordinary citizens, distraught at what they are seeing, speak up, join a march, or run for office to make a difference. And it happens here in this Chamber—in this Senate Chamber—when Senators put addressing the challenges of our country over the pressures from their party.

Before casting their votes today, I urge each and every one of my colleagues to ask themselves: Will you defend the integrity of our elections? Will you deliver impartial justice? Will you protect the separation of powers—the heart of our Constitution? Will you uphold the rule of law and the inspiring words carved above the doors of our Supreme Court, “Equal Justice Under Law”?

I stand here today in support of our Constitution, which has made our Nation that shining city on a hill. I stand here today for equal justice under law. I stand here today for a full and fair trial as our Constitution demands. I stand here today to say that a President who has abused this office by soliciting a foreign country to intervene in the election of 2020 and bias the outcome—betraying the trust of the American people and undermining the strength of our Constitution—must be removed from office.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR JOHN CORNYN

Mr. CORNYN. Madam President, over the last months, our country has been consumed by a single word, one that we don’t use often in our ordinary parlance. That word, of course, is “impeachment.” It has filled our news channels, our Twitter feeds, and dinner conversations. It has led to a wide-ranging debate on everything from the constitutional doctrines of the separation of powers to the due process of law—two concepts which are the most funda-

mental building blocks of who we are as a nation. It has even prompted those who typically have no interest in politics to tune into C-SPAN or into their favorite cable news channels.

The impeachment of a President of the United States is simply the gravest undertaking we can pursue in this country. It is the nuclear option in our Constitution—the choice of last resort—when a President has committed a crime so serious that Congress must act rather than leave the choice to the voters in the election.

The Framers of the Constitution granted this awesome power to the U.S. Congress and placed their confidence in the Senate to use only when absolutely necessary, when there is no other choice.

This is a rare, historic moment for the Members of this Chamber. This has been faced by the Senate only on two previous occasions during our Constitution's 232-year history—only two times previously. We should be extraordinarily vigilant in ensuring that the impeachment power does not become a regular feature of our differences and, in the process, cheapen the vote of the American people. Soon, Members of the Senate will determine whether, for the first time in our history, a President will be removed from office, and then we will decide whether he will be barred from the ballot in 2020.

The question all Senators have to answer is, Did the President commit, in the words of the Constitution, a high crime and misdemeanor that warrants his removal from office or should he be acquitted of the charges made by the House?

I did my best to listen intently to both sides as they presented their cases during the trial, and I am confident in saying that President Trump should be acquitted and not removed from office.

First, the Constitution gives the Congress the power to impeach and remove a President from office only for treason, bribery, and other high crimes and misdemeanors, but the two Articles of Impeachment passed by the House of Representatives fail to meet that standard.

The first charge, as we know, is abuse of power. House Democrats alleged that the President withheld military aid from Ukraine in exchange for investigations of Joe and Hunter Biden. But they failed to bring forward compelling and unassailable evidence of any crime—again, the Constitution talks about treason, bribery, or other high crimes and misdemeanors; clearly, a criminal standard—and thus failed to meet their burden of proof. Certainly, the House managers did not meet the high burden required to remove the President from office, effectively nullifying the will of tens of millions of Americans just months before the next election. What is more, the House's vague charge in the first article is equivalent to acts considered and rejected by the Framers of our Constitution.

That brings us to the second article we are considering—obstruction of Congress. During the House inquiry, Democrats were upset because some of the President's closest advisers—and their most sought-after witnesses—did not testify. To be clear, some of the executive branch witnesses were among the 13 witnesses whose testimony we did hear during the Senate trial. But for those witnesses for whom it was clear the administration would claim a privilege, almost certainly leading to a long court battle, the House declined to issue the subpoenas and certainly did not seek judicial enforce-

ment. Rather than addressing the privilege claims in court, as happened in the Nixon and Clinton impeachments, the Democratic managers moved to impeach President Trump for obstruction of Congress for protecting the Presidency itself from a partisan abuse of power by the House.

Removing the President from office for asserting long-recognized and constitutionally grounded privileges that have been invoked by both Republican and Democratic Presidents would set a very dangerous precedent and would do violence to the Constitution's separation of powers design. In effect, it would make the Presidency itself subservient to Congress.

The father of our Constitution, James Madison, warned against allowing the impeachment power to create a Presidential tenure at the pleasure of the Senate.

Even more concerning, at every turn throughout this process, the House Democrats violated President Trump's right to due process of law. All American law is built on a constitutional foundation securing basic rights and rules of fairness for a citizen accused of wrongdoing.

It is undisputed that the House excluded the President's legal team from both the closed-door testimony and almost the entirety of the House's 78-day inquiry. They channeled personal, policy, and political grievances and attempted to use the most solemn responsibility of Congress to bring down a political rival in a partisan process.

It is no secret that Democrats' crusade to remove the President began more than 3 years ago on the very day he was inaugurated. On January 20, 2017, the Washington Post ran a story with the headline "The campaign to impeach President Trump has begun."

At first, Speaker PELOSI wisely resisted. Less than a year ago, she said, "Impeachment is so divisive to the country that unless there is something so compelling and overwhelming and bipartisan, I don't think we should go down that path because it divides the country." And she was right. But when she couldn't hold back the stampede of her caucus, she did a 180-degree about-face. She encouraged House Democrats to rush through an impeachment inquiry before an arbitrary Christmas deadline.

In the end, the articles passed with support from only a single party—not bipartisan. The bipartisanship the Speaker claimed was necessary was actually opposed to the impeachment of the President; that is, Democrats and Republicans voted in opposition to the Articles of Impeachment. Only Democrats voted for the Articles of Impeachment in the House.

Once the articles finally made it to the Senate after a confusing, 28-day delay, Speaker PELOSI tried to have Senator SCHUMER—the Democratic leader here—use Speaker PELOSI's playbook, and he staged a number of political votes every Member of the Senate knew would fail, just so he could secure some perceived political advantage against Republican Senators in the 2020 election.

What should be a solemn, constitutional undertaking became partisan guerilla warfare to take down President Trump and make Senator SCHUMER the next majority leader of the U.S. Senate.

All of this was done on the eve of an election and just days shy of the first primary in Iowa.

Well, to say the timing was a coincidence would be laughable. This partisan impeachment process could not only remove the President from office, it would also potentially prevent his name from appearing on the ballot in November. We are only 9 months away from an election—9 months away from the American people voting on the direction of our country—but our Democratic colleagues don't trust the American people, so they have taken matters into their own hands.

This politically motivated impeachment sets a dangerous precedent. This is a very important point. This is not just about President Trump; this is about the Office of the Presidency and what precedent a conviction and removal would set for our Constitution and for our future. If successful, this would give a green light to future Congresses to weaponize impeachment to defeat a political opponent for any action—even a failure to kowtow to Congress's wishes.

Impeachment is a profoundly serious matter that must be handled as such. It cannot become the Hail Mary pass of a party to remove a President, effectively nullifying an election and interfering in the next.

I believe—I think we should all believe—that the results of the next election should be decided by the American people, not by Congress.

The decision to remove a President from office requires undeniable evidence of a high crime. That is the language chosen by the Framers of our Constitution. But despite our colleagues' best attempts, the facts they presented simply don't add up to that standard.

House managers failed to meet their heavy burden of proof that President Trump, beyond a reasonable doubt, committed a crime, let alone a high crime; therefore, I will not vote to convict the President.

I hope our Democratic colleagues will finally accept the result of this trial—just as they have not accepted the result of the 2016 election—and I hope they won't take the advice of Congresswoman WATERS, MAXINE WATERS in the House, and open a second impeachment inquiry. It is time for our country to come together to heal the wounds that divide us and to get the people's work done.

There is no doubt, as Speaker PELOSI observed in March of 2019, that impeachment is a source of division in our country, and it is also a period of great sadness. If this partisan impeachment were to succeed, my greatest fear is it would become a routine process for every President who serves with a House majority of the opposite party, and we would find ourselves in a recurring impeachment nightmare every time we elect a new President.

Our country is deeply divided and damaged by this partisan impeachment process. It is time for us to bring it to a close and to let the wounds from this unnecessary and misguided episode heal.

I ask unanimous consent that my statement regarding the impeachment be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

## STATEMENT FOR THE RECORD—IMPEACHMENT TRIAL OF DONALD JOHN TRUMP

SENATOR JOHN CORNYN OF TEXAS

Mr. President, I would like to submit this statement for the record regarding the impeachment trial of President Donald Trump. This statement seeks to supplement the remarks that I made on the Senate floor on Wednesday, February 5, 2020. It includes some of my observations as a former judge on some of the complicated constitutional, legal, and factual issues associated with this impeachment proceeding and its implications for future presidential impeachments.

*(1) What is the Constitutional standard?*

In America, all government derives its power, in the words of the Declaration of Independence, “from the consent of the governed.”<sup>1</sup> This is not just a statement of national policy, but a statement about legitimacy.

Elections are the principal means of conferring legitimacy by the consent of the governed. Impeachments, by the House and tried in the Senate, while conferring authority on 535 Members of Congress to nullify one election and disqualify a convicted President from appearing on a future ballot, exercise delegated power from the governed, much attenuated from the direct consent provided by an election. It seems obvious that an impeachment of a President during an election year should give rise to heightened concerns about legitimacy.

While there was extensive argument on what the Framers intended the impeachment standard to be, suffice it to say, they believed it should be serious enough to warrant removal, and disqualification from future office, of a duly elected President.

The role of impeachments in a constitutional republic like the United States was borrowed, to some extent, from our British forebears. But it was not a wholesale acceptance of the British model, with its parliamentary system where entire governments can be removed on a vote of no confidence, but rather a distinctly Americanized system that purposefully created a strong and co-equal chief executive, elected by the people for a definite term, with a narrowed scope of impeachable offenses for the President.

Under the U.S. Constitution, Presidents may be impeached for “treason, bribery, and other high crimes and misdemeanors.” Due to the rarity of presidential impeachments (three in 232 years), the age of some precedents (dating back to the Johnson impeachment of 1868), and the diversity of impeachment cases (and in particular, the significant difference between the impeachment of judges and Presidents), there remains quite a bit of debate about precisely what actions by a President are impeachable.

Some argue a crime is not required, although all previous presidential impeachments charged a crime. Some argue that not all crimes are impeachable, only serious crimes can be “high” crimes. Some categories, including “malversation,” “neglect of duty,” “corruption,” “malpractice,” and “maladministration” were considered and rejected by the Framers.<sup>2</sup>

*(2) Abuse of power*

The President’s lawyers charge that “abuse of power” alleged in the first Article of Impeachment is not a crime, much less a “high” crime, nor a violation of established law. This argument raises Due Process of Law concerns with regard to notice of what is prohibited. As Justice Antonin Scalia observed shortly before his death in the criminal context, “invoking so shapeless a provision to condemn someone . . . does not comport with the Constitution’s guarantee of due process.”<sup>3</sup>

Moreover, they argue that “abuse of power” is tantamount to “maladministration,” which was rejected by the Framers. There is little doubt that a vague and ambiguous charge in an Article of Impeachment can be a generalized accusation into which the House can lump all of their political, policy, and personal differences with a President. This should be avoided.

The House Managers say no crime is required for impeachment, and that abuse of power, which incorporates a host of nefarious acts, is all that is required. No violation of criminal statutes is alleged, nor required they say, and they disagree that abuse of power equates with “maladministration.” They point to Alexander Hamilton’s statement in Federalist 65 that impeachable offenses are “those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.”

*(3) Obstruction of Congress.*

The House Permanent Select Committee on Intelligence issued dozens of subpoenas and heard testimony from 17 witnesses. As to other witness subpoenas issued to members of the Trump Administration, White House Counsel Pat

Cipollone argued in his October 8, 2019 letter to Speaker of the House Pelosi that any subpoenas issued before passage of a formal resolution of the House establishing an impeachment inquiry were constitutionally invalid and a violation of due process. The House Managers rely on the Constitution's grant of the "sole power of impeachment" to the House and argue that no authorizing resolution was required. Essentially, they argue that under the Constitution the House can run an impeachment inquiry any way the House wants and no one can complain.

No committee of the House was officially delegated the House's impeachment authority until October 31, 2019, when the House passed House Resolution 660 directing "the Permanent Select Committee on Intelligence and the Committees on Financial Services, Foreign Affairs, the Judiciary, Oversight and Reform, and Ways and Means to continue their ongoing investigations as part of the existing House of Representatives inquiry into whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Donald John Trump, President of the United States."

Neither the House's theory that it could act without a delegation resolution, nor the White House Counsel's argument that subpoenas were void without one was presented to a court during this impeachment inquiry.<sup>4</sup> In fact, the House intentionally avoided litigation because, as House Manager Adam Schiff stated, it would slow down their inquiry.

One example makes this point. Charles Kupperman was a deputy to former National Security Advisor John Bolton. Other than Bolton himself, Kupperman was one of the officials most likely to have direct knowledge of an alleged quid pro quo on aid to Ukraine. But after the House subpoenaed him last fall, Kupperman went to court and asked for a resolution of the competing claims between the President and the House. Rather than wait for a judicial determination in this interbranch dispute, the House withdrew its subpoena and affirmatively disclaimed any desire to pursue Kupperman's testimony in the future.<sup>5</sup> The House also decided not to subpoena Bolton or any other key witnesses in the administration.

Instead, the House elected to push through impeachment with an abbreviated period of roughly three months and declared any delay by President Trump, even to seek judicial review, to be obstruction of Congress and a high crime and misdemeanor. The Administration is currently in court challenging demands for witnesses and documents. Just a couple weeks ago, the Supreme Court accepted such cases for review and stayed the lower court decisions ordering the production of President Trump's financial records from third parties.<sup>6</sup> Still, the House impeached President Trump before the Supreme Court or other federal courts could rule on the merits of claims of presidential privileges and immunities in this impeachment inquiry.

The essence of the House's second Article of Impeachment is that it is Obstruction of Congress to decline to voluntarily submit to the House's inquiry and forgo any claims of presidential privileges or immunities. One interpretation of these facts is that the House simply gave up pursuing the testimony in the interest of speed. While undoubtedly litigation would have delayed for a time the House's impeachment inquiry if they were determined to secure the testimony they initially sought, it is clear that the President, and not the witnesses, would assert claims of executive privilege or absolute testimony immunity to protect the Office of the Presidency. These claims are constitutionally based in the separation of powers, long-recognized by the Department of Justice's Office of Legal Counsel, and repeatedly asserted by both Republican and Democratic Administrations in countless disputes with Congress. And since the House did not pursue the testimony originally subpoenaed, the issue of presidential privileges or immunity was never decided.<sup>7</sup>

But that is not all. Representative Eric Swalwell recently declared that not only should a sitting president be impeached if he or she goes to the courts rather than submit to Congress, but that contesting demands for evidence is actually evidence of guilt on all of the charged offenses. Congressman Swalwell claimed "we can only conclude that you are guilty" if someone refuses to give testimony or documents to Congress.<sup>8</sup> So much for the presumption of innocence and other constitutional rights encompassed by the Constitution's guarantee of Due Process of Law.

It is an odd argument that a person accused of running a red light has more legal rights than a President being impeached.

#### (4) *The House's impeachment inquiry*

The House Managers argue that since Article 1, Section 2 of the Constitution gives the House the "sole power of impeachment," the President cannot question the procedures as a denial of Due Process of Law or authority by which that House produced the Articles. What they don't explain is how House rules can preempt the Constitution. They can't. As Chief Justice John Marshall wrote in *Marbury v. Madi-*

son, “the Constitution is superior to any ordinary act of the legislature, [and] the Constitution, and not such ordinary act, must govern the case to which they both apply.”<sup>9</sup>

While the Constitution gives the House the “sole power to impeach” it gives the Senate the “sole power to try all impeachments.” Some have analogized the House’s role to a grand jury in criminal cases. Generally speaking, a grand jury may issue an indictment, also known as a “true bill,” only if it finds, based upon the evidence that has been presented to it, that there is probable cause to believe that a crime has been committed by a criminal suspect.

But impeachment is not, strictly speaking, a criminal case, even though the Constitution speaks in terms of “conviction” and the impeachment standard is “treason, bribery, or other high crimes and misdemeanors.” Contrast that with Article 1, Section 3, Clause 7: “the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.” In other words, the constitutional prohibition of double jeopardy does not apply.

Neither are Senators jurors in the usual sense of being “disinterested” in the facts or outcome. Senators take the following oath: “Do you solemnly swear that in all things appertaining 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?”

Hamilton wrote in Federalist 65 the Senate was chosen as the tribunal for courts of impeachment because:

“Where else than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent? What other body would be likely to feel confidence enough in its own situation, to preserve, unawed and uninfluenced, the necessary impartiality between an individual accused, and the representatives of the people, his accusers?”

Because impeachment is neither civil nor criminal in the usual sense, it must be something different. President Trump’s counsel referred to the Senate role as sitting in a “High Court of Impeachment,” and “Democracy’s ultimate court.” Hamilton, in Federalist 65, called it “a method of national inquest.”

One of most significant disputes in the Senate impeachment trial of President Trump was the duty of the House to develop evidence during its impeachment inquiry and the duty of the Senate when new evidence is sought by one or both parties during the trial. In addressing this issue, it is helpful to remind ourselves that the American system of justice is adversarial in nature. That is, it is a system that “resolves disputes by presenting conflicting views of fact and law to an impartial and relatively passive arbiter, who decides which side wins what.”<sup>10</sup> This system “consists of a core of basic rights that recognize and protect the dignity of the individual in a free society.”<sup>11</sup>

The rights that comprise the adversary system include . . . the rights to call and to confront witnesses, and the right to require the government to prove guilt beyond a reasonable doubt. . . . These rights, and others, are also included in the broad and fundamental concept [of] due process of law—a concept which itself has been substantially equated with the adversary system.”<sup>12</sup>

The adversarial nature of these proceedings means that the House Managers were obligated to develop their case, including the evidence, in the House inquiry, and not rely on the Senate to do so. In typical court proceedings, the failure of the prosecutor to present sufficient evidence at trial results in dismissal, not in open-ended discovery or a re-opened investigation.

President Trump’s lawyers argued that there were three main errors in the House proceedings:

(1) The House did not initially authorize the impeachment inquiry, thus delegating its “sole power” to the Intelligence Committee, which issued dozens of subpoenas the President deemed invalid;

(2) Numerous due process violations during the Intelligence Committee’s proceedings, including denial of notice, counsel, cross examination, and the opportunity to call witnesses;

(3) And, finally, that as an interested fact witness regarding Intelligence Committee contacts with the whistleblower, Chairman Schiff could not be said to have fairly conducted the House investigation.

Again, the House Managers argue that the method by which the Articles of Impeachment were approved in the House cannot be challenged in the Senate trial given the House’s “sole power to impeach.”

Ominously, the President’s lawyers argue that whatever precedent was set by the Senate in this trial would be the “new normal” and govern not just this trial but all impeachment trials in the future. They also argue that to make impeachment “too easy” in the House will result in more frequent presidential impeachments

being approved by this and future Houses, which the Senate would then be obligated to try. Similarly, they argue that the Senate should not reward the failure of the House to litigate questions of presidential privileges and immunities in their impeachment inquiry and transfer that burden to the Senate. An important difference between the House and Senate is that House inquiries can be delegated to committees while the House conducts other business; not so in the Senate, which must sit as a court of impeachment until the trial is completed.

Thus, during a Senate impeachment trial, absent unanimous consent—unlikely given the contentious nature of the proceedings—the Senate is precluded from any other business, even during delays while executive privilege and similar issues are litigated in the courts. Given that the House chose to not seek judicial enforcement of subpoenas during its impeachment inquiry because of concerns about delay, the question is do they have a right to do so during the Senate trial? If so, the President's lawyers claim, such an outcome would significantly protract a Senate trial and permanently alter the relationship between the House and Senate in impeachment proceedings. Indeed, there is a strong textual and structural argument that the Constitution prohibits the Senate from performing the investigative role assigned to the House.

The House Managers contend that Chief Justice John Roberts could rule on questions of privilege while presiding over the impeachment trial, avoiding delay during litigation, but the Chief Justice made clear his was not a judicial role in the usual sense.<sup>13</sup> When the issue of whether the Chief Justice would be a tie-breaking vote came up during the trial, he said: "I think it would be inappropriate for me, an unelected official from a different branch of government, to assert the power to change that result so that the motion would succeed." So it is that the Senate, not the Chief Justice presiding in an essentially ceremonial role during impeachment trials, determines disputed issues. This conclusion is further supported by the rule that a majority of Senators are empowered to effectively "overrule" an initial determination by the presiding officer. In the words of Senate Impeachment Rule Seven: "The presiding officer may, in the first instance, submit to the Senate, without a division, all questions of evidence and incidental questions; but the same shall, on the demand of one-fifth of the members present, be decided by yeas and nays." The unseemliness of imposing this role on the Chief Justice is obvious and should be avoided.

#### *(5) The Facts*

Of course, the main factual contentions of the House Managers involve President Trump's interest in an investigation of Hunter and Joe Biden's role in Ukraine. They allege the President's "corrupt" motive to dig up dirt on a potential political rival is an abuse of power. The President's lawyers argue that it is clearly within the President's authority to investigate corruption and leverage foreign aid in order to combat it. Even if it incidentally helps the President electorally, they argue it is not a "high crime and misdemeanor."

But there are more basic factual conundrums. Any investigations discussed in the July 25 conversation between Ukrainian President Volodymyr Zelensky and President Trump never occurred. And the foreign aid, including lethal defensive aid and weapons, was paused for just a short time and delivered on September 11, 2019, before the deadline of September 30.

The abuse of power alleged was based on desired investigations and the withholding of foreign aid. But neither, ultimately, occurred. This is similar to an "attempted" offense under the criminal law. Indeed, the law criminalizes a host of attempted offenses. But the Articles of Impeachment do not charge President Trump with any crimes, including any "attempted" offenses.

#### *(6) Burden of Proof*

President Trump's counsel argued that the appropriate burden of proof in this quasi-criminal trial is "proof beyond a reasonable doubt." This point was not seriously contested by the House Managers who repeatedly claimed the evidence in support of the Articles of Impeachment was "overwhelming." Manager Jerry Nadler went further and claimed, repeatedly, that the evidence produced was "conclusive" and "uncontested." Manager Zoe Lofgren argued that Senators could use, literally, any standard they wished.

This is significant on the issue of the President's motive in seeking a corruption investigation from President Zelensky, one that included former Vice President Biden and his son, Hunter, and the company on whose board he served, Burisma. The House Managers argued, repeatedly, that President Trump did not care about Ukrainian corruption or burden sharing with allies and that his sole motive was to get information damaging to a political rival, Joe Biden.

President Trump's lawyers contend that he has a record of concerns about burden sharing with allies, as well as corruption, and produced several examples. At most, they say, his was a mixed motive—partly policy, partly political—and in any event it was not a crime and thus not impeachable.

Therefore, the question arises: did the House Managers prove beyond a reasonable doubt that the sole motive for pausing military aid to Ukraine was for his personal benefit? Or, did they fail to meet their burden?

#### Conclusion

Ultimately, the House Managers failed to prove beyond a reasonable doubt that President Trump's sole motive for seeking any corruption investigation in Ukraine, including of Hunter Biden, was for a personal political benefit. This is particularly true given the evidence of President Trump's documented interest in financial burden sharing with allies, and the widely shared concerns, including by the Obama/Biden Administration, with corruption in Ukraine and the need to protect American taxpayers.

Even if President Trump had mixed motives—a public interest combined with a personal interest—the fact is the investigations never occurred and the aid to Ukraine was paused but delivered on schedule.

Moreover, none of the above conduct rises to the level of a “high crime and misdemeanor.” The first article, Abuse of Power, which charges no crime or violation of existing law is too vague and ambiguous to meet the Constitution's requirements. It is simply a conclusion into which any disagreeable conduct can be lumped.

Finally, the second article, Obstruction of Congress, cannot be sustained on this record. The President's counsel argued persuasively that its subpoenas were largely unauthorized in the absence of a House resolution delegating its authority to a House committee. What's more, the House never sought to enforce its subpoenas in the courts, essentially giving up efforts to do so in favor of expediting the House impeachment inquiry. The desire to meet an arbitrary deadline before Christmas was prioritized over a judicial determination in the interbranch dispute.

#### ENDNOTES

1. See Declaration of Independence (“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their powers from the consent of the government.”)

2. See The Records of the Federal Convention of 1787 (Max Farrand, ed., 1911).

3. *Johnson v. United States*, 135 S.Ct. 2551, 2560 (2015). Chief Justice Roberts similarly relied on Justice Scalia's views when he raised due process concerns in the context of an amorphous definition of corruption in the criminal prosecution of public officials. *McDonnell v. United States*, 136 S.Ct. 2355, 2373 (2016).

4. A variation of these arguments came up in active litigation related to the House's access to testimony and evidence connected with Special Counsel Mueller's investigation. The district courts rejected the White House Counsel's position. See *House of Representatives v. McGahn*, No. 1:19-cv-02379-KBJ, 2019 WL 6312011 (D.D.C. Nov. 25, 2019) and *In re Application of House of Representatives for Release of Certain Grand Jury Materials*, No. 1:19-gj-00048, 2019 WL 5485221 (D.D.C. Oct. 25, 2019). But those decisions are now on appeal, and the D.C. Circuit heard argument in those cases on January 3, 2020.

5. See *Kupperman v. House of Representatives*, 1:19-cv-03224-RJL, 2019 WL 729359 (D.D.C. Dec. 30, 2019).

6. See Order of Supreme Court dated December 13, 2019 granting certiorari in *Trump v. Mazars USA*, 940 F.3d 710 (D.C. Cir. 2019); *Trump v. Deutsche Bank*, 943 F.3d 627 (2d Cir. 2019), and *Trump v. Vance*, 941 F.3d 631 (2d Cir. 2019). The Supreme Court will hear argument in these cases on March 31, 2020.

7. Issues associated with executive privilege were litigated and resolved in the courts well in advance of the Nixon and Clinton impeachments.

8. See December 17, 2019 Interview of Congressman Eric Swalwell by CNN's Wolf Blitzer (“Unless you send those [witnesses] to us, we can only conclude that you are guilty, because in America, innocent men do not hide and conceal evidence. In fact, . . . they do just the opposite, they are forthcoming and they want to cooperate, and the President is acting like a very guilty person.”)

9. See *Marbury v. Madison*, 5 U.S. 137, 138 (1803) (“An act of congress repugnant to the constitution cannot become a law.”)

10. Monroe H. Freeman, “Our Constitutionalized Adversary System,” 1 Chapman Law Rev. 57, 57 (1998). Justice Scalia noted that the adversarial system is founded on “the presence of a judge who does not (as the inquisitor does) conduct the factual

and legal investigation himself, but instead decides on the basis of facts and arguments pro and con adduced by the parties.” *McNeil v. Wisconsin*, 501 U.S. 171, 181 n.2 (1991).

11. *Id.*

12. *Id.*

13. As even one of the witnesses who testified in the House has recognized, the Constitution designates the Chief Justice to serve as presiding officer of the Senate for presidential impeachments because the Framers understood the obvious conflict of interest and tension in allowing the Vice President to preside over the trial of the President. Michael Gerhardt, *The Constitutional Limits to Impeachment and Its Alternatives*, 68 *Texas Law Review* 1, 98 (1989).

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR JOSH HAWLEY

Mr. HAWLEY. Madam President, I come here today with the business of impeachment before this Chamber. It should hardly be necessary at this late juncture to outline again the train of abuses and distortions and outright lies that have brought us to today’s impeachment vote: the secret meetings in the Capitol basement; the closed hearings without due process or basic fairness; the failure of the House to follow their own rules and authorize an impeachment inquiry and then the bipartisan vote against impeachment; and the attempt to manipulate or even prevent a trial here in the Senate—holding the Articles of Impeachment for 33 days—in brazen defiance of the Constitution’s mandates.

The House Democrats have given us the first purely partisan impeachment in our history and the first attempt to remove an elected President that does not even allege unlawful conduct.

Animating it all has been the bitter resentment of a professional political class that cannot accept the verdict of the people in 2016, that cannot accept the people’s priorities, and that now seeks to overturn the election and entrench themselves in power. That is how we arrived at this moment, that is how we got here, and that is what this is really about.

Now it is time to bring this fiasco to a close. It is time to end this cycle of retribution and payback and bitterness. It is time to end the abuse of our institutions. It is time to let the verdict of the people stand. So I will vote today to acquit the President of these charges.

You know, it has been clear for a long time that impeachment is not a priority of the people—it is not even close. It is a pipe dream of politicians. And as the Democrats have forced it on this country over these many months, it has sapped our energy and diverted our attention from the real issues that press upon our country, the issues the people of this Nation have tried to get this town to care about for years. I mean the crisis of surging suicides and drug addiction that is driving down life expectancy in my State and across this Nation. I mean the crisis at the border, where those drugs are pouring across. I mean the crisis of skyrocketing healthcare costs, which burden families, young and old, with bills they cannot pay. I mean the crisis of affordable housing, which robs parents of a safe place to raise their children and build a life. I mean the crisis of trafficking and exploitation, which robs our young girls and boys of a future and our society of their innocence.

I mean the crisis of the family farm and the crisis of education costs for those who go to college and the lack of good-paying jobs for those who don't. I mean the crisis of connectivity in our heartland, where too many schoolchildren can't access the internet even to do their homework at night. I mean the crisis of unfair trade and lost jobs and broken homes. And I could go on.

My point is this: When I listen to the people of my State, I don't hear about impeachment. No, I hear about the problems of home and neighborhood, of family and community, about the loss of faith in our government and about the struggle to find hope for the future. This town owes it to these Americans—the ones who sent us here—finally to listen, finally to act, and finally to do something that really matters to them.

We must leave this impeachment circus behind us and ensure that our Constitution is never again abused in this way. It is time to turn the page. It is time to turn to a new politics of the people and to a politics of home. It is time to turn to the future—a future where this town finally accepts the people's judgment and the people's verdict and where this town finally delivers for the people who elected them; a future where the middle of our society gets a fair shake and a level playing field; a future where maybe—maybe—this town will finally listen.

When I think of all the energy and all the effort that has been expended on this impeachment crusade over almost 3 years now, I wonder what might have been.

Today is a sad day, but it does not have to remain that way. Imagine what we might achieve for the good of this Nation if we turn our energy and our effort to the work of the American people. Imagine what we could do to keep families in their homes and to bring new possibility to the Nation's heartland and to care for our children in every part of this society. Imagine what we could do to lift up the most vulnerable among us who have been exploited and trafficked and give them new hope and new life. Imagine what we could do for those who have been forgotten, from our rural towns to our inner cities. Imagine what we could do to give them control over their own destinies.

We can find the common good. We can push the boundaries of the possible. We can rebuild this Nation if we will listen to the American people. Let us begin.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR LAMAR ALEXANDER

Mr. ALEXANDER. Madam President, in this impeachment proceeding, I worked with other Senators to make sure that we had the right to ask for more documents and witnesses, but there was no need for more evidence to prove something that I believe had already been proven and that did not meet the U.S. Constitution's high bar for an impeachable offense.

There was no need for more evidence to prove that the President asked Ukraine to investigate Joe Biden and his son, Hunter. He said this on television on October 3, 2019, and he said it during his July 25, 2019, telephone call with the President of Ukraine.

There was no need for more evidence to conclude that the President withheld United States aid, at least in part, to pressure Ukraine to investigate the Bidens. The House managers have proved this with what they called a “mountain of overwhelming evidence.” One of the managers said it was “proved beyond a shadow of a doubt.”

There was no need to consider further the frivolous second Article of Impeachment that would remove from the President and future Presidents—remove this President for asserting his constitutional prerogative to protect confidential conversations with his close advisers.

It was inappropriate for the President to ask a foreign leader to investigate his political opponent and to withhold U.S. aid to encourage this investigation. When elected officials inappropriately interfere with such investigations, it undermines the principle of equal justice under the law. But the Constitution does not give the Senate the power to remove the President from office and ban him from this year’s ballot simply for actions that are inappropriate.

The question, then, is not whether the President did it but whether the Senate or the American people should decide what to do about what he did. I believe that the Constitution clearly provides that the people should make that decision in the Presidential election that began on Monday in Iowa.

The Senate has spent 11 long days considering this mountain of evidence, the arguments of the House managers and the President’s lawyers, their answers to Senators’ questions, and the House record. Even if the House charges were true, they don’t meet the Constitution’s “Treason, Bribery, or other High Crimes and Misdemeanors” standard for impeachable offense.

The Framers believed that there never ever should be a partisan impeachment. That is why the Constitution requires a two-thirds vote of the Senate to convict. Yet not one House Republican voted for these articles.

If this shallow, hurried, and wholly partisan impeachment were to succeed, it would rip the country apart, pouring gasoline on the fire of cultural divisions that already exist. It would create a weapon of perpetual impeachment to be used against future Presidents whenever the House of Representatives is of a different political party.

Our founding documents provide for duly elected Presidents who serve with “the consent of the governed,” not at the pleasure of the U.S. Congress. Let the people decide.

A year ago, at the Southeastern Conference basketball tournament, a friend of 40 years sitting in front of me turned to me and said: “I am very unhappy with you for voting against the President.” She was referring to my vote against the President’s decision to spend money that Congress hadn’t appropriated to build the border wall.

I believed then and now that the U.S. Constitution gives to the Congress the exclusive power to appropriate money. This separation of powers creates checks and balances in our government that preserve our individual liberty by not allowing, in that case, the Executive to have too much power.

I replied to my friend: “Look, I was not voting for or against the President. I was voting for the United States Constitution.” Well, she wasn’t convinced.

This past Sunday, walking my dog Rufus in Nashville, I was confronted by a neighbor who said she was angry and crushed by my vote against allowing more witnesses in the impeachment trial. “The Senate should remove the President for extortion,” she said.

I replied to her: “I was not voting for or against the President. I was voting for the United States Constitution, which, in my view, does not give the Senate the power to remove a President from his office and from this year’s election ballot simply for actions that are inappropriate. The United States Constitution says a President may be convicted only for Treason, Bribery, and other High Crimes and Misdemeanors. President Trump’s actions regarding Ukraine are a far cry from that. Plus,” I said, “unlike the Nixon impeachment, when almost all Republicans voted to initiate an impeachment inquiry, not one single Republican voted to initiate this impeachment inquiry against President Trump. The Trump impeachment,” I said to her, “was a completely partisan action, and the Framers of the United States Constitution, especially James Madison, believed we should never ever have a partisan impeachment. That would undermine the separation of powers by allowing the House of Representatives to immobilize the executive branch, as well as the Senate, by a perpetual partisan series of impeachments.” Well, she was not convinced.

When our country was created, there never had been anything quite like it—a democratic republic with a written Constitution. Perhaps its greatest innovation was the separation of powers among the Presidency, the Supreme Court, and the Congress.

The late Justice Scalia said this of checks and balances: “Every tin horn dictator in the world today, every president for life, has a Bill of Rights. . . . What has made us free is our Constitution.” What he meant was, what makes the United States different and protects our individual liberty is the separation of powers and the checks and balances in our Constitution.

The goal of our Founders was not to have a King as a chief executive, on the one hand, or not to have a British-style parliament, on the other, which could remove our chief executive or prime minister with a majority or no-confidence vote. The principle reason our Constitution created a U.S. Senate is so that one body of Congress can pause and resist the excesses of the Executive or popular passions that could run through the House of Representatives like a freight train.

The language of the Constitution, of course, is subject to interpretation, but on some things, its words are clear. The President cannot spend money that Congress doesn’t appropriate—that is clear—and the Senate can’t remove a President for anything less than treason, bribery, high crimes and misdemeanors, and two-thirds of us, the Senators, must agree on that. That requires a bipartisan consensus.

We Senators take an oath to base our decisions on the provisions of our Constitution, which is what I have endeavored to do during this impeachment proceeding.

Madam President, I ask unanimous consent to include a few documents in the RECORD following my remarks. They include an editorial from February 3 from the Wall Street Journal; an editorial from the National Review, also dated February 3; an opinion editorial by Robert Doar, president of the American Enterprise Institute on February 1; an article from KnoxTNToday, yesterday; and a transcript from my appearance on “Meet the Press” on Sunday, February 2, 2020. These documents illuminate and further explain my statement today.

Thank you.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Feb. 3, 2020]

EDITORIAL BOARD: LAMAR ALEXANDER’S FINEST HOUR—HIS VOTE AGAINST WITNESSES WAS ROOTED IN CONSTITUTIONAL WISDOM

Senate Republicans are taking even more media abuse than usual after voting to bar witnesses from the impeachment trial of President Trump. “Cringing abdication” and “a dishonorable Senate” are two examples of the sputtering progressive rage. On the contrary, we think it was Lamar Alexander’s finest hour.

The Tennessee Republican, who isn’t running for re-election this year, was a decisive vote in the narrowly divided Senate on calling witnesses. He listened to the evidence and arguments from both sides, and then he offered his sensible judgment: Even if Mr. Trump did what House managers charge, it still isn’t enough to remove a President from office. “It was inappropriate for the president to ask a foreign leader to investigate his political opponent and to withhold United States aid to encourage that investigation,” Mr. Alexander said in a statement Thursday night. “But the Constitution does not give the Senate the power to remove the president from office and ban him from this year’s ballot simply for actions that are inappropriate.”

The House managers had proved their case to his satisfaction even without new witnesses, Mr. Alexander added, but “they do not meet the Constitution’s ‘treason, bribery, or other high crimes and misdemeanors’ standard for an impeachable offense.” Nebraska Sen. Ben Sasse told reporters “let me be clear: Lamar speaks for lots and lots of us.”

This isn’t an abdication. It’s a wise judgment based on what Mr. Trump did and the rushed, partisan nature of the House impeachment. Mr. Trump was wrong to ask Ukraine to investigate Joe and Hunter Biden, and wrong to use U.S. aid as leverage. His call with Ukraine’s President was far from “perfect.” It was reckless and self-destructive, as Mr. Trump often is.

Nearly all of his advisers and several Senators opposed his actions, Senators like Wisconsin’s Ron Johnson lobbied Mr. Trump hard against the aid delay, and in the end the aid was delivered within the fiscal year and Ukraine did not begin an investigation. Even the House managers did not allege specific crimes in their impeachment articles. For those who want the best overall account of what happened, we again recommend the Nov. 18 letter that Mr. Johnson wrote to House Republicans.

Mr. Alexander’s statement made two other crucial points. The first concerns the damage that partisan removal of Mr. Trump would do to the country.

“The framers believed that there should never, ever be a partisan impeachment. That is why the Constitution requires a 2/3 vote of the Senate for conviction. Yet not one House Republican voted for these articles,” Mr. Alexander noted. “If this shallow, hurried and wholly partisan impeachment were to succeed, it would rip the country apart, pouring gasoline on the fire of cultural divisions that already exist. It would create the weapon of perpetual impeachment to be used against future presidents whenever the House of Representatives is of a different political party.”

Does anyone who isn’t a Resistance partisan doubt this? Democrats and the press talk as if removing Mr. Trump is a matter of constitutional routine that would restore American politics to some pre-2016 normalcy. That’s a dangerous illusion.

The ouster of Mr. Trump, the political outsider, on such slender grounds would be seen by half the country as an insider coup d’etat. Unlike Richard Nixon’s resignation, it would never be accepted by Mr. Trump’s voters, who would wave it as a bloody flag for years to come. Payback against the next Democratic President when the Republicans retake the House would be a certainty.

Mr. Alexander directed Americans to the better solution of our constitutional bedrock. “The question then is not whether the president did it, but whether the United States Senate or the American people should decide what to do about what he did,” his statement said. “Our founding documents provide for duly elected presidents who serve with ‘the consent of the governed,’ not at the pleasure of the United States Congress. Let the people decide.”

Democrats and their allies in the media have spent three years trying to nullify the election their candidate lost in 2016. They have hawked false Russian conspiracy theories, ignored abuse by the FBI, floated fantasies about triggering the 25th Amendment, and tried to turn bad presidential judgment toward Ukraine into an impeachable offense. Yet Mr. Trump’s job approval rating has increased during the impeachment hearings and trial.

Our friendly advice to Democrats and the impeachment press is to accept that you lost fair and square in 2016 and focus on nominating a better Democratic candidate this year. On the recent polling evidence, that task is urgent. In the meantime, thank you, Lamar Alexander.

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[From the National Review, Feb. 3, 2020]

EDITORIAL BOARD: LAMAR ALEXANDER GETS IT RIGHT

The impeachment saga is drawing to a close.

The Senate is prepared to acquit without hearing from witnesses, after Lamar Alexander, a swing vote, came out against calling them late last week.

In his statement, Alexander expressed the correct view on the underlying matter—one we have been urging Republicans to publicly adopt since impeachment first got off the ground.

The Tennessee Republican said that it has been amply established that Donald Trump used a hold on defense aid to pressure the Ukrainians to undertake the investigations that he wanted, and that this was, as he mildly put it, inappropriate. But this misconduct, he argued, doesn’t rise to the level of the high crimes and misdemeanors required to remove a president from office. If the Senate were to do so anyway, it would further envenom the nation’s partisan divide. Besides, there is a national election looming where the public itself can decide whether Trump should stay in office or not.

Since we already know the core of what happened, Alexander explained, there was no need to hear from additional witnesses in the Senate trial. (On this theory of the case, the Senate is in effect acting like an appellate court, rendering a judgment on a threshold question of law, rather than a trial court sifting through the facts.)

In the wake of Alexander’s statement, other Senate Republicans endorsed his line of analysis, which, it must be noted, is superior to the defense mounted by the White House legal team over the last two weeks.

Because the president refused to acknowledge what he did, his team implausibly denied there was a quid pro quo and argued that one hadn’t been proven since there were no first-hand witnesses. Obviously, this position was at odds with the defense team’s insistence that no further witnesses be called. It also raised the natural question why, if people with firsthand knowledge had exculpatory information, the White House wasn’t eager to let them come forward.

Additionally, the White House maintained that a president can’t be impeached unless he’s guilty of a criminal violation. This is an erroneous interpretation of the Constitution, although it is true that past presidential impeachments have involved violations of the law and that such violations provide a bright line that’s missing if the charge is only abuse of power. Alan Dershowitz argued this position most aggressively for the president’s defense, and made it even worse by briefly seeming—before walking it back—to argue that anything a president does to advance his reelection is properly motivated.

As for the House managers, they were at their strongest making the case that the president had done what they alleged, and their weakest arguing that he should be removed for it.

They tried to inflate the gravity of Trump’s offense by repeatedly calling it “election interference.” At the end of the day, though, what the Trump team sought was not an investigation of Joe or Hunter Biden, but a statement by the Ukrainians that they’d look into Burisma, the Ukrainian company on whose board Hunter Biden sat. The firm has a shady past and has been investigated before. Trump should have steered clear of anything involving his potential opponent, but it’s not obvious that a new Burisma probe would have had any effect on 2020 (the vulnerability for Biden

is Hunter's payments, which are already on the record) and, of course, the announcement of an investigation never happened.

They said that Trump's seeking this Ukrainian interference was in keeping with his welcoming of Russian meddling, implying that Trump had been found guilty of colluding with the Russians in 2016, rather than exonerated. (Part of the complaint here is that Trump made use of material that emerged via Russian hacking. Then again, so did Bernie Sanders in his fight with the DNC.)

They alleged that the brief delay in aid to Ukraine somehow endangered our national security, a risible claim given that the Ukrainians got the aid and that Trump has provided Ukraine lethal assistance that President Obama never did.

They accused the president of obstruction of justice for asserting privileges invoked by other presidents and not producing documents and witnesses on the House's accelerated timeline, a charge that White House lawyer Patrick Philbin effectively dismantled.

Finally, they insisted that a trial without witnesses wouldn't be fair, despite making no real effort to secure the new witnesses during their own rushed impeachment inquiry.

As for the Senate trial being a "cover up," as Democrats now insist it is, there is nothing stopping the House—or the Senate, for that matter—from seeking testimony from John Bolton and others outside the confines of the trial. This would be entirely reasonable congressional oversight (despite the White House arguing otherwise) and there is still a public interest in knowing as much as possible about this matter, even if Trump isn't going to be removed.

If nothing else, the last two weeks have been a forum for extensive discussion about the respective powers of the two elected branches of government. We are sympathetic to the view that the executive branch has too much power. If Congress seeks to remedy this imbalance by impeaching and removing presidents, though, it will be sorely disappointed, since the two-thirds requirement for a Senate conviction is an almost insuperable obstacle to removal (as both House Republicans and House Democrats have experienced the last 20 years).

It would be better if Congress undertook a more systematic effort to take back prerogatives it has ceded to the executive branch and the courts. But we aren't optimistic on this score, since the same Democrats who claim to be sticklers about congressional power on the Ukraine matter won't say a discouraging word about Elizabeth Warren's and Bernie Sanders's promised adventures in unilateral rule as president.

At the end of the day, Nancy Pelosi impeached knowing that the Senate wouldn't convict, and so here we are—with nine months to go until voters get to make their judgment: not just about Ukraine, but about the last four years and Trump's eventual opponent.

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[From the AEI, Feb. 1, 2020]

ALEXANDER GOT IT RIGHT: IT TAKES MORE TO REMOVE A PRESIDENT

(By Robert Doar)

"It was inappropriate for the president to ask a foreign leader to investigate his political opponent and to withhold United States aid to encourage that investigation. When elected officials inappropriately interfere with such investigations, it undermines the principle of equal justice under the law. But the Constitution does not give the Senate the power to remove the president from office and ban him from this year's ballot simply for actions that are inappropriate."

Republican Sen. Lamar Alexander's words reminded me of the struggle my father, John Doar, had as he considered whether the conduct of President Richard Nixon was so serious that it should lead the House to impeach him and the Senate to remove him from office. Dad was in charge of the House Judiciary Committee staff, which took seven months (between December 1973 and July 1974) to examine the evidence and consider the question. What he concluded, and what the House Judiciary Committee by bipartisan majorities also found, was that Nixon deserved impeachment and removal for a pattern of conduct over a multi-year period that both obstructed justice and abused power.

So the first article, concerning obstruction of justice, found that Nixon and his subordinates had tampered with witnesses and interfered with the Department of Justice's investigations. They had paid hush money and attempted to misuse the CIA. And they had lied repeatedly to investigators and the American people.

On abuse of power, Nixon was found to have misused his authority over the IRS, the FBI, the CIA, and the Secret Service to defeat political opponents and protect himself, and in the process he had violated the constitutional rights of citizens. After he came under suspicion, he tried to manipulate these agencies to interfere with the investigation.

President Trump's conduct toward Ukraine, though inappropriate, differs significantly from Nixon's in one crucial respect. Where Nixon's impeachable abuse of power occurred over a period of several years, the conduct challenged by the House's impeachment of Trump was not nearly as prolonged. From July to September of last year, Trump attempted to cajole a foreign government to open an investigation into his political opponent. That conduct was wrong. But it's not the same as what Nixon did over multiple years.

This contrast brings to light a critical difference between the House's behavior in 1974 and its efforts today. When Nixon's actions came to light, the House conducted an impeachment the right way: The House Judiciary Committee took seven months to examine all of the evidence, built up a theory of the case which matched the Constitution's requirements, and produced charges that implicated the president and his subordinates in a pattern of impeachable conduct. Faced with certain impeachment and removal from office, Nixon resigned. What Trump attempted to do, as Alexander rightly sees, is not that.

Alexander is right about one other thing—we should let the people decide who our next president should be.

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[From the Knox TN Today, Feb. 4, 2020]

LAMAR WAS RIGHT

(By Frank Cagle)

Since I'm older than dirt, there have been occasions over the years when first-term state legislators would ask me if I had any advice for them.

Yes.

When a major and controversial issue looms study it, decide where you are and let everyone know where you are. In other words, pick a side early, have a reputation for keeping your word, and do not be known as a member who will go where the wind blows.

Make sure you do not get into the group known as the undecideds. You will get hammered by both sides, wooed by both sides and hounded by the media. And finally, do not under any circumstances be the deciding vote. Yours will be the only vote anyone remembers.

You would think someone who has been around as long as Lamar Alexander could avoid this trap. But not so. In the impeachment trial of President Trump, he got the label undecided, he was then hounded by the media and hammered by both sides over whether he would march in lockstep with Majority Leader Mitch McConnell or whether he would vote to call more witnesses as the Democrats wanted.

And horror of horrors, he was the deciding vote and the only one that will be remembered. When he announced how he would vote the "more witnesses" movement collapsed.

Alexander now finds himself being excoriated by both sides. The Trump supporters will never forget his failure to fall in line and salute. The anti-Trumpers are expressing their disappointment.

I've never been a Lamar fan. But I would like to make the case that he did exactly the right thing and he expressed the position of the majority of his Republican colleagues. He, and anyone who has been paying attention, says Trump did what he was accused of and what he did was wrong—inappropriate. But it did not rise to the level of removing him from office. There was no point in listening to additional witnesses and dragging things out. Everyone knew he was guilty. But if Trump is to be removed from office, let the voters do it.

If you believe that Trump didn't hold up aid to Ukraine or that he didn't ask them to investigate Joe Biden you have surrendered your critical faculties or you haven't been paying attention.

Joe and Hunter Biden should be investigated. By the FBI. I understand Trump's frustration that the mainstream media could not be counted on to investigate what should be disqualifying information about Biden's presidential run. (In the media's defense, Trump's kids are also trading off their father's position.) Trump's problem is that instead of turning to the FBI he turned the problem over to Rudy Giuliani

and a couple of his questionable associates, otherwise known as the “Gang Who Couldn’t Shoot Straight.”

I doubt you could find 10 Republican senators who, in their heart of hearts, didn’t agree with Lamar’s position. Many have echoed his argument. But it will be Lamar who will take the heat.

[From Meet the Press, Feb. 2, 2020]

INTERVIEW WITH SENATOR LAMAR ALEXANDER, U.S. SENATOR FOR TENNESSEE

Chuck Todd: Republican Senator Lamar Alexander of Tennessee. Senator Alexander, welcome back.

Senator Lamar Alexander: Thank you, Chuck.

Todd: So one of the reasons you gave in your release about not voting for more witnesses is that—and to decide that, okay, this trial is over, let’s let the people decide—was that the election was too close. So let me ask you though, on the witness vote itself, would it be helpful for the people to decide if they had more information?

Alexander: Well, I mean, if you have eight witnesses who say someone left the scene of an accident, why do you need nine? I mean, the question for me was, do I need more evidence to conclude that the president did what he did? And I concluded no. So I voted.

Todd: What do you believe he did?

Alexander: What I believe he did. One, was that he called the president of Ukraine and asked him to become involved in investigating Joe Biden, who was—

Todd: You believe his wrongdoing began there, not before?

Alexander: I don’t know about that, but he admitted that. The president admitted that. He released the transcript. He said it on television. The second thing was, at least in part, he delayed the military and other assistance to Ukraine in order to encourage that investigation. Those are the two things he did. I think he shouldn’t have done it. I think it was wrong. Inappropriate was the way I’d say it, improper, crossing the line. And then the only question left is, who decides what to do about that?

Todd: Well, who decides what to do with that?

Alexander: The people. The people is my conclusion. You know, it struck me really for the first time early last week, that we’re not just being asked to remove the president from office. We’re saying, tell him you can’t run in the 2020 election, which begins Monday in Iowa.

Todd: If this weren’t an election year, would you have looked at this differently?

Alexander: I would have looked at it differently and probably come to the same conclusion because I think what he did is a long way from treason, bribery, high crimes and misdemeanors. I don’t think it’s the kind of inappropriate action that the framers would expect the Senate to substitute its judgment for the people in picking a president.

Todd: Does it wear on you though that one of the foundational ways that the framers wrote the constitution was almost fear of foreign interference.

Alexander: That’s true.

Todd: So, and here it is.

Alexander: Well, if you hooked up with Ukraine to wage war on the United States, as the first Senator from Tennessee did, you could be expelled, but this wasn’t that. What the president should have done was, if he was upset about Joe Biden and his son and what they were doing in Ukraine, he should’ve called the Attorney General and told him that and let the Attorney General handle it the way they always handle cases that involve public things.

Todd: Why you think he didn’t do that?

Alexander: Maybe he didn’t know to do it.

Todd: Okay. This has been a rationale that I’ve heard from a lot of Republicans. Well boy, he’s still new to this.

Alexander: Well, a lot of people come to Washington—

Todd: At what point though, is he no longer new to this?

Alexander: The bottom line is not an excuse. He shouldn’t have done it. And I said he shouldn’t have done it and now I think it’s up to the American people to say, okay, good economy, lower taxes, conservative judges, behavior that I might not like, call to Ukraine. And weigh that against Elizabeth Warren and Bernie Sanders and pick a president.

Todd: Are you at all concerned though when you seek foreign interference? He does not believe he’s done anything wrong. That what has happened here might encourage him that he can continue to do this?

Alexander: I don't think so. I hope not. I mean, enduring an impeachment is something that nobody should like. Even the president said he didn't want that on his resume. I don't blame him. So, if a call like that gets you an impeachment, I would think he would think twice before he did it again.

Todd: What example in the life of Donald Trump has he been chastened?

Alexander: I haven't studied his life that close, but, like most people who survive to make it to the Presidency, he's sure of himself. But hopefully he'll look at this and say, okay, that was a mistake I shouldn't have done that, shouldn't have done it that way. And he'll focus on the strengths of his Administration, which are considerable.

Todd: Abuse of power, define it.

Alexander: Well, that's the problem with abuse of power. As Professor Dershowitz said during his argument, he had a list of 40 presidents who'd been accused of abuse of power from Washington to Obama. So it's too vague a standard to use to impeach a president. And the founders didn't use it. I mean, they said, I mean, think of what a high bar they set. They said treason, bribery, high crimes or misdemeanors. And then they said

Todd: What do you think they meant by misdemeanors? Violation of a public trust.

Alexander: At the time they used it, misdemeanor meant a different thing in Great Britain. But I think Dershowitz was right. It was something akin to treason, bribery and other high crimes and misdemeanors, very high. And then in addition to that, two thirds of us in the Senate have to agree to that, which is very hard to do, which is why we've never removed a president this way in 230 years.

Todd: One of your other reasonings was the partisan nature of the impeachment vote itself in the House. Except now we are answering a partisan impeachment vote in the House with a partisan, I guess, I don't know what we would call this right now.

Alexander: Well you all it acquittal. That's what happens.

Todd: An acquittal, but essentially also, on how the trial was run—a partisan way from the trial. So, if we make bipartisanship a standard, if somebody has a stranglehold on a base of a political party, then what you're saying is, you can overcome any impeachable offense as long as you have this stranglehold on a group of people.

Alexander: Well, as far as what the Senate did, I thought we gave a good hearing to the case. I mean, I help make sure that we didn't dismiss it. We heard it. There were some who wanted to dismiss it. I helped make sure that we had a right to ask for more evidence if we needed it, which we thought we didn't. We heard, we saw videotapes of 192 times that witnesses testified. We sat there for 11 and 12 hour days for nine days. So, I think we heard the case pretty well, but the partisan points, the most important point to me, James Madison, others thought there never, ever should be a wholly partisan impeachment. And if you look at Nixon, when the vote that authorized that inquiry was 410 to four and you look at Trump, where not a single Republican voted for it. If you start out with a partisan impeachment, you're almost destined to have a partisan acquittal.

Todd: Alright, but what do you do if you have somebody who has the ability to essentially be a populist? You know, be somebody who is able to say it's fake news. It's deep state. Don't trust this. Don't trust that. The establishment is doing this. And so don't worry about truth anymore. Don't worry about what you hear over there. I mean, some may say I'm painting an accurate picture. Some may be saying I'm painting a radical picture. But how do you prevent that?

Alexander: Well, the way you prevent that in our system, according to the Declaration of Independence, is we have duly elected presidents with the consent of the governed. So we vote them out of office. The other thing we do is, as in the Nixon case, Nixon had just been elected big in 1972 big time, only lost only one state, I think. But then a consensus developed, a bipartisan consensus, that what he was doing was wrong. And then when they found the crimes, he only had 10 or 12 votes that would have kept him in the Senate. So he quit. So those are the two options you have.

Todd: Have we essentially eliminated impeachment as a tool for a first-term president?

Alexander: No, I don't think so. I think impeachment as a tool should be rarely used and it's never been used in 230 years to remove a president. There been 63 impeachments, eight convictions. They're all federal judges on a lower standard.

Todd: Does it bother you that the president's lead lawyer, Pat Cipollone, is now fingered as being in the room with John Bolton the first time the president asked John Bolton to call the new President of Ukraine and have him take a meeting with Rudy Giuliani? And I say that because Pat Cipollone is up there arguing that there's no direct evidence and yet, he may have been a firsthand witness.

Alexander: Well, it doesn't have anything to do with my decision because my decision was, did the president do it, what he's charged with? He wasn't charged with a crime. He was charged with two things. And my conclusion was, he did do that and I don't need any more evidence to prove it. That doesn't have anything to do with where Cipollone was.

Todd: No, I say that does it only reinforce what some believe is that the White House was disingenuous about this the whole time. They've been disingenuous about how they've handled subpoenas from the House or requests from the House.

Alexander: I don't agree with that Chuck, either. The fact of the matter is in the Nixon case, the House voted 410 to four to authorize an inquiry. That means that it authorized subpoenas by the judiciary committee for impeachment. This House never did that. And so, all the subpoenas that they asked for were not properly authorized. That's the reason that the president didn't respond to them.

Todd: Bill Clinton offered regret for his behavior. This president has not. Does that bother you?

Alexander: Well, there hasn't been a vote yet either, so we'll see what he says and does. I think that's up to him.

Todd: You're comfortable acquitting him before he says something of regret. Would that not, would that not help make your acquittal vote?

Alexander: Well, I wasn't asked to decide who says his level of regret. I was asked, did he make a phone call and did he, at least in part, hold up aid in order to influence an investigation of Joe Biden? I concluded yes. So I don't need to assess his level of regret. What I hope he would do is when he makes his State of the Union address, that he puts this completely behind him, never mentions it and talks about what he thinks he's done for the country and where we're headed. He's got a pretty good story to tell. If he'll focus on it.

Todd: You're one of the few people that detailed what you believe he did wrong. One of the few Republicans that have accepted the facts as they were presented. Mitt Romney was just uninvited from CPAC. Mike Pompeo can't speak freely in talking about Maria Bonovich, the ousted ambassador. Is there room for dissent in the Republican party right now?

Alexander: Well, I believe there is. I mean, I dissent when I need to. Whether it's on—

Todd: —not easy though right now, is it?

Alexander: Well, I voted in a way that not everybody appreciated on immigration. Just before I was reelected, I voted against the president's decision to use what I thought was unauthorized money to build a wall, even though I think we need the wall. I said, I thought he did it this past week and we'll vote to acquit him. So I'm very comfortable saying what I believe. And I think others can as well.

Todd: You know, in that phone call, there's one thing on the phone call that I'm surprised frankly, hasn't been brought up more by others. It's the mere mention of the word, CrowdStrike is a Russian intelligence sort of piece of propaganda that they've been circulating. Does it bother you that the President of United States is reiterating Russian propaganda?

Alexander: Yes. I think that's a mistake. I mean if you, see what's happening in the Baltic States where Russians have a big warehouse in St. Petersburg in Russia where they're devoted to destabilizing Western democracies. I mean, for example, in one of the Baltic States, they accused a NATO officer of raping a local girl—of course it didn't happen, but it threw the government in a complete disarray for a week. So I think we need to be sensitive to the fact that the Russians are out to do no good to destabilize Western democracies, including us. And be very wary of theories that Russians come up with and peddle.

Todd: Well, I was just going to say this, is it not alarming? The President of United States in this phone call and you clearly are judging him on the phone, more so than,

Alexander: Well the phone call and the evidence. There was plenty of evidence. I mean the House managers came to us and said, we have overwhelming evidence. We have a mountain of evidence and we approve it beyond a shadow of a doubt. Which made me think, well then why do you need more evidence?

Todd: Do you think it's more helpful for the public to hear from John Bolton?

Alexander: They'll read his book in two weeks.

Todd: You don't want to see him testify.

Alexander: Well, if the question is do I need more evidence to think the president did it, the answer is no. I guess I'm coming back to this issue—if you looked at it as an isolated incident, here he is using Russian propaganda in order to try to talk to this new president of Ukraine. That's alarming. Where is he getting this CrowdStrike propaganda. My view is that that is Russian propaganda. Maybe he has information that I didn't have.

Todd: Okay. Are you definitely voting to acquit or do you think you may vote present?

Alexander: No question. I'm going to vote to acquit. I'm very concerned about any action that we could take that would establish a perpetual impeachment in the House of Representatives whenever the House was a different party than the president. That would immobilize the Senate. You know, we have to take those articles, stop what we're doing, sit in our chairs for 11 hours a day for three or four weeks and consider it. And it would immobilize the presidency. So I don't want a situation—and the framers didn't either—where a partisan majority in the house of either party can stop the government.

Todd: You used the phrase "pour gasoline on a fire."

Alexander: Yeah.

Todd: It certainly struck home with me reading you saying something that I've been thinking long and hard about. How concerned are you about the democracy as it stands right now?

Alexander: Well, I'm concerned and I want to give credit to Marco Rubio because that's really his phrase. I borrowed it from him—pouring gasoline on the cultural fires.

Todd: He went a step further. He said this was an impeachable offense, but he was uncomfortable in an election year.

Alexander: But, I'm concerned about the divisions in the country. They're reflected in the Senate. They make it harder to get a result. I mean, I work pretty hard to get results on healthcare, making it easier to go to college. And we've had some real success with it. But the Senate is for the purpose of solving big problems that the country will accept. And that goes back to what happened this past week. The country would not have accepted the Senate saying to it, you can't vote for or against President Trump in the Iowa caucus, New Hampshire primary, or the election this year.

Todd: Are you glad you're leaving?

Alexander: No, I've really loved being in the Senate, but it's time for me to go on, turn the page, think of something else to do. It'll be my third permanent retirement.

Todd: You've retired a few times, is this one going to stick?

Alexander: Well, we'll see.

Todd: Senator Lamar Alexander, Republican from Tennessee, our always thoughtful guest. Thanks for coming on.

Alexander: Thank you, Chuck.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR BEN SASSE

Mr. SASSE. Madam President, I ask unanimous consent to introduce into the Senate RECORD and into the impeachment trial record an op-ed that I wrote in the Omaha World-Herald this morning.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Omaha World Herald, Feb. 4, 2020]

MIDLANDS VOICES: OPEN LETTER FROM BEN SASSE PRESENTS HIS TAKE ON  
IMPEACHMENT

(By Ben Sasse)

Impeachment is serious. It's the "Break Glass in Case of Emergency" provision of the Constitution.

I plan to vote against removing the president, and I write to explain this decision to the Nebraskans on both sides who have advocated so passionately.

An impeachment trial requires senators to carry out two responsibilities: We're jurors sworn to "do impartial justice." We're also elected officeholders responsible for promoting the civic welfare of the country. We must consider both the facts before us, and the long-term effects of the verdict rendered. I believe removal is the wrong decision.

Let's start with the facts of the case. It's clear that the president had mixed motives in his decision to temporarily withhold military aid from Ukraine. The line between personal and public was not firmly safeguarded. But it is important to understand, whether one agrees with him or not, three things President Trump believes:

He believes foreign aid is almost always a bad deal for America. I don't believe this, but he has maintained this position consistently since the 1980s.

He believes the American people need to know the 2016 election was legitimate, and he believes it's dangerous if they worry Russia picked America's president. About this, he's right.

He believes the Crowdstrike theory of 2016, that Ukraine conducted significant meddling in our election. I don't believe this theory, but the president has heard it repeatedly from people he trusts, chiefly Rudy Giuliani, and he believes it.

These beliefs have consequences. When the president spoke to Ukraine's president Zelensky in July 2019, he seems to have believed he was doing something that was simultaneously good for America, and good for himself politically—namely, reinforcing the legitimacy of his 2016 victory. It is worth remembering that that phone call occurred just days after Robert Mueller's two-year investigation into the 2016 election concluded that “the investigation did not establish that members of the Trump Campaign conspired or coordinated with the Russian government in its election interference activities.”

This is not a blanket excuse, of course. Some of the president's lawyers have admitted that the way the administration conducted policymaking toward Ukraine was wrong. I agree. The call with Zelensky was certainly not “perfect,” and the president's defense was made weaker by staking out that unrepentant position.

Moreover, Giuliani's off-the-books foreign policy-making is unacceptable, and his role in walking the president into this airplane propeller is underappreciated: His Crowdstrike theory was a bonkers attempt not only to validate Trump's 2016 election, and to flip the media's narrative of Russian interference, but also to embarrass a possible opponent. One certainty from this episode is that America's Mayor shouldn't be any president's lawyer. It's time for the president and adults on his team to usher Rudy off the stage—and to ensure that we do not normalize rogue foreign policy conducted by political operatives with murky financial interests.

There is no need to hear from any 18th impeachment witness, beyond the 17 whose testimony the Senate reviewed, to confirm facts we already know. Even if one concedes that John Bolton's entire testimony would support Adam Schiff's argument, this doesn't add to the reality already established: The aid delay was wrong.

But in the end, the president wasn't seduced by the most malign voices; his honest advisers made sure Ukraine got the aid the law required. And importantly, this happened three weeks before the legal deadline. To repeat: The president's official staff repeatedly prevailed upon him, Ukraine ultimately got the money, and no political investigation was initiated or announced.

You don't remove a president for initially listening to bad advisors but eventually taking counsel from better advisors—which is precisely what happened here.

There is another prudential question, though, beyond the facts of the case: What is the right thing for the long-term civic health of our country? Will America be more stable in 2030 if the Senate—nine months from Election Day 2020—removes the president?

In our Constitution's 232 years, no president has ever been removed from office by the Senate. Today's debate comes at a time when our institutions of self-government are suffering a profound crisis of legitimacy, on both sides of the aisle. This is not a new crisis since 2016; its sources run much deeper and longer.

We need to shore up trust. A reckless removal would do the opposite, setting the nation on fire. Half of the citizenry—tens of millions who intended to elect a disruptive outsider—would conclude that D.C. insiders overruled their vote, overturned an election and struck their preferred candidate from the ballot.

This one-party removal attempt leaves America more bitterly divided. It makes it more likely that impeachment, intended as a tool of last resort for the most serious presidential crimes, becomes just another bludgeon in the bag of tricks for the party out of power. And more Americans will conclude that constitutional self-government today is nothing more than partisan bloodsport.

We must do better. Our kids deserve better. Most of the restoration and healing will happen far from Washington, of course. But this week, senators have an important role: Get out of the way, and allow the American people to render their verdict on election day.

[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR KAMALA D. HARRIS

Ms. HARRIS. Mr. President, when the Framers wrote the Constitution, they didn't think someone like me would serve as a U.S. Senator, but they did envision someone like Donald Trump being President of the United States, someone who thinks he is above the law and that rules don't apply to him. So they made sure our democracy had the tool of impeachment to stop that kind of abuse of power.

The House managers have clearly laid out a compelling case and evidence of Donald Trump's misconduct. They have shown that the President of the United States of America withheld military aid and a coveted White House meeting for his political gain. He wanted a foreign country to announce—not actually conduct, announce—an investigation into his political rivals. Then he refused to comply with congressional investigations into his misconduct. Unfortunately, a majority of U.S. Senators, even those who concede that what Donald Trump did was wrong, are nonetheless going to refuse to hold him accountable.

The Senate trial of Donald Trump has been a miscarriage of justice. Donald Trump is going to get away with abusing his position of power for personal gain, abusing his position of power to stop Congress from looking into his misconduct and falsely claim he has been exonerated. He is going to escape accountability because a majority of Senators have decided to let him. They voted repeatedly to block key evidence like witnesses and documents that could have shed light on the full truth.

We must recognize that still in America there are two systems of justice—one for the powerful and another for everyone else. So let's speak the truth about what our two systems of justice actually mean in the real world. It means that in our country too many people walk into courthouses and face systemic bias. Too often they lack adequate legal representation, whether they are overworked, underpaid, or both. It means that a young man named Emmett Till was falsely accused and then murdered, but his murderer didn't have to spend a day in jail. It means that four young Black men have their lives taken and turned upside-down after being falsely accused of a crime in Groveland, FL. It means that, right now, too many people in America are sitting in jail without having yet been convicted of a crime but simply because they cannot afford bail. And it means that future Presidents of the United States will remember that the U.S. Senate failed to hold Donald Trump accountable, and they will be emboldened to abuse their power knowing there will be no consequence.

Donald Trump knows all this better than anybody. He may not acknowledge that we have two systems of justice, but he knows the institutions in this country, be it the courts or the Senate, are set up to protect powerful people like him. He told us as much when, regarding the sexual assault of women, he said, "When you're a star, they let you do it. You can do anything." He said that article II of the U.S. Constitution gives him, as President, the right to do whatever he wants.

Trump has shown us through his words and actions that he thinks he is above the law. And when the American people see the President acting as though he is above the law, it understandably leaves them feeling distrustful of our system of justice, distrustful of our democracy. When the U.S. Senate refuses to hold him accountable, it reinforces that loss of trust in our system.

Now, I am under no illusion that this body is poised to hold this President accountable, but despite the conduct of the U.S. Senate in this impeachment trial, the American people must continue to strive toward the more perfect Union that our Constitution promises. It is going to take all of us—in every State, every town, everywhere—to continue fighting for the best of who we are as a country. We each have an important role to play in fighting for those words inscribed on the U.S. Supreme Court building: “Equal Justice Under Law.”

Frederick Douglass, who I, like many, consider to be one of the Founders of our Nation, wrote that “the whole history of the progress of human liberty shows that all concessions yet made to her august claims have been born of earnest struggle.”

The impeachment of Donald Trump has been one of those earnest struggles for liberty, and this fight, like so many before it, has been a fight against tyranny. This struggle has not been an easy one, and it has left too many people across our Nation feeling cynical. For too many people, this trial confirmed something they have always known, that the real power in this country lies not with them but with just a few people who advance their own interests at the expense of others’ needs. For many, the injustice in this trial is yet another example of the way that our system of justice has worked or, more accurately, failed to work.

But here is the thing. Frederick Douglass also told us that “if there is no struggle, there is no progress.” He went on to say: “Power concedes nothing without a demand.” And he said: “It never did, and it never will.”

In order to wrestle power away from the few people at the very top who abuse their power, the American people are going to have to fight for the voice of the people and the power of the people. We must go into the darkness to shine a light, and we cannot be deterred, and we cannot be overwhelmed, and we cannot ever give up on our country.

We cannot ever give up on the ideals that are the foundation for our system of democracy. We can never give up on the meaning of true justice. And it is part of our history, our past, clearly, our present, and our future that, in order to make these values real, in order to make the promise of our country real, we can never take it for granted.

There will be moments in time, in history, where we experience incredible disappointment, but the greatest disappointment of all will be if we give up. We cannot ever give up fighting for who we know we are, and we must always see who we can be, unburdened by who we have been. That is the strength of our Nation.

So, after the Senate votes today, Donald Trump will want the American people to feel cynical. He will want us not to care. He will want us to think that he is all powerful and we have no power, but we are not going to let him get away with that.

We are not going to give him what he wants because the true power and potential of the United States of America resides not with the President but with the people—all the people.

So, in our long struggle for justice, I will do my part by voting to convict this lawless President and remove him from office, and I urge my colleagues to join me on the right side of history.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR MARGARET WOOD HASSAN

Ms. HASSAN. Mr. President, considering whether to convict a President of the United States on Articles of Impeachment is a solemn and consequential duty, and I do not take it lightly. Even before we had a country, our Founders put forward the notion of “country first,” pledging in the Declaration of Independence their lives, fortunes, and sacred honor—a pledge they made to an idea, imagining and hoping for a country where no one was above the law, where no one had absolute power.

My dad, a World War II veteran, and my mom raised me to understand that this is what made our country the unique and indispensable democracy that it is.

My obligation throughout this process has been to listen carefully to the case that the House managers put forward and the defenses asserted by the President’s lawyers and then to carefully consider the constitutional basis for impeachment, the intent of our Founders, and the facts.

That is what I have done over the past few days. The Senate heard extensive presentations from both sides and answers to the almost 200 questions that Senators posed to the House managers and the President’s advocates.

The facts clearly showed that President Trump abused the public’s sacred trust by using taxpayer dollars to extort a foreign government into providing misinformation about a feared political opponent.

Let me repeat that. The President of the United States used taxpayer money that had been authorized, obligated, and cleared for delivery as critical military aid to Ukraine to try to force that country to interfere in our elections. He violated the law and the public trust. And he put our national security and the lives of the Ukrainian soldiers on the frontlines of Russian aggression at risk.

Although the country was alerted to the possibility that the President had crossed a critical line because of revelations about his now-infamous July 25 phone call, it is not the phone call alone that led to the President’s impeachment. Instead, the phone call was a pivotal point in a scheme that had started earlier, spearheaded by President Trump’s personal lawyer Rudy Giuliani.

Mr. Giuliani has acknowledged that he was doing the President’s personal and political bidding when he engaged with the Ukrainian Government.

As the newly elected anti-corruption Ukrainian Government came into power, in need of recognition and support from the United States, President Trump forced officials from Ukraine and the United States to negotiate through Mr. Giuliani, conflating his

personal and political interests with the national security and diplomatic interests of our country.

And then, as President Zelensky resisted the request that he concoct and announce a fake investigation into the Bidens, the President and Mr. Giuliani increased the pressure. Suddenly, and without explanation or a legally required notification to Congress, the President ordered that previously approved and critically needed military aid to Ukraine be held up.

Mr. Trump, at first through Mr. Giuliani, and then directly, solicited interference with an American election from a foreign government. And he ordered others in his administration to work with Mr. Giuliani to ensure this scheme's success.

While there is still more evidence that the Senate should have subpoenaed both witnesses and documents that would have given us a more complete understanding of what happened, we know as much as we do because of the courage and strength of American patriots who put country before self—patriots like the intelligence community whistleblower, who was followed by Army Lieutenant Colonel Vindman and former U.S. Ambassadors to Ukraine Marie Yovanovitch and William Taylor, as well as current members of the administration.

These Americans who came forward were doing exactly what we always ask of citizens: If you see something wrong, you need to speak up; "See something, say something." It is a fundamental part of citizenship to alert each other to danger, to act for the greater good, to care about each other and our country without regard to political party.

When Americans step forward, sometimes at real risk to themselves, they rightly expect that their government will take the information they provide and act to make them safer, to protect their fundamental rights. That is the understanding between the American people and their representative government.

While the brave women and men who appeared before the House did their jobs, the Senate, under this majority, has unfortunately not. Rather than gathering full, relevant testimony under oath and with the benefit of cross-examination, the Senate majority has apparently decided that despite what it has heard, it is not interested in learning more; not interested in learning more about how a President, his personal agent, and members of his administration corrupted our foreign policy and put our Nation's security at risk; not interested in learning more about how they planned to use the power of his office to tilt the scales of the next election to ensure that he stays in power; not interested in learning more about how they worked to cover it up.

Increasingly, over the last few days, the President's defense team and more and more of my colleagues in the Senate have acknowledged the facts of the President's scheme. Their argument has shifted from "He didn't do it" to "He had a right to," to "He won't do it again," or even "It doesn't really matter."

I disagree so strongly.

The idea that in our country, established by the very rejection of a monarchy, the President has absolute power is absurd, as is the idea that this President, whose conduct is ultimately the cause of this entire process, will suddenly stop. President Trump continues

to invite foreign powers to interfere with our elections, maintaining to this day that “it was a perfect call.”

Our Founders knew that all people, all leaders, are fallible human beings. And they knew that our system of checks and balances could survive some level of human frailty, even in as important an office as the Presidency.

The one thing that they feared it could not survive was a President who would put self-interest before the interests of the American people or who didn’t understand the difference between the two. As citizen-in-chief, and one wielding enormous power, Presidents must put country first.

Our Founders knew that we needed a mechanism to hold Presidents accountable for behavior that violated that basic understanding and that would threaten our democracy. And they provided a mechanism for removal outside of the election process because of the immense damage a President could do in the time between elections—damage, in the case of this President’s continuing behavior, to our national security and election integrity.

Our Founders believed that they were establishing a country that would be unique in the history of humankind, a country that would be indispensable, built on the rule of law, not the whims of a ruler. Generation after generation of Americans have fought for that vision because of what it has meant to our individual and collective success and to the progress of humankind worldwide.

That is the America that I have sworn an oath to protect. I will vote in favor of both Articles of Impeachment because the President’s conduct requires it, Congress’s responsibility as a coequal branch of government requires it, and the very foundation and security of our American idea requires it.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR DOUG JONES

Mr. JONES. Mr. President, on the day I was sworn in as a United States Senator, I took an oath to protect and defend the Constitution. Just last month, at the beginning of the impeachment trial, I took a second oath to do fair and impartial justice, according to the same Constitution I swore to protect.

As I took the oath and throughout the impeachment trial, I couldn’t help but think of my father. As many of you know, I lost my dad over the holiday recess. While so many were arguing over whether or not the Speaker of the House should send Articles of Impeachment to the Senate, I was struggling with watching him slip away, while only occasionally trying to weigh in with my voice to be heard about the need for witnesses in the upcoming impeachment trial. My dad was a great man, a loving husband, father, grandfather, and great-grandfather who did his best to instill in me the values of right and wrong as I grew up in Fairfield, AL. He was also a fierce patriot who loved this country. Although, fortunately, he was never called on to do so, I firmly believe he would have placed his country even above his family because he knew and understood fully what America and the freedoms and liberties that

come with her mean to everyone in this great country and, significantly, to people around the world.

I know he would have put his country before any allegiance to any political party or even to any President. He was on the younger side of that "greatest generation" who joined the Navy at age 17 to serve our great military. That service and love of country shaped him into the man of principle that he was, instilling in me those same principles. In thinking of him, his patriotism, his principles, and how he raised me, I am reminded of Robert Kennedy's words that were mentioned in this trial:

Few men are willing to brave the disapproval of their fellows, the censure of their colleagues, the wrath of their society. Moral courage is a rarer commodity than bravery in battle or great intelligence. Yet it is the one essential, vital quality for those who seek to change a world that yields most painfully to change.

Candidly, to my colleagues on both sides of the aisle, I fear that moral courage, country before party is a rare commodity these days. We can write about it and talk about it in speeches and in the media, but it is harder to put into action when political careers may be on the line. Nowhere is the dilemma more difficult than in an impeachment of the President of the United States. Very early on in this process, I implored my colleagues on both sides of the aisle, in both Houses of Congress, to stay out of their political and partisan corners. Many did, but so many did not. Even the media continually view this entire process through partisan, political eyes and how it may or may not affect an election. That is unfortunate. The country deserves better, and we must find a way to move beyond such partisan divides.

The solemn oaths that I have taken have been my guides during what has been a difficult time for the country, my State, and for me personally. I did not run for the Senate hoping to participate in the impeachment trial of a duly elected President, but I cannot and will not shrink from my duty to defend the Constitution and to do impartial justice.

In keeping with my oath as Senator and my oath to do impartial justice, I resolved that throughout this process, I would keep an open mind, to consider the evidence without regard to political affiliation, and to hear all of the evidence before making a final decision on either charge against the President. I believe that my votes later today will reflect that commitment.

With the eyes of history upon us, I am acutely aware of the precedents that this impeachment trial will set for future Presidencies and Congresses. Unfortunately, I do not believe that those precedents are good ones. I am particularly concerned that we have now set a precedent that the Senate does not have to go forward with witnesses or review documents, even when those witnesses have firsthand information and the documents would allow us to test not just the credibility of witnesses but also test the words of counsel of both parties.

It is my firm belief that the American people deserve more. In short, witnesses and documents would provide the Senate and the American people with a more complete picture of the truth. I believe the American people deserve nothing less.

That is not to say, however, that there is not sufficient evidence in which to render a judgment. There is. As a trial lawyer, I once

explained this process to a jury as like putting together the pieces of a puzzle. When you open the box and spread all the pieces on the table, it is just an incoherent jumble. But one by one, you hold those pieces up, and you hold them next to each other and see what fits and what doesn't. Even if, as was often the case in my house growing up, you are missing a few pieces—even important ones—you more often than not see the picture.

As I have said many times, I believe the American people deserve to see a completed puzzle, a picture with all of the pieces—pieces in the form of documents and witnesses with relevant, first-hand information, which would have provided valuable context, corroboration, or contradiction to that which we have heard. But even with missing pieces, our common sense and life's experiences allow us to see the picture as it comes into full view.

Throughout the trial, one piece of evidence continued to stand out for me. It was the President's statement that under the Constitution, "we have Article II, and I can do anything I want." That seems to capture this President's belief about the Presidency; that he has unbridled power, unchecked by Congress or the Judiciary or anyone else. That view, dangerous as it is, explains the President's actions toward Ukraine and Congress.

The sum of what we have seen and heard is, unfortunately, a picture of a President who has abused the great power of his office for personal gain—a picture of a President who has placed his personal interest well above the interests of the Nation and, in so doing, threatened our national security, the security of our European allies, and the security of Ukraine. The evidence clearly proves that the President used the weight of his office and the weight of the U.S. Government to seek to coerce a foreign government to interfere in our election for his personal political benefit. His actions were more than simply inappropriate; they were an abuse of power.

When I was a lawyer for the Alabama Judicial Inquiry Commission, there was a saying that the chairman of the inquiry commission and one of Alabama's great judges, Randall Cole, used to say about judges who strayed from the canons of ethics. He would say that the judge "left his post."

Sadly, President Trump left his post with regard to the withholding of military aid to Ukraine and a White House visit for the new Ukrainian President, and in so doing, he took the great powers of the Office of the President of the United States with him. Impeachment is the only check on such Presidential wrongdoing.

The second article of impeachment, obstruction of Congress, gave me more pause. I have struggled to understand the House's strategy in their failure to fully pursue documents and witnesses and wished that they had done more. However, after careful consideration of the evidence developed in the hearings, the public disclosures, the legal precedents, and the trial, I believe that the President deliberately and unconstitutionally obstructed Congress by refusing to cooperate with the investigation in any way. While I am sensitive to protecting the privileges and immunities afforded to the President and his advisers, I believe it is critical to our constitutional structure that we also protect the authorities of the Congress of the United States. Here it was clear from the outset

that the President had no intention whatsoever of accommodating Congress when he blocked both witnesses and documents from being produced. In addition, he engaged in a course of conduct to threaten potential witnesses and smear the reputations of the civil servants who did come forward and provide testimony.

The President's actions demonstrate a belief that he is above the law, that Congress has no power whatsoever in questioning or examining his actions, and that all who do so, do so at their peril. That belief, unprecedented in the history of this country, simply must not be permitted to stand. To do otherwise risks guaranteeing that no future whistleblower or witness will ever come forward, and no future President, Republican or Democrat, will be subject to congressional oversight as mandated by the Constitution even when the President has so clearly abused his office and violated the public trust.

Accordingly, I will vote to convict the President on both Articles of Impeachment. In doing so, I am mindful that in a democracy there is nothing more sacred than the right to vote and respecting the will of the people. But I am also mindful that when our Founders wrote the Constitution, they envisioned a time or at least a possibility that our democracy would be more damaged if we fail to impeach and remove a President. Such is the moment in history that we face today.

The gravity of this moment, the seriousness of the charges, and the implication for future Presidencies and Congress have all contributed to the difficulty at which I arrived at my decision.

I am mindful that I am standing at a desk that once was used by John F. Kennedy, who famously wrote "Profiles in Courage," and there will be so many who simply look at what I am doing today and say that it is a profile in courage. It is not. It is simply a matter of right and wrong, where doing right is not a courageous act; it is simply following your oath.

This has been a divisive time for our country, but I think it has nonetheless been an important constitutional process for us to follow. As this chapter of history draws to a close, one thing is clear to me. As I have said before, our country deserves better than this. They deserve better from the President, and they deserve better from the Congress. We must find a way to come together, to set aside partisan differences, and to focus on what we have in common as Americans.

While so much is going in our favor these days, we still face great challenges, both domestically and internationally. But it remains my firm belief that united we can conquer them and remain the greatest hope for the people around the world.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR JACK REED

Mr. REED. Mr. President, today the Senate is called upon to uphold our oath of office and our duty to the Constitution because President Trump failed to do so himself.

After listening closely to the impeachment managers and the President's defense team, weighing the evidence that was pre-

sented to us, and being denied the opportunity to see relevant documents and hear from firsthand witnesses, I will vote to find President Trump guilty on both Articles of Impeachment.

I take no pleasure in voting to impeach a President and remove him from office. I agree with those who say that impeachment should be rare and American voters should decide our elections. That is why it is so galling that President Trump blatantly solicited foreign interference in our democratic process. And he did it as he geared up for reelection.

The evidence shows President Trump deliberately and illicitly sought foreign help to manufacture a scandal that would elevate him by tarnishing a political rival.

He attempted to undermine our democracy, using U.S. taxpayer money in the form of U.S. military aid for Ukraine as leverage for his own personal benefit. The President's aides who heard President Trump's call seeking "a favor" from the Ukrainian President immediately sensed it was wrong. So when they alerted the White House lawyers, the record of the call was immediately placed on a highly classified computer system. And despite the President claiming that the version of the call that was publicly released "is an exact word-for-word transcript of the conversation," we know from testimony that there are key omissions in the document we all read.

Compounding the President's misconduct, he then engaged in an extended cover up that appears to be ongoing to this day.

There is a lot to unravel here, and I will provide a more detailed legal explanation in the near future. But for now, let me briefly explain my decision and outline my thoughts on the Senate's impeachment proceedings and the disturbing precedents I fear will be set when the majority chooses to side with the President over the Constitution's checks and balances.

The House of Representatives voted to impeach the President for abuse of power and obstruction of Congress. Based on the uncontested evidence, I concur.

It is clear that President Trump and others, such as Mr. Giuliani, who was serving as the President's lawyer, attempted to coerce the newly elected President of Ukraine to announce two sham investigations, including one that sought to directly damage President Trump's rival in the upcoming election. The President's actions served his personal and political needs, not those of our country. His efforts to withhold military aid to Ukraine for his own personal benefit undermined our national security.

The second article of impeachment charges the President with obstruction of Congress for blocking testimony and refusing to provide documents in response to House subpoenas in the impeachment inquiry. Again, the House managers produced overwhelming evidence of the President's obstruction and his efforts to cover up his malfeasance.

The President's counsel offered a number of unpersuasive arguments against this article, which fail to overcome the following: first, that the legislative branch has sole power over impeachment under the Constitution. That could not be more clear; second, past precedents of prior administrations and court rulings; and third,

the blatant October 8 letter expressing a complete rejection of the House's impeachment proceedings.

The Constitution grants the executive branch significant power, but as every student in America learns, our system is one of checks and balances so that no branch is entirely unfettered from oversight and the law.

President Trump would have us believe this system of checks and balances is wrong. In President Trump's own words, he expressed the misguided imperial belief in the supremacy of his unchecked power, stating: "I have an Article II, where I have the right to do whatever I want as President."

Couple this sentiment with his January 2016 boast that: "I could stand in the middle of Fifth Avenue and shoot somebody and I wouldn't lose voters." That paints a chilling picture of someone who clearly believes, incorrectly, that he is above the law. The President's attorneys have hewn to this line of faulty reasoning and, in one notably preposterous effort, even claimed the President could avoid impeachment for an inappropriate action motivated entirely by his own political and personal interests.

The President's defense also failed to sufficiently demonstrate that the President's blanket defiance of subpoenas and document requests overcomes the precedents established in prior impeachment proceedings and the record of congressional oversight of the executive branch.

In the Clinton impeachment, there was an enormous amount of documentary evidence, as well as sworn depositions and testimony by the President and his closest advisers.

In the cases of *United States v. Nixon*, *House Judiciary Committee v. Miers*, and others, the House managers rightly point out that the courts have held "Congress's power to investigate is as broad as its power to legislate and lies at the heart of Congress's constitutional role."

While President Trump's impeachment lawyers claim the House should take the President to court over these previously settled issues, President Trump's lawyers at the Justice Department are simultaneously arguing in the courts that the judicial branch cannot even rule on such matters.

As President Trump staked out new, expansive, and aggressive positions about executive privilege, immunity, and the limits of Congress's oversight authority, Republican leaders went along with it.

I have heard a variety of explanations for why my Republican colleagues voted against witnesses. But no one has offered the simplest explanation: My Republican colleagues did not want to hear new evidence because they have a hunch it would be really, really bad for this President. It would further expose the depth of his wrongdoing. And it would make it harder for them to vote to acquit.

My colleagues on the other side of the aisle did not ask to be put in this position. President Trump's misconduct forced it on them. But in the partisan rush to spare President Trump from having his staff and former staff publicly testify against him under oath, a bar has been lowered, a constitutional guardrail has been removed, the

Senate has been voluntarily weakened, and our oversight powers severely diminished.

This short-term maneuver to shield President Trump from the truth is a severe blow against good government that will do lasting damage to this institution and our democracy. I hope one day the damage can be repaired.

The arc of history is indeed long, and it does bend toward justice—but not today. Today, the Senate and the American people have been denied access to relevant, available evidence and first-hand witnesses. We have been prohibited from considering new, material information that became available after the House's impeachment vote.

The Constitution is our national compass. But at this critical moment, clouded by the fog of President Trump's misconduct, the Senate majority has lost its way, and is no longer guided by the Constitution. In order to regain our moral bearings, stay true to our core values, and navigate a better path forward, we must hold President Trump accountable.

The President was wrong to invite foreign interference in our democracy. He was wrong to try and stonewall the investigation. And he is wrong if he thinks he is above the law.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR TAMMY DUCKWORTH

Ms. DUCKWORTH. Mr. President, from the first words in the Constitution, the weight that lies on every American's shoulders has been clear: We the people are the ones who dreamed up this wild experiment that we call America, and we the people are the ones charged with ensuring its survival.

That is the tension—the push and the pull—behind our democracy because, while there is no greater privilege than living in a country whose Constitution guarantees our rights, there is no greater burden than knowing that our actions could sap that very same Constitution of its power; that our inaction risks allowing it to wither like any other piece of parchment from some bygone era.

For the past few weeks, it has been my sworn duty as a U.S. Senator to sit as an impartial juror in the impeachment trial of Donald J. Trump. While I wish the President had not put our Nation in this position, after having listened closely with an open mind to both sides, it is now my duty as an American to vote on whether to remove him from office. Other than sending our troops into harm's way, I cannot think of a more serious, more somber vote to take in this Chamber, but as sobering as it is, the right path forward is clear.

Throughout this trial, we have seen unprecedented obstruction from the Trump administration—obstruction so flagrant that it makes Nixon, when in the thick of Watergate, look like the model of transparency. Yet the facts uncovered still prove the truth of the matter: Trump abused his power when he secretly withheld security aid and a White House meeting to try to force Ukraine to announce investigations into a political rival in order to help him swing November's election. He put his political self-interest ahead

of our national security. He smeared the name of an American Ambassador, even seemingly risking her safety because she was simply too principled to further his corruption, because she was too clean to help him strong-arm Ukraine into that favor he demanded.

When the reports first emerged about what he had done, he denied it. Then his explanation changed to: Well, maybe I did do it, but it was only because I was trying to root out corruption.

If that were true, there would be some documentary record to prove that, and we have seen absolutely none, even after I asked for it during the questioning period.

Now his defense team has gone so far as to claim that, well, it doesn't matter if he did it because he is the President and the President can do anything he wants if it will help him get re-elected. Breathtaking. To put it another way, when he got caught, he lied. Then, when that lie was found out, he lied again, then again, then again.

Along the way, his own defense counsel could not papier-mache together even the most basic argument to actually exonerate him. The best case they could muster boiled down to: When the President does it, it is not illegal. Nixon already tried that defense. It did not work then, and it does not work now because—here is the thing—in America, we believe not in rulers but in the rule of law.

Through all we have seen over the past few months, the truth has never changed. It is what National Security Council officials and decades-long diplomats testified to under oath. It is what foreign policy experts and Trump administration staffers—and, yes, an American warrior with a Purple Heart—have raised their right hands to tell us, time after time, since the House hearings had begun.

Even some of my Republican colleagues have admitted that Trump “cross[ed] a line.” Some said it as recently as this weekend, but many more said months ago that, if Trump did do what he is accused of, then it would, indeed, be wrong. Well, it is now obvious that those allegations were true, and it is pretty clear that Trump's defense team knows that also. If they actually believe Trump did nothing wrong—that his call was “perfect”—then why would they fight so hard to block the witnesses and the documents from coming to light that could exonerate him? The only reason they would have done so is if they had known that he was guilty. The only reason for one to vote to acquit Trump today is if one is OK with his trying to cover it up.

Now, I know that some folks have been saying that we should acquit him—that we should ignore our constitutional duty and leave him in office—because we are in an election year and that the voters should decide his fate. That is an argument that rings hollow because this trial was about Trump's trying to cheat in the next election and rob the voters of their ability to decide. Any action other than voting to remove him would give him the license and the power to keep tampering with that race, to keep trying to turn that election into as much of a sham as an impeachment trial without witnesses.

You know, I spent 23 years in the military, and one of the most critical lessons anyone who serves learns is of the damage that can be done when troops don't oppose illegal orders, when fealty be-

comes blind and ignorance becomes intentional. Just as it is the duty of military officers to oppose unlawful orders, it is the responsibility of public servants to hold those in power accountable.

Former NSC official Fiona Hill understood that when she testified before Congress because she knew that politics must never eclipse national security.

Ambassador Bill Taylor understood that as well. The veteran who has served in every administration since Reagan's answered the question that is at the heart of the impeachment inquiry. He said under oath that, yes, there was a "clear understanding" of a quid pro quo—exactly the sort of abuse of power no President should be allowed to get away with.

LTC Alexander Vindman—the Purple Heart recipient who dedicated decades of his life to our Armed Forces—understood the lessons of the past, too, in his saying that, here in America, right matters.

My colleagues in this Chamber who have attacked Lieutenant Colonel Vindman or who have provided a platform for others to tear him down just for his doing what he believes is right should be ashamed of themselves.

We should all be aware of the example we set and always seek to elevate the national discourse. We should be thoughtful about our own conduct both in terms of respecting the rule of law and the sacrifices our troops make to keep us safe because, at the end of the day, our Constitution is really just a set of rules on some pieces of paper. It is only as strong as our will to uphold its ideals and hold up the scales of justice.

So I am asking each of us today to muster up just an ounce of the courage shown by Fiona Hill, Ambassador Taylor, and Lieutenant Colonel Vindman. When our names are called from the dais in a few hours, each of us will either pass or fail the most elementary, yet most important, test any elected official will ever take—whether to put country over party or party over country.

It may be a politically difficult vote for some of us, but it should not be a morally difficult vote for any of us because, while I know that voting to acquit would make the lives of some of my colleagues simpler come election day, I also know that America would have never been born if the heroes of centuries past made decisions based on political expediency.

It would have been easier to have kept bowing down to King George III than to have pushed 342 chests of tea into the Boston Harbor, and it would have been easier to have kept paying taxes to the Crown than to have waged a revolution. Yet those patriots knew the importance of rejecting what was easy if it were in conflict with what was right. They knew that the courage of just a few could change history.

So, when it is time to vote this afternoon, we cannot think of political convenience. If we say abuse of power doesn't warrant removal from office today, we will be paving the way for future Presidents to do even worse tomorrow—to keep breaking the law and to keep endangering our country—one "perfect" call, one "favor," one high crime and misdemeanor at a time.

Time and again, over these past few months, we have heard one story about our Founders, perhaps, more than any other. It was the

time when Benjamin Franklin walked out of Independence Hall after the Constitutional Convention and someone asked: “What have we got—a republic or a monarchy?”

We all know what he said: “A Republic if you can keep it.”

Keeping it may very well come down to the 100 of us in this very Chamber. We are the ones the Constitution vests with the power to hold the President accountable, and through our actions, we are the ones who vest the Constitution with its power.

In this moment, let’s think not just of today but of tomorrow too. In this moment, let’s remember that, here, right matters; truth matters. The truth is that Donald Trump is guilty of these Articles of Impeachment. I will vote to do the right thing, and I hope my colleagues will as well. For the sake of tomorrow and the tomorrow after that, we must.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR ROY BLUNT

Mr. BLUNT. Mr. President, later today I will vote to acquit the President on the charges of the two Articles of Impeachment. A not-guilty verdict, as every Senator on this floor has known for some time, was always what would happen in a House-driven, partisan impeachment process.

Less than a year ago, the Speaker of the House said that we should not go through this process unless something was compelling, unless something was overwhelming, unless something was bipartisan. I think the Speaker was exactly right then, and I hope all future Speakers look at that guidance as we think about this process of impeachment.

In the first 180 years of the Constitution, individual Members talked about impeachment of Presidents—maybe of almost every President—but the Congress only seriously touched this topic one time—one time in 180 years.

In the last 46 years, Presidential impeachment has been before the country three times, and each case has been less compelling than the one before it. We don’t want partisan impeachment to become an exercise that happens when one party—not the party of the President—happens to have a majority of the votes in the House of Representatives.

Impeachment is fundamentally a political process. The Members of the Senate meet no standards for a regular jury. The jury can override the judge. Two-thirds of the Senate is necessary to remove the President. We really have no better term in the Constitution, I suppose, to use than “trial,” but in any classic sense, this isn’t a trial. In any classic sense, a partisan impeachment isn’t any kind of a real indictment.

Maybe, first and foremost, the House has to do its job. Part of that job would be to create a case that would produce a bipartisan vote on the articles in the House. If you haven’t met that standard—going back to the Speaker’s standard—you should work on the case some more and then wonder, if you can’t meet the standard, what is wrong with the process you are going through. Part

of that job is to do everything necessary to have Articles of Impeachment that are compelling and complete.

The House has time available to it to consider impeachment as they go about their essential work. They can continue to do the work of the Congress. They have weeks, months, if they choose to have, even maybe years to put a case together. They can call witnesses. They can go to court to seek testimony. They can determine if this is an impeachment question or just an oversight question.

The House can do lots of things, but once the Senate gets the Articles of Presidential Impeachment, they become for the Senate an absolute priority. Both our rules and reality mean we cannot do anything else, realistically, until we are done dealing with the case the House sent over.

That was fundamentally what was so wrong with the House sending over a case that they said needed more work. If it needed more work, it should have had more work.

You can be for strong review of the Executive. You can be for strong congressional oversight and still support the idea of Executive privilege. The President has the right to unfettered advice and to know all the options. In fact, I think when you pierce that right, you begin to have advisers who may not want to give all the options to the President because it might appear they were for all the options. But the President's advisers need to see that the President understands all the options and implications of a decision.

The President, by the way—another topic that came up here several times—the President determines executive policy. The staff, the assistants, and whoever else works in the executive branch doesn't determine executive policy; the President determines executive policy. The staff can put all the notes in front of the President they want to, but it is the President's decision what the policy of the administration will be. Sharing that decision with the Congress, sharing how he got to that point—or later, she got to that point—with that decision is a negotiated balance.

Congress says: We want to know this.

The President says: No. I need to have some ability for people to give me advice that isn't all available for the Congress.

So this is balanced out, and if that can't happen, if that balance can't be achieved, the judiciary decides what the balance is. The judiciary decides a question and says: You really must talk to the Congress about this, but you don't have to talk to them about the next sentence you said at that same meeting.

That is the kind of balance that occurs.

The idea repeatedly advanced by the House managers that the Senate, by majority vote, can decide these questions is both outrageous and dangerous.

The idea that the government would balance itself is, frankly, the miracle of the Constitution. Nobody had ever proposed, until Philadelphia in 1787, one, that the basis for government was the people themselves, and two, you could have a government that was so finely balanced that it would operate and maintain itself over time.

The House managers would really upend that balance. By being unwilling to take the time the House had to pursue the constitu-

tional solution, they decided: We don't have to worry about the Constitution to have that solution.

To charge that the President's assertion of article II rights that go back to Washington is one of the actual Articles of Impeachment, that is dangerous.

The legislative branch cannot also be the judicial branch. The legislative branch can't also decide "here is the balance" if the executive and legislative branch are in a fight about what should be disclosed and what shouldn't. You can't continue to have the three balances of power in our government if one of the branches can decide what the legislative branch should decide.

In their haste to put this case together, the House sent the Senate the two weakest Articles of Impeachment possible. Presidents since Washington have been accused by some Members of Congress of abuse of power. Presidents since Washington have been accused by some Members of Congress of failure to cooperate with the Congress.

The House managers argued against their own case. They repeatedly contended that they had made their case completely, they had made their case totally, they had made their case incontrovertibly, but they wanted us to call witnesses they had chosen not to call. They said they had already been in court 9 months to get the President's former White House Counsel to testify and weren't done yet, but somehow they thought the Senate could get that person and others in a matter of days.

These arguments have been and should have been rejected by the Senate.

Today, the Articles of Impeachment should be and will be rejected by the Senate. Based on the Speaker's March comments, these articles should have never been sent to the Senate. They were not compelling, they were not overwhelming, they were not bipartisan, and most importantly, they were not necessary.

One of the lessons we send today is to this House and to future Houses of Representatives: Do your job. Take it seriously. Don't make it political.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR MIKE LEE

Mr. LEE. Mr. President, I have long maintained that most, if not all, of the most serious and vexing problems within our Federal Government can be traced to a deviation from the twin core structural protections of the Constitution.

There are two of these protections—one that operates along a vertical axis; the other, a horizontal.

The vertical protection we call federalism, which states a very simple fact: that in the American system of government, most power is to be reserved to the States respectively, or the people, where it is exercised at the State and local level. It is only those powers enumerated in the Constitution, either in article I, section 8 or elsewhere, that are made Federal, those things that the Founding Fathers appropriately deemed unavoidably, necessarily

national or that we have otherwise rendered national through a subsequent constitutional amendment.

As was the case when James Madison wrote Federalist No. 45, the powers reserved to the States are numerous and indefinite, while those that are given to the Congress to be exercised federally are few and defined—few and defined powers, the Federal Government; numerous and indefinite reserved for the States.

The horizontal protection operates within the Federal Government itself, and it acknowledges that we have three coequal, independent branches within the Federal Government: one that makes the laws, one that executes the laws, and one that interprets the laws when people can't come to an agreement and have an active, live dispute as to the meaning of a particular law in a particular case or controversy.

Sadly, we have drifted steadily, aggressively from both of these principles over the last 80 years. For roughly the first 150 years of the founding of our Republic and of the operation of our constitutional structure, we adhered pretty closely to them, but over the last 80 years or so, we have drifted steadily. This has been a bipartisan problem. It was one that was created under the broad leadership of Republicans and Democrats alike and, in fact, in Senates and Houses of Representatives and White Houses of every conceivable partisan combination.

We have essentially taken power away from the American people in two steps—first, by moving power from the State and local level and taking it to Washington, in violation of the vertical protection we call federalism; and then a second time, moving it away from the people's elected lawmakers in Washington to unelected, unaccountable bureaucrats placed within the executive branch of government but who are neither elected by the people nor accountable to anyone who is electable. Thus, they constitute essentially a fourth branch of government within our system, one that is not sanctioned or contemplated by the Constitution and doesn't really fit all that well within its framework.

This has made the Federal Government bigger and more powerful. It has occurred in a way that has made people less powerful. It has made government in general and in particular, this government, the Federal Government, less responsive to the needs of the people. It has been fundamentally contrary to the way our system of government operates.

What, one might ask, does any of this have to do with impeachment? Well, in my opinion, everything—or at least a lot. This distance that we have created in these two steps—moving power from the people to Washington and within Washington, handing it to unelected lawmakers or unelected bureaucrats—has created an amount of anxiety among the American people. Not all of them necessarily recognize it in the same way that I do or describe it with the same words, but they know something is not right. They know it when their Federal Government requires them to work many months out of every year just to pay their Federal taxes, only to be told later that it is not enough and hasn't been enough for a long time since we have accumulated \$22 to \$23 trillion in debt, and when they come to understand that the Federal Government

also imposes some \$2 trillion in regulatory compliance costs on the American people.

This harms the poor and middle class. It makes everything we buy more expensive. It results in diminished wages, unemployment, and underemployment. On some level, the American people feel this. They experience this. They understand it. It creates anxiety. It was that very anxiety that caused people to want to elect a different kind of leader in 2016, and they did. It was this set of circumstances that caused them to elect Donald J. Trump as the 45th President of the United States, and I am glad they did because he promised to change the way we do things here, and he has done that.

But as someone who has focused intently on the need to reconnect the American people with their system of government, Donald Trump presents something of a serious threat to those who have occupied these positions of power, these individuals who, while hard-working, well-intentioned, well-educated, and highly specialized, occupy these positions of power within what we loosely refer to as the executive branch but is in reality an unelected, unaccountable fourth branch of government.

He has bucked them on many, many levels and has infuriated them as he has done so, even as he is implementing the American people's wishes to close that gap between the people and the government that is supposed to serve them.

He has bucked them on so many levels, declining to defer to the opinions of self-proclaimed government experts who claim that they know better than any of us on a number of levels.

He pushed back on them, for example, when it comes to the Foreign Intelligence Surveillance Act—or FISA, as it is sometimes described—when he insisted that FISA had been abused in efforts to undermine his candidacy and infringe on the rights of the American people. When he took that position, Washington bureaucrats predictably mocked him, but he turned out to be right.

He called out the folly of engaging in endless nation-building exercises as part of a two-decade-long war effort that has cost this country dearly in terms of American blood and treasure. Washington bureaucrats mocked him again, but he turned out to be right.

He raised questions with how U.S. foreign aid is used and sometimes misused throughout the world, sometimes to the detriment of the American people and the very interests that such aid was created to alleviate. Washington bureaucrats mocked him, but he turned out to be right.

President Trump asked Ukraine to investigate a Ukrainian energy company, Burisma. He momentarily paused U.S. aid to Ukraine while seeking a commitment from the then newly elected Ukrainian President, Volodymyr Zelensky, regarding that effort. He wanted to make sure that he could trust this recently elected President Zelensky before sending him the aid. Within a few weeks, his concerns were satisfied, and he released the aid. Pausing briefly before doing so isn't criminal. It certainly isn't impeachable. It is not even wrong.

Quite to the contrary, this is exactly the sort of thing the American people elected President Trump to do. He would and has de-

cided to bring a different paradigm to Washington, one that analyzes things from how the American citizenry views the American Government.

This has in some respects, therefore, been a trial of the Washington, DC, establishment itself but not necessarily in the way the House managers apparently intended. While the House managers repeatedly invoked constitutional principles, including separation of powers, their arguments have tended to prove the point opposite of the one they intended.

Yes, we badly need to restore and protect both federalism and separation of power, and it is my view that the deviation from one contributes to the deviation from the other. But here, in order to do that, we have to respect the three branches of government for what they are, who leads them, how they operate, and who is accountable to whom.

For them to view President Trump as somehow subservient to the career civil servant bureaucratic class that has tended to manage agencies within the Federal Government, including the National Security Council, the Department of Defense, the Office of Management and Budget, individuals in the White House, and individuals within the State Department, among others, is not only mischaracterizing this problem, it helps identify the precise source of this problem.

Many of these people, including some of the witnesses we have heard from in this trial, have mistakenly taken the conclusion that because President Trump took a conclusion different from that offered by the so-called interagency process, that that amounted to a constitutionally impeachable act. It did not. It did nothing of the sort.

Quite to the contrary, when you actually look at the Constitution itself, it makes clear that the President has the power to do what he did here. The very first section of article II of the Constitution—this is the part of the Constitution that outlines the President's authority—makes clear that “[t]he executive Power [of the United States Government] shall be vested in the President of the United States.”

It is important to remember that there are exactly two Federal officials who were elected within the executive branch of government. One is the Vice President, and the other is the President.

The Vice President's duties, I would add, are relatively limited. Constitutionally speaking, the Vice President is the President of the Senate and thus performs a quasi-legislative role, but the Vice President's executive branch duties are entirely bound up with those of the President's. They consist of aiding and assisting the President as the President may deem necessary and standing ready to step into the position of the Presidency should it become necessary as a result of disability, incapacitation, or death. Barring that, the entire executive branch authority is bound up within the Presidency itself. The President is the executive branch of government, just as the Justices who sit across the street themselves amount to the capstone of the judicial branch, just as 100 Senators and 435 Representatives are the legislative branch.

The President is the executive branch. As such, it is his prerogative, within the confines of what the law allows and authorizes and

otherwise provides, to decide how to execute that. It is not only not incompatible with that system of government, it is entirely consistent with it—indeed, authorized by it.

A President should be able to say: Look, we have a newly elected President in Ukraine.

We have longstanding allegations of corruption within Ukraine. Those allegations have been well-founded in Ukraine. No one disputes that corruption is rampant in Ukraine.

A newly elected President comes in. This President or any President in the future decides: Hey, we are giving a lot of aid to this country—\$391 million for the year in question. I want to make sure that I understand how that President operates. I want to establish a relationship of trust before taking a step further with that President. So I am going to take my time a little bit. I am going to wait maybe a few weeks in order to make sure we are on a sure footing there.

He did that. There is nothing wrong with that.

What is the response from the House managers? Well, it gets back to that interagency process, as if people whom the American people don't know or have reason to know because those people don't stand accountable to the people—they are not elected by the people; they are not really accountable to anyone who is in turn elected by the people—the fact that those people involved in the interagency process might disagree with a foreign policy decision made by the President of the United States and the fact that this President of the United States might take a different approach than his predecessor or predecessors does not make this President's decisions criminal. It certainly doesn't make them impeachable. It doesn't even make them wrong.

In the eyes of many and I believe most Americans—they want a President to be careful about how the United States spends money. They want the United States to stop and reconsider from time to time the fact that we spend a lot of money throughout the world on countries that are not the United States. We want a President of the United States to be able to exercise a little bit of discretion in pushing pause before that President knows whether he can trust a newly elected government in the country in question.

So to suggest here that our commitment to the Constitution; to suggest here, as the House managers have, that our respect for the separation of powers within the constitutional framework somehow demands that we remove the duly elected President of the United States is simply wrong. It is elevating to a status completely foreign to our constitutional structure an entity that the Constitution does not name. It elevates a policy dispute to a question of high crimes and misdemeanors. Those two are not the same thing.

At the end of the day, this government does, in fact, stand accountable to the people. This government is of, by, and for the people. We cannot remove the 45th President of the United States for doing something that the law and the Constitution allow him to do without doing undue violence to that system of government to which every single one of us has sworn an oath.

We have sworn to uphold and protect and defend that system of government. That means standing up for the American people and those they have elected to do a job recognized by the Constitution.

I will be voting to defend this President's actions. I will be voting against undoing the vote taken by the American people some 3½ years ago. I will be voting for the principle of freedom and for the very principles that our Constitution was designed to protect.

I urge all of my colleagues to reject these deeply factually and legally flawed Articles of Impeachment and to vote not guilty.

[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR KEVIN CRAMER

Mr. CRAMER. Mr. President, I rise today to officially declare that I will vote against both Articles of Impeachment brought against President Trump by the very partisan and, quite frankly, ridiculous House of Representatives. I know my position is hardly a surprise, but it is almost as unsurprising as the House impeaching the President, to begin with.

Since the moment he was sworn into office, Democrats have schemed to remove Donald Trump from office. It is not my opinion. I take them at their word. Their fixation on his removal was a conclusion in search of a justification, which they manufactured from a phone conversation between world leaders leaked—leaked—by one of the many career bureaucrats who seem to have forgotten that they work for the elected leaders in this country, not the other way around.

So the two Articles of Impeachment before this body today, in my view, are without merit. They are an affront, in fact, to this institution and to our Constitution, representing the very same partisan derangement that worried our Founding Fathers so much that they made the threshold for impeachment this high.

The Senate exists exactly for moments like this. I didn't arrive at my conclusion to support acquittal hastily or flippantly, and I don't believe any of my colleagues did either, including those who come to a different conclusion from mine. Despite being sent such flawed Articles by the House, the Senate did in fact dutifully and solemnly follow its constitutional obligation. During the last days of the trial, we heard sworn testimony from 13 witnesses, read 17 depositions, asked 180 questions, viewed 193 video clips, and poured over 28,000 pages of documents.

But even more than the House managers' shallow arguments and lack of evidence against and due process for our President and the obvious derangement at the very root of every investigation, beginning with the corrupt FBI Crossfire Hurricane counterintelligence investigation during the 2016 election cycle, the Articles of Impeachment we will vote on in a few hours should have ended at their beginning.

Can we agree that if a Speaker of the House unilaterally declares an impeachment inquiry, it represents the opinion of one Member of Congress, not the official authorization of the entire Congress? Can we agree that a vote to begin an impeachment inquiry that has only partisan support and bipartisan opposition is not what the Founders had in mind and in fact is what they firmly rejected and cautioned about? Can we agree that impeachment articles passed by a majority of one party and opposed by Members of both parties

on their face fail, if not the letter of the law, certainly, the spirit of the Constitution?

Yet, even under the cloud of purely partisan politics of the House of Representatives, the Senate conducted a complete, comprehensive trial, resulting, in my view, in a crystal clear conclusion: The Democratic-led House of Representatives failed to meet the most basic standards of proof and has dramatically lowered the bar for impeachment to unacceptable levels. It is deeply concerning, and I believe we must commit to never, ever letting it happen again to the President of any political party.

That can start today. In just a few hours, the Senate will have the opportunity to cast a vote to end this whole ordeal, and, in doing so, can make a statement that the threshold for undoing the will of the American people in the most recent election and undoing the will of a major political party in the upcoming election should be higher than one party's petty obsession.

I hope my colleagues on both sides of the aisle join me in voting against these charges. But whether he is acquitted or convicted and removed, it is my prayer, as we were admonished many times throughout the last few weeks by our Chaplain Black, that God's will is the one that will be done.

Then we can move on to the unifying issues the American people want us to tackle—issues like infrastructure, education, energy security and dominance, national security, and the rising cost of healthcare, among many others. These are issues the American people care about. These are issues that North Dakotans care about. These are issues that the people have sent us here to deal with. Let's do it together. Let's start now.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR CINDY HYDE-SMITH

Mrs. HYDE-SMITH. Mr. President, I will vote to acquit President Donald J. Trump on both Articles of Impeachment presented by House Democrats. I have listened carefully to the arguments presented by the House Democratic managers and the White House defense team. Those prosecuting the President failed on a legal and constitutional basis to produce the evidence required to undertake the very serious act of removing a duly elected President from this office.

This trial exposed that pure political partisanship fueled a reckless investigation and the subsequent impeachment of the President on weak, vague, and noncriminal accusations. The Democrats' case, which lacked the basic standards of fairness and due process, was fabricated to fulfill their one long-held hope to impeach President Trump.

We should all be concerned about the dangerous precedent and consequences of convicting any President on charges originating from strictly partisan reasons. The Founding Fathers warned against allowing impeachment to become a political weapon. In this case, House Democrats crossed that line.

Rejecting the abuse of power and obstruction of Congress articles before us will affirm our belief and the impeachment standards in-

tended by the Founders. With my votes to acquit President Trump, justice will be served. The Senate has faithfully executed its constitutional duties to hear and judge the charges leveled against the President.

I remain hopeful that we can finally set aside this flawed partisan investigation, prosecution, and persecution of President Trump. The people of Mississippi and this great Nation are more interested in us getting back to doing the work they sent us here to do.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR JAMES E. RISCH

Mr. RISCH. Mr. President, fellow Senators, I come today to talk about the business at hand. Obviously, it is the vote that we are going to take at 4 o'clock this afternoon.

We were subjected to days and days of trial here—many witnesses, witness statements, and all that sort of thing—and it is incumbent upon us now as jurors to reach a conclusion, and I have done so.

I come at this with a little bit of a different view, probably, than others. I have tried more cases, probably, than anyone on the floor, both as a prosecutor and in private practice. So I watched carefully as the case was presented to us and how the case had been put together by the managers from the House. What I learned in the many years of trial experience that I had is that the only way, really, to try a case and to reach where you want to get is to do it in good faith and to do it honestly.

I had real trouble right at the beginning when I saw that the lead manager read a transcript purporting to be a transcript of the President's phone call that has been at issue here, and it was falsified. It was falsified knowingly, willfully, and intentionally. So, as a result of that, when they walked through the door and wanted to present their case, there was a strike there already, and I put it in that perspective.

How the case unfolded after that was stunning because I have never seen a case succeed the way they put the case together. They put the case together by taking every fact that they wanted to make fly and put it only in the best light without showing the other side but more importantly—more importantly—intentionally excluding evidence. Of course, this whole thing centered on witness statements that the President had somehow threatened or pressured the President of Ukraine to do what he was going to do. That simply wasn't the case. The transcript didn't say that.

Now, admittedly, they had a witness who was going around saying that, and they called every person he told to tell us that that was the situation. The problem is, it was hearsay. There is a good reason why they don't allow hearsay in a court of law, and that is, it simply wasn't true.

When the person who was spreading that rumor actually talked to the President about it, the President got angry and said: That is not true. I would never do that.

They never told us that. Once the tape was shown, the House managers spent days putting together that proposition for us. The President's counsel dismantled that in about an hour and did so really quickly. And, as a result of that, simply from a factual basis, it is my opinion that the prosecution in this case did not meet its burden.

Now, much has been said about witnesses and how they did this and what have you, but the Constitution is crystal clear. It gives the House absolute, total, 100-percent control of impeachment; that is, the investigation and the vote on it. It gives us the same thing but on the trial basis.

The thing I think was surprising is that they came over here and tried to tell us how to do their job. I suspect they, in the House, would feel the exact same way about it if we went over there and told them how they should impeach. They came over here and told us how we should do witnesses and all that sort of thing. They had every opportunity to prepare the case. It was totally in their hands. They had as much time as they wanted, and they simply didn't do it. So in that respect, I also found that they came short.

But the bottom line for me, too, is that there is a second reason I would vote to acquit, and that is the stunning attack that this was on the U.S. Constitution. This is really the first time in history when a purely political attack was instigated by reaching to the U.S. Constitution and using what is really a sacred item in that Constitution, a process that the Founding Fathers gave us for good reason, and that is impeachment.

It was not intended to be used as a political bludgeon. It simply wasn't. We had in front of us the Federalist Papers, and we had the debates of the Constitutional Convention. Really, the one silver lining that came out of this was it underscored again for us the genius of the Founding Fathers giving us three branches of government—not just three branches of government but three branches of government that had distinct lanes in which they operated and, most importantly, indicating that they were separate but equal.

They wanted not a parliamentary system like they had looked at from Britain with a head of state that was a Prime Minister who could be removed and changed, as happens all around the world today. They gave us a unique system with three branches of government.

So the Founding Fathers were very clear. They debated the question of what should it take to get rid of the head of state, and they concluded that the second branch of government couldn't be a strong branch of government if, indeed, the President could be removed as a Prime Minister could be removed, simply by Congress getting unhappy with his policies or disagreeing with him. So, as a result of that, they did give us impeachment, and it is a unique process. They were very clear that it was supposed to be used only in very extreme circumstances and not just simply because of a political disagreement or a policy disagreement. And that is exactly what happened here.

The Federalist Papers and the Constitutional Convention debates are very, very clear that it is not a broad swath of reasons to impeach the President that is given to the first branch of government but, indeed, a very, very narrow swath. It was interesting that,

from the beginning, they picked the two words of “treason” and “bribery,” and to that they then had a long debate about what it would be in addition to that. They had such words as “malfeasance,” “misfeasance,” “corruption,” and all those kinds of things that could be very broad. They rejected all those and said, no, specifically, it had to be “high Crimes and Misdemeanors.”

So what they did was they narrowed the lane considerably and made it difficult to remove the head of the second branch of government. And then, on top of that, for frosting on the cake, they said it has got to be two-thirds. Now, what did that simply mean? They knew—they knew—that human beings being the way they are, that human beings who were involved in the political process and political parties would reach to get rid of a political enemy using everything they could. So they wanted to see that that didn’t happen with impeachment. So, as a result of that, they gave us the two-thirds requirement, and that meant that no President was going to be impeached without a bipartisan movement.

This movement has been entirely partisan. No Republican voted to impeach him in the House of Representatives. This afternoon at 4 we are going to have a vote, and it is going to be along party lines and, again, it is going to be political.

So what do we have here? At the end of the day, we have a political exercise, and that political exercise is going to fail. And once again—once again—God has blessed America, and the Republic that Benjamin Franklin said we have, if we can keep it, is going to be sustained.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR SHERROD BROWN

Mr. BROWN. Madam President, over the past 3 weeks, we have heard from the House managers and the President’s counsel regarding the facts of the case against President Donald Trump.

Much like trials in Lorain and Lima and Lordstown, OH, or in Marietta, in Massillon, and in Marion, OH, we have seen the prosecution—in this case, the House managers—and the defense—in this case, the President’s lawyers—present their cases. All 100 of us—every one of us—are the jury. We took an oath to be impartial jurors. We all took an oath to be impartial jurors just like juries in Ohio and across America. But to some of my colleagues, that just appeared to be a joke.

The great journalist Bill Moyers summed up the past 3 weeks: “What we’ve just seen is the dictator of the Senate manipulating the impeachment process to save the demagogue in the White House whose political party has become the gravedigger of democracy.”

Let me say that again. “What we have just seen is the dictator of the Senate manipulating the impeachment process to save the demagogue in the White House whose political party has become the gravedigger of democracy.”

Even before this trial began, Leader MCCONNELL admitted out loud that he was coordinating the trial process with the White House. The leader of the Senate was coordinating with the White

House on impeachment. I challenge him to show me one trial in my State of Ohio or his State of Kentucky where the jury coordinated with the defense lawyers. In a fair trial, the defense and prosecution would have been able to introduce evidence, to call witnesses, and to listen to testimony.

Every other impeachment proceeding in the Senate for 250 years had witnesses. Some of them had dozens. We had zero. Leader MCCONNELL rushed this trial through. He turned off cameras in this body so that the American public couldn't see the whole process. He restricted reporter access. We know reporters roam the halls to talk to Members of the House and Senate. He restricted access there. He twisted arms to make sure every Republican voted with him to block witnesses. He didn't get a couple of them, but he had enough to protect himself.

The public already sees through it. This is a sham trial. I said from the beginning that I would keep an open mind. If there are witnesses who would exonerate the President, the American people need to hear from them.

Over the course of this trial we heard mounting, overwhelming evidence that President Trump did something that not even Richard Nixon ever did: He extorted a foreign leader. He fired a career foreign service officer for rooting out corruption. He put his own Presidential campaign above our collective national security.

The President said this is just hearsay, but he and the Republican leader, together with 51 of 53 Republican Senators, blocked every single potential witness we wanted to call. The President says it was hearsay. We knew there were witnesses who were in the room with President Trump. We didn't get to hear from them. We didn't hear from Ambassador Bolton. We didn't hear from interim Chief of Staff Mulvaney. We didn't hear from Secretary Pompeo. The Republican leader denied the American people the chance to hear all of them testify under oath.

We have seen more information come to light each day, which builds on the pattern of facts laid out in great detail by the House managers. We have now heard tape recordings of the President of the United States telling associates to "get rid of" U.S. Ambassador Yovanovitch, a public servant who devoted her life to fighting corruption and promoting American ideals and foreign policy throughout her long, distinguished career at the State Department. With her removed from the post, it appears the President thought he would be able to compel our ally Ukraine to investigate President Trump's political opponent.

Reporters have now revealed that Ambassador Bolton—again, a firsthand witness—outlined that the President did exactly what the Impeachment Articles allege: He withheld security assistance to an ally at war with Russia in exchange for a political favor.

The Justice Department admits there are 24 emails showing the President's thinking on Ukraine assistance. But you know what? Senator MCCONNELL, down the hall, will not allow us to see any of these 24 emails.

Make no mistake, the full truth is going to come out. The Presiding Officer, my colleagues on the other side of the aisle, they are all going to be embarrassed because they covered this up. It wasn't just the President and the Vice President and Secretary Pompeo

and Chief of Staff Mulvaney; it was 51 Republican U.S. Senators, including the Presiding Officer, who is a new Member of this body, who covered up this evidence.

It will come out this week. It will come out this month, this year, the year after that, for decades to come. And when the full truth comes out, we will be judged by our children and grandchildren.

Without additional witnesses, we must judge based on the facts presented. The House managers made a clear, compelling case. In the middle of a war with Russia, the President froze \$400 million in security assistance to Ukraine. He wanted an investigation into his 2020 political opponent. He refused a critical meeting with President Zelensky in the Oval Office.

These actions don't promote our national security or the rule of law; they promote Donald Trump personally and his campaign.

We know the President extorted President Zelensky. He asked the leader of a foreign government to help him. That is the definition of an abuse of power. That is why we have no choice—no choice—but to convict this President of abusing his office. All of us know this. To acquit would set a clear, dangerous precedent: If you abuse your office, it is OK. Congress will look the other way.

This trial and these votes we are about to cast are about way more than just President Trump. They are about the future of democracy. It will send a message to this President—or whomever we elect in November—and to all future Presidents. It will be heard around the world—our verdict—by our allies and enemies alike, especially the Russians. Are we going to roll out the welcome mat to our adversaries to interfere in our elections? Are we going to give a green light to the President of the United States to base our country's foreign policy not on our collective, agreed-upon national security or that of our allies, like Ukraine, but on the President's personal political campaign?

These are the issues at stake. If we don't hold this President accountable for abuse of office, if no one in his own party, if no one on this side of the aisle—no one—has the backbone to stand up and say "stop," there is no question it will get worse. How do I know that? I have heard it from a number of my Republican colleagues when, privately, they will tell me, yes, we are concerned about what the President is going to do if he is exonerated.

I was particularly appalled by the words of Mr. Dershowitz. He said: "If a President does something which he believes will help him get elected in the public interest, that cannot be the kind of quid pro quo that results in impeachment."

Think about that for a moment. If the President thinks it is OK, he thinks it is going to help his election, and he thinks his election is in the public interest, then it is OK; the President can break any law, can funnel taxpayer money toward his reelection, can turn the arm of the State against his political enemies and not be held accountable. That is what this claim comes down to.

Remember the words of Richard Nixon: "When the President does it, that means it is not illegal." Our country rejected that argument during Watergate. We had a Republican Party with principle in those days and Senators with backbone, and they told that President to resign because nobody is above the State; nobody is above the law.

If we have a President who can turn the Office of the Presidency and the entire executive branch into his own political campaign operation, God help us.

My colleagues think I am exaggerating. We don't have the option to vote in favor of some arguments made during the trial and not others. Mr. Dershowitz's words will live forever in the historical record. If they are allowed to stand beside a "not guilty" verdict—make no mistake—they will be used as precedent by future aspiring autocrats. In the words of House Manager SCHIFF, "that way madness lies."

I know some of my colleagues agree this sets a dangerous precedent. Some of you have admitted to me that you are troubled by the President's behavior. You know he is reckless. You know he lies. You know what he did was wrong. I have heard Republican after Republican after Republican Senator tell me that privately. If you acknowledge that, if you have said it to me, if you said it to your family, if you said it to your staff, if you just said it to yourself, I implore you, we have no choice but to vote to convict.

What are my colleagues afraid of? I think about the words of ADAM SCHIFF in this Chamber on Tuesday: "If you find that the House has proved its case and still vote to acquit"—if you still vote to acquit—"your name will be tied to his with a cord of steel and for all of history."

"[Y]our name will be tied to his with a cord of steel and for all of history."

So I ask my colleagues again: What are you afraid of?

One of our American fundamental values is that we have no Kings, no nobility, no oligarchs. No matter how rich, no matter how powerful, no matter how much money you give to MITCH MCCONNELL's super PAC, everyone can and should be held accountable.

I hope my colleagues remember that. I hope they will choose courage over fear. I hope they will choose country over party. I hope they will join me in holding this President accountable to the American people we all took an oath to serve.

We know this: Americans are watching. They will not forget.

I will close with quoting, again, Bill Moyers, a longtime journalist: "What we have just seen is the dictator of the Senate manipulating the impeachment process to save the demagogue in the White House whose political party has become the gravedigger of democracy."

I know my colleagues on the other side of the aisle know better. I hope they vote what they really know.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR MAZIE K. HIRONO

Ms. HIRONO. Madam President, when the Framers debated whether to include the power of impeachment in the Constitution, they envisioned a moment very much like the one we face now. They were fearful of a corrupt President who would abuse the Presidency for his or her personal gain, particularly one who would allow any foreign country to interfere in the affairs of our United

States. With this fear in mind, the Framers directed the Senate to determine whether to ultimately remove that President from office.

In normal times, the Senate—conscious of its awesome responsibility—would meet this moment with the appropriate sobriety and responsibility to conduct a full and fair trial. That includes calling appropriate witnesses and subpoenaing relevant documents, none of which happened here.

In normal times, the Senate would have weighed the evidence presented by both sides and rendered impartial justice. And in normal times, having been presented with overwhelming evidence of impeachable acts, the Senate would have embraced its constitutional responsibility to convict the President and remove him or her from office.

But as we have learned too often over the past 3 years, these are not normal times. Instead of fulfilling its duty later today, the U.S. Senate will fail its test at a crucial moment of our country by voting to acquit Donald J. Trump of abuse of power and obstruction of Congress.

The Senate cannot blame its constitutional failure on the House managers. They proved their case with overwhelming and compelling evidence. Manager JERRY NADLER laid out a meticulous case demonstrating how and why the President's actions rose to the constitutional standard for impeachment and removal.

Manager HAKEEM JEFFRIES explained how Donald Trump “directly pressured the Ukrainian leader to commence phony political investigations as a part of his effort to cheat and solicit foreign interference in the 2020 election.”

Manager VAL DEMINGS walked us through the evidence of how Donald Trump used \$391 million of taxpayer money to pressure Ukraine to announce politically motivated investigations. She concluded: “This is enough to prove extortion in court.”

Manager SYLVIA GARCIA showed us how Donald Trump's demand for investigations was purely for his personal, political benefit. She debunked the conspiracy theories the President's counsel raised against former Vice President Joe Biden—Donald Trump's political rival and the true target of his corrupt scheme.

Manager JASON CROW described vividly the human costs of withholding aid from Ukrainian troops fighting a hot war against Russia.

Manager ADAM SCHIFF tied together the evidence of Donald Trump's abuse of power—the most serious of impeachable offenses and one that includes extortion and bribery.

And Manager ZOE LOFGREN used her extensive experience to provide perspective on Donald Trump's unprecedented, unilateral, and complete obstruction of Congress to cover up his corrupt scheme. She is the only Member of Congress to be involved in three Presidential impeachments.

The President's lawyers could not refute the House's case. Instead, they ultimately resorted to the argument that, even accepting the facts as presented by the House managers, Donald Trump's conduct is not impeachable. It is what I have called the “He did it; so what?” argument.

Many of my Republican colleagues are using the “So what?” argument to justify their votes to let the President off the hook. Yet

the senior Senator from Tennessee said: “I think he shouldn’t have done it. I think it was wrong.” He said it was “inappropriate” and “improper, crossing a line.” But he refused to hold the President accountable, arguing that the voters should decide.

The junior Senator from Iowa said: “The President has a lot of latitude to do what he wants to do” but he “did it maybe in the wrong manner.”

She also said that “whether you like what the President did or not,” the charges didn’t rise to the level of an impeachable offense.

The junior Senator from Ohio called the President’s actions “wrong and inappropriate” but said they did not “rise to the level of removing a duly-elected president from office and taking him off the ballot in the middle of an election.”

And the senior Senator from Florida went so far as to say: “Just because actions meet a standard of impeachment does not mean it is in the best interest of the country to remove a president from office.”

By refusing to hold this President accountable, my Republican colleagues are reinforcing the President’s misguided belief that he can do whatever he wants under article II of the U.S. Constitution.

Donald Trump was already a danger to this country. We have seen it in his policy decisions—from taking away healthcare from millions of Americans to threatening painful cuts to Social Security and Medicare, to engaging in an all-out assault on immigrants in this country.

But today, we are called on to confront a completely different type of danger—one that goes well beyond the significant policy differences I have with this President.

If we let Donald Trump get away with extorting the President of another country for his own personal, political benefit, the Senate will be complicit—complicit—in his next corrupt scheme.

Which country will he bully or invite to interfere in our elections next? Which pot of taxpayer money will he use as a bribe to further his political schemes?

Later today, I will vote to convict and remove President Donald Trump for abusing his power and obstructing Congress. I am under no illusion that my Republican colleagues will do the same. They have argued it is up to the American people to decide, as though impeachment were not a totally separate, constitutional remedy for a lawless President.

As I considered my vote, I listened closely to Manager SCHIFF’s closing statement about why the Senate needs to convict this President. He said:

I do not ask you to convict him because truth or right or decency matters nothing to him—

He is referring to the President—

but because we have proven our case, and it matters to you. Truth matters to you. Right matters to you. You are decent. He is not who you are.

It is time for the Senate to uphold its constitutional responsibility by convicting this President and holding him accountable.

[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR MICHAEL F. BENNET

Mr. BENNET. Madam President, when I was in the second grade—which I did twice because I was dyslexic, so I don't know which year of the second grade it was, but one of those 2 years—we were asked to line up in order of whose family had been here the longest period of time and whose family had been here the shortest period of time.

I turned out to be the answer to both of those questions. My father's family went all the way back to the Mayflower, and my mom's family were Polish Jews who survived the Holocaust. They didn't leave Warsaw because my grandfather had a large family he didn't want to leave behind. And in the event—everybody was killed in the war, except my mom, her parents, and an aunt. They lived in Warsaw for 2 years after the war. Then they went to Stockholm for a year. They went to Mexico City for a year, of all places. And then they came to the United States—the one place in the world they could rebuild their shattered lives, and they did rebuild their shattered lives. My mom was the only person in the family who could speak any English. She registered herself in the New York City public schools. She graduated from Hunter College High School. She went on to graduate from Wellesley College in Massachusetts in one generation. My grandparents rebuilt the business they had lost during the war.

I knew from them how important this symbol of America was to people struggling all over the world. They had been through some of the worst events in human history, and their joy of being Americans was completely unadulterated. I have met many immigrants across this country, and I still haven't met anybody with a stronger accent than my grandparents had, and I have never met anybody who were greater patriots than they were. They understood how important the idea of America was, not because we were perfect—exactly the opposite of that—because we were imperfect. But we lived in a free society that was able to cure its imperfections with the hard work of our citizens to make this country more democratic, more free, and more fair—a country committed to the rule of law. Nobody was above the rule of law, and nobody was treated unfairly by the law, even if you were an immigrant to this country.

From my dad's example, I learned something really different. It might interest some people around here to know he was a staffer in the Senate for many years. I actually grew up coming here on Saturday mornings, throwing paper airplanes around the hallways of the Dirksen Building and Russell Building.

He worked here at a very different time in the Senate. He worked here at a time when Republicans and Democrats worked together to uphold the rule of law, to pass important legislation that was needed by the American people to move our country forward, a time when Democrats and Republicans went back home and said: I didn't get everything I wanted, to be sure, but the 65 percent I did get is worth the bill we have, and here is why the other side needed 35 percent.

Those days are completely gone in the U.S. Senate, and I grieve for them. My dad passed away about a year ago. I know how dis-

appointed he would be about where we are, but there isn't anybody who can fix it, except the 100 people who are here and, I suppose, the American people for whom we ostensibly work.

In the last 10 years that I have been here, I have watched politicians come to this floor and destroy the solemn responsibility we have—the constitutional responsibility we have—to advise and consent on judicial appointments, to turn that constitutional responsibility into nothing more than a vicious partisan exercise. That hasn't been done by the American people. That wasn't done by any other generation of politicians who were in this place. It has been done by this generation of politicians led by the Senator from Kentucky, the majority leader of the Senate.

We have become a body that does nothing. We are an employment agency. That is what we are. Seventy-five percent of the votes we took last year were on appointments. We voted on 26 amendments last year—26—26. In the world's greatest deliberative body, we passed eight amendments in a year. Pathetic. We didn't consider any of the major issues the American people are confronting in their lives, not a single one—10 years of townhalls with people saying to me: MICHAEL, we are killing ourselves, and we can't afford housing, healthcare, higher education, early childhood education. We cannot save. We can't live a middle-class life. We think our kids are going to live a more diminished life than we do.

What does the U.S. Senate do? Cut taxes for rich people. We don't have time to do anything else around here. And now, when we are the only body on planet Earth charged with the responsibility of dealing with the guilt or innocence of this President, we can't even bring ourselves to have witnesses and evidence as part of a fair trial, even when there are literally witnesses with direct knowledge of what the President did practically banging on the door of the Senate saying: Let me testify.

We are too lazy for that. The reality is, we are too broken for that. We are too broken for that. And we have failed in our duty to the American people.

Hamilton said in Federalist 65 that in an impeachment trial we were the inquisitors for the people. The Senate—we would be the inquisitors for the people. How can you be the inquisitors for the people when you don't even dignify the process with evidence and with witnesses?

I often have school kids come visit me here in the Senate, which I really enjoy because I used to be the superintendent of the Denver Public Schools. When they come visit me, they very often have been on the Mall. They have seen the Lincoln Memorial. They have seen the Washington Monument. They have been seen the Supreme Court, this Capitol. And there is a tendency among them to believe that this was just all here, that it was all just here. And of course, 230 years ago, I tell them, none of it was here. None of it was here. It was in the ideas of the Founders, the people whom we call the Founders, who did two incredible things in their lifetime, in their generation, that had never been done before in human history. They wrote a Constitution that would be ratified by the people who lived under it. It never happened before. They would never have imagined that we would have lasted 230 years—at least until the age of Donald Trump.

They led an armed insurrection against a colonial power. We call that the Revolutionary War. That succeeded too.

They did something terrible in their generation that will last for the rest of our days and that is they perpetuated human slavery. The building we are standing in today was built by enslaved human beings because of the decisions that they made.

But I tell the kids who come and visit me that there is a reason why there are not enslaved human beings in this country anymore and that is because of people like Frederick Douglass. He was born a slave in the United States of America, escaped his slavery in Maryland, risked his life and limb to get to Massachusetts, and he found the abolitionist movement there. And the abolitionist movement has been arguing for generations that the Constitution was a pro-slavery document. Frederick Douglass, who is completely self-taught, said to them: You have this exactly wrong, exactly backward, 180 degrees from the truth. The Constitution is an anti-slavery document, Frederick Douglass said, not a pro-slavery document.

But we are not living up to the words of the Constitution. It is the same thing Dr. King said the night before he was killed in Memphis when he went down there for the striking garbage workers and he said: I am here to make America keep the promise you wrote down on the page.

In my mind, Frederick Douglass and Dr. King are Founders, just as much as the people who wrote the Constitution of the United States. How could they not be? How could they not be?

The women who fought to give my kids, my three daughters, the right to vote, who fought for 50 years to get the right to vote—mostly women in this country—are Founders, just like the people who wrote the Constitution, as well.

Over the years that I have been here, I have seen this institution crumble into rubble. This institution has become incapable of addressing the most existential questions of our time that the next generation cannot address. They can't fix their own school. They can't fix our immigration system. They can't fix climate change, although they are getting less and less patient with us on that issue.

But what I have come to conclude is that the responsibility of all of us—not just Senators but all of us as citizens in a democratic republic—230 years after the founding of this Republic, is the responsibility of a Founder. It is that elevated sense of what a citizen is required to do in a republic to sustain that republic, and I think that is the right way to think about it. It gives you a sense of what is really at stake beyond the headlines on the cable television at night and, certainly, in the social media feeds that divide us minute to minute in our political life today.

The Senate has clearly failed that standard. We have clearly failed that standard. The idea that we would turn our backs and close our eyes to evidence pounding on the outside of the doors of this Capitol is pitiful. It is disgraceful, and it will be a stain on this body for all time. More than 50 percent of the people in this place have said that what the President did was wrong. It clearly was wrong. It clearly was unconstitutional. It clearly was impeachable. What President would run for office saying to the American people: I am going to try to extort a foreign power for my own electoral

interest to interfere in our elections? It is exactly the kind of conduct that the impeachment clause was written for. It is a textbook case of why the impeachment clause exists.

But even if you don't agree with me that he should have been convicted or that he should be convicted, I don't know how anybody in this body goes home and faces their constituents and says that we wouldn't even look at the evidence.

So I say to the American people: Our democracy is very much at risk. I am not one of those people who believes that Donald Trump is the source of all our problems. I think he has made matters much worse, to be sure, but he is a symptom of our problem. He is a symptom of our failure to tend to the democracy—to our responsibility—as Founders. And if we don't begin to take that responsibility as seriously as our parents and grandparents did—people who faced much bigger challenges than we ever did—nobody is asking us, thank God, to end human slavery. Nobody is asking us to fight for 50 years for the self-evident proposition that women should have the right to vote. We are not marching in Selma, being beaten for the self-evident prospect that all people are created equal. Nobody is asking us to climb the Cliffs of Normandy to fight for freedom in a world war.

But we are being asked to save the democracy and we are going to fail that test today in the Senate. And my prayer for our country is that the American people will not fail that test. I am optimistic that we will not. We have never failed it before, and I don't think we will fail it in our time.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR TAMMY BALDWIN

Ms. BALDWIN. Madam President, in 2012, the good people of Wisconsin elected me to work for them in the Senate. Like every one of my fellow Senators, I took an oath of office. In 2018, I was reelected, and I took that same oath. We have all taken that oath. It is not to support and defend the President—this President or any other. Our oath is to support and defend the Constitution of the United States. That is our job every day that we come to work, and it certainly is our job here today.

Just over 2 weeks ago, we all stood together right here, and we took another oath given to us by Chief Justice Roberts to do impartial judgment in this impeachment trial. I have taken this responsibility very seriously. I have listened to both sides make their case. I have reviewed the evidence presented, and I have carefully considered the facts.

From the beginning, I have supported a full, fair, and honest impeachment trial. A majority of this Senate has failed to allow it. I supported the release of critical evidence that was concealed by the White House. The other side of the aisle let President Trump hide it from us, and they voted to keep it a secret from the American people. I voted for testimony of relevant witnesses with direct, firsthand evidence about the President's conduct. Senate Republicans blocked witness testimony because they didn't want to be bothered with the truth.

Every Senate impeachment trial in our Nation's history has included witnesses, and this Senate trial should have been no different. Unfortunately, it was. A majority of the Senate has taken the unprecedented step of refusing to hear all the evidence, declining all the facts, denying the full truth about this President's corrupt abuse of power. President Trump has obstructed Congress, and this Senate will let him.

Last month, President Trump's former National Security Advisor, John Bolton, provided an unpublished manuscript to the White House. The recent media reports about what Ambassador Bolton could have testified to, had he not been blocked as a witness, go to the heart of this impeachment trial—abuse of power and obstruction of Congress.

As reported, in early May 2019, there was an Oval Office meeting that included President Trump, Mick Mulvaney, Pat Cipollone, Rudy Giuliani, and John Bolton. According to Mr. Bolton, the President directed him to help with his pressure campaign to solicit assistance from Ukraine to pursue investigations that would not only benefit President Trump politically but would act to exonerate Russia from their interference in our 2016 elections.

Several weeks later, the U.S. Department of Defense certified the release of military aid to Ukraine, concluding that they had taken substantial actions to decrease corruption. This was part of the security assistance we approved in Congress with bipartisan support to help Ukraine fight Russian aggression. However, President Trump blocked it and covered it up from Congress.

On July 25, 2019, as President Trump was withholding the support for Ukraine, he had a telephone call with Ukrainian President Zelensky. Based on a White House call summary memo that was released 2 months later, we all know the President put his own political interest ahead of our national security and the integrity of our elections.

Based on the clear and convincing evidence presented in this trial, we know President Trump used American taxpayer dollars in security assistance in order to get Ukraine to interfere in our elections to help him politically. We know the President solicited assistance from Ukraine to pursue an investigation of phony conspiracy theories about our 2016 U.S. elections that are a part of a Russian disinformation campaign. We know the President solicited assistance from Ukraine to discredit the conclusion by American law enforcement, the U.S. intelligence community, and confirmed by a bipartisan Senate report that Russia interfered with our 2016 elections. We also know President Trump solicited foreign interference in the upcoming election by pressuring Ukraine to publicly announce investigations to help him politically.

I ask my friends to consider the fact that the Ukrainian President was pressured and prepared to go on an American cable television network to announce these political investigations.

To those who are making the argument to acquit the President because to convict would create further division in our country, I ask you to acknowledge the fact that President Trump's corrupt scheme has given Russia another opening to attack our democracy, interfere in our elections, and further divide our already divided

country. We know this to be true, but the Senate is choosing to ignore the truth.

As reported just weeks after the Zelensky call, President Trump told Ambassador Bolton in August that he wanted to continue freezing \$391 million in security assistance to Ukraine until it helped with the political investigations. Had Ambassador Bolton testified to these facts in this trial, it would have directly contradicted what the President told Senator JOHNSON in a phone call on August 31, 2019, in which, according to Senator JOHNSON, the President said:

I would never do that. Who told you that?

John Bolton not only has direct evidence that implicates President Trump in a corrupt abuse of power, but he has direct evidence that President Trump lied to one of our colleagues in an attempt to cover it up. It may not matter to this Senate, but I can tell you that it matters to the people of the State of Wisconsin that this President did not tell their Senator the truth.

Based on the facts presented to us, I refuse to join this President's coverup, and I refuse to conclude that the President's abuse of power doesn't matter, that it is OK, and that we should just get over it.

I recognize the courageous public servants who did what this Senate has failed to do—to put our country first. In the House impeachment inquiry, brave government servants came forward and told the truth. They put their jobs on the line. Instead of inspiring us to do our duty—to do our jobs—they have faced character assassination from this President, the White House, and some of my colleagues here in the Senate. It is a disgrace to this institution that they have been treated as anything less than the patriots they are.

As Army LTC Alexander Vindman said, "This is America. Here, right matters."

My judgment is inspired by these words, and I am guided to my commitment to put country before party and our Constitution first.

My vote on the President's abuse of power and obstruction of Congress is a vote to uphold my oath of office and to support and defend the Constitution. My vote is a vote to uphold the rule of law and our uniquely American principle that no one—not even the President—is above the law. I only have 1 of 100 votes in the U.S. Senate, and I am afraid that the majority is putting this President above the law by not convicting him of these impeachable offenses.

Let's be clear. This is not an exoneration of President Trump. It is a failure to show moral courage and hold this President accountable.

Now every American will have the power to make his or her own judgment. Every American gets to decide what is in our public interest. We the people get to choose what is in our national interest. I trust the American people. I know they will be guided by our common good and the truth. The people we work for know what the truth is, and they know, in America, it matters.

[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR CHRISTOPHER MURPHY

Mr. MURPHY. Madam President, it is important to remind ourselves, at moments like this, how unnatural and uncommon democracy really is.

Just think of all of the important forums in your life. Think about your workplace, your family, your favorite sports team. None of them makes decisions by democratic vote. The CEO decides how much money you are going to make. It is not by the vote of your fellow employees. You love your kids, but they don't get an equal say in household matters as mom and dad do. The plays the Chiefs called on their game-winning drives were not decided by a team vote.

No, most everything in our lives that matters, other than the government under which we live, is not run by democratic vote, and, of course, a tiny percentage of humans—well under 1 percent—have lived in a democratic society over the last thousand years of human history.

Democracy is unnatural. It is rare. It is delicate. It is fragile, and untended to, neglected, or taken for granted, it will disappear like ashes that scatter into the cold night.

This body—the U.S. Senate—was conceived by our Founders to be the ultimate guardians of this brittle experiment in governance. We, the 100 of us, were given the responsibility to keep it safe from those who may deign to harm it, and when the Senate lives up to this charge, it is an awesome, inspirational sight to behold.

I was born 3 weeks after Alexander Butterfield revealed the existence of a taping system in the White House that likely held evidence of President Nixon's crimes, and I was born 1 week after the Senate Watergate Committee, in a bipartisan vote, ordered Nixon to turn over several key tapes.

Now, my parents were Republicans. My mom is still a Republican. Over the years, they have voted for a lot of Democrats and Republicans. They raised me, in the shadow of Watergate, to understand that what mattered in politics wasn't really someone's party. It was whether you were honest and decent and if you were pursuing office for the right reasons.

In the year I was born, this Senate watched a President betray the Nation, and this Senate—both Democrats and Republicans—stood together to protect the country from this betrayal. This is exactly what our Founders envisioned when they gave the Congress the massive responsibility of the impeachment power. They said to use it sparingly, to use it not to settle political scores but to use it when a President has strayed from the bonds of decency and propriety.

The Founders wanted Congress to save the country from bad men who would try to use the awesome power of the executive branch to enrich themselves or to win office illicitly, and I grew up under the belief that, when those bad men presented themselves, this place had the ability to put aside party and work to protect our fragile democracy from attack.

This attack on our Republic that we are debating today, if left unchecked, is potentially lethal. The one sacred covenant that an

American President makes with the governed is to use the massive power of the executive branch for the good of the country, not for personal financial or political benefit. The difference between a democracy and a tin-pot dictatorship is that, here, we don't allow Presidents to use the official levers of power to destroy political opponents. Yet that is exactly what President Trump did, and we all know it. Even the Republicans who are going to vote to acquit him today admit that. If you think that our endorsement through acquittal will not have an impact, then, just look at Rudy Giuliani's trip to Ukraine in December, which was in the middle of the impeachment process. He went back, looking for more dirt, and the President was ringing him up to get the details before Giuliani's plane even hit the gate. The corruption hasn't stopped. It is ongoing. If this is the new normal—the new means by which a President can consolidate power and try to destroy political opponents—then we are no longer living in America.

What happened here over the last 2 weeks is as much a corruption as Trump's scheme was. This trial was simply an extension of Trump's crimes—no documents, no witnesses. It was the first-ever impeachment trial in the Senate without either. John Bolton, in his practically begging to come here and tell his firsthand account of the President's corruption, was denied—just to make sure that voters couldn't hear his story in time for them to be able to pressure their Senators prior to an impeachment vote.

This was a show trial—a gift-wrapped present for a grateful party leader. We became complicit in the very attacks on democracy that this body is supposed to guard against. We have failed to protect the Republic.

What is so interesting to me is that it is not like the Republicans didn't see this moment coming. In fact, many of my colleagues across the aisle literally predicted it. Prior to the President's election, here is what the Republican Senators said about Donald Trump.

One said:

He is shallow. He is ill-prepared to be Commander in Chief. I think he is crazy. I think he is unfit for office.

Another said:

The man is a pathological liar. He doesn't know the difference between truth and lies.

Yet another Republican Senator said:

What we are dealing with is a con artist. He is a con artist.

Now, you can shrug this off as election-year rhetoric, but no Democrat has ever said these kinds of things about a candidate from our party, and prior to Trump, no Republican had said such things about candidates from their party either. The truth is the Republicans, before Trump became the head of their party, knew exactly how dangerous he was and how dangerous he would be if he won. They knew he was the archetype of that bad man the Founders intended the Senate to protect democracy from.

That responsibility seems to no longer retain a position of primacy in this body today. The rule of law doesn't seem to come first today. Our commitment to upholding decency and truth and honor is not the priority today. In the modern Senate today, all that

seems to matter is party. What is different about this impeachment is not that the Democrats have chosen to make it partisan. It is that the Republicans have chosen to excuse their party's President's conduct in a way that they would not have done and did not do 45 years ago. That is what makes this moment exceptional.

Now, Congressman SCHIFF, in his closing argument, rightly challenged the Democrats to think about what we would do if a President of our party ever committed the same kind of offense that Donald Trump has. I think it was a very wise query and one that we as Democrats should not be so quick on the trigger to answer self-righteously.

Would we have the courage to stand up to our base, to our political supporters, and vote to remove a Democratic President who had chosen to trade away the safety of the Nation for political help? It would not be easy. No, the easy thing to do would be to just do what is happening today—to box our ears, close our eyes, and just hope the corruption goes away.

So I have thought a lot about this question over these past 2 days, and I have come to the conclusion that, at least for me, I would hold the Democrats to the same standard. I would vote to remove. But I admit to some level of doubt, and I think that I need to be honest about that because the pressures today to put party first are real on both sides of the aisle, and they are much more acute today than they were during Watergate.

It is with that reality as context that I prepare to vote today. I believe that the President's crimes are worthy of removal. I will vote to convict on both Articles of Impeachment.

But I know that something is rotten in the state of Denmark. Ours is an institution built to put country above party, and today we are doing, often, the opposite. I believe within the cult of personality that has become the Trump Presidency, the disease is more acute and more perilous to the Nation's health on the Republican side of the ledger, but I admit this affliction has spread to all corners of this Chamber.

If we are to survive as a democracy—a fragile, delicate, constantly in need of tending democracy—then this Senate needs to figure out a way after today to reorder our incentive system and recalibrate our faiths so that the health of one party never ever again comes before the health of our Nation.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR MITT ROMNEY

Mr. ROMNEY. Mr. President, the Constitution is at the foundation of our Republic's success, and we each strive not to lose sight of our promise to defend it.

The Constitution established a vehicle of impeachment that has occupied both Houses of our Congress these many days. We have labored to faithfully execute our responsibilities to it. We have arrived at different judgments, but I hope we respect each other's good faith.

The allegations made in the Articles of Impeachment are very serious. As a Senator juror, I swore an oath before God to exercise

impartial justice. I am profoundly religious. My faith is at the heart of who I am. I take an oath before God as enormously consequential.

I knew from the outset that being tasked with judging the President—the leader of my own party—would be the most difficult decision I have ever faced. I was not wrong.

The House managers presented evidence supporting their case, and the White House Counsel disputed that case.

In addition, the President's team presented three defenses: first, that there could be no impeachment without a statutory crime; second, that the Bidens' conduct justified the President's actions; and third, that the judgment of the President's actions should be left to the voters. Let me first address those three defenses.

The historic meaning of the words "high crimes and misdemeanors," the writings of the Founders, and my own reasoned judgment convinced me that a President can indeed commit acts against the public trust that are so egregious that, while they are not statutory crimes, they would demand removal from office.

To maintain that the lack of a codified and comprehensive list of all the outrageous acts that a President might conceivably commit renders Congress powerless to remove such a President defies reason.

The President's counsel also notes that Vice President Biden appeared to have a conflict of interest when he undertook an effort to remove the Ukrainian prosecutor general. If he knew of the exorbitant compensation his son was receiving from a company actually under investigation, the Vice President should have recused himself. While ignoring a conflict of interest is not a crime, it is surely very wrong.

With regard to Hunter Biden, taking excessive advantage of his father's name is unsavory but also not a crime.

Given that in neither the case of the father nor the son was any evidence presented by the President's counsel that a crime had been committed, the President's insistence that they be investigated by the Ukrainians is hard to explain other than as a political pursuit. There is no question in my mind that were their names not Biden, the President would never have done what he did.

The defense argues that the Senate should leave the impeachment decision to the voters. While that logic is appealing to our democratic instincts, it is inconsistent with the Constitution's requirement that the Senate, not the voters, try the President. Hamilton explained that the Founders' decision to invest Senators with this obligation rather than leave it to the voters was intended to minimize to the extent possible the partisan sentiments of the public at large. So the verdict is ours to render under our Constitution. The people will judge us for how well and faithfully we fulfill our duty.

The grave question the Constitution tasks Senators to answer is whether the President committed an act so extreme and egregious that it rises to the level of a high crime and misdemeanor. Yes, he did. The President asked a foreign government to investigate his political rival. The President withheld vital military funds from that government to press it to do so. The President delayed funds

for an American ally at war with Russian invaders. The President's purpose was personal and political. Accordingly, the President is guilty of an appalling abuse of public trust.

What he did was not "perfect." No, it was a flagrant assault on our electoral rights, our national security, and our fundamental values. Corrupting an election to keep one's self in office is perhaps the most abusive and destructive violation of one's oath of office that I can imagine.

In the last several weeks, I have received numerous calls and texts. Many demanded, in their words, that I "stand with the team." I can assure you that thought has been very much in my mind. You see, I support a great deal of what the President has done. I have voted with him 80 percent of the time. But my promise before God to apply impartial justice required that I put my personal feelings and political biases aside. Were I to ignore the evidence that has been presented and disregard what I believe my oath and the Constitution demands of me for the sake of a partisan end, it would, I fear, expose my character to history's rebuke and the censure of my own conscience.

I am aware that there are people in my party and in my State who will strenuously disapprove of my decision, and in some quarters, I will be vehemently denounced. I am sure to hear abuse from the President and his supporters. Does anyone seriously believe that I would consent to these consequences other than from an inescapable conviction that my oath before God demanded it of me?

I sought to hear testimony from John Bolton, not only because I believe he could add context to the charges but also because I hoped that what he might say could raise reasonable doubt and thus remove from me the awful obligation to vote for impeachment.

Like each Member of this deliberative body, I love our country. I believe that our Constitution was inspired by providence. I am convinced that freedom itself is dependent on the strength and vitality of our national character.

As it is with each Senator, my vote is an act of conviction. We have come to different conclusions, fellow Senators, but I trust we have all followed the dictates of our conscience.

I acknowledge that my verdict will not remove the President from office. The results of this Senate court will, in fact, be appealed to a higher court—the judgment of the American people. Voters will make the final decision, just as the President's lawyers have implored. My vote will likely be in the minority in the Senate. But irrespective of these things, with my vote, I will tell my children and their children that I did my duty to the best of my ability, believing that my country expected it of me.

I will only be one name among many—no more, no less—to future generations of Americans who look at the record of this trial. They will note merely that I was among the Senators who determined that what the President did was wrong, grievously wrong.

We are all footnotes at best in the annals of history, but in the most powerful Nation on Earth, the Nation conceived in liberty and justice, that distinction is enough for any citizen.

[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR TIM SCOTT

Mr. SCOTT of South Carolina. Mr. President, over the past few weeks, we have heard a lot of arguments, accusations, and anecdotes. Some very skilled speakers on both sides have presented their case both for and against impeachment.

I listened intently, hour after hour, day after day, to the House managers and the President's lawyers, and the word that kept coming to me, that I kept writing down in my notes was "fairness" because, you see, here in America you are innocent until proven guilty.

As the President's defense team noted, "[A]t the foundation of those authentic forms of justice is fundamental fairness. It's playing by the rules. It's why we don't allow deflated footballs or stealing signs from the field. Rules are rules. They're there to be followed."

You can create all the rhetorical imagery in the world, but without the facts to prove guilt, it doesn't mean a thing. They can say the President cannot be trusted, but without proving why he can't be trusted, their words are just empty political attacks.

You can speak of David v. Goliath, but if you were the one trying to subvert the presumption of innocence, if you were the one to will facts into existence, you are not David; you have become Goliath.

Our job here in the Senate is to ensure a fair trial based on the evidence gathered by the House. I have been accused, as have many of my colleagues, of not wanting that fair trial. The exact opposite is true. We have ensured a fair trial in the Senate after House Democrats abused historical precedents in their zeal to impeach a President they simply do not like.

During prior impeachment proceedings in the last 50 years—lasting around 75 days or so in the House—the House's opposing party was allowed witnesses and the ability to cross-examine. This time, House Republicans were locked out of the first 71 of 78 days. Let me say that differently. The ability to cross-examine the witnesses who are coming before the House against the President, the House Republicans and the President's team were not allowed to cross-examine those witnesses. The ability to contradict and/or to cross-examine or have a conversation about the evidence at the foundation of the trial? The White House counsel and Republicans were not allowed. Think about the concept of due process. The House Republicans and President's team, were not allowed for 71 of 78 days in the House. This is not a fair process. Does that sound fair to you?

Democrats began talking about impeachment within months of President Trump's election and have made it clear that their No. 1 goal—perhaps their only goal—has been to remove him from office. Does that sound fair to you?

They have said: "We are going to impeach the . . ." and used an expletive.

They said: "We have to impeach him, otherwise he's going to win the election." Now that might be the transparency we have been looking for in this process—the real root or foundation of why we found ourselves here for 60 hours of testimony. It might be be-

cause, as they said themselves, if we don't impeach him, he might just win.

What an amazing thought that the American people and not Members of Congress would decide the Presidency of the United States. What a novel concept that the House managers and Congress would not remove his name from the ballot in 2020, but we would allow the American people to decide the fate of this President and of the Presidency.

They don't get it. They don't understand that the American people should be and are the final arbiters of what happens. They want to make not only the President vulnerable, but they want to make Republican Senators vulnerable so that they can control the majority of the U.S. Senate because the facts are not winning for them. The facts are winning for us because when you look at the facts, they are not their facts and our facts, they are just the facts. What I have learned from watching the House managers who were very convincing—they were very convincing the first day—and after that what we realized was, some facts mixed with a little fiction led to 100 percent deception. You cannot mix facts and fiction without having the premise of deceiving the American public, and that is what we saw here in our Chamber.

Why is that the case? It is simple. When you look at the facts of this Presidency, you come to a few conclusions that are, in fact, indisputable. One of those conclusions is that our economy is booming, and it is not simply booming from the top. When you start looking into the crosstabs, as I like to say, what you find is that the bottom 20 percent are seeing increases that the top 20 percent are not seeing. So this economy is working for the most vulnerable Americans, and that is challenging to our friends on the other side.

When you think about the fact that the opportunity zone legislation supported by this President is bringing \$67 billion of private sector dollars into the most vulnerable communities, that is challenging to the other side, but those, too, are facts. When you think about the essence of criminal justice reform and making communities safer and having a fairer justice system for those who are incarcerated, that is challenging to the other side, but it is, indeed, a fact, driven home by the Republican Party and President Donald John Trump. These facts do have consequences, just like elections.

Our friends on the other side, unfortunately, decided that if they could not beat him at the polls, give Congress an opportunity to, in fact, impeach the President. My friends on the left simply don't want a fair process. This process has lacked fairness. Instead, they paint their efforts as fighting on behalf of democracy when, in fact, they are just working on behalf of Democrats. That is not fair. It is not what the American people deserve.

House managers said over and over again, the Senate had to protect our Nation's free and fair elections, but they are seeking to overturn a fairly won election with absurd charges.

The House managers said over and over again that the Senate has to allow new witnesses so as to make the Senate trial fair, but they didn't bother with the notion of fairness when they were in charge in the House.

Their notion of fairness is to give the prosecution do-overs and extra latitude but not the defendants.

Actions speak louder than words, and the Democrats' actions have said all we need to hear.

Let's vote no on these motions today and get back to working for the American people.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR CHRISTOPHER A. COONS

Mr. COONS. Mr. President, the last time this body—the last time the Senate—debated the fate of a Presidency in the context of impeachment, the legendary Senator from West Virginia, Robert Byrd, rose and said:

I think my country sinks beneath the yoke. It weeps, it bleeds, and each new day a gash is added to her wounds.

Our country today, as then, is in pain. We are deeply divided, and most days, it seems to me that we here are the ones wielding the shiv, not the salve.

The Founders gave this Senate the sole power to try impeachments because, as Alexander Hamilton wrote: “Where else than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent?”

I wish I could say with confidence that we here have lived up to the faith our Founders entrusted in us. Unfortunately, I fear, in this impeachment trial, the Senate has failed a historic test of our ability to put country over party.

Foreign interference in our democracy has posed a grave threat to our Nation since its very founding. James Madison wrote that impeachment was an “indispensable” check against a President who would “betray his trust to foreign powers.”

The threat of foreign interference remains grave and real to this day. It is indisputable that Russia attacked our 2016 election and interfered in it broadly. President Trump's own FBI Director and Director of National Intelligence have warned us they are intent on interfering in our election this coming fall.

So, to my Republican colleagues, I have frankly found it difficult to understand why you would continue to so fervently support a President who has repeatedly and publicly invited foreign interference in our elections.

During his 2016 campaign, Donald Trump looked straight into the cameras at a press conference and said: Russia, if you're listening, I hope you're able to find Secretary Clinton's 30,000 emails.

We now know with certainty that Russian military intelligence hackers first attempted to break into Secretary Clinton's office servers for the first time that very day. Throughout his campaign, President Trump praised the publication of emails that Russian hackers had stolen from his political opponent. He mercilessly attacked former FBI Director Robert Mueller throughout his investigation into the 2016 election and allegations of Russian interference.

Now we know, following this trial, that the day after Special Counsel Mueller testified about his investigation to this Congress, President Trump, on a phone call with the President of Ukraine, asked for a favor. He asked President Zelensky to announce an in-

vestigation of his chief political rival, former Vice President Joe Biden, and he asked for an investigation into a Russian conspiracy theory about that DNC server. In the weeks and the months since, he has repeated that Ukraine should investigate his political opponent and that China should as well.

During the trial here, after the House managers and President's counsel made their presentation, Senators had the opportunity to ask questions. I asked a question of the President's lawyers about a sentence in their own trial brief that stated: "Congress has forbidden foreigners' involvement in American elections."

I simply asked whether the President's own attorneys believed their client, President Trump, agrees with that statement, and they refused to confirm that he does. And how could they when he has repeatedly invited and solicited foreign interference in our elections?

So, to my colleagues: Do you doubt that President Trump did what he is accused of? Do you doubt he would do it again? Do you think for even one moment he would refuse the help of foreign agents to smear any one of us if he thought it was in his best political interest? And I have to ask: What becomes of our democracy when elections become a no-holds-barred blood sport, when our foreign adversaries become our allies, and when Americans of the opposing party become our enemies?

Throughout this trial, I have listened to the arguments of the House managers prosecuting the case against President Trump and of the arguments of counsel defending the President. I engaged with colleagues on both sides of the aisle and listened to their positions.

The President's counsel have warned us of danger in partisan impeachments. They have cautioned that abuse of power—the first article—is a difficult standard to define. They have expressed deep concern about an impeachment conducted on the brink of our next Presidential election.

I understand those concerns and even share some of them. The House managers, in turn, warned us that our President has demonstrated a perilous willingness to seek foreign interference in our elections and presented significant evidence that the President withheld foreign aid from a vulnerable ally, not to serve our national interest but to attack a political opponent. They demonstrated the President has categorically obstructed congressional investigations to cover up his misconduct. These are serious dangers too.

We, then, are faced with a choice between serious and significant dangers. After listening closely to the evidence, weighing the arguments, and reflecting on my constitutional responsibility and my oath to do impartial justice, I have decided today I will vote guilty on both articles.

I recognize that many of my colleagues have made up their minds. No matter what decision you have reached, I think it is a sad day for our country. I myself have never been on a crusade to impeach Donald Trump, as has been alleged against all Democrats. I have sought ways to work across the aisle with his administration, but in the years that have followed his election, I have increasingly become convinced our President is not just unconven-

tional, not just testing the boundaries of our norms and traditions, but he is at times unmoored.

Throughout this trial, I have heard from Delawareans who are frustrated the Senate refused to hear from witnesses or subpoena documents needed to uncover all the facts about the President's misconduct. I have heard from Delawareans who fear our President believes he is above the law and that he acts as if he is the law. I have also heard from Delawareans who just want us to find a way to work together.

It is my sincere regret that, with all the time we have spent together, we could not find common ground at all. From the opening resolution that set the procedures for trial adopted on a party-line basis, the majority leader refused all attempts to make this a more open and more fair process. Every Democrat was willing to have Chief Justice Roberts rule on motions to subpoena relevant witnesses and documents. Every Member of the opposing party refused. We could not even forge a consensus to call a single witness who has said he has firsthand evidence, who is willing to testify and was even preparing to appear before us.

When an impeachment trial becomes meaningless, we are damaged and weakened as a body, and our Constitution suffers in ways not easily repaired. We have a President who hasn't turned over a single scrap of paper in an impeachment investigation. Unlike Presidents Nixon and Clinton before him, who directed their senior advisers and Cabinet officials to cooperate, President Trump stonewalled every step of this Congress's impeachment inquiry and then personally attacked those who cooperated. The people who testified to the House of Representatives in spite of the President's orders are dedicated public servants and deserve our thanks, not condemnation.

Where do we go from here? Well, after President Clinton's impeachment trial, he said: "This can be and must be a time of reconciliation and renewal for [our country]," and he apologized for the harm he had done to our Nation.

When President Nixon announced his resignation, he said: "The first essential is to begin healing the wounds of this Nation."

I wish President Trump would use this moment to bring our country together, to assure us he would work to make the 2020 election a fair contest; that he would tell Russia and China to stay out of our elections; that he would tell the American people, whoever his opponent might be, the fight will be between candidates, not families; that if he loses, he will leave peacefully, in a dignified manner; and that if he wins, he will work tirelessly to be the President for all people.

But at this point, some might suggest it would be hopelessly naive to expect of President Trump that he would apologize or strive to heal our country or do the important work of safeguarding our next election. So that falls to us.

To my colleagues who have concluded impeachment is too heavy a hammer to wield, if you believe the American people should decide the fate of this President in the next election, what will you do to protect our democracy? What will you do to ensure the American people learn the truth of what happened so that they can cast informed votes? Will you cosponsor bills to secure our elections?

Will you insist they receive votes on this floor? Will you express support for the intelligence community that is working to keep our country safe? Will you ensure whistleblowers who expose corruption are protected, not vilified? Will you press this administration to cooperate with investigations and to allow meaningful accommodations so that Congress can have its power of oversight? Why can we not do this together?

Each day of this trial, we have said the Pledge of Allegiance to our common Nation. For my Republican friends who have concluded the voters should decide President Trump's fate, we need to do more together to make that possible. Many of my Democratic friends, I know, are poised to do their very best to defeat President Trump at the ballot box.

So here is my plea—that we would find ways to work together to defend our democracy and safeguard our next election. We have spent more time together here in the last few weeks than in the last few years. Imagine if we dedicated that same time to passing the dozens of bipartisan bills that have come over from the House that are awaiting action. Imagine what we could accomplish for our States and our country if we actually tackled the challenges of affordable healthcare and ending the opioid crisis, making our schools and communities safer, and bridging our profound disagreements.

What fills me with dread, to my colleagues, is that each day we come to this floor and talk past each other and not to each other and fail to help our constituents.

Let me close by paraphrasing our Chaplain—Chaplain Black—whose daily prayers brought me great strength in recent weeks: May we work together to bring peace and unity. May we permit Godliness to make us bold as lions. May we see a clear vision of our Lord's desire for our Nation and remember we borrow our heartbeats from our Creator each day.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR CORY GARDNER

Mr. GARDNER. Mr. President, over the last several months and last several weeks, the American people have watched Washington convulse in partisan accusations, investigations, and endless acrimony. That division reached its high watermark as the U.S. Senate carried out the third Presidential impeachment trial in our Nation's history.

We saw, over the last 2 weeks, an impeachment process that included the testimony of 17 witnesses, more than 100 hours of testimony, and tens of thousands of pages of evidence, records, and documents, which I successfully fought to make part of the record. I fought hard to extend the duration of testimony to ensure that each side could be heard over 6 days instead of just 4. But what we did not see over the last 2 weeks was a conclusive reason to remove the President of the United States—an act which would nullify the 2016 election and rob roughly half the country of their preferred candidate for the 2020 elections.

House managers repeatedly stated that they had established “overwhelming evidence” and an “airtight” case to remove the President. Yet they also repeatedly claimed they needed additional investigation and testimony. A case cannot be both “overwhelming” and “airtight” and yet incomplete at the same time. That contradiction is not mere semantics.

In their partisan—their partisan—race to impeach, the House failed to do the fundamental work required to prove its case, to meet the heavy burden. For the Senate to ignore this deficiency and conduct its own investigation would weaponize the impeachment power. A House majority could simply short-circuit an investigation, impeach, and demand the Senate complete the House’s work—what they were asking us to do.

The Founders were concerned about this very point. Alexander Hamilton wrote, regarding impeachments: “[T]here will always be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by real demonstrations of innocence or guilt.”

More recently, Congressman JERRY NADLER, one of the House managers in the trial, said:

There must never be a narrowly voted impeachment or an impeachment substantially supported by one of our major political parties and largely opposed by the other. Such an impeachment will lack legitimacy.

Last March, Speaker NANCY PELOSI said: “Impeachment is so divisive to the country that unless there’s something so compelling and overwhelming and bipartisan, I don’t think we should go down that path, because it divides the country.”

The Framers knew that partisan impeachments could lead to impeachments over policy disagreements. Legal scholars like Charles Black have written that policy differences are not grounds for impeachment. But policy differences about corruption and the proper use of tax dollars are at the very heart of this impeachment. Nevertheless, that disagreement led the House to deploy this most serious of constitutional remedies.

The reason the Framers were concerned about partisan or policy impeachments was their concern for the American people. Removing a President disenfranchises the American people. For a Senate of only 100 people, to do that requires a genuine, bipartisan, national consensus. Here, especially only 9 months before an election, I cannot pretend the people will accept this body removing a President who received nearly 63 million votes without meeting that high burden.

The House managers’ other argument to remove the President—obstruction of Congress—is an affront to the Constitution. The Framers created a system of government in which the legislative, executive, and the judiciary are evenly balanced. The Framers consciously diluted each branch’s power, making all three separate but equal and empowered to check each other.

The obstruction charge assumes the House is superior to the executive branch. In their zeal, the House managers would disempower the judiciary and demand that the House’s interpretation of the sole power of impeachment be accepted by the Senate and the other branches without question. They claim no constitutional privilege exists to protect the executive branch against the

legislature seeking impeachment. They go further and claim that a single Justice—a single Justice—exercising the Senate’s sole power to try impeachments, can actually strip the executive of its constitutional protections with a simple decree.

In Federalist 78, Hamilton wrote: “[L]iberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments.”

If the House managers prevail, the House would have destroyed our constitutional balance, declaring itself the arbiter of constitutional rights and conscripting the Chief Justice to do it.

To be clear, the executive branch is not immune from legislative oversight or impeachment and trial, but that cannot come at the expense of constitutional rights—certainly not without input from the judiciary. After all, since *Marbury v. Madison*, “[i]t is emphatically the duty of the Judicial Department to say what the law is.” Without this separation, nothing stops the House from seeking privileged information under the guise of an impeachment inquiry.

But the House managers say that no matter how flimsy the House’s case, if the Executive tries to protect that information constitutionally, that itself is an impeachable offense. That dangerous precedent would weaken the stability of government—constantly threatening the President with removal and setting the stage for a constitutional crisis without recourse to the courts. With that precedent set, the separation of powers would simply cease to exist.

Over the 244-year history of our country, no President has been removed from office. The first Presidential impeachment occurred in 1868. The next was more than 100 years later. Now, 50 percent of Presidents have been impeached in the last 25 years alone. A tool so rarely used in the past is now being used more frequently. It is a dangerous development, and the Senate stands as the safeguard as passions grow even more heated.

These defective articles and the defective process leading to them allow the House to muddy things and claim we are setting a destructive precedent for the future.

Of course, bad cases make bad law. The House’s decision to short-circuit the investigation—moving faster than any Presidential impeachment ever, and a wholly partisan one at that—certainly makes for a bad case.

So, again, let me be clear about what this precedent does not do. At the outset, this case does not set the precedent that a President can do anything as long as he believes it to be in his electoral interest. I also reject the claim that impeachment requires criminal conduct. Rather, this shows, first, that House committees cannot simply assume the impeachment power to compel evidence without express authority from the full body and corresponding political accountability.

Second, the House should work in good faith with the Executive through the accommodation process. If that process reaches an impasse, the House should seek the assistance of the judicial branch before turning to impeachment.

Finally, when Articles of Impeachment come to the Senate along partisan lines, when nearly half of the people appear unmoved and maintain adamant support for the President and when the country is just months away from an election, in these circumstances, the

American people would likely not accept removing the President, and the Senate can wisely decline to usurp the people's power to elect their own President.

It has been said in this trial that the American people cannot make that decision for themselves. I couldn't disagree more. I believe in the American people. I believe in the power of our people to evaluate the President, to make their decision in November, and to move forward in our enduring effort to form a more perfect union. I do not believe a Senate nullification of two elections over defective Impeachment Articles is in the Nation's best interest.

So let's move forward with the people's business and bring this Nation back together. Let's rise up together, not fight each other. Not all of us voted for President Trump. Not all of us voted for the last President or the one before him. Yet we should work to make our Nation successful regardless of partisan passions. Passion, positively placed, will provide our Nation with the prosperity it has always been blessed with. Partisan poison will prove devastating to our Nation's long-term prosperity.

We must not allow our fractures to destroy our national fabric or partisanship to destroy our friendships. If we come together, we will succeed together, for surely we are bound together in this, the great United States of America.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR PATRICK J. LEAHY

Mr. LEAHY. Mr. President, I entered the Senate in the wake of Watergate in 1975, a time when the American people's faith in our institutions was profoundly shaken. The very first vote I cast was in favor of creating the Select Committee to Study Government Operations with Respect to Intelligence Activities and the Rights of Americans—that is, the Church Committee. Through that committee's work, the American public soon learned of years of abuses that had occurred at the hands of the executive branch's intelligence agencies. In response, the Senate passed sweeping reforms to rein in this overreach. In many ways, this represented the best of the Senate: We came together across party lines to thoroughly investigate, and ultimately curb, gross executive branch abuses.

The Senate has never been perfect. And much has changed in the 45 years I have served in this body. Yet today we face a similar test: whether the Senate, in the face of egregious misconduct directed by the President himself, will rise again to serve as the check on executive abuses our Founders intended us to be.

But today, and throughout this "trial," we are failing this test and witnessing the very worst of the modern Senate. After being confronted with overwhelming evidence of a brazen abuse of executive power, and an equally brazen attempt to keep that scheme hidden from Congress and the American people, the Senate is poised to look the other way. To simply move on. To pretend the Senate has no responsibility to reveal the President's misconduct and, God forbid, hold him to account.

Indeed we are being told the Senate has no constitutional role to play, and only the American people should judge the President's

misconduct in the next election. This is despite the Senate's constitutionally-mandated role and despite the fact that the President's scheme was aimed at cheating in that very election. And now the Senate is cementing a cover-up of the President's misconduct, to keep its extent hidden from the American people. How, then, will the American people be equipped to judge the President's actions? How far the Senate has fallen.

In some ways, President Nixon's misconduct—directing a break-in of the Democratic National Committee headquarters to benefit himself politically—seems quaint compared to what we face today. As charged in article I, President Trump secretly directed a sweeping, illegal scheme to withhold \$400 million in military aid from an ally at war in order to extort that ally into announcing investigations of his political opponent to boost his reelection. Then, instead of hiding select incriminating records, as President Nixon did, President Trump attempted to hide every single record from the American people. As reflected in article II, President Trump has the distinction of being the only President in our Nation's history to direct all executive branch officials not to cooperate with a congressional investigation.

I want to be clear: I did not relish the prospect of an impeachment trial. I have stark disagreements with this President on issues of policy and the law, on morality and honesty. But it is for the American people to judge a President on those matters. Today is not about differences over policy. It is about the integrity of our elections, and it is about the Constitution.

The Constitution cannot protect itself. During this trial, the words of Washington, Madison, Jefferson, Hamilton, and Lincoln have frequently been invoked on behalf of our Constitution. Now it is our turn to record our names in defense of our democracy.

In Federalist No. 65, Alexander Hamilton described impeachment as the remedy for "the abuse or violation of some public trust." Although that definition has guided the Nation for 230 years, President Trump's counsels would have us rely on a very different definition.

The central arguments presented by the President's defense team were stunning. The President argues that we cannot convict him because abuse of power is not impeachable. He can abuse his power to benefit his reelection and engage in improper quid pro quos so long as he believes his reelection is in the national interest. King Louis XIV of France—who famously declared "I am the State"—might approve of that reasoning, but the Senate should condemn it. The President and his attorneys even argue that a President may welcome and even request foreign governments to "dig up dirt" on their opponents with impunity. Yet not only are such requests illegal, they violate the very premise of our democracy—that American elections are decided only by Americans.

The Senate should flatly reject the President's brazen and dangerous arguments. But an acquittal today will do the opposite. If you believe that the President's outlandish arguments are irrelevant after today and will have no lasting impact on our democracy, remember this: The President's counsel's claim that abuse of power is not impeachable is largely—and mistakenly—based on the argument of another counsel, Justice Benjamin Curtis, defending an-

other President from impeachment, President Johnson. That was 150 years ago.

What we do today will set a weighty precedent. An acquittal today—despite the overwhelming evidence of guilt, and following a sham of a trial—may fundamentally, and perhaps irreparably, distort our system of checks and balances for another 150 years.

And what a sham trial it was. The fact that this body would not call a uniquely critical witness who has declared his willingness to testify, John Bolton, is beyond outrageous. And why? To punish the House for not taking years to first litigate a subpoena and then litigate every line of testimony? Or is it because testimony detailing this corrupt scheme, no matter how damning, would not alter the Majority Leader's preordained acquittal?

The Senate had a constitutional obligation to try this impeachment impartially. Yet the Senate willfully blinded itself to evidence that will soon be revealed. Senate Republicans even defeated a motion merely to consider and debate whether to seek critical documents and key witnesses. The notion that the Senate could retain the title of the "world's greatest deliberative body" following this charade rings hollow.

It is often said that history is watching. I expect that's true. But in this moment we are not merely witnesses to history—we are writing it. It is ours to shape. And let me briefly describe the dark chapters we are inscribing in the story of our republic today.

In his farewell address, George Washington warned us that "foreign influence is one of the most baneful foes of republican government." Yet, as a candidate, President Trump famously requested that Russia hack his political opponent's emails. Hours later, Russia did. The President then weaponized Russia's criminal influence campaign, which resulted in an investigation that uncovered a morass of inappropriate contacts with Russians, lies to cover them up, multiple instances of the President's obstruction of justice, and 37 other indictments and convictions. Yet, after the saga concluded, the President felt liberated. Literally the day after Special Counsel Robert Mueller testified, the President asked the Ukrainian President "for a favor." He has since publicly repeated his request for Ukraine to intervene in our election and made the same request to China on national television.

All of us must ask: If we acquit President Trump today, what will he do tomorrow? None of us knows. But two things I am confident of: President Trump's willingness to abuse his office, and his eagerness to exploit foreign interference in our elections, will only grow. And, crucially, Congress's capacity to do anything about it will be crippled.

While the President's lawyers stood on the Senate floor and admonished the House managers for failing to litigate each subpoena in court to exhaustion, he had other lawyers in court making the mutually exclusive argument that article III courts have no jurisdiction to settle disputes between our two branches. Such duplicity would put the two-faced Roman God Janus to shame. Meanwhile, the President's Department of Justice claims not only that President Trump cannot be indicted while in office, he cannot even be investigated.

But don't worry, the President's lawyers promise us, the President is still not above the law because Congress can hold him in check through our confirmation power and power of the purse. Neither would come close to checking a lawless Executive. It is well known that the President has effectively stopped nominating senior officials in his administration. He has now set a modern record for acting Cabinet Secretaries. The President has said that he prefers having acting officials, who bypass Senate scrutiny because they are easier to control.

More crucially, with this vote today, we inflict grave damage on our power of the purse. I am the vice chairman of Appropriations, a committee on which I have served for 40 years. Members of this committee not only write the spending bills, they are the guardians of this body's power of the purse, granted exclusively to Congress by the Founders to counter "all the overgrown prerogatives of the other branches." The Framers, having broken free from the grip of a monarchy, feared an unchecked executive who would use public dollars like a King: as a personal slush fund. Yet this is precisely what President Trump has done.

If we fail to hold President Trump accountable for illegally freezing congressionally appropriated military aid to extract a personal favor, what would stop him from freezing disaster aid to States hit by hurricanes and flooding until Governors or home State Senators agree to endorse him? What would stop any future President from holding any part of the \$4.7 trillion budget hostage to their personal whims? The answer is nothing. We will have relinquished the very check that the Founders entrusted to us to ensure a President could never behave like a King.

The President's defense team also argued that impeachment is inappropriate unless it is fully bipartisan. Decades ago, I questioned whether an impeachment would be accepted if not bipartisan. But this argument has revealed itself to be painfully flawed. In 1974, Republicans ultimately convinced President Nixon to resign; in 1999, Democrats condemned President Clinton's private misconduct and supported a formal censure. In contrast, with one important exception, President Trump's supporters have thus far shown no limits in their tolerance of overwhelming misconduct; they even chased out of their party a Congressman who stood up to the President. Indeed, a prerequisite for membership in the Republican Party today appears to be the belief that he can do no wrong. Under this standard, claiming that President Trump's impeachment would only be valid if it were supported by his most unflinching enablers renders the impeachment clause null and void.

That said, I do understand the immense pressure my Republican friends are under to support this President. I know well how much easier it is for me to express my disgust and disappointment that the President has proven himself so unfit for his office. That is one reason why I feel it is important to make a commitment right now. If any President, Republican or Democrat, uses the power of his or her office to extort a foreign nation to interfere in our elections to do the President's domestic political bidding, I will support their impeachment and removal. It is wrong, no matter the party. And we all should say so.

Before I close, I want to thank the brave individuals who shared their testimony with both the House of Representatives and American people. Each of these witnesses served this President in his administration. And they have served their country. They witnessed misconduct originating in the highest office in world, and they spoke up. They did not hide behind the President's baseless order not to cooperate. Most knew that by stepping forward they would be attacked by the President and some of his vindictive defenders. Yet they came forward anyway. We owe them our enduring appreciation. They give me hope for tomorrow.

Yet today is a dark day for our democracy. And what frightens me most is this: We are currently on a dangerous road, and no one has any idea where this road will take us. Not one of us here knows. But we all know our democracy has been indelibly altered.

The notion that the President has learned his lesson is farcical. The President's lead counsel opened and closed this trial by claiming the President did nothing wrong. The President himself describes his actions as "perfect." On 75 separate occasions, including yesterday, he has claimed he has done nothing wrong. Lord help us if the Senate agrees. The only lesson the President has learned from this trial is how easily he can get away with egregious, illegal misconduct.

If the Senate does not recognize the gravity of President Trump's "violation of the public trust," and hold him accountable, we will have seen but a preview of what is to come. Foreign interference in our elections. Total noncompliance with lawful congressional oversight. Disregard of our constitutional power of the purse. Open, flagrant corruption. I fear there is no bottom.

This is the tragic result of the Senate failing its constitutional duty to hold a real trial. We will leave President Trump "sacred and inviolable" and with "no constitutional tribunal to which he is amenable; no punishment to which he can be subjected without involving the crisis of a national revolution." As Hamilton warned over two centuries ago, that is not a President; that is a King. I, for one, will not merely "get over it."

I have listened very carefully to both sides over the past 2 weeks. The record has established, leaving no doubt in my view, that President Trump directed the most impeachable, corrupt scheme by any President in this country's history. To protect our constitutional republic and to safeguard our government's system of checks and balances, my oath to our Constitution compels me to hold the President of the United States accountable.

I will vote to convict and remove President Donald J. Trump from office.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR RICHARD C. SHELBY

Mr. SHELBY. Mr. President, over the past 2 weeks, my colleagues and I have patiently listened to arguments from both the House managers and the President's counsel right here in the Senate regarding a grave allegation from the House that the President has committed an act worthy of impeachment.

As a Senator, I believe that the first and perhaps most important consideration is whether abuse of power and obstruction of Congress are impeachable offenses as asserted by our House managers.

Impeachment is a necessary and essential component of our Constitution. It serves as an important check on civil officers who commit crimes against the United States. However, our Founding Fathers were wise to ensure that the impeachment and the conviction of a sitting President would not be of partisan intent. Since President Trump took office, many have sought to delegitimize his Presidency with partisan attacks. We have heard this right here in the Senate, and we have experienced it. This extreme effort to unseat the President, I believe, is unjustified and intolerable.

Now that the Senate has heard and studied the arguments from both sides, I believe the lack of merit in the House managers' case is evident. The outcome of the impeachment trial is a foregone conclusion. Acquittal is the judgment the Senate should and, I believe, will render—and soon.

For my part, I have weighed the House managers' case and found it wanting in fundamental aspects. I will try to explain.

I believe that their case does not allege an impeachable offense. Even if the facts are as they have stated, the managers have failed, I believe, as a matter of constitutional law, to meet the exceedingly high bar for removal of the President as established by our Founding Fathers, the Framers of the Constitution.

In their wisdom, the Framers rejected vague grounds for impeachment—offenses like we have heard here, “maladministration”—for fear that it would, in the words of Madison, result in a Presidential “tenure during [the] pleasure of the Senate.”

“Abuse of power,” one of the charges put forward here by the House managers, is a concept as vague and susceptible to abuse, I believe, as “maladministration.” If you take just a minute or two to look at the definitions of “abuse” and “mal,” they draw distinct similarities. “Mal,” a prefix of Latin origin, means bad, evil, wrong. “Abuse,” also of Latin origin, means to wrongly use or to use for a bad effect. There is a kinship between “mal” and “abuse.”

As the Framers rejected in their wisdom “maladministration,” I believe that they, too, would reject the noncriminal “abuse of power.” Instead, the Framers, as the Presiding Officer knows, provided for impeachment only in a few limited cases: treason, bribery, and high crimes and misdemeanors. Only those offenses justify taking the dire step of removing a duly elected President from office and permanently taking his name off the ballot.

This institution, the U.S. Senate, I believe, should not lower the constitutional bar and authorize their theory of impeachment for abuse of power. It is simply not an impeachable offense, in my judgment. Their criteria for removal centers not on the President's actions but on their loose perception of his motivations. If the Senate endorses this approach, we will dramatically transform the impeachment power as we have known it over the years. We will forever turn this grave constitutional power into a tool for adjudicating policy disputes and political disagreements among all of us. The Framers, in their wisdom, cautioned us against this dangerous path, and I believe the Senate will heed their warning.

The other article, the House managers' obstruction of Congress claim, is similarly flawed. Congress's investigative and oversight powers are critical tools, and we use them in ensuring our system of checks and balances. But those powers are not absolute.

The President, too, as head of a coequal branch of government, enjoys certain privileges and immunities from congressional fact-finding. That is his constitutional right and has been the right of former Presidents from both parties. The President's mere assertion of privileges and immunities is not an impeachable offense. Endorsing otherwise would be unprecedented and would ignore the past practices of administrations of both parties. Adopting otherwise would drastically undermine the separation of powers enshrined in our Constitution.

This was not what our Framers intended. Nowhere in the Constitution or in the Federal statute is abuse of power or obstruction of Congress listed as a crime—nowhere. What constitutes an impeachable offense is not left to the discretion of the Congress. We cannot expand, I believe, on the scope of actions that could be deemed impeachable beyond that which the Framers intended.

What we really have here, I believe, is nothing more than the abuse of the power of impeachment itself by the Democratic House. Doesn't our country deserve better? The President certainly deserves better.

Today I am proud to stand and repudiate those very weak impeachment efforts, and I will accordingly vote to acquit the President on both articles.

My hope is that, in the future, Congress will reject this episode and, instead, choose to be guided by the Constitution and the words from our Framers.

Basically, I believe it is a time to move on. We know that the American economy is booming. The United States is projecting strength and promoting peace abroad. The President is unbowed. I believe the American people see all of this. At the end of the day, the ultimate judgment rests in their hands. In my judgment, that is just as it should be.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR RICHARD J. DURBIN

Mr. DURBIN. Mr. President, Benjamin Franklin knew the strength of our Constitution, but he also knew its vulnerability. His words, oft repeated on this floor—"a republic, if you can keep it"—were a stark warning. Franklin believed every generation could face the challenge of protecting and defending our Nation's liberty-affirming document.

We know this personally. Before we can legally serve as Senators, we must publicly swear an oath to support and defend the Constitution of the United States. A trial of impeachment, more than any other Senate assignment, tests the oath each one of us takes before the people of this Nation.

The President's legal team warns us of the danger of impeachment and conviction. They tell us to think carefully about what the removal of a duly elected President could mean for our democracy.

But if we should have our eyes wide open to the danger of conviction, we also cannot ignore the danger of acquittal. The facts of this impeachment are well known, and many Republicans concede that they are likely true. They believe as I do, that President Trump pressured the Ukrainian President by withholding vital military aid and a prized White House visit in return for the announcement of an investigation of the Bidens and the Russian-concocted CrowdStrike fantasy.

Some of these same Republicans acknowledge that what the President did was “inappropriate.” At least one has used the word “impeachable.” But many say they are still going to vote to acquit him regardless. So let’s open our eyes to the morning after a judgment of acquittal. Facing a well-established election siege by Russia and other enemies of the United States, we, the Senate, will have absolved a President who continues to brazenly invite foreign interference in our elections. Expect more of the same.

A majority of this body will have voted for the President’s argument that inviting interference by a foreign government is not impeachable if it serves the President’s personal political interests.

We will also have found for the first time in the history of this Nation that an impeachment proceeding in the Senate can be conducted without any direct witnesses or evidence presented on either side of the case and that a President facing impeachment can ignore subpoenas to produce documents or witnesses to Congress.

Alexander Hamilton described the Senate as the very best venue for an impeachment trial because it is “independent and dignified,” in his words. When the Senate voted 51 to 49 against witnesses and evidence, those 51 raised into question any claim to independence or dignity.

In addition, an acquittal will leave the extreme views stated by the President’s defense counsel Alan Dershowitz unchallenged: first, that abuse of power is not an impeachable offense; second, that the impeachment charges against the President were constitutionally insufficient; and, third, his most dangerous theory, that unless the President has committed an actual crime, his conduct cannot be corrupt or impeachable as long as he believes it was necessary for his reelection.

By this logic, Professor Dershowitz would have excused Richard Nixon’s ordering of IRS audits of his political enemies. Mr. Dershowitz has created an escape clause to impeachment, which is breathtaking in its impact and unfounded in our legal history. We have all received a letter signed by nearly 300 constitutional law scholars flatly rejecting the arguments offered by the President’s defense team.

I ask unanimous consent to have printed in the RECORD the scholars’ letter.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JANUARY 31, 2020.

TO THE UNITED STATES SENATE: The signatories of this letter are professors of law and scholars of the American constitution who write to clarify that impeachment does not require proof of crime, that abuse of power is an impeachable offense, and that a president may not abuse the powers of his office to secure re-election, whatever he may believe about how beneficial his continuance in power is to the country.

## IMPEACHABLE CONDUCT DOES NOT REQUIRE PROOF OF ANY CRIME

Impeachment for “high Crimes and Misdemeanors” under Article II of the U.S. Constitution does not require proof that a president violated any criminal law. The phrase “high Crimes and Misdemeanors” is a term of art consciously adopted by the drafters of the American constitution from Great Britain. Beginning in 1386, the term was frequently used by Parliament to describe the wide variety of conduct, much of it non-criminal abuses of official power, for which British officials were impeached.

The phrase “high crimes and misdemeanors” was introduced into the American constitution by George Mason, who explained the necessity for expanding impeachment beyond “treason and bribery” by drawing his colleagues’ attention to the ongoing parliamentary impeachment trial of Warren Hastings. Hastings was charged with a long list of abuses of power that his articles of impeachment labeled “high crimes and misdemeanors,” but which even his chief prosecutor, Edmund Burke, admitted were not prosecutable crimes. On George Mason’s motion, the Philadelphia convention wrote into our constitution the same phrase Parliament used to describe Hastings’ non-criminal misconduct.

No convention delegate ever suggested that impeachment be limited to violations of criminal law. Multiple founders emphasized the need for impeachment to extend to plainly non-criminal conduct. For example, James Madison and George Nicholas said that abuses of the pardon power should be impeachable. Edmund Randolph believed that violation of the foreign emoluments clause would be.

Thus, Alexander Hamilton’s famous observation in *Federalist 65* that impeachable offenses “are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself” was not merely an advocate’s rhetorical flourish, but a well-informed description of the shared understanding of those who wrote and ratified the Constitution.

Since ratification, one senator and multiple judges have been impeached for non-criminal behavior. The first federal official impeached, convicted, and removed for “high crimes and misdemeanors” was Judge John Pickering, whose offenses were making bad legal rulings, being drunk on the bench, and taking the name of the Supreme Being in vain.

Among presidents, the tenth and eleventh articles of impeachment against President Andrew Johnson charged non-criminal misconduct. The first and second articles of impeachment against President Richard Nixon approved by the House Judiciary Committee allege both criminal and non-criminal conduct, and the third alleges non-criminal obstruction of Congress. Indeed, the Nixon House Judiciary Committee issued a report in which it specifically rejected the contention that impeachable conduct must be criminal.

The consensus of scholarly opinion is that impeachable conduct does not require proof of crime.

## ABUSE OF POWER IS AN IMPEACHABLE HIGH CRIME AND MISDEMEANOR

It has been suggested that abuse of power is not an impeachable high crime and misdemeanor. The reverse is true. The British Parliament invented impeachment as a legislative counterweight to abuses of power by the Crown and its ministers. The American Framers inserted impeachment into our constitution primarily out of concern about presidential abuse of power. They inserted the phrase “high crimes and misdemeanors” into the definition of impeachable conduct in order to cover non-criminal abuses of power of the type charged against Warren Hastings.

As Edmund Randolph observed at the Constitutional Convention, “the propriety of impeachments was a favorite principle with him” because “[t]he Executive will have great opportunities of abusing his power.” In *Federalist 65*, Hamilton defined “high crimes and misdemeanors” as “those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.”

This understanding has often been expressed in the ensuing centuries. For example, in 1926, the House voted to impeach U.S. District Judge George English. The Judiciary Committee report on the matter reviewed the authorities and concluded:

Thus, an official may be impeached for offenses of a political character and for gross betrayal of public interests. Also, for abuses or betrayals of trusts, for inexcusable negligence of duty [or] for the tyrannical abuse of power.

Two of the three prior presidential impeachment crises have involved charges of abuse of power. The eleventh article of impeachment against President Andrew Johnson alleged that he abused his power by attempting to prevent implementation of reconstruction legislation passed by Congress in March 1867, and thus violated Article II, Section 3, of the constitution by failing to “take care that the laws be

faithfully executed.” The second article of impeachment against Richard Nixon charged a litany of abuses of presidential power, including “interfering with agencies of the Executive Branch.”

Even if no precedent existed, the constitutional logic of impeachment for abuse of presidential power is plain. The president is granted wide powers under the constitution. The framers recognized that a great many misuses of those powers might violate no law, but nonetheless pose immense danger to the constitutional order. They consciously rejected the idea that periodic elections were a sufficient protection against this danger and inserted impeachment as a remedy.

The consensus of scholarly opinion is that abuse of power is an impeachable “high crime and misdemeanor.”

A PRESIDENT MAY NOT ABUSE HIS POWERS OF OFFICE TO SECURE HIS OWN RE-ELECTION

Finally, one of President Trump’s attorneys has suggested that so long as a president believes his re-election is in the public interest, “if a president did something that he believes will help get him elected, in the public interest, that cannot be the kind of quid pro quo that results in his impeachment.” It is true that merely because a president makes a policy choice he believes will have beneficial political effects, that choice is not necessarily impeachable. However, if a President employs his powers in a way that cannot reasonably be explained except as a means of promoting his own reelection, the president’s private conviction that his maintenance of power is for the greater good does not insulate him from impeachment. To accept such a view would be to give the president *carte blanche* to corrupt American electoral democracy.

Distinguishing between minor misuses of presidential authority and grave abuses requiring impeachment and removal is not an exact science. That is why the Constitution assigns the task, not to a court, but to Congress, relying upon its collective wisdom to assess whether a president has committed a “high crime and misdemeanor” requiring his conviction and removal.

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Robert Westley; Lolita Buckner Inniss; Margie Paris; Amy T. Campbell; Prof. Bruce A. Boyer; Fabio Arcila, Jr.; Michael L. Perlin, Esq.; Vincent M. Southerland; Robert M. Sanger; Cynthia Godsoe; Caren Morrison; Daniel JH Greenwood; Paula C. Johnson; Michael H. Hoffheimer.

Jenia I. Turner; Ben Trachtenberg; Catherine Powell; Ruth-Arlene W. Howe; Charisa Kiyô Smith, Esq.; Dana Alicia Thompson; Mark C. Modak-Truran, J.D., Ph.D.; Professor Irma S. Russell; Nicholas W. Allard; Sarah E. Ricks; Daniel Farber; M. Isabel Medina; Evan Caminker; Miguel Schor; Nina Chernoff.

Rashmi Goel; Barbara Ann White; Monica Eppinger; Jimmy Gurulé; Odeana R. Neal; Gabriel J. Chin; Margaret Montoya, J.D.; Anil Kalhan; Rebecca K. Stewart; Anthony Paul Farley; Sahar Aziz; Jaya Ramji-Nogales; Amy Widman; Perry Dane; Maya Manian.

Amanda Leiter; Paula Galowitz; Jesse A. Goldner; Anthony Paul Farley; Elizabeth Nevins; Rick Wilson; Prof. Jonathan Askin; James R. Maxeiner; Genevieve Byrne; Daniel L. Hatcher; Fred B. Brown; Joseph Pileri; David Jaros; Mark N. Aaronson.

Sonia Gipson Rankin; Richard C. Reuben; Sam Erman; Katy Ramsey; Janet M. Calvo; R. Wilson Freyermuth; Sarah Helene Duggin; Danaya C. Wright; Charles S. Bobis; Kim D. Ricardo; James Gray Pope; Chuck Henson; George W. Conk, M.A., J.D.

Mr. DURBIN. Yet a verdict of acquittal by the Senate blesses the professor's torturous reasoning. An acquittal verdict would also give President Trump's personal attorney Rudy Giuliani a pat on the back to continue his global escapades, harassing American Ambassadors whose service he distrusts, and lounging at European cigar bars with an entourage of post-Soviet amigos.

More than anything, a verdict of acquittal says a majority of the Senate believes this President is above the law and cannot be held accountable for conduct abusing the powers of his office. And make no mistake, this President believes that is true.

On July 23—2 days before his phone call with President Zelensky—President Trump spoke to a group of young supporters and he said: "I have an Article II, where I have the right to do whatever I want as president."

This is the dangerous principle that President Trump and his lawyers are asking us, with a verdict of acquittal, to accept. Under the oath I have sworn, I cannot.

What does it say of this Congress and our Nation that in 3 years, we have become so anesthetized to outrage that, for a majority in this Senate, there is nothing—nothing—this President can do or say that rises to the level of blushworthy, let alone impeachable?

Nearly 6 years ago, I traveled to Ukraine with a bipartisan group of Senate colleagues led by John McCain. It was one of John's whirlwind visits where we crammed 5 days' worth of meetings into 48 hours. We arrived in Kyiv on March 14, 2014. It was bitterly cold. Ukrainians had just ousted a corrupt, Russian-backed leader who looted the national treasury and hollowed out their nation's military. They had done so by taking to the streets, risking their lives for democracy and a better future. More than 100 ordinary citizens in Kyiv had been killed by security forces of the old government simply because they were protesting for democracy.

Seeing Ukraine in a fragile democratic transition, Vladimir Putin pounced on them, ordered an invasion and occupied Crimea. Putin and his thinly disguised Russian thugs were on the verge of seizing Donetsk in the east.

I asked the Prime Minister what Ukraine needed to defend itself. He said:

Everything. We don't have anything that floats, flies or runs.

Many may not appreciate how devastating Russia's war on Ukraine has been to that struggling young democracy. Their costly battle with Russia was for a principle that is really basic to America's national security as well.

In a country with one-eighth of our population, more Ukrainian troops have died defending Ukraine from Russia than American troops have perished in Afghanistan.

During the months President Trump illegally withheld military aid, as many as two dozen Ukrainian soldiers were killed in battle. By withholding security aid from Ukraine for President Trump's personal political benefit, he endangered the security of a fragile democracy.

Can there be any deeper betrayal of a President's responsibility than to endanger our national security and the security of an ally for his own personal political gain?

And to those of my colleagues who describe the President's conduct as merely "inappropriate," I disagree. Disparaging John McCain's service to our country is disgusting and inappropriate. What this President has done to Ukraine crosses that line. It is impeachable.

I will close by remembering two public servants who, like us, were called by history to judge a President. Tom Railsback passed away as this impeachment proceeding began. He was 2 days shy of his 88th birthday. I knew Tom. I considered him a friend.

In 1974, Tom was a Republican Congressman from Moline, IL, and a member of the House Judiciary Committee. He regarded President Nixon as a political friend. He believed that Richard Nixon had achieved much for America, including the opening of the door to China.

After studying the Watergate evidence closely, Congressman Railsback came to believe that Richard Nixon had violated the Constitution. When President Nixon refused to turn over records and recordings requested by Congress, Tom Railsback took to the House floor to say: "If the Congress doesn't get the material we think we need and then votes to exonerate, we'll be regarded as a paper tiger."

When he voted to impeach President Nixon, Tom believed it was probably the end of his career, but he was elected four more times. To his dying day, Tom Railsback was proud of his vote. He voted for his country above his party.

Bill Cohen—also a Republican—was a freshman Congressman at the time and a member of the House Judiciary Committee. He studied the evidence with Tom Railsback and then worked with him to draft Articles of Impeachment.

Bill Cohen received death threats, and he thought his votes to impeach President Nixon would be the end of his political career. But he went on to a distinguished career in the House, three terms in the Senate, and served as Secretary of Defense.

Listen to what Bill Cohen said recently of President's Trump's actions:

This is presidential conduct that you want to be ashamed of. He is corrupting institutions, politicizing the military, and acts like he is THE law.

And then Cohen added:

If [the President's conduct] is acceptable, we really don't have a Republic as we've known it any more.

May I respectfully say to my Senate colleagues, Ben Franklin warned us of this day.

I will vote guilty on both Articles of Impeachment against President Donald John Trump, on article I abuse of power and article II obstruction of Congress. But at this moment of high constitutional drama, I hope my last words can be a personal appeal to my Senate colleagues.

Last night, many of us attended a State of the Union Address which was as emotionally charged as any I have ever attended. As divided as our Nation may be and as divided as the Senate may be, we should remember America has weathered greater storms than this impeachment and our current political standoff.

It was Abraham Lincoln, in the darkness of our worst storm, who called on us "to strive on to finish the work we are in, to work to bind the nation's wounds."

After this vote and after this day, those of us who are entrusted with this high office must each do our part to work to bind the wounds of our divided nation. I hope we can leave this Chamber with that common resolve.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR LINDSEY GRAHAM

Mr. GRAHAM. Mr. President, let me just begin with a note of optimism. You are going to get to pick the next President, not a bunch of politicians driven by sour grapes. I don't say that lightly. I didn't vote for President Trump. I voted for somebody I wouldn't know if they walked in the door. But I accepted the fact that he won. That has been hard for a lot of people to do. And it is not like I am above the President being investigated.

I supported the Mueller investigation. I had Democratic colleagues come to me and say: We are afraid he is going to fire Mueller. Will you stand with us to make sure Mueller can complete

his investigation? And I did—2 years, \$32 million, FBI agents, subpoenas, you name it. The verdict is in. What did we find? Nothing. I thought that would be it.

But it is never enough when it comes to President Trump. This sham process is the low point in the Senate for me. If you think you have done the country a good service by legitimizing this impeachment process, what you have done is unleashed the partisan forces of Hell. This is sour grapes.

They impeached the President of the United States in 78 days. You cannot get a parking ticket, if you contested it, in 78 days. They gave out souvenir pens when it was over.

If you can't see through that, your hatred of Donald Trump has blinded you to the obvious. This is not about protecting the country; this is about destroying the President.

There are no rules when it comes to Donald Trump. Everybody in America can confront the witnesses against them, except Donald Trump. Everybody in America can call witnesses on their behalf, except President Trump. Everybody in America can introduce evidence, except for President Trump. He is not above the law, but you put him below the law. In the process of impeaching this President, you have made it almost impossible for future Presidents to do their job.

In 78 days, you took due process, as we have come to know it in America, and threw it in the garbage can. This is the first impeachment in the history of the country driven by politicians.

The Nixon impeachment had outside counsel, Watergate prosecutors. The Clinton impeachment had Ken Starr, who looked at President Clinton for years before he brought it to Congress. The Mueller investigation went on for 2 years. I trusted Bob Mueller. And when he rendered his verdict, it broke your heart. And you can't let it go.

The only way this is going to end permanently is for the President to get reelected. And he will.

So as to abuse of Congress, it is a wholesale assault on the Presidency; it is abandoning every sense of fairness that every American has come to expect in their own lives; it is driven by blind partisanship and hatred of the man himself. And they wanted to do it in 78 days. Why? Because they wanted to impeach him before the election. I am not making this up. They said that.

The reason the President never was allowed to go to court and challenge the subpoenas that were never issued is because the House managers understood it might take time. President Clinton and President Nixon were allowed to go to article III court and contest the House's action. That was denied this President because it would get in the way of impeaching him before the election.

And you send this crap over here, and you are OK with it, my Democratic colleagues. You are OK with the idea that the President was denied his day in court, and you were going to rule on executive privilege as a political body. You are willing to deal out the article III court because you hate Trump that much.

What you have done is you have weakened the institution of the Presidency. Be careful what you wish for because it is going to come back your way.

Abuse of Congress should be entitled “abuse of power by the Congress.” If you think ADAM SCHIFF is trying to get to the truth, I have a bridge I want to sell you. These people hate Trump’s guts. They rammed it through the House in a way you couldn’t get a parking ticket, and they achieved their goal of impeaching him before the election.

The Senate is going to achieve its goal of acquitting him in February. The American people are going to get to decide in November whom they want to be their President.

Acquittal will happen in about 2 hours; exoneration comes when President Trump gets reelected because the people of the United States are fed up with this crap. But the damage you have done will be long-lasting.

Abuse of power. You are impeaching the President of the United States for suspending foreign aid for a short period of time that they eventually received ahead of schedule to leverage an investigation that never happened. You are going to remove the President of the United States for suspending foreign aid to leverage an investigation of a political opponent that never occurred. The Ukrainians did not know of the suspension until September. They didn’t feel any pressure. If you are OK with Joe Biden and Hunter Biden doing what they did, it says more about you than it does anything else. The point of the abuse of power article is that you made it almost impossible now for any President to pick up the phone, if all of us can assume the worst and impeach somebody based on this objective standard. He was talking about corruption in Ukraine with a past President.

And the Bidens’ conduct in Ukraine undercut our ability to effectively deal with corruption by allowing his son to receive \$3 million from the most corrupt gas company in Ukraine. Can you imagine how the Ukrainian Parliamentarian must have felt to be lectured by Joe Biden about ending sweetheart deals?

What you have done is impeached the President of the United States and willing to remove him because he suspended foreign aid for 40 days to leverage an investigation that never occurred.

And to my good friend DICK DURBIN, Donald Trump has done more to help the Ukrainian people than Barack Obama did in his entire 8 years. If you are looking for somebody to help the Ukrainian people fight the Russians, how about giving them some weapons?

This is a sham. This is a farce. This is disgusting. This is an affront to President Trump as a person. It is a threat to the office. It will end soon. There is going to be an overwhelming rejection of both articles. We are going to pick up the pieces and try to go forward.

But I can say this without any hesitation: I worry about the future of the Presidency after what has happened here. Ladies and gentlemen, you will come to regret this whole process.

And to those who have those pens, I hope you will understand history will judge those pens as a souvenir of shame.

Mr. President, this is my second Presidential impeachment. My first was as a House manager for the impeachment of President Clinton. I believe President Clinton corruptly interfered in a lawsuit filed against him by a private citizen alleging sexual assault

and misconduct. It was clear to me that President Clinton tampered with the evidence, suborned perjury, and tried to deny Paula Jones her day in court. I believed then and continue to believe now that these criminal acts against a private citizen by President Clinton were wholly unacceptable and should have cost him his job. However, at the end of the Clinton impeachment, I accepted the conclusions of the Senate and said that a cloud had been removed from the Presidency, and it was time to move on.

During the Clinton impeachment, I voted against one Article of Impeachment that related to lying under oath regarding his sexual relationship with Monica Lewinsky. While the conduct covered by that article was inappropriate, to have made such conduct impeachable would have done grave damage to the Presidency by failing to recognize that, in the future, the office will be occupied by flawed human beings. It was obvious to me that President Clinton's lying under oath about his relationship with Monica Lewinsky, while wrong, was not a high crime or misdemeanor and that many people in similar circumstances would be inclined to lie to protect themselves and their families.

As to the impeachment of President Trump, I feel compelled to condemn the impeachment process used in the House because I believe it was devoid of basic, fundamental due process. The process used in the House for this impeachment was unlike that used for Presidents Nixon or Clinton. This impeachment was completed within 78 days and had a spirit of partisanship and revenge that if accepted by the Senate will lead to the weaponization of impeachment against future presidents.

President Trump was entirely shut out of the evidence gathering stage in the House Intelligence Committee, denied the right to counsel, and the right to cross-examine and call witnesses. Moreover, the great volume of evidence gathered against President Trump by the House Intelligence Committee consists of inadmissible hearsay. The House Judiciary Committee impeachment hearings were, for lack of a better term, a sham. And most importantly, the House managers admitted the reason that neither the House Intelligence Committee nor the House Judiciary Committee sought testimony in the House from President Trump's closest advisers, including former National Security Advisor John Bolton, Secretary of State Mike Pompeo, and Acting Chief of Staff Mick Mulvaney, is because it would have required the House to go to court, impeding their desire to impeach the President before the election. It was a calculated decision to deal article III courts out of President Trump's impeachment inquiry due to a political timetable. The Senate must send a clear message that this can never, ever happen again.

As to the substance of the allegations against President Trump, the abuse of power charge as defined by the House is vague, does not allege criminal misconduct, and requires the Senate to engage in a subjective analysis of the President's motives and actions. The House managers argued to the Senate that the sole and exclusive purpose of freezing aid to Ukraine was for the private, political benefit of President Trump. It is clear to me that there is ample evidence—much more than a mere scintilla—that the actions of

Hunter Biden and Vice President Biden were inappropriate and undercut American foreign policy.

Moreover, there was evidence in the record that officials in Ukraine were actively speaking against Candidate Trump and were pulling for former Secretary of State Clinton. Based on the overwhelming amount of evidence of inappropriate behavior by the Bidens and statements by State Department officials about certain Ukrainians' beliefs that one American candidate would be better than the other, I found it eminently reasonable for the President to be concerned about Ukraine corruption, election interference, and the behavior of Vice President Biden and his son Hunter. It is hard to believe that Vice President Biden was an effective messenger for reform efforts in Ukraine while his son Hunter was receiving \$3 million from Burisma, one of Ukraine's most corrupt companies.

As Professor Dershowitz described, there are three buckets for examining allegations of corrupt motive or action with regards to impeachment. The first is where there is clearly only a public, national benefit, as in the analogy of freezing aid to Israel unless it stops building new settlements. The second is the mixed motive category in which there is a public benefit—in this case, the public benefit of exposing the Bidens' conduct in the Ukrainian energy sector—and the possibility of a personal, political benefit as well. The third is where there is clearly a pure corrupt motive, as when there is a pecuniary or financial benefit, an allegation that has not been made against President Trump.

It is obvious to me that, after the Mueller report, President Trump viewed the House impeachment inquiry as a gross double standard when it comes to investigations. The House launched an investigation into his phone call with President Zelensky while at the same time the House showed no interest in the actions of Vice President Biden and Hunter Biden. The President, in my view, was justified in asking the Ukrainians to look into the circumstances surrounding the firing of Ukrainian Prosecutor General Viktor Shokin, who was investigating Burisma, and whether his termination benefited Hunter Biden and Burisma.

It is clear to me that the phone call focused on burden-sharing, corruption, and election interference in an appropriate manner. The most vexing question was how the President was supposed to deal with these legitimate concerns. The House managers in one moment suggest that President Trump could not have asked the Attorney General to investigate these concerns because that would be equivalent to President Trump asking for an investigation of a political rival. But in the next moment, the House managers declare that the proper way for President Trump to have dealt with those allegations would have been to ask the Attorney General to investigate. They cannot have it both ways. I believe that it is fair to criticize President Trump's overreliance on his private attorney, Rudy Giuliani, to investigate alleged corruption and conflicts of interest regarding the Bidens and Burisma. However, I do not find this remotely an impeachable offense, and it would be beneficial for the country as a whole to find ways to deal with such matters in the future.

Assuming the facts in the light most favorable to the House managers, that for a period of time the aid was suspended by President Trump to get Ukraine to investigate the Bidens and election interference, I find both articles fail as nonimpeachable offenses. I find this to be the case even if we assume the New York Times article about Mr. Bolton is accurate. The Ukrainians received the military aid and did not open the requested investigation.

The abuse of power Article of Impeachment is beyond vague and requires a subjective analysis that no Senator should have to engage in. It also represents an existential threat to the Presidency. Moreover, the obstruction of Congress article is literally impeaching the President because he chose to follow the advice of White House counsel and the Department of Justice and he was willing to use constitutional privileges in a manner consistent with every other President. This article must be soundly rejected, not only in this case, but in the future. Whether one likes President Trump or not, he is the President with privileges attached to his office.

The House of Representatives, I believe, abused their authority by rushing this impeachment and putting the Senate in the position of having to play the role of an article III court. The long term effect of this practice would be to neuter the Presidency, making the Office of the President only as strong as the House will allow.

The allegations contained in this impeachment are not what the Framers had in mind as high crimes or misdemeanors. The Framers, in my view, envisioned serious, criminal-like misconduct that would shake the foundation of the American constitutional system. The Nixon impeachment had broad bipartisan support once the facts became known. The Clinton impeachment started with bipartisan support in the House and ended with bipartisan support in the Senate, even though it fell well short of the two-thirds vote requirement to remove the President. In the case of President Trump, this impeachment started as a partisan affair with bipartisan rejection of the Articles of Impeachment in the House and, if not rejected in the Senate, will lead to impeachment as almost an inevitability, as future Presidents will be subject to the partisan whims of the House in any given moment.

My decision to vote not guilty on both Articles of Impeachment, I hope, will be seen as a rejection of what the House did and how they did it. I firmly believe that article III courts have a role in the impeachment process and that, to remove a President from office, the conduct has to be of a nature that would shake the very foundation of our constitutional system. The impeachment of President Trump was driven by a level of partisanship and ends justify the means behavior that the American people have rejected. The best way to end this matter is to allow the American people to vote for or against President Trump in November, not to remove him from the ballot.

These Articles of Impeachment must be soundly rejected by the Senate because they represent an assault on the Presidency itself and the weaponization of impeachment as a political tool. They must fail for a variety of reasons. First, the conduct being alleged by House managers is that there was a temporary suspension on military assistance to Ukraine, which was eventually received ahead of schedule to leverage an investigation that never occurred.

This is not the constitutional earthquake the Founders had in mind regarding bribery, treason, or other high crimes and misdemeanors. Second, the articles as drafted do not allege any semblance of a crime and require the Senate to make a subjective analysis of the President's motives. Third, the record is abundant with evidence that the President had legitimate concerns about corruption, election interference emanating from Ukraine, and that Vice President Biden and his son undercut U.S. efforts to reform corruption inside Ukraine.

The second article, alleging obstruction of Congress, is literally punishing the President for exercising the legal rights available to all Presidents as part of our constitutional structure. This article must fail because the House chose their impeachment path based on a political timetable of impeaching the President before Christmas to set up an election year trial in the Senate. The Senate must reject the theory offered by the House managers with regard to obstruction of Congress; to do otherwise would allow the House in the future to deal article III courts out of the impeachment process and give the House complete control over the impeachment field in a way that denies fundamental fairness.

Because it took the House 78 days from start to finish to impeach the President of the United States and, during its fact-gathering process, the House denied the President the right to counsel, to cross-examine witnesses against him, and the ability to introduce evidence on his behalf, the Senate must reject both Articles of Impeachment.

I am compelled to vote not guilty, to ensure impeachment will not become the new normal.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR CHARLES E. SCHUMER

Mr. SCHUMER. Mr. President, the Articles of Impeachment before us charged President Donald John Trump with offenses against the Constitution and the American people.

The first Article of Impeachment charges that President Trump abused the Office of the Presidency by soliciting the interference of a foreign power, Ukraine, to benefit himself in the 2020 election. The President asked a foreign leader to "do us a favor"—"us" meaning him—and investigate his political opponents.

In order to elicit these political investigations, President Trump withheld a White House meeting and hundreds of millions of dollars in military assistance from an ally at war with Russia. There is extensive documentation in the record proving this quid pro quo and the corrupt motive behind it. The facts are not seriously in dispute. In fact, several Republican Senators admitted they believe the President committed this offense with varying degrees of "inappropriate," "wrong," "shameful." Almost all Republicans will argue, however, that this reprehensible conduct does not rise to the level of an impeachable offense.

The Founders could not have been clearer. William Davie, a delegate to the Constitutional Convention, deemed impeachment "an

essential security,” lest the President “spare no efforts or means whatever to get himself reelected.”

James Madison offered a specific list of impeachable offenses during a debate in Independence Hall:

A President “might lose his capacity” or embezzle public funds.

“A despicable soul might even succumb to bribes while in office.”

Madison then arrived at what he believed was the worst conduct a President could engage in: the President could “betray his trust to foreign powers,” which would be “fatal to the Republic.” Those are Madison’s words.

When I studied the Constitution and the Federalist Papers in high school, admittedly, I was skeptical of George Washington’s warning that “foreign influence is one of the most baneful foes of republican government.” It seemed so far-fetched. Who would dare? But the foresight and wisdom of the Founders endure. Madison was right. Washington was right.

There is no greater subversion of our democracy than for powers outside of our borders to determine elections within them. If Americans believe that they don’t determine their Senator, their Governor, their President, but, rather, some foreign potentate does, that is the beginning of the end of democracy.

For a foreign country to attempt such a thing on its own is contemptible. For an American President to deliberately solicit such a thing—to blackmail a foreign country into helping him win an election—is unforgivable.

Does this rise to the level of an impeachable offense? Of course it does. Of course it does. The term “high crimes” derives from English law. “Crimes” were committed between subjects of the monarchy. “High crimes” were committed against the Crown itself. The Framers did not design a monarchy; they designed a democracy, a nation where the people were King. High crimes are those committed against the entire people of the United States.

The President sought to cheat the people out of a free and fair election. How could such an offense not be deemed a high crime—a crime against the people? As one constitutional scholar in the House Judiciary hearings testified: “If this is not impeachable, nothing is.” I agree.

I judge that President Trump is guilty of the first Article of Impeachment.

The second Article of Impeachment is equally straightforward. Once the President realized he got caught, he tried to cover it up. The President asserted blanket immunity. He categorically defied congressional subpoenas, ordered his aides not to testify, and withheld the production of relevant documents.

Even President Nixon, author of the most infamous Presidential coverup in history, permitted his aides to testify in Congress in the Watergate investigation. The idea that the Trump administration was properly invoking the various rights and privileges of the Presidency is nonsense. At each stage of the House inquiry, the administration conjured up a different bad-faith justification for evading accountability. There is no circumstance under which the administration would have complied.

When I asked the President’s counsel twice to name one document or one witness the President provided to Congress, they could

not answer. It cannot be that the President, by dint of legal shamelessness, can escape scrutiny entirely.

Once again, the facts are not in dispute, but some have sought to portray the second Article of Impeachment as somehow less important than the first. It is not. The second Article of Impeachment is necessary if Congress is to ever hold a President accountable—again, Democratic or Republican. The consequences of sanctioning such categorical obstruction of Congress will be far-reaching, and they will be irreparable.

I judge that President Trump is guilty of the second Article of Impeachment.

The Senate should convict President Trump, remove him from the Presidency, and disqualify him from holding future office. The guilt of the President on these charges is so obvious that here, again, several Republican Senators admit that the House has proved its case.

So instead of maintaining the President's innocence, the President's counsel ultimately told the Senate that even if the President did what he was accused of, it is not impeachable. This has taken the form of an escalating series of Dershowitzian arguments, including "Abuse of power is not an impeachable offense"; "The President can't be impeached for noncriminal conduct, but he also can't be indicted for criminal conduct"; "If a President believes his own reelection is essential to the Nation, then a quid pro quo is not corrupt." These are the excuses of a child caught in a lie.

Each explanation is more outlandish and desperate than the last. It would be laughable if not for the fact that the cumulative effect of these arguments would render not just this President but all Presidents immune from impeachment and therefore above the law.

Several Members of this Chamber said that even if the President is guilty and even if it is impeachable, the Senate still shouldn't convict the President because there is an election coming up—as if the Framers forgot about elections when they wrote the impeachment clause. If the Founders believed that even when a President is guilty of an impeachable offense, the next election should decide his fate, they never would have included an impeachment clause in the Constitution. That much is obvious.

Alone, each of the defenses advanced by the President's counsel comes close to being preposterous. Together, they are as dangerous to the Republic as this President—a fig leaf so large as to excuse any Presidential misconduct. Unable to defend the President, arguments were found to make him a King.

Let future generations know that only a fraction of the Senate swallowed these fantasies. The rest of us condemn them to the ash heap of history and the derision of first-year law students everywhere.

We are only the third Senate in history to sit as a Court of Impeachment for the President. The task we were given was not easy, but the Framers gave the Senate this responsibility because they could not imagine any other body capable of it. They considered others, but they entrusted it to us, and the Senate failed. The Republican caucus trained its outrage not on the conduct of the Presi-

dent but on the impeachment process in the House, deriding—falsely—an alleged lack of fairness and thoroughness.

The conjured outrage was so blinding that the Republican majority ended up guilty of the very sins it falsely accused the House of committing. It conducted the least fair, least thorough, most rushed impeachment trial in the history of this country.

A simple majority of Senators denied the Senate's right to examine relevant evidence, to call witnesses, to review documents, and to properly try the impeachment of the President, making this the first impeachment trial in history that heard from no witnesses. A simple majority of Senators, in deference to and most likely in fear of the President of their party, perpetrated a great miscarriage of justice in the trial of President Trump. As a result, the verdict of this kangaroo court will be meaningless.

By refusing the facts, by refusing witnesses and documents, the Republican majority has placed a giant asterisk—the asterisk of a sham trial—next to the acquittal of President Trump, written in permanent ink. Acquittal and an unfair trial with this giant asterisk—the asterisk of a sham trial—are worth nothing at all to President Trump or to anybody else.

No doubt, the President will boast he received total exoneration, but we know better. We know this wasn't a trial by any stretch of the definition. And the American people know it, too.

We have heard a lot about the Framers over the past several weeks, about the impeachment clause they forged, the separation of powers they wrought, the conduct they most feared in our chief magistrate. But there is something the Founders considered even more fundamental to our Republic: truth. The Founders had seen and studied societies governed by the iron fist of tyrants and the divine right of Kings, but none by argument, rational thinking, facts, and debate.

Hamilton said the American people would determine “whether societies of men are really capable or not of establishing good government from reflection and choice, or . . . forever destined to depend on accident and force.” And what an astonishing thing the Founders did. They placed a bet with long odds. They believed that “reflection and choice” would make us capable of self-government; that we wouldn't agree on everything, but at least we could agree on a common baseline of fact and of truth. They wrote a Constitution with the remarkable idea that even the most powerful person in our country was not above the law and could be put on trial. A trial—a place where you seek truth. The faith our Founders placed in us makes the failure of this Senate even more damning.

Our Nation was founded on the idea of truth, but there was no truth here. The Republican majority couldn't let truth into this trial. The Republican majority refused to get the evidence because they were afraid of what it might show.

Our Nation was founded on the idea of truth, but in order to countenance this President, you have to ignore the truth. The Republicans walk through the halls with their heads down. They didn't see the tweet. They can't respond to everything he says. They hope he learned his lesson this time. Yes, maybe, this time, he learned his lesson.

Our Nation was founded on truth, but in order to excuse this President, you have to willfully ignore the truth and indulge in the President's conspiracy theories: Millions of people voted illegally. The deep state is out to get him. Ukraine interfered in our elections. You must attempt to normalize his behavior. Obama did it, too, they falsely claim. The Democrats are just as bad.

Our Nation was founded on the idea of truth, but this President is such a menace—so contemptuous of every virtue, so dishonorable, so dishonest—that you must ignore—indeed, sacrifice—the truth to maintain his favor.

The trial of this President—its failure—reflects the central challenge of this Presidency and, maybe, the central challenge of this time in our democracy. You cannot be on the side of this President and be on the side of truth, and if we are to survive as a nation, we must choose truth because, if the truth doesn't matter, if the news you don't like is fake, if cheating in an election is acceptable, if everyone is as wicked as the wickedest among us, then hope for the future is lost.

The eyes of the Nation are upon this Senate, and what they see will strike doubt in the heart of even the most ardent patriot.

The House managers established that the President abused the great power of his office to try to cheat in an election, and the Senate majority is poised to look the other way.

So I direct my final message not to the House managers, not even to my fellow Senators, but to the American people. My message is simple: Don't lose hope. There is justice in this world and truth and right. I believe that. I wouldn't be in this government if I didn't. Somehow, in ways we can't predict, with God's mysterious hand guiding us, truth and right will prevail.

There have been dark periods in our history, but we always overcome. The Senate's opening prayer yesterday was Amos 5:24: Let justice roll down like water, righteousness like an ever-flowing stream.

The long arc of the moral universe, my fellow Americans, does bend toward justice. America does change for the better but not on its own. It took millions of Americans hundreds of years to make this country what it is today—Americans of every age and color and creed who marched and protested, who stood up and sat in; Americans who died while defending this democracy, this beautiful democracy, in its darkest hours.

On Memorial Day in 1884, Oliver Wendell Holmes told his war-weary audience: "[W]hether [one] accepts from Fortune her spade, and will look downward and dig, or from Aspiration her axe and cord, and will scale the ice, the one and only success which it is [yours] to command is to bring to [your] work a mighty heart."

I have confidence that Americans of a different generation—our generation—will bring to our work a mighty heart to fight for what is right, to fight for the truth, and never, never lose faith.

[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR MITCH MCCONNELL

Mr. MCCONNELL. Mr. President, the U.S. Senate was made for moments like this. The Framers predicted that factional fever might dominate House majorities from time to time. They knew the country would need a firewall to keep partisan flames from scorching our Republic. So they created the Senate—out of “necessity,” James Madison wrote, “of some stable institution in the government.”

Today, we will fulfill this founding purpose. We will reject this incoherent case that comes nowhere near—nowhere near—justifying the first Presidential removal in history. This partisan impeachment will end today, but I fear the threat to our institutions may not because this episode is one symptom of something much deeper.

In the last 3 years, the opposition to this President has come to revolve around a truly dangerous concept. Leaders in the opposite party increasingly argue that, if our institutions don’t produce the outcomes they like, our institutions themselves must be broken. One side has decided that defeat simply means the whole system is broken, that we must literally tear up the rules and write new ones.

Normally, when a party loses an election, it accepts defeat. It reflects and retools—but not this time.

Within months, Secretary Clinton was suggesting her defeat was invalid. She called our President “illegitimate.” A former President falsely claimed: “[President] Trump didn’t actually win.” “He lost the election,” a former President said. Members of Congress have used similar rhetoric—a disinformation campaign, weakening confidence in our democracy.

The very real issue of foreign election interference was abused to fuel conspiracy theories. For years, prominent voices said there had been a secret conspiracy between the President’s campaign and a foreign government, but when the Mueller investigation and the Senate Intelligence Committee debunked that, the delegitimizing endeavor didn’t stop. It didn’t stop.

Remember what Chairman SCHIFF said here on the floor? He suggested that if the American people reelect President Trump in November that the election will be presumptively invalid as well. That was Chairman SCHIFF, on this floor, saying, if the American people reelect President Trump this November, the election will be presumptively invalid as well.

So they still don’t accept the American voters’ last decision, and now they are preparing to reject the voters’ next decision if they don’t like the outcome—not only the last decision but the next decision. Heads, we win. Tails, you cheated. And who can trust our democracy anyway, they say?

This kind of talk creates more fear and division than our foreign adversaries could achieve in their wildest dreams. As Dr. Hill testified, our adversaries seek to “divide us against each other, degrade our institutions, and destroy the faith of the American people in our democracy.” As she noted, if Americans become “consumed by partisan rancor,” we can easily do that work for them.

The architects of this impeachment claimed they were defending norms and traditions. In reality, it was an assault on both.

First, the House attacked its own precedents on fairness and due process and by rushing to use the impeachment power as a political weapon of first resort. Then their articles attacked the Office of the Presidency. Then they attacked the Senate and called us “treacherous.” Then the far left tried to impugn the Chief Justice for remaining neutral during the trial.

Now, for the final act, the Speaker of the House is trying to steal the Senate’s sole power to render a verdict. The Speaker says she will just refuse to accept this acquittal. The Speaker of the House of Representatives says she refuses to accept this acquittal—whatever that means. Perhaps she will tear up the verdict like she tore up the State of the Union Address.

So I would ask my distinguished colleagues across the aisle: Is this really—really—where you want to go? The President isn’t the President? An acquittal isn’t an acquittal? Attack institutions until they get their way? Even my colleagues who may not agree with this President must see the insanity of this logic. It is like saying you are so worried about a bull in a china shop that you want to bulldoze the china shop to chase it out.

Here is the most troubling part. There is no sign this attack on our institutions will end here. In recent months, Democratic Presidential candidates and Senate leaders have toyed with killing the filibuster so that the Senate could approve radical changes with less deliberation and less persuasion.

Several of our colleagues sent an extraordinary brief to the Supreme Court, threatening political retribution if the Justices did not decide a case the way they wanted.

We have seen proposals to turn the FEC—the regulator of elections and political speech—into a partisan body for the first time ever.

All of these things signal a toxic temptation to stop debating policy within our great American governing traditions and, instead, declare war on the traditions themselves—a war on the traditions themselves.

So, colleagues, with whatever policy differences we may have, we should all agree this is precisely the kind of recklessness the Senate was created to stop. The response to losing one election cannot be to attack the Office of the Presidency. The response to losing several elections cannot be to threaten the electoral college. The response to losing a court case cannot be to threaten the judiciary. The response to losing a vote cannot be to threaten the Senate.

We simply cannot let factional fever break our institutions. It must work the other way, as Madison and Hamilton intended. The institutions must break the fever rather than the other way around.

The Framers built the Senate to keep temporary rage from doing permanent damage to our Republic.

The Framers built the Senate to keep temporary rage from doing permanent damage to our Republic. That is what we will do when we end this precedent-breaking impeachment.

I hope we will look back on this vote and say this was the day the fever began to break.

I hope we will not say this was just the beginning.

[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR CHUCK GRASSLEY

Mr. GRASSLEY. Mr. President, as Senators, we cast a lot of votes throughout our tenure in this body. I have cast over 13,200 of them. Each vote is important. A vote to convict or acquit the President of the United States on charges of impeachment is one of the most important votes a Senator could ever cast. Until this week, such a vote has only taken place twice since the founding of our Republic.

The President has been accused of committing “high Crimes and Misdemeanors” for requesting that a foreign leader launch an anti-corruption investigation into his potential political opponent and obstructing Congress’s subsequent inquiry into his actions. For such conduct, the House of Representatives asks this body to remove the President from office and prohibit him from ever again serving in a position of public trust. As both a judge and juror, this Senator asks first whether the conduct alleged rises to the level of an offense that unquestionably demands removal. If it does, I ask whether the House has proven beyond a reasonable doubt that the conduct actually occurred. The House’s case clearly fails on the first of those questions. Accordingly, I will vote not guilty on both articles.

The President’s request, taken at face value, is not impeachable conduct. A President is not prohibited by law or any other restriction from engaging the assistance of a foreign ally in an anti-corruption investigation. The House attempts to cure this defect by suggesting that the President’s subjective motive—political advantage—is enough to turn an otherwise unimpeachable act into one that demands permanent removal from office. I will not lend my vote in support of such an unnecessary and irreversible break from the Constitution’s clear standard for impeachment.

The Senate is an institution of precedent. We are informed and often guided, especially in times like this, by history and the actions of our predecessors. While we look to history, however, we must be mindful of the reality that our choices make history, for better or for worse. What we say and do here necessarily becomes part of the roadmap for future Presidential impeachments and their consideration by this body. These days, that reality can be difficult to keep front and center. Partisan fervor to convict or acquit a President of the United States who has been impeached can lead to cut corners, overheated rhetoric, and rushed results. We are each bound by the special oath we take while sitting as a Court of Impeachment to “do impartial justice according to the Constitution and laws.” But as President pro tempore, I recognize we must also do justice to the Senate as an institution and to the Republic that it serves.

This trial began with a full and fair opportunity to debate and amend the rules that would guide our process. The Senate considered and voted on 11 separate amendments to the resolution, over the span of nearly 13 hours. Consistent with precedent, the Senate

adopted a resolution to allow the same length of time for opening arguments and questions as was agreed to unanimously in 1999 during the Clinton impeachment trial. Consistent with precedent, the Senate agreed to table the issue of witnesses and additional evidence until after the conclusion of questions from Members. Consistent with precedent, the Senate engaged in a robust and open debate on the necessity of calling witnesses and pursuing additional evidence. We heard nearly 24 hours of presentation from the House managers, nearly 12 hours of presentation from the President's counsel, and we engaged in 16 hours of questioning on both sides.

Up to today, the Senate has sat as a Court of Impeachment for a combined total of over 70 hours. The Senate did not and does not cut corners, nor can the final vote be credibly called a rushed result or anything less than the product of a fair and judicious process. Future generations, if faced with the toxic turmoil of impeachment, will be better served by the precedent we followed and the example we set in this Chamber. I cannot in good conscience say the same of the articles before us today.

I have said since the beginning of this unfortunate episode that the House's articles don't, on their face, appear to allege anything satisfying the Constitution's clear requirement of "Treason, Bribery, or other high Crimes and Misdemeanors." Yet I took my role as a juror seriously. I committed to hear the evidence in the record and to reflect on the arguments made. After 9 days of presentation and questions and after fully considering the record as presented to the Senate, I am convinced that what the House is asking us to do is not only constitutionally flawed but dangerously unprecedented.

The House's first article, impeaching the President for "abuse of power," rests on objectively legal conduct. Until Congress legislates otherwise, a President is well within his or her legal and constitutional authority, as the head of state, to request that a foreign leader assist with an anti-corruption investigation falling outside of the jurisdiction of our domestic law enforcement authorities. Short of political blowback, there is also nothing in the law that prohibits a President from conditioning his or her official acts upon the agreement by the foreign leader to carry out such an investigation.

In an attempt to cure this fundamental defect in its charge, the House's "abuse of power" article sets out an impermissibly flexible and vague standard to justify removing the Chief Executive from office. As the House's trial brief and presentation demonstrated, its theory of the case rests entirely on the President's subjective motive for carrying out objectively permissible conduct. For two reasons, this cannot be sustained.

First, the House would seemingly have the Senate believe that motive by itself is sufficient to prove the illegality of an action. House managers repeatedly described the President's "corrupt motive" as grounds for removal from office. But this flips basic concepts in our justice system upside down and represents an unprecedented expansion of the scope of the impeachment authority. With limited exception, motive is offered in court to show that the defendant on trial is the one who most likely committed the illegal act that has been charged. Jealousy might compel one neighbor to

steal something from the other. But a court doesn't convict the defendant for a crime of jealousy. Second, let's assume, however, that motive could be grounds for impeachment and removal. The House offers no limiting principle or clear standard whatsoever of what motives are permissible. Under such an amorphous standard, future Houses would be empowered to impeach Presidents for taking lawful action for what the House considers to be the wrong reasons.

The House also gives no aid to this institution or to our successors on whether impeachment should rest on proving a single, "corrupt" motive or whether mixed motive suffices under their theory for removing a President from office. In its trial brief presented to the Senate, the House asserts that there is "no credible alternative explanation" for the President's alleged conduct. This formulation, in the House's own brief, necessarily implies that the presence of a credible alternative explanation for the President's conduct would defeat the "abuse of power" theory. But once the Senate heard the President's counsel's presentation, the House changed its tune. Even a credible alternative explanation—or multiple benign motives—shouldn't stop this body from removing the President, so long as one "corrupt" motive is in the mix. This apparent shift in trial strategy seems less indicative of a cohesive theory and more reflective of an "impeach-by-any-means-necessary" mindset. But reshaping their own standard mid-trial only served to undercut their initial arguments.

Simply asserting at least 63 times, as the House managers did, during the trial that their evidence was "overwhelming" and that the President's guilt was proven does not make the underlying allegations accurate or prove an impeachable offense. Even in the midst of questions and answers, after opening arguments had concluded, the House managers started repeating the terms "bribery" and "extortion" on the floor of the Senate, while neither appears anywhere in the House's articles. These are serious, statutory crimes that have specific elements of proof; they shouldn't be casually used as window dressing to inflame the jury. And the House's attempts to shoehorn those charges into their articles is itself a due process violation.

It is not the Senate's job to read into the House's articles what the House failed or didn't see fit to incorporate itself. No more so is it the job of a judge to read nonexistent provisions into legislation that Congress passes and the President signs. Articles of Impeachment should not be moving targets.

The Senate, accordingly, doesn't need to resolve today the question of whether a criminal violation is necessary for a President's conduct to be impeachable. The text of the Constitution and the Framers' clear intent to limit the scope of the impeachment power counsels in favor of such a brightline rule. And until this episode, no President has been impeached on charges that didn't include a violation of established law. Indeed, the only Presidential impeachments considered by this body included alleged violations of laws, and both resulted in acquittals. But the stated ambiguities surrounding the House's "abuse of power" theory, acknowledged even by the House managers, give this Senator reason enough to vote

not guilty. If we are to lower the bar of impeachment, we better be clear on where the bar is being set.

The President himself, however, should not conclude from my vote that I think his conduct was above reproach. He alone knows what his motives were. The President has a duty to the American people to root out corruption no matter who is implicated. And running for office does not make one immune from scrutiny. But the President's request was poorly timed and poorly executed, and he should have taken better care to avoid even the mere appearance of impropriety. Had he done so, this impeachment saga might have been avoided altogether. It is clear that many of the President's opponents had plans to impeach him from the day he took office. But the President didn't have to give them this pretense.

The House's second article, impeaching the President for "obstruction of Congress," is equally unprecedented as grounds for removal from office and patently frivolous. It purports that, if the President claims constitutional privileges against Congress, "threatens" to litigate, or otherwise fails to immediately give up the goods, he or she must be removed from office.

I know a thing or two about obstruction by the executive branch under both Democrat and Republican administrations. Congressional oversight—rooting out waste, fraud, and abuse—is central to my role as a Senator representing Iowa taxpayers and has been for 40 years. If there is anything as sure as death and taxes, it is Federal agencies resisting Congress' efforts to look behind the curtain. In the face of obstruction, I don't retreat. I go to work. I use the tools the Constitution provides to this institution. I withhold consent on nominees until I get an honest answer to an oversight request. I work with my colleagues to exercise Congress's power of the purse. And when necessary, I take the administration to court. That is the very core of checks and balances. For years, I fought the Obama administration to obtain documents related to Operation Fast and Furious. I spent years seeking answers and records from the Obama administration during my investigation into Secretary Clinton's mishandling of highly classified information.

Under the House's "obstruction of Congress" standard, should President Obama have been impeached for his failure to waive privileges during the course of my and other committees' oversight investigations? We fought President Obama on this for 3 years in the courts, and we still didn't end up with all we asked for. We never heard a peep from the Democrats then. So the hypocrisy here by the House Democrats is on full display.

When I face unprecedented obstruction, I don't agitate to impeach. Rather, my office aggressively negotiates, in good faith, with the executive branch. We discuss the scope of questions and document requests. We discuss the intent of the inquiry to provide context for the requested documents. We build an airtight case and demand cooperation. Negotiations are difficult. They take time.

In the case before us, the House issued a series of requests and subpoenas to individuals within the White House and throughout the administration. But it did so rather early in its inquiry. The House learned of the whistleblower complaint in September, issued subpoenas for records in October, and impeached the President by December, 4 months from opening the inquiry to impeachment for

“obstruction.” As one who can speak from experience, that is unreasonable and doesn’t allow an investigation to appropriately and reasonably run its course. That timeline makes clear to me that the House majority really had one goal in mind: to impeach the President at all costs, no matter what the facts and the law might say. Most importantly, the House failed to exhaust all legal remedies to enforce its requests and subpoenas. When challenged to stand up for the legality of its requests in court, the investigating committee simply retreated. Yet, now, the House accuses the Senate of aiding and abetting a coverup, if we don’t finish their job for them. The evidence is “overwhelming,” yet the Senate must entertain more witnesses and gather more records that the House chose to forgo.

The House’s failure to proceed with their investigation in an orderly, reasonable, good-faith manner has created fundamental flaws in its own case. They skipped basic steps. It is not the job of the Senate to fix the fundamental flaws that directly result from the House’s failure to do its job. The House may cower to defend its own authority, but it will not extort and demean this body into cleaning up a mess of the House’s own making.

For the myriad ways in which the House failed to exercise the fundamentals of oversight, for the terrible new precedent the House wants us to endorse, and for the risk of future generations taking it up as the standard, I will vote not guilty on the obstruction article.

Now, there has been much discussion and debate about the whistleblower whose complaint framed the House’s inquiry in this case. I have worked for and with whistleblowers for more than 30 years. They shed light on waste, fraud, and abuse that ought to be fixed and that the public ought to know about, all frequently at great personal cost. Whistleblowers are patriots, and they are heroes. I believed that in the 1980s. I believe it today. I have sponsored, co-sponsored, and otherwise strongly supported numerous laws designed to strengthen whistleblowers protections. I have reminded agencies of the whistleblowers’ rights to speak with us and of their protection under the law for doing so. And this is how it works. Of course, it is much better to have firsthand information because it is more reliable. However, whether it is firsthand information or secondhand, it is possible to conduct a thorough investigation of a whistleblower’s claims and respect his or her request for confidentiality.

As I said in October of last year, attempts by anyone in government or the media to “out” a whistleblower just to sell an article or score a political point is not helpful. It undermines the spirit and purpose of the whistleblower protection laws. I remember very well the rabid, public lashing experienced by the brave whistleblowers who came to me about the Obama administration’s Operation Fast and Furious. President Obama’s Justice Department worked overtime to discredit them and tarnish their good names in the press, all to protect an operation that it tried to keep hidden from Congress and the American people, and that resulted in the death of an American Border Patrol agent. That was not the treatment those whistleblowers deserved. It is not the treatment any whistleblower deserves, who comes forward in good faith, to report what he or she truly believes is waste, fraud, or abuse.

But whistleblower claims require careful evaluation and follow up, particularly because their initial claim frames your inquiry and forms the basis for further fact finding. The questions you ask and the documents and witnesses you seek all start there. Any investigator worth their salt will tell you that part of the investigative process involving a whistleblower, or indeed any witness, requires the investigator to evaluate that individual's claim and credibility. It is standard procedure. So we talk to the whistleblowers, we meet with them when possible, we look at their documents. We keep them confidential from potential retaliators, but not from the folks who need to speak with them to do their jobs. When whistleblowers bring to us significant cases of bipartisan interest, where we have initially evaluated their claim and credibility and determined that the claim merits additional follow up, we also frequently work closely with the other side to look into those claims.

We have done many bipartisan investigations of whistleblowers' claims over the years and hopefully will continue to do so. We trust the other side to respect the whistleblower's confidence as well and treat the investigation seriously. We have also worked with many witnesses in investigations who want to maintain low profiles and who request additional security measures to come and speak with us. We are flexible on location. We have the Capitol Police. We have SCIFs. We have interviewed witnesses in both classified and unclassified settings. We are willing to work with those witnesses to make them comfortable and to ensure they are in a setting that allows them to share sensitive information with us.

I know the House committees, particularly the oversight committees, have all taken that course themselves. They routinely work with whistleblowers too. Both sides understand how to talk to whistleblowers and how to respect their role and confidentiality. So why no efforts were taken in this case to go through these very basic, bipartisan steps is baffling. I do not under any circumstances support reprisal or efforts to throw stones without facts. But neither do I support efforts to skirt basic fundamental investigative procedures to try and learn those facts. I fear that, to achieve its desired ends, the House weaponized and politicized whistleblowers and whistleblower reporting for purely partisan purposes. I hope that the damage done from all sides to these decades-long efforts will be short lived.

Finally, throughout my time on the Judiciary Committee, including as chairman, I have made it a priority to hold judicial nominees to a standard of restraint and fidelity to the law. As judges in the Court of Impeachment, we too should be mindful of those factors which counsel restraint in this matter.

To start, these articles came to the Senate as the product of a flawed, unprecedented and partisan process. For 71 of the 78 days of the House's expedited impeachment inquiry, the President was not permitted to take part or have agency counsel present. Many of the rights traditionally afforded to the minority party in impeachment proceedings were altered or withheld. And an authorizing vote by the full House didn't occur until 4 weeks after hearings had already begun. When the articles themselves were put to a vote by the full House, just in time for Christmas, the only bipartisanship we saw was in opposition. Moreover, the Iowa caucuses

have already occurred. The 2020 Presidential election is well underway. Yet we are being asked to remove the incumbent from the ballot, based on Articles of Impeachment supported by only one party in Congress. Taken together, the Senate should take no part in endorsing the dangerous new precedent this would set for future impeachments.

With more than 28,000 pages of evidence, 17 witnesses, and over 70 hours of open, transparent consideration by the Senate, I believe the American people are more than adequately prepared to decide for themselves the fate of this President in November. This decision belongs to them.

When the Chief Justice spoke up at the start of this trial to defuse some rising emotions, he challenged both sides addressing the Chamber to “remember where they are.” We, too, should remember where we are. The U.S. Senate has ably served the American people through trying times. These are trying times. And when this trial adjourns, the cloud of impeachment may not so quickly depart. But if there is any institution best equipped to help bridge the divide and once again achieve our common goals, it is this one.

Let’s get back to work for the People.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR PATRICK J. LEAHY

Mr. LEAHY. Mr. President, the question before us is incredibly serious, but it is also more than a little absurd. We are sitting as a court, exercising the sole power to try impeachments, entrusted to us by the Framers. The President of the United States has been charged with high crimes—a constitutional charge of abuse of power that includes in its text each of the elements of criminal bribery. The President’s lawyers have complained all week about the absence of sworn testimony from officials with firsthand knowledge of the President’s actions and intent. They claim not to know when the President froze the aid. They falsely claim there is no evidence the President withheld the aid in exchange for his political errand—announcing an investigation into his political rival. And yet whenever the President’s counsels have pled ignorance or claimed a lack of evidence, they ask not that we pursue the truth; they ask instead that we look away.

The Senate simply cannot look away. In the 220 years this body has served as a constitutional court of impeachment, we have never refused to look at critical evidence sitting in front of us. We have never raced to a pre-ordained verdict while deliberately avoiding the truth or evaluating plainly critical evidence.

And when I say “sitting in front of us,” I mean that literally. Just this morning, we learned that Pat Cipollone, lead counsel for the President, along with Rudy Giuliani and Mick Mulvaney, was part of a meeting where President Trump directed John Bolton to “ensure [President] Zelensky would meet with Mr. Giuliani.” A meeting with the President’s personal lawyer is not subject to executive privilege; and a meeting with Bolton and Mulvaney is not subject to attorney-client privilege. And this afternoon we received a prof-

fer from Lev Parnas's attorney, claiming that Parnas could provide us with testimony implicating several Cabinet officials and Members of Congress in the President's scheme. I cannot say whether that is credible, but shouldn't he at least be heard and cross-examined? The Senate cannot turn a blind eye to such directly relevant evidence.

This slipshod process reminds me of another trial. That was the trial of Alice in Wonderland. In that trial, the accusation was read, and the King immediately said to the jury, "Consider your verdict." But even in that case it was acknowledged that "There's a great deal to come before that," and the first witness was called. With apologies to Lewis Carroll, surely the U.S. Senate can at least match the rigorous criminal procedure of Wonderland?

The oath that each of us swore just 2 weeks ago requires that we do "impartial justice." Reasonable people can disagree about what that means, but every single time this body has sat as a court—every single time—it has heard from witnesses and weighed sworn testimony. We have never been denied the opportunity to hear from critical witnesses with firsthand information. During the Johnson trial, this court heard live testimony from 41 witnesses, including private counsel for the President and a Cabinet secretary. During the Clinton trial, three witnesses were deposed, and we considered the grand jury testimony of the President's chief of staff, deputy chief of staff, and White House Counsel—plus the grand jury testimony of the President himself. "Impartial justice" cannot mean burying our collective heads in the sand, and preventing relevant, probative testimony from being taken.

Briefly, I also want to address the arguments made against calling witnesses. The President has said that "Witnesses are up to the House, not up to the Senate." But the Senate has never been, and should not be now, limited to the House record. The Senate's constitutional obligation to try impeachments stands independent of the House's obligation. The Constitution does not allow the House's action or inaction to limit the evidence and testimony the Senate can and must consider. The last time we sat as a court we heard from 26 witnesses in total, including 17 who had not testified before the House. Seventeen.

Some have also said that calling witnesses like John Bolton would leave us tangled up in an endless court battle over executive privilege. Not so. The Senate alone has the "sole Power to try all Impeachments," and the Chief Justice reminded us just a few years ago in *Zivotofsky v. Clinton* that article III courts cannot hear cases "where there is a textually demonstrable constitutional commitment of the issue to a coordinate political department." And in *Walter Nixon v. United States*, the Supreme Court expressly ruled out "[j]udicial involvement in impeachment proceedings, even if only for purposes of judicial review."

Moreover, and more simply, executive privilege cannot prevent testimony from a private citizen like Bolton who is willing to testify. And, in any event, the President has almost certainly waived any claim to privilege by endlessly tweeting and talking to the media about his conversations with Bolton. The Senate is not helpless. We are the only court with jurisdiction. We can and should resolve these questions.

Let us conduct this trial with the seriousness it deserves—consistent with Senate precedent, the overwhelming expectations of the American people, and how every other trial across the country is conducted every single day.

As Senators, we are here to debate and vote on difficult questions. I understand this may be a difficult question politically—but it is nowhere close to a difficult question under the law or common sense. I do not believe for 1 second that any of us sought public office to become an accomplice to what can only be described as a cover-up. As the Chief Justice has reminded us, we have the privilege of serving in the world's greatest deliberative body. So let's actually deliberate.

But if we adopt the rule—rejected even in Wonderland—of verdict first, witnesses later, be assured those witnesses will eventually follow. Whether through FOIA, journalism, or book releases, the American people will learn the truth, likely sooner rather than later. Maybe even over the upcoming weekend. What will they think of a Senate that went to such extraordinary lengths—ignoring 220 years of precedent, any notions of fairness or respect for facts, and indeed ignoring our duties to the Constitution itself—to keep the truth buried?

A vote to preclude witnesses will embolden this President to further demean the Congress, this Senate, and the balance of power so carefully established by the Framers in the Constitution. It will ratify the President's shell game of telling the House it should sue to enforce its subpoenas and then telling courts that the House has no standing to do so. Just today, after a week of his counsel arguing that the President cannot be impeached for failing to respond to House subpoenas, the Justice Department argued in court that the House can use its impeachment power to enforce its subpoenas. It is up to all 100 of us to put a stop to this nonsense.

I have served in this body for 45 years. It is not often we face votes like this—votes that will leave a significant mark on history and will shape our constitutional ability to serve as a check against presidents for generations to come. I pray the Senate is worthy of this responsibility and of this moment. I fear the repercussions if it is not.

I will vote to hear from witnesses. With deep respect, I ask my fellow Senators to do the same.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR MICHAEL B. ENZI

Mr. ENZI. Mr. President, I rise today to speak on the trial of President Trump.

After information from more than a dozen witnesses, over a hundred questions, and days of oral arguments, I believe the House failed to prove its case for the two Articles of Impeachment. The House's story relies on too much speculation, guessing games and repetition. It fails to hold up under scrutiny. The House claims to have proven its case, but insists on more evidence. It was the House's responsibility to ensure it had developed a complete record

of the evidence it needed to make its case, and it is not up to the Senate to start the process over again.

There were contradictions in the House's case from the very beginning. The House counted on repetition to make its claims seem true, but often didn't provide the underlying evidence. For example, the House managers relied on telephone records for timing, but speculated on the content of the calls.

The House managers claimed the President wanted to influence an election, but it is difficult to see how the House's rush to bring this case in such a haphazard manner is nothing more than an attempt to influence the 2020 election. The House managers asked the Senate to do additional witnesses in 1 week, which could mean the Senate would essentially have to start the trial all over.

I not only can't call their efforts adequate, I have to say they have been entirely inadequate. Consequently, I did not vote for more witnesses or more evidence and will vote to acquit the President on both counts.

I hope we can learn from everything we do, especially in regard to impeachment. The animosity toward President Trump is unprecedented, and I believe it is the reason we have ended up where we are today. I believe we should give each newly elected President a chance to show what he or she can do. We should provide them the opportunity to prove themselves and demonstrate our faith in our country and its leadership.

We have to give the President an opportunity to lead or even to fail. Unfortunately, President Trump was promised an impeachment from the day he was elected, before he even took his oath of office. On the day of his inauguration, before any official act, there were riots where, and I quote from the New York Times, "protesters threw rocks and bricks at police officers, set a car on fire and shattered storefront windows." I have never seen that kind of conduct before stemming from the result of our democratic process. I hope to never see it again.

The obstruction continued as President Trump's nominations were held up in an unprecedented way. This obstruction kept the new President from getting his key people in place. The few nominations approved had to work with career or hold-over staff from the previous administration. We have read in news articles that some of those staffers not only disliked their new bosses, but they tried to actively undercut their policies. Sometimes they even delayed or used inaction or gave adverse advice. These types of tactics were used to put blame on their boss and on President Trump, and that ultimately hurt our country, too.

Again, almost immediately after the election came the call for investigations, ending with the appointment of Special Counsel Robert Mueller. This investigation went on for almost 2 years. When the Mueller investigation didn't yield the desired results, the President's detractors returned to the continuing cry for an impeachment. The volume and pitch increased even as the 2020 election got closer.

Eventually, the House of Representatives found its latest accusation. Yet, not willing to conduct a thorough impeachment investigation and wanting to reach a foregone conclusion as the election year approached, the House of Representatives hurried its inves-

tigation so it would be done before Christmas and the Senate would be forced to address these articles as a new year started. Ironically, after all that rushing and taking shortcuts, the House delayed sending the articles to the Senate until the new year. All of this was just the latest example of the efforts to block President Trump's agenda.

I have now served in two Presidential impeachment trials, one during my first term and this one in my last. I have never underestimated the responsibility of the task at hand or forgotten the oaths I took to uphold the Constitution. There are few duties Senators will face as grave as deciding the fate of the President of the United States, but just like 21 years ago, this decision is about country, not politics. These experiences have helped refine my views, which I will now share.

Our Forefathers did well setting the trial in the Senate where it takes a two-thirds majority, currently 67 votes, to convict. They could see the difficulty it would bring to the Nation if impeachment could easily be convicted by a slight majority. Even though it is not the law, I would counsel the House not to impeach without at least a three-fifths vote in their own body, and that should include some number from the minority party.

I have also come to believe that impeachment should be primarily about a criminal activity. Impeachment is inherently undemocratic because it reverses an election, so in election years, the bar for considering impeachment and removal goes even higher. Ultimately, the American people should and will have the final say.

The House of Representatives must also be sure to complete its investigation. It shouldn't send the Senate impeachment charges and then expect the Senate to continue gathering more evidence. The House should subpoena witnesses and deal with defense claims such as privilege, even if that means going through the judicial process rather than placing such a burden on the Senate.

The House cannot simply rely on repetition of possibilities of violations, no matter how many times stated, to make their accusations true. A complete investigation means the investigators don't rush to judgment, don't speculate about the content of calls, and don't rely on repetition of accusations about the content of such calls as a substitute for seeking the truth.

During the initial investigation, witnesses should have already been deposed by both sides before it comes to the Senate. The President's counsel must be allowed to cross-examine all persons deposed by the House. Then, and only then, can any of the witnesses be called to testify at the Senate trial. The House investigation has to be complete.

Finally, I would call for our outside institutions to also think about how they contribute to the well-being of our country. I have often said that conflict sells. It might even increase sales to consumers of news for both parties, but I fear that we are all treating this like a sport, speculating which team will win and which will lose. I suspect that some venomous statements about this process have ended some friendships and strained some families. In the end, if we lose faith in our institutions, our friends, and our families, we will all lose.

We desperately need more civility. That is simply being nice to each other. My mom said, “Bad behavior is inexcusable.” It violates the Golden Rule as revised by my mom, “Do what’s right. Do your best. Treat others as THEY wish to be treated.” One of the first movies I saw was the now-ancient animated picture, “Bambi.” I am reminded of the little rabbit saying, “My Mom always says, if you can’t say something nice, don’t say anything at all!” I believe we all agree on at least 80 percent of most issues, but the trend seems to be shifting to concentrate on the other 20 percent we don’t agree on. That 20 percent causes divisiveness, opposition, venomous harsh words, and anger.

Too often, it feels like our Nation is only becoming more divided, more hostile. I do not believe that our country will ever be able to successfully tackle our looming problems if we continue down this road. As we move forward from this chapter in our Nation’s history, I hope that we will focus more on our shared goals that can help our Nation, and not the issues that drive us apart.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR RICHARD BURR

Mr. BURR. Mr. President, in my 25 years representing North Carolina in Congress, I have cast thousands of votes, each with its own significance. The ones that weigh most heavily are those that send our men and women in uniform into armed conflict. Those are the votes I spend the most time debating before casting—first and foremost because of the human cost involved but secondly because they hold the power to irrevocably set the course of American history.

With similar consideration, I have taken a sober and deliberate approach to the impeachment proceedings of the last few weeks, conscious of my constitutional responsibility to serve as an impartial juror.

As the investigative body, the House has charged President Trump with abuse of power and obstruction of Congress. The Senate’s role is to determine whether the House has proven its case beyond a reasonable doubt and whether, if true, these charges rise to the level of removing the President from office.

After listening to more than 70 hours of arguments from the House managers and the President’s counsel, I have concluded that the House has not provided the Senate with a compelling reason for taking the unprecedented and destabilizing step of removing the President from office.

In my role as chairman of the Senate Intelligence Committee, I have visited countries all over the world. What separates the United States from every other nation on Earth is our predictable, peaceful transitions of power. Every 4 years, Americans cast their ballots with the confidence their vote will be counted and the knowledge that both winners and losers will abide by the results.

To remove a U.S. President from office, for the first time in history, on anything less than overwhelming evidence of “Treason, Bribery, or High Crimes and Misdemeanors” would effectively overturn the will of the American people.

As the Speaker said last year, “Impeachment is so divisive to the country that unless there’s something so compelling and overwhelming and bipartisan, I don’t think we should go down that path, because it divides the country.”

I believe the Speaker was correct in her assessment. A year later, however, the House went down that exact path, choosing to conduct a highly partisan impeachment inquiry, with underwhelming evidence, in a deeply flawed process.

The House had ample opportunity to pursue the answers to its inquiry in order to prove their case beyond a reasonable doubt. They chose not to do so. Instead, investigators followed an arbitrary, self-imposed timeline dictated by political, rather than substantive, concerns.

For example, the House did not attempt to compel certain witnesses to testify because doing so would have meant confronting issues of executive privilege and immunity. They argued navigating executive privilege—something every administration lays claim to—may have caused some level of delays and involved the courts.

At the time, the House justified their decision by claiming the issue was too important, too urgent, for any delays. Yet, after the House voted on the Articles of Impeachment, the Speaker waited 4 full weeks before transmitting the articles to the Senate. Those were weeks the House could have spent furthering its inquiry, had it not rushed the process. Instead, without a hint of irony, House leadership attempted to use that time to pressure the Senate into gathering the very witness testimony their own investigators chose not to pursue.

Additionally, in drafting the Articles of Impeachment, the House stated President Trump committed “Criminal bribery and honest services wire fraud,” two crimes that carry penalties under our Criminal Code. Inexplicably, the House chose not to include those alleged criminal misdeeds in the articles sent to the Senate, much less argue them in front of this body.

At every turn, it appears the House made decisions not based on the pursuit of justice but on politics. When due process threatened to slow down the march forward, they took shortcuts. When evidence was too complicated to obtain or an accusation did not carry weight, the House created new, flimsy standards on the fly, hoping public pressure would sway Senate jurors in lieu of facts.

The Founding Fathers who crafted our modern impeachment mechanism predicted this moment and warned against a solely partisan and politically motivated process.

In Federalist 65, Alexander Hamilton wrote, “In many cases [impeachment] will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence, and interest on one side or on the other; and in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt.”

Hamilton believed impeachment was a necessary tool but one to be used when the evidence of wrongdoing was so overwhelming, it elevated the process above partiality and partisanship. The House has failed to meet that standard.

The Founders also warned against using impeachment as recourse for management or policy disagreements with the President.

Prior to America's founding, impeachment had been used for centuries in England as a measure to reprimand Crown-appointed officials and landed gentry. At the time, it included the vague charge of "maladministration," as well.

During the Constitutional Convention in 1787, George Mason moved to add "maladministration" to the U.S. Constitution's list of impeachable offenses, asking: "Why is the provision restrained to Treason & bribery only? Treason as defined in the Constitution will not reach many great and dangerous offences. Attempts to subvert the Constitution may not be Treason as above defined."

I submit for this body James Madison's response: "So vague a term will be equivalent to a tenure during the pleasure of the Senate."

Madison knew that impeachment based purely on disagreements about governance would turn the U.S. Congress into a parliamentary body, akin to those tumultuous coalitions in Europe, which could recall a President on little more than a whim. To do so would subordinate the Executive to the Congress, rather than delineating its role as a coequal branch of our Federal Government. And with political winds changing as frequently then as they do now, he saw that every President could theoretically be thus impeached on fractious and uncertain terms.

In a functioning democracy, the President cannot serve at "the pleasure of Senate." He must serve at the pleasure of the people.

Gouverneur Morris supported Madison's argument, adding at the time: "An election every four years will prevent maladministration."

Thus "maladministration" was not made an impeachable offense in America, expressly because we have the recourse of free and fair elections.

I bring up this story for two reasons. First, the Founder's decision signals to me they felt strongly that an impeachable offense must be a crime akin to treason, bribery, or an act equally serious, as defined in the Criminal Code. Second, this story tells me the Founders believed anything that does not meet the constitutional threshold should be navigated through the electoral process.

By that standard, I do not believe the Articles of Impeachment presented to the Senate rise to the level of removal from office, nor do I believe House managers succeeded in making the case incumbent upon them to prove. Given the weak underpinnings of the articles themselves and the House's partisan process, it would be an error to remove the President mere months before a national election; therefore, I have concluded I will vote to acquit President Donald J. Trump on both Articles of Impeachment.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR AMY KLOBUCHAR

Ms. KLOBUCHAR. Mr. President, today is a somber day for our country. As Senators, we are here as representatives of the American people. It is our duty, as we each swore to do when we took

our oath of office, to support and defend the Constitution. We also took an oath, as judges and jurors in this proceeding, to pursue “impartial justice” as we consider these articles—including the serious charge that the President of the United States leveraged the power of his office for his own personal gain.

Those are the oaths that the Framers set out for us in the Constitution, to guide the Senate in its oversight responsibilities. The Framers believed that the legislative branch was best positioned to provide a check on the Executive. They envisioned that the separation of powers would allow each branch of government to oversee the other. They also knew, based on their experience living under the British monarchy, that someday a President might corrupt the powers of the office. William Davie from North Carolina was particularly concerned that a President could abuse his office by sparing “no efforts or means whatever to get himself reelected.”

So the Framers put in place a standard that would cover a range of Presidential misconduct, settling on: “Treason, Bribery, or other high Crimes and Misdemeanors.” As Alexander Hamilton explained in Federalist 65, the phrase was intended to cover the “abuse or violation of some public trust” and “injuries done immediately to society itself.” The Framers designed a remedy for this public harm: removal from public office. So now we are here as judge and jury to try the case and to evaluate whether the President’s acts have violated the public trust and injured our democracy.

I am concerned of course that the Senate has decided that we must make this decision without all the facts. With a 51 to 49 vote, the Senate blocked the opportunity to call witnesses with firsthand knowledge or to get relevant documents. Fairness means evidence—it means documents, and it means witnesses. In every past impeachment trial in the Senate, in this body’s entire 231-year history, there have been witnesses. There is no reason why the Senate should not have called people to testify who have firsthand knowledge of the President’s conduct, especially if, as some of my colleagues have suggested, you believe the facts are in dispute.

During the question period, I asked about the impeachment of Judge Porteous in 2010. I joined several of my colleagues in serving on the trial committee. We heard from 26 witnesses in the Senate, 17 of whom were new witnesses who had not previously testified in the House. What possible reason could there be for allowing 26 witnesses in a judicial impeachment trial and zero in a President’s trial? How can we consider this a fair trial if we are not even willing to try and get to the truth?

We do not even have to try and find it. John Bolton has firsthand knowledge about central facts in this case, and he said he would comply with a subpoena from the Senate. We also know there are documents that could verify testimony presented in the House, like records of emails sent between administration officials in the days after the July 25 call. We cannot ignore this evidence—we have a constitutional duty to consider it.

And since this trial began, new evidence has continued to emerge. One way or another, the truth is going to come out. I believe that history will remember that the majority in this body did not seek out the evidence and instead decided that the President’s alleged corrupt acts did not even require a closer look.

But even without firsthand accounts and without primary documents, the House managers have presented a compelling case. I was particularly interested in the evidence that the managers presented showing that the President's conduct put our national security at risk by jeopardizing our support for Ukraine.

Protecting Ukraine's fragile democracy has been a bipartisan priority. I went to Ukraine with the late Senator John McCain and Senator LINDSEY GRAHAM right after the 2016 election to make clear that the United States would continue to support our ally Ukraine in the face of Russian aggression—that we will stand up for democracy. As the House managers stressed, it is in our national security interest to strengthen Ukraine's democracy. The United States has 60,000 troops stationed in Europe, and thousands of Ukrainians have died fighting Russian forces and their proxies.

Our Nation's support for Ukraine is critically needed. Ukraine is at the frontline of Russian aggression, and since the Russians invaded Crimea in 2014, the United States has provided over \$1.5 billion in aid. Russia is watching everything we do. So this summer, as a new Ukrainian President prepared to lead his country and address the war with Russia, it was critical that President Trump showed the world that we stand with Ukraine. Instead, President Trump decided to withhold military security assistance and to deny the Ukrainian President an Oval Office meeting. In doing so, he jeopardized our national security interests and put the Ukrainians in danger. But worse yet, he did so to benefit himself.

Testimony from the 17 current and former officials from the President's administration made it clear that the President leveraged the power of his office to pressure Ukraine to announce an investigation into his political rival. These brave public servants defied the President's order and agreed to testify about what happened despite the risks to their careers. Former U.S. Ambassador to Ukraine Marie Yovanovitch showed particular courage, testifying before the House even as the President disparaged her on Twitter. And I will never forget when Lieutenant Colonel Vindman testified and sent a message to his immigrant father, saying, "Don't worry Dad, I will be fine for telling the truth."

As Manager SCHIFF said, in our country "right matters." What is right and wrong under our Constitution does not turn on whether or not you like the President. It is not about whether the disregard for its boundaries furthers policies that you agree or disagree with. It is about whether it remains true that in our country, right matters. Through his actions, the President compromised the security of our ally Ukraine, invited foreign interference in our elections, and undermined the integrity of our democratic process—conduct that I believe the Framers would see as an abuse of power and violation of his oath of office.

The Articles of Impeachment include a second charge: that the President used the powers of his office to prevent Congress from investigating his actions and attempted to place himself above the law.

Unlike any President before him, President Trump categorically refused to comply with any requests from Congress. Even President Nixon directed "all the president's men" to comply with congress-

sional requests. Despite that history, President Trump directed every member of his administration not to comply with requests to testify and also directed the executive branch not to release a single document.

The President's refusal to respect the Congress's authority is a direct threat to the separation of powers. The Constitution gives the House the "sole power of impeachment," a tool of last resort to provide a check on the president. By refusing to cooperate, the President is attempting to erase the Congress's constitutional power and to prevent the American people from learning of his misconduct. As we discussed during our questions, the President is asserting that his aides have absolute immunity, a proposition that Federal courts have consistently rejected. Manager Demings warned, "absolute power corrupts absolutely."

But this President has taken many steps to place himself above the law. This administration has taken the position that a sitting President cannot be indicted or prosecuted. This President has argued that he is immune from State and criminal investigations. And now we are being asked to say that the Constitution's check on a President's power, as set out by the Framers, cannot prevent a President from abusing his power and covering it up.

During the trial, we have heard this directly from the President's defense. In the words of Alan Dershowitz, "If a president does something which he believes will help him get elected—in the public interest—that cannot be the kind of quid pro quo that results in impeachment." These echo the words of an impeached President, Richard Nixon, who said: "When the president does it, that means it is not illegal." We cannot accept that conclusion. In this country the President is not King, the law is King. But if the Senate looks past the President's defiance of Congress, we will forever undermine our status as a coequal branch and undermine the rule of law.

So as we consider these Articles of Impeachment, I ask my colleagues to think about the consequences. Our system, designed by the Framers 232 years ago, is one not of absolute power but of power through and by the people. We are, in some ways, faced with the same question the Founders faced when they made the fateful decision to challenge the unchecked power of a King.

When signing the Declaration of Independence, John Hancock signed his name large and said, "There must be no pulling different ways. We must all hang together." Benjamin Franklin replied, "Yes, we must, indeed, all hang together, or most assuredly we shall all hang separately."

We have the opportunity today to stand together and say that the Constitution, that these United States, are stronger than our enemies, foreign and domestic, and we, together, are stronger than a President who would corrupt our democracy with an abuse of power and an attempt to deny the rights of a coequal branch of government. We do not have to agree on everything today or tomorrow or a year from now, but surely we can agree on the same basic principles: that this is a government of laws, not of men and women; that in this country, no one is above the law. If we can agree on that much, then I submit to my colleagues that the choice before us is clear.

[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR BERNARD SANDERS

Mr. SANDERS. Mr. President, an impeachment trial of a sitting President of the United States is not a matter to be taken lightly. A President should not and must not be impeached because of political disagreements or policy differences. That is what elections are for. Instead, an impeachment trial occurs when a President violates the oath he or she swore to uphold the Constitution of the United States.

Therefore, there are two questions for me to answer as a juror in the impeachment trial of President Donald J. Trump: whether President Trump is guilty of abusing his power as President for his own political gain and whether he obstructed Congress in their investigation of him.

The first Article of Impeachment charges President Trump with abuse of power when he “solicited the interference of a foreign government, Ukraine, in the 2020 United States Presidential election.” Based on the evidence I heard during the Senate trial, Trump “corruptly solicited” an investigation into former Vice President Joe Biden and his son in order to benefit his own reelection chances. To increase the pressure on Ukraine, President Trump then withheld approximately \$400 million in military aid from Ukraine. Finally, according to the charges, even when Trump’s scheme to withhold aid was made public, he “persisted in openly and corruptly urging and soliciting Ukraine to undertake investigations for his personal political benefit.” So on this first Article of Impeachment, it is my view that the President is clearly guilty.

The second Article of Impeachment asserts that Trump obstructed Congress in its investigation of Trump’s abuse of power, stating that Trump “has directed the unprecedented, categorical, and indiscriminate defiance of subpoenas issued by the House of Representatives pursuant to its ‘sole Power of Impeachment.’” According to the warped logic of the arguments presented by the President’s counsel, there are almost no legal bounds to anything a President can do so long as it benefits his own reelection. If a President cannot be investigated criminally or by Congress while in office, then he or she would be effectively above the law. President Trump, who raised absurd legal arguments to hide his actions and obstruct Congress, is clearly guilty here as well.

Now, frankly, while the House of Representatives passed two Articles of Impeachment, President Trump could have been impeached for more than just that.

For example, it seems clear that Donald Trump has violated both the domestic and foreign emoluments clauses. In other words, it appears Trump has used the Federal Government over and over to benefit himself financially.

In 2018 alone, Trump’s organization made over \$40 million in profit just from his Trump hotel in DC alone. And foreign governments, including lobbying firms connected to the Saudi Arabian Government, have spent hundreds of thousands of dollars at that hotel. That appears to be corruption, pure and simple.

In addition, as we all know, there is significant evidence that Donald Trump committed obstruction of justice with regard to the

Robert Mueller investigation by, among other actions, firing the FBI Director, James Comey.

One of the difficulties of dealing with President Trump and his administration is that we cannot trust his words. He is a pathological liar who, according to media research, has lied thousands of times since he was elected. During the trial, I posed a question to the House impeachment managers: Given that the media has documented President Trump's thousands of lies while in office—more than 16,200 as of January 20, 2020—why would we be expected to believe that anything President Trump says has credibility? The answer is that, sadly, we cannot.

Sadly, we now have a President who sees himself as above the law and is either ignorant or indifferent to the Constitution. And we have a President who clearly committed impeachable offenses.

The evidence of Trump's guilt is so overwhelming that the Republican Party, for the first time in the history of Presidential impeachment, obstructed testimony from witnesses—even willing witnesses. It defies basic common sense that in a trial to determine whether the President of the United States is above the law, the Senate would not hear from the people who could speak directly to President Trump's behavior and motive. Leader MITCH MCCONNELL's handling of this trial, unfortunately, was nothing more than a political act.

Yet this impeachment trial is about more than just the charges against President Trump. What this impeachment vote will decide is whether we believe that the President, any President, is above the law.

Last week, Alan Dershowitz, one of President Trump's lawyers, argued to the Senate that a President cannot be impeached for any actions he or she takes that are intended to benefit their own reelection. That is truly an extraordinary and unconstitutional assertion. If Trump is acquitted, I fear the repercussions of this argument would do grave damage to the rule of law in our country.

Imagine what such a precedent would allow an incumbent President to get away with for the sake of their own reelection. Hacking an opponent's email using government resources? Soliciting election interference from China? Under this argument, what would stop a President from withholding infrastructure or education funding to a given State to pressure elected officials into helping the President politically?

Let me be clear: Republicans will set a dangerous and lawless precedent if they vote to acquit President Trump. A Republican acquittal of Donald Trump won't just mean that the current President is above the law; it will give a green light to all future Presidents to disregard the law so long as it benefits their reelection.

It gives me no pleasure to conclude that President Donald Trump is guilty of the offenses laid out in the two Articles of Impeachment. I will vote to convict on both counts. But my greater concern is if Republicans acquit President Trump by undercutting the very rule of law. That will truly be remembered as a sad and dangerous moment in the history of our country.

[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR PATRICK J. TOOMEY

Mr. TOOMEY. Mr. President, I rise to speak about the House Articles of Impeachment against President Donald Trump.

In 1999, then-Senator Joe Biden of Delaware asked the following question during the impeachment trial of President Bill Clinton: “[D]o these actions rise to the level of high crimes and misdemeanors necessary to justify the most obviously antidemocratic act the Senate can engage in—overturning an election by convicting the president?” He answered his own question by voting against removing President Clinton from office.

It is this constitutionally grounded framework—articulated well by Vice President Biden—that guided my review of President Trump’s impeachment and, ultimately, my decision to oppose his removal.

House Democrats’ impeachment articles allege that President Trump briefly paused aid and withheld a White House meeting with Ukraine’s President to pressure Ukraine into investigating two publicly reported corruption matters. The first matter was possible Ukrainian interference in our 2016 election. The second was Vice President Biden’s role in firing the controversial Ukrainian prosecutor investigating a company on whose board Vice President Biden’s son sat. When House Democrats demanded witnesses and documents concerning the President’s conduct, he invoked constitutional rights and resisted their demands.

The President’s actions were not “perfect.” Some were inappropriate. But the question before the Senate is not whether his actions were perfect; it is whether they constitute impeachable offenses that justify removing a sitting President from office for the first time and forbidding him from seeking office again.

Let’s consider the case against President Trump: obstruction of Congress and abuse of power. On obstruction, House Democrats allege the President lacked “lawful cause or excuse” to resist their subpoenas. This ignores that his resistance was based on constitutionally grounded legal defenses and immunities that are consistent with longstanding positions taken by administrations of both parties. Instead of negotiating a resolution or litigating in court, House Democrats rushed to impeach. But as House Democrats noted during President Clinton’s impeachment, a President’s defense of his legal and constitutional rights and responsibilities is not an impeachable offense.

House Democrats separately allege President Trump abused his power by conditioning a White House meeting and the release of aid on Ukraine agreeing to pursue corruption investigations. Their case rests entirely on the faulty claim that the only possible motive for his actions was his personal political gain. In fact, there are also legitimate national interests for seeking investigations into apparent corruption, especially when taxpayer dollars are involved.

Here is what ultimately occurred: President Trump met with Ukraine’s President, and the aid was released after a brief pause. These actions happened without Ukraine announcing or conducting investigations. The idea that President Trump committed an impeachable offense by meeting with Ukraine’s President at the

United Nations in New York instead of Washington, DC, is absurd. Moreover, the pause in aid did not hinder Ukraine's ability to combat Russia. In fact, as witnesses in the House impeachment proceedings stated, U.S. policy in support of Ukraine is stronger under President Trump than under President Obama.

Even if House Democrats' presumptions about President Trump's motives are true, additional witnesses in the Senate, beyond the 17 witnesses who testified in the House impeachment proceedings, are unnecessary because the President's actions do not rise to the level of removing him from office, nor do they warrant the societal upheaval that would result from his removal from office and the ballot months before an election. Our country is already far too divided, and this would only make matters worse.

As Vice President Biden also stated during President Clinton's impeachment trial, "[t]here is no question the Constitution sets the bar for impeachment very high." A President can only be impeached and removed for "Treason, Bribery, or other high Crimes and Misdemeanors." While there is debate about the precise meaning of "other high Crimes and Misdemeanors," it is clear that impeachable conduct must be comparable to the serious offenses of treason and bribery.

The Constitution sets the impeachment bar so high for good reasons. Removing a President from office and forbidding him from seeking future office overturns the results of the last election and denies Americans the right to vote for him in the next one. The Senate's impeachment power essentially allows 67 Senators to substitute their judgment for the judgment of millions of Americans.

The framework Vice President Biden articulated in 1999 for judging an impeachment was right then, and it is right now. President Trump's conduct does not meet the very high bar required to justify overturning the election, removing him from office, and kicking him off the ballot in an election that has already begun. In November, the American people will decide for themselves whether President Trump should stay in office. In our democratic system, that is the way it should be.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR MARCO RUBIO

Mr. RUBIO. Mr. President, voting to find the President guilty in the Senate is not simply a finding of wrongdoing; it is a vote to remove a President from office for the first time in the 243-year history of our Republic.

When they decided to include impeachment in the Constitution, the Framers understood how disruptive and traumatic it would be. As Alexander Hamilton warned, impeachment will "agitate the passions of the whole community."

This is why they decided to require the support of two-thirds of the Senate to remove a President we serve as a guardrail against partisan impeachment and against removal of a President without broad public support.

Leaders in both parties previously recognized that impeachment must be bipartisan and must enjoy broad public support. In fact,

as recently as March of last year, Manager ADAM SCHIFF said there would be “little to be gained by putting the country through” the “wrenching experience” of a partisan impeachment. Yet, only a few months later, a partisan impeachment is exactly what the House produced. This meant two Articles of Impeachment whose true purpose was not to protect the Nation but, rather, to, as Speaker NANCY PELOSI said, stain the President’s record because “he has been impeached forever” and “they can never erase that.”

It now falls upon this Senate to take up what the House produced and faithfully execute our duties under the Constitution of the United States.

Why does impeachment exist?

As Manager JERRY NADLER reminded us last week, removal is not a punishment for a crime, nor is removal supposed to be a way to hold Presidents accountable; that is what elections are for. The sole purpose of this extraordinary power to remove the one person entrusted with all of the powers of an entire branch of government is to provide a last-resort remedy to protect the country. That is why Hamilton wrote that in these trials our decisions should be pursuing “the public good.”

Even before the trial, I announced that, for me, the question would not just be whether the President’s actions were wrong but ultimately whether what he did was removable. The two are not the same. It is possible for an offense to meet a standard of impeachment and yet not be in the best interest of the country to remove a President from office.

To answer this question, the first step was to ask whether it would serve the public good to remove the President, even if the managers had proven every allegation they made. It was not difficult to answer that question on the charge of obstruction of Congress. The President availed himself of legal defenses and constitutional privileges on the advice of his legal counsel. He has taken a position identical to that of every other administration in the last 50 years. That is not an impeachable offense, much less a removable one.

Negotiations with Congress and enforcement in the courts, not impeachment, should be the frontline recourse when Congress and the President disagree on the separation of powers. But here, the House failed to go to court because, as Manager SCHIFF admitted, they did not want to go through a yearlong exercise to get the information they wanted. Ironically, they now demand that the Senate go through this very long exercise they themselves decided to avoid.

On the first Article of Impeachment, I reject the argument that abuse of power can never constitute grounds for removal unless a crime or a crime-like action is alleged. However, even if the House managers had been able to prove every allegation made in article I, would it be in the interest of the Nation to remove the President? Answering this question requires a political judgment—one that takes into account both the severity of the wrongdoing they allege and the impact removal would have on the Nation.

I disagree with the House managers’ argument that, if we find the allegations they have made are true, failing to remove the President leaves us with no remedy to constrain this or future

Presidents. Congress and the courts have multiple ways by which to constrain the power of the Executive. And ultimately, voters themselves can hold the President accountable in an election, including the one just 9 months from now.

I also considered removal in the context of the bitter divisions and deep polarization our country currently faces. The removal of the President—especially one based on a narrowly voted impeachment, supported by one political party and opposed by another and without broad public support—would, as Manager NADLER warned over two decades ago, “produce divisiveness and bitterness” that will threaten our Nation for decades. Can anyone doubt that at least half of the country would view his removal as illegitimate—as nothing short of a coup d’état? It is difficult to conceive of any scheme Putin could undertake that would undermine confidence in our democracy more than removal would.

I also reject the argument that unless we call new witnesses, this is not a fair trial. First, they cannot argue that fairness demands we seek witnesses they did little to pursue. Second, even if new witnesses would testify to the truth of the allegations made, these allegations, even if they had been able to prove them, would not warrant the President’s removal.

This high bar I have set is not new for me. In 2014, I rejected calls to pursue impeachment of President Obama, noting that he “has two years left in his term,” and, instead of pursuing impeachment, we should use existing tools at our disposal to “limit the amount of damage he’s doing to our economy and our national security.”

Senator PATRICK LEAHY, the President pro tempore emeritus, once warned, “[A] partisan impeachment cannot command the respect of the American people. It is no more valid than a stolen election.” His words are more true today than when he said them two decades ago. We should heed his advice.

I will not vote to remove the President because doing so would inflict extraordinary and potentially irreparable damage to our already divided Nation.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR RON JOHNSON

Mr. JOHNSON. Mr. President, I am glad that this unfortunate chapter in American history is over. The strength of our Republic lies in the fact that, more often than not, we settle our political differences at the ballot box, not on the streets or battlefield and not through impeachment.

Just last year, Speaker PELOSI said that any impeachment “would have to be so clearly bipartisan in terms of acceptance of it.” And in 1998, Representative NADLER, currently a House impeachment manager, said, “There must never be . . . an impeachment substantially supported by one of our major political parties and largely opposed by the other . . . Such an impeachment would lack legitimacy, would produce divisiveness and bitterness in our politics for years to come . . .”

And yet, that is exactly what House Democrats passed. I truly wish Speaker PELOSI, Chairman NADLER, and their House colleagues would have followed their own advice.

As I listened to the House managers' closing arguments, I jotted down adjectives describing the case they were making: angry, disingenuous, hyperbolic, sanctimonious, distorted—if not outright dishonest—and overstated; they were making a mountain out of a molehill.

Congressman SCHIFF and the other House managers are not stupid. They had to know that their insults and accusations—that the President had threatened to put our heads on a pike, that the Senate was on trial, that we would be part of the coverup if we didn't cave to their demand for witnesses—would not sway Republican Senators. No, they had another goal in mind. They were using impeachment and their public offices to accomplish the very thing they accused President Trump of doing, interfering in the 2020 election.

Impeachment should be reserved for the most serious of offenses where the risk to our democracy simply cannot wait for the voters' next decision. That was not the case here.

Instead, the greater damage to our democracy would be to ratify a highly partisan House impeachment process that lacked due process and sought to impose a duty on the Senate to repair the House's flawed product. Caving to House managers' demands would have set a dangerous precedent and dramatically altered the constitutional order, further weaponizing impeachment and encouraging more of them.

Now that the trial is over, I sincerely hope everyone involved has renewed appreciation for the genius of our Founding Fathers and for the separation of powers they incorporated into the U.S. Constitution. I also hope all the players in this national travesty go forward with a greater sense of humility and recognition of the limits the Constitution places on their respective offices.

I am concerned about the divisiveness and bitterness that Chairman NADLER warned us about. We are a divided nation, and it often seems the lines are only hardening and growing farther apart. But hope lies in finding what binds us together—our love of freedom, our faith, our families.

We serve those who elect us. It is appropriate and necessary to engage in discussion and debate to sway public opinion, but in the end, it is essential that we rely upon, respect, and accept the public's electoral decisions.

In addition, I ask unanimous consent that my November 18, 2019, letter to Congressmen NUNES and JORDAN, and the January 22, 2020, Real Clear Investigations article written by Paul Sperry be printed in the RECORD following my remarks.

The November 18, 2019, letter responds to NUNES' and JORDAN's request to provide information regarding my firsthand knowledge of events regarding Ukraine that were relevant to the impeachment inquiry. The January 22, 2020, article was referenced in my question to the House managers and counsel to the President during the 16-hour question and answer phase of the impeachment trial. Specifically, that question asked: "Recent reporting described two NSC staff holdovers from the Obama administration attending

an ‘all hands’ meeting of NSC staff held about two weeks into the Trump administration and talking loudly enough to be overheard saying, ‘we need to do everything we can to take out the president.’ On July 26, 2019, the House Intelligence Committee hired one of those individuals, Sean Misko. The report further describes relationships between Misko, Lt. Col. Vindman, and the alleged whistleblower. Why did your committee hire Sean Misko the day after the phone call between Presidents Trump and Zelensky, and what role has he played throughout your committee’s investigation?”

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Hon. JIM JORDAN,  
*Ranking Member,*  
*Committee on Oversight and Reform.*

Hon. DEVIN NUNES,  
*Ranking Member, Permanent Select Committee on Intelligence.*

DEAR CONGRESSMAN JORDAN AND CONGRESSMAN NUNES: I am writing in response to the request of Ranking Members Nunes and Jordan to provide my first-hand information and resulting perspective on events relevant to the House impeachment inquiry of President Trump. It is being written in the middle of that inquiry—after most of the depositions have been given behind closed doors, but before all the public hearings have been held.

I view this impeachment inquiry as a continuation of a concerted, and possibly coordinated, effort to sabotage the Trump administration that probably began in earnest the day after the 2016 presidential election. The latest evidence of this comes with the reporting of a Jan. 30, 2017 tweet (10 days after Trump’s inauguration) by one of the whistleblower’s attorneys, Mark Zaid: “#coup has started. First of many steps. #rebellion. #impeachment will follow ultimately.”

But even prior to the 2016 election, the FBI’s investigation and exoneration of former Secretary of State Hillary Clinton, combined with Fusion GPS’ solicitation and dissemination of the Steele dossier—and the FBI’s counterintelligence investigation based on that dossier—laid the groundwork for future sabotage. As a result, my first-hand knowledge and involvement in this saga began with the revelation that former Secretary of State Hillary Clinton kept a private e-mail server.

I have been chairman of the Senate Committee on Homeland Security and Governmental Affairs (HSGAC) since January 2015. In addition to its homeland security portfolio, the committee also is charged with general oversight of the federal government. Its legislative jurisdiction includes federal records. So when the full extent of Clinton’s use of a private server became apparent in March 2015, HSGAC initiated an oversight investigation.

Although many questions remain unanswered from that scandal, investigations resulting from it by a number of committees, reporters and agencies have revealed multiple facts and episodes that are similar to aspects of the latest effort to find grounds for impeachment. In particular, the political bias revealed in the Strzok/Page texts, use of the discredited Steele dossier to initiate and sustain the FBI’s counterintelligence investigation and FISA warrants, and leaks to the media that created the false narrative of Trump campaign collusion with Russia all fit a pattern and indicate a game plan that I suspect has been implemented once again. It is from this viewpoint that I report my specific involvement in the events related to Ukraine and the impeachment inquiry.

I also am chairman of the Subcommittee on Europe and Regional Security Cooperation of the Senate Foreign Relations Committee. I have made six separate trips to Ukraine starting in April 2011. Most recently, I led two separate Senate resolutions calling for a strong U.S. and NATO response to Russian military action against Ukraine’s navy in the Kerch Strait. I traveled to Ukraine to attend president-elect Volodymyr Zelensky’s inauguration held on May 20, and again on Sept. 5 with U.S. Sen. Chris Murphy to meet with Zelensky and other Ukrainian leaders.

Following the Orange Revolution, and even more so after the Maidan protests, the Revolution of Dignity, and Russia’s illegal annexation of Crimea and invasion of eastern Ukraine, support for the people of Ukraine has been strong within Congress and in both the Obama and Trump administrations. There was also universal recognition and concern regarding the level of corruption that was endemic throughout Ukraine. In 2015, Congress overwhelmingly authorized \$300 million of security assistance to Ukraine, of which \$50 million was to be available only for lethal defen-

sive weaponry. The Obama administration never supplied the authorized lethal defensive weaponry, but President Trump did.

Zelensky won a strong mandate—73%—from the Ukrainian public to fight corruption. His inauguration date was set on very short notice, which made attending it a scheduling challenge for members of Congress who wanted to go to show support. As a result, I was the only member of Congress joining the executive branch's inaugural delegation led by Energy Secretary Rick Perry, Special Envoy Kurt Volker, U.S. Ambassador to the European Union Gordon Sondland, and Lt. Col. Alexander Vindman, representing the National Security Council. I arrived the evening before the inauguration and, after attending a country briefing provided by U.S. embassy staff the next morning, May 20, went to the inauguration, a luncheon following the inauguration, and a delegation meeting with Zelensky and his advisers.

The main purpose of my attendance was to demonstrate and express my support and that of the U.S. Congress for Zelensky and the people of Ukraine. In addition, the delegation repeatedly stressed the importance of fulfilling the election mandate to fight corruption, and also discussed the priority of Ukraine obtaining sufficient inventories of gas prior to winter.

Two specific points made during the meetings stand out in my memory as being relevant.

The first occurred during the country briefing. I had just finished making the point that supporting Ukraine was essential because it was ground zero in our geopolitical competition with Russia. I was surprised when Vindman responded to my point. He stated that it was the position of the NSC that our relationship with Ukraine should be kept separate from our geopolitical competition with Russia. My blunt response was, "How in the world is that even possible?"

I do not know if Vindman accurately stated the NSC's position, whether President Trump shared that viewpoint, or whether Vindman was really just expressing his own view. I raise this point because I believe that a significant number of bureaucrats and staff members within the executive branch have never accepted President Trump as legitimate and resent his unorthodox style and his intrusion onto their "turf." They react by leaking to the press and participating in the ongoing effort to sabotage his policies and, if possible, remove him from office. It is entirely possible that Vindman fits this profile.

Quotes from the transcript of Vindman's opening remarks and his deposition reinforce this point and deserve to be highlighted. Vindman testified that an "alternative narrative" pushed by the president's personal attorney, Rudy Giuliani, was "inconsistent with the consensus views of the" relevant federal agencies and was "undermining the consensus policy."

Vindman's testimony, together with other witnesses' use of similar terms such as "our policy," "stated policy," and "long-standing policy" lend further credence to the point I'm making. Whether you agree with President Trump or not, it should be acknowledged that the Constitution vests the power of conducting foreign policy with the duly elected president. American foreign policy is what the president determines it to be, not what the "consensus" of unelected foreign policy bureaucrats wants it to be. If any bureaucrats disagree with the president, they should use their powers of persuasion within their legal chain of command to get the president to agree with their viewpoint. In the end, if they are unable to carry out the policy of the president, they should resign. They should not seek to undermine the policy by leaking to people outside their chain of command.

The other noteworthy recollection involves how Perry conveyed the delegation concern over rumors that Zelensky was going to appoint Andriy Bohdan, the lawyer for oligarch Igor Kolomoisky, as his chief of staff. The delegation viewed Bohdan's rumored appointment to be contrary to the goal of fighting corruption and maintaining U.S. support. Without naming "Bohdan, Secretary Perry made U.S. concerns very clear in his remarks to Zelensky.

Shortly thereafter, ignoring U.S. advice, Zelensky did appoint Bohdan as his chief of staff. This was not viewed as good news, but I gave my advice on how to publicly react in a text to Sondland on May 22: "*Best case scenario on COS: Right now Zelensky needs someone he can trust. I'm not a fan of lawyers, but they do represent all kinds of people. Maybe this guy is a patriot. He certainly understands the corruption of the oligarchs. Could be the perfect guy to advise Zelensky on how to deal with them. Zelensky knows why he got elected. For now, I think we express our concerns, but give Zelensky the benefit of the doubt. Also let him know everyone in the U.S. will be watching VERY closely.*"

At the suggestion of Sondland, the delegation (Perry, Volker, Sondland and me) proposed a meeting with President Trump in the Oval Office. The purpose of the meeting was to brief the president on what we learned at the inauguration, and convey our impressions of Zelensky and the current political climate in Ukraine. The

delegation uniformly was impressed with Zelensky, understood the difficult challenges he faced, and went into the meeting hoping to obtain President Trump's strong support for Zelensky and the people of Ukraine. Our specific goals were to obtain a commitment from President Trump to invite Zelensky to meet in the Oval Office, to appoint a U.S. ambassador to Ukraine who would have strong bipartisan support, and to have President Trump publicly voice his support.

Our Oval Office meeting took place on May 23. The four members of the delegation sat lined up in front of President Trump's desk. Because we were all directly facing the president, I do not know who else was in attendance sitting or standing behind us. I can't speak for the others, but I was very surprised by President Trump's reaction to our report and requests.

He expressed strong reservations about supporting Ukraine. He made it crystal clear that he viewed Ukraine as a thoroughly corrupt country both generally and, specifically, regarding rumored meddling in the 2016 election. Volker summed up this attitude in his testimony by quoting the president as saying, "They are all corrupt. They are all terrible people. . . . I don't want to spend any time with that." I do not recall President Trump ever explicitly mentioning the names Burisma or Biden, but it was obvious he was aware of rumors that corrupt actors in Ukraine might have played a part in helping create the false Russia collusion narrative.

Of the four-person delegation, I was the only one who did not work for the president. As a result, I was in a better position to push back on the president's viewpoint and attempt to persuade him to change it. I acknowledged that he was correct regarding endemic corruption. I said that we weren't asking him to support corrupt oligarchs and politicians but to support the Ukrainian people who had given Zelensky a strong mandate to fight corruption. I also made the point that he and Zelensky had much in common. Both were complete outsiders who face strong resistance from entrenched interests both within and outside government. Zelensky would need much help in fulfilling his mandate, and America's support was crucial.

It was obvious that his viewpoint and reservations were strongly held, and that we would have a significant sales job ahead of us getting him to change his mind. I specifically asked him to keep his viewpoint and reservations private and not to express them publicly until he had a chance to meet Zelensky. He agreed to do so, but he also added that he wanted Zelensky to know exactly how he felt about the corruption in Ukraine prior to any future meeting. I used that directive in my Sept. 5 meeting with Zelensky in Ukraine.

One final point regarding the May 23 meeting: I am aware that Sondland has testified that President Trump also directed the delegation to work with Rudy Giuliani. I have no recollection of the president saying that during the meeting. It is entirely possible he did, but because I do not work for the president, if made, that comment simply did not register with me. I also remember Sondland staying behind to talk to the president as the rest of the delegation left the Oval Office.

I continued to meet in my Senate office with representatives from Ukraine: on June 13 with members of the Ukrainian Parliament's Foreign Affairs Committee; on July 11 with Ukraine's ambassador to the U.S. and secretary of Ukraine's National Security and Defense Council, Oleksandr Danyliuk; and again on July 31 with Ukraine's ambassador to the U.S., Valeriy Chaly. At no time during those meetings did anyone from Ukraine raise the issue of the withholding of military aid or express concerns regarding pressure being applied by the president or his administration.

During Congress' August recess, my staff worked with the State Department and others in the administration to plan a trip to Europe during the week of Sept. 2 with Senator Murphy to include Russia, Serbia, Kosovo and Ukraine. On or around Aug. 26, we were informed that our requests for visas into Russia were denied. On either Aug. 28 or 29, I became aware of the fact that \$250 million of military aid was being withheld. This news would obviously impact my trip and discussions with Zelensky.

Sondland had texted me on Aug. 26 remarking on the Russian visa denial. I replied on Aug. 30, apologizing for my tardy response and requesting a call to discuss Ukraine. We scheduled a call for sometime between 12:30 p.m. and 1:30 p.m. that same day. I called Sondland and asked what he knew about the hold on military support. I did not memorialize the conversation in any way, and my memory of exactly what Sondland told me is far from perfect. I was hoping that his testimony before the House would help jog my memory, but he seems to have an even fuzzier recollection of that call than I do.

The most salient point of the call involved Sondland describing an arrangement where, if Ukraine did something to demonstrate its serious intention to fight corruption and possibly help determine what involvement operatives in Ukraine might

have had during the 2016 U.S. presidential campaign, then Trump would release the hold on military support.

I have stated that I winced when that arrangement was described to me. I felt U.S. support for Ukraine was essential, particularly with Zelensky's new and inexperienced administration facing an aggressive Vladimir Putin. I feared any sign of reduced U.S. support could prompt Putin to demonstrate even more aggression, and because I was convinced Zelensky was sincere in his desire to fight corruption, this was no time to be withholding aid for any reason. It was the time to show maximum strength and resolve.

I next put in a call request for National Security Adviser John Bolton, and spoke with him on Aug. 31. I believe he greed with my position on providing military assistance, and he suggested I speak with both the vice president and president. I requested calls with both, but was not able to schedule a call with Vice President Pence. President Trump called me that same day.

The purpose of the call was to inform President Trump of my upcoming trip to Ukraine and to try to persuade him to authorize me to tell Zelensky that the hold would be lifted on military aid. The president was not prepared to lift the hold, and he was consistent in the reasons he cited. He reminded me how thoroughly corrupt Ukraine was and again conveyed his frustration that Europe doesn't do its fair share of providing military aid. He specifically cited the sort of conversation he would have with Angela Merkel, chancellor of Germany. To paraphrase President Trump: "Ron, I talk to Angela and ask her, 'Why don't you fund these things,' and she tells me, 'Because we know you will.' We're schmucks. Ron. We're schmucks."

I acknowledged the corruption in Ukraine, and I did not dispute the fact that Europe could and should provide more military support. But I pointed out that Germany was opposed to providing Ukraine lethal defensive weaponry and simply would not do so. As a result, if we wanted to deter Russia from further aggression, it was up to the U.S. to provide it.

I had two additional counterarguments. First, I wasn't suggesting we support the oligarchs and other corrupt Ukrainians. Our support would be for the courageous Ukrainians who had overthrown Putin's puppet, Viktor Yanukovich, and delivered a remarkable 73% mandate in electing Zelensky to fight corruption. Second, I argued that withholding the support looked horrible politically in that it could be used to bolster the "Trump is soft on Russia" mantra.

It was only after he reiterated his reasons for not giving me the authority to tell Zelensky the support would be released that I asked him about whether there was some kind of arrangement where Ukraine would take some action and the hold would be lifted. Without hesitation, President Trump immediately denied such an arrangement existed. As reported in the Wall Street Journal, I quoted the president as saying, "(Expletive deleted)—No way. I would never do that. Who told you that?" I have accurately characterized his reaction as adamant, vehement and angry—there was more than one expletive that I have deleted.

Based on his reaction, I felt more than a little guilty even asking him the question, much less telling him I heard it from Sondland. He seemed even more annoyed by that, and asked me, "Who is that guy?" I interpreted that not as a literal question—the president did know whom Sondland was—but rather as a sign that the president did not know him well. I replied by saying, "I thought he was your buddy from the real estate business." The president replied by saying he barely knew him.

After discussing Ukraine, we talked about other unrelated matters. Finally, the president said he had to go because he had a hurricane to deal with. He wrapped up the conversation referring back to my request to release the hold on military support for Ukraine by saying something like, "Ron, I understand your position. We're reviewing it now, and you'll probably like my final decision."

On Tuesday, Sept. 3, I had a short follow up call with Bolton to discuss my upcoming trip to Ukraine, Serbia and Kosovo. I do not recall discussing anything in particular that relates to the current impeachment inquiry on that call.

We arrived in Kyiv on Sept. 4, joining Taylor and Murphy for a full day of meetings on Sept. 5 with embassy staff, members of the new Ukrainian administration, and Zelensky, who was accompanied by some of his top advisers. We also attended the opening proceedings of the Ukrainian High Anti-Corruption Court. The meetings reinforced our belief that Zelensky and his team were serious about fulfilling his mandate—to paraphrase the way he described it in his speech at the High Anti-Corruption Court—to not only fight corruption but to defeat it.

The meeting with Zelensky started with him requesting we dispense with the usual diplomatic opening and get right to the issue on everyone's mind, the hold being placed on military support.

He asked if any of us knew the current status. Because I had just spoken to President Trump, I fielded his question and conveyed the two reasons the president told

me for his hold. I explained that I had tried to persuade the president to authorize me to announce the hold was released but that I was unsuccessful.

As much as Zelensky was concerned about losing the military aid, he was even more concerned about the signal that would send. I shared his concern. I suggested that in our public statements we first emphasize the universal support that the U.S. Congress has shown—and will continue to show—for the Ukrainian people. Second, we should minimize the significance of the hold on military aid as simply a timing issue coming a few weeks before the end of our federal fiscal year. Even if President Trump and the deficit hawks within his administration decided not to obligate funding for the current fiscal year, Congress would make sure he had no option in the next fiscal year—which then was only a few weeks away. I also made the point that Murphy was on the Appropriations Committee and could lead the charge on funding.

Murphy made the additional point that one of the most valuable assets Ukraine possesses is bipartisan congressional support. He warned Zelensky not to respond to requests from American political actors or he would risk losing Ukraine's bipartisan support. I did not comment on this issue that Murphy raised.

Instead, I began discussing a possible meeting with President Trump. I viewed a meeting between the two presidents as crucial for overcoming President Trump's reservations and securing full U.S. support. It was at this point that President Trump's May 23 directive came into play.

I prefaced my comment to Zelensky by saying, "Let me go out on a limb here. Are you or any of your advisers aware of the inaugural delegation's May 23 meeting in the Oval Office following your inauguration?" No one admitted they were, so I pressed on. "The reason I bring up that meeting is that I don't want you caught off-guard if President Trump reacts to you the same way he reacted to the delegation's request for support for Ukraine."

I told the group that President Trump explicitly told the delegation that he wanted to make sure Zelensky knew exactly how he felt about Ukraine before any meeting took place. To repeat Volker's quote of President Trump: "They are all corrupt. They are all terrible people. . . . I don't want to spend any time with that." That was the general attitude toward Ukraine that I felt President Trump directed us to convey. Since I did not have Volker's quote to use at the time, I tried to portray that strongly held attitude and reiterated the reasons President Trump consistently gave me for his reservations regarding Ukraine: endemic corruption and inadequate European support.

I also conveyed the counterarguments I used (unsuccessfully) to persuade the president to lift his hold: (1) We would be supporting the people of Ukraine, not corrupt oligarchs, and (2) withholding military support was not politically smart. Although I recognized how this next point would be problematic, I also suggested any public statement Zelensky could make asking for greater support from Europe would probably be viewed favorably by President Trump.

Finally, I commented on how excellent Zelensky's English was and encouraged him to use English as much as possible in a future meeting with President Trump. With a smile on his face, he replied, "But Senator Johnson, you don't realize how beautiful my Ukrainian is." I jokingly conceded the point by saying I was not able to distinguish his Ukrainian from his Russian.

This was a very open, frank, and supportive discussion. There was no reason for anyone on either side not to be completely honest or to withhold any concerns. At no time during this meeting—or any other meeting on this trip—was there any mention by Zelensky or any Ukrainian that they were feeling pressure to do anything in return for the military aid, not even after Murphy warned them about getting involved in the 2020 election—which would have been the perfect time to discuss any pressure.

Following the meeting with Zelensky and his advisers, Murphy and I met with the Ukrainian press outside the presidential office building. Our primary message was that we were in Kyiv to demonstrate our strong bipartisan support for the people of Ukraine. We were very encouraged by our meetings with Zelensky and other members of his new government in their commitment to fulfill their electoral mandate to fight and defeat corruption. When the issue of military support was raised, I provided the response I suggested above: I described it as a timing issue at the end of a fiscal year and said that, regardless of what decision President Trump made on the fiscal year 2019 funding, I was confident Congress would restore the funding in fiscal year 2020. In other words: Don't mistake a budget issue for a change in America's strong support for the people of Ukraine.

Congress came back into session on Sept. 9. During a vote early in the week, I approached one of the co-chairs of the Senate Ukraine Caucus, U.S. Sen. Richard Durbin. I briefly described our trip to Ukraine and the concerns Zelensky and his

advisers had over the hold on military support. According to press reports, Senator Durbin stated that was the first time he was made aware of the hold. I went on to describe how I tried to minimize the impact of that hold by assuring Ukrainians that Congress could restore the funding in fiscal year 2020. I encouraged Durbin, as I had encouraged Murphy, to use his membership on the Senate Appropriations Committee to restore the funding.

Also according to a press report, leading up to a Sept. 12 defense appropriation committee markup, Durbin offered an amendment to restore funding. On Sept. 11, the administration announced that the hold had been lifted. I think it is important to note the hold was lifted only 14 days after its existence became publicly known, and 55 days after the hold apparently had been placed.

On Friday, Oct. 4, I saw news reports of text messages that Volker had supplied the House of Representatives as part of his testimony. The texts discussed a possible press release that Zelensky might issue to help persuade President Trump to offer an Oval Office meeting. Up to that point, I had publicly disclosed only the first part of my Aug. 31 phone call with President Trump, where I lobbied him to release the military aid and he provided his consistent reasons for not doing so: corruption and inadequate European support.

Earlier in the week, I had given a phone interview with Siobhan Hughes of the Wall Street Journal regarding my involvement with Ukraine. With the disclosure of the Volker texts, I felt it was important to go on the record with the next part of my Aug. 31 call with President Trump: his denial. I had not previously disclosed this because I could not precisely recall what Sondland had told me on Aug. 30, and what I had conveyed to President Trump, regarding action Ukraine would take before military aid would be released. To the best of my recollection, the action described by Sondland on Aug. 30 involved a demonstration that the new Ukrainian government was serious about fighting corruption—something like the appointment of a prosecutor general with high integrity.

I called Hughes Friday morning, Oct. 4, to update my interview. It was a relatively lengthy interview, almost 30 minutes, as I attempted to put a rather complex set of events into context. Toward the tail end of that interview, Hughes said, “It almost sounds like, the way you see it, Gordon was kind of freelancing and he took it upon himself to do something that the president hadn’t exactly blessed, as you see it.” I replied, “That’s a possibility, but I don’t know that. Let’s face it: The president can’t have his fingers in everything. He can’t be stage-managing everything, so you have members of his administration trying to create good policy.”

To my knowledge, most members of the administration and Congress dealing with the issues involving Ukraine disagreed with President Trump’s attitude and approach toward Ukraine. Many who had the opportunity and ability to influence the president attempted to change his mind. I see nothing wrong with U.S. officials working with Ukrainian officials to demonstrate Ukraine’s commitment to reform in order to change President Trump’s attitude and gain his support.

Nor is it wrong for administration staff to use their powers of persuasion within their chain of command to influence policy. What is wrong is for people who work for, and at the pleasure of, the president to believe they set U.S. foreign policy instead of the duly elected president doing so. It also would be wrong for those individuals to step outside their chain of command—or established whistleblower procedures—to undermine the president’s policy. If those working for the president don’t feel they can implement the president’s policies in good conscience, they should follow Gen. James Mattis’ example and resign. If they choose to do so, they can then take their disagreements to the public. That would be the proper and high-integrity course of action.

This impeachment effort has done a great deal of damage to our democracy. The release of transcripts of discussions between the president of the United States and another world leader sets a terrible precedent that will deter and limit candid conversations between the president and world leaders from now on. The weakening of executive privilege will also limit the extent to which presidential advisers will feel comfortable providing “out of the box” and other frank counsel in the future.

In my role as chairman of the Senate’s primary oversight committee, I strongly believe in and support whistleblower protections. But in that role, I am also aware that not all whistleblowers are created equal. Not every whistleblower has purely altruistic motives. Some have personal axes to grind against a superior or co-workers. Others might have a political ax to grind.

The Intelligence Community Inspector General acknowledges the whistleblower in this instance exhibits some measure of “an arguable political bias.” The whistleblower’s selection of attorney Mark Zaid lends credence to the ICIG’s assessment, given Zaid’s tweet that mentions coup, rebellion and impeachment only 10 days after Trump’s inauguration.

If the whistleblower's intention was to improve and solidify the relationship between the U.S. and Ukraine, he or she failed miserably. Instead, the result has been to publicize and highlight the president's deeply held reservations toward Ukraine that the whistleblower felt were so damaging to our relationship with Ukraine and to U.S. national security. The dispute over policy was being resolved between the two branches of government before the whistleblower complaint was made public. All the complaint has accomplished is to fuel the House's impeachment desire (which I believe was the real motivation), and damage our democracy as described above.

America faces enormous challenges at home and abroad. My oversight efforts have persuaded me there has been a concerted effort, probably beginning the day after the November 2016 election, to sabotage and undermine President Trump and his administration. President Trump, his supporters, and the American public have a legitimate and understandable desire to know if wrongdoing occurred directed toward influencing the 2016 election or sabotaging Trump's administration. The American public also has a right to know if no wrongdoing occurred. The sooner we get answers to the many unanswered questions, the sooner we can attempt to heal our severely divided nation and turn our attention to the many daunting challenges America faces.

Sincerely,

RON JOHNSON,  
*United States Senator.*

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[From RealClearInvestigations, Jan. 22, 2019]

WHISTLEBLOWER WAS OVERHEARD IN '17 DISCUSSING WITH ALLY HOW TO REMOVE TRUMP

(By Paul Sperry)

Barely two weeks after Donald Trump took office, Eric Ciaramella—the CIA analyst whose name was recently linked in a tweet by the president and mentioned by lawmakers as the anonymous “whistleblower” who touched off Trump's impeachment—was overheard in the White House discussing with another staffer how to remove the newly elected president from office, according to former colleagues.

Sources told RealClearInvestigations the staffer with whom Ciaramella was speaking was Sean Misko. Both were Obama administration holdovers working in the Trump White House on foreign policy and national security issues. And both expressed anger over Trump's new “America First” foreign policy, a sea change from President Obama's approach to international affairs.

“Just days after he was sworn in they were already talking about trying to get rid of him,” said a White House colleague who overheard their conversation.

“They weren't just bent on subverting his agenda,” the former official added. “They were plotting to actually have him removed from office.”

Misko left the White House last summer to join House impeachment manager Adam Schiff's committee, where sources say he offered “guidance” to the whistleblower, who has been officially identified only as an intelligence officer in a complaint against Trump filed under whistleblower laws. Misko then helped run the impeachment inquiry based on that complaint as a top investigator for congressional Democrats.

The probe culminated in Trump's impeachment last month on a party-line vote in the House of Representatives. Schiff and other House Democrats last week delivered the articles of impeachment to the Senate, and are now pressing the case for his removal during the trial, which began Tuesday.

The coordination between the official believed to be the whistleblower and a key Democratic staffer, details of which are disclosed here for the first time, undercuts the narrative that impeachment developed spontaneously out of the “patriotism” of an “apolitical civil servant.”

Two former co-workers said they overheard Ciaramella and Misko, close friends and Democrats held over from the Obama administration, discussing how to “take out,” or remove, the new president from office within days of Trump's inauguration. These co-workers said the president's controversial Ukraine phone call in July 2019 provided the pretext they and their Democratic allies had been looking for.

“They didn't like his policies,” another former White House official said. “They had a political vendetta against him from Day One.”

Their efforts were part of a larger pattern of coordination to build a case for impeachment, involving Democratic leaders as well as anti-Trump figures both inside and outside of government.

All unnamed sources for this article spoke only on condition that they not be further identified or described. Although strong evidence points to Ciaramella as the government employee who lodged the whistleblower complaint, he has not been officially identified as such. As a result, this article makes a distinction between public information released about the unnamed whistleblower/CIA analyst and specific information about Ciaramella.

Democrats based their impeachment case on the whistleblower complaint, which alleges that President Trump sought to help his re-election campaign by demanding that Ukraine's leader investigate former Vice President Joe Biden and his son Hunter in exchange for military aid. Yet Schiff, who heads the House Intelligence Committee, and other Democrats have insisted on keeping the identity of the whistleblower secret, citing concern for his safety, while arguing that his testimony no longer matters because other witnesses and documents have "corroborated" what he alleged in his complaint about the Ukraine call.

Republicans have fought unsuccessfully to call him as a witness, arguing that his motivations and associations are relevant—and that the president has the same due-process right to confront his accuser as any other American.

The whistleblower's candor is also being called into question. It turns out that the CIA operative failed to report his contacts with Schiff's office to the intelligence community's inspector general who fielded his whistleblower complaint. He withheld the information both in interviews with the inspector general, Michael Atkinson, and in writing, according to impeachment committee investigators. The whistleblower form he filled out required him to disclose whether he had "contacted other entities"—including "members of Congress." But he left that section blank on the disclosure form he signed.

The investigators say that details about how the whistleblower consulted with Schiff's staff and perhaps misled Atkinson about those interactions are contained in the transcript of a closed-door briefing Atkinson gave to the House Intelligence Committee last October. However, Schiff has sealed the transcript from public view. It is the only impeachment witness transcript out of 18 that he has not released.

Schiff has classified the document "Secret," preventing Republicans who attended the Atkinson briefing from quoting from it. Even impeachment investigators cannot view it outside a highly secured room, known as a "SCIF," in the basement of the Capitol. Members must first get permission from Schiff, and they are forbidden from bringing phones into the SCIF or from taking notes from the document.

While the identity of the whistleblower remains unconfirmed, at least officially, Trump recently retweeted a message naming Ciaramella, while Republican Sen. Rand Paul and Rep. Louie Gohmert of the House Judiciary Committee have publicly demanded that Ciaramella testify about his role in the whistleblower complaint.

During last year's closed-door House depositions of impeachment witnesses, Ciaramella's name was invoked in heated discussions about the whistleblower, as RealClearInvestigations first reported Oct. 30, and has appeared in at least one testimony transcript. Congressional Republicans complain Schiff and his staff counsel have redacted his name from other documents.

Lawyers representing the whistleblower have neither confirmed nor denied that Ciaramella is their client. In November, after Donald Trump Jr. named Ciaramella and cited RCI's story in a series of tweets, however, they sent a "cease and desist" letter to the White House demanding Trump and his "surrogates" stop "attacking" him. And just as the whistleblower complaint was made public in September, Ciaramella's social media postings and profiles were scrubbed from the Internet.

#### 'TAKE OUT' THE PRESIDENT

An Obama holdover and registered Democrat, Ciaramella in early 2017 expressed hostility toward the newly elected president during White House meetings, his co-workers said in interviews with RealClearInvestigations. They added that Ciaramella sought to have Trump removed from office long before the filing of the whistleblower complaint.

At the time, the CIA operative worked on loan to the White House as a top Ukrainian analyst in the National Security Council, where he had previously served as an adviser on Ukraine to Vice President Biden. The whistleblower complaint cites Biden, alleging that Trump demanded Ukraine's newly elected leader investigate him and his son "to help the president's 2020 reelection bid."

Two NSC co-workers told RCI that they overheard Ciaramella and Misko—who was also working at the NSC as an analyst—making anti-Trump remarks to each

other while attending a staff-wide NSC meeting called by then-National Security Adviser Michael Flynn, where they sat together in the south auditorium of the Eisenhower Executive Office Building, part of the White House complex.

The “all hands” meeting, held about two weeks into the new administration, was attended by hundreds of NSC employees.

“They were popping off about how they were going to remove Trump from office. No joke,” said one ex-colleague, who spoke on the condition of anonymity to discuss sensitive matters.

A military staffer detailed to the NSC, who was seated directly in front of Ciaramella and Misko during the meeting, confirmed hearing them talk about toppling Trump during their private conversation, which the source said lasted about one minute. The crowd was preparing to get up to leave the room at the time.

“After Flynn briefed [the staff] about what ‘America first’ foreign policy means, Ciaramella turned to Misko and commented, ‘We need to take him out,’” the staffer recalled. “And Misko replied, ‘Yeah, we need to do everything we can to take out the president.’”

Added the military detailee, who spoke on condition of anonymity: “By ‘taking him out,’ they meant removing him from office by any means necessary. They were triggered by Trump’s and Flynn’s vision for the world. This was the first ‘all hands’ [staff meeting] where they got to see Trump’s national security team, and they were huffing and puffing throughout the briefing any time Flynn said something they didn’t like about ‘America First.’”

He said he also overheard Ciaramella telling Misko, referring to Trump, “We can’t let him enact this foreign policy.”

Alarmed by their conversation, the military staffer immediately reported what he heard to his superiors.

“It was so shocking that they were so blatant and outspoken about their opinion,” he recalled. “They weren’t shouting it, but they didn’t seem to feel the need to hide it.”

The co-workers didn’t think much more about the incident.

“We just thought they were wacky,” the first source said. “Little did we know.”

Neither Ciaramella nor Misko could be reached for comment.

A CIA alumnus, Misko had previously assisted Biden’s top national security aide Jake Sullivan. Former NSC staffers said Misko was Ciaramella’s closest and most trusted ally in the Trump White House.

“Eric and Sean were very tight and spent nearly two years together at the NSC,” said a former supervisor who requested anonymity. “Both of them were paranoid about Trump.”

“They were thick as thieves,” added the first NSC source. “They sat next to each other and complained about Trump all the time. They were buddies. They weren’t just colleagues. They were buddies outside the White House.”

The February 2017 incident wasn’t the only time the pair exhibited open hostility toward the president. During the following months, both were accused internally of leaking negative information about Trump to the media.

But Trump’s controversial call to the new president of Ukraine this past summer—in which he asked the foreign leader for help with domestic investigations involving the Obama administration, including Biden—gave them the opening they were looking for.

A mutual ally in the National Security Council who was one of the White House officials authorized to listen in on Trump’s July 25 conversation with Ukraine’s president leaked it to Ciaramella the next day—July 26—according to former NSC co-workers and congressional sources. The friend, Ukraine-born Lt. Col. Alexander Vindman, held Ciaramella’s old position at the NSC as director for Ukraine. Although Ciaramella had left the White House to return to the CIA in mid-2017, the two officials continued to collaborate through interagency meetings.

Vindman leaked what he’d heard to Ciaramella by phone that afternoon, the sources said. In their conversation, which lasted a few minutes, he described Trump’s call as “crazy,” and speculated he had “committed a criminal act.” Neither reviewed the transcript of the call before the White House released it months later.

NSC co-workers said that Vindman, like Ciaramella, openly expressed his disdain for Trump whose foreign policy was often at odds with the recommendations of “the interagency”—a network of agency working groups comprised of intelligence bureaucrats, experts and diplomats who regularly meet to craft and coordinate policy positions inside the federal government.

Before he was detailed to the White House, Vindman served in the U.S. Army, where he once received a reprimand from a superior officer for badmouthing and ridiculing America in front of Russian soldiers his unit was training with during a joint 2012 exercise in Germany.

His commanding officer, Army Lt. Col. Jim Hickman, complained that Vindman, then a major, “was apologetic of American culture, laughed about Americans not being educated or worldly and really talked up Obama and globalism to the point of [It being] uncomfortable.”

“Vindman was a partisan Democrat at least as far back as 2012,” Hickman, now retired, asserted. “Do not let the uniform fool you. He is a political activist in uniform.”

Attempts to reach Vindman through his lawyer were unsuccessful.

July 26 was also the day that Schiff hired Misko to head up the investigation of Trump, congressional employment records show. Misko, in turn, secretly huddled with the whistleblower prior to filing his Aug. 12 complaint, according to multiple congressional sources, and shared what he told him with Schiff, who initially denied the contacts before press accounts revealed them.

Schiff’s office has also denied helping the whistleblower prepare his complaint, while rejecting a Republican subpoena for documents relating to it. But Capitol Hill veterans and federal whistleblower experts are suspicious of that account.

Fred Fleitz, who fielded a number of whistleblower complaints from the intelligence community as a former senior House Intelligence Committee staff member, said it was obvious that the CIA analyst had received coaching in writing the nine-page whistleblower report.

“From my experience, such an extremely polished whistleblowing complaint is unheard of,” Fleitz, also a former CIA analyst, said. “He appears to have collaborated in drafting his complaint with partisan House Intelligence Committee members and staff.”

Fleitz, who recently served as chief of staff to former National Security Adviser John Bolton, said the complaint appears to have been tailored to buttress an impeachment charge of soliciting the “interference” of a foreign government in the election.

And the whistleblower’s unsupported allegation became the foundation for Democrats’ first article of impeachment against the president. It even adopts the language used by the CIA analyst in his complaint, which Fleitz said reads more like “a political document.”

#### OUTSIDE HELP

After providing the outlines of his complaint to Schiff’s staff, the CIA analyst was referred to whistleblower attorney Andrew Bakaj by a mutual friend “who is an attorney and expert in national security law,” according to the Washington Post, which did not identify the go-between.

A former CIA officer, Bakaj had worked with Ciaramella at the spy agency. They have even more in common: like the 33-year-old Ciaramella, the 37-year-old Bakaj is a Connecticut native who has spent time in Ukraine. He’s also contributed money to Biden’s presidential campaign and once worked for former Sen. Hillary Clinton. He’s also briefed the intelligence panel Schiff chairs.

Bakaj brought in another whistleblower lawyer, Mark Zaid, to help on the case. A Democratic donor and a politically active anti-Trump advocate, Zaid was willing to help represent the CIA analyst. On Jan. 30, 2017, around the same time former colleagues say they overheard Ciaramella and Misko conspiring to take Trump out, Zaid tweeted that a “coup has started” and that “impeachment will follow ultimately.”

Neither Bakaj nor Zaid responded to requests for an interview.

It’s not clear who the mutual friend and national security attorney was whom the analyst turned to for additional help after meeting with Schiff’s staff. But people familiar with the matter say that former Justice Department national security lawyer David Laufman involved himself early on in the whistleblower case.

Also a former CIA officer, Laufman was promoted by the Obama administration to run counterintelligence cases, including the high-profile investigations of Clinton’s classified emails and the Trump campaign’s alleged ties to Russia. Laufman sat in on Clinton’s July 2016 FBI interview. He also signed off on the wiretapping of a Trump campaign adviser, which the Department of Justice inspector general determined was conducted under false pretenses involving doctored emails, suppression of exculpatory evidence, and other malfeasance. Laufman’s office was implicated in a report detailing the surveillance misconduct.

Laufman could not be reached for comment.

Laufman and Zaid are old friends who have worked together on legal matters in the past. “I would not hesitate to join forces with him on complicated cases,” Zaid said of Laufman in a recommendation posted on his LinkedIn page.

Laufman recently defended Zaid on Twitter after Trump blasted Zaid for advocating a “coup” against him. “These attacks on Mark Zaid’s patriotism are baseless, irresponsible and dangerous,” Laufman tweeted. “Mark is an ardent advocate for his clients.”

After the CIA analyst was coached on how to file a complaint under Intelligence Community whistleblower protections, he was steered to another Obama holdover—former Justice Department attorney-turned-inspector general Michael Atkinson, who facilitated the processing of his complaint, despite numerous red flags raised by career Justice Department lawyers who reviewed it.

The department’s Office of Legal Counsel that the complaint involved “foreign diplomacy,” not intelligence, contained “hearsay” evidence based on “secondhand” information, and did not meet the definition of an “urgent concern” that needed to be reported to Congress. Still, Atkinson worked closely with Schiff to pressure the White House to make the complaint public.

Fleitz said cloaking the CIA analyst in the whistleblower statute provided him cover from public scrutiny. By making him anonymous, he was able to hide his background and motives. Filing the complaint with the IC inspector general, moreover, gave him added protections against reprisals, while letting him disclose classified information. If he had filed directly with Congress, it could not have made the complaint public due to classified concerns. But a complaint referred by the IG to Congress gave it more latitude over what it could make public.

#### OMITTED CONTACTS WITH SCHIFF

The whistleblower complaint was publicly released Sept. 26 after a barrage of letters and a subpoena from Schiff, along with a flood of leaks to the media.

However, the whistleblower did not disclose to Atkinson that he had briefed Schiff’s office about his complaint before filing it with the inspector general. He was required on forms to list any other agencies he had contacted, including Congress. But he omitted those contacts and other material facts from his disclosure. He also appears to have misled Atkinson on Aug. 12, when on a separate form he stated: “I reserve the option to exercise my legal right to contact the committees directly,” when he had already contacted Schiff’s committee weeks prior to making the statement.

“The whistleblower made statements to the inspector general under the penalty of perjury that were not true or correct,” said Rep. John Ratcliffe, a Republican member of the House Intelligence Committee.

Ratcliffe said Atkinson appeared unconcerned after the New York Times revealed in early October that Schiff’s office had privately consulted with the CIA analyst before he filed his complaint, contradicting Schiff’s initial denials. Ratcliffe told RealClearInvestigations that in closed door testimony on Oct. 4, “I asked IG Atkinson about his ‘investigation’ into the contacts between Schiff’s staff and the person who later became the whistleblower.” But he said Atkinson claimed that he had not investigated them because he had only just learned about them in the media.

On Oct. 8, after more media reports revealed the whistle blower and Schiff’s staff had concealed their contacts with each other, the whistleblower called Atkinson’s office to try to explain why he made false statements in writing and verbally, transgressions that could be punishable with a fine of up to \$10,000, imprisonment for up to five years, or both, according to the federal form he signed under penalty of perjury.

In his clarification to the inspector general, the whistleblower acknowledged for the first time reaching out to Schiff’s staff before filing the complaint, according to an investigative report filed later that month by Atkinson.

“The whistleblower got caught,” Ratcliffe said. “The whistleblower made false statements. The whistleblower got caught with Chairman Schiff.”

He says the truth about what happened is documented on pages 53–73 of the transcript of Atkinson’s eight-hour testimony. Except that Schiff refuses to release it.

“The transcript is classified ‘Secret’ so Schiff can prevent you from seeing the answers to my questions,” Ratcliffe told RCI.

Atkinson replaced Charles McCullough as the intelligence community’s IG. McCullough is now a partner in the same law firm for which Bakaj and Zaid work. McCullough formerly reported directly to Obama’s National Intelligence Director, James Clapper, one of Trump’s biggest critics in the intelligence community and a regular agitator for his impeachment on CNN.

## HIDDEN POLITICAL AGENDA?

Atkinson also repeatedly refused to answer Senate Intelligence Committee questions about the political bias of the whistleblower. Republican members of the panel called his Sept. 26 testimony “evasive.” Senate investigators say they are seeking all records generated from Atkinson’s “preliminary review” of the whistleblower’s complaint, including evidence and “indicia” of the whistleblower’s “political bias” in favor of Biden.

Republicans point out that Atkinson was the top national security lawyer in the Obama Justice Department when it was investigating Trump campaign aides and Trump himself in 2016 and 2017. He worked closely with Laufman, the department’s former counterintelligence section chief who’s now aligned with the whistleblower’s attorneys. Also, Atkinson served as senior counsel to Mary McCord, the senior Justice official appointed by Obama who helped oversee the FBI’s Russia “collusion” probe, and who personally pressured the White House to fire then National Security Adviser Flynn. She and Atkinson worked together on the Russia case. Closing the circle tighter, McCord was Laufman’s boss at Justice.

As it happens, all three are now involved in the whistleblower case or the impeachment process.

After leaving the department, McCord joined the stable of attorneys Democrats recruited last year to help impeach Trump. She is listed as a top outside counsel for the House in key legal battles tied to impeachment, including trying to convince federal judges to unblock White House witnesses and documents.

“Michael Atkinson is a key anti-Trump conspirator who played a central role in transforming the ‘whistleblower’ complaint into the current impeachment proceedings,” said Bill Marshall, a senior investigator for Judicial Watch, the conservative government watchdog group that is suing the Justice Department for Atkinson’s internal communications regarding impeachment.

Atkinson’s office declined comment.

## ANOTHER ‘CO-CONSPIRATOR’?

During closed-door depositions taken in the impeachment inquiry, Ciamarella’s confederate Misko was observed handing notes to Schiff’s lead counsel for the impeachment inquiry, Daniel Goldman—another Obama Justice attorney and a major Democratic donor—as he asked questions of Trump administration witnesses, officials with direct knowledge of the proceedings told RealClear Investigations. Misko also was observed sitting on the dais behind Democratic members during last month’s publicly broadcast joint impeachment committee hearings.

Another Schiff recruit believed to part of the clandestine political operation against Trump is Abby Grace, who also worked closely with Ciamarella at the NSC, both before and after Trump was elected. During the Obama administration, Grace was an assistant to Obama national security aide Ben Rhodes.

Last February, Schiff recruited this other White House friend of the whistleblower to work as an impeachment investigator. Grace is listed alongside Sean Misko as senior staffers in the House Intelligence Committee’s “The Trump-Ukraine Impeachment Inquiry Report” published last month.

Republican Rep. Louie Gohmert, who served on one of the House impeachment panels, singled out Grace and Misko as Ciamarella’s “co-conspirators” in a recent House floor speech arguing for their testimony. “These people are at the heart of everything about this whole Ukrainian hoax,” Gohmert said. “We need to be able to talk to these people.”

A Schiff spokesman dismissed Gohmert’s allegation.

“These allegations about our dedicated and professional staff members are patently false and are based off false smears from a congressional staffer with a personal vendetta from a previous job,” said Patrick Boland, spokesman for the House Intelligence Committee. “It’s shocking that members of Congress would repeat them and other false conspiracy theories, rather than focusing on the facts of the president’s misconduct.”

Boland declined to identify “the congressional staffer with a personal vendetta.”

Schiff has maintained in open hearings and interviews that he did not personally speak with the whistleblower and still does not even know his identity, which would mean the intelligence panel’s senior staff has withheld his name from their chairman for almost six months. Still, he insists that he knows that the CIA analyst has “acted in good faith,” as well as “appropriately and lawfully.”

The CIA declined comment. But the agency reportedly has taken security measures to protect the analyst, who has continued to work on issues relating to Russia and Ukraine and participate in interagency meetings.

[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR RICHARD BLUMENTHAL

Mr. BLUMENTHAL. Mr. President, I ask unanimous consent to have a statement I prepared concerning the impeachment trial be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATOR RICHARD BLUMENTHAL—STATEMENT FOR THE RECORD

IMPEACHMENT TRIAL OF DONALD JOHN TRUMP

The case for impeachment presented by the House managers is overwhelming. Donald Trump held taxpayer-funded military aid hostage from an ally at war while demanding a personal, political favor. He tried to cheat, got caught, and worked hard to cover it up. His actions constitute a shocking, corrupt abuse of power and betrayal of his oath of office. Just as a sheriff cannot delay responding to calls for help until the callers endorse his re-election, the President is not entitled to withhold vital military assistance from a foreign ally until they announce an investigation to smear his political rival. The proof shows precisely the type of corruption that the Framers sought to prevent through the Impeachment Clause, including foreign interference in our election.

Two further points are significant. First, the President is guilty of the crime of bribery, which is specifically listed in the Constitution as a grounds for impeachment.<sup>1</sup> Second, the President's unprecedented campaign to obstruct the impeachment inquiry compels us to conclude that the evidence he is hiding would provide further proof of his guilt.

I. *The President committed the federal crime of bribery*

There is no question—based on the original meaning of the Constitution, the elaboration of the impeachment clause in the Federalist Papers, historical precedent, and common sense—that the President need not violate a provision of any criminal code in order to warrant removal from office.<sup>2</sup> The President's argument that he must violate “established law” to be impeached would be laughable if its implications were not so dangerous.

But there is no reasonable doubt that the President *has* violated established law. The Constitution specifically states that a President who commits bribery should be impeached.<sup>3</sup> The evidence before us establishes that President Trump has committed the crime of bribery as it existed at the time of the framers and now. Therefore, even using the President's own standard, the Senate has no choice but to convict.

The evidence shows that the President solicited interference in the 2020 election for his own benefit by pressuring Ukraine to announce an investigation into his political opponents in return for releasing nearly \$400 million in taxpayer-funded military aid Ukraine desperately needed, as well as a meeting with President Zelensky at the White House. He sought, indeed demanded, a personal benefit in exchange for an official act.

Section 201 of Title 18 of the U.S. Code criminalizes “bribery of public officials and witnesses.” A public official is guilty under this section when they seek “anything of value” in exchange for any “official act” and do so with corrupt intent. The code even specifies that punishment for this crime may include disqualification “from holding any office of honor, trust, or profit under the United States.”<sup>4</sup>

A. The requested investigations constitute “things of value”

The investigations that President Trump requested into his political enemies and to undermine claims that Russia illegally helped him get elected are clearly “things of value.”<sup>5</sup> By all accounts, he was obsessed with them. According to multiple reports, Trump cared more about the investigations than he did about defending Ukraine from Russia. Ambassador Gordon Sondland even testified that the President “doesn't give a s\*\*t” about Ukraine and only cares about “big stuff” like the announcement of the investigations he requested.<sup>6</sup>

Courts have consistently applied a broad and subjective understanding of the phrase “anything of value.” All that matters is that the bribe had value in the eyes of the official accepting or soliciting it. The Second Circuit has determined that

“anything of value” includes stock that, although it had no commercial value at the time, had subjective value to the defendant.<sup>7</sup> Similarly, the Sixth Circuit held that loans that a public official would have been otherwise unable to receive were “thing[s] of value.”<sup>8</sup> The Eighth Circuit has similarly emphasized that “anything of value” should be interpreted “broadly” and “subjectively.”<sup>9</sup>

Further, the “thing” need not be tangible, and it need not be immediately available. For example, the Sixth Circuit held that a promise of “future employment” is a thing of value.<sup>10</sup> A D.C. district court found that travel and entrance to various events that Tyson Foods gave to the Agriculture Secretary’s girlfriend counted as things of value, despite the fact that they were not given directly to the Secretary and were not tangible items.<sup>11</sup> Campaign contributions also count as “things of value,” even contributions made to Super PACs, despite Supreme Court precedent holding that independent expenditures do not have sufficient value to candidates to justify placing limits on them.<sup>12</sup> In other contexts, the courts have interpreted the phrase “thing of value” to encompass a tip about the whereabouts of a witness,<sup>13</sup> information about government informants,<sup>14</sup> and the testimony of a government witness.<sup>15</sup> The courts have roundly rejected the proposition that this phrase “covers only things having commercial value;” intangibles, including information itself, can certainly be a “thing of value.”<sup>16</sup> The relevant inquiry is not the objective value of the thing offered, but “whether the donee placed any value on the intangible gifts.”<sup>17</sup>

Here, President Trump clearly placed value on the announcement of investigations. During the July 25 phone call, Trump stated that it was “very important” that Zelensky open these investigations.<sup>18</sup> Over several months, Trump and Rudy Giuliani had made repeated public statements about how important they thought the investigations were. Since at least April, 2017, President Trump has been publicly promoting the debunked conspiracy theory that a California-based cybersecurity company, CrowdStrike, worked with the Democratic National Committee to fabricate evidence that Russia interfered in the 2016 election and hide the proof of their actions in Ukraine. Rudy Giuliani, the President’s personal attorney, has been promoting a conspiracy theory about Joe and Hunter Biden since at least January, 2019.<sup>19</sup> Days after Zelensky was elected, Trump stated on air that he would be directing Attorney General Barr to “look into” the CrowdStrike conspiracy theory.<sup>20</sup> In May, 2019, Rudy Giuliani, with the knowledge and consent of President Trump and acting on the President’s behalf,<sup>21</sup> planned to travel to Ukraine to ask for these investigations, which he said would be “very, very helpful to my client, and may turn out to be helpful to my government.”<sup>22</sup> On July 10, top Ukrainian officials met with Energy Secretary Perry, John Bolton, Kurt Volker, and Ambassador Sondland at the White House where Sondland made clear that an official White House visit with Zelensky was important to the President.<sup>23</sup>

Further, the electoral value to President Trump of investigations that would smear Joe Biden and the DNC while casting doubt on Russian interference in the 2016 election is obvious. President Trump was elected in a shocking and narrow victory after polls showed him trailing his opponent until officials announced that she was under investigation.<sup>24</sup> The announcement of an investigation into his political opponents clearly had tremendous value to him personally.

The President’s counsels claim that Trump demanded investigations of his political rival as part of a perfectly legitimate anti-corruption effort. In short, they want the Senate to leave our common sense at the door. At least four undisputed facts decisively disprove the claim that President Trump’s actions were motivated by the public interest and not his own.

First, as one of my colleagues has put it,<sup>25</sup> it “strains credulity” to suggest that President Trump was pursuing the public interest and not his political benefit when the only corruption investigations he could think to demand involved his political opponents.<sup>26</sup> President Trump’s counsel have claimed throughout this trial that the President believed corruption in Ukraine to be widespread. Yet he did not suggest a single investigation or programmatic action other than the two investigations of his political rivals.

Second, President Trump did not actually want Ukraine to conduct the investigations he only wanted Zelensky to *announce* them.<sup>27</sup> If he really did want to get to the bottom of a legitimate concern, a *public announcement* of the investigation would not further that interest. Any good investigator knows that, if you actually want to get to the truth, you do not prematurely tip off the subject of the investigation. Indeed, federal prosecutors are instructed to not even “respond to questions about the existence of an ongoing investigation or comment on its nature or progress before charges are publicly filed.”<sup>28</sup> While announcing the investigations could only harm any legitimate law enforcement objective, it would obviously benefit President Trump’s political goals.

Third, President Trump never sought the investigations through ordinary, official channels, or if he did seek them the Justice Department declined to pursue them. If President Trump wanted bona fide investigations, as opposed to politically-motivated announcements, he would have charged the Department of Justice with conducting an official investigation, and the Department would have sought cooperation from the Ukrainian government through the U.S.-Ukraine Mutual Legal Assistance Treaty (MLAT). Legitimate requests made pursuant to an MLAT allow DOJ to take testimony, obtain records, locate persons, serve documents, transfer persons into U.S. custody, execute searches and seizures, freeze assets, and engage in any other lawful actions that the state can take.<sup>29</sup> Trump claims that he just wanted to root out criminality and corruption. But he did not ask domestic U.S. law enforcement to look into the matter; to date, there is no criminal investigation of Hunter Biden. Instead, Trump tried to coerce a *foreign government* to investigate a U.S. citizen without any formal coordination with the U.S. Justice Department. In other words, there was not a sufficient basis for a bona fide, domestic criminal investigation, so Trump had to go elsewhere. The fact that Trump asked a foreign government to investigate Hunter Biden is not evidence that he cared about corruption; it is evidence that he was engaged in corruption.

In fact, Ukraine ultimately resisted President Trump's requests for investigations precisely because the President had failed to rely on the usual channels used to prevent political interference with law enforcement.<sup>30</sup> If Trump actually wanted a legitimate investigation, and wanted to ensure that DOJ would be privy to relevant information, he would have sought formal assistance through the U.S.-Ukraine MLAT. DOJ has confirmed that he did no such thing.<sup>31</sup> Instead, President Trump acted through his personal attorney, Rudy Giuliani, a man who made clear that he was duty bound to pursue his boss's personal interests and not those of the public.<sup>32</sup> The only reasonable explanation for the President's decision to completely bypass the Justice Department is that he knew that his conspiracy theories could not withstand scrutiny and he set out to circumvent law enforcement officials. They were solely intended to serve Trump's personal, political interests.

Finally, as the American Intelligence Community has unanimously concluded,<sup>33</sup> the CrowdStrike conspiracy is not supported by any evidence. It is difficult to fathom how propagating Russian-generated propaganda that implicates American public figures and companies is in the national interest of the United States. Even if his motives were mixed, and he cared peripherally about corruption generally, his predominant goal was to smear a political opponent.

B. The release of the hold on military aid and the promised White House visit constitute "official acts"

The two acts the President agreed to perform—releasing the hold on military aid and setting up an official White House meeting with Zelensky—constitute "official acts." The bribery statute defines "official act" broadly to include "any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit."<sup>34</sup> Military assistance and an official White House visit were within his control only because of his tenure in elective office. In fact, both receiving foreign dignitaries and providing foreign assistance are in the President's official, constitutional job description.<sup>35</sup>

Actions authorized by statute, such as the ones President Trump took here, are particularly clear examples of official acts.<sup>36</sup> Congress has specifically authorized, and circumscribed, the President's ability to award military assistance to foreign countries. This process has been codified since the early 1960s, and there is an enormous federal apparatus devoted to evaluating the needs of foreign nations, how those needs intersect with legitimate U.S. foreign policy interests, and how to award foreign aid in line with those interests.<sup>37</sup> Further, when the President placed a hold on the aid, he was acting on behalf of the United States, not in his personal capacity. It defies reason to argue that the President's decision to award, or fail to execute, a foreign aid determination is not an "official act" under the bribery statute.

Similarly, an official White House meeting is an "official act" because the President is specifically "assigned by law"<sup>38</sup>—in both the Constitution and numerous statutes—with receiving representatives from foreign governments.<sup>39</sup> Indeed, the authority to receive ambassadors and recognize foreign governments is considered so core to the office of the President that the Supreme Court has struck down statutes that interfere with it.<sup>40</sup>

C. The President corruptly sought a *quid pro quo*

President Trump made an agreement with the specific intent to be influenced in his decision whether to lift the hold on the military aid and to host a White House meeting. In *United States v. Sun-Diamond Growers of California*, the Supreme Court held that a bribe made or solicited “in return for” an official act entails an exchange, a *quid pro quo*.<sup>41</sup> In a seminal case, the D.C. Circuit reasoned that the term “corruptly” means that the official act would not be undertaken (or undertaken in a particular way) without the thing of value.<sup>42</sup>

Department of Justice guidance on the issue, citing the standard jury instructions that numerous courts have upheld, indicates that “corruptly” denotes “nothing more than . . . acting ‘with bad purpose’ to achieve some unlawful end.”<sup>43</sup> The guidance further explains that, ordinarily, this “bad purpose” is “a hope or expectation of either financial gain or other benefit to one’s self, or some aid or profit or benefit to another.”<sup>44</sup> In other words, the intent merely to be influenced in the way prohibited by the bribery statute itself is sufficient to find that the defendant acted “corruptly.”

Further, the Supreme Court unanimously held in 2016 that the *quid pro quo* demand “need not be explicit,” the official “need not specify the means that he will use to perform his end of the bargain,” nor must the official actually intend to follow through for a prosecutor to succeed in making her case that the defendant is guilty of bribery.<sup>45</sup> In a Seventh Circuit case, the court made clear that the context of a communication can be determinative: evidence of a *quid pro quo* can emerge from “the often clandestine atmosphere of corruption with a simple wink and a nod if the surrounding circumstances make it clear that something of value will pass to a public official if he takes improper, or withholds proper, action.”<sup>46</sup> While the defendant in that case never made an explicit offer and never relayed a specific amount of money, the court nonetheless upheld his conviction for bribery.<sup>47</sup>

Trump’s actions clearly qualify as a *quid pro quo*. Less than a month prior to this phone call, President Trump had put a hold on hundreds of millions of dollars in military aid to Ukraine and had previously set in motion, but not committed to, an official White House visit with Ukraine’s new president, Volodymyr Zelensky. When Trump and Zelensky spoke on July 25, Trump set the terms of the conversation by making clear that he felt Ukraine owed him for America’s generosity. And as soon as Zelensky mentioned that Ukraine was interested in receiving American anti-tank missiles, the President immediately stated that he would like Zelensky to “do us a favor though,” and explicitly asked Zelensky to investigate the Biden conspiracy theory and alleged Ukrainian interference in the 2016 election. As soon as Zelensky appeared to agree to open the requested investigations, Trump almost immediately assured the Ukrainian President that “whenever you would like to come to the White House, feel free to call.”<sup>48</sup> Text messages sent by Special Envoy Volker indicate that it had also been made clear to the Ukrainians prior to the call that the official White House visit was also conditioned upon Zelensky complying with Trump’s request for these investigations.<sup>49</sup> Gordon Sondland, the American ambassador to the EU, testified that the President’s proposal to lift the hold in exchange for the investigations was as clear as “two plus two equals four.”<sup>50</sup> Trump’s acting Chief of Staff, Mick Mulvaney, confessed during a press conference that there was a *quid pro quo* exchange and suggested that the public should just “get over it.”<sup>51</sup>

The implication of Trump’s message to Zelensky on the July 25 phone call is that Trump would not lift the hold or have the White House meeting unless Zelensky opened the requested investigations. The obvious political value to the President of opening these investigations constitutes sufficient grounds for a jury to determine that he had a “bad motive” in making this request. Trump is guilty of *quid pro quo* bribery.

## D. Trump’s defenses are not persuasive

Trump attempts to absolve his behavior by arguing that his subjective intent is irrelevant to whether he committed an impeachable offense, that there is no *quid pro quo* because Ukraine never announced the infamous investigations, and that, even if he did commit a *quid pro quo*, he cannot be impeached because the articles do not accuse him of bribery. Even setting aside that these defenses ignore the fact that Trump *still* has not held a White House meeting with Zelensky, these arguments are wholly unpersuasive in their own right.

## 1. Trump’s subjective intent is eminently relevant

Trump claims that his subjective intent is irrelevant; that he cannot be impeached based on the reasons for which he sought the investigations.<sup>52</sup> This argument is specious for at least three reasons. First, the two offenses that the Constitution explic-

itly mentions as requiring removal from office—treason and bribery—hinge on the *subjective reasons* that the official acted. If the Commander-in-Chief orders the military to take certain actions with the purpose of benefiting an enemy of the United States, then the President has committed treason, even if the President generally has the authority to command the armed forces. If the President vetoes a law because someone has paid him a large bribe, then he has committed bribery, even if the President generally has the authority to veto laws. When we are prohibited from scrutinizing the President’s reasons for acting, we lose the ability to protect our democracy from tyrants and traitors.

Second, the President maintains that he needs to have violated “established law” in order to be impeached.<sup>53</sup> Using the President’s own standard, then, in evaluating whether he violated the federal bribery statute, we must evaluate whether he acted with corrupt intent. If the President wants to be scrutinized using the standards of the federal criminal code, then he must concede that his subjective intent is at issue.

Third, even if Trump had *other* reasons for releasing the aid, it was *still a crime* for him to even *ask* for the investigations. Section 201(c) of Title 18 prohibits public officials from demanding anything of value “for or because of any official act.”<sup>54</sup> The courts have been clear that even if the official act “might have been done without” the bribe, the defendant is still guilty under section 201(c).<sup>55</sup> Even if Trump never actually intended to maintain a hold on the aid, even if he decided to release the aid for entirely legitimate reasons, the fact that he requested the investigations as a “favor”<sup>56</sup>—because of how generous the President was in agreeing to conduct a White House visit or lifting the hold on the military aid—means that the President committed a crime.

Even if a legislator would have voted for a piece of legislation because he thinks it is in the public interest, he still commits bribery if he takes a payoff to do it. As the courts have made clear, an illegal bribe under this section may take the form of “a reward [ . . . ] for a past act that has already been taken.”<sup>57</sup> Thus, the fact that the President *continued* to ask for the investigations after the hold was finally released<sup>58</sup> does not absolve him; it further incriminates him.

## 2. Trump completed his crime the moment he solicited the bribe

It is undisputed that the President, either directly or indirectly, demanded investigations into Joe Biden and a conspiracy theory involving the Democratic National Committee. The President’s only response is that he cannot be liable because he did not receive what he requested. Under federal law, however, a corrupt official need not receive the benefit he demands or perform the official acts in question; “it is enough that the official agreed to do so.”<sup>59</sup> It is the solicitation of a private benefit *in and of itself* that constitutes the crime.<sup>60</sup> All a prosecutor would have to demonstrate is that the President made an agreement or offer to exchange official acts for a thing of value.

We know from the memorandum of the July 25 phone call, from Volker and Sondland’s texts, and from Sondland’s testimony that Trump had agreed to lift the hold and conduct the White House meeting in exchange for the investigations.<sup>61</sup> We also know that there is additional evidence out there that speaks to the President’s communications—both directly and through his agents—with Ukraine regarding his illegal scheme. We know, at the very least, of the existence of diplomatic cables from the Ukrainian embassy about the hold on the military assistance and communications with the State Department about the hold.<sup>62</sup> The head of the agency that placed the hold on the military assistance has refused to respond to a lawful subpoena, under the instruction of the White House.<sup>63</sup> As discussed below, when a party fails to produce or obstructs access to relevant evidence, that failure “gives rise to an inference that the evidence is unfavorable to him.”<sup>64</sup> In this case, although the evidence already presented proves the crime of bribery, the Senate should infer that the evidence that the executive branch has hidden about these communications would provide further evidence that Trump agreed to this illicit exchange.

## 3. Senators must convict if they conclude that the President committed the crime of bribery, whether or not the term ‘bribery’ appears in the articles

The first article of impeachment accuses the President of “corruptly solicit[ing]” the public announcement of investigations that were in his “personal political benefit,” in exchange for “two official acts.”<sup>65</sup> In response to questions from Senators, Trump’s counsel has argued that because the article did not explicitly refer to the crime of bribery, Trump was provided inadequate notice. This argument is absurd.

Trump has received plenty of notice that he stands accused of bribery. Trump's actions, as described in the article, clearly align with the elements of the federal crime of bribery: he solicited a thing of value in exchange for official acts and did so with corrupt intent.<sup>66</sup> Further, the House Judiciary Committee report adeptly explained why the President is guilty of bribery under the criminal code.<sup>67</sup> Lawmakers have been discussing the President's misdeeds in terms of bribery for months now.<sup>68</sup> His lack of a defense is due not to lack of notice but to lack of facts.

The historical record confirms the common sense notion that the articles need not name specific crimes. In 1974, the House Judiciary Committee approved three articles of impeachment against President Nixon, none of which referenced any provisions of any criminal code.<sup>69</sup> Many of my colleagues were presented with similarly drafted articles of impeachment against Judge Porteous in 2010. In that instance, the House adopted four articles of impeachment, none of which explicitly referenced the criminal code.<sup>70</sup> The first article described conduct that amounts to bribery—claiming that Judge Porteous “solicited and accepted things of value” in exchange for ruling in favor of a particular party—but never used the term “bribe” or mentioned the federal bribery statute.<sup>71</sup> The Senate unanimously convicted Judge Porteous on this article and voted to forever disqualify him from holding office.<sup>72</sup> No one seriously entertained the notice argument then, and there is no good reason to do so now. This bad faith defense is a red herring, and we must not let it distract us from the issue before us: the President's crimes.

Trump's claim that he cannot be removed for a crime unless the crime is specifically mentioned in the articles of impeachment—coupled with his claim that there must be proof of a crime—is simply untenable. By Trump's flawed logic, if he had been impeached for “shooting someone on Fifth Avenue,” he could not be removed for “murder” unless that word was specifically included in the articles. We have not been called to sit in judgment of the House of Representatives' diction; we sit in judgment of the President's actions—carefully and precisely described in the articles of impeachment as a clear-cut case of bribery.

## II. *The President's unprecedented campaign to obstruct access to relevant evidence compels us to conclude that the evidence is against him*

The House of Representatives has made a very strong case that the President's refusal to engage in any way with their investigation is unlawful and constitutionally offensive. But make no mistake—this conflict is more than a dispute between the branches of government. The House of Representatives and a number of Senators have raised the alarm bells not for our own sake, but because when the President hides from Congress, he hides from the American people. The separation of powers does not exist to benefit members of Congress; it exists to curb the excesses of enormously powerful government officials.

Throughout this entire ordeal—from the moment the call transcript was improperly placed on a classified server<sup>73</sup> to the time when Trump threatened to unlawfully assert executive privilege over any testimony requested by the Senate<sup>74</sup>—the President has sought to keep his illegal scheme secret from the very people the scheme was designed to manipulate: the American electorate.

Indeed, the withholding of aid itself was concealed, unlike with other similar pauses or suspensions of military assistance.

The law and historical precedent are clear—when the President stifles Congress' investigative authority, whether during an impeachment inquiry or when Congress is exercising its broader mandate to investigate the executive branch, he has exceeded the bounds of the law. Because Trump has flouted congressional inquiry in such a brazen and uninged manner, this violation alone requires us to vote to remove him from office.

Separately, this egregious campaign of obfuscation strengthens the case against the President for abuse of power. As a matter of law, when a party to a case improperly withholds relevant evidence, courts can instruct juries to make an adverse inference—to assume that the evidence would be unfavorable to the withholding party. In this case, Trump has withheld *every single piece of evidence that the House requested*. The facts before us confirm the underlying logic of the adverse inference rule—that when a party hides something, it is because they have something to hide. Applying that rule here, the already overwhelming evidence against Trump becomes an avalanche.

### A. Trump's obstruction requires us to infer that all the evidence is against him, which only strengthens the case for removal for abuse of power

It is a long-established rule of law that when a party “has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that

the evidence is unfavorable to him.”<sup>75</sup> Importantly, this rule applies even in the absence of a subpoena and, in fact, “the willingness of a party to defy a subpoena in order to suppress the evidence *strengthens the force of the preexisting inference*,” because in that scenario “it can hardly be doubted he has some good reason for his insistence on suppression.”<sup>76</sup> Indeed, the courts have recognized that the adverse inference rule is essential to prevent intransigent parties from abusing “costly and time consuming” court proceedings to subvert their legal duty to produce relevant evidence.<sup>77</sup> The Supreme Court has specifically applied this rule against a party who selectively provided weak evidence and failed to allow those persons with the most relevant knowledge to testify, noting that “the production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse.”<sup>78</sup> As the Court put it, in circumstances like this, “silence then becomes evidence of the most convincing character.”<sup>79</sup>

We know that the Trump administration has relevant evidence that it refuses to produce. As an initial matter, the President has failed to comply with a single request from the House of Representatives, and, following the President’s orders, the White House, the office of the Vice President, the Office of Management and Budget, the State Department, the Department of Defense, and the Department of Energy refused to produce a single document in response to 71 specific requests issued by the House of Representatives.<sup>80</sup>

But we also know of specific pieces of evidence that go to the heart of the House’s case and that Trump is concealing. Mark Sandy testified that in August, OMB produced a memorandum recommending that the President’s hold on the Ukraine military assistance be released.<sup>81</sup> William Taylor testified that on August 29, he sent a first person cable to Secretary Pompeo, relaying his concerns about the “folly I saw in withholding military aid to Ukraine at a time when hostilities were still active in the east and when Russia was watching closely to gauge the level of American support for the Ukrainian Government.”<sup>82</sup> Mr. Taylor also testified that he had exchanged WhatsApp messages with Ambassadors Volker and Sondland as well as with Ukrainian officials. The White House has refused to release any of these documents. We therefore must infer that they demonstrate that there was no inter-agency process to review the best use of the funds—that this rationale was pre-textual.

The White House maintains that Ukraine was not even aware of the hold on the military assistance until after it was reported on publicly. But we have testimony to the contrary—testimony that includes reference to specific documents that the President is withholding. Laura K. Cooper, the American deputy assistant secretary of defense for Russia, Ukraine and Eurasia, testified that her staff received two emails on July 25th that directly undermine Trump’s claim. The first, received at 2:31 PM, stated that the Ukrainian embassy was asking about the security assistance. The second, received at 4:25 PM, stated that the Ukrainian embassy knew that the foreign military financing assistance had been held up.<sup>83</sup> At the behest of President Trump, the State Department has not released these emails. Unless and until the administration produces these documents and any others bearing on when Ukraine first learned about the hold, we should assume that they demonstrate that Ukraine knew about the hold when Trump spoke to Zelensky on July 25.

B. The evidence that has emerged despite Trump’s intransigence has only bolstered the case against him

Based on the above analysis alone, the Senate is more than entitled to infer that the mountain of evidence that Trump is withholding would demonstrate his guilt. But two further points compel us to make such an inference. First, Trump confessed on national television to having “all the materials” and bragged about how he had kept them from Congress.<sup>84</sup> We cannot let this gleeful boast stand without inferring that the materials in question speak to Trump’s guilt.

Second, as the House managers repeatedly cautioned us would happen, the evidence that Trump has been hiding has started to come out. And each newly revealed tape or record *has been* unfavorable to the President’s case. The assumption that the law compels us to make about the contents of these materials—that they demonstrate the President’s guilt—is confirmed each and every time they come out into the light. Most damning has been the leak of a draft of John Bolton’s forthcoming book, which confirms that the President “told his national security adviser in August that he wanted to continue freezing \$391 million in security assistance to Ukraine until officials there helped with investigations into Democrats including the Bidens,” as well as details about the involvement of various senior cabinet officials in Trump’s illegal scheme.<sup>85</sup> And this is only the most recent revelation in a rapidly growing series of records that have come to light. On January 14, 2020, Lev

Parnas, a former associate of Rudy Giuliani, released documents which demonstrate both that the President was orchestrating a deal to get Zelensky to “announce that the Biden case will be investigated,” and that Marie Yovanovitch was the subject of an illegal intimidation campaign.<sup>86</sup> On January 25, 2020, a tape from April, 2018 was publicly released of a private dinner with top donors where Trump is heard yelling: “Get rid of her! Get her out tomorrow. I don’t care. Get her out tomorrow. Take her out. Okay? Do it,” in reference to Ambassador Yovanovitch.<sup>87</sup> The President is also heard specifically asking how long Ukraine would last in a war against Russia absent U.S. support—in other words, inquiring how much Ukraine is at the mercy of the United States.<sup>88</sup> Not only does this tape provide further evidence of a coordinated campaign against the Ambassador; it also undermines “earlier defenses by the White House that Trump wasn’t aware of what was taking place in the early phase of the Ukraine affair.”<sup>89</sup> This tape suggests that Trump not only knew about the Ukraine affair, but also that “he may have been directing events” as early as April 2018.<sup>90</sup>

The steady drip of damning evidence leaking from the President’s associates, combined with Trump’s own public confession to concealing relevant evidence, compels us to conclude what the law already instructs us to infer: that the mountain of evidence Trump is hiding proves his guilt.

#### Conclusion

It is clear to me that Trump is guilty of bribery and that his campaign to obstruct any investigation into his wrongdoing only strengthens the case against him. Trump’s actions require us to vote to remove him from office. When the Framers included the impeachment power in the Constitution, they knew that there would be a presidential election every four years—and they also knew that this was an insufficient check against a President who abuses the power of his office to cheat his way to re-election. Trump’s misdeeds are a case study in the need for impeachment.

Throughout the impeachment trial, I have been moved by the grave moral purpose that the Senate is charged with pursuing—of sustaining America as an idea, of our Constitution as a living document that gives substance to our identity as the world’s leading democracy. As we sit in judgment of a President who has demonstrated nothing but contempt for our laws and our values, history sits in judgment of the Senate. By failing to remove Trump from office, we will have failed our country.

#### ENDNOTES

1. U.S. CONST. art. II, § 4 (“The President [ . . . ] shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors”).

2. See generally, JARED P. COLE & TODD GARVEY, CONG. RES. SERV., R44260, IMPEACHMENT AND REMOVAL (2015); see also Paul Leblanc, *Democrats Play 1999 Video of Lindsey Graham Talking About Impeachment to Bolster Case Against Trump*, CNN, Jan. 23, 2020, available at <https://www.cnn.com/2020/01/23/politics/impeachment-managers-lindsey-graham-video/index.html> (quoting then-Representative Graham’s statement during the Clinton impeachment that an impeachable offense “[d]oesn’t even have to be a crime. It’s just when you start using your office and you’re acting in a way that hurts people, you have committed a high crime”); Steven J. Harper, *Why Did Alan Dershowitz Say Yes to Trump?*, N.Y. TIMES, Jan. 22, 2020, available at <https://www.nytimes.com/2020/01/22/opinion/alan-dershowitz-impeachment.html> (quoting Alan Dershowitz’s 1998 comments regarding the Clinton impeachment that “[i]t certainly doesn’t have to be a crime if you have somebody who completely corrupts the office of president and who abuses trust and who poses great danger to our liberty. You don’t need a technical crime. We look at their acts of state. We look at how they conduct the foreign policy. We look at whether they try to subvert the Constitution”).

3. U.S. CONST. art. II § 4.

4. 18 U.S.C. § 201(b).

5. The President does not contest that he is a “public official,” and the law confirms that it would be foolish to claim otherwise. The courts have found that a wide array of officials are subject to the bribery statute: from a cook at a federal prison, *U.S. v. Baymon*, 312 F. 3d 725, 728 (5th Cir. 2002), to a private in the United States army, *U.S. v. Kidd*, 734 F. 2d 409, 411–12 (9th Cir. 1984), to a housing eligibility technician employed by an independent public corporation, *U.S. v. Hang*, 75 F. 3d 1275, 1280 (8th Cir. 1996). It would defy reason to argue that a cook at a federal prison is a public official but the President of the United States is not.

6. Tom Porter, *Ambassador Sondland Said Trump Doesn't 'Give a S—' about Ukraine Except When it Benefits Him Personally*, *Official Testifies*, BUSINESS INSIDER, Nov. 19, 2019, available at <https://www.businessinsider.com/sondland-said-trump-doesnt-give-a-s-about-ukraine-official-2019-11>. This attitude to Ukraine is amplified by a statement made by Secretary of State Pompeo, who has refused to testify before the House of Representatives, when he recently asked a NPR political reporter whether she thought Americans gave a [expletive] about Ukraine. Mary Louise Kelly, *Encore: NPR's Full Interview with Secretary of State Mike Pompeo*, NPR, Jan. 25, 2020, available at <https://www.npr.org/2020/01/25/799470712/encore-nprs-full-interview-with-secretary-of-state-mike-pompeo>.

7. *United States v. Williams*, 705 F.2d 603, 602–23 (2d Cir. 1983) (“Corruption of office occurs when the officeholder agrees to misuse his office in the expectation of gain, whether or not he has correctly assessed the worth of the bribe.”).

8. *U.S. v. Gorman*, 807 F.2d 1299, 1304–05 (6th Cir. 1986) (explaining that “anything of value” should be “broadly construed” with a “focus . . . on the value which the defendant subjectively attaches to the items received”).

9. *U.S. v. Renzi*, 769 F.3d 731, 744 (8th Cir. 2014) (citing *Williams* and *Gorman* in explaining importance of subjective test for “anything of value”).

10. *Gorman*, 807 F. 2d 1299 at 1299.

11. *Williams*, 7 F. Supp. 2d 40 at 52–51.

12. *U.S. v. Menendez*, 132 F. Supp. 3d 635 (D.N.J. 2015); see *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 357 (2010) (“The absence of prearrangement and coordination of an expenditure with the candidate or his agent [ . . . ] undermines the value of the expenditure to the candidate,” and therefore the government was not justified in placing limits on independent expenditures.) (internal citations and quotations omitted).

13. *U.S. v. Sheker*, 618 F. 2d 607, 609 (9th Cir. 1980);

14. *U.S. v. Girard*, 601 F. 2d 69, 70 (2d Cir. 1979).

15. *U.S. v. Zouras*, 497 F. 2d 1115, 1121 (7th Cir. 1974).

16. *Sheker*, 618 F. 2d at 609.

17. *U.S. v. Williams*, D.D.C.1998, 7 F.Supp.2d 40, vacated in part 240 F.3d 35, 345 U.S.App.D.C. 111 (emphasis added).

18. MEMORANDUM OF TELEPHONE CONVERSATION: TELEPHONE CONVERSATION WITH PRESIDENT ZELENSKY OF UKRAINE 3 (July 25, 2019).

19. Ryan Lucas, *House Committees Subpoena Rudy Giuliani in Impeachment Inquiry*, NPR, Oct. 1, 2019, available at <https://www.npr.org/2019/10/01/765986709/house-committees-subpoenae-rudy-giuliani-in-impeachment-inquiry>.

20. Tamara Keith, *Trump, Ukraine and the Path to the Impeachment Inquiry: A Timeline*, NPR, Oct. 12, 2019, available at <https://www.npr.org/2019/10/12/768935251/trump-ukraine-and-the-path-to-the-impeachment-inquiry-a-timeline>.

21. Michael Biesecker, Mary Clare Jalonick & Eric Tucker, *Giuliani Associate Names Trump, Pence, More in Ukraine Plan*, ASSOCIATED PRESS, Jan. 17, 2020, available at <https://apnews.com/708b81d4c77038eb0b751c30f72ff315> (quoting letter from Giuliani requesting a meeting with Zelensky “as personal counsel to President Trump and with his knowledge and consent”).

22. Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries that Could Help Trump*, N.Y. TIMES, May 9, 2019, available at <https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html>.

23. See Keith, *Trump*, *supra* n. 23.

24. Amy Choick & Patrick Healy, *This Changes Everything: Donald Trump Exults as Hillary Clinton's Team Scrambles*, N.Y. Times, Oct. 28, 2016, available at <https://www.nytimes.com/2016/10/29/us/politics/donald-trump-hillary-clinton.html>.

25. Benjamin Wood, *Mitt Romney Says Everybody Knows It 'Is Wrong' to Ask a Foreign Government to Probe a Political Rival*, Salt Lake Tribune, Oct. 11, 2019, available at <https://www.sltrib.com/news/politics/2019/10/10/mitt-romney-says-he-hasnt/>. Sen. Romney made this statement in regard to Trump’s request, made live on national television, that China investigate the Bidens. But the logic of the Senator’s claim applies with equal force to Trump’s demand that Ukraine investigate the Bidens.

26. hile CrowdStrike is not actually a Trump political opponent, Trump was accusing them of conspiring with the Democratic National Committee and did not suggest any illegal conduct on their part unrelated to President Trump’s political past and future.

27. Zach Beauchamp, *Trump Didn't Want an Investigation into Biden. He Wanted a Political Show.*, VOX, Nov. 20, 2019, available at <https://www.vox.com/policy-and-politics/2019/11/20/20974201/gordon-sondland-impeachment-hearing-testimony-biden-show-trump>.

28. See United States Attorneys' Manual 1-7.400—Disclosure of Information Concerning Ongoing Criminal, Civil, or Administrative Investigations, 1997 WL 1944080. Only in special circumstances are U.S. attorneys permitted to make public statements about ongoing investigations, such as when necessary to ensure public safety.

29. Treaty of Mutual Legal Assistance, Ukraine-U.S., art. 1 cl.2, July 22, 1998, T.I.A.S. No. 12978.

30. *The Trump-Ukraine Impeachment Inquiry Report: Report for the H. Perm. Select Comm. On Intelligence Pursuant to H. Res. 660 in Consultation with the H. Comm. On Oversight and Reform and the H. Comm. On Foreign Affairs* at 122, 116th Cong. (2019).

31. DEPARTMENT OF JUSTICE, STATEMENT, Sept. 25, 2019 (“The President has not asked the Attorney General to contact Ukraine—on this or any other matter. The Attorney General has not communicated with Ukraine—on this or any other subject.”)

32. See Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries that Could Help Trump*, N.Y. Times, May 9, 2019, available at <https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html> (quoting Giuliani, in response to questions about his travel to Ukraine, noting that “this isn’t foreign policy—I’m asking them to do an investigation [. . .] because that information will be very, very helpful to my client [Donald Trump], and may turn out to be helpful to my government.”) (emphasis added).

33. Miles Parks & Brian Naylor, *Trump Did ‘Nothing Wrong,’ His Legal Team Says in First Day of Impeachment Defense*, NPR, Jan. 25, 2020, available at <https://www.npr.org/2020/01/25/797321065/president-trumps-legal-team-to-begin-impeachment-defense?utm-source=twitter.com&utm-term=nprnews&utm-campaign=npr&utm-medium=social> (“American intelligence agencies have been unanimous in their assessment that it was Russia that interfered in the last presidential race”).

34. 18 U.S.C. § 201(a)(3).

35. See U.S. CONST. art. II § 2 (The President “shall receive ambassadors and other public ministers,”); *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 135 S. Ct. 2076, 2086 (2015)(the Reception Clause “assigns the President means to effect recognition on his own initiative”).

36. Cf. *U.S. v. Birdsall*, 233 U.S. 223, 231 (1914) ([I]t is sufficient that [the act] was governed by a lawful requirement of the executive department under whose authority the officer was acting; and such requirement need not have been prescribed by a written rule or regulation, but might also be found in an established usage which constituted the common law of the department.”).

37. See MARIAN L. LAWSON & EMILY M. MORGENSTERN, CONG. RES. SERV., R40213, FOREIGN AID: AN INTRODUCTION TO U.S. PROGRAMS AND POLICY (2019).

38. *McDonnell v. U.S.*, 136 S. Ct. 2355, 2373. The meetings that the Court considered in *McDonnell* are not comparable. Nowhere in Virginia’s constitution or statutes is the governor tasked with arranging meetings, hosting parties, or engaging in unofficial conversations with other government officials. The Court took issue with a jury instruction which stated that an official act need not have been taken “pursuant to responsibilities explicitly assigned by law,” whereas the President’s actions here clearly are assigned by law.

39. See U.S. Const. art. II § 2 (The President “shall receive ambassadors and other public ministers”); *Zivotofsky*, 135 S. Ct. at 2086 (2015)(the Reception Clause “assigns the President means to effect recognition on his own initiative”); 22 U.S.C. § 2754; 22 U.S.C. § 2311(a).

40. See *Zivotofsky* 135 S. Ct. at 2096.

41. 526 U.S. 398, 404 (1999).

42. *U.S. v. Brewster*, 506 F. 2d 62, 71 (D.C. Cir. 1974). In contrast, with a bribe under 201(c), the thing of value need not be a reason that the official performed the act at all. See *infra* 14–15.

43. DEPARTMENT OF JUSTICE, CRIMINAL RESOURCE MANUAL, 834. INTENT OF THE PARTIES, available at <https://www.justice.gov/jm/criminal-resource-manual-834-intent-parties>.

44. *Id.*

45. *McDonnell*, 136 S. Ct. at 2371.

46. *United States v. Synowiec*, 333 F. 3d 786, 789 (7th Cir. 2003).

47. *Id.* at 789–90.

48. MEMORANDUM OF TELEPHONE CONVERSATION, *supra* n. 21 at 5.

49. Charlie Savage & Josh Williams, *Read the Text Messages Between U.S. and Ukrainian Officials*, N.Y. TIMES, Oct. 4, 2019, available at <https://www.nytimes.com/interactive/2019/10/04/us/politics/ukraine-text-messages-volker.html>.

50. Lisa Mascare, Mary Clare Jalonick & Eric Tucker, *Watch: Ambassador Gordon Sondland Testifies Trump Directed Ukraine Quid Pro Quo*, ASSOCIATED PRESS, Nov. 19, 2019, available at <https://www.wgbh.org/news/national-news/2019/11/19/watch-live-eu-ambassador-gordon-sondland-2-others-testify-on-day-4-of-impeachment-hearings>.

51. Jessica Taylor, ‘Get Over It’: Politics is Part of Foreign Policy, Mulvaney Says, NPR, Oct. 17, 2019, available at <https://www.npr.org/2019/10/17/770979659/watch-white-house-holds-now-rare-press-briefing-amid-impeachment-syria-conflicts>.

52. See Trial Memorandum of President Donald J. Trump at 27–28 (Jan. 20, 2020) (rebutting “radical claim that a President can be impeached and removed from office solely for doing something he is allowed to do, if he did it for the ‘wrong’ subjective reasons [ . . . ] By eliminating any requirement for wrongful conduct, House Democrats have tried to make thinking the wrong thoughts an impeachable offense”) (emphasis in original).

53. As discussed *supra* pp. 1–2, it is eminently clear that the President need not have violated “established law” in order to have committed an impeachable offense.

54. 18 U.S.C. § 201(c).

55. *Brewster*, 506 F. 2d at 72.

56. MEMORANDUM OF TELEPHONE CONVERSATION, *supra* n. 21 at 3.

57. *Sun-Diamond Growers*, 526 U.S. at 404.

58. See Kevin Breuninger, *Trump Says China Should Investigate the Bidens, Doubles Down on Ukraine Probe*, CNBC, Oct. 3, 2019, available at <https://www.cnbc.com/2019/10/03/trump-calls-for-ukraine-china-to-investigate-the-bidens.html> (quoting President Trump, in response to question about what he wanted Ukraine to do, stating that “[i]f they were honest about it, they would start a major investigation into the Bidens”).

59. *McDonnell v. U.S.* 136 S. Ct. 2355, 2371 (2016).

60. *Id.* at 2370–71 (2016); see also *United States v. Hawkins*, 37 F. Supp. 3d 964 (N.D. Ill. 2014), *aff’d in part*, vacated in part on other grounds, remanded, 2015 WL 309520 (7th Cir. 2015) (“What is required to make the act corrupt is not an intent to take a specific action, but the holding out of the performance of the duties of one’s office for sale.”).

61. See *supra* pp. 12–13.

62. Andrew E. Kramer, *Ukraine Knew of Aid Freeze in July, Says Ex-Top Official in Kyiv*, N.Y. TIMES, Dec. 3, 2019, available at <https://www.nytimes.com/2019/12/03/world/europe/ukraine-impeachment-military-aid.html>; *Transcript: Laura Cooper and David Hale’s Nov. 20 Testimony to House Intelligence Committee*, WASHINGTON POST, Nov. 20, 2019, <https://www.washingtonpost.com/politics/2019/11/20/transcript-laura-cooper-david-hales-nov-testimony-house-intelligence-committee/>. Any statement to the contrary by Zelensky is not reliable for the simple reason that Ukraine’s future depends on remaining in Trump’s good graces. As Catherine Croft, who testified that the Ukrainians knew about the hold much earlier than she expected to, stated, the Ukrainians did not want the hold publicized because it “would be a really big deal in Ukraine, and an expression of declining U.S. support for Ukraine.” Charlotte Butash, *Summary of Catherine Croft’s Deposition Testimony*, LAWFARE, Nov. 16, 2019, available at [lawfareblog.com/summary-catherine-crofts-deposition-testimony](http://lawfareblog.com/summary-catherine-crofts-deposition-testimony).

63. Peter Baker, *Mulvaney Will Defy House Impeachment Subpoena*, N.Y. TIMES, Nov. 12, 2019, available at <https://www.nytimes.com/2019/11/12/us/politics/mulvaney-impeachment-subpoena.html>.

64. *Interstate Circuit v. U.S.*, 306 U.S. 208, 226 (1939); see *infra* Part II.

65. H. Res. 755, 116th Cong. § 1 (2019).

66. 18 U.S.C. § 201(b); see *supra* pp. 2–13.

67. See *Report of the H. Comm. on the Judiciary, Impeachment of Donald John Trump, President of the United States* at 120–26, 116th Cong. (2019).

68. See Patricia Zengerle, Karen Freifeld & Richard Cowan, *Pelosi Says Trump Has Admitted to Bribery as Impeachment Probe Intensifies*, REUTERS, Nov. 14, 2019, available at <https://www.reuters.com/article/us-usa-trump-impeachment/pelosi-says-trump-has-admitted-to-bribery-as-impeachment-probe-intensifies-idUSKBN1XO1HD>; Jessica Taylor, *Rep. Adam Schiff: Trump’s Potentially Impeachable Offenses Include Bribery*, NPR, Nov. 12, 2019, available at <https://www.npr.org/2019/11/12/778380499/rep-adam-schiff-trumps-potentially-impeachable-offenses-include-bribery> (explaining that Rep. Schiff believes “there’s a clear argument to be made that Trump committed ‘bribery’ and ‘high crimes and misdemeanors’—both explicitly outlined in the Constitution as impeachable offenses—when pressuring the Ukrainian government to investigate former Vice President Joe Biden’s son in exchange for long-promised military aid”); Sean Collins, *A Republican Memo Details the Party’s Impeachment Inquiry Defenses. They Aren’t Very Strong*, VOX, Nov. 12,

2019, available at <https://www.vox.com/policy-and-politics/2019/11/12/20961073/trump-impeachment-hearings-republican-testimony-strategy> (quoting Rep. Speier: “[t]he president broke the law. He went on a telephone call with the president of Ukraine and said ‘I have a favor, though,’ and then proceeded to ask for an investigation of his rival. And this is a very strong case of bribery”).

69. H. Doc. No. 109–153, *Jurisdictional History of the Judiciary Committee: The Committee and Impeachment*, at 124–27.

70. See H. Res. 1031, 111th Cong. (2010).

71. *Id.* at § 1.

72. Jennifer Steinhauer, *Senate, for Just the 8th Time, Votes to Oust a Federal Judge*, N.Y. TIMES, Dec. 8, 2010, available at <https://www.nytimes.com/2010/12/09/us/politics/09judge.html>.

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75. International Union, United Auto., Aerospace and Agr. Implement Workers of America (UAW) v. N.L.R.B., 459 F. 2d 1329, 1336 (D.C. Cir. 1972) (noting that “this rule can be traced as far back as 1722”); *United States v. Roberson*, 233 F. 2d 517, 519 (5th Cir. 1956) (“Unquestionably the failure of a defendant in a civil case to testify or offer other evidence within his ability to produce and which would explain or rebut a case made by the other side may, in a proper case, be considered as a circumstance against him and may raise a presumption that the evidence would not be favorable to his position.”).

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR ELIZABETH WARREN

Ms. WARREN. Mr. President, when I was elected to serve in the U.S. Senate, I swore an oath to support and defend the Constitution of the United States. Every U.S. Senator takes the same oath. The Constitution makes clear that no one is above the law, not even the President of the United States.

Over the past 2 weeks, the Senate has heard overwhelming evidence showing that the President of the United States, Donald J. Trump, abused the power of his office to pressure the President of Ukraine to dig up dirt on a political rival to help President Trump in the next election. The President then executed an unprecedented campaign to cover up his actions, including a wholesale obstruction of Congress's effort to investigate his abuse of power.

The Constitution gives the Senate the sole power to conduct impeachment trials. A fair trial is one in which Senators are allowed to see and hear all of the relevant information needed to evaluate the Articles of Impeachment, including relevant witnesses and documents. The American people expected and deserved a fair trial, but that is not what they got. Instead of engaging in a pursuit for the truth, Senate Republicans locked arms with the President and refused to subpoena a single witness or document. They even refused to allow the testimony of the President's former National Security Advisor, John Bolton, who possesses direct evidence related to the issues at the heart of the trial, even as more evidence continued to come to light and as Bolton repeatedly volunteered to share what he knows.

This trial boils down to one word: corruption—the corruption of a President who has repeatedly put his interests ahead of the interests of the American people and violated the Constitution in the process; the corruption of this President's political appointees, including individuals like U.S. Ambassador to the European Union Gordon Sondland, who paid \$1 million for an ambassadorship; the corruption running throughout our government that protects and defends the interests of the wealthy and powerful to the detriment of everyone else.

Americans have a right to hear and see information that further exposes the gravity of the President's actions and the unprecedented steps he and his agents took to hide it from the American people. But more importantly, Americans deserve to know that the President of the United States is using the power of his office to work in the Nation's interest, not his own personal interest.

I voted to convict and to remove the President from office in order to stand up to the corruption that has permeated this administration and that was on full display with President Trump's abuse of power and obstruction of Congress. I will continue to call out this corruption and fight to make this government work not

just for the wealthy and well-connected but to make it work for everyone.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR GARY C. PETERS

Mr. PETERS. Mr. President, I swore an oath to defend the Constitution both as an officer in the U.S. Navy Reserve and as a U.S. Senator.

At the beginning of the impeachment trial, I swore an oath to keep an open mind, listen carefully to the facts, and in the end deliver impartial justice.

After carefully listening to the arguments presented by both House managers and the President's lawyers, I believe the facts are clear.

President Trump stands accused by the House of Representatives of abusing his power in an attempt to extort a foreign government to announce a trumped up investigation into a political rival and thereby put his personal interest ahead of national security and the public trust.

The President illegally withheld congressionally approved military aid to an ally at war with Russia and conditioned its release on Ukraine making an announcement the President could use to falsely discredit a likely political opponent.

When the President's corrupt plan was brought to light, the White House engaged in a systematic and unprecedented effort to cover up the scheme.

The President's complete refusal to cooperate with a constitutionally authorized investigation is unparalleled in American history.

Despite the extraordinary efforts by the President to cover up the facts, the House managers made a convincing case.

It is clear.

The President's actions were not an effort to further official American foreign policy.

The President was not working in the public interest.

What the President did was wrong, unacceptable, and impeachable.

I expected the President's lawyers to offer new eyewitness testimony from people with firsthand knowledge and offer new documents to defend the President, but that did not happen.

It became very clear to me that the President's closest advisers could not speak to the President's innocence, and his lawyers did everything in their power to prevent them from testifying under oath.

Witness testimony is the essence of a fair trial. It is what makes us a country committed to the rule of law.

If you are accused of wrongdoing in America, you have every right to call witnesses in your defense, but you also don't have the right to stop the prosecution from calling a hostile witness or subpoenaing documents.

No one in this country is above the law—no one—not even the President.

If someone is accused of a crime and they have witnesses who could clear them of any wrongdoing, they would want those witnesses to testify. In fact, not only would they welcome it, they would insist on it.

All we need to do is use our common sense. The fact that the President refuses to have his closest advisers testify tells me that he is afraid of what they will say.

The President's conduct is unacceptable for any official, let alone the leader of our country.

Our Nation's Founders feared unchecked and unlimited power by the President. They rebelled against an abusive monarch with unlimited power and instead created a republic that distributed power across different branches of government.

They were careful students of history; they knew unchecked power would destroy a democratic republic.

They were especially fearful of an unchecked Executive and specifically granted Congress the power of impeachment to check a President who thought of themselves as above the law.

Two years ago, I had the privilege of participating in an annual bipartisan Senate tradition reading President George Washington's farewell address on the Senate floor.

In that address, President Washington warned that unchecked power, the rise of partisan factions, and foreign influence, if left unchecked, would undermine our young Nation and allow for the rise of a demagogue.

He warned that we could become so divided and so entrenched in the beliefs of our particular partisan group that "cunning, ambitious and unprincipled men will be enabled to subvert the power of the people and to usurp for themselves the reins of government."

I am struck by the contrast of where we are today and where our Founders were more than 200 years ago.

George Washington was the ultimate rock star of his time. He was beloved, and when he announced he would leave the Presidency and return to Mount Vernon, people begged him to stay.

There was a call to make him a King, and he said no. He reminded folks that he had just fought against a monarch so that the American people could enjoy the liberties of a free people.

George Washington, a man of integrity and an American hero, refused to be anointed King when it was offered to him by his adoring countrymen. He chose a republic over a monarchy.

But tomorrow, by refusing to hold President Trump accountable for his abuses, Republicans in the Senate are offering him unbridled power without accountability, and he will gleefully seize that power.

And when he does, our Republic will face an existential threat.

A vote against the Articles of Impeachment will set a dangerous precedent and will be used by future Presidents to act with impunity.

Given what we know, that the President abused the power of his office by attempting to extort a foreign government to interfere with an American election, that he willfully obstructed justice at every turn, and that his actions run counter to our Nation's most cherished and fundamental values, it is clear the President be-

trayed the trust the American public placed in him to fully execute his constitutional responsibilities.

This betrayal is by definition a high crime and misdemeanor. If it does not rise to the level of impeachment and removal, I am not sure what would.

The Senate has a constitutional responsibility to hold him accountable.

If we do not stand up and defend our democracy during this fragile period, we will be allowing this President and future Presidents to have unchecked power.

This is not what our Founders intended. The oath I swore to protect and defend the Constitution demands that I vote to preserve the future of our Republic. I will faithfully execute my oath and vote to hold this President accountable for his actions.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR TOM COTTON

Mr. COTTON. Mr. President, I will soon join a majority of the Senate in voting down the Articles of Impeachment brought against the President by his partisan opponents. The time has come to end a spectacle that has elevated the obsessions of Washington's political class over the concerns and interests of the American people.

This round of impeachment is just the latest Democratic scheme to bring down the President. I say "this round" because House Democrats have tried to impeach President Trump at least four times—first, for being mean to football players; then for his transgender military policy; next for his immigration policy. And those are just the impeachment attempts. Along the way, Democrats also proclaimed that Robert Mueller would drive the President from office. Some even speculated that the Vice President and the Cabinet would invoke the 25th Amendment to seize power from the President—a theory that sounds more like resistance fan fiction than reality.

What is behind this fanaticism? Simply put, the Democrats have never accepted that Donald Trump won the 2016 election, and they will never forgive him, either.

It is time for the Democrats to get some perspective. They are claiming that we ought to impeach and remove a President from office for the first time in our history for briefly pausing aid to Ukraine and rescheduling a meeting with the Ukrainian President, allegedly in return for a corruption inquiry. But the aid was released after a few weeks, and the meeting occurred, yet the inquiry did not—even though, I would add, it remains justified by the Biden family's obvious, glaring conflict of interest in Ukraine.

Just how badly have the Democrats lost perspective? The House managers have argued that we ought to impeach and remove the President because his meeting with the Ukrainian President happened in New York, not Washington.

When most Americans think about why a President ought to be impeached and removed from office for the first time in our history, I suspect that pausing aid to Ukraine for a few weeks is pretty far down the list. That is not exactly "treason, bribery, or other high

crimes and misdemeanors.” And that is especially true when we are just months away from the election that will let Americans make their own choice. Indeed, Americans are already voting to select the President’s Democratic challenger. Why not let the voters decide whether the President ought to be removed?

The Democrats’ real answer is that they are afraid they will lose again in 2020, so they designed impeachment to hurt the President before the election. As one Democratic Congressman said last year, “I’m concerned that if we don’t impeach this president, he will get reelected.” Or, as Minority Leader CHUCK SCHUMER claimed earlier this month, impeachment is a “win-win” for Democrats; either it will lead to the President’s defeat or it will hurt enough Republican Senators in tough races to hand Democrats the majority. Or maybe both.

The political purpose of impeachment was clear from the manner in which House Democrats conducted their proceedings. If impeachment was indeed the high-minded, somber affair that Speaker NANCY PELOSI claimed, House Democrats would have taken their time to get all the facts from all relevant witnesses. Instead, they barreled ahead with a slipshod and secretive process, denying the President’s due-process rights, gathering testimony behind closed doors, leaking their findings selectively to the press, and ignoring constitutional concerns such as executive privilege.

The impeachment vote itself contradicted the pretensions of House Democrats. Speaker PELOSI said last year that she wouldn’t support impeachment unless there was something “so compelling and overwhelming and bipartisan” that it demanded a response. Likewise, Congressman JERRY NADLER said that the House had to “persuade enough of the opposition party voters” before it voted to impeach. Democrats failed on both counts. Indeed, the only bipartisan aspect of the whole proceeding is that both Republicans and Democrats voted against impeaching the President. Not a single Republican voted for either Article of Impeachment in the House, resulting in the first party-line impeachment of a President in our Nation’s history.

So instead of doing their work, House Democrats simply impeached the President and declared their job complete. Yet after piously declaring the urgency of this impeachment, they waited a month to send the articles over to the Senate. Maybe they had to wait for the gold-encrusted souvenir pens to arrive for Speaker PELOSI’s “signing ceremony.”

And once in the Senate, the political theater continued. The House Democrats repeatedly asserted a bizarre logical fallacy: Their case was both “overwhelming” and in need of more evidence. Yet we heard from 17 witnesses—all hand-selected by the House Democrats—and received more than 28,000 pages of documents. The House could have pursued more witnesses during its impeachment; yet it instead chose to rush ahead rather than subpoena those witnesses or litigate issues in Federal court. In fact, when one of the House’s potential witnesses asked a Federal court to rule on the issue, the House withdrew its subpoena and asked to dismiss the case. The House Democrats complain that the courts would have taken too long. Yet they expected the Senate to delay our work to finish theirs. And in a final, remarkable stunt, Con-

gressman ADAM SCHIFF suggested that we depose witnesses—only his, of course, not the President’s—with Chief Justice Roberts ruling on all questions of evidence and privilege, dragging him into this political spectacle.

But the curtain will soon come down on this political theater. The Senate will perform the role intended for us by the Founders, of providing the “cool and deliberate sense of the community,” as it says in Federalist 63, over and against an inflamed and transient House majority. Were we to do otherwise, were the Senate to acquiesce to the House, this process might have dragged on for many weeks, even for months, shutting down the normal legislative business of Congress even longer than it already has.

Even worse, by legitimizing the House’s flawed, partisan impeachment, we would be setting a grave precedent for the future. Just consider how many times we heard about the impeachment trial of President Andrew Johnson during this trial. The Founders didn’t intend impeachment as a tool to check the Executive over policy disagreements or out of political spite. And the House has never before used impeachment in this way, not when the Democrats claimed that President George W. Bush misled the country into the Iraq war or when President Barack Obama broke the law by releasing terrorists from Guantanamo Bay in return for the release of an American deserter, Bowe Bergdahl. Indeed, the Republican House did not impeach President Obama for, yes, withholding aid from Ukraine for 3 full years.

No House in the future should lead the country down this path again. By refusing to do this House’s dirty work, the Senate is stopping this dangerous precedent and preserving the Founders’ understanding that Congress ought to restrain the executive through the many checks and balances still at our disposal. More fundamentally, we are preserving the most important check of all—an election. It is time to teach that lesson to this House and to all future Houses, of both parties.

NANCY PELOSI and ADAM SCHIFF have failed, but the American people lost. Now it is time to get back to doing the people’s business.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR DAN SULLIVAN

Mr. SULLIVAN. Mr. President, I rise today to speak about the impeachment of Donald J. Trump.

The Democratic House managers, who are prosecuting the case against the President, emphasized that history is watching. That is true. Every action taken by the House and the Senate during this impeachment sets a precedent for our country and our institutions of government, whether good or bad.

For that reason, it is our job as Senators to look at the entire record of this proceeding—from what happened in the House to final arguments made here in the Senate. It is also our duty to look at the whole picture, the flawed process in the House, the purely partisan nature of the Articles of Impeachment, the President’s ac-

tions that led to his impeachment, and the impact of all of this on our constitutional norms.

Most importantly, we must weigh the impact on our Nation and on the legitimacy of our institutions of government, if the Senate were to agree with the House managers' demands to overturn the 2016 election and remove the President from the 2020 ballot. This has never happened in our country's 243-year history.

It is also our job as Senators during an impeachment trial to be guided by "a deep responsibility to future times." This is a quote from U.S. Supreme Court Justice Joseph Story, two centuries ago, but it couldn't be more relevant today. With this grave constitutional responsibility in mind and considering the important factors listed above, I will vote to acquit the President on both charges brought against him.

It may surprise some, but if you listened to all the witnesses in this trial and you examine the sweep of American history, one strong bipartisan point of consensus has emerged: Purely partisan impeachments are not in the country's best interest. In fact, they are a danger which the Framers of the Constitution clearly feared.

Alexander Hamilton's warning from Federalist No. 65 bears repeating: "In many cases [impeachment] will connect itself with the pre-existing factions, and will inlist all their animosities, partialities, influence, and interest on one side or on the other; and in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt . . . Yet it ought not to be forgotten that the demon of faction will, at certain seasons, extend his sceptre over all numerous bodies of men."

The reason for this "greatest danger" is obvious: the weaponization of impeachment as a regular tool of partisan warfare will incapacitate our government, undermine the legitimacy of our institutions, and tear the country apart. Until this impeachment, our country's representatives largely understood this. During the Clinton impeachment—Democrats, including Minority Leader SCHUMER and House Managers LOFGREN and NADLER, argued that a purely partisan impeachment would be "divisive," "lack the legitimacy of a national consensus," and "call into question the very legitimacy of our political institutions."

Less than a year ago, Speaker PELOSI said: "Impeachment is so divisive to the country that unless there's something so compelling and overwhelming and bipartisan, I don't think we should go down that path because it divides the country."

Yet here we are. Against the weight of bipartisan consensus and the wisdom of the Framers, the House still took this dramatic and consequential step, the first purely partisan impeachment in U.S. history. Only Democrats in the House voted to impeach the President, while a bipartisan group of House members opposed.

This was done through rushed House proceedings that lacked the most basic due process procedures afforded Presidents Clinton and Nixon during their impeachment investigations. A significant portion of the House proceedings last fall took place in secret, where the President was not afforded counsel, the ability to call his own witnesses, or cross-examine those of the House Democrats. Certain testimonies from these secret hearings were then selectively leaked

to a pro-impeachment press. This happened in America. In my view, it sounds like something more worthy of the Soviet Union, not the world's greatest constitutional republic.

Yet here we are. A new precedent has been set in the House. When asked several times if these precedents and the partisan nature of this impeachment should concern us, the House managers dodged the questions, and my Senate colleagues, who in 1999 were so strongly and correctly and vocally against the dangers of purely partisan impeachments, have all gone silent.

Perhaps it is too late. Perhaps the genie is now out of the bottle. Perhaps the danger that Hamilton so astutely predicted 232 years ago is upon us for good. I hope not. No one thinks that partisan impeachments every few years would be good for our great Nation.

The Senate does not have to validate this House precedent, and a Senate focused on "deep responsibility to future times" shouldn't do so.

In addition to unleashing the danger of purely partisan impeachments, the House's impeachment action and their arguments before the Senate, if ratified, have the potential to undermine other critical constitutional norms, such as the separation of powers and the independence of our judiciary.

These traditions exist to implement the will of the people we represent and to protect their liberty. And yet so much of what has already been done in the House and what has now been argued in the Senate has little or no precedent in U.S. history, thereby threatening many of the constitutional safeguards that have served our country so well for over two centuries.

Take, for example, the debate we recently had on whether to have the Senate seek additional evidence for this impeachment trial. The House managers claim that, by not doing so, we are undermining a "fair trial" in the Senate. The irony of such a claim should not be lost on the American people.

Throughout this trial, and in their briefs, the House managers have claimed dozens of times that they have "overwhelming evidence" on the current record to impeach the President, thereby undermining their own rationale for more evidence.

And in terms of fairness, it is well documented that the Democratic leadership in the House just conducted the most rushed, partisan, and fundamentally unfair House impeachment proceedings in U.S. history.

A Senate vote to pursue additional evidence and witnesses would have turned the article I constitutional impeachment responsibilities of the House and Senate on their heads. It would have required the Senate to do the House's impeachment investigatory work, even when the House affirmatively declined to seek additional evidence last fall, such as subpoenaing Ambassador John Bolton, because of Speaker PELOSI's artificial deadline to impeach the President by Christmas.

A vote by the Senate to pursue additional evidence that the House consciously chose not to obtain would incentivize less thorough and more frequent partisan impeachments in the future, a danger that should concern us all.

Another example of the House's attempt to erode long-standing constitutional norms is found in its second Article of Impeachment,

obstruction of Congress. This article claims that the President committed an impeachable offense by resisting House subpoenas for witnesses and documents, even though the House didn't attempt to negotiate, accommodate, or litigate the President's asserted defenses, such as executive privilege and immunity, to provide such evidence.

These defenses have been utilized by administrations, Democrat and Republican, for decades and go to the heart of the separation of powers within the article I and article II branches of the Federal Government and even implicate a defendant's right to vigorously defend oneself in court. Indeed, the Supreme Court acknowledged in *United States v. Nixon* that the President has the right to assert executive privilege.

Nevertheless, the House managers argued that the mere assertion of these constitutional rights is an impeachable offense, in essence claiming the unilateral power to define the limits and scope of executive privilege, while simultaneously usurping that power from the courts, where it has existed for centuries.

Indeed, the House managers even argued that merely asserting these defenses is evidence of guilt itself. This is a dangerous argument that demonstrates a lack of understanding of basic constitutional norms. As U.S. Supreme Court Justice Brandeis stated in his famous dissent in *Myers v. United States*, "The doctrine of the separation of powers was adopted by the convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy." If allowed to stand by the Senate, the implications of these House precedents for our Nation and the individual liberties of the people we represent are difficult to discern, but would be profound and likely very negative.

Similarly concerning were the attempts, both subtle and not so subtle, to inject Chief Justice Roberts of the U.S. Supreme Court into this trial. The smooth siren song of House Manager SCHIFF, casually inviting the Senate and Chief Justice into a constitutional labyrinth for which there may have been no exit, was a recurring theme of this trial.

"We have a perfectly good judge here," SCHIFF said over and over again, "whom you all trust and have confidence in." Let him quickly decide all the weighty legal and constitutional issues before the Senate, the relevance of witnesses, claims of immunity and executive privilege, what House Manager NADLER described on day 1 of the trial as "executive privilege, and other nonsense."

Moreover, the Chief Justice could do this all within a week, SCHIFF told us. It all seemed so simple, rational, and efficient. But our Constitution doesn't work this way. The Chief Justice, in an impeachment of the President, sits as the Presiding Officer over the Senate, not as an article III judge. And while the Senate can delegate certain trial powers to him, it cannot delegate matters, such as a President's claims of executive privilege, over which the Senate itself does not have constitutional authority.

The quick and efficient fix SCHIFF was tempting the Senate with might have ended up as a form of constitutional demolition. And

as the trial proceeded, it became apparent that it was more than just claims of efficiency behind the invitation to draw the Chief Justice fully into the trial.

There was something else afoot, a subtle and not so subtle attempt by some to attack the credibility and independence of the Chief Justice and the Court he leads. The junior Senator from Massachusetts' question for the House managers, which drew an audible gasp from those watching in the Senate after the Chief Justice read it, made this clear, when she asked about "the loss of legitimacy of the Chief Justice, the Supreme Court, and the Constitution," so too did Minority Leader SCHUMER's parliamentary inquiry about the precedent from the impeachment of President Johnson 150 years ago, on the role of the Chief Justice in breaking ties on 50–50 votes in the Senate during Presidential impeachments. Chief Justice Roberts' cogent, historically accurate, and constitutionally-based answer to this inquiry will set an important precedent on this impeachment issue for generations to come.

Perhaps it is all a coincidence, but as these attempts to diminish the Chief Justice's credibility by more fully dragging him into this impeachment trial were ongoing, much more harsh political ads directly attacking him in this regard were being launched across the country. Members of the Senate noticed, and we were not impressed.

The independence of the Federal judiciary as established in our Constitution is a gift to our Nation that has taken centuries to develop. The overreach of the House managers and certain Democratic Senators seeking to undermine this essential constitutional norm was a disappointing and even dangerous aspect of this impeachment trial.

When historians someday write about this divisive period of American history, they would do well to focus on these subtle and not so subtle attacks on the Chief Justice's credibility—and by extension the credibility of the Supreme Court—for it was clearly one of the important reasons why the Senate voted last week, 51 to 49, to no longer prolong the trial phase of this impeachment.

The impeachment articles do not charge the President with a crime. Although there was much debate in the trial on whether this is required, it is undisputed that in all previous presidential impeachments—Johnson, Nixon, and Clinton—the President was charged with having violated a criminal statute. And there was little dispute that these charges were accurate. Lowering the bar to non-criminal offenses has set a new precedent. However, whether a crime is required is still debatable. Instead, the House impeachment charged the President with an abuse of power based on speculative interpretation of his intent.

So what about the President's actions that were the primary focus of this impeachment trial and the basis of the House's first Article of Impeachment claim that he abused his power? The House managers argued that the President abused his power by taking actions that on their face appeared valid—withholding aid to a foreign country and investigating corruption—but were motivated by "corrupt intent."

One significant problem with this argument is that it is vague and hinges on deciphering the President's intent and motives, a dif-

difficult feat because it is subjective and could be—and was indeed in this case—defined by a partisan House. Further, the House managers argue essentially that there could be no legitimate national interest in pursuing investigations into interference of the U.S. 2016 elections by Ukraine and corruption involving Burisma.

I believe all Presidents have the right to investigate interference in U.S. elections and credible claims of corruption and conflicts of interest, particularly in countries where America sends significant amounts of foreign aid, like Ukraine, and where corruption is endemic, like Ukraine.

Were the President's actions perfect? No. For example, despite having the authority to investigate corruption in Ukraine and with Burisma, I believe he should have requested such an investigation through more official and robust channels, such as pursuing cooperation through the U.S. Mutual Legal Assistance Treaty with Ukraine, with the Department of Justice in the lead. I also believe that the role of Mr. Giuliani has caused confusion and may have undermined the Trump administration's broader foreign policy goals with regard to Ukraine.

But none of this even remotely rises to the level of an offense that merits removing the President from office. It is difficult to imagine a situation requiring a higher burden of proof. The radical and dangerous step that the House Democrats are proposing seems to have been lost in all of the noise.

What they are asking the Senate to do is not just overturn the results of the 2016 election—nullifying the votes of millions of Americans—but to remove the President from the 2020 ballot, even as primary voting has begun across the country.

Such a step, if ever realized, would do infinitely more damage to the legitimacy of our constitutional republic and political system than any mistake or error of judgment President Trump may have made.

An impeachment trial is supposed to be the last resort to protect the American people against the highest crimes that undermine and threaten the foundations of our Republic, not to get rid of a President because a faction of one political party disagrees with the way he governs. That is what elections are for.

I trust the Alaskan and American people, not House Democrats, with the monumental decision of choosing who should lead our Nation.

And soon, they will decide, again, who should lead our Nation. In churches, libraries, and school cafeterias, the people all across the country will vote for who they want to represent them.

And I am convinced that the American people will make their choices wisely.

Let me conclude by saying a few words about where we should go from here.

Right before this impeachment trial began, I was at an event in Wasilla, AK, where many of Alaska's military veterans attended. A proud veteran approached me with a simple but fervent request. "Senator SULLIVAN," he said, "Protect our Constitution."

So many of us, including me, have heard similar pleas over the past few months from the people we represent, but there was something about the way he said it, something in his eyes that truly got

my attention. I realized that something was fear. That man, a brave Alaskan who had served in the military to protect our constitutional freedoms, was afraid that the country he knows and he loves was at risk. And I have to admit that I have had similar fears these past weeks.

But I look around me, on this floor, and I continue to see hope for our Nation.

I see my colleagues on the other side of the aisle—my friends—who are willing to work with me on so many issues to find solutions sorely needed for the country.

And back home, I see my fellow Alaskans, some of them fearful, but also so hungry to do their part to help heal the divides.

We should end this chapter, and we should take our cues from them, the people whose spirit and character guides this great Nation. They want us to protect our Constitution. They need us to work together to do that and address America's challenges.

It is time to get back to the work Alaskans want the Congress to focus on: growing our economy, improving our infrastructure, rebuilding our military, cleaning up our oceans, lowering healthcare costs and drug prices, opening markets for our fishermen, and taking care of our most vulnerable in society like survivors of sexual assault and domestic violence and those struggling with addiction.

That is what I am committed to do.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR CATHERINE CORTEZ MASTO

Ms. CORTEZ MASTO. Mr. President, the decision I make today is not an easy one, nor should it be.

I have approached this serious task with an open and impartial mind, as my trial oath required. I have studied the facts and the evidence of the case before me.

I have been an attorney for over two decades, and I was the attorney general of Nevada for 8 years. And I keep coming back to what I learned in the courtroom. The law is a technical field, but it is also based on common sense.

You don't have to study the law for years to know that stealing and cheating are wrong. It is one of the first things we learn in our formative years.

And you don't have to be a law school professor to realize that a President should not be using the job the American people gave him to benefit himself personally.

Abraham Lincoln reminded us that our Nation was founded on the essential idea of government "of the people, by the people, for the people."

As I sat on the Senate floor thinking about President Lincoln and listening to the arguments in President Trump's impeachment trial, I thought of the awesome responsibility our Founding Fathers entrusted to each Senator.

I also thought about all of the Nevadans I represent—those who voted for President Trump and those who did not. For those who did, I put myself in their shoes and considered how I would respond if the President were from my political party.

The removal of a sitting President through impeachment is an extraordinary remedy. It rarely occurs, and no Senator should rush into it.

Yet impeachment is a key part of our constitutional order. When our Founding Fathers designed the Office of the Presidency, the Framers of the Constitution had just gotten rid of a King, and they didn't want another one.

They were afraid that the President might use his extensive powers for his own benefit.

To prevent this, the Framers provided for impeachment by the House and trial by the Senate for "treason, bribery, or other high crimes and misdemeanors."

They didn't have to do things this way. They could have left it up to the courts to hold the trial of a President accused of wrongdoing.

But they wanted to make sure each branch of government could be a check on the other, which would bring balance to our system of government.

And the Framers were specifically concerned with the idea of an all-powerful Executive who might abuse his power and invite foreign interference in our elections.

This concern is reflected in the Articles of Impeachment laid out by the House managers.

Putting aside the biases I heard coming from both political parties, I focused on getting to the truth of the case—like any trial attorney.

The truth in any case that I have been involved with starts with the facts.

For 2 weeks I listened to the arguments presented by both sides, took notes, posed questions, and identified the facts that were supported and substantiated and those that were not.

With a heavy heart and great sadness, I became convinced by the evidence that President Trump intentionally withheld security assistance and a coveted White House meeting to pressure Ukraine into helping him politically, even though Ukraine was defending itself from Russia.

This wasn't an action "of the people, by the people, for the people."

President Trump used the immense power of the U.S. Government not for the people but, rather, for himself.

We know these facts from President Trump's own words in a phone call to Ukrainian President Zelensky in July and in statements to the press in October.

We also know it through the testimony of 17 American officials—many of them appointed by the President himself.

Those officials indicated that over the spring and summer of 2019, through both his personal lawyer, Rudy Giuliani, and through American diplomats, President Trump asked Ukraine to publicly announce investigations that would influence the 2020 elections in his favor.

We also know through testimony provided during the House investigation that President Trump tried to pressure Ukraine to announce those investigations, first by conditioning a visit by Presi-

dent Zelensky to the White House on them and later by denying \$391 million in security assistance to Ukraine.

Some of my colleagues don't dispute these facts.

President Trump's actions interfere with the fundamental tenets of our Constitution. Citizens do not get to govern themselves if the officials who get elected seek their own benefit to the detriment of the public good.

The Framers knew this. They were very aware that officials could leverage their office to benefit themselves.

In Federalist No. 65, Alexander Hamilton explained why we had the impeachment power in the first place: it was to respond to "those offenses which proceed from the misconduct of public men, or in other words, from the abuse or violation of some public trust."

With the undisputed facts condemning the President, I listened to the President's counsel argue that the Articles of Impeachment were defective because abuse of power and obstruction of Congress are not crimes.

However, many constitutional scholars soundly refuted this argument, and precedent supports them. The Impeachment Articles in President Nixon's case included abuse of power and obstruction of Congress.

During this impeachment investigation, the President blocked all members of his administration from testifying in response to congressional committee requests and withheld all documents.

This action is absolutely unprecedented in American history. Even Presidents Nixon and Clinton allowed staff to testify to Congress during impeachment investigations and provided some documents.

The executive branch has no blanket claim to secrecy. It works for the American people, as do Members of Congress.

In the Senate, the President's counsel argued that the House investigators should have fought this wholesale obstruction in court. Yet at the same time, in a court down the street, other administration lawyers contended that the courts should stay out of disputes between Congress and the President.

The President's counsel also argued that the American people should decide in the next election whether to remove President Trump for his actions. But if this were the standard, then the impeachment clause could only ever be utilized in the second term of a Presidency, when no upcoming election would preserve the country.

Most importantly, isn't the impeachment clause pointless if a President can abuse his power in office and then completely refuse to comply with a House impeachment investigation and a Senate trial in order to delay until the next election?

The Framers themselves actually argued about whether Americans could rely on elections to get rid of bad Presidents. They decided that if they didn't put the impeachment power into the Constitution, a corrupt President would be willing to do anything to get himself reelected.

James Madison said that without impeachment, a corrupt President "might be fatal to the Republic."

And through my oath of office as a Senator, I swore to protect not just Nevadans but also our great Republic.

Our country, unfortunately, has never been more divided along party lines. It played out in the House impeachment investigation and in the Senate trial. The Senate rules for the trial were not written by all of the Senators with bipartisan input. Instead, they were written behind closed doors by one man in coordination with the President. In so doing, the Senate has abdicated its powerful check on the executive branch.

Without this important check, I am concerned about what the President will do next to put our Republic in jeopardy.

We have seen that President Trump is willing to violate our Constitution in order to get himself reelected. He has disrespected norms and worked to divide our country for his own political gain. He has undermined our standing in the world and put awesome pressure on foreign leaders to benefit himself, rather than to advance the interests of our country.

I have also learned from this trial that the President is willing to take any action, including cheating in the next election, to serve his personal interest.

No act in our country is more sacred and solemn for democracy than voting, and nothing in our system of government is more vital to the continued health of our democracy than its elections. No American should stand for foreign election interference, much less invite it.

American elections are for Americans.

That is why I cannot condone this President's actions by acquitting him.

Finding the President guilty of abuse of power and obstruction of Congress marks a sad day for our country and not something I do with a light heart.

But I was sent to Congress not just to fight for all Nevadans but also to fight for our children and their future. To leave them with a country that still believes in right and wrong, that exposes corruption in government and holds it accountable, that stands up to tyranny at home and abroad.

In my view, President Trump has fallen far, far short of those lofty ideals and of the demands of our Constitution.

That requires the rest of us, regardless of party, creed, or ethnicity, to work together all the more urgently to defend our democracy, our elections, and our national security.

I have faith in Americans because I have seen time and time again in Nevada our ability to come together and work with one another for our common good.

America is more than just one person, and like President Lincoln's, my faith will always lie with the people.

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[From the CONGRESSIONAL RECORD, February 5, 2020]

STATEMENT OF SENATOR JACKY ROSEN

Ms. ROSEN. Mr. President, I didn't come to the Senate expecting to sit as a juror in an impeachment trial. I have participated in this trial with an open mind, determined to evaluate the President's actions outside of any partisan lens, and with a focus on my constitutional obligations. I listened to the arguments, took de-

tailed notes, asked questions, and heard both sides answer questions from my colleagues. After thorough consideration, based on the evidence presented, sadly, I find I have no choice but to vote to remove the President from office.

The first Article of Impeachment charges the President with abuse of power, specifically alleging that the President used the powers of his public office to obtain an improper political benefit. I can now conclude the evidence shows that this is exactly what the President did when he withheld critically important security assistance from Ukraine in order to persuade the Ukrainian Government to investigate his political rival. I understand that foreign policy involves negotiations, leveraging advantages, and using all the powers at our disposal to advance U.S. national security goals. But this was different. The President sent his personal attorney, whose obligation is to protect the personal interests of the President, not the United States, to meet and negotiate with foreign government officials from Ukraine to get damaging information about the President's rivals, culminating in the July 25 phone call between the U.S. and Ukrainian Presidents, during which the President made clear his intent to withhold aid until a political favor was completed. In doing so, the President put U.S. national security and a key alliance against Russian aggression at risk, all so he could benefit politically from the potential fallout from an investigation into a possible opponent.

While I would like to hear more from witnesses and see the documents the administration is withholding, the evidence presented is compelling and not in doubt. The President withheld military aid in order to coerce an ally to help him politically. This is no mere policy disagreement; this is about whether the President negotiates with foreign governments on behalf of the United States or on his own behalf. No elected official, regardless of party, should use public office to advance his or her personal interests, particularly to the detriment of U.S. national security, and in the case of the President of the United States, such conduct is particularly dangerous. As elected officials, we have no more important responsibility than ensuring our national security, and that includes protecting the Nation from future threats. The President's conduct here sets a dangerous precedent that must not be repeated in the future and requires a firm response by the representatives of the people. After hearing evidence that the President held up congressionally approved military assistance to an ally fighting Russia in order to exact concessions from Ukraine that benefited him personally, we cannot trust the President to place national security over his own interests. It is therefore with sadness that I conclude that the President must be removed from office under article I, and I will vote to convict him of abuse of power.

With respect to the second Article of Impeachment charging obstruction of Congress, the President's behavior suggests that he believes he is above the law. Certainly, there may be documents and testimony that are subject to executive privilege or are confidential for some other reason. But here, the President directed every agency, office, and employee in the executive branch not to cooperate with the impeachment inquiry conducted by the U.S. House of Representatives. As a Member of Congress, I take my oversight role se-

riously. It is how we ensure transparency in government, so the people of Nevada can know how their tax dollars are spent and whether their elected officials are acting legally, ethically, and in their best interests. The President's refusal to negotiate in good faith with the House investigators over documents and testimony and instead to impede any investigation into his official conduct can only be characterized as blatant obstruction.

More importantly, it suggests that he will continue to operate outside the law, and if he believes he can ignore lawful subpoenas from Congress, it will be impossible to hold him accountable. For these reasons, I will vote to convict the President of obstruction of Congress, as delineated in article II.

Impeachment is a grave constitutional remedy, not a partisan exercise. To fulfill my constitutional role as a juror, I asked myself how I would view the evidence if it were any President accused of this conduct. Based on the facts and arguments presented, I conclude that no President of the United States, regardless of party, can trade congressionally approved and legally mandated military assistance for personal political favors. No one is above the law, not this President or the next President. Having exercised my constitutional duty, I will continue what I have been doing over the course of this trial and have done since I first came to Congress, to look past partisanship and develop commonsense, bipartisan solutions that help hard-working families in Nevada and across the country.

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[From the CONGRESSIONAL RECORD, February 10, 2020]

STATEMENT OF SENATOR JOHN BARRASSO

Mr. BARRASSO. Mr. President, I come to the floor today following Senate acquittal in the impeachment trial of President Trump.

After a 2-week trial, the U.S. Senate has delivered impartial justice. Make no mistake: Senate acquittal is the final judgment, forever clearing President Trump.

The House clearly made serious mistakes. Never before has a President been impeached with no underlying crime, no defense counsel, and not a single Republican vote. It was purely partisan and totally political.

The House overstepped its authority. The Senate, however, according to the Constitution, has the final word. The Senate followed the law. The Senate held a fair trial. We used the bipartisan Clinton trial format. These rules ensured both sides full and equal time.

Let's not forget: In the House, the President's rights were ignored. He had no voice, no due process, no defense. The Senate allowed the President to defend himself, and his defense team presented a fact-based case. White House lawyers detailed the President's legitimate, long-held concerns over Ukraine corruption. The President's legal team made a strong case against the House impeachment articles.

House managers, meanwhile, failed to prove their case. Rather than focus on facts, they appeared to be playing to the cameras. Incredibly, House managers attacked the Senate jury, accusing Re-

publicans of “corruption” and “cover-up.” House managers played for time, repeating speeches, demanding more witnesses we didn’t need. In reality, it was a weak case. There were no offenses that rose to the Constitution’s requirement of “Treason, Bribery, or other high Crimes and Misdemeanors.”

The House process was one-sided from the start. For political purposes, Speaker PELOSI rushed the impeachment vote by Christmas, claiming urgency. Then her sense of urgency disappeared. She proceeded to delay the Senate trial for 4 weeks. The Speaker waited 33 days to send us the Articles of Impeachment. This begs the question: Why delay the removal of a President the Democrats in the House claim is “dangerous”?

Still, the Speaker insisted this spectacle was “solemn,” even prayerful. Then came her strangely irreverent signing ceremony. Nothing says solemn like souvenir signing pens.

The bottom line is: Partisan impeachment is poison—poison—for our democracy. Senate acquittal is the antidote. Impeachment has hurt and divided this country. It has also delayed important work on behalf of the American people. Congress needs to now come together and move forward.

Look at the incredible results we are already seeing under this President. Thanks to tax and regulatory relief, our economy is booming. American workers are winning.

We are seeing record job growth: 7 million new jobs, 500,000 new manufacturing jobs, and 50-year-low unemployment. Middle-class and blue-collar wages are rising. Household wealth is soaring. Consumer confidence is at record highs. Add to that the President’s America-first trade deals. The U.S.-Mexico-Canada deal, deals with China, Japan, they are a boon for our farmers and for our workers. What is more, we have unleashed American energy. The U.S. is now No. 1 in oil and in natural gas. We no longer need Middle East oil. We have also confirmed 187 highly qualified Federal judges. Above all, we are keeping the country safe and secure. President Trump has completely rebuilt our military.

Yet partisan impeachment has blocked progress. Congress has learned its lesson: Impeachment, if it is to ever happen again, must be bipartisan, fair, and rare. Senate acquittal is the final judgment.

Now, we are back to work for the American people. We are looking forward to the important work ahead, to continuing our progress on priorities like lowering prescription drug costs, securing our border, and fixing our aging roads and bridges.

The 2020 Presidential election is fast approaching. In fact, voting has already occurred in Iowa. It is time for the American people to decide who serves as President. It is time for Congress to get back to work. Thank you.

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[From the CONGRESSIONAL RECORD, February 10, 2020]

STATEMENT OF SENATOR MARTHA MCSALLY

Ms. MCSALLY. Mr. President, on Wednesday, I voted against convicting President Trump of the two Articles of Impeachment. The Senate has spent the last 3 weeks in a Presidential impeachment trial for only the third time in our Nation’s 244-year history.

ADAM SCHIFF and House Democrats demanded that the Senate overturn the results of the 2016 Presidential election, remove President Trump from office, and take him off the 2020 ballot. These outcomes would be deeply disruptive to the functioning of our government, would further divide our Nation, and would prevent the American people from deciding who their President should be at the ballot box. The American people collectively are better fit to judge Donald Trump's Presidency as a whole than the partisan politicians in Washington who brought forth this impeachment. Despite the celebrations by NANCY PELOSI and House Democrats, this is a grave and serious matter with implications far beyond this President, this Congress, and this generation.

During the trial, I have remained committed to my oath to administer impartial justice with the same seriousness as my oath to protect the Constitution that I put my life on the line for in uniform. I listened carefully to the presentations by both the House managers and the President's counsel. I researched the law, reviewed historical precedents, and asked questions. I discussed the evidence and the issues with colleagues, and I came to my own conclusion.

The text, history, and purpose of the Constitution support acquittal. Our founding document gives the House the sole power of impeachment and the Senate the sole power to try all impeachments. Further, it requires a two-thirds vote to convict and remove any President. The Founding Fathers were concerned that impeachment would be frequently used as a partisan political weapon. Because of this concern, they deliberated whether to include Presidential impeachment at all. Then, they considered the scope of the offenses subject to the grievous, divisive, and disruptive punishment of decapitating one branch of our government. At the constitutional convention, the Founders rejected vague, standardless terms like "malpractice," "neglect of duty," and "maladministration." James Madison, the father of our Constitution, objected that vague terms would be "equivalent to a tenure during the pleasure of the Senate." Madison's view prevailed, and the Framers settled on "treason, bribery, or other high crimes and misdemeanors" to minimize the risk of partisan abuse of impeachment.

Madison and the other Founders intended impeachment to be an extremely disruptive last resort to save the Republic. What our constitutional text and tradition teach us is that no President should be impeached and removed from office without the support of both parties and the American people. The reason that President Andrew Johnson avoided conviction in his trial was that a mixed group of both Democrats and Republicans voted to find the President not guilty. Richard Nixon's impeachment inquiry vote passed the House 410 to 4. Senator CHUCK SCHUMER and Speaker NANCY PELOSI used to agree. "I expect history will show that we've lowered the bar on impeachment so much, we've broken the seal on this extreme penalty so cavalierly—that it will be used as a routine tool to fight political battles," SCHUMER said in 1998. "My fear is that when a Republican wins the White House, Democrats will demand payback." Likewise, Speaker PELOSI stated last March: "Impeachment is so divisive to the country that unless there's something so compelling and overwhelming and bipartisan, I don't think

we should go down that path because it divides the country.” Before a few months ago, the consensus, articulated well by Senator SCHUMER and Speaker PELOSI, was that a partisan impeachment is not a proper impeachment.

The first Article of Impeachment for “abuse of power” does not warrant removal from office and the ballot. The President is not perfect, and the way in which he evidently attempted to address his legitimate concerns about corruption involving the Bidens was inappropriate. But even if all that the House Democrats allege in fact occurred, even if John Bolton supports their allegations in his book, even if other negative information comes out in the future, this does not rise anywhere near the level of throwing the President out of office or off the ballot for the first time in American history. Abuse of power is a vague offense that the House managers have failed to define with precision, but even accepting all the House managers’ facts as true, the alleged conduct does not justify conviction.

The second Article of Impeachment for “obstruction of Congress” is frivolous and dangerous for the separation of powers that is foundational to our Republic. Presidential clashes with Congress are not just routine but are baked into our constitutional DNA. The separation of powers painstakingly negotiated by our Founders is working—and that is a positive thing. The Framers designed tension between the coequal executive and legislative branches of our government. Congress often wants access to everyone and everything in the executive branch. The executive branch, in contrast, has legitimate grounds to prevent certain advisors or documents from being hauled before Congress. This article, if legitimized, would cede unprecedented power to one Chamber and would permit the House to remove a President from office any time that it does not get what it wants from the President, exactly as James Madison feared.

Not only do the two articles fail, but I also cannot in good conscience vote to convict because every step of this slapdash impeachment process has been characterized by a lack of fundamental fairness. I am troubled by the speed and cheerful eagerness with which the House Democrats railroaded through their investigation and vote on the articles. Unlike the Nixon and Clinton impeachments, the investigation into the alleged wrongdoing was hastily conducted and sloppily executed. The House Democrats made it clear that their objective was to impeach the President by Christmas, and they trampled over fairness and well-established legal processes on the way. After initially failing to vote to authorize the inquiry, they went from a vote authorizing an inquiry to impeaching the President in just 48 days.

What is more, the House Intelligence Committee failed to afford the President with procedural rights. The House should have voted to authorize the impeachment before investigating and should have attempted the usual accommodation process to resolve the tensions with the executive branch. The fundamentals of due process also include the right to have counsel present during interviews with investigators, the right to cross-examine witnesses, the right to call your own witnesses, and the right to submit evidence. Here, House Democrats called only their preferred witnesses, and they denied

President Trump's counsel the opportunity to be present for examinations. The Democrats conducting the investigation also failed to subpoena individuals whom they now claim are key witnesses. If ADAM SCHIFF genuinely wanted to hear from John Bolton, he should have subpoenaed him, should have allowed the President to assert immunity, and should have gone to the courts to sort out the competing claims. But that wouldn't have fit the House Democrats' rushed timeline or narrative.

Once the process was handed over to the House Judiciary Committee, House Democrats had a single hearing with law professors on December 4 before announcing on December 5 that they were committed to drafting Articles of Impeachment. The committee approved the articles on December 13. To put this in perspective, this meant that the relevant committee spent 1 week drafting the articles before Speaker PELOSI spent 4 weeks sitting on the articles. And on the Senate side, I am likewise concerned that ADAM SCHIFF, House Democrats, and CHUCK SCHUMER demanded that the Senate do the House's job and clean up the House's shoddy work. Democrats have insisted that the Senate subpoena witnesses that the House refused to call and that the Senate shut itself down for weeks or months to allow for an investigation that the House should have conducted before proceeding to a final impeachment vote. The House Democrats showed testimony of 13 witnesses during the trial and submitted 28,000 pages of documents. Having repeatedly stated that their evidence was overwhelming, they then claimed that they needed more witnesses and documents to make their case. You can't have it both ways.

I am particularly troubled that in the Senate, the House managers sought to have the Senate address issues of executive privilege in a way that it has never done before. Executive privilege is a right—asserted by all Presidents of different parties for decades—to prevent close advisers from divulging confidential communications. But now, for the first time in our Nation's history, the Democrats sought to have the Senate displace the judiciary and resolve, by majority vote, highly complicated questions on executive privilege—a task that would raise substantial constitutional and institutional questions.

Even more disturbing was the House and Senate Democrats' casual attempt to drag the Chief Justice of the Supreme Court into this process. With a straight face, ADAM SCHIFF repeatedly called for the Chief Justice to be the decisionmaker on serious and complex issues, as if attempting to remove a President and adjust the relationship between the House and the Senate forever weren't enough. On top of this, Democrats tried to bring the third branch of government into this partisan political exercise with no concern for the seismic implications for our Republic.

Although my vote against convicting President Trump lies with the failure of House Democrats to prove impeachable conduct, I would be remiss if I did not emphasize one crucial fact: The historical record is clear that President Obama was weak on Russia and trivialized the geopolitical threat posed by Putin. In 2009, Obama's Secretary of State presented the Russian Foreign Minister with a "reset" button, grinning alongside him in a photo opportunity. That year, President Obama, at Russia's request, cancelled plans to

build a missile defense system in Eastern Europe. In 2011, an open microphone caught Obama telling Russian President Medvedev that he would “have more flexibility” with easing pressure on Russia—“particularly with missile defense”—after the Presidential election. During the 2012 election, President Obama mocked his opponent for expressing geopolitical concern about Russia. “The 1980s are now calling to ask for their foreign policy back,” Obama said. Two years later, Russia annexed Crimea and then invaded eastern Ukraine. Obama refused to provide lethal aid to Ukraine to defend itself and his policies toward Russia were a national security disaster.

In contrast, President Trump has placed unprecedented sanctions on Russia and provided lethal weapons like the Javelin anti-tank missile to Ukraine to defend itself. Several of the House managers who attempted to remove President Trump for a minor delay in security-assistance funding, which was separate from the Javelin missile purchases, voted against providing lethal aid to Ukraine in multiple defense authorization and funding bills. Should we have impeached Obama for not providing lethal aid to Ukraine? No. It was bad policy and weak compared to what Trump has done but not impeachable.

This Presidential impeachment is historic for dangerous reasons. It is the first partisan House impeachment with bipartisan opposition. It is the first to deny procedural fairness protections to the President during the House inquiry. It is disturbing because this entire matter should have been handled via the normal oversight processes available to Congress with subpoena disputes resolved in the courts.

With all the above in mind, I conclude that the President did not engage in conduct rising to the level of treason, bribery, or other high crimes and misdemeanors. Democrats have been trying to impeach President Trump repeatedly since he was elected. They filed eight impeachment resolutions for everything from undermining the freedom of the press to using insulting language.

Our country has a Presidential election in 9 months, with the first votes in Iowa already completed. The American people deserve to be represented by the President they elected. They also deserve to choose who is the President for the next 4 years. While I have concerns about the upcoming 9 months, I am likewise concerned about the next 90 years. Looking at the process that unfolded in the House and the constitutional contortionism that the Democrats displayed in the Senate, it would be a dangerous precedent to normalize how House Democrats have carried out this process. If rewarded, this precedent would trivialize impeachment, distort the relationship between the two Chambers, and forever alter the relationship among the three branches. In the future, any House controlled by the opposite party of the President could trample on due process, ram through an unfair impeachment for vague accusations, and demand that the Senate shut down its legislative work to investigate on behalf of the House. No future House of Representatives run by Democrats or Republicans should take this path.

I have heard it said repeatedly throughout this trial that Benjamin Franklin left Americans “a Republic—if you can keep it.” I vote to keep it.

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[From the CONGRESSIONAL RECORD, February 12, 2020]

STATEMENT OF SENATOR CHARLES E. SCHUMER

Mr. SCHUMER. Madam President, in voting to acquit President Trump of an abuse of power and obstruction of Congress, Senate Republicans sought to justify their vote by claiming that the President had “learned his lesson.” The implication was that the ordeal of impeachment and its permanent stain on his reputation that can never be erased would chasten President Trump’s future behavior—a toddler scolded into compliance.

The explanation, frankly, looked like an excuse. It was unconvincing the moment it was uttered. No serious person believes President Trump has learned any lesson. He doesn’t learn any lessons. He does just what he wants and what suits his ego at the moment. Observers of the President would question whether he is even capable of learning a lesson, and, unsurprisingly, the flimsy rationalization by some Senate Republicans, desperate to have an excuse because they were so afraid of doing the right thing, was disproven within a matter of days.

President Trump was acquitted by Senate Republicans last Wednesday. On Friday, he began dismissing members of his administration who testified in the impeachment inquiry, including the patriot LTC Alexander Vindman and Ambassador Gordon Sondland, a clear and obvious act of retaliation—very simply, that is all it was—against witnesses who told the truth under oath.

President Trump hates the truth, time and time again, because he knows he lies, and when other people tell the truth, he hates it, so he fired them. The President even fired the brother of Lieutenant Colonel Vindman for the crime of being related to someone the President wanted out. How vindictive, how petty, how nasty, and yet there are rumors now that the President might dismiss the inspector general of the intelligence community, the official who received the whistleblower report. These are patriots all. President Trump can’t stand patriots because they stand for country, not for what he wants.

Yesterday, once again and typically, the White House reportedly decided to withdraw the nomination of Elaine McCusker, who was in line to serve as the Pentagon Comptroller and Chief Financial Officer. Why did he dismiss her—a longtime serving, very capable woman? Because over the summer, Ms. McCusker advised—merely advised—members of the administration about the legal ramifications of denying assistance to Ukraine. Her crime, in the eyes of President Trump and his so many acolytes—henchmen—in the administration, was attempting to follow the law. How dare she try to follow the law. How dare she even voice this is what the law is in this kind of administration.

Of course, yesterday, after career prosecutors recommended that Roger Stone be sentenced to 7 to 9 years in Federal prison for witness tampering and lying abjectly to Congress, the President

tweeted that his former confidant was being treated extremely unfair. It appears the Attorney General of the United States and other political appointees of the Justice Department intervened to countermand the sentencing recommendation. As a result, in an unprecedented but brave, courageous, and patriotic move, four career prosecutors working on the Roger Stone case—all four of them—withdraw from the case or resigned from the Justice Department.

When asked about the clear impropriety of intervening in a Federal case, the President said he has an “absolute right” to order the Justice Department to do whatever he wants. This morning, the President congratulated the Attorney General, amazingly enough, for taking charge of the case.

The President ran against the swamp in Washington, a place where the game is rigged by the powerful to benefit them personally. I ask my fellow Americans: What is more swampy, what is more fetid, and what is more stinking than the most powerful person in the country literally changing the rules to benefit a crony guilty of breaking the law?

As a result, I have formally requested that the inspector general of the Justice Department investigate this matter immediately. This morning, I call on Judiciary Committee Chairman GRAHAM to convene an emergency hearing of the Judiciary Committee to do the same—to conduct oversight and hold hearings. That is the job of the Judiciary Committee, no matter who is President and whether the President is from your party or not. Something egregious like this demands that the inspector general investigate and demands that the chairman of the Judiciary Committee hold a hearing now.

The President is claiming that rigging the rules is perfectly legitimate. He claims an absolute right to order the Justice Department to do anything he wants. The President has, as his Attorney General, an enabler—and that is a kind word—who actually supports this view. Does anyone think it is out of the question that President Trump might order the FBI to investigate Hillary Clinton, Joe Biden, or anyone else without any evidence to support such an arbitrary violation of individual rights? Oh, I know, some far-right conspiratorial writer, who has no credibility, who just makes things up, writes it, FOX News puts it on, Sean Hannity or someone talks about it, and then the President says “investigate.” That is third-world behavior, not American behavior. That kind of behavior defiles that great flag that is standing above us. This is not ordinary stuff. I have never seen it before with any President—Democratic, Republican, liberal or conservative.

Does any serious person believe the President’s abuse would be limited to the Justice Department? Does any serious person think that Trump might not order the Justice Department to treat his friends, associates, and family members differently than it treats ordinary citizens and that Attorney General Barr would just carry out these orders?

Of course, none of this is out of the question. The President asserted his absolute right to do whatever he wants yesterday. We are witnessing a crisis in the rule of law in America, unlike one we have ever seen before. It is a crisis of President Trump’s mak-

ing, but it was enabled and emboldened by every Senate Republican who was too afraid to stand up to him and say the simple word “no” when the vast majority of them knew that was the right thing to do.

Republicans thought the President would learn his lesson. It turned out that the lesson he learned was not that he went too far and not that he needed to rein it in. The lesson the President learned was that the Republican Party will not hold him accountable, no matter how egregious his behavior—not now, not ever.

Senate Republicans voted to excuse President Trump’s abuses of power. They voted to abdicate the constitutional authority of Congress to check on an overreaching Executive. Senate Republicans now own this crisis, and they are responsible for every new abuse of power President Trump commits. John Adams famously described our grand Republic that he helped create as a government of laws, not of men. Our Founding Fathers’ foremost concern, of course, was to escape the tyranny of a government of men—more specifically, a King. That is why the Founders created a republic in America. That is why the patriots died for the freedom we are now blessed with.

Yet, after almost 2½ centuries of experience in self-government as a republic, we are, once again, faced with a very serious and looming question: Do we want a government of laws or of men? Do we want to be governed by the laws of the United States or by the whims of one man?

I don’t think my Republican colleagues fully appreciated what they were unleashing when they voted in the impeachment trial to excuse the President’s conduct—although, maybe they did. They were just afraid, fearful, shaking in their boots because Trump might take vengeance out on them as he did on Senators Flake and Corker. They voted to acquit the President after he used his immense power to pressure a foreign leader to announce an investigation to smear a rival.

What we have seen in the hours and days since that fateful acquittal vote last Wednesday is so disturbing. In a parade of horrors, this is one of the most horrible things President Trump has done. In a parade of horrors, this is one of the most feeble and servile actions of Republicans, just no one saying a peep about it. We are seeing the behavior of a man who has contempt for the rule of law beginning to try out the new unrestrained power conferred on him by 52, 53—well, 52 Republican Senators, 1 brave one.

Left to his own devices, President Trump would turn America into a banana republic with a dictator who can do whatever he wants, and the Justice Department is the President’s personal law firm, not a defender of the rule of law. It is a sad day in America—a sad day.

The Founding Fathers created something brand new, a republic, because they were afraid of monarchy. The Senate Republicans aided and abetted President Trump to get much closer to that monarchy than we have been in a long time. Senate Republicans have created something very close to a monarchy, if they can keep it.

[From the CONGRESSIONAL RECORD, February 12, 2020]

STATEMENT OF SENATOR SHERROD BROWN

Mr. BROWN. Mr. President, I thank the Senator from South Dakota.

At the conclusion of President Trump's impeachment trial, I heard some of my Republican colleagues, most of whom I consider my friends, say that the President would be chastened by impeachment. Some of you told me you knew what he did was wrong. A number of Republicans told me they admit that he lies a lot. They would acknowledge extorting an ally for help in the 2020 Presidential campaign wasn't bad enough to rise to the level of warranting removal from office—even though Richard Nixon never did that; even though, just on the face of it, thinking of soliciting a bribe from a foreign country to help you in your reelection as President of the United States is worse than untoward.

But you told me—many of you on the Republican side—that holding the trial was enough to check his bad behavior. You said things like this—and these are quotes, but I will not mention who they were because they were private conversations. You said: “I think he has learned he has to be maybe a little more judicious and careful.”

Some of you said these publicly too. A reporter asked another of you whether Trump might see acquittal as a license to do it again, and you responded: I don't think so.

One of my colleagues said: “I think he knows now that, if he is trying to do certain things . . . he needs to go through the proper channels.”

Another colleague said: “The President has been impeached. That's a pretty big lesson. . . . I believe that he will be more cautious in the future.”

Well, the President learned a pretty big lesson. The lesson he learned—because everybody, every single person, from the majority leader down the hall to every Republican sitting at this desk and this desk and this desk—every Republican except for MITT ROMNEY voted to acquit. Every single Republican voted to acquit, so the lesson is he can do whatever he wants; he can abuse his office because he will never, ever be held accountable.

One Republican had the courage to stand up and do it. Every other Republican sitting at these desks said to the President of the United States: Yeah, it is OK. You have learned your lesson. Yeah, your lesson is that you can do whatever you want and this body will never, ever hold you accountable.

So do you know what? And I thank the Presiding Officer, by the way. Do you know what? The President went on what we call a PR tour—a personal retribution tour—starting at the prayer breakfast—the prayer breakfast—the next day when he attacked and he attacked and he attacked all kinds of people, continuing through to his speech in the East Room where many of my colleagues were in the audience clapping for the President when the President made these attacks on people.

They say he will never do it again; even if we vote to acquit, he will never do it again. But then they clap for him when he starts his personal retribution tour.

He removed Colonel Vindman, a patriot, a Purple Heart recipient who spent his life serving our country. He was an immigrant. He left the Soviet Union. He wanted freedom. He served in our country's military.

The President, when he attacked Colonel Vindman, mocked his accent. He grew up speaking Ukrainian, and his English was damn near perfect when I have listened to him, but he had a bit of a Ukrainian accent. He mocked his accent. And then he suggested he could be subject to military prosecution.

He removed Ambassador Sondland, who was a Trump appointee, after he testified to the quid pro quo.

Yesterday, President Trump continued this PR tour—his personal retribution tour—interfering at the Department of Justice. I am not a lawyer. I know the Presiding Officer is. Most of my colleagues on both sides of the aisle are. But they know a President doesn't interfere with the Department of Justice. As part of his personal retribution tour, he is interfering there. He is strong-arming appointees to overrule the decision of career prosecutors.

Do you know what? These career prosecutors withdrew in protest. One of them resigned from the Department—more on that later.

Late last night, when the country's eyes were on the primary in New Hampshire, the President of the United States was on part of this retribution tour, and my colleagues had said: Oh, no, he has learned from impeachment. Well, he hasn't. He has learned he can get away with stuff. He yanked his own Treasury nominee, who was working on terrorist financing and financial crimes, former U.S. Attorney Jessie Liu, who had worked as U.S. Attorney for the District of Columbia and had worked on, among other things, oversight of prosecutions from Special Counsel Mueller's investigations. The Treasury Department has offered zero explanation. I am going to get a chance in a few minutes to ask the Treasury Secretary, coming in front of my committee, why they are withdrawing her nomination 48 hours before her confirmation hearing.

We can take a guess at why President Trump pulled down her nomination. She oversaw the U.S. attorneys prosecuting President Trump's criminal associates, his political operatives, like Rick Gates, Michael Flynn, and Roger Stone.

This is so obvious. There were people out there who displeased the President. One of them was doing his public duty. He is career military and had fled the Soviet Union. He was speaking under oath about what the President had done because he knew it was wrong to solicit a bribe from a foreign country. Another was a lawyer that oversaw the prosecution of some of the President's political operatives and political hacks—criminals, as it turned out. They oversaw the prosecution. The President is attacking them. The President is using his power to attack him.

My colleagues—who sit at this desk and this desk and this desk and this desk on the Senate floor—think it is OK to acquit him and then tell me that he is going to quit acting the way he acts.

No sentient human being, including the Presiding Officer, would possibly think that way. Ms. Liu was scheduled to testify under oath before members of both parties at our hearing in the Banking Committee tomorrow morning. We need answers as to what she

would have said. Were there discussions and decisions she was part of as U.S. attorney involving the President's associates that he didn't like? Was he afraid more would come out about the actions of some of the President's associates, the criminal actions? Was she aware of efforts by the President and his political appointees to interfere in the operation of our justice system? We need a swift and thorough DOJ inspector general investigation of these prosecutorial decisions.

With every passing day, we don't see a humbled President. We see a President unleashed. Again, he didn't learn a lesson from impeachment. Actually, he learned a lesson from his acquittal. The lesson he learned is that he can do whatever he wants. He is a President unleashed. He is bent on turning the arms of a government that is supposed to serve the American people into his own personal vengeance operation—his own personal vengeance operation.

I implore my colleagues: We can't let that stand.

The Department of Justice is supposed to be impartial and immune from political influence, but it has become no more than a personal weapon, or it is becoming—it is not there yet, but it started to be—a personal weapon the President can unleash on his political enemies.

As I said, I am not a lawyer, but I know enough to know the Department of Justice and the executive branch are not there to serve the President of the United States. The Department of Justice and the executive branch are there to serve the same people we do—the people of Ohio, the people of the Presiding Officer's State of Utah, the people of Maine, Iowa, Tennessee, and every State across this country. No one—no one—should be above the law.

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[From the CONGRESSIONAL RECORD, February 13, 2020]

STATEMENT OF SENATOR MITCH MCCONNELL

Mr. MCCONNELL. Mr. President, now on an entirely different matter, it has been 1 week since the Senate concluded the third Presidential trial in American history.

Things move quickly in Washington, as always, so it is natural that our focus is now shifting to the many policy subjects where we have more work to do for families all across our country.

But when the Senate acts, we do not only address the particular issue before us; we create lasting precedent. This is especially true during something as grave and uncommon as an impeachment trial. Just as citizens, scholars, and Senators ourselves studied the past precedents of 1868 and 1999, so will future generations examine what unfolded over the past few months.

So before we adjourn for the upcoming State work period and leave impeachment fully in the rearview mirror, I wanted to speak about it one more time—not about the particulars that have been so exhaustively discussed and debated but the deeper questions, to record some final observations for the future.

The Senate did its job. We protected the long-term future of our Republic. We kept the temporary fires of factionalism from burning through to the bedrock of our institutions. We acted as Madison

wished—as an “impediment” against “improper acts.” The Framers’ firewall held the line.

But in this case, all is not well that ends well. We cannot forget the abuses that fueled this process. We cannot make light of the dangerous new precedents set by President Trump’s opponents in their zeal to impeach at all costs. We need to remember what happened so we can avoid it ever happening again.

As we know, the leftwing drive to impeach President Trump predated—predated—any phone call to Ukraine—and, in fact, his inauguration. This isn’t a Republican talking point; it is what was reported by outlets like POLITICO and the Washington Post. House Democrats barely tried to hide that they began with a guilty verdict and were simply shopping for a suitable crime.

So, unfortunately, it was predictable that the House majority would use the serious process of impeachment as a platform to politically attack the President. It was less predictable that they would also attack our Nation’s core institutions themselves. But that is what happened.

First, the House Democrats chose to degrade their body’s own precedents. The majority sprinted through a slapdash investigation to meet arbitrary political deadlines. They trivialized the role of the House Judiciary Committee, the body traditionally charged with conducting impeachment inquiries. They sidelined their own Republican minority colleagues and the President’s counsel to precedent-breaking degrees.

All of this was very regrettable, but from a purely practical perspective, breaking the House’s own china was Speaker PELOSI’s prerogative. What was truly outrageous is what came next—a rolling attack on the other institutions outside the House.

To begin with, the recklessly broad Articles of Impeachment were an attack not just on one President but on the Office of the Presidency itself.

Their first article criticized the alleged motivation behind a Presidential action but failed to frame their complaint as definable “high Crimes [or] Misdemeanors.” This House set out into uncharted constitutional waters by passing the first-ever Presidential impeachment that did not allege any violations of criminal statutes.

Clearly, they owed the Senate and the country a clear limiting principle to explain why removal on these grounds would be different from the malleable and subjective “maladministration” standard, which the Framers rejected as a ground for impeachment. But they offered no such thing.

And their second article sought to criminalize the normal and routine exercise of executive privileges that Presidents of both parties have rightly invoked throughout our history. This was, in effect, criminalizing the separation of powers themselves.

So the House articles would have sharply diminished the Presidency in our constitutional structure. To extract a pound of flesh from one particular President, House Democrats were willing to attack the office itself.

But it did not stop with the House and the Presidency. Next in the crosshairs came the Senate.

The very night the House passed the articles, the Speaker began an unprecedented effort to reach outside her own Chamber and dic-

tate the contours of the Senate trial to Senators. The bizarre stunt of withholding the articles achieved, of course, nothing, but the irony was enormous.

The House had just spent weeks jealously guarding their “sole power” of impeachment and criticizing other branches for perceived interference. Indeed, this reasoning was the entire basis for their second Article of Impeachment, but their first act out of the gate was to try to bust constitutional guardrails and meddle in the Senate.

When that stunt went nowhere and the trial began, House Democrats brought their war on institutions over to this Chamber. From the very first evening, it was clear the House managers would not even try to persuade a supermajority of Senators but simply sought to degrade and smear the Senate itself before the Nation. Senators were called “treacherous” for not structuring our proceedings to the managers’ liking.

Finally, when the trial neared its end and it became clear that bullying the Senate would not substitute for persuading it, the campaign against institutions took aim at yet another independent branch—the Supreme Court—in particular, the Chief Justice of the United States.

A far-left pressure group produced ads impugning him for presiding neutrally—neutrally—and not seizing control of the Senate. One Democratic Senator running for President made the Chief Justice read a pointless question gainsaying his own “legitimacy.”

So, in summary, the opponents of this President were willing to throw mud at the House, the Presidency, the Senate, and the Supreme Court—all for the sake of short-term partisan politics.

The irony would be rich if it were less sad. For years, this President’s opponents have sought to cloak their rage in the high-minded trappings of institutionalism. The President’s opponents profess great concern for the norms and traditions of our government. But when it really counted—when the rubber met the road—that talk proved cheap. It was they who proved willing to degrade public confidence in our government. It was they who indulged political bloodlust at the expense of our institutions: reckless—reckless—insinuations that our 2016 election was not legitimate; further insinuations—right here on the floor—that if the American people reelect this President in 2020, the result will be presumptively illegitimate as well; bizarre statements from the Speaker of the House that she may simply deny reality and refuse to accept the Senate’s verdict as final.

There has been much discussion about the foreign adversaries who seek to reduce the American people’s faith in our democracy and cause chaos and division in our country—rightly so—but we must also demand that our own political leaders exercise some self-restraint and not do the work of our adversaries for them.

The critics of our Constitution often say that because our Framers could not have imagined modern conditions, their work is outmoded. We hear that the First Amendment or the Second Amendment or the separation of powers must be changed to suit the times.

But the geniuses who founded this Nation were actually very prescient. Case in point: The reckless partisan crusade of recent

weeks is something they predicted more than two centuries ago. Hamilton predicted “the demon of faction will, at certain seasons, extend his scepter” over the House of Representatives. He predicted that partisan anger could produce “an intemperate or designing majority in the House of Representatives,” capable of destroying the separation of powers if left unchecked.

The Framers predicted overheated House majorities might lash out at their peer institutions and display “strong symptoms of impatience and disgust at the least sign of opposition from any other quarter; as if the exercise of . . . rights, by either the executive or judiciary, were a breach of their privilege and an outrage to their dignity.” They knew the popular legislature might be “disposed to exert an imperious control over the other departments.”

They predicted all of this. They predicted it all.

So they did something about it. They set up a firewall. They built the Senate.

This body performed admirably these past weeks. We did precisely the job we were made for.

We did precisely the job we were made for, but impeachment should never have come to the Senate like this. This most serious constitutional tool should never have been used so lightly—as a political weapon of first resort, as a tool to lash out at the basic bedrock of our institutions because one side did not get their way.

It should never have happened, and it should never happen again.

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[From the CONGRESSIONAL RECORD, February 25, 2020]

STATEMENT OF SENATOR JAMES LANKFORD

Mr. LANKFORD. Madam President, the country is deeply divided on multiple issues right now. The impeachment trial is both a symptom of our times and another example of our division. At the beginning of our Nation, we did not have an impeachment inquiry of a President for almost 100 years with the partisan impeachment of Andrew Johnson. After more than 100 years, another impeachment inquiry was conducted when the House began a formal impeachment inquiry into President Nixon in an overwhelmingly bipartisan vote of 410–4. Within a period of weeks, President Nixon resigned before he was formally impeached. Then, just over two decades later, President Clinton was impeached by the House, on another mostly partisan vote leading to a partisan acquittal in the Senate.

This season of our history has been referred to as the Age of Investigations and the Age of Impeachment. We have had multiple special counsels since 1974 over multiple topics. This is more than just oversight; it has been a unique time in American history when the politics of the moment have driven rapid calls for investigation and impeachment. Over the past 3 years, the House of Representatives has voted four times to open an impeachment inquiry: once in 2017, once in 2018, and twice in 2019. Only the second vote in 2019 actually passed and began a formal inquiry.

The Mueller investigation that consumed most of 2018 and 2019 answered many questions about Russian attacks on our voting sys-

tems—although no votes were changed—but it was also a \$32 million investigation that took more than 2 years of America’s attention. For the last 4 months the country has been consumed with impeachment hearings and investigations. The first rumors of issues with Ukraine arose August 28 when POLITICO published a story about U.S. foreign aid being slow-walked for Ukraine, and then on September 18 when the Washington Post published a story about a whistleblower report that claimed President Trump pressured an unnamed foreign head of state to do an investigation for his campaign.

Within days of the Washington Post story on September 24, Speaker PELOSI announced that the House would begin hearings to impeach the President, which led to the formal House vote to open the impeachment inquiry on October 31 and then a vote to impeach the President on December 18. But after the partisan vote to impeach the President, Speaker PELOSI held the Articles of Impeachment for a month before turning them over to the Senate, which began the formal trial of the President of the United States on January 16, 2020. After hearing hours of arguments from both House managers and the President’s legal defense team and Senators asking 180 questions to both sides, the trial concluded February 5, 2020.

There are key dates to know:

April 21, 2019, President Zelensky is elected President of Ukraine.

May 21, President Zelensky sworn in. After the ceremony, President Zelensky abolishes Parliament and calls for quick snap elections on July 21.

July 21, Ukrainian Parliamentary elections. President Zelensky’s party wins a huge majority.

July 25, President Trump calls President Zelensky to congratulate him and his party.

August 12, An unnamed whistleblower working in the U.S. intelligence community filed a complaint that he had heard from others that the President of the United States had tried to pressure President Zelensky of Ukraine to investigate former Vice President Joe Biden on an official phone call July 25, 2019.

August 26, the Inspector General for the Intelligence Community declares the whistleblower report “an urgent matter” and asks for its release within 7 days. The Justice Department looks over the report and notes that although it was written by a person in the intelligence community, it is not related to intelligence matters, so it does not fall within the Inspector General’s jurisdiction and it is forwarded on to the Department of Justice for review.

August 28, POLITICO publishes a story that the annual military aid for Ukraine is currently being slow-walked.

September 9, the Inspector General contacts the House Intelligence Committee to let them know that he has not been able to release the whistleblower report to their committee.

September 13, the House Intelligence Committee subpoenas the whistleblower report.

September 18, the Washington Post prints a story with “unnamed sources” that there is a whistleblower report about the President talking with a foreign leader about a campaign matter.

September 24, the House began an informal impeachment inquiry after Speaker Pelosi announced it at a press conference in the U.S. Capitol.

September 25, President Trump released the official unredacted “read out” of the phone call with President Zelensky from July 25.

September 26, the whistleblower report is declassified and released publicly.

October 31, the House formally votes along party lines for an impeachment inquiry.

December 18, the House votes to impeach the President with two articles—abuse of Power and obstruction of congress

January 15, Speaker PELOSI releases the Articles of Impeachment to the Senate.

January 16, Senate trial on impeachment begins.

February 5, Senate trial concludes with acquittal on both articles.

Ukraine became independent in 1991 when it broke away from the Soviet Union, but the Ukrainians have faced constant pressure from Russia ever since. In 2014 Ukraine forced out its pro-Russia President, and Moscow retaliated by taking over Crimea—and stealing the Ukrainian Navy—then rolling tanks into eastern Ukraine and taking all of eastern Ukraine by force. Russian and Ukrainian troops continue to fight every day in eastern Ukraine.

The people of Ukraine face an aggressive Russia on the east and pervasive Soviet era corruption throughout the government and the business community. President Trump met the previous President of Ukraine in 2017 to talk about other countries helping Ukraine with greater military support funds and to ask how Ukraine could address corruption on a wider scale. The two Presidents also spoke about lethal aid—allowing the Ukrainians to buy sniper rifles, anti-tank Javelin missiles, and other lethal supplies—to help them fight the invading Russians. The United States also started sending a couple hundred American troops to train Ukrainian soldiers in the far west of Ukraine.

On April 21, 2019, President Zelensky was overwhelmingly elected as the new President of Ukraine. He was a sitcom actor/comedian who had no political experience but was well known for his television show in which he played the part of a corruption-fighting teacher who was elected as President of Ukraine. His television popularity helped him win the election, but when he was sworn in on May 21, he was relatively unknown to most of the world.

On the same day as his inauguration, May 21, President Zelensky abolished Parliament and called for snap elections to put his party in power. With a new President in place and parliamentary elections in Ukraine coming, starting in June of 2019, the President ordered foreign aid to Ukraine to be held until the end of the fiscal year, but agencies were informed that they should do all the preliminary work needed before the aid was sent, so it would be ready to release at a moment’s notice. The leadership in Ukraine was not notified that there was a hold on their foreign aid.

The new Parliament was elected on July 21, and President Zelensky’s party won by a landslide. By mid-August, the new Parliament was working on anti-corruption efforts and trying to establish a high court on corruption, which they put in place September

5, 2019. There was a tremendous amount of uncertainty in the early days of the new administration, but by mid-August there was clear evidence of actual change in a country that desperately needed a new direction from its corrupt past.

On July 25, when President Trump called President Zelensky, the President congratulated President Zelensky for the big win in Parliament and talked about “burden-sharing”—other nations also paying their share of support for Ukraine. The two Presidents talked about their disapproval of the previous ambassadors to each other’s countries. But instead of following all the staff preparation notes written by Lieutenant Colonel Vindman, the National Security Council staffer assigned to Ukraine, and just talking about “corruption” in general, the President brought up a question about Ukraine and the 2016 election interference, which I will note below. President Zelensky also brought up to President Trump that his staff was planning to meet with Rudy Giuliani, President Trump’s personal attorney, in the coming days, which led to a conversation about Joe Biden and the firing of the previous prosecutor in Ukraine.

After the call, Lieutenant Colonel Vindman contacted an attorney at the National Security Council to express his “policy concerns” about the call. It is interesting to note that Lieutenant Colonel Vindman’s boss, Tim Morrison, was also on the call, but he did not see any problems or concerns with the call according to his own testimony in the House impeachment inquiry. Within a month, a whistleblower filed a report about the call, saying he heard about the call secondhand and was concerned about the implications of a conversation about elections on a head-of-state call. To keep the July 25th call in context with other news, the day before it took place July 24 Robert Mueller had testified before Congress as the last official act to close down the 2½ year Mueller investigation and clear the President and his campaign team of any further accusation of election interference.

During the impeachment trial in the Senate, the House managers repeated over and over that the President was planning to cheat “again” on the next election, but the final conclusion of the Mueller report was that “ultimately, the investigation did not establish that the (Trump) Campaign coordinated or conspired with the Russian government in its election-interference activities.”

This is especially notable because for years a rumor circulated that Ukraine was part of the 2016 election interference and that someone in Ukraine was hiding the Democratic National Committee, DNC, server that was hacked by the Russians in 2016. As the conspiracy theory goes, it was actually the Ukrainians who hacked the DNC, not the Russians. This is the “Crowdstrike” theory that President Trump asked President Zelensky to help solve during the call.

Agencies of the U.S. intelligence community have stated over and over that they did not believe that Ukraine was involved in the Russian election interference from 2016. I personally agree with the intelligence community assessment but Rudy Giuliani and multiple others around President Trump believed there was a secret plan in 2016 to hurt President Trump’s election from Ukraine. This accusation was amplified by bits of truth, including that the

Ukrainian Ambassador to the United States wrote an editorial in support of Hillary Clinton in 2016 right before the election, and several other Ukrainian officials publicly spoke out against Candidate Trump in 2016.

There is nothing illegal about a foreign nation speaking out for or against a Presidential candidate, whether Hillary Clinton or Donald Trump in 2016 or anyone else in the future. It may not be wise to take sides before an election, but it is not illegal. Just because some Ukrainian officials took sides does not mean that the whole Ukrainian Government worked on a cyber attack on our elections. But since this rumor had persisted, and it was a new administration now in Ukraine, President Trump asked President Zelensky to help clear up the facts if he could. That is certainly not illegal or improper, and it is certainly not something that could help the President in the 2020 election, especially since the 2016 Russian election accusation had just been closed the day before.

The 2016 “Crowdstrike” theory is the issue that President Trump asked President Zelensky to “do us a favor” about, not the Bidens or Burisma. During the July 25 call after the question about “Crowdstrike,” President Zelensky mentioned to President Trump that one of his advisers would be meeting with Rudy Giuliani soon. Then, President Trump affirmed that meeting and encouraged them to talk about the Biden investigation and the firing of the Ukrainian prosecutor.

That may seem out of the blue, but in Washington, D.C., that week, the city was buzzing about a Washington Post article that had been written 3 days before July 22, 2019—detailing Hunter Biden’s giant salary—\$83,000 per month—for doing essentially nothing for a corrupt Ukrainian natural gas company and how it undercut Vice President Biden’s message on corruption.

It is important to get the context of that week to understand the context of the phone call that day. I have no doubt that the story was just as big of news in Kiev, Ukraine, as it was in Washington, D.C., that week. President Trump’s personal attorney, Rudy Giuliani, had been in and out of Ukraine since November 2018, meeting with government officials and trying to find out more about the “Crowdstrike” theory or any other Ukrainian connection to the 2016 election. During that time, Rudy Giuliani met several former prosecutors from Ukraine who blamed their departure on Vice President Biden. It is clear that Rudy Giuliani was working to gain information about both of these issues in his capacity as President Trump’s private attorney.

It is not criminal for Rudy Giuliani to work on opposition research for a Presidential campaign or to work on behalf of his client to clear his name from any issues related to the 2016 campaign, which he had done since November 2018. Some have stated that since this was “foreign information,” it is illegal. That is absolutely not true. In fact, Hillary Clinton and the Democratic National Committee in 2016 paid a British citizen, Christopher Steele, to work his contacts in Russia to create the now debunked “Steele Dossier,” which the FBI used to open its investigation into President Trump, leading directly to the appointment of Special Counsel Mueller. That dossier was opposition research done in Russia by a British citizen, paid for by the Clinton campaign team. Their oppo-

sition research was not illegal, but the use and abuse of that document by the FBI to start an investigation was certainly inappropriate and is most likely illegal. But the FBI warrant issue is still being investigated by the ongoing Durham probe.

During the July 25, 2019, call, President Zelensky brought up the issue of Rudy Giuliani, and President Trump replied to his statement. You can argue that President Trump should not have discussed the issue with President Zelensky when he brought it up, but it is certainly not illegal or impeachable to talk about it, especially when there are serious questions about Hunter Biden's work with Burisma. That is not a conservative conspiracy theory; the issue of Hunter Biden's employment in Ukraine was a problem for years at the State Department. It had been raised to Vice President Biden when he was still in office. Every State Department official interviewed for the Trump impeachment investigation noted that at best it was a clear conflict of interest, and it was the center of a huge story on corruption in the Washington Post on July 22, 2019. It had the appearance of high-level corruption by using a well-placed family member on the board of a known corrupt gas company in Ukraine to shelter it from prosecutors. Hunter Biden had only resigned from the Burisma board a few months before the July 25 phone call, just prior to when his dad announced his run for the Presidency in 2019.

After the July 25 phone call, Attorney General Barr did not have any followup meetings or calls with Ukrainian officials. Rudy Giuliani did have additional conversations with Ukrainian officials, which are legal to do since he is a private attorney representing the President.

#### TEXT OF JULY 25, 2019 PHONE CALL BETWEEN PRESIDENTS TRUMP AND ZELENSKY

The President: Congratulations on a great victory. We all watched from the United States and you did a terrific job. The way you came from behind, somebody who wasn't given much of a chance, and you ended up winning easily. It's a fantastic achievement. Congratulations.

President Zelensky: You are absolutely right Mr. President. We did win big and we worked hard for this. We worked a lot but I would like to confess to you that I had an opportunity to learn from you. We used quite a few of your skills and knowledge and were able to use it as an example for our elections and yes it is true that these were unique elections. We were in a unique situation that we were able to achieve a unique success. I'm able to tell you the following; the first time you called me to congratulate me when I won my presidential election, and the second time you are now calling me when my party won the parliamentary election. I think I should run more often so you can call me more often and we can talk over the phone more often.

The President: (laughter) That's a very good idea. I think your country is very happy about that.

President Zelensky: Well yes, to tell you the truth, we are trying to work hard because we wanted to drain the swamp here in our country. We brought in many many new people. Not the old politicians, not the typical politicians, because we want to have a new format and a new type of government. You are a great teacher for us and in that.

The President: Well it is very nice of you to say that. I will say that we do 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 than they are. Germany 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 I think it's something you want to look at but the United States has been very very good to Ukraine. I wouldn't say that it's reciprocal necessarily be-

cause things are happening that are not good but the United States has been very very good to Ukraine.

President Zelensky: Yes you are absolutely right. Not only 100%, but actually 1000% and I can tell you the following; I did talk to Angela Merkel and I did meet with her I also met and talked with Macron and I told them that they are not doing quite as much as they need to be doing on the issues with the sanctions. They are not enforcing the sanctions. They are not working as much as they should work for Ukraine. It turns out that even though logically, the European Union should be our biggest partner but technically the United States is a much bigger partner than the European Union and I'm very grateful to you for that because the United States is doing quite a lot for Ukraine. Much more than the European Union especially when we are talking about sanctions against the Russian Federation. I would also like to thank you for your great support in the area of defense. We are ready to continue to cooperate for the next steps specifically we are almost ready to buy more Javelins from the United States for defense purposes.

The President: I would like you to do us a favor though because our country has been through a lot and Ukraine knows a lot about it. I would like you to find out what happened with this whole situation with Ukraine, they say CrowdStrike. I guess you have one of your wealthy people . . . The server, they say Ukraine has it. There are a lot of things that went on, the whole situation. I think you're surrounding yourself with some of the same people. I would like to have the Attorney General call you or your people and I would like you to get to the bottom of it. As you saw yesterday, that whole nonsense ended with a very poor performance by a man named Robert Mueller, an incompetent performance, but they say a lot of it started with Ukraine. Whatever you can do, it's very important that you do it if that's possible.

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 open a new page on cooperation in relations between the United States and Ukraine. For that purpose, I just recalled our ambassador from United States and he will be replaced by a very competent and very experienced ambassador who will work hard on making sure that our two nations are getting closer. I would also like and hope to see him having your trust and your confidence and have personal relations with you so we can cooperate even more so. I will personally tell you that one of my assistants spoke with Mr. Giuliani just recently and we are hoping very much that Mr. Giuliani will be able to travel to Ukraine and we will meet once he comes to Ukraine. I just wanted to assure you once again that you have nobody but friends around us. I will make sure that I surround myself with the best and most experienced people. I also wanted to tell you that we are friends. We are great friends and you Mr. President have friends in our country so we can continue our strategic partnership. I also plan to surround myself with great people and in addition to that investigation, I guarantee as the President of Ukraine that all the investigations will be done openly and candidly. That I can assure you.

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

President Zelensky: I wanted to tell you about the prosecutor. First of all, I understand and I'm knowledgeable about the situation. Since we have won the absolute majority in our Parliament, the next prosecutor general will be 100% my person, my candidate, who will be approved, by the parliament and will start as a new prosecutor in September. He or she will look into the situation, specifically to the company that you mentioned in this issue. The issue of the investigation of the case is actually the issue of making sure to restore the honesty so we will take care of that and will work on the investigation of the case. On top of that, I would kindly ask you if you have any additional information that you can provide to us, it would be very helpful for the investigation to make sure that we administer justice in our country with regard to the Ambassador to the United States from Ukraine as far

as I recall her name was Iyanovich. It was great that you were the first one who told me that she was a bad ambassador because I agree with you 100%. Her attitude towards me was far from the best as she admired the previous President and she was on his side. She would not accept me as a new President well enough.

The President: Well, she's going to go through some things. I will have Mr. Giuliani give you a call and I am also going to have Attorney General Barr call and we will get to the bottom of it. I'm sure you will figure it out. I heard the prosecutor was treated very badly and he was a very fair prosecutor so good luck with everything. Your economy is going to get better and better I predict. You have a lot of assets. It's a great country. I have many Ukrainian friends, they're incredible people.

President Zelensky: I would like to tell you that I also have quite a few Ukrainian friends that live in the United States. Actually last time I traveled to the United States, I stayed in New York near Central Park and I stayed at the Trump Tower. I will talk to them and I hope to see them again in the future. I also wanted to thank you for your invitation to visit the United States, specifically Washington DC. On the other hand, I also want to ensure you that we will be very serious about the case and will work on the investigation. As to the economy, there is much potential for our two countries and one of the issues that is very important for Ukraine is energy independence. I believe we can be very successful and cooperating on energy independence with United States. We are already working on cooperation. We are buying American oil but I am very hopeful for a future meeting. We will have more time 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. I am looking forward to our meeting and I also would like to invite you to visit Ukraine and come to the city of Kyiv which is a beautiful city. We have a beautiful country which would welcome you. On the other hand, I believe that on September 1 we will be in Poland and we can meet in Poland hopefully. After that, it might be a very good idea for you to travel to Ukraine. We can either take my plane and go to Ukraine or we can take your plane, which is probably much better than mine.

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 be there at that time. President Zelensky: Thank you very much Mr. President.

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

President Zelensky: Thank you Mr. President bye-bye.

Based on a whistleblower report about the July 25 call, the House Intelligence Committee subpoenaed the report on September 13 and started its impeachment inquiry on September 24.

In the Senate impeachment trial, House managers stated their belief that the President had carried out a "scheme to cheat in the 2020 election" by withholding financial aid to Ukraine and withholding a White House meeting with the new President of Ukraine in exchange for Ukraine announcing it would investigate Joe Biden, Burisma, and 2016 election interference.

Let's discuss the facts of both.

#### WHITE HOUSE MEETING

There is no question that President Trump had offered a White House meeting to President Zelensky three times: once in May on a phone call after President Zelensky won his election, once in June in a letter, and finally in the July 25 call after President Zelensky's party won the parliamentary elections. But Tim Morrison—State Department official called as a witness by the House—also testified that they were working on heads-of-state meetings with 12 other heads of state during that same time period. Many

nations were trying to line up meetings in the White House during the summer of 2019.

During the July 25 call, President Zelensky offered to instead move their meeting from a White House meeting to a face-to-face meeting in Warsaw, Poland, when they would both be there on September 1, 2019. The Presidents agreed, and planning began on the meeting in August. By August 22, the meeting planning was in full swing, as noted by emails in the House hearing's evidence. However, Hurricane Dorian slammed into the United States in the hours leading up to the September 1 meeting, causing a last-minute shift to the Vice President traveling to Poland so the President could stay in the United States to monitor hurricane relief.

We know that Vice President PENCE met face-to-face with President Zelensky, and they spoke about other nations paying their fair share to help Ukraine and the issue of corruption across Ukraine. We know from the preparation materials and the meeting notes themselves that during the meeting the Vice President did not bring up or discuss the issue of Burisma, Joe Biden, or any other campaign conversation with President Zelensky.

The White House found the next available time when President Trump and President Zelensky would both be in the same place at the same time to set up a face-to-face meeting: September 25 at the U.N. Assembly in New York. That meeting was set up, and it took place as scheduled.

In the Senate impeachment trial, the House managers maintained that only a White House meeting was sufficient and that it was being withheld, but the facts show that President Zelensky himself floated the idea of a meeting in Poland and that the meeting was not barred or withheld.

In the early months of President Zelensky's term, there was a great deal of concern about him, his staff, and his plans because he was an unknown political figure. Until more was known about him, it was entirely appropriate to show caution in coordinating a meeting, but once his nationwide anti-corruption efforts began in August, it was clear that face-to-face meetings were planned and carried out.

There was no withholding of a face-to-face meeting with President Trump and President Zelensky. There cannot be a quid pro quo if the meeting was not withheld from Ukrainian officials.

The House managers claimed that there was a secret plot to "extort" or "bribe" the leadership of Ukraine to investigate Hunter Biden in exchange for around \$400 million of U.S. aid. The aid was State Department and foreign military aid that had been provided for the past 4 years, since Ukraine had been in a war with Russia.

After the Russian invasion of Ukraine in 2014 and its occupation of Crimea and the Donbas region in eastern Ukraine, the United States started sending aid to help the Ukrainian Government. Congress allowed lethal and non-lethal aid to support Ukraine, but during the previous administration, only non-lethal aid was sent. Under President Trump's administration, it was determined that the United States would give the leadership of Ukraine lethal aid to help them fight off Russian tanks, which was President Zelensky's reference to "javelins" in the July 25 phone call and his

gratitude to President Trump for allowing those tank killing rockets to flow to Ukraine.

To be clear, the theory of funds being withheld from Ukraine in exchange for an investigation does not originate from the July 25 call read-out. There is nothing in the text of the call that threatens the withholding of funds in exchange for an investigation.

The theory originates from the fact that aid was held back by the Office of Management and Budget, headed by the President's Acting Chief of Staff, Mick Mulvaney, and the "presumption" of U.S. Ambassador to the European Union, Gordon Sondland, that the aid must have been held because of the President's desire to get the Biden investigation done, since the President's attorney, Rudy Giuliani, was working to find out more about the Biden investigation.

Ambassador Sondland told multiple people about his theory, but when he finally called President Trump and asked him directly about it, the President responded that he did not have any quid pro quo; he just wanted the President of Ukraine to do what he ran on and "do the right thing." Obviously, people who assume the worst about President Trump take this as a secret message that there actually was a quid pro quo, but the most important fact is that Ambassador Sondland did not read it that way after his call with the President. Ambassador Sondland believed that the President was serious. Unfortunately, the White House counsel was never allowed to cross examine Ambassador Sondland during the House investigation to get the facts about who he talked to and why he came to believe for a while that there was an effort to push for investigations in exchange for money.

During the Senate trial, I listened closely to the facts surrounding the withholding of aid money to Ukraine. This was by far the most serious charge against the President. Two key questions had to be answered for me: Why was the aid held, and why was the aid released? There was no question the aid was held for a couple months. The question was why?

Statements from the House witnesses during the House impeachment inquiry answered the two key questions: The aid was held because there was a legitimate concern about the new President of Ukraine and his administration in the early days of his Presidency and the aid was released on time when the new Ukrainian Parliament starting passing anti-corruption laws in August and after Vice President PENCE sat down face to face with President Zelensky on September 1 in Poland to discuss their progress on corruption.

We should not lose track of what was happening in Ukraine in 2019. A new President was elected who was a TV actor with no political experience and no record on how he would handle Russia or the issue of widespread national corruption in Ukraine. He ran on a platform of anti-corruption at all levels, but no one knew how he would govern. His campaign was funded by a Ukrainian oligarch who owned a major media outlet, and one of his first advisers was the former attorney for that oligarch.

I personally spoke to many of the State Department officials in Ukraine in May of 2019 and heard their concerns about the new government. Then, newly elected President Zelensky used his

power to dissolve their Parliament the day he was sworn in and called for “snap elections” in which the vast majority of the newly elected leaders were from his newly formed party. To our State Department and the White House, this was either a really a good sign or a really bad sign. Either Ukraine was about to take a major change for the better with new leadership, or this new young leader was about to assume real centralized power. No one knew for certain in May, June, and July of 2019. Within a few weeks in August, the new Parliament got to work passing anti-corruption laws and making significant changes in their accountability and for the country. This was a very good sign.

When Vice President PENCE met face to face with President Zelensky September 1, both sides had confidence the country was taking a new direction. On September 10 Vice President PENCE and Senator ROB PORTMAN met with President Trump to tell him about the progress that had been made, and both advised lifting the hold on aid. The aid was lifted the next day, September 11. No investigation into Hunter Biden or Burisma was ever done by Ukraine, and no part of the U.S. Department of Justice was ever involved in any investigation of Hunter Biden or Burisma.

Although the aid was frozen in June, there was no public announcement of the hold, as explained by the White House counsel, to keep this from becoming a public issue while the White House monitored the progress and status of the transition in Ukraine.

On August 27, POLITICO published an article that noted that the foreign aid had been held by the United States. This caused President Zelensky’s office to reach out to the State Department and ask why. During the House impeachment proceedings, four of the House witnesses—Ambassador Voelker, Ambassador Sondland, Ambassador Taylor, and Tim Morrison—all testified that the Ukrainian leadership learned about the temporary hold in aid after the POLITICO article was published.

The issue of the hold was also the first question from President Zelensky to Vice President PENCE when they met on September 1 in Poland. The idea that the leadership in Ukraine had pressure placed on them to do an investigation fails the most essential test. Did the leadership of Ukraine even know that the aid was being held? The answer from multiple American and Ukrainian leaders was no, they did not know there was a hold on the aid from the White House. You cannot have pressure to act on an investigation if they did not even know the aid was being held.

It is interesting to note, when I researched the records of past foreign aid payment dates and times to Ukraine, I found the 2019 aid was in line with the date the 2016, 2017, and 2018 aid was sent. The vast majority of the military aid to Ukraine was obligated in August or September for the past 4 years. Although the aid was ready to go out the door a couple months earlier in 2019, it was certainly not late, based on the record of the previous 3 years. In fact, the State Department aid was obligated September 30 in 2019, but it was obligated September 28 in 2018. As quoted by the Ukrainian Minister of Defense, “The aid was held such a short time, we did not even notice.”

During the 2 days of question-and-answer time, I asked a specific question related to this issue because I felt it was important to get

the context of the aid, since there had been so much made of the issue during the trial. Here is the full text of my question to the White House counsel:

House Managers have described any delay in military aid and state department funds to Ukraine in 2019 as a cause to believe there was a secret scheme or quid pro quo by the President. In 2019, 86% of the DOD funds were obligated to Ukraine in September, but in 2018, 67% of the funds were obligated in September and in 2017, 73% of the funds were obligated in September. In the State Department, the funds were obligated September 30 in 2019, but they were obligated September 28 in 2018. Each year, the vast majority of the funds were obligated in the final month or days of the fiscal year. Question: Was there a national security risk to Ukraine or the United States from the funds going out late in September in the two previous years? Did it weaken our relationship with Ukraine because the vast majority of our aid was released in September each of the last three years?

In response to my question, White House counsel detailed the fact that military aid from the United States was not for immediate use. It was designed to help the Ukrainian military buy materials for the next year, so it was common for the aid to be obligated at the end of the fiscal year—September 30—and it was also common for some money to be left unobligated and carried over into the next fiscal year, as it was in 2019.

While it is easy to create an intricate story on the hold placed on foreign aid to Ukraine, it is also clear that President Trump has temporarily held foreign aid from multiple countries over the past 2 years, including: Afghanistan, Pakistan, Honduras, Guatemala, El Salvador, Lebanon, and others. There is no question that a President can withhold aid for a short period of time, but it must be released by September 30, the end of the fiscal year, which it was in this instance.

Article I, section 2 of the U.S. Constitution grants the U.S. House of Representatives “the sole power of impeachment,” while article I, section 3 states that “the Senate shall have the sole power to try all impeachments.”

The Constitution is clear that the House does not control the Senate process and the Senate does not control the House process; however, during the impeachment trial of President Trump, the House tried repeatedly to dictate to the Senate how it should conduct its trial.

The “sole power to try” means laying out rules for the trial, including when and if to call additional witnesses or request more documents.

In addition to laying out roles and responsibilities for impeachment, our Constitution also provides basic rights for the accused. The Fifth Amendment ensures due process. However, the receipt of due process is not contingent upon waiving another right, like immunity or executive privilege. But that is exactly what the House tried to force President Trump to do.

The President is not above the law, but neither is the House of Representatives. If there was a question as to the scope and proper use of the President’s right to assert immunity or executive privilege regarding conversations he had with his closest advisers, that question is proper for a court to determine, not Congress, and surely not the House on its own accord. To put this in constitutional terms, the legislative branch cannot prevent the executive branch from having access to the judicial branch. The House wanted to

move quickly and prevent the President from ever going to court to resolve any issue. That has never been done for a good reason, the separation of powers. In previous legal battles with the President, it has taken months to resolve critical issues, like *Bush v. Gore* in 2000 or even in the Clinton impeachment trial, when the House took 2 months to resolve an issue with witnesses in court. It does not have to drag on for years.

The House also wanted the Chief Justice of the United States to “rule on” any issue quickly instead of allowing the President to go through the courts. This would have created a new judicial executive branch by putting all the judicial power of the nation in one person, not in the judicial branch, as is stated in the Constitution. It would have also ignored the text of the Constitution where it notes that the Chief Justice “presides” in the court of impeachment, not “decides.” The sole power of impeachment is in the Senate, not the Senate plus the one Justice. The Chief Justice keeps the trial moving along, based on the rules of the trial, but he or she is not a decider of fact; that is reserved to the Senate. The House managers wanted to ignore that part of the Constitution to move the trial faster for expedience. We cannot ignore the Constitution or create bad precedent, no matter which party is being tried for impeachment.

Further, the Sixth Amendment guarantees that the accused has the ability to both confront the witnesses against him and to have the assistance of counsel. The majority of the impeachment inquiry in the House was done without a meaningful opportunity for the President to participate, and administration witnesses were denied the ability to have counsel present for depositions.

The Constitution lays out a clear separation of powers but importantly also provides a system of checks and balances. For something as important as impeachment, it is imperative that the process be one that is squarely within the bounds of the Constitution and is one that the American people can trust. Unfortunately, the process undertaken by the House to impeach President Trump falls wildly short of the standards put in place by our Founders.

Article II, section 4 of the Constitution states that “the President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.”

During the trial of President Trump, there was a lot of conversation about what constitutes a “high crime” or “misdemeanor.” Notably, the House did not charge the President with any crimes; rather, the House chose to impeach the President for “abuse of power” and “obstruction of Congress.”

The House theoretically could have chosen to file Articles of Impeachment for crimes such as bribery, extortion, solicitation of interference in an election, or violations of the Impoundments Clause Act. For any of these crimes, the House would have had to prove specific elements of each. Since they couldn’t prove any of those crimes, they chose to charge the President with abuse of power. As was noted in the trial, 40 Presidents have faced accusation of abuse of power, going back as far as George Washington.

The abuse of power charge for President Trump was based on allegations that he improperly withheld aid to Ukraine and condi-

tioned a meeting with President Zelensky at the White House in exchange for an investigation into former Vice President Biden and his son Hunter. Over the course of the last 4 months, we heard the term “quid pro quo” used over and over again, but the facts do not show criminal quid pro quo. As previously mentioned, President Zelensky asked to meet with President Trump in Poland, and that meeting was set up. Further, while the aid to Ukraine was delayed, it wasn’t delayed more than it had been the previous 2 years, and the aid was released without an investigation—or even an announcement of one—into the Biden’s.

The second Article of Impeachment, obstruction of Congress, had an even weaker constitutional foundation. The investigation was announced September 24 did not officially begin until October 31. The impeachment vote in the House was December 18. This very short time table and the accusation that the President refused to follow the law, honor the courts, and that he acted like a “King” did not meet even the most basic constitutional standards for justice.

For example, during the Mueller investigation, the President’s team fully cooperated with the investigation that included over 2,000 subpoenas and 500 witnesses, including the President’s Chief of Staff, multiple Cabinet officials, and many lower level officials who were all made available. It was clear throughout the investigation that the President did not like or agree with the Mueller investigation, but he also fully cooperated with every subpoena, each witness, and every document. In fact, they released over a million pages of documents to the Mueller team.

President Trump also made his disagreement with the courts very clear on issues like the census, whether travel restrictions can be put in place to ensure national security, or whether particular funds can be used to secure our southern border. But each time the President lost in court, his administration complied with orders from the judiciary. That is how our system of government is supposed to work.

When disagreements happen between the legislative branch and the judicial branch, they usually lead to resolution, not impeachment. The Fast and Furious investigation, which lasted more than 3 years in the Obama administration, led to a vote in the House to hold then-Attorney General Eric Holder in contempt, but it never led to an impeachment inquiry, even though there was a clear and consistent refusal to cooperate with Congress or turn over key documents for 3 years.

In this case, the accusation that President Trump ignored subpoenas or refused to follow the law is not correct. The President’s team made it very clear that they would cooperate during the impeachment inquiry with properly authorized and issued subpoenas, but the House refused to issue subpoenas that were consistent with the law to seek resolution for documents and witnesses. The House was focused on speed, not legal process.

The House, in a rush to impeachment last fall, issued multiple subpoenas for documents and testimony before the House had given authority to the committees to issue subpoenas for an impeachment inquiry, which happened October 31. Since there was no authority to issue the subpoenas, they were not duly authorized.

The House also demanded testimony from the President's inner circle without working through the legal questions, and the House demanded executive agency witnesses appear without allowing them to bring agency counsel with them. All of those issues created very real legal and constitutional problems. Agency individuals have always been allowed to have legal counsel with them when they are deposed, except this time.

As a Member of Congress, I cannot demand the President turn over documents or give testimony in any fashion that I would prefer just because I have oversight responsibilities. In the same way, the President or other executive branch officials cannot demand I turn over my notes or provide my staff for testimony without going through the courts and gaining a legal subpoena. Congress has vigorously and rightfully protected its rights from unwarranted investigations from any President and Presidents have done the same. But in all cases, the law must be followed and the proper process must be pursued to get the information in a legal way.

From the very first moments of the Senate trial, the House managers fought for additional witnesses and documents from the President. Their argument and justification for the second Article of Impeachment centered on the White House's refusal to turn over documents and make every witness available without going through the normal legal process.

Per the resolution adopted by the Senate, the House record was part of the trial record. The Senate had the testimony of the witnesses the House chose to question as part of the overall information of the trial. The House already had 28,000 pages of documents that were part of the evidence they submitted to the Senate, although, the House managers admitted during the Senate impeachment trial that they still have not released all of the documents and witness testimony that they had gathered in their investigation to the White House counsel or to the Senate. We do not fully know why the House held back some of its witness testimony and released others.

The House witness testimony was used extensively in the Senate trial.

These are the witnesses who testified live or via video in the House and Senate Impeachment: David Holmes, Political Counselor, U.S. Embassy Ukraine, State Department; Dr. Fiona Hill, White House Advisor, National Security Council; David Hale, Under Secretary for Political Affairs, State Department; Laura Cooper, Deputy Assistant Secretary of Defense; Gordon Sondland, U.S. Ambassador to the European Union; Tim Morison, Former White House Adviser; Kurt Voelker, Former Special Envoy for Ukraine; LTC Alexander Vindman, National Security Council; Jennifer Williams, aide to the Vice President; Marie Yovanovitch, Former Ambassador to Ukraine; George Kent, Deputy Assistant Secretary of State; Bill Taylor, Former U.S. Ambassador to Ukraine.

The House managers repeated over and over that additional witnesses would only take a week to depose, which is a clearly false statement. New witnesses took longer than a week to depose in the House inquiry; clearly it would take just as long or longer in a Senate trial. The remaining "wish list" of witnesses all had clear issues

that needed to be resolved in the courts, which would take a couple of months to resolve, which is why the House managers did not push for their testimony in the House impeachment process. They valued speed more than legal process.

House managers repeatedly stated that witnesses only took a week to depose in the Clinton Senate impeachment trial, but they know that during the Clinton Senate trial, all three called witnesses previously deposed in the House inquiry or in the grand jury investigation, and all issues of executive privilege had already been decided through the courts. There were no new witnesses in the Senate trial of President Clinton. Also, the Clinton White House had already had the opportunity to cross-examine witnesses or the investigators in the Clinton impeachment inquiry. This time, the Trump White House had been denied that right. So, if new witnesses would be added for the Senate trial, the White House should have the right to also cross-examine the previous House witnesses they had been denied the right to cross examine in the past. This would all take much longer than a week, and the House managers knew that.

During the Clinton impeachment trial in the Senate, there were no additional documents requested, only previously deposed witnesses. The House managers did not go through the legal process to get documents, like the Mueller investigation had done, so all of the new document requests from the House managers would take at least 3 to 5 weeks to complete, once a legal subpoena is delivered. It takes time to search all databases, review the documents for classified materials, determine any legal issues, and release them to the investigation. Once the documents are turned over, both legal teams need time to review the documents. Again, the House managers knew these facts, but they continued to repeat over and over that it would only take a week to get all the documents.

The first question for the Senate trial was, do we have enough evidence and testimony to answer the questions the House presented in their Articles of Impeachment? If the answer is yes, then we do not need additional witnesses or documents. If the answer is no, then we do need additional information. There were many leaks and newspaper stories during the trial designed to push the Senate to vote to ask for more testimony, but that did not change the primary question. We already knew from evidence that there was no quid pro quo, no Ukrainian investigations, and no withholding of a public meeting with President Trump.

The New York Times story on January 26 and again on January 31 are clear examples of an attempt to bring doubt on the information and witness testimony. Both stories stated that someone had read the pending John Bolton book manuscript and that in the book, Bolton stated that President Trump had talked about investigations in exchange for aid funding for Ukraine. The New York Times also wrote that the book would state that Acting Chief of Staff Mick Mulvaney and White House Counsel Pat Cipollone were also a part of the scheme. I looked at both stories closely and noticed that the reporters had not read the manuscripts or quoted the manuscripts; they were reports from someone who stated that they had read the manuscripts. Both stories took significant liberties to

describe the intent in the manuscripts, but the reporter had apparently also not spoken to John Bolton.

On January 23, 2020, the National Security Council lawyers sent a letter to the legal team handling the book publishing for John Bolton to inform him that the manuscript contained some classified information and it would need have some edits before publication in March. Then, on January 26, the New York Times published a story that someone had leaked some of the details of the book, but they had not released the actual manuscript. While I am interested in seeing the actual manuscript, I am also very aware that this selective leak was designed by the New York Times and whoever leaked the information to influence the ongoing trial.

It was clear from the earliest days of the trial that the House had a clear political strategy as well as a courtroom strategy. During the trial, I had the responsibility to hear the facts but also to separate the politics from the facts. Politically, it was best for the House to move as quickly as possible through impeachment so that vulnerable Democratic Members could vote for impeachment and then move quickly to other topics. But since the Presidential election is in full swing, it was politically better for Democrats to make the Senate trial move as slow as possible to hurt the President during the campaign. That explains why the House did not take the time to formally request documents or testimony from many individuals; they needed to move fast and try to force the Senate to move slowly. It also explained why the House passed impeachment on a party line vote, then held the Articles of Impeachment for a month before delivering them to the Senate to start the trial. The House managers said repeatedly that the evidence was clear and that they had proved their case, but if that was true, why would the Senate need to call additional witnesses? I think the reason is that the witness process was about delay, more than facts.

The facts do not support the accusation in the Trump impeachment, and it certainly did not need to come to this moment of national division. While it was clear that the House managers wanted to drag the trial on for months in the Senate, through the primary election season, their case consisted of hypothetical story lines and “presumptions” more than facts that warrant the removal of a President. This does not meet what Alexander Hamilton in *Federalist 65* described as the “due weight” for the arguments.

But impeachment has certainly created the division in our society that Alexander Hamilton predicted. Over 200 years ago he wrote, “The prosecution [of impeachments], will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused.” This has been an incredibly divisive season in our Nation. It is not about one person; it is about all of us. We individually choose how we handle disagreements with family, friends, and people on the other side of particular issues. Our government represents us, so it is up to us to model for our government how to handle disagreements.

We are now past impeachment, and it is time to work on the issues that matter most to the American people. As we move forward, every American should speak out on the issues that are important to them and the voices that speak for their point of view. But we should remember that we have much more in common than

we have that divides us. It is my hope that our Nation does not go through a season like this again for a very long time and that we can move past this age of impeachment to an age of oversight and accountability.

I appreciate all the engagement with our office during the impeachment proceedings. We had thousands of calls and emails over the past month. We had hundreds of thousands of views on the nightly Facebook Live updates each day during the trial. While not every Oklahoman agrees with every decision I make on behalf of our State, I am grateful most choose to be respectful in expressing their points of view. At the end of the day, we are Oklahomans. We may not all agree on each issue, but we can be respectful of each other in our disagreement.

I am honored to serve our State and Nation. We have many important issues to address in the coming days I pray we can work on them together for the future of our State and Nation.

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[From the CONGRESSIONAL RECORD, February 25, 2020]

STATEMENT OF SENATOR THOM TILLIS

Mr. TILLIS. Madam President, during the impeachment trial, this Chamber considered the evidence and heard the arguments presented by the House managers and White House counsel. During the 12 days of the impeachment trial, the Senate heard from the House managers for nearly 22 hours, and we heard from the White House counsel for nearly 12 hours. This was followed by 180 questions asked and answered over 2 days, concluding with closing arguments by the House managers and White House counsel.

Ultimately, there were two questions the Senate had to answer when considering the Articles of Impeachment.

The first question, for the near-term, is should the President be removed from office?

The second question, for the long-term health of our Nation, is whether we should allow the impeachment process to be weaponized and used by a majority in the House to settle partisan political scores?

My answers to both questions are a resounding no.

That is why I voted against both Articles of Impeachment.

While my Democratic colleagues operated under the presumption of guilt, even if one is to assume the worst, the reality is the allegations against President Trump were neither criminal nor impeachable. They did not come close to meeting the standard of treason, bribery, or high crimes or misdemeanors set by our Founding Fathers.

It is remarkable to read the Federalist Papers and appreciate their clairvoyance. Federalist 65, written by Alexander Hamilton, was frequently quoted throughout these proceedings, and for good reason. Hamilton's warnings to this body of using impeachment as a partisan device were borne out. Hamilton wrote that impeachment:

[W]ill seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. In many cases it will connect itself with the pre-existing factions . . . and in such cases there will always

be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt.

By placing the impeachment power within the House and Senate, Hamilton acknowledged that power may wind up in the hands of “the leaders or tools of the most cunning or the most numerous faction,” which may “hardly be expected to possess the requisite neutrality towards those whose conduct may be the subject of scrutiny.” It is because of this remarkable power that Hamilton argued the Senate had been granted the power to try impeachments because the Senate is more likely to preserve “the necessary impartiality between the INDIVIDUAL accused, and the REPRESENTATIVES OF THE PEOPLE, HIS ACCUSERS?”

It is important to note that the Speaker of the House previously warned about the dangers of a politically motivated impeachment effort, stating in March 2019 that “impeachment is so divisive to the country that unless there’s something so compelling and overwhelming and bipartisan, I don’t think we should go down that path, because it divides the country.”

History has proven that warning to be true. One only needs to compare the dramatically different outcomes between the Nixon impeachment inquiry, which resulted in resignation, and the Clinton impeachment process, which resulted in acquittal.

The Speaker’s warning rings as true today as it did when she said it nearly 1 year ago. Unfortunately, the House majority ignored this warning, electing to lead a distinctly partisan process from beginning to end, based on a political timeline.

It began when the House majority refused to provide the President with basic due process rights for 71 of the 78 days of the formal House impeachment inquiry. The House majority also refused to provide proper rights to the minority, whose requests for an equal number of witnesses was denied.

It is no wonder why House Resolution 660, which permitted an impeachment inquiry, and House Resolution 755, the Articles of Impeachment against President Trump, failed to receive a single vote from the minority. In fact, the only thing that was bipartisan was the opposition to the articles.

The House majority presented a weak and completely partisan case for impeachment to the Senate. This is why the House managers attempted to convince the Senate to endorse its particular views of separation of powers, essentially asking the Senate to do the House’s job where it failed: to make a compelling case for the President’s removal.

This is yet another area Hamilton addressed. In Federalist 66, Hamilton outlined the differing roles and responsibilities between the House and Senate on impeachment, casting the House as the accusers and the Senate as the judges:

The division of them between the two branches of the legislature, assigning to one the right of accusing, to the other the right of judging, avoids the inconvenience of making the same persons both accusers and judges; and guards against the danger of persecution, from the prevalency of a factious spirit in either of those branches. As the concurrence of two thirds of the Senate will be requisite to a condemnation, the security to innocence, from this additional circumstance, will be as complete as itself can desire.

By dividing the power to accuse and the power to judge, the Founding Founders further recognized the procedural nature of

this process. Appropriate procedure would serve to protect the Executive from the designs of a partisan faction in the House and would ensure that removal was not just desirable, but truly necessary.

In this instance, removal was absolutely unnecessary, even if it was desirable to the whims of some in the House majority since the day the President was inaugurated in 2017.

This addresses the answer to the second question I posed on whether the Senate will allow the impeachment process to become the new normal.

It would create a dangerous precedent in which the House actively seeks opportunities to open impeachment inquires to politically weaken and potentially remove the President of the opposing party.

Impeachment is the most powerful tool the Founding Fathers gave to us to defend against Executive misconduct, but it should never be abused. It should never be used to settle political scores, and it should never be used as an effort to deny the American people the right to decide the President's fate at the ballot box.

To transform impeachment into a partisan political weapon is to diminish and undermine its critical constitutional role.

Despite the factions which formed during this impeachment trial, I remain optimistic about the direction of our Nation. For all the bitter partisan emotions this impeachment process has enflamed, this Congress now has the opportunity to move on and focus on forging consensus to conduct the business of the American people. Congress has recently demonstrated this ability—enacting historic criminal justice reform, agreeing on reforms to improve the delivery of healthcare to our brave veterans, and approving a fair and free trade deal with America's two largest economic partners, producing a win for American workers and consumers.

I hope, when the record is written of this impeachment, that history will say that the Senate ultimately retained the high bar which must be met to remove a President, that the Senate rejected the temptation to normalize the impeachment process for partisan political gain, and that Congress turned the page following the President's acquittal to prioritize the needs of the American people and, in turn, solve the most pressing challenges facing our great Nation.

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[From the CONGRESSIONAL RECORD, February 27, 2020]

STATEMENT OF SENATOR JACK REED

Mr. REED. Mr. President, I ask unanimous consent to have my opinion memorandum in the impeachment trial of President Donald John Trump printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OPINION MEMORANDUM OF UNITED STATES SENATOR JOHN F. REED IN THE  
IMPEACHMENT TRIAL OF PRESIDENT DONALD JOHN TRUMP

I. FINDINGS

Based on the evidence in the record, the arguments of the House Impeachment Managers, and the arguments of the President's Counsel, I conclude as follows: The President has violated his constitutional oath to "take care that the laws be faithfully executed" and placed his personal and political interests above the interests of the United States. The House Impeachment Managers have proven that the President's abuse of power and congressional obstruction amount to the constitutional standard of "high Crimes and Misdemeanors" for which the sole remedy is conviction and removal from office.

II. STATEMENT OF THE FACTS

On December 18, 2019, the United States House of Representatives passed H. Res. 755,<sup>1</sup> "Impeaching Donald John Trump, President of the United States, for high crimes and misdemeanors." H. Res. 755 contains two Articles of Impeachment. The first Article declares that the President abused his power by soliciting foreign interference to help his bid for reelection in the 2020 United States presidential election and conditioning United States government acts of significant value on the foreign power's cooperation. The second Article declares that the President obstructed Congress by directing the categorical, indiscriminate defiance of subpoenas for witness testimony and documents deemed vital to the House Impeachment inquiry.

Pursuant to Article I, Section 3 of the United States Constitution, the United States Senate convened as a Court of Impeachment on January 16, 2020, and each Senator took an oath to "do impartial justice according to the Constitution and laws."<sup>2</sup> Alexander Hamilton spoke about the Senate's role in an Impeachment trial in *Federalist Paper No. 65*, when he wrote, "What other body would be likely to feel *confidence enough in its own situation*, to preserve unawed and uninfluenced the necessary impartiality between an *individual* accused and the *representatives of the people, his accusers*?"<sup>3</sup>

The obligation of the Senate is to accord the President, as the accused, the right to conduct his defense fairly, while respecting the House's exclusive constitutional prerogative to bring Articles of Impeachment. At the core of the Senate's task is the fundamental understanding that our system of laws recognizes the rights of defendants and the responsibilities of the prosecution to prove its case. Such a basic tenet of our law and our experience as a free people does not evaporate in the rarified atmosphere of a Court of Impeachment, simply because the accused is the President and the accuser is the House of Representatives.

III. THE CONSTITUTIONAL GROUNDS FOR IMPEACHMENT

"The Senate shall have the sole Power to try all Impeachments."<sup>4</sup> With these few words, the Framers of the Constitution entrusted the Senate with the most awesome power within a democratic society: whether to remove an impeached President from office.

A. *High Crimes and Misdemeanors*

The Constitution states, "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."<sup>5</sup>

"Treason" and "Bribery" are foundational impeachable offenses. No more heinous example of an offense against the constitutional order exists than betrayal of the nation to an enemy or betrayal of duty for personal enrichment. A President commits treason when he levies war against the United States or gives comfort or aid to its enemies.<sup>6</sup> As the House Judiciary Committee explains, a President engages in impeachable bribery when he "offers, solicits, or accepts something of personal value to influence his own official actions."<sup>7</sup>

In interpreting "high Crimes and Misdemeanors," we must not only look to the *Federalist Papers* and the records of the Constitutional Convention, but also to the contemporary and foundational writings on Impeachment available to the Framers.

Sir William Blackstone, whose influential *Commentaries on the Laws of England* were published from 1765–1770, discussed a classification of crimes he termed "public wrongs, or crimes and misdemeanors" that he defined as breaches of the public duty that an individual owed to their entire community.<sup>8</sup> Blackstone viewed treason, murder, and robbery as "public wrongs" not only because they cause injury to individuals but also because they "strike at the very being of society."<sup>9</sup>

Richard Wooddeson, a legal scholar who began giving lectures on English law in 1777, defined impeachable offenses as misdeeds that fail to clearly fall under the jurisdiction of ordinary tribunals. These wrongs were “abuse[s] of high offices of trust” that damaged the commonwealth.<sup>10</sup>

Much the same as Blackstone and Wooddeson, Alexander Hamilton included the dual components of abuse of public trust and national harm in his definition of impeachable crimes and misdemeanors. In Federalist Paper No. 65, Hamilton defined an impeachable offense as “those offenses which proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.”<sup>11</sup>

#### *B. The Constitutional Debates*

Adding impressive support to these consistent views of the meaning of the constitutional term, “high Crimes and Misdemeanors,” is the history of the deliberations at the Constitutional Convention.

The convention delegates considered limiting Impeachment to treason and bribery. However, they concluded that these enumerated offenses alone could not anticipate every manner of profound misconduct that a future President might engage in.<sup>12</sup> George Mason, a delegate from Virginia, declared that “high crimes and misdemeanors” would be an apt way to further capture “great and dangerous offences” or “[a]ttempts to subvert the Constitution.”<sup>13</sup>

This wording would also set the necessarily high threshold for Impeachment that would be proportional to the severe punishment of removing an elected official and disqualification from holding future public office.

Further insight is provided by James Iredell, a delegate to the North Carolina Convention that ratified the Constitution, who later served as a Justice of the United States Supreme Court. During the Convention debates, Iredell stated:

The power of impeachment is given by this Constitution, to bring great offenders to punishment . . . This power is lodged in those who represent the great body of the people, because the occasion for its exercise will arise from acts of great injury to the community, and the objects of it may be such as cannot be easily reached by an ordinary tribunal.<sup>14</sup>

Iredell’s understanding sustains the view that an impeachable offense must cause “great injury to the community.” Private wrongdoing, without a significant, adverse effect upon the nation, cannot constitute an impeachable offense. James Wilson, a delegate to the Federal Constitutional Convention and, like Iredell, later a Supreme Court Justice, wrote that Impeachments are “proceedings of a political nature . . . confined to political characters, to political crimes and misdemeanors, and to political punishments.”<sup>15</sup>

Later commentators expressed similar views. In 1833, Justice Joseph Story quoted favorably from the scholarship of William Rawle, who concluded that the “legitimate causes of impeachment . . . can have reference only to public character, and official duty . . . In general, those offenses, which may be committed equally by a private person, as a public officer, are not the subject of impeachment.”<sup>16</sup>

This line of reasoning is buttressed by the careful and thoughtful work of the House of Representatives during the Watergate proceedings. The Democratic staff of the House Judiciary Committee concluded that, “Because impeachment of a President is a grave step for the nation, it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office.”<sup>17</sup>

The deliberations at the Constitutional Convention also demonstrate a conscious movement to narrow the terminology as a means of raising the threshold for the Impeachment process to require an offense against the State.

Early in the debate on the issue of presidential Impeachment in July of 1787, it was suggested that Impeachment and removal could be founded on a showing of “malpractice,” “neglect of duty,” or “corruption.”<sup>18</sup> By September of 1787, the issue of presidential Impeachment had been referred to the Committee of Eleven, which was created to resolve the most contentious issues. The Committee of Eleven considered whether the grounds for Impeachment should be “treason or bribery.”<sup>19</sup> This was significantly more restricted than the amorphous standard of “malpractice,” too restricted, in fact, for some delegates. George Mason objected and suggested that “maladministration” be added to “treason and bribery.”<sup>20</sup> This suggestion was opposed by Madison as being “equivalent to a tenure during pleasure of the Senate.”<sup>21</sup> Mason responded by further refining his suggestion and offered the term “other high crimes and misdemeanors against the State.”<sup>22</sup> The Mason language was a clear reference to the English legal history of Impeachment. Mason’s proposal explicitly

narrowed these offenses to those “against the State.” The Convention itself further clarified the standard by replacing “State” with the “United States.”<sup>23</sup>

At the conclusion of the substantive deliberations on the constitutional standard of Impeachment, it was obvious that only serious offenses against the governmental system would justify Impeachment and subsequent removal from office. However, the final stylistic touches to the Constitution were applied by the Committee of Style. This Committee had no authority to alter the meaning of the carefully debated language, but could only impose a stylistic consistency through, among other things, the elimination of redundancy. In its zeal to streamline the text, the words “against the United States” were eliminated as unnecessary to the meaning of the passage.<sup>24</sup>

The weight of both authoritative commentary and the history of the Constitutional Convention combines to provide convincing proof that the Impeachment process was reserved for serious breaches of the constitutional order that threaten the country in a direct and immediate manner.

#### *C. An Impeachable Offense is Not Limited to Criminal Liability or A Defined Offense*

In the case before us, the President’s Counsel wholly reject a longstanding understanding of Impeachment, by arguing that abuse of power is not an impeachable offense and by positing that “the Framers restricted impeachment to specific offenses against ‘already known and established law.’”<sup>25</sup>

This assertion is clearly wrong. Article I, Section 3 of the United States Constitution provides that “Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.”<sup>26</sup> As Delegate James Wilson wrote, “impeachments, and offenses and offenders impeachable “[do not come] within the sphere of ordinary jurisprudence. They are founded on different principles, are governed by different maxims, and are directed to different objects: for this reason, the trial and punishment of an offense on an impeachment, is no bar to a trial and punishment of the same offence at common law.”<sup>27</sup> The independence of the Impeachment process from the prosecution of crimes underscores the function of Impeachment as a means to remove a President from office, not only because of criminal behavior, but because the President poses a threat to the constitutional order. Criminal behavior is not irrelevant to an Impeachment, but it only becomes decisive if that behavior imperils the balance of powers established in the Constitution.

The assertion that an impeachable offense must be predicated on a criminal act goes against the well-established consensus of the legal community. For example, the argument by President’s Counsel is undercut by the President’s current Attorney General, William Barr. Mr. Barr wrote in a 2018 memo to the Department of Justice (DOJ) when he was still in private practice, that the President “is answerable for any abuses of discretion and is ultimately subject to the judgment of Congress through the impeachment process [which] means that the president is *not* the judge in his own cause.”<sup>28</sup> As Mr. Barr makes clear, Impeachment does not need to be based on a crime.

Furthermore, the assertion that an impeachable offense must involve the violation of an “already known or established” law, even if not criminal, is not supported by the constitutional record. In advocating for the inclusion of Impeachment at the Constitutional Convention, James Madison made the case that the country must be protected against any number of abuses that a President could engage in and which might cause permanent damage to the country. Madison wrote that:

[It was] indispensable that some provision should be made for defending the Community [against] the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service, was not a sufficient security . . . He might pervert his administration into a scheme of peculation or oppression. He might betray his trust to foreign powers.<sup>29</sup>

Confining Impeachment to criminal or even codified offenses goes against the mainstream consensus on the meaning of “high Crimes and Misdemeanors” and would fail to capture the universe of harms to the constitutional order in which a President could engage.

#### *D. Impeachment as a Remedy for Corrupting Foreign Influence*

The Founders were also gravely concerned about the dangers of foreign influence corrupting our elections and interfering with the rule of law.<sup>30</sup> The United States was then a fledging union that had just gained independence from Britain, with help from the French during the American Revolution. As such, the Founders rightly feared that foreign governments might try to exploit American politics in order

to further their own interests. During the Constitutional Convention, Elbridge Gerry, a delegate from Massachusetts, warned that “[f]oreign powers will intermeddle in our affairs, and spare no expence to influence them.”<sup>31</sup>

The Founders were also acutely aware of the potential for public officials to betray their office to a foreign power, if the temptation were strong enough. Hamilton conceded in Federalist Paper No. 22 that “[o]ne of the weak sides of republics, among their numerous advantages, is that they afford too easy an inlet to foreign corruption.”<sup>32</sup> In Hamilton’s view, when ordinary men are elevated by their fellow citizens to high office, they “may find compensations for betraying their trust, which to any but minds animated and guided by superior virtue, may appear to exceed the proportion of interest they have in the common stock, and to over-balance the obligations of duty. Hence it is that history furnishes us with so many mortifying examples of the prevalency of foreign corruption in republican governments.”<sup>33</sup>

#### *E. Conclusion*

Authoritative commentary on, together with the structure of, the Constitution makes it clear that the term, “other high Crimes and Misdemeanors,” encompasses conduct that involves the President in the impermissible exercise of the powers of his office to upset the constitutional order. Moreover, since the essence of Impeachment is removal from office, rather than punishment for offenses, there is a strong inference that the improper conduct must represent a continuing threat to the American people and the Constitution. It must be an episode that either cannot be dealt with in the Courts or that raises generalized concerns about the continued service of the President, as is the case presented here.

#### IV. STANDARD OF PROOF

In an Impeachment trial, each Senator has the obligation to establish the burden of proof he or she deems proper.<sup>34</sup> The Founding Fathers believed maximum discretion was critical for Senators confronting the gravest of constitutional choices.<sup>35</sup> Differentiating Impeachment from criminal trials, Alexander Hamilton argued, in Federalist Paper No. 65, that Impeachments “can never be tied down by such strict rules . . . as in common cases serve to limit the discretion of courts in favor of personal security.”<sup>36</sup> In this regard, Hamilton further distinguished Impeachment proceedings from a criminal trial by stressing that an impeached official would be subject to the established rules of criminal prosecution after Impeachment.<sup>37</sup>

During the Clinton Impeachment trial, I believed, as I do now, that the House Impeachment Managers bear the burden of proving their case.<sup>38</sup> In that trial, the House Impeachment Managers asserted that the Senators should reach a conclusion utilizing a beyond a reasonable doubt standard before voting to convict the President. The House Impeachment Managers, explicitly stated, “none of us, would argue . . . that the President should be removed from office unless you conclude he committed the crimes that he is alleged to have committed.”<sup>39</sup> I chose that standard of proof during that trial.<sup>40</sup> As I stated then, “[h]ad the charges of th[at] case involved threats to our constitutional order not readily characterized by criminal charges, I would have been forced to further parse an exact standard. However, for all practical purposes, the Managers have themselves established the burden of proof in [the Clinton Impeachment] case.”<sup>41</sup>

As the charges in this case against President Trump cut to the core of our constitutional order, I believe that I am now required to offer further analysis on which standard of proof to apply.

While the House Impeachment Managers in the current trial did not provide a single standard of proof required for conviction and removal, it was clear that the bar they set was quite high, which is appropriate. However, what exact constitutional standard should be used remains debatable. Practical concerns related to utilizing the Impeachment power should be considered when determining the standard of proof required. Too low of a standard may lead to removal, even if significant doubts exist. A “. . . high ‘criminal’ standard of proof could mean, in practice, that a man could remain president whom every member of the Senate believed to be guilty of corruption, just because his guilt was not shown ‘beyond a reasonable doubt.’”<sup>42</sup>

When uncertain about the standard of proof to apply, it is worth reviewing the writings of eminent scholars. In doing so, I have found a closer approximation to what the standard should be in many Impeachment trials as compared to those used in general legal practice: “[o]verwhelming preponderance of the evidence’ . . .”<sup>43</sup> Yet, I believe that the severity of removing a President of the United States warrants an even higher bar. As such, a definition slightly modified, but modeled on that proposed standard, is more applicable: overwhelmingly clear and convincing evidence.

This standard more closely comports with historical analysis of the Founders' desire to separate criminal law and Impeachment, and the arguments made by scholars, while reflecting the serious constitutional harms alleged in the Articles of Impeachment before the Senate. Further, after review of substantive differences between the Articles of Impeachment that allege President Trump's dire and ongoing threat to our constitutional order and the Articles of Impeachment levied against President Clinton—which could be more readily applied by analogy to criminal law—a different standard is clearly warranted. In a future case, if Articles of Impeachment contain a set of facts or allegations not contemplated in either the Clinton Impeachment trial or in this case, I will likely have to revisit this analysis.

The Articles, embodied in H. Res. 755, accuse the President of abuse of power and obstruction of Congress. After reading the materials and hearing the arguments presented at trial, I conclude that the evidence presented at trial was more than compelling. Indeed, it was overwhelmingly clear and convincing. Having concluded that the charges of abuse of power and obstruction of Congress rise to the level of “high Crimes and Misdemeanors,” an analysis of the specific charges is necessary.

#### V. ARTICLE I: ABUSE OF POWER

Article I of House Resolution 755 provides that, in the conduct of his office, the President abused his presidential powers, in violation of his constitutional duty to take care that the laws be faithfully executed, through a scheme, or course of conduct, to solicit interference of a foreign government, Ukraine, in the 2020 U.S. presidential election for personal political gain. The scheme included President Trump soliciting the Government of Ukraine to publicly announce investigations that would influence the 2020 U.S. presidential election to his advantage and the disadvantage of a potential political opponent in that election. Article I provides further that President Trump, for corrupt purposes, used the powers of the Office in a manner that injured the vital national interests of the United States by harming the integrity of the democratic process and compromising U.S. national security. As I will further explain, the conduct described in Article I amounts to an abuse of power and shows that President Trump remains an ongoing threat to the national interest if allowed to remain in office.

##### A. *Abuse of Power Is an Impeachable Offense*

A cardinal American principle that emerged during the drafting of the Constitution is that no one is above the law. As discussed in the previous section, this principle was a chief subject of debate at the Constitutional Convention. The Framers understood that power corrupts and they would need to build guardrails to protect the public good from a would-be authoritarian. The Framers were reacting to the overreach of King George III.

Yet, the President's Counsel argue that Impeachment is not an appropriate remedy for abuse of power, arguing that the Framers were not concerned about violations of the public trust. The President's Counsel instead argue that the Framers were primarily concerned about an Executive that would be beholden to a heavy-handed legislature. Indeed, during the debates at the Constitutional Convention, this fear was raised by opponents of Impeachment. Rufus King, a delegate from Massachusetts, said “[i]mpeachment by Congress] would be destructive of his independence and of the principles of the Constitution. He relied on the vigor of the Executive as a great security for the public liberties.”<sup>44</sup> Clearly, King's arguments did not carry the day.

In drafting the Constitution, the Framers had carefully calibrated the powers between Congress and the Executive. Ultimately, they decided that they could not leave the nation without any recourse against a President who would be in a unique and potent position to engage in any number of abusive acts. Without a mechanism to keep an out-of-control President in check, there was little binding him to the law. Hamilton underscored the importance of the Impeachment process for holding the President liable by drawing a contrast with the British monarchy, for whom “there is no constitutional tribunal to which he is amenable.”<sup>45</sup>

George Mason, a delegate from Virginia, underscores abuse of power as one of the key reasons for the need for presidential Impeachment, asking “Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice?”<sup>46</sup> Edmund Randolph, another delegate from Virginia, concurred, noting that “[t]he Executive will have great opportunities of abusing his power[,]” and in such instances “[g]uilt wherever found ought to be punished.”<sup>47</sup>

The Framers debate on these matters was prescient, as public officials have, in fact, been found to have committed impeachable offenses including abuse of power. Most well-known, President Nixon resigned after the House Judiciary Committee (hereinafter known as “Judiciary Committee”) found he had abused his powers on

multiple occasions.<sup>48</sup> Three district judges were also impeached during the 20th century for abusing their power. In impeaching these judges, the House used “abuse of power” to describe misconduct ranging from the unlawful use of contempt of court, to the ordering of a jury to find a defendant guilty, to the improper appointing of an associate to an official position.<sup>49</sup>

In stark contrast to the positions of the Framers, the President’s Counsel argue that a President who does something to benefit himself in a reelection, if he thinks it is in the nation’s interest, has not committed an impeachable offense. This is not a credible argument because under this view, the President would have free reign to solicit foreign interference, unlawfully withhold security assistance, use his powers to target his political opponents and engage in a whole host of corrupt conduct that might help him get reelected. This rings all too familiar of President Nixon when he said “Well, when the *president does* it that means *that it is not illegal*.”<sup>50</sup>

#### A.1. Definition of Abuse of Power

Black’s Law Dictionary defines “abuse of power” as including “The misuse or improper exercise of one’s authority; esp., the exercise of a statutorily or otherwise duly conferred authority in a way that is tortious, unlawful or outside its proper scope.”<sup>51</sup>

In its Impeachment inquiry of President Richard Nixon, the Judiciary Committee found the President repeatedly abused his power while in office.<sup>52</sup> Among its findings, the Judiciary Committee determined that President Nixon unlawfully directed or authorized federal agencies, including the Internal Revenue Service and the Federal Bureau of Investigation, to investigate and surveil American citizens, and used the resulting information for his own political purposes.<sup>53</sup> The Judiciary Committee further found that Nixon then interfered with investigations into these and other actions to conceal his misconduct, and stressed that Nixon’s actions in all of these instances “served no valid national policy objective.”<sup>54</sup>

The Judiciary Committee concluded that the “conduct of Richard M. Nixon has constituted a repeated and continuing abuse of the powers of the presidency in disregard of the fundamental principle of the rule of law in our system of government. This abuse of the powers of the President was carried out by Richard M. Nixon, acting personally and through his subordinates, for his own political advantage, not for any legitimate governmental purpose and without due consideration for the national good.”<sup>55</sup>

In the current Impeachment of President Trump, the Judiciary Committee has defined abuse of power as occurring “when a President exercises the powers of his office to obtain an improper personal benefit while injuring and ignoring the national interest.”<sup>56</sup>

From these sources, I have concluded that an abuse of power by a sitting President has the following three elements:

- 1) The use of official governmental power;
- 2) For personal or some other corrupt purpose;
- 3) Without due consideration for the national interest.

President Trump’s conduct in soliciting foreign interference in the 2020 presidential election meets each of these elements of the charge of abuse of power. Moreover, the defenses put forth by the President’s Counsel are substantively deficient when viewed in the context of the corrupt scheme conducted by President Trump through his personal attorney, Rudy Giuliani, starting in late 2018.

#### B. The Corrupt Scheme

President Trump engaged in a corrupt scheme to solicit foreign interference in the 2020 presidential election to tarnish his political rivals and bolster public perceptions of the legitimacy of his 2016 electoral victory. The corrupt scheme served to benefit the President in a personal, political manner, and was contrary to the national interest. President Trump repeatedly misused the powers of the presidency to increase pressure on Ukraine to further the corrupt scheme, including withholding a White House meeting and U.S. military assistance that the Ukrainians desperately need to counter Russia. This scheme continued even after a whistleblower exposed the President’s efforts and even following the launch of the Impeachment inquiry by the House.

The scheme directed by the President comprised two separate efforts—both aimed to damage his political rivals and benefit his reelection prospects. The first effort was to get the Ukrainian government to announce an investigation into baseless accusations propagated by a Russian disinformation campaign,<sup>57</sup> that Ukraine interfered in the 2016 election to benefit President Trump’s political rival, Hillary Clinton (hereinafter referred to as the “2016 campaign theory”). The 2016 campaign the-

ory comprised numerous unfounded allegations including that Ukraine colluded with the Democrats to influence the 2016 election and that the cybersecurity company CrowdStrike, falsely alleged to be owned by a Ukrainian oligarch, investigated the hack of the Democratic National Committee (DNC) computer infrastructure, and covered up evidence of Ukrainian culpability in the cyber-attack by hiding the servers from the FBI inside Ukraine.<sup>58</sup>

President Trump's fixation on the 2016 campaign theory appears to have been intended to change public perceptions of President Trump's connection to Russia, in the wake of the Intelligence Community assessment that Russia interfered in the 2016 election to support then candidate Trump,<sup>59</sup> and the Special Counsel's mandate including to review "any links or coordination between the Russian government and individuals associated with the Trump campaign."<sup>60</sup> The Special Counsel noted "several [of President Trump's] advisors recalled that the President . . . viewed stories about his Russian connections, the Russian investigations and the Intelligence Community assessment of Russian interference as a threat to the legitimacy of his electoral victory."<sup>61</sup> Further, in the spring of 2019, the Special Counsel affirmed the assessments of the Intelligence Community and concluded that while there was no direct conspiracy or coordination between the Kremlin and the Trump campaign, ". . . the Russian government perceived it would benefit from a Trump presidency and worked to secure that outcome, and that the campaign expected it would benefit electorally from information stolen and released through Russian efforts . . ." <sup>62</sup> In directing this effort of the scheme, the President was attempting to rewrite history by having a foreign power make statements to validate his allegations that it was Ukraine colluding with the Democrats rather than Russia interfering to benefit then candidate Trump and exonerate himself of any wrongdoing or ties to Russia.

In addition, the 2016 campaign theory sought to implicate the President's political rival in 2016, former Secretary of State Hillary Clinton. As Deputy Assistant Secretary George Kent testified, the President "wanted nothing less than President [Zelensky] to go to [a] microphone and say investigations, Biden, and Clinton." He confirmed that "shorthand" for Clinton "was 2016."<sup>63</sup>

The scheme also comprised a second effort to get the Ukrainian government to announce an investigation into unfounded corruption allegations against former Vice President Joe Biden and his son Hunter Biden (hereinafter referred to as "Biden/Burisma theory"). The allegations associated with this theory surround Vice President Biden's successful pressuring of Ukrainian President Poroshenko to remove Ukrainian Prosecutor General Victor Shokin in 2016, who purportedly was investigating a Ukrainian energy company, Burisma, on whose board Hunter Biden served.<sup>64</sup> Vice President Biden is a potential presidential challenger to President Trump in the 2020 Presidential election and was viewed as a frontrunner during the spring and summer of 2019 when President Trump directed such efforts to further the scheme. The President needed to undercut Vice President Biden as a candidate to enhance his chances of reelection.<sup>65</sup>

Successfully pressuring the Ukrainian government to announce investigations into the 2016 campaign and Biden/Burisma theories was likely to garner the President several political benefits including help with his reelection efforts. As the House Impeachment Managers state in their trial memo:

Although these theories were groundless, President Trump sought a public announcement by Ukraine of investigations into them [2016/the Bidens] in order to help his 2020 reelection campaign. An announcement of a Ukrainian investigation into one of his key political rivals would be enormously valuable to President Trump in his efforts to win reelection in 2020—just as the FBI's investigation into Hillary Clinton's emails had helped him in 2016. And an investigation suggesting that President Trump did not benefit from Russian interference in the 2016 election would give him a basis to assert—falsely—that he was the victim, rather than the beneficiary, of foreign meddling in the last election. Ukraine's announcement of that investigation would bolster the perceived legitimacy of his Presidency and, therefore, his political standing going into the 2020 race.<sup>66</sup>

President Trump needed to obfuscate what was known and proven about Russian involvement on his behalf in the 2016 election to bolster the credibility of claims of Ukrainian Government involvement in the 2016 election and corruption allegations against Vice President Biden ahead of the 2020 election. By soliciting investigations into the 2016 campaign and Biden/Burisma theories, he sought to accomplish both of those goals.

Throughout this scheme, which began in late 2018, President Trump employed Mr. Giuliani as his principal agent,<sup>67</sup> and enlisted several U.S. government officials to assist with efforts to compel Ukrainian officials to launch investigations into these baseless theories.

Mr. Giuliani involved associates in this scheme, including Lev Parnas and Igor Fruman, both of whom have been indicted in the Southern District of New York for conspiracy to violate election laws.<sup>68</sup> Mr. Parnas and Mr. Fruman leveraged their Ukrainian connections to facilitate contacts between Mr. Giuliani and then Ukrainian Prosecutor General Yuriy Lutsenko and his predecessor Victor Shokin to advance the scheme. Both Mr. Lutsenko<sup>69</sup> and Mr. Shokin<sup>70</sup> were removed from their positions under a cloud of corruption.

The corrupt Ukrainian Prosecutors General Lutsenko and Shokin were among Mr. Giuliani's sources for the unfounded allegations in support of the 2016 campaign and Biden/Burisma theories. During a January 2019 call via Skype,<sup>71</sup> Mr. Shokin asserted he had overseen the investigation into Burisma.<sup>72</sup> Mr. Shokin alleged that Vice President Biden forced his resignation to stop further investigation into Burisma and cover up wrongdoing.<sup>73</sup> He made additional allegations including that he had wanted to come to the United States to share information regarding corruption at the Embassy, and that U.S. Ambassador to Ukraine Marie Yovanovitch denied him a U.S. visa because she was close to Vice President Biden.<sup>74</sup> Mr. Shokin later provided an affidavit espousing allegations against Vice President Biden, which explicitly stated that his sworn statement was made at the behest of a pro-Putin Ukrainian oligarch.<sup>75</sup>

Also, in January 2019, Mr. Giuliani met in New York with Yuriy Lutsenko, who was then the Ukrainian Prosecutor General. During these initial conversations with Mr. Giuliani, Mr. Lutsenko made multiple allegations that Ukrainian government officials interfered in the 2016 election to help Democratic candidate Hillary Clinton. He also made allegations about corrupt practices at Burisma and raised the possibility that there could have been improper payments to Hunter Biden. In addition, Mr. Lutsenko made false allegations against U.S. Ambassador to Ukraine Marie Yovanovitch.<sup>76</sup>

Using these unfounded allegations, Mr. Giuliani launched a disinformation campaign on traditional and social media. In the spring of 2019, Mr. Giuliani and his associates worked with columnist John Solomon, who wrote a series of articles in *The Hill*, amplifying the false allegations of Mr. Lutsenko and Mr. Shokin.<sup>77</sup> Through these columns and a related interview, Mr. Lutsenko announced he was opening investigations into aspects of both the 2016 campaign and Biden/Burisma theories.<sup>78</sup> The President,<sup>79</sup> his son Donald Trump Jr.,<sup>80</sup> and Mr. Giuliani<sup>81</sup> amplified the false allegations by retweeting the articles. President Trump<sup>82</sup> and Mr. Giuliani<sup>83</sup> also repeated the false allegations contained in *The Hill* articles during press interviews.

In furtherance of the corrupt scheme, President Trump directed the removal of Ambassador Yovanovitch. As laid out in the Statement of Material Facts by the House Impeachment Managers, "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. The President also helped amplify the smear campaign."<sup>84</sup> Ambassador Yovanovitch testified she was told her removal from post was not for cause.<sup>85</sup> Mr. Giuliani later admitted he "believed that [he] needed Ambassador Yovanovitch out of the way" because "[s]he was going to make the investigations difficult for everybody."<sup>86</sup> Documents obtained by the House Permanent Select Committee on Intelligence further confirm that the Ambassador's firing was part of the effort to further the corrupt scheme. A text message from Ukrainian Prosecutor General Lutsenko warned Giuliani associate Lev Parnas that if they didn't fire Ambassador Yovanovitch, "you are bringing into question all my allegations including about 'B.'"<sup>87</sup> Mr. Parnas confirmed in a press interview that the "B" referred to Hunter Biden.<sup>88</sup>

As previously discussed, both the 2016 campaign and Biden/Burisma theories are unfounded. The 2016 campaign theory is an active Russian disinformation campaign.<sup>89</sup> On December 9, 2019, FBI Director Christopher Wray stated, "We have no information that indicates that Ukraine interfered with the 2016 presidential election."<sup>90</sup>

Further, the President's own national security officials have rejected the claim that the Ukrainian government systematically interfered in the 2016 election, including refuting the theory that Ukraine was behind the hack of the DNC servers.<sup>91</sup> Trump Homeland Security adviser Tom Bossert stressed, "[t]he DNC server and that conspiracy theory has got to go, they have to stop with that, it cannot continue to be repeated . . . in our discourse."<sup>92</sup>

With regards to the Biden/Burisma theory, no proof of any wrongdoing has been made to support this claim.<sup>93</sup> No evidence has been presented showing Vice President Biden specifically discussed Burisma with then President Poroshenko in relation to the removal of the corrupt Prosecutor General. Furthermore, U.S. diplomats, such as Former Special Envoy to Ukraine Ambassador Kurt Volker defended Vice

President Biden's actions. In his closed interview with the House Committees, Volker stated, "There is clear evidence that Vice President Biden did indeed weigh in with the President of Ukraine to have Shokin fired but the motivations for that are entirely different from those contained in that allegation."<sup>94</sup> Vice President Biden, acting as the point person for Ukraine policy in the Obama Administration, was representing the interests of the United States and the international community,<sup>95</sup> promoting increased transparency, corruption reform, and the rule of law.<sup>96</sup> Vice President Biden's public statements from the time reflect such efforts, focusing on combatting corruption and institutional reform rather than specific companies, such as Burisma.<sup>97</sup>

The President's Counsel made misleading assertions that U.S. Government officials warned the Vice President of the appearance of wrongdoing in an attempt to convince him to take corrective action. One person they cited was Amos Hochstein, a diplomat who served in the Obama Administration.<sup>98</sup> Mr. Hochstein did raise the matter with the Vice President but did not recommend that Hunter Biden resign from the board of Burisma.<sup>99</sup>

By mid-May 2019, Mr. Lutsenko publicly recanted previous allegations he made to Mr. Giuliani, including admitting that he had no evidence of wrongdoing by Vice President Biden or Hunter Biden.<sup>100</sup> Ambassador Volker explained Mr. Lutsenko's motivations for making these baseless accusations, "My opinion of Prosecutor General Lutsenko was that he was acting in a self-serving manner, frankly making things up, in order to appear important to the United States, because he wanted to save his job."<sup>101</sup>

At no point during the trial did the President's Counsel dispute the facts surrounding the scheme. The record is clear that the President directed the corrupt scheme to solicit investigations into the 2016 campaign and Biden/Burisma theories for his personal political gain.

#### *C. President Trump's Misuse of his Office to Advance the Corrupt Scheme*

President Trump used the powers of his office to advance the corrupt scheme through multiple efforts, violating the public trust and placing his own personal political interests above the interests of the nation. In doing so, the President abused the power of his office.

##### *C.1. President Trump Solicited Ukrainian President Zelensky to Open Investigations into the 2016 Campaign and Biden/Burisma Theories*

President Trump abused the powers of his office in order to advance the corrupt scheme by attempting to leverage the Ukrainian desire for an Oval Office meeting and U.S. security assistance as a quid pro quo for Ukrainian investigations into his political opponents that would benefit his reelection in 2020. Starting in May 2019, President Trump directed a sustained campaign to solicit newly-elected Ukrainian President Zelensky to undertake investigations into the 2016 campaign and Biden/Burisma theories.

##### *C.1.a. President Trump conditioned an Oval Office meeting on investigations into the 2016 campaign and Biden/Burisma theories*

President Trump's misuse of his official powers, with regard to this matter, began shortly after Volodymyr Zelensky won the Ukrainian presidential election on April 21, 2019. In early May, Mr. Giuliani announced that he planned to travel to Ukraine to meet with President-elect Zelensky "to urge him to pursue inquiries" into "the origin of the Special Counsel's investigation into Russia's interference in the 2016 election" and Hunter Biden's "involvement" in Burisma.<sup>102</sup> Mr. Giuliani admitted that he was not conducting "foreign policy" but rather "meddling in an investigation,"<sup>103</sup> and that President Trump was aware of his activities.<sup>104</sup>

In trying to arrange a meeting with President Zelensky, Mr. Giuliani was acting in a private capacity, not as a public official or to advance official U.S. policy. On May 10, 2019, Mr. Giuliani wrote to then President-Elect Zelensky, to request a meeting in his capacity as "personal counsel to President Trump and with his knowledge and consent."<sup>105</sup> Mr. Giuliani made clear in the letter he was representing Donald Trump as a private citizen, not as President of the United States. While the letter did not state the purpose of the requested meeting, Mr. Giuliani stated publicly on the same day that he intended to tell President Zelensky to pursue investigations into the 2016 campaign and Biden/Burisma theories.<sup>106</sup> Then on May 11th, Mr. Giuliani abruptly cancelled his trip to Ukraine, declaring that President-Elect Zelensky had surrounded himself with "enemies of the President" (referring to President Trump).<sup>107</sup>

President Trump intertwined Mr. Giuliani's private mission and the activities of public officials when he directed U.S. officials to aid his personal attorney in advanc-

ing this scheme. At a May 23rd meeting in the Oval Office, President Trump was briefed by Ambassador Paul Volker, Ambassador Gordon Sondland, and Secretary of Energy Rick Perry, who would subsequently describe themselves as the “Three Amigos,” (hereinafter referred to as the “Three Amigos”) on their recent trip to attend the inauguration of President Zelensky.<sup>108</sup> Witness testimony indicates that despite their positive assessments about President Zelensky, President Trump was unconvinced, and replied that the Ukrainians tried to “take me down” in 2016, referring to the debunked 2016 campaign theory.<sup>109</sup> The President resisted the recommendation of the Three Amigos to invite President Zelensky to the White House, and instead repeatedly directed these three officials to “talk to Rudy.”<sup>110</sup> Ambassador Sondland testified that he understood this to refer to Mr. Giuliani and that “if we did not talk to Rudy, nothing would move forward on Ukraine.”<sup>111</sup> Ambassador Sondland further explained that they chose to follow the President’s direction to communicate with Mr. Giuliani, not because they liked it, but because “it was the only constructive path open to us.”<sup>112</sup>

The Three Amigos frequently operated outside regular diplomatic channels between the United States and Ukraine, but their activities were not a secret to the President’s national security officials. Ambassador Bill Taylor, Charge d’affaires at the U.S. Embassy in Kyiv, described in his testimony how, while he operated in the regular channel of U.S. policymaking regarding Ukraine, beginning on May 23rd there emerged “an irregular, informal channel,” consisting of Special Envoy Volker, Ambassador Sondland, Secretary Perry, and Mr. Giuliani.<sup>113</sup> As Ambassador Sondland testified, “everyone was in the loop,”<sup>114</sup> further clarifying that President Trump, Secretary Pompeo, Mr. Giuliani, and Acting Chief of Staff Mick Mulvaney were kept informed of the activities undertaken by the Three Amigos. Fiona Hill, National Security Council Director for European and Russian Affairs, concluded that Ambassador Sondland was correct that he was keeping the relevant officials informed of his activities because he was “involved in a domestic political errand” while she and other government officials were conducting U.S. national security foreign policy, and “those two things had just diverged.”<sup>115</sup>

The purpose of these two channels diverged as well: while the career diplomats were engaged in promoting U.S. national security interests in supporting Ukraine in its fight against Russian aggression, the irregular channel was engaged in pursuing a quid pro quo to secure Ukrainian investigations into the 2016 campaign and the Biden/Burisma theories for the benefit of the President’s 2020 reelection. At the direction of the President, as conveyed through Mr. Giuliani and Acting White House Chief of Staff Mick Mulvaney, the Three Amigos pursued a quid pro quo—the offer of a politically valuable Oval Office meeting with President Trump in exchange for President Zelensky announcing the desired investigations. Ambassador Sondland testified “Mr. Giuliani’s requests were a quid pro quo for arranging a White House visit for President Zelensky.”<sup>116</sup>

The evidence shows that by early July, the message was conveyed to Ukrainian officials that investigations were a prerequisite for their desired White House meeting. Ambassador Volker testified that when the Oval Office meeting was not scheduled by late June, he “came to believe that the President’s long-held negative view toward Ukraine was causing hesitation in actually scheduling the meeting.”<sup>117</sup> At a bilateral meeting in Toronto in early July, Ambassador Volker testified that he told alerted President Zelensky that he couldn’t get a date scheduled for the White House meeting. Ambassador Volker relayed to President Zelensky, “I think we have a problem here, and that problem being the negative feed of information from Mr. Giuliani.”<sup>118</sup> Ambassador Volker further testified that during the Toronto meeting, he specifically mentioned investigations into “2016” election and “Burisma” with President Zelensky.<sup>119</sup> Soon after this warning, President Zelensky’s close aide Andriy Yermak asked to be connected with Mr. Giuliani.<sup>120</sup>

The President’s conditions for securing a White House meeting were communicated an additional time, during a July 10, 2019, bilateral meeting led by then National Security Adviser John Bolton and then Ukrainian National Security Adviser Oleksandr Danylyuk. During the meeting, the Ukrainian delegation raised their desire to have a White House meeting.<sup>121</sup> NSC official Hill testified that Ambassador Sondland, who was in attendance at the meeting, responded to the Ukrainian request by stating, “We have an agreement that there will be a meeting, if specific investigations are put under way.”<sup>122</sup> NSC official Lt. Col. Vindman testified that during that afternoon’s meetings with the Ukrainian delegation, Ambassador Sondland “emphasized the importance of Ukraine delivering the investigations into 2016 elections, the Bidens and Burisma.”<sup>123</sup> Later, Ambassador Sondland told Dr. Hill that there was agreement with Mr. Mulvaney that there would be a White House meeting with President Zelensky “in return for investigations.”<sup>124</sup> According to Dr. Hill, Ambassador Bolton was so alarmed that he told her to inform the law-

yers about what happened in the meeting, adding that he was not be part of “whatever drug deal that Mulvaney and Sondland are cooking up.”<sup>125</sup>

#### C.1.b. President Trump withheld military assistance

President Trump also used the powers of his office to order, through the Office of Management and Budget (OMB), the withholding of congressionally appropriated security assistance to Ukraine. The evidence shows that the President fixated on a June 19, 2019 article in the *Washington Examiner* announcing the release of Ukraine security assistance as an additional leverage point to further the corrupt scheme.<sup>126</sup> By no later than July 12, 2019,<sup>127</sup> President Trump ordered a hold on \$391 million in security assistance for Ukraine, consisting of \$250 million in Department of Defense Ukraine Security Assistance Initiative (USAI) funding and \$141 million in State Department Foreign Military Financing (FMF). At an interagency meeting on July 18, 2019, a week before the Trump-Zelensky phone call, OMB officials instructed relevant U.S. government departments and agencies to withhold obligation of the Ukraine security assistance at the direction of the President.<sup>128</sup> According to multiple witnesses, OMB did not provide a reason for the President’s hold on the Ukraine aid.<sup>129</sup> OMB maintained this hold on Ukraine security assistance through September 11th, when OMB lifted the hold, again without providing a rationale for the change of course.<sup>130</sup>

The President’s Counsel claim that the President’s hold on security assistance was because of a policy difference, but that claim is not supported by the evidence. The manner in which the White House placed the hold on security assistance for Ukraine differed significantly from the process in which holds of assistance to other countries based on policy considerations had previously occurred. As the House Impeachment Managers stated, “What the President did is not the same as routine withholding of foreign aid to ensure that it aligns with the President’s policy priorities or to adjust with geopolitical developments.”<sup>131</sup> The President began asking about the hold based on the announcement of the release of funds, after the Department of Defense had certified that the Ukrainian government made progress on corruption reform, showing that the hold was not placed due to policy considerations. Further, no geopolitical circumstances had changed in that timeframe to warrant the placing of a hold on security assistance funds to Ukraine.

In addition, despite substantial evidence that U.S. government officials were deeply concerned about conflicts with the Impoundment Control Act (ICA), there was no notification of the delay to Congress as required by this law, belying the idea that the President harbored legitimate concerns about policy.<sup>132</sup> Congress has an established bipartisan record of robust support for Ukraine. Since 2014, the United States has provided more than \$3.5 billion in foreign assistance to Ukraine: \$1.96 billion in military and other security assistance and \$1.6 billion in political aid to Ukraine, all illustrating a policy that support to Ukraine furthers U.S. national security interests.<sup>133</sup> Interagency conversations while the hold was in place reflected concerns that withholding the funds would in fact violate the ICA,<sup>134</sup> yet there were no plans to notify Congress or rescind the funds as required by under the ICA. Further, when OMB official Mike Duffey directed Acting DOD Comptroller Elaine McCusker to formally hold the assistance for Ukraine, he 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.”<sup>135</sup> The secrecy maintained by Administration officials regarding the hold on this security assistance differs significantly from past practice and supports the inference that they were aware that the hold was contrary to U.S. policy and that they had no legitimate policy justification for a change in U.S. policy.

In withholding the security assistance for Ukraine, the President violated his duty to faithfully execute the laws. Congress enacted the ICA in 1974 as one of many responses to the abuses of President Nixon in order to require the President to obligate funds appropriated by Congress, unless Congress otherwise authorizes the withholding.<sup>136</sup> The ICA provides the President with narrowly circumscribed authority to withhold, or “impound,” appropriated funds only in limited, specified circumstances, and included a requirement to inform Congress. At no point did the Trump Administration either assert that it was impounding the Ukraine security assistance or inform Congress of any deferral or rescission of funds. In reviewing the OMB’s withholding of funds appropriated to the Department of Defense for Ukraine security assistance, the Government Accountability Office concluded that OMB violated the ICA.<sup>137</sup>

*C.1.c. President Trump conditioned a White House meeting and Ukrainian security assistance on investigations*

The House Impeachment Managers' record demonstrates overwhelmingly that President Trump conditioned both a White House meeting and nearly \$400 million in U.S. security assistance for Ukraine on a commitment by President Zelensky to conduct investigations for the personal political benefit of Donald Trump. The President's scheme to secure corrupt investigations to benefit his reelection efforts converged with his official duties during a July 25, 2019, phone call with President Zelensky. The President's actions during that phone call, understood in the context of the broader corrupt scheme, are compelling evidence that the President solicited foreign interference in U.S. elections.

The President's own words during the July 25th call, as summarized in a memorandum of telephone conversation released by the White House, demonstrate the President's demand for a quid pro quo.<sup>138</sup> Far from showing the "perfect call" that President Trump claims,<sup>139</sup> the memorandum of the telephone conversation makes clear that the President solicited politically-motivated investigations from President Zelensky in exchange for a White House meeting and U.S. military aid. When the Ukrainian President indicated he would be seeking additional U.S. military arms that Ukraine desperately needed for its conflict with Russia, President Trump responded by requesting that President Zelensky do him "a favor though."<sup>140</sup> The memorandum of the telephone conversation makes clear that the favor President Trump sought as a condition for future military aid was the two investigations into the 2016 campaign and the Biden/Burisma theories. President Trump went on to espouse many of the allegations associated with the debunked 2016 campaign theory, including "Crowdstrike," and "one of your wealthy people," falsely insinuating that a Ukrainian oligarch owned the cybersecurity firm that investigated the DNC hack.<sup>141</sup> He then alleged that Ukraine has the server and added, ". . . They say a lot of it started in Ukraine. Whatever you can do, it's very important that you do it. . . ." <sup>142</sup> Later in the phone call, President Trump mentioned "the other thing" he wanted investigated, declaring that there was "a lot of talk about" Vice President "Biden's son," and that Vice President "Biden stopped the prosecution."<sup>143</sup> President Trump told President Zelensky, "A lot of people want to find out about that, so whatever you can do with the Attorney General would be great."<sup>144</sup> In addition, it must be noted President Trump specifically urged President Zelensky to call Mr. Giuliani, as well as Attorney General Barr,<sup>145</sup> regarding investigations into the 2016 campaign and Biden/Burisma theories.<sup>146</sup> Given all of the steps taken by Mr. Giuliani leading up to the call, including his letter to President Zelensky and public statements urging President Zelensky to undertake investigations into the 2016 campaign and Biden/Burisma theories, it is clear that President Trump was signaling that he wanted these investigations.

The President's Counsel disputed the notion that there was a quid pro quo by claiming that President Zelensky was not aware of an arrangement and he felt no pressure during the July 25th phone call. However, evidence shows that the President's surrogates prepped President Zelensky ahead of the call to say that he would conduct investigations into the 2016 campaign and Biden/Burisma theories in order to get a White House meeting. Ambassadors Volker and Sondland had multiple exchanges with President Zelensky and his aide Mr. Yermak ahead of the call. Ambassador Volker, after having breakfast with Mr. Giuliani, told Ambassador Taylor and Ambassador Sondland via text, "Most important is for Zelensky to say that he will help with investigation."<sup>147</sup> That same day, Ambassador Sondland directed President Zelensky to tell President Trump, he would "run a fully transparent investigation and turn over every stone,"<sup>148</sup> which he indicated in testimony referred to the "Burisma and the 2016" investigations.<sup>149</sup> The morning of the July 25th call, Ambassador Sondland spoke to President Trump and then alerted Ambassador Volker to contact him.<sup>150</sup> Approximately a half hour later, Ambassador Volker texted Zelensky aide Mr. Yermak, "Heard from White House—assuming President Z[elensky] convinces Trump he will investigate/ 'get to the bottom of what happened' in 2016, we will nail down a date for a visit in Washington."<sup>151</sup>

The memorandum of the telephone conversation shows that President Zelensky understood the messages that he was told to convey during the call and followed those instructions. During the call, President Zelensky said to President Trump, "I also wanted to thank you for your invitation to visit the United States, specifically Washington D.C. On the other hand, I also want to ensure you that we will be very serious about the case and will work on the investigation."<sup>152</sup> Lt. Col. Vindman testified that aspects of the call, including President Zelensky bringing up Burisma, suggested that he was "prepped" for this call.<sup>153</sup> President Zelensky knew what

“favor” President Trump was asking for as a condition for receiving the White House meeting.

C.1.d. *The actions of Administration officials following the July 25th phone call demonstrate that the President conditioned U.S. military aid to Ukraine and the White House meeting on President Zelensky announcing the investigations into the 2016 campaign and Biden/Burisma theories*

The President’s Counsel allege that there is no evidence that the President conditioned U.S. military aid for Ukraine or the White House meeting on a commitment by President Zelensky to announce investigations into the 2016 campaign and Biden/Burisma theories. The President’s Counsel assert that any claims that President Trump made any such linkage, particularly relating to the military assistance, are unsupported and based on second or third-hand sources and speculation. They claim that no one with first-hand knowledge of the President’s thinking came forward and testified that he conditioned the delivery of these official acts for Ukraine on the investigations. These claims are both disingenuous and wrong.<sup>154</sup>

Furthermore, the actions of Administration officials after the July 25th phone call make clear President Trump’s request was a quid pro quo. Approximately 90 minutes after the call, OMB official Mike Duffey directed Acting DoD Comptroller McCusker to formally hold the Department of Defense security assistance for Ukraine.<sup>155</sup>

In addition, conversations on July 26, 2019, detail that President Trump appeared solely focused on whether efforts to pressure President Zelensky to initiate the investigations had been successful. On July 26th, the day after the phone call between Presidents Trump and Zelensky, Ambassador Sondland called President Trump from Kyiv. According to testimony from David Holmes, Counselor for Political Affairs at the U.S. Embassy who overheard the phone call, President Trump asked Ambassador Sondland, “So he’s going to do the investigation?” referring to the 2016 campaign and Burisma/Biden theories.<sup>156</sup> Holmes also testified that he asked Ambassador Sondland that same day if President Trump cared about Ukraine. Sondland responded that President “Trump only cared about ‘big stuff’ that benefits the President, like the ‘Biden investigation’ that Mr. Giuliani was pushing.”<sup>157</sup>

Most telling, President Trump’s Acting Chief of Staff Mick Mulvaney publicly admitted at a press conference on October 17th that withholding the security assistance for Ukraine provided leverage to convince Ukraine to investigate the source of the hack of the DNC servers in 2016, an aspect of the 2016 campaign theory.<sup>158</sup> Mr. Mulvaney confirmed that President Trump “[a]bsolutely” raised “corruption related to the DNC server” and added that was part of “why we held up the money.”<sup>159</sup> When a reporter pointed out that he had just described a quid pro quo, Mr. Mulvaney stated, “We do that all the time with foreign policy” and told everyone to “Get over it. There’s going to be political influence in foreign policy.”<sup>160</sup>

Despite the assertions of the President’s counsel, evidence indicates that the Zelensky Administration knew that there was a problem with the security assistance well before the hold was reported publicly on August 28, 2019.<sup>161</sup> The same afternoon of the July 25th phone call, Department of Defense officials learned that diplomats at the Ukrainian Embassy in Washington had made multiple overtures to the Pentagon and the State Department “asking about security assistance.”<sup>162</sup> Separately, during that same time frame, two different officials at the Ukrainian Embassy contacted Ambassador Volker’s special assistant, Catherine Croft, to ask her in confidence about the hold.<sup>163</sup> In early August 2019, the Ukrainians reportedly made further inquiries about the security assistance funds.<sup>164</sup> The message sent back was that the holdup was not bureaucratic in nature, and that to address it they were advised to reach out to Mick Mulvaney.<sup>165</sup> NSC official Lt. Col. Vindman testified that by mid-August 2019, he had also received inquiries about the hold on the security assistance from an official at the Ukrainian Embassy.<sup>166</sup>

Evidence and reporting regarding the President’s interactions with then National Security Adviser John Bolton further confirms that the President held security assistance in order to further the corrupt scheme. On August 16, 2019, Ambassador Bolton reportedly made a personal appeal to President Trump to release the security assistance for Ukraine and was “rebuffed.”<sup>167</sup> NSC official Tim Morrison affirmed this account in his testimony. Mr. Morrison testified that Ambassador Bolton said President Trump, “wasn’t ready” to release the aid.<sup>168</sup> According to news reports that emerged during the Impeachment trial, an account from Ambassador Bolton’s forthcoming book reportedly makes this link even more explicit.

Ambassador Bolton stated during the August meeting, President Trump “appeared focused on the theories Mr. Giuliani had shared with him, replying to Mr. Bolton’s question that he preferred sending no assistance to Ukraine until officials

turned over all materials they had about the Russia investigation that related to Mr. Biden and supporters of Mrs. Clinton in Ukraine.”<sup>169</sup>

The record also shows that after the July 25th Trump-Zelensky phone call, President Trump directed a campaign to increase the pressure in furtherance of the scheme. Starting in early August, Ambassadors Volker and Sondland, in coordination with Mr. Giuliani, attempted to get President Zelensky to publicly announce investigations into the 2016 campaign and Biden/Burisma theories.<sup>170</sup> Ambassadors Volker and Sondland worked in conjunction with President Zelensky’s aide Mr. Yermak to generate an acceptable statement.<sup>171</sup> After the initial Ukrainian draft of the statement contained only a general commitment from President Zelensky to fight corruption, Ambassadors Volker and Sondland consulted Mr. Giuliani who responded that if the statement “doesn’t say Burisma and 2016, it’s not credible.”<sup>172</sup> Ambassador Volker then revised President Zelensky’s draft statement to include specific references to “Burisma” and “the 2016 U.S. elections.”<sup>173</sup> No statement was ever released by President Zelensky, and Ambassador Volker testified that it was because the Ukrainians realized that making such a statement was tantamount to a quid pro quo.<sup>174</sup>

Furthermore, witness testimony shows that as the hold on the security assistance continued through the late summer, U.S. government officials realized the connection between the hold and the President’s desire for Ukrainian announcements of investigations into President Trump’s political rivals. By early September, Ambassador Taylor said his “clear understanding” was that President Trump would withhold security assistance until President Zelensky “committed to pursue the investigations.”<sup>175</sup> Ambassador Taylor further testified that his contemporaneous notes reflect that President Trump wanted President Zelensky “in a box by making [a] public statement about ordering such investigations.”<sup>176</sup> Ambassador Sondland explained to Ambassador Taylor that “everything” (the Oval Office meeting and security assistance) “was dependent on the Ukrainian government announcing the political investigations.”<sup>177</sup> Ambassador Taylor responded to Ambassador Sondland that he thought it was “crazy to withhold security assistance for help with a political campaign.”<sup>178</sup> Foreign Service Officer David Holmes testified that his “clear impression” around the same time was that “the security assistance hold was likely intended by the President either to express dissatisfaction with the Ukrainians who had not yet agreed to the Burisma/Biden investigations, or as an effort to increase the pressure on them to do so.”<sup>179</sup>

Once the hold on the security assistance was reported in the press in late August 2019, the conditions for releasing the assistance were soon overtly communicated to President Zelensky. President Trump’s surrogates informed President Zelensky and his aides that the security assistance was held up as a result of President Zelensky’s unwillingness to announce the investigations into President Trump’s political rivals. These directions came from the President.<sup>180</sup> Ambassador Sondland testified that he had passed a message directly to President Zelensky’s aide Mr. Yermak on September 1, 2019, that, “I believed that the resumption of U.S. aid would not likely occur until Ukraine took some kind of action on the public statement that we had been discussing for weeks.”<sup>181</sup> Affirming this account, Ambassador Taylor testified that Ambassador Sondland told him he had warned President Zelensky and Mr. Yermak that, “although this was not a quid pro quo, if President Zelensky did not clear things up in public, we would be at a stalemate.”<sup>182</sup> President Zelensky apparently understood the message because arrangements were made for the Ukrainian President to go on CNN to announce the investigations.<sup>183</sup>

The President’s Counsel argue that there could not have been a quid pro quo because the Ukrainians ultimately got the funding without making the commitment to conduct the investigations. Essentially, they argue “no harm, no foul.” However, the President’s solicitation of the politically-motivated investigations in exchange for official acts is in and of itself an abuse of his office and the public trust. Further, President Trump released the hold on the security assistance only after a whistleblower’s complaint had been provided to Congress and three House committees had initiated an investigation into the hold. On August 12, 2019, a whistleblower filed a complaint with the Intelligence Community’s Inspector General, which stated multiple U.S. government officials had told him or her information indicating that the “President of the United States is using the power of his office to solicit interference from a foreign country in the 2020 U.S. election.”<sup>184</sup> The complaint cited the July 25th call between Presidents Trump and Zelensky, the placing of the call on a codeword server, and other circumstances surrounding the call including the role of Mr. Giuliani.<sup>185</sup> The President was reportedly briefed by White House Counsel on the existence of a whistleblower complaint in late August.<sup>186</sup> On September 9, 2019, the whistleblower complaint was referred to Congress.<sup>187</sup> On the same day, the House Permanent Select Committee on Intelligence, the House Committee on Over-

sight and Government Reform, and the House Committee on Foreign Affairs opened an inquiry into the circumstances surrounding the hold.<sup>188</sup> The President subsequently lifted the hold on September 11, 2019.<sup>189</sup>

Moreover, the corrupt scheme did not end even after the House Committees began the Impeachment Inquiry. Mr. Giuliani, at the direction of the President, has continued to travel to Ukraine to generate compromising material on President Trump's political opponents,<sup>190</sup> raising the possibility of future attempts by President Trump to pressure foreign leaders to interfere in the 2020 election.

Consistent with the first element delineated for abuse of power, the evidence clearly shows that President Trump misused his office to advance a corrupt scheme.

The fact that President Trump's actions involve the misuse of the office of the presidency distinguishes the current proceedings from the circumstances in the 1999 Clinton Impeachment trial. Based on the historical record, the constitutional standard I applied in the Clinton proceedings was that "private wrongdoing, without a significant adverse effect upon the nation, cannot constitute an impeachable offense."<sup>191</sup> On that basis, I concluded that "Citizens may well lack confidence in the ability of President Clinton to be honest about his personal life, this is not however a threat to our government."<sup>192</sup> The circumstances regarding President Trump can be distinguished both on the grounds that his actions involved the misuse of his public office, not private wrongdoing, and because the nature of President Trump's abuse of power is an ongoing threat to our systems of government and our constitutional order.

*D. The President's Solicitation of Investigations by Ukraine into the 2016 Campaign and Biden/Burisma Theories Was for his Personal or Other Corrupt Purpose*

The second element of the offense of abuse of power, as previously delineated, is the use of official governmental power for personal or some other corrupt purpose. The President's Counsel have argued that the President had legitimate policy reasons for withholding the Ukraine security assistance or the White House meeting. Specifically, the President's Counsel asserted that President Trump had longstanding concerns about corruption and burden-sharing by European allies in support of Ukraine. Upon careful review of the record, these assertions simply do not square with the facts. While there is some basis for the assertion that President Trump cared about these issues, they were not the basis for the withholding of Ukraine security assistance.

Evidence shows that President Trump's solicitation alarmed Administration officials who listened in to the July 25th call, and their concerns did not stem from policy differences. NSC official Lt. Col. Vindman testified that he was "concerned" about the call and "did not think it was proper to demand that a foreign government investigate a U.S. citizen."<sup>193</sup> Vice Presidential aide Jennifer Williams, who also listened to the July 25th call, testified she found it, "unusual because, in contrast to other Presidential calls I had observed, it involved discussion of what appeared to be a domestic political matter."<sup>194</sup> Ms. Williams was informed of the security assistance hold on July 3rd and stated that the call "shed some light on possible other motivations behind a security assistance hold."<sup>195</sup> Lt. Col. Vindman and NSC official Tim Morrison were sufficiently concerned that they separately reported the contents of the call to NSC lawyers, Mr. Eisenberg and Mr. Ellis.<sup>196</sup> The President's lawyers, in turn, took steps to restrict access to the rough transcript of the call by placing it on a highly-restricted classified server.<sup>197</sup>

Furthermore, the President's Counsel's claim that security assistance for Ukraine was withheld over concerns about corruption is unfounded. On May 23, 2019, the Department of Defense certified to Congress that Ukraine had made progress on defense reform and anti-corruption measures. Congress required this certification under the National Defense Authorization Act in order to allow USAI funding to be provided beyond the first 50 percent of amounts authorized and appropriated for Ukraine military aid.<sup>198</sup> Furthermore, support for providing security assistance to Ukraine was unanimous among relevant agencies of the United States government. Deputy Assistant Secretary of Defense Laura Cooper testified that there was a consensus within the interagency that corruption was not a legitimate reason for the hold.<sup>199</sup> Ambassador Taylor affirmed Ms. Cooper's recollection that no agencies raised policy-related concerns as reason for the hold on security assistance testimony, "At every meeting, the unanimous conclusion was that the security assistance should be reassumed, the hold lifted. At one point the Defense Department was asked to perform an analysis of the effectiveness of the assistance. Within a day, the Defense Department came back with the determination that the assistance was effective and should be resumed."<sup>200</sup>

Nor does the evidence support the claim that President Trump, himself, had concerns about institutional corruption that would lead him to withhold military assist-

ance for Ukraine. There is no evidence that President Trump in his interactions with his Ukrainian counterpart, raised concerns about corruption. Indeed, corruption was not raised by President Trump during the two calls he had with President Zelensky,<sup>201</sup> despite that issue being included in his talking points prepared by NSC staff for both calls.<sup>202</sup> Further evidence that President Trump was not interested in institutional corruption in Ukraine came from Mr. Morrison, who listened to the July 25th call, and testified that President Trump did not make a “full-throated endorsement of the Ukraine reform agenda that I was hoping to hear.”<sup>203</sup>

Further, communications by U.S. diplomats to President Zelensky or other Ukrainian officials do not indicate that President Trump held Ukrainian security assistance due to concern about corruption in Ukraine. As discussed earlier, Ambassador Volker and Ambassador Sondland had multiple contacts with President Zelensky and his close aide Mr. Yermak ahead of the July 25th call. No evidence shows that President Zelensky was advised to outline steps he was taking to address corruption on the call.<sup>204</sup> Similarly, previously discussed diplomatic efforts in August focused on securing a public commitment by President Zelensky to investigate the 2016 campaign and Biden/Burisma theories specifically, and a commitment to pursue corruption generally was deemed insufficient to meet President Trump’s request.<sup>205</sup>

The evidence also does not indicate that President Trump used official auspices to undertake a corruption investigation in furtherance of official U.S. government policy. If the President was interested in pursuing a particular corruption investigation with the Government of Ukraine, he could have done so through established diplomatic channels. The President could have directed his Attorney General to make an official request of Ukraine to initiate investigations into corruption under the existing Mutual Legal Assistance Treaty (MLAT) with Ukraine.<sup>206</sup> In this instance, President Trump did not take such action. Rather, in the July 25th call, President Trump asked President Zelensky to work with both his personal attorney, Mr. Giuliani, and Attorney General Barr to pursue investigations into his political rivals.<sup>207</sup> Further, supporting the idea that the President did not ask for any official investigations, the DOJ has denied knowledge of any such investigations, declaring that “the President has not asked the Attorney General to contact Ukraine—on this [the July 25th call] or any other matter.”<sup>208</sup> Additionally, Mr. Yermak asked Ambassador Volker to make any official request for investigations through formal channels,<sup>209</sup> but there is no evidence that the DOJ or officials at the US Embassy Kyiv followed up on that suggestion.<sup>210</sup> That the President did not go through regular inter-governmental channels supports the conclusion that his interest in Ukrainian investigations was for his personal political benefit and not legitimate policy considerations.

In addition, there is no evidence to support the claim that President Trump withheld Ukrainian military assistance out of concerns about European burden sharing. While President Trump may be skeptical about European contributions to mutual defense, European nations contribute significantly more foreign aid overall to Ukraine than the United States. The EU is the single largest contributor of foreign assistance to Ukraine, having provided €15 billion since 2014 versus \$1.96 billion in security assistance that the United States has provided over that same time period.<sup>211</sup>

The rationale that the President withheld security assistance because he was concerned with Europe paying more to support Ukraine was not raised until well after the hold was placed on U.S. security assistance for Ukraine. Witness testimony indicates that the President began making inquiries about the aid on June 19, 2019,<sup>212</sup> and that all security assistance for Ukraine had been put on hold by July 12, 2019.<sup>213</sup> OMB official Mark Sandy testified that when the hold was ordered no explicit reason was provided.<sup>214</sup> Mr. Sandy further testified that it wasn’t until September, after the hold became public, that a concern was expressed about European burden sharing.<sup>215</sup>

Nor is there evidence that the Trump Administration made any efforts publicly or privately to get additional contributions from Europe while the aid was on hold. Mr. Sandy testified that he was not aware of any other countries committing to provide more financial assistance to Ukraine prior to the lifting of the hold on September 11th.<sup>216</sup>

Moreover, as the GAO decision makes clear, the President does not have the authority to withhold funding that Congress has appropriated for a specific purpose. The GAO determined “the law does not permit the President to substitute his own policy priorities for those that Congress has enacted into law. OMB withheld funds for a policy reason, which is not permitted under the Impoundment Control Act (ICA). The withholding was not a programmatic delay. Therefore, we conclude that OMB violated the ICA.”<sup>217</sup>

The OMB continued to implement the President's hold on the Ukraine security assistance despite repeated warnings starting in early August from Department of Defense (DOD) officials that further delays risked violating the ICA.<sup>218</sup> The OMB-directed hold on the apportionment of funds continued even after DOD warned that it could no longer guarantee that the Department would be able to obligate the funds before the end of the fiscal year, a clear violation of the ICA.<sup>219</sup> Ultimately, DOD failed to execute \$35 million of the \$250 million obligated for USAI before the end of the fiscal year.<sup>220</sup>

The President's Counsel have failed to produce credible evidence to support the contention that the President withheld security assistance and an Oval Office meeting from Ukraine for legitimate policy reasons. Instead, an adverse inference can be drawn that the President had no legitimate policy basis for his actions. Further, the House Impeachment Managers have established that the President acted for his own personal benefit, specifically to advance the ongoing corrupt scheme to solicit foreign interference in the 2020 presidential election.

*E. The President's Solicitation of Investigations into the 2016 Campaign and Biden/Burisma Theories was Without Due Consideration of U.S. National Interests*

The final element of the offense of abuse of power, as previously delineated, is that the use of official power, for personal or some other corrupt purpose, is made without due consideration for the national interest. The evidence presented at the Senate trial makes clear that in using the powers of his office to withhold valuable U.S. security assistance and an Oval Office visit for the newly-elected Ukrainian President to advance a corrupt scheme to solicit foreign interference for his personal benefit, President Trump harmed the national interest of the United States. President Trump's efforts to leverage two official acts to advance a scheme to solicit foreign interference in the 2020 election is contrary to the national interests of the United States in a number of ways.

First and foremost, President Trump's misuse of the powers of his office threatened the heart of the constitutional order itself, potentially undermining our democratic process. By pressuring Ukraine to engage in election interference through the promotion of two unfounded theories, President Trump's conduct posed an urgent danger to the integrity of our constitutional system. If the history of the 2016 election can be rewritten at the President's direction to cast doubt on Russia's interference, it invites Russia and other adversaries to interfere again in the future knowing that there will be no consequences. Similarly, it risks distorting the integrity of our electoral process if the President can leverage the power of the presidency to pressure foreign countries to commit their government resources to dig up "dirt" on his political opponents in order to benefit his reelection.

Second, President Trump's corrupt scheme threatened U.S. national security objectives by advancing a Russian disinformation narrative that it was Ukraine, and not Russia, that interfered in the 2016 presidential campaign. The Intelligence Community unanimously assessed that "Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the U.S. presidential election."<sup>221</sup> That assessment of the Intelligence Community was affirmed by the bipartisan Senate Select Committee on Intelligence,<sup>222</sup> and the Special Counsel's investigation.<sup>223</sup>

The perpetuation and promotion of a Russian disinformation operation undermines U.S. efforts to protect our electoral institutions from Russian interference and to build the resilience of the American people against foreign interference. Former NSC official Dr. Fiona Hill underscored the importance of countering this Russian information warfare campaign when she testified before the House Intelligence Committee on November 21, 2019. She assessed:

The impacts of the successful 2016 Russian campaign remains evident today. Our nation is being torn apart. Truth is questioned. Our highly professional expert career Foreign Service is being undermined. U.S. support for Ukraine which continues to face armed Russian aggression is being politicized. The Russian Government's goal is to weaken our country, to diminish America's global role, and to neutralize a perceived U.S. threat to Russian interests. President Putin and the Russian security services aim to counter U.S. foreign policy objectives in Europe including in Ukraine, where Moscow wishes to reassert political and economic dominance.<sup>224</sup>

Third, the President's withholding of nearly \$400 million in U.S. security assistance to Ukraine undermined U.S. national security objectives in the strategic competition with Russia, a central pillar of the Administration's own National Defense Strategy. NSC official Tim Morrison stressed that "Ukraine is on the front lines of a strategic competition between the West and Vladimir Putin's revanchist Russia."<sup>225</sup> He added, "The United States aids Ukraine and her people so they can fight Russia over there, and we don't have to fight Russia here."<sup>226</sup> Ambassador Taylor also testified on the importance of supporting Ukraine for U.S. national security in-

terests. He stressed, “One of our national security goals is to resolve conflicts in Europe” and our aid to Ukraine is “in support of a broader strategic approach to Europe . . .,” and is “to support Ukraine when it negotiates with the Russians.”<sup>227</sup>

Ambassador Taylor and other witnesses were particularly alarmed by the withholding of the security assistance because of its potential impact on Ukraine at a critical time in its conflict with Russia. As Ambassador Taylor testified, “It’s one thing to try to leverage a meeting in the White House. It’s another thing, I thought, to leverage security assistance to a country at war, dependent on both the security assistance and the demonstration of support. It was much more alarming.”<sup>228</sup> Ambassador Taylor further underscored the harm from withholding vital aid for Ukraine: “Security assistance was so important for Ukraine as well as our national interests, to withhold that assistance for no good reason other than help with a political campaign made no sense. It was counterproductive to all of what we had been trying to do. It was illogical. It could not be explained. It was crazy.”<sup>229</sup>

President Trump’s actions also threatened to undermine one of Ukraine’s greatest assets in its conflict with Russia, the bipartisan nature of support for Ukraine in the U.S. Congress. Ambassador Taylor advised President Zelensky’s close aide Yermak, of the “high strategic value of a bipartisan support for Ukraine and the importance of not getting involved in other country’s elections.”<sup>230</sup> Ambassador Volker also emphasized the importance of the bipartisan support in Congress for U.S. policy toward Ukraine.<sup>231</sup>

Finally, the President’s efforts to secure investigations into the 2016 campaign and Biden/Burisma theories undermined U.S. policy promoting the rule of law and fighting corruption, which included discouraging partner governments from launching politically-motivated investigations into domestic rivals. Deputy Assistant Secretary George Kent, former Deputy Chief of Mission in Ukraine, testified to the official U.S. policies in place in countries like Ukraine and Georgia, stating that “having the President of the United States effectively ask for a political investigation of his opponent would run directly contrary” to these efforts.<sup>232</sup> As Chairman Schiff restated on December 18, 2019:

On September 14 in Ukraine, when Ambassador Volker sat down with Andriy Yermak, the top adviser to Zelensky, and he did what he should do. He supported the rule of law, and he said: You, Andriy Yermak, should not investigate the last President, President Poroshenko, for political reasons. You should not engage in political investigations. And do you know what Yermak said: “Oh, you mean like what you want us to do with the Bidens and the Clintons?”<sup>233</sup>

Based on the above analysis, I find that there is overwhelmingly clear and convincing evidence that elements of abuse of power have been met and that President Trump is guilty on the first Article of Impeachment.

#### VI. ARTICLE II: OBSTRUCTION OF CONGRESS

Article II of House Resolution 755 provides that, in the conduct of his office, the President directed the unprecedented and categorical indiscriminate defiance of subpoenas issued pursuant to the House’s “sole Power of Impeachment.”<sup>234</sup> Article I provides further provides that President Trump’s ordering the White House and other Executive Branch agencies and Executive Branch officials to defy House subpoenas sought “to seize and control the power of impeachment . . . a vital constitutional safeguard vested solely in the House of Representatives.”<sup>235</sup> I will first explain how historical and case precedent proves that obstruction of Congress is an impeachable offense. Next, I will explain how, through his indiscriminate order, President Trump sought to vitiate and in fact, did undermine, the lawful authority of Congress. Finally, I will explain how each of the arguments that the President’s Counsel put forward during the Impeachment Trial to justify the President’s obstruction do not amount to a lawful cause or excuse.

##### *A. Obstruction of Congress Is An Impeachable Offense*

When any one branch of government seeks to obstruct an essential function of another branch, it threatens a central feature of our republic: the separation of powers.<sup>236</sup> In the case where a President seeks to derogate the authority of another branch, it can also undermine the President’s constitutional obligation to “take Care that the Laws be faithfully executed.”<sup>237</sup>

President Trump continues to thwart Congress’ oversight and investigative powers, which are essential constitutional functions of the Legislative Branch. In *McGrain v. Daugherty*, the Supreme Court firmly established that such inquiry power is “an essential and appropriate auxiliary to the legislative function” and included the ability to seek and enforce demands for information.<sup>238</sup>

The need to comply with subpoena-backed requests for information, including in an Impeachment, has been explicitly stated. In *Kilbourn v. Thompson*, the Supreme

Court held that, “Where the question of such impeachment is before either [the House or Senate] acting in its appropriate sphere on that subject [of impeachment], we see no reason to doubt the right to compel the attendance of witnesses, and their answer to proper questions, in the same manner and by the use of the same means that courts of justice can in like cases.”<sup>239</sup>

Part of Congress’ broad oversight authority is the power to hold sitting presidents accountable for grave misconduct and abuses of public trust through Impeachment. Indeed, Article I, Section 2, Clause 5 of the U.S. Constitution gives the House of Representatives “the sole Power of Impeachment.”<sup>240</sup> However, an Impeachment inquiry can only be discharged through the cooperation of the governmental branch being investigated; only this branch can provide documents and witness testimony related to its own conduct. By refusing to provide any information, President Trump is trying to stop Congress from gathering relevant information and render the Impeachment process toothless.<sup>241</sup> As John Quincy Adams noted, it would make a “mockery” of the Constitution’s Impeachment power for Congress to have the power to impeach but “not the power to obtain the evidence and proofs on which their impeachment was based.”<sup>242</sup>

The Judiciary Committee also confirmed that subverting the constitutionally vested powers of the Legislative Branch can be an impeachable offense, when it previously approved Articles of Impeachment charging President Richard Nixon with the failure to comply with duly authorized congressional subpoenas. The Judiciary Committee explained that:

In refusing to produce these papers and things, Richard M. Nixon, substituting his judgment as to what materials were necessary for the inquiry, interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, thereby assuming to himself functions and judgments necessary to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives.<sup>243</sup>

Based on the above historical and case precedent, I conclude that obstruction of Congress can be an impeachable offense. I also conclude that a sitting President commits obstruction of Congress by:

- 1) Contravening the lawful authority of the Legislative Branch;
- 2) By imposing the powers of the presidency;
- 3) Without lawful cause or excuse.

#### *B. The House of Representatives Exercised Its Lawful Authority in the Impeachment Inquiry*

As explained in Section V, Subsection A of this Memorandum, Congress has broad power to conduct oversight and issue demands for information, and is vested with the sole power to conduct Impeachment.

In this case, the House of Representatives was using both its lawful investigative and Impeachment authorities, when it issued lawful subpoenas leading up to and after the adoption of House Resolution 660 on October 31, 2019, which formalized the ongoing investigations into whether sufficient grounds existed for the House of Representatives to impeach President Donald John Trump.<sup>244</sup>

On September 9, 2019, the House Committees on Intelligence, Foreign Affairs, and Oversight and Reform (hereinafter “Investigating Committees”) first announced that they would be starting an investigation into reports that President Trump and his associates might have been seeking assistance from the Ukrainian government in his bid for reelection.<sup>245</sup> As part of this inquiry, the Investigating Committees requested that the White House provide documents related to the President’s July 25th call with the Ukrainian President.<sup>246</sup>

Speaker Nancy Pelosi subsequently announced on September 24, 2019 that the House would be commencing “an official Impeachment inquiry.”<sup>247</sup> The Investigating Committees then subpoenaed documents and witness testimony from the White House,<sup>248</sup> the Department of State,<sup>249</sup> the Department of Defense,<sup>250</sup> the Office of Management and Budget,<sup>251</sup> the Department of Energy,<sup>252</sup> and Rudy Giuliani.<sup>253</sup>

Once H.Res. 660 was approved by the House on October 31st, the subpoenas issued as part of the ongoing investigations leading up to the adoption of H.Res. 660 remained in full force.<sup>254</sup> In addition, the House Intelligence Committee issued new subpoenas for witness testimony to officials at the National Security Council,<sup>255</sup> White House,<sup>256</sup> Office of Management and Budget,<sup>257</sup> and the Office of the Vice President.<sup>258</sup>

As such, I conclude that there is overwhelmingly clear and convincing evidence that the House used its lawful authority in conducting its Impeachment inquiry.

*C. President Trump Used the Powers of the Presidency to Subvert the Powers of Congress*

President Trump used the vast powers of his office to prevent the House of Representatives from exercising its oversight authority and sole power of Impeachment. The President did so by ordering the entire Executive Branch not to cooperate with the House Impeachment inquiry. White House Counsel Pat Cipollone sent a letter to Speaker Pelosi and the Investigating Committees on October 8, 2019, declaring that “President Trump cannot permit his Administration to participate in this partisan inquiry under these circumstances.”<sup>259</sup> It is notable that, even before sending the October 8th letter, President Trump had made his intentions clear to obstruct any and all oversight by Congress, proclaiming, “We’re fighting all the subpoenas.”<sup>260</sup> President Trump further asserted, “As the President of the United States, I have an absolute right, perhaps even a duty, to investigate, or have investigated, CORRUPTION, and that would include asking, or suggesting, other Countries help us out!”<sup>261</sup>

The President’s sweeping directive on October 8th had the foreseeable effect of obstructing, and in fact, did materially thwart, the House Impeachment inquiry. Following President Trump’s categorical order, the Department of State,<sup>262</sup> the Office of Management and Budget,<sup>263</sup> the Department of Energy,<sup>264</sup> and the Department of Defense<sup>265</sup> failed to produce a single document in response to requests or demands for records in their possession. To date, the only documents the Executive Branch has released are summaries of President Trump’s phone calls with President Zelensky on April 21, 2019<sup>266</sup> and July 25, 2019.<sup>267</sup> Even these documents are not complete. The President claimed the July 25th call is, “an exact word for word transcript of the conversation.”<sup>268</sup> However, witness testimony from the House Impeachment inquiry shows that there were key omissions. NSC official Lt. Col. Vindman, who listened to the calls, testified that edits that he provided to the draft July 25th document based on his notes were not included in the transcript that was released. Lt. Col. Vindman’s edits included a reference to Burisma and President Trump telling President Zelensky that there are recordings of Vice President Biden.<sup>269</sup>

Additionally, as a result of the October 8th directive, multiple Trump Administration officials have defied congressional subpoenas and refused to testify in the Impeachment proceedings.<sup>270</sup> Overwhelming evidence of the President’s abuse of power has come to light, despite the President’s obstructionist efforts, largely because key Administration officials risked their jobs and careers to comply with subpoenas and requests issued by the House. Even in those cases, agency leadership worked to ensure that these officials would only be able to give limited testimony. In particular, the Department of State,<sup>271</sup> the Department of Defense,<sup>272</sup> and the Department of Energy<sup>273</sup> prevented Executive Branch employees who did participate as witnesses from accessing documents that they identified as directly relevant to the Impeachment inquiry—including their phone records, emails, notes, and memoranda. As a result, these witnesses were denied the opportunity to have documents that could have helped them give more specific testimony, and some had to rely on their own notes and recollections.<sup>274</sup>

President Trump personally sought, through intimidation or influence, to impede the testimony of officials that cooperated with the House Impeachment inquiry. He specifically sought to interfere with the testimonies of Ambassador Gordon Sondland,<sup>275</sup> Ambassador William Taylor,<sup>276</sup> Ambassador Marie Yovanovitch,<sup>277</sup> Lt. Col. Alexander Vindman,<sup>278</sup> and Jennifer Williams.<sup>279</sup>

There is indeed overwhelmingly clear and convincing evidence that President Trump used the powers of his office to prevent the House from exercising its constitutionally granted authority to conduct oversight related to the Impeachment inquiry.

*D. President Trump Obstructed the Impeachment Inquiry Without Lawful Cause or Excuse*

Whether President Trump obstructed Congress turns on whether there is evidence that he had legal cause or excuse for his total non-cooperation with the Impeachment inquiry. I will address how each of the arguments that the President’s Counsel have made in attempting to justify the President’s stonewalling do not provide sufficient legal excuse for his conduct.

D.1. Validity of Congressional Subpoenas

The President’s Counsel argue that subpoenas related to the Impeachment proceeding are invalid, if they were issued before the House voted to approve H.Res. 660 formalizing the Impeachment inquiry on October 31, 2019. In the President’s trial brief, Counsel states that “It was entirely proper for Administration officials

to decline to comply with subpoenas issued pursuant to a purported ‘impeachment inquiry’ before the House of Representatives had authorized any such inquiry. No House committee can issue subpoenas pursuant to the House’s Impeachment power without authorization from the House itself.”<sup>280</sup> Relying on the argument that subpoenas issued prior to the passage of H.Res. 660 were invalid, the White House, Department of State, and the Department of Defense instructed current and former employees not to testify before the Investigating Committees in the Impeachment proceedings.<sup>281</sup>

The President’s Counsel’s argument broadly fails because it goes against well-established case law recognizing Congress’ power to conduct investigations<sup>282</sup> and issues subpoenas,<sup>283</sup> even when it is not engaged in an Impeachment. Furthermore, the standing rules of the House authorize a committee or subcommittee, with certain limitations, to issue subpoenas “[f]or the purpose of carrying out any of its functions and duties.”<sup>284</sup>

Therefore, the relevant question on the validity of the House subpoenas does not turn on whether they were issued before or after H.Res. 660, as the President’s Counsel argue. Rather, it should center on whether they were issued as part of a lawful congressional investigation.<sup>285</sup> In this case, the subpoenas at issue involved the legitimate purpose of investigating whether President Trump and his associates sought assistance from the Ukrainian government to influence the 2020 election. As a result, there is convincing evidence that the House Permanent Select Committee on Intelligence, the House Foreign Affairs Committee, and the House Committee on Oversight and Reform had valid investigative and subpoena authority, even before the passage of H.Res. 660.

Even if the argument made by the President’s Counsel was legitimate, the Trump Administration failed to abide by its rule. Following the President’s Counsel’s own logic, the President would have to recognize the validity of and comply with subpoenas issued after the Impeachment inquiry was formalized on October 31, 2019. Yet, the President did not permit officials from OMB and the National Security Council to testify even though they were subpoenaed *after* H.Res. 660 passed the House.<sup>286</sup>

## D.2. Assertions of Privilege

To the extent that the President has legitimate executive privilege claims, he failed to properly assert them or to go through the proper accommodation process to keep information confidential.

### D.2.a. Presidential privilege is not absolute

The President’s Counsel have stood by the October 8th letter from Mr. Cipollone to Speaker Pelosi declaring that the President and his Administration would not participate in the Impeachment inquiry.<sup>287</sup> President Trump himself has articulated his expansive view of his powers saying, “Honestly, we have all the material . . . They don’t have the material.”<sup>288</sup>

However, in *United States v. Nixon*, the Supreme Court flatly rejected this kind of unlimited assertion of executive power. The Court held that “neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances.”<sup>289</sup> Instead, the Court found that, in an inter-branch dispute, when a claim of presidential privilege is based merely on the grounds of a generalized interest in confidentiality, “the generalized assertion of privilege must yield to the demonstrated, specific need for evidence.”<sup>290</sup>

A related D.C. Circuit Court case, *Senate Select Committee on Presidential Campaign Activities v. Nixon*, affirmed that presidential privilege is not absolute and could be overcome by a “strong showing of need by another institution of government.”<sup>291</sup> The Court in this case articulated the following test in making its decision: Congress in using its investigative powers may override presidential privilege when it makes the requisite showing of need that “the subpoenaed evidence is demonstrably critical to the responsible fulfillment of the Committee’s function,” such as a legitimate oversight or legislative purpose.<sup>292</sup>

In this case, Mr. Cipollone’s October 8th letter makes clear the President intended to exercise privileges over the *whole* of the Executive Branch, regardless of whether an agency was involved in foreign policy or national security policy.<sup>293</sup> In contrast, the Investigating Committees overwhelmingly demonstrated a particularized interest in obtaining information to ascertain whether the President used the powers of his office to solicit foreign interference on his behalf in the 2020 election. In addition, it would be hard to think of a setting where congressional need for information

is greater than during an Impeachment, which is the Constitution's most potent way to hold the President accountable for his misconduct.<sup>294</sup>

The President's Counsel further assert that senior advisors to the President do not have to comply with congressional subpoenas because they have "absolute immunity." This doctrine of absolute immunity has also been rejected by the D.C. District Court in *House Judiciary Committee v. Miers*<sup>295</sup> and *House Judiciary Committee v. McGahn*.<sup>296</sup>

#### D.2.b. Accommodation of legislative branch

Moreover, even if President Trump did have a legitimate need to keep information confidential, each branch of government is required to accommodate the legitimate needs of the others to maintain the separation of powers. If President Trump had a valid need to keep confidential some of the information that the House requested, the agencies and offices involved could have entered into good-faith negotiations with the House to resolve their conflicting needs. The Courts have suggested that the Framers intended dynamic compromise as the most effective way to solve disputes between the branches and that view has been affirmed by the longstanding historical practice of the branches.<sup>297</sup> In *United States v. AT&T*, the D.C. Circuit Court held that "Under this view, the coordinate branches do not exist in an exclusively adversary relationship to one another when a conflict in authority arises. Rather, each 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."<sup>298</sup>

It is this accommodation process that is the norm, not a wholesale refusal by one branch to another. "Cooperation dominates most congressional requests for information, with the executive turning over the requested information as a matter of routine."<sup>299</sup> A complete breakdown in these procedures is a rarity as "information access disputes are typically worked out through one of several intermediate options" such as the Executive Branch agency providing redacted documents or requiring Congress to keep the requested information confidential.<sup>300</sup> A memorandum written by the Office of Legal Counsel (OLC) during the administration of President George H. W. Bush explains that "[I]f further negotiation is unavailing, it is necessary to consider asking the President to assert executive privilege."<sup>301</sup> Traditionally, Executive Branch agency officials then present their case for the assertion of executive privilege to the President and the agency asks Congress to hold its request in abeyance, pending the President's decision.<sup>302</sup>

The President's Counsel claim that the Executive Branch was willing to enter into an accommodation process with the House.<sup>303</sup> However, whereas the presumption in an inter-branch dispute is cooperation, the White House's default position has been total refusal of the House's requests for information. To this day, the Trump Administration has not turned over a single responsive document or worked to make a single witness available for questioning by Congress. The Administration has not sought an intermediate option to make information available to Congress. Nor has the Executive Branch ever formally invoked executive privilege or asked Congress to hold its requests in abeyance pending the President's decision to assert executive privilege.

#### D.2.c. Obstruction in Senate trial

President Trump's obstruction of Congress and his failure to resolve disputes with the Legislative Branch in good faith continued into the Senate trial, as his Administration continued to withhold the information that was subpoenaed during the House inquiry. The President's Counsel even went so far as to instruct the Senate that it could not consider the evidence the House did obtain saying that "The Senate may not rely on a corrupted factual record derived from constitutionally deficient proceedings to support a conviction of the President of the United States."<sup>304</sup>

In addition, as the Senate Impeachment proceedings were underway, new and material evidence of President Trump's misconduct continued to come out. Lev Parnas, the associate of Rudy Giuliani, asserted that President Trump was fully aware of efforts to dig up "dirt" on his political rival, as were Vice President Mike Pence, Attorney General William Barr, and former Energy Secretary Rick Perry.<sup>305</sup> According to news reports, it also has come to light that President Trump directed John Bolton, his then-national security adviser, to help with his pressure campaign against the Ukrainian government.<sup>306</sup> Both Bolton and Parnas made it clear during the Impeachment trial that they were willing to testify before the Senate.<sup>307</sup> Yet, President Trump sought to discredit both witnesses<sup>308</sup> and even threatened to assert executive privilege to prevent John Bolton from coming to testify and cooperating in the Impeachment trial.<sup>309</sup>

### D.3. *Purported Defectiveness of Impeachment Inquiry*

The President's Counsel argue that the subpoenas issued by the House are invalid not only because of when they were issued. They argue that the Impeachment inquiry itself is defective and unauthorized and therefore any compliance is unnecessary.

The President's Counsel argue that "the House has never undertaken the solemn responsibility of a presidential impeachment inquiry without first authorizing a particular committee to begin the inquiry" and "[t]hat has also been the House's nearly unbroken practice for every judicial impeachment for two hundred years."<sup>310</sup>

As explained in Section V, Subsection D.1 of this Memorandum, Congress' power to conduct investigations and issue subpoenas, even when not as part of an impeachment, has been repeatedly and firmly settled by the Courts. Therefore, even if one accepts that the Impeachment investigation was invalid unless authorized by the House, it does nothing to diminish the power of the committees at hand to engage in an oversight investigation. Nor does it diminish the duty to comply with subpoenas that were issued under this oversight authority.

The President's Counsel is contradicted by the cases of President Johnson and Nixon, where a committee of jurisdiction started taking steps toward Impeachment before the full House took any action. In the Johnson Impeachment, the Judiciary Committee considered Articles of Impeachment before reporting them out for a vote by the House.<sup>311</sup> In the case of President Nixon, the Judiciary Committee employed a Special Counsel to assist in the inquiry, before the House explicitly authorized the Committee's investigation to determine whether the House should impeach.<sup>312</sup>

What's more, the President's Counsel's position appears to be that the House must authorize an Impeachment before it has gathered enough evidence to warrant one, and also that a congressional investigation which begins to produce evidence of grounds for Impeachment loses its investigative authority until the House votes to formalize the Impeachment inquiry. These arguments defy both logic and past precedent.

Here, I am also persuaded by the House Impeachment Managers' argument that the Constitution grants the "sole Power of Impeachment" to the House of Representatives. In addition, the Constitution says that, "[t]he Senate shall have the sole Power to try all Impeachments."<sup>313</sup> Nowhere does the Constitution empower the President to unilaterally decide that an Impeachment is illegitimate. I conclude that investigations leading up to H.Res. 660 and the formal inquiry that continued afterward were duly authorized.

### D.4. *Further Litigation*

The President's Counsel argue that its categorical and comprehensive defiance cannot be deemed to be obstruction of Congress because the House has not sought judicial review of the subpoenas issued as part of the Impeachment inquiry.

This argument is unconvincing given that the involvement of the Courts in information access disputes between the Legislative and Executive Branches has been rare, at least with respect to conflicts over House subpoenas. As the Congressional Research Service explains:

The traditional preference for political rather than judicial solutions seems supported by the fact that neither Congress nor the President appears to have turned to the courts to resolve an investigative dispute until the 1970s . . . The courts themselves have also generally sought to avoid adjudicating investigative disputes between the executive and legislative branches, instead encouraging settlement of their differences through a political resolution. Consistent with that approach, lower federal courts have suggested that judicial intervention in investigative disputes "should be delayed until all possibilities for settlement have been exhausted." . . . [In addition] some evidence suggests that both the House and the courts have viewed judicial involvement in an impeachment inquiry as inappropriate or in excess of the judiciary's power.<sup>314</sup>

Moreover, the argument of the President's Counsel is ineffective in the context of the dilatory tactics the Trump Administration has been using in other pending cases where the House also has subpoenaed documents. In particular, the Administration has used arguments which, if taken together, seem to assert the President cannot be held accountable by either the Judicial or Legislative Branch. These stall tactics were highlighted in a case currently pending in the D.C. Circuit Court, *Committee on the Judiciary v. McGahn*. In this case, the House Judiciary Committee is trying to enforce a subpoena against former White House Counsel, Don McGahn. The D.C. District Court ruled against the DOJ, which claimed that McGahn had absolute immunity from congressional subpoenas for his testimony. In its decision, the Judge compares the DOJ's inconsistent arguments in the *McGahn* case with a series of

cases regarding congressional subpoenas for the President's tax returns. The Judge points out that the:

DOJ stood silent with respect to the jurisdictional question, as President Trump (in his personal capacity) has invoked the authority of the federal courts, on more than one occasion, seeking resolution of a dispute over the enforceability of a legislative subpoena concerning his tax returns. A lawsuit that asserts that a legislative subpoena should be quashed as unlawful is merely the flip side of a lawsuit that argues that a legislative subpoena should be enforced. And it is either DOJ's position that the federal courts have jurisdiction to review such subpoena-enforcement claims or that they do not. By arguing vigorously here that the federal courts have no subject-matter jurisdiction to entertain the Judiciary Committee's subpoena-enforcement action, yet taking no position on the jurisdictional basis for the President's maintenance of lawsuits to prevent Congress from accessing his personal records by legislative subpoena, DOJ implicitly suggests that (much like absolute testimonial immunity) the subject-matter jurisdiction of the federal courts is properly invoked only at the pleasure of the President.<sup>315</sup>

The Judge in the *McGahn* case also noted that the DOJ made conflicting arguments in the House's lawsuit seeking grand jury evidence that contributed to former Special Counsel Robert Mueller's report. The Judge goes on to write:

During oral argument, when one of the panelists asked DOJ about the district court's subject-matter jurisdiction to entertain the House's legal action, DOJ Counsel remarked that, while the Executive branch was "not advancing that argument[,]," it believed that DOJ "certainly has both standing and jurisdiction" to seek review of the district court's injunction . . . But if DOJ's position is that the federal courts have the authority to entertain a legal claim concerning the House's contested request for allegedly privileged grand jury materials, how can it be heard to argue, nearly simultaneously, that the instant Court has no jurisdiction to entertain a legal claim concerning the enforceability of a House committee's subpoena compelling the testimony of senior-level presidential aides?<sup>316</sup>

Further litigation is also problematic because, unlike Presidents Nixon and Clinton who were in their second terms, President Trump's misconduct is immediately preceding and, in anticipation of, the upcoming presidential election. The crux of President Trump's scheme was to corruptly use the vast powers of his presidency to invite foreign interference into the 2020 election in order to benefit himself politically. Allowing President Trump to delay this Impeachment through litigation would enable him to keep relevant documents and witnesses from coming out until after the 2020 election. It could also embolden him to engage in additional unfettered misconduct aimed at increasing his chances of getting reelected.

This threat to the integrity of our elections is exactly the kind of misconduct that the Framers were worried about. In George Mason's view, a risk of election fraud "furnished a peculiar reason in favor of impeachments[.]"<sup>317</sup> Another exchange between two delegates, William Richardson Davie and James Wilson, highlights the importance of safeguarding against a corrupt president that would cheat to get reelected. Davie stated, "[i]f he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself reelected." [Davie] considered this as an essential security for the good behaviour of the Executive."<sup>318</sup> Wilson concurred with Davie "in the necessity of making the Executive impeachable while in office."<sup>319</sup>

#### D.5. Due Process

The President's Counsel assert that the Impeachment inquiry is defective because of a lack of due process protections for President Trump. Specifically, in Mr. Cipollone's October 8th letter, he asserts that the President was entitled to due process rights during the House's Impeachment inquiry, which he was not afforded, including "the right to see all evidence, to present evidence, to call witnesses, to have Counsel present at all hearings, to cross-examine all witnesses, to make objections . . . and to respond to evidence and testimony."<sup>320</sup>

Procedural due process—meaning the legal procedures to be used in a proceeding—is rooted in basic constitutional principles of fundamental fairness. Determining due process of the law "require[s] . . . that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions and not infrequently are designated as 'law of the land.'"<sup>321</sup>

In evaluating whether President Trump was afforded protections that are consistent with the "fundamental principles of liberty and justice," the analysis should center on whether he was given rights customarily given to presidents in previous Impeachments.

During the Clinton Impeachment inquiry, the President's Counsel was invited to attend all Judiciary Committee executive sessions and open hearings, was allowed to cross-examine witnesses, object to pieces of evidence, suggest that the Committee review additional evidence, and respond to evidence used by the Committee.<sup>322</sup> During the Nixon Impeachment inquiry, the President's Counsel was not invited to participate in the Judiciary Committee's proceedings until months after the inquiry's authorizing resolution was passed.<sup>323</sup> Once invited, Nixon's counsel was allowed to attend the initial presentation of evidence and respond to it in later proceedings, attend later hearings with witnesses, submit requests to call witnesses, cross-examine witnesses that were called, and object to pieces of evidence.<sup>324</sup>

The House's Impeachment inquiry into President Trump afforded the President rights that were consistent with these precedents from prior presidential Impeachments. The President's Counsel was given the opportunity to participate in the House Judiciary Committee's proceedings during the impeachment inquiry. This included the right to attend every Judiciary Committee hearing; request additional witnesses during these hearings; present evidence orally or in writing; have the President's Counsel cross-examine witnesses; and raise objections during Judiciary Committee hearings.<sup>325</sup> In a November 29th letter to the President, House Judiciary Committee Chairman Nadler inquired which of these privileges the President's Counsel wished to exercise.<sup>326</sup> In his December 6th response, Mr. Cipollone chose not to exercise any of these rights and claimed the Impeachment inquiry violated due process rights.<sup>327</sup>

After reviewing this comparison, I conclude President Trump has been afforded at least as much due process protection as Presidents Nixon and Clinton, and therefore standards of fundamental fairness requisite for due process have been met in the current Impeachment proceeding.

Based on the above analysis, I find that there is overwhelmingly clear and convincing evidence that President Trump obstructed the House Impeachment inquiry without lawful cause or excuse and that President Trump is guilty on the second Article of Impeachment.

#### VII. LACK OF EVIDENTIARY RECORD

##### A. *Senate's Role in Lack of Witnesses and Documents*

As I have explained, the House of Representatives, as part of its Impeachment inquiry, subpoenaed documents and witnesses from multiple Executive Branch agencies. To date, the Administration has produced zero responsive documents. In fact, the Administration has engaged in a coordinated and systematic effort to deny relevant evidence and testimony to the House of Representatives in defiance of lawful Congressional subpoenas.<sup>328</sup>

Fortunately, patriotic and law-abiding federal employees and former officials complied with lawful subpoenas and appeared at depositions or public hearings. As described previously, testimony provided by witnesses is probative of the President's guilt on both Articles of Impeachment.

Once the Articles of Impeachment were received by the Senate, the Senate had the opportunity to utilize its own oversight and Impeachment authority pursuant to Article I of the Constitution to gather relevant documents and testimony. However, in this Impeachment trial, unlike previous ones conducted by the Senate, whether of Presidents or other officials, no witnesses were allowed.<sup>329</sup>

My Republican colleagues voted against holding a fair trial. For example, Leader McConnell initially sought to have a set of rules governing this Impeachment trial that would not have included a provision to automatically adopt the House's evidence.<sup>330</sup> He also sought to have twenty-four hours of opening arguments over two days to speed up the trial.<sup>331</sup> My Republican colleagues relented on these points, allowing the House Impeachment Managers and the President's Counsel to each have twenty-four hours of argument over three days.<sup>332</sup> The Republican-authored resolution ultimately did not guarantee witnesses, only providing for a vote on whether witnesses could be heard at the end of arguments and the question period.<sup>333</sup> From the get-go, my Republican colleagues were reluctant to have evidence and arguments put in front of the American people for judgment.

My Democratic colleagues offered eleven amendments in an effort to ensure a fair trial.<sup>334</sup> The amendments, if adopted, would have permitted Senators and the American people to see relevant evidence and hear from witnesses. These amendments were defeated—almost entirely along party lines.<sup>335</sup>

After the question and answer portion of the Impeachment trial, the Senate voted on amendments offered by my Democratic colleagues that would have provided for witnesses and documents.<sup>336</sup> These amendments were again defeated, largely along partisan lines.<sup>337</sup> It is crucial to note, that this second series of votes was taken

after reports that Ambassador Bolton's draft manuscript contained evidence relevant and central to the allegations in the Articles of Impeachment. Through the end of the trial, the vast majority of my Republican colleagues did not want to hear from Ambassador Bolton, other relevant witnesses, or see documents that would likely reveal evidence damaging to the President.

Further, Leader McConnell compared his approach in this trial to that of the Impeachment Trial of President Clinton, when Senators voted on whether to hear witnesses at the end of arguments.<sup>338</sup> Leader McConnell's assertion is disingenuous considering that the Clinton Impeachment trial occurred after a lengthy and comprehensive investigation led by the then independent Counsel, Kenneth Starr, which included tens of thousands of pages of evidence and recorded testimony. During the Clinton Impeachment trial, witnesses had also previously testified in grand jury proceedings.<sup>339</sup> There were no surprises as to what witnesses would say. President Trump's Impeachment Trial represents a stark departure from what occurred during the Clinton Impeachment Trial and indeed, sets a damaging and devastating precedent.

#### VIII. CONCLUSION: REMOVAL OF PRESIDENT TRUMP IS THE SOLE APPROPRIATE REMEDY

Conviction and removal of a President from office is a high standard, and one that should only be arrived at when there are no other remedies available. As I laid out during the 1999 Impeachment trial of President Clinton, "the independence of the Impeachment process from the prosecution of crimes underscores the function of Impeachment as a means to remove a President from office, not because of criminal behavior, but because the President poses a threat to the Constitutional order."<sup>340</sup> Furthermore, during the Clinton Impeachment proceedings, I concluded that the President's improper conduct must represent a continuing threat to the American people.<sup>341</sup> In the current case, I have concluded that allowing President Trump to remain in office would pose such a continuing threat to our electoral system and the Constitution.

##### A. Subversion of the Constitutional Order and an Unaccountable President

The President's Counsel have argued that even if President Trump abused the power of his office to withhold U.S. military assistance to an ally, in order to pressure that country to conduct investigations for his personal and political benefit, doing so would not be an impeachable offense. According to the President's Counsel, "If a President does something which he believes will help him get elected—in the public interest—that cannot be the kind of quid pro quo that results in impeachment."<sup>342</sup> It is on this basis that the President's Counsel further argue that, even if the President did in fact condition security assistance for Ukraine on politically-motivated investigations, it would not be an impeachable offense.<sup>343</sup> That argument violates the fundamental principle of our constitutional system that no one is above the law.

Furthermore, President Trump has shown that he will block any congressional check on his misuse of office by ignoring subpoenas as he pleases, without asserting a lawful cause. At the same time, Trump Administration lawyers have been arguing in various court cases that the Judiciary has no role in enforcing the very subpoenas from Congress that the Administration is resisting.

President Trump's defiance of both Congress and the Courts on subpoenas threatens to nullify the constitutional authority of both the House and Senate, not merely to check the personal excesses of any given president, but also to oversee the entire Executive Branch. It validates and encourages the President's strategy of large-scale obstruction of congressional inquiries. It emboldens the President to defy investigations into his misconduct and strengthens the President's determination to resist additional congressional oversight.

The result of permitting the Executive Branch to wholly disregard Congressional requests for information is not only to neuter the Impeachment power, but more profoundly, impact Congress as a fundamental check on executive mismanagement, abuse, corruption, and overreach embodied in the power of congressional oversight.

##### B. Ongoing Harm to the Constitutional Order

An additional basis for seeking the removal of a President from office is that his conduct poses continuing harm to the constitutional order. President Trump's solicitation of foreign election interference, based on the perpetuation and amplification of baseless and unfounded theories that harm his political opponents, serves to damage the fundamental institutions of our democracy.

President Trump's behavior was not a one-time indiscretion, but rather part of a pattern of behavior to invite foreign influence into our elections which thereby undermines the constitutional order and harms the integrity of our democracy. In

2016, then-candidate Trump called on Russia to hack the emails of his political rival, Secretary Clinton.<sup>344</sup> He also promoted hacked emails from Secretary Clinton's campaign that were stolen by Russian Military Intelligence units, in order to benefit himself politically in the 2016 election.<sup>345</sup> In June 2019, President Trump publicly announced that he would take information on his political rival from a foreign government.<sup>346</sup> Moreover, he pressured Ukraine to announce investigations into his political opponents to benefit his 2020 campaign. Indeed, even after the House began its Impeachment inquiry and he was confronted by allegations of soliciting foreign interference, President Trump doubled down by asking China also to investigate the Bidens.<sup>347</sup> In addition, as stated earlier, his personal attorney, Mr. Giuliani as recently as December 2019, was working to gather disinformation on political opponents.<sup>348</sup>

The President has in no way taken responsibility for these actions or shown that he understands the consequences of his behavior and its harm to the Constitution. After the Impeachment trial in 1999, President Clinton apologized to the nation and acted contrite. In contrast, President Trump has not, in any way, admitted wrongdoing and clings to the fiction that his call with President Zelensky was "perfect."<sup>349</sup> This lack of remorse, combined with his past and present actions, leaves open the possibility that President Trump will repeat such offenses in the future.

### *C. Elections Cannot be the Sole Remedy*

It has been argued that Impeachment and removal of the President is not the appropriate remedy when the country is roughly ten months away from an election. The President's Counsel argue that any judgment regarding the President's actions should be left to the American people when they go to the polls in November 2020. However, by soliciting foreign interference in the coming election, President Trump's actions threaten the viability of our elections and the very foundation of our constitutional order to serve as a check on the President's conduct.

The Founders were acutely aware of the dangers of foreign election interference. As Alexander Hamilton said in Federalist Paper Number 68, "[t]he desire [of] foreign powers to gain an improper ascendant in our Counsels" was one of "the most deadly adversaries of republican government."<sup>350</sup> The Founders knew this risk was inevitable in an election setting. In a letter to John Adams, Thomas Jefferson wrote "You are apprehensive of foreign Interference, Intrigue, Influence. So am I—But, as often as Elections happen, the danger of foreign Influence recurs."<sup>351</sup>

I reject the notion, put forward by the President's Counsel, that a President who believes his reelection is in the best interest of the country cannot be impeached for abusing his power to tilt the next election in his favor. The Impeachment clause cannot be read to provide a *carte blanche* for the President to engage in illegal acts<sup>352</sup> that directly undermine the operation of our free and fair electoral system. The remedy for a President attempting to corrupt the next election cannot be allowing the President to corrupt that election. Even a well-intentioned autocrat is still an autocrat and not a President subject to the Constitution. If accepted as true, these views would pave the way for the type of autocratic government that the Founders feared and fought to leave behind.

For elections to express the will of the electorate, they must be free and fair. Elections must be legitimate, and the public must have confidence in them. Even the perception that our elections are tainted would lead voters to question whether their vote matters. That is why one of our jobs as lawmakers is to ensure the integrity of the electoral process. We work to ensure that every vote cast is fairly and accurately counted. We work to ensure that external forces, foreign or otherwise, cannot sway or pre-determine the outcome of the election. The United States government should not be playing a role in advancing the goals of foreign powers that seek to use our institutions to further their own interests.

Acquitting President Trump would undermine the integrity of our elections and clear the way for Russia or other countries to repeat in 2020, and beyond, the kind of election interference that the Intelligence Community unanimously assessed occurred in the 2016 election. Through acquittal, the Senate will give its blessing for President Trump to use any means at his disposal to sway the next election in his favor, with no consequences. President Trump has already demonstrated unequivocally that he has no compunction about violating the law, obstructing congressional oversight, and putting our nation and allies at risk. The difference now will be that President Trump will know that the Senate will give him cover for his future abuses of office. The ongoing threat to the constitutional order must be remedied, and therefore removal of the President is the only logical finding in this case.

### ENDNOTES

1. H.R. Res. 755, 116th Cong. (2019).

2. U.S. Const. art. I, § 3, cl. 6; 166 Cong. Rec. 10, S268 (daily ed. Jan. 16, 2020).
3. The Federalist No. 65, at 441 (Alexander Hamilton) (Jacob E. Cooke ed., 1961) (emphasis in original).
4. U.S. Const. art. I, § 3, cl. 6.
5. U.S. Const. art. II, § 4.
6. U.S. Const. art. III, § 3, cl. 1.
7. Staff of H. Comm. on the Judiciary, 116th Cong., Rep. on Constitutional Grounds for Presidential Impeachment 14 (Comm. Print 2019).
8. 2 Sir William Blackstone, Commentaries on the Laws of England 2152 (William Carey Jones ed., 1976).
9. *Id.* at 2153.
10. Charles Doyle, Cong. Research Serv., 98–882, Impeachment Grounds: A Collection of Selected Materials 4 (1998).
11. The Federalist No. 65, *supra* note 3, at 439 (emphasis in original).
12. 2 The Records of the Federal Convention of 1787 550 (Max Farrand ed., 1911).
13. *Id.*
14. 4 The Debates in the Several State Conventions on the Adoption of the Federal Constitution 113 (Jonathon Elliot ed., 2nd ed. 1861).
15. Michael J. Gerhardt, The Federal Impeachment Process: A Constitutional and Historical Analysis 21 (3rd ed. The University of Chicago Press 2019) (1996).
16. 2 Joseph Story, Commentaries on the Constitutions 799 at 269–70 quoting William Rawle, A View of the Constitution of the United States at 213 (2d ed. 1829).
17. Staff of H. Comm. on the Judiciary, 93rd Cong., Rep. on Constitutional Grounds for Presidential Impeachment 27 (Comm. Print 1974).
18. 2 The Records of the Federal Convention of 1787, *supra* note 12, at 64–65.
19. *Id.* at 550
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.* at 551.
24. *Id.* at 600.
25. Trial Memorandum of President Donald J. Trump, In Proceedings Before the United States Senate 1 (Jan. 20, 2020).
26. U.S. Const. art. I, § 3, cl. 7.
27. 1 The Collected Works of James Wilson 736 (Kermit L. Hall and Mark David Hall eds., 2007).
28. Memorandum from William Barr, Attorney General, Department of Justice, to Rod Rosenstein, Deputy Attorney General, Department of Justice, and Steve Engel, Assistant Attorney General, Department of Justice 12 (June 8, 2018) (on file with the New York Times) (emphasis in original).
29. 2 The Records of the Federal Convention of 1787, *supra* note 12, at 65–66.
30. The Federalist No. 68, at 458–459 (Alexander Hamilton) (Jacob E. Cooke ed., 1961); 1 The Records of the Federal Convention of 1787 319 (Max Farrand, ed., 1911); 2 The Records of the Federal Convention of 1787, *supra* note 12, at 271–272.
31. 2 The Records of the Federal Convention of 1787, *supra* note 12, at 268.
32. The Federalist No. 22, at 142 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).
33. *Id.*
34. Charles L. Black, Jr. & Philip Bobbit, Impeachment: A Handbook, New Edition 17 (2018).
35. The Federalist No. 65, *supra* note 3, at 441; Laurence Tribe & Joshua Matz, To End a Presidency: The Power of Impeachment 127 (2018).
36. The Federalist No. 65, *supra* note 3, at 441.
37. *Id.* at 442.
38. Opinion Memorandum of United States Senator John F. Reed, Trial of President William Jefferson Clinton 1 (Feb. 14, 1999).
39. 145 Cong. Rec. 6, S260 (daily ed. Jan. 15, 1999) (statement of Mr. Manager McCollum).
40. Opinion Memorandum of U.S. Senator John F. Reed, *supra* note 38, at 6.
41. *Id.*
42. Black & Bobbitt, *supra* note 34.
43. *Id.* (Black’s analysis is cited by several other scholars as persuasive; See e.g., Laurence Tribe and Joshua Matz, To End a Presidency: The Power of Impeachment 137 (2018).
44. 2 The Records of the Federal Convention of 1787, *supra* note 12, at 67.
45. The Federalist No. 69, at 463 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).
46. 2 The Records of the Federal Convention of 1787, *supra* note 12, at 65.

47. *Id.* at 67.
48. H.R. Rep. No. 93–1305, at 139 (1974).
49. S. Doc. No. 58–133, at 5 (1905); S. Doc. No. 69–101, at 1 (1926); S. Doc. No. 72–215, at 2 (1933). These judges were district judges Charles Swayne of Florida, George English of Illinois, and Harold Louderback of California.
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51. Black’s Law Dictionary 13 (11th ed. 2019).
52. H.R. Rep. No. 93–1305, at 139 (1974).
53. *Id.* at 3, 139–40.
54. *Id.* at 4, 139, 140.
55. *Id.* at 180.
56. H.R. Rep. No. 116–346, at 5 (2019).
57. *Impeachment Inquiry: Fiona Hill and David Holmes Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 40 (2019) (statement of Dr. Fiona Hill). (On November 21, 2019, NSC senior adviser Fiona Hill described the theory of Ukrainian interference in the 2016 election as “a fictional narrative that is being perpetrated and propagated by the Russian security services themselves.”)
58. Scott Shane, *How a Fringe Theory About Ukraine Took Root in the White House*, N.Y. Times, Oct. 3, 2019, <https://www.nytimes.com/2019/10/03/us/politics/trump-ukraine-conspiracy.html>.
59. Office of the Director of National Intelligence, National Intelligence Council, *Assessing Russian Activities in Recent US Elections ii* (2017). (The Intelligence Community unanimously concluded on January 6, 2017, that Russia interfered in the 2016 election to “undermine public faith in the US democratic process, denigrate Secretary Clinton and her electability and potential Presidency.” The Intelligence Community further assessed that “Putin and the Russian Government developed a clear preference for President-elect Trump.”)
60. 1 Robert S. Mueller, III, Report On The Investigation Into Russian Interference In The 2016 Presidential Election 1–2 (Mar., 2019). (The Special Counsel’s investigation into Russian interference in the 2016 concluded that “. . . the Russian government perceived it would benefit from a Trump presidency and worked to secure that outcome, and that the campaign expected it would benefit electorally from information stolen and released through Russian efforts . . .”)
61. 2 Robert S. Mueller, III, Report On The Investigation Into Russian Interference In The 2016 Presidential Election 23 (Mar., 2019).
62. 1 Mueller, *supra* note 60, at 1.
63. *Interview of: George Kent Before the H. Perm. Select Comm. On Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 268 and 275 (2019).
64. *Interview of: Kurt Volker Before the H. Perm. Select Comm. On Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 37 (2019). (As part of Biden’s role as the lead on Ukraine policy for the Obama Administration, he called for institutional reform in the justice sector, including the firing of then Prosecutor General Victor Shokin. The Obama administration had urged his resignation because he was not actively investigating serious cases of corruption, and threatened to withhold \$1 billion in loan guarantees. The call for Shokin to resign was the unanimous position of the United States and the West. Multiple witnesses testified that Vice President Biden was acting in accordance with bipartisan US policy towards Ukraine. For example, Ambassador Volker stated: “When Vice President Biden made those representations . . . he was representing U.S. policy at the time.”); *Impeachment Inquiry: Ambassador Kurt Volker and Timothy Morrison Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 20 (2019) (statement of Amb. Volker). (Ambassador Volker testified at his public hearing, “it’s not credible to me that former Vice President Biden would have been influenced in any way by financial or personal motives in carrying out his duties as Vice President.”); Daryna Krasnolutska, Kateryna Choursina and Stephanie Baker, *Ukraine Prosecutor Says No Evidence of Wrongdoing by Bidens*, Bloomberg, May 16, 2019, <https://www.bloomberg.com/news/articles/2019-05-16/ukraine-prosecutor-says-no-evidence-of-wrongdoing-by-bidens>. (Allegations of wrong doing by Hunter Biden have also been found to be without merit including by then Prosecutor General Lutsenko who stated in mid-May 2019, that he had found no evidence of wrongdoing by Hunter Biden, recanting his previous allegations.)
65. See e.g. Arlette Saenz, *Joe Biden Announces He is Running for President in 2020*, CNN, Apr. 25, 2019, <https://www.cnn.com/2019/04/25/politics/joe-biden-2020-president/index.html>. (Vice President Biden declared his candidacy for president on

April 25, 2019, following months of speculation about whether he would run and being cast by the press as a formidable rival to President Trump.)

66. Trial Memorandum of the United States House of Representatives, In the Impeachment Trial of President Donald J. Trump 3 (Jan. 18, 2020).

67. Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquires that Could Help Trump*, N.Y. Times, May 9, 2019, <https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html>. (According to Mr. Giuliani, the President was fully witting of the Mr. Giuliani's activities to further the scheme. Mr. Giuliani told the *New York Times* that the President, "basically knows what I'm doing, sure, as his lawyer," and, "[m]y only client is the president of the United States. He's the one I have an obligation to report to, tell him what happened.")

68. See generally Karen Freifeld & Aram Roston, *Exclusive: Trump Lawyer Giuliani was Paid \$500,000 to Consult on Indicted Associate's Firm*, Reuters, Oct. 14, 2019, <https://www.reuters.com/article/us-usa-trump-whistleblower-giuliani-excl/exclusive-trump-lawyer-giuliani-was-paid-500000-to-consult-on-indicted-associates-firm-idUSKBN1WU07Z>; Rosalind S. Helderman, Josh Dawsey, Paul Sonne and Tom Hamburger, *How Two Soviet-Born Emigres Made it into Elite Trump Circles—and the Center of the Impeachment Storm*, Washington Post, Oct. 12, 2019, [https://www.washingtonpost.com/politics/how-two-soviet-born-emigres-made-it-into-elite-trump-circles-and-the-center-of-the-impeachment-storm/2019/10/12/9a3c03be-ec53-11e9-85c0-85a098e47b37\\_story.html](https://www.washingtonpost.com/politics/how-two-soviet-born-emigres-made-it-into-elite-trump-circles-and-the-center-of-the-impeachment-storm/2019/10/12/9a3c03be-ec53-11e9-85c0-85a098e47b37_story.html); Kenneth P. Vogel, Ben Protess and Sarah Maslin Nir, *Behind the Deal that put Giuliani Together with a Dirt-Hunting Partner*, N.Y. Times, Nov. 6, 2019, <https://www.nytimes.com/2019/11/06/us/politics/ukraine-giuliani-charles-gucciardo.html>; United States of America v. Lev Parnas, Igor Fruman, David Correia, And Andrey Kukushkin, Defendants. No. 19 CRIM 725 (S.D.N.Y filed October 9, 2019). (In the spring of 2018, Soviet born businessmen Lev Parnas and Igor Fruman had multiple contacts with President Trump and his associates. Mr. Parnas and Mr. Fruman donated \$325,000 to the pro-Trump Super Pac America First Action through an LLC. Through those contacts, they forged a relationship with Trump personal attorney Rudy Giuliani. In August, 2018, Mr. Parnas and Mr. Fruman hired Giuliani for \$500,000 to provide legal advice for their company "Fraud Guarantee." Press reports indicate that Fraud Guarantee appears to have no customers. On October 10, 2019 a federal indictment from the Southern District of New York charged Mr. Parnas and Mr. Fruman with funneling illegal campaign contributions from foreign donors to U.S. government officials and political action committees.)

69. See Kim Hjelmgaard, *Ukraine Opens Case Against Former Prosecutor Yuriy Lutsenko*, USA Today, Oct. 1, 2019, <https://www.usatoday.com/story/news/world/2019/10/01/ukraine-opens-case-against-ex-prosecutor-yuriy-lutsenko/3828779002/>. (Mr. Lutsenko was fired in late August 2019 by newly-elected President Zelensky. In October 2019, Ukraine's State Bureau of investigations (SBI) opened criminal proceedings against Mr. Lutsenko over possible abuse of power charges, stemming from illegal gambling operations.)

70. See Christopher Miller, *Why was Ukraine's Top Prosecutor Fired? The Issue at the Heart of the Dispute Gripping Washington*, Radio Free Europe, Sep. 24, 2019, <https://www.rferl.org/a/why-was-ukraine-top-prosecutor-fired-viktor-shokin/30181445.html>. (Mr. Shokin had served as the Prosecutor General during the Poroshenko administration from February 2015–March 2016. In the fall of 2015, the Obama Administration grew concerned that Mr. Shokin, despite promises to increase anti-corruption investigations, had not followed through, including on promises to investigate corruption allegations against the Ukrainian energy company Burisma. In March 2016, Vice President Biden called for Mr. Shokin to be fired and told Ukrainian authorities that the United States would withhold \$1 billion in loan guarantees if he was not relieved of his position. The U.S. position that Mr. Shokin should be removed and replaced with a prosecutor general that was dedicated to institutional reforms was coordinated with European allies and partners and held popular support inside Ukraine. On March 29, 2016, the Ukrainian Rada (parliament) voted overwhelmingly in approval of President Poroshenko's decision to fire Mr. Shokin; *Interview of: George Kent*, *supra* note 63, at 45. (Regarding Mr. Shokin, Deputy Assistant Secretary Kent, a leading authority on rule of law and anti-corruption efforts, assessed in his deposition, "There was a broad-based consensus that he [Shokin] was a typical Ukraine prosecutor who lived a lifestyle far in excess of his government salary, who never prosecuted anybody known for having committed a crime, and having covered up crimes that were known to have been committed.")

71. *Interview of: George Kent*, *supra* note 63, at 47. (The Skype call between Mr. Shokin and Mr. Giuliani occurred after Mr. Shokin was denied a visa to travel to the United States, based on his record of corrupt dealings. Deputy Assistant Secretary George Kent testified that the State Department objected to the visa because

Mr. Shokin was “very well and very unfavorably known to us. And we felt, under no circumstances, should a visa be issued to someone who knowingly subverted and wasted U.S. taxpayer money.” Mr. Kent further testified that White House aide Robert Blair called to follow up on why Shokin was denied a visa.); *Deposition of: Marie “Masha” Yovanovitch, Before the H. Perm. Select Comm. On Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs, 116th Cong. 264–265 (2019)*. (Ambassador Yovanovitch stated at her closed-door interview, “The embassy had received a visa application for a tourist visa from Mr. Shokin, the previous prosecutor general. And he said that he was coming to visit his children, who live in the United States . . . The consular folks . . . got the application, recognized the name, and believed he was ineligible for a visa, based on his . . . corrupt activities . . . so I alerted Washington to this, that this had happened. And the next thing we knew, Mayor Giuliani was calling the White House as well as the Assistant Secretary of Consular Affairs, saying that I was blocking the visa for Mr. Shokin, and that Mr. Shokin was coming to meet him to provide information about corruption at the embassy, including my corruption.”)

72. Notes from Interview with Mr. Shokin, Rudolph Giuliani (Jan. 23, 2019) (on file with the State Department).

73. *Id.*

74. *Id.*

75. See Stephanie Baker & Irina Reznik, *To Win Giuliani’s Help, Oligarch’s Allies Pursued Biden Dirt*, Bloomberg, Oct. 18, 2019, <https://www.bloomberg.com/news/articles/2019-10-18/to-win-giuliani-s-help-oligarch-s-allies-pursued-biden-dirt>. (In early September 2019, Shokin swore in an affidavit that Vice President Biden pressured the Poroshenko administration to fire him to protect Hunter Biden. He further testified that he was forced out because he was leading “a wide ranging corruption probe” of Burisma and that he was “forced to leave office, under direct and intense pressure from Joe Biden and the U.S. Administration.” At the beginning of the affidavit, Shokin wrote that he was making the statement at the request of lawyers acting for pro-Putin Ukrainian oligarch Dmitry Firtash, who has a history of acting as a Russian agent and in July 2019, retained the pro-Trump legal team Victoria Toensing and Joe DiGenova, who have been working in coordination with Giuliani to further the corrupt scheme. As part of his legal representation, Mr. Firtash retained Giuliani associate Lev Parnas to be his translator. Furthermore, court filings indicate that Mr. Firtash wired Mr. Parnas’s wife a million dollars through an intermediary. It must be further noted that Mr. Giuliani referenced that Ms. Toensing would accompany him to the meeting he requested with then President-elect Zelensky in mid-May. While the letter did not state the purpose of the requested meeting, Mr. Giuliani stated publicly that he intended to tell President Zelensky to pursue the investigation.); See also Letter from Rudolph Giuliani to Volodymyr Zelensky, President-Elect, Ukraine (May 10, 2019) (on file with H. Perm. Select Comm. On Intelligence); Christian Berthelsen, *Giuliani Ally Got \$1 Million from Ukrainian Oligarch’s Lawyer*, Bloomberg, Dec. 17, 2019, <https://www.bloomberg.com/news/articles/2019-12-17/firtash-lawyer-was-source-of-1-million-to-parnas-giuliani-ally>.

76. Andy Heil & Christopher Miller, *U.S. Rejects Ukraine Top Prosecutor’s ‘Don’t Prosecute’ Accusation*, Radio Free Europe, Mar. 21, 2019, <https://www.rferl.org/a/us-rejects-top-ukrainian-prosecutors-dont-prosecute-accusation/29834853.html>. (On March 21, a State Department spokesperson responded: “The allegations by the Ukrainian prosecutor-general are not true and intended to tarnish the reputation of Ambassador Yovanovitch.”)

77. Staff of H. Perm. Select Comm. on Intelligence, 116th Cong., Rep. on The Trump-Ukraine Impeachment Inquiry 44 (Comm. Print 2019). (The House Committees who led the impeachment investigation, “uncovered evidence of close ties and frequent contacts between Mr. Solomon and Mr. Parnas, who was assisting Mr. Giuliani in connection with his representation of the President.”); Adam Entous, *The Ukrainian Prosecutor Behind Trump’s Impeachment*, The New Yorker, Dec. 16, 2019, <https://www.newyorker.com/magazine/2019/12/23/the-ukrainian-prosecutor-behind-trumps-impeachment>. (In December 2019, Giuliani affirmed coordination with Hill columnist John Solomon: “I said, ‘John [Solomon], let’s make this as prominent as possible . . . I’ll go on TV. You go on TV. You do columns.’”)

78. See John Solomon, *As Russia Collusion Fades, Ukrainian Plot to Help Clinton Emerges*, The Hill, Mar. 20, 2019, <https://thehill.com/opinion/campaign/435029-russia-collusion-fades-ukrainian-plot-to-help-clinton-emerges>; John Solomon, *US Embassy Pressed Ukraine to Drop Probe of George Soros Group During the 2016 election*, The Hill, Mar. 26, 2019, <https://thehill.com/opinion/campaign/435906-us-embassy-pressed-ukraine-to-drop-probe-of-george-soros-group-during-2016>; John Solomon, *Joe Biden’s 2020 Ukrainian Nightmare: A Closed Probe is Revived*, The Hill,

Apr. 1, 2019, <https://thehill.com/opinion/white-house/436816-joe-bidens-2020-ukrainian-nightmare-a-closed-probe-is-revived>; John Solomon, *Ukrainian to U.S. Prosecutors: Why Don't You Want Our Evidence on Democrats?*, The Hill, Apr. 7, 2019, <https://thehill.com/opinion/white-house/437719-ukrainian-to-us-prosecutors-why-dont-you-want-our-evidence-on-democrats>; (John Solomon wrote the above columns based on the disinformation that Mr. Giuliani gathered from Mr. Shokin, Mr. Lutsenko and others.)

79. See Donald J. Trump (@realDonaldTrump), Twitter (Mar. 20, 2019, 10:40 PM), <https://twitter.com/realdonaldtrump/status/1108559080204001280>. (For instance, President Trump promoted a link to Solomon's column from March 20, 2019.)

80. See Donald Trump, Jr. (@DonaldJTrumpJr), Twitter (Apr. 2, 2019, 7:52 AM), <https://twitter.com/donaldjtrumpjr/status/1113046659456528385>. (Donald Trump Jr. retweeted Solomon's April 1 column on April 2, 2019.)

81. See Rudy Giuliani (@RudyGiuliani), Twitter (Mar. 22, 2019, 11:38 AM), <https://twitter.com/RudyGiuliani/status/1109117167176466432>. (On March 22, Mr. Giuliani tweeted an allegation from the article: "Hillary, Kerry, and Biden people colluding with Ukrainian operatives to make money and affect 2016 election.")

82. Interview by Sean Hannity with Donald Trump, President, United States (Apr. 25, 2019). (Mr. Hannity asked the President if the people of the United States needed to see the evidence Ukraine has with regards to Ukraine colluding with Hillary Clinton's campaign. President Trump responded, ". . . I think we do." He went on to claim that that, "People have been saying . . . the concept of Ukraine, they have been talking about it actually for a long time . . .")

83. Interview by Howard Kurtz with Rudolph Giuliani (Apr. 7, 2019). (For instance, on April 7, 2019, Mr. Giuliani stated on *Fox News*, "I got information about three or four months ago that a lot of the explanations for how this whole phony investigation started will be in the Ukraine, that there were a group of people in the Ukraine that were working to help Hillary Clinton and were colluding really . . . And then all of a sudden, they revealed the story about Burisma and Biden's son . . . [Vice President Biden] bragged about pressuring Ukraine's president to firing [sic] a top prosecutor who was being criticized on a whole bunch of areas but was conducting an investigation of this gas company which Hunter Biden served as a director . . .")

84. Trial Memorandum of the United States House of Representatives, *supra* note 66, at SMF 4.

85. *Deposition of: Marie "Masha" Yovanovitch, Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 131 (2019). (Ambassador Yovanovitch testified that Deputy Secretary of State John Sullivan informed her that "the President had lost confidence, and I would need to depart my post . . . And he said, you've done nothing wrong. And he said that he had to speak to ambassadors who had been recalled for cause before and this was not that.")

86. Adam Entous, *The Ukrainian Prosecutor Behind Trump's Impeachment*, The New Yorker, Dec. 16, 2019, <https://www.newyorker.com/magazine/2019/12/23/the-ukrainian-prosecutor-behind-trumps-impeachment>.

87. Text Message from Yuriy Lutsenko, Prosecutor General, Ukraine, to Lev Parnas (Mar. 22, 2019) (on file with H. Perm. Select Comm. on Intelligence).

88. Interview by Rachel Maddow with Lev Parnas (Jan. 16, 2020).

89. *Impeachment Inquiry: Fiona Hill and David Holmes*, *supra* note 57, at 40; Vladimir Putin, President, Russia, Remarks in Joint News Conference with Hungarian Prime Minister Viktor Orban (Feb. 2, 2017). (Russian President Vladimir Putin publicly accused Ukraine of interfering to support Secretary Clinton in 2016. On February 2, 2017 Putin stated: "As we all know, during the presidential campaign in the United States, the Ukrainian government adopted a unilateral position in favor of one candidate. More than that, certain oligarchs, certainly with the approval of the political leadership, funded . . . this female candidate.")

90. Luke Barr & Alexander Mallin, *FBI Director Pushes Back on Debunked Conspiracy Theory About 2016 Election Interference*, ABC News, Dec. 9, 2019, <https://abcnews.go.com/Politics/fbi-director-pushes-back-debunked-conspiracy-theory-2016/story?id=67609244>.

91. Chris Grancescani, *President Trump's Former National Security Advisor 'Deeply Disturbed' by Ukraine Scandal: 'Whole World is Watching'*, ABC News, Sept. 29, 2019, <https://abcnews.go.com/Politics/president-trumps-national-security-advisor-deeply-disturbed-ukraine/story?id=65925477>. (Mr. Tom Bossert, President Trump's former Homeland Security Adviser stated in a Press interview that the CrowdStrike allegations are, "completely debunked." Mr. Bossert further stated, "The United States government reached its conclusion on attributing to Russia the DNC hack in

2016 before it even communicated it to the FBI, before it ever knocked on the door at the DNC. So a server inside the DNC was not relevant to our determination to the attribution. It was made up front and beforehand.”)

92. Allan Smith, *‘Enough’: Trump’s Ex-Homeland Security Adviser ‘Disturbed,’ Frustrated by Ukraine Allegations, Says President Must Let 2016 Go*, NBC News, Sept. 29, 2019, <https://www.nbcnews.com/politics/donald-trump/enough-trump-former-homeland-security-adviser-disturbed-ukraine-allegations-n1060051>.

93. See 166 Cong. Rec. 17, S596–98 (daily ed. Jan. 27, 2020) (Statement of Ms. Counsel Bondi); See generally Adam Entous, *Will Hunter Biden Jeopardize his Father’s Campaign?*, New Yorker, Jul. 1, 2019, <https://www.newyorker.com/magazine/2019/07/08/will-hunter-biden-jeopardize-his-fathers-campaign>; Michael Kranish & David L. Stern, *As Vice President, Biden Said Ukraine Should Increase Gas Production. Then His Son Got a Job at a Ukrainian Gas Company.*, Washington Post, Jul. 22, 2019, [https://www.washingtonpost.com/politics/as-vice-president-biden-said-ukraine-should-increase-gas-production-then-his-son-got-a-job-with-a-ukrainian-gas-company/2019/07/21/f599f42c-86dd-11e9-98c1-e945ae5db8fb\\_story.html](https://www.washingtonpost.com/politics/as-vice-president-biden-said-ukraine-should-increase-gas-production-then-his-son-got-a-job-with-a-ukrainian-gas-company/2019/07/21/f599f42c-86dd-11e9-98c1-e945ae5db8fb_story.html); Lucien Bruggeman, *Biden Sought to Avoid a Conflict of Interest Before the 2008 Campaign: Court Records*, ABC News, Oct. 8, 2019, <https://abcnews.go.com/Politics/joe-bidens-effort-dodge-sons-conflict-interest-backfired/story?id=66371399>; Glen Kessler, *GOP Tries to Connect Dots on Biden and Ukraine, but Comes Up Short*, Washington Post, Dec. 4, 2019, <https://www.washingtonpost.com/politics/2019/12/04/gop-tries-connect-dots-biden-ukraine-comes-up-short/>. (The President’s Counsel made assertions of the appearance of conflict of interest, but did not produce evidence that Hunter Biden broke the laws of the United States or Ukraine or that Vice President Biden acted corruptly in calling for the removal of then Prosecutor General Victor Shokin. Multiple media outlets have also undertaken investigations into the allegations regarding Vice President Biden and Hunter Biden, and produced no evidence of wrongdoing.)

94. *Interview of: Kurt Volker Before the H. Perm. Select Comm. On Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 36–37 (2019).

95. Alan Cullison, *Bidens in Ukraine: An Explainer*, Wall Street Journal, Sept. 22, 2019, <https://www.wsj.com/articles/bidens-anticorruption-effort-in-ukraine-overlapped-with-sons-work-in-country-11569189782>. (For example, Ukraine expert Anders Aslund from the Atlantic Council recalls, “Everyone in the Western community wanted Shokin sacked. The whole G–7, the IMF, the EBRD, everybody was united that Shokin must go, and the spokesman for this effort was Joe Biden.”)

96. Geoffrey Pyatt, then-U.S. Ambassador to Ukraine, Remarks at the Odesa Financial Forum in Odesa, Ukraine (Sept. 24, 2015). (In the fall of 2015, the Obama Administration grew concerned that Shokin, despite promises to increase anti-corruption investigations, had not followed through with enacting forms. For example, on September 24, 2015, then US Ambassador to Ukraine Geoffrey Pyatt stated publicly that Shokin’s office “not only did not support investigations into corruption, but rather undermined prosecutors working on legitimate corruption cases.” Ambassador Pyatt specifically brought up Burisma as an example of an investigation that had languished under Shokin’s tenure as Prosecutor General.)

97. See Joe Biden, then-Vice President, United States, Remarks to the Ukrainian Rada in Kyiv, Ukraine (Dec. 9, 2015). (On December 9, 2015, Vice President Biden stated in front of the Ukrainian Parliament (Rada): “. . . you cannot name me a single democracy in the world where the cancer of corruption is prevalent. You cannot name me one. They are thoroughly inconsistent. And it’s not enough to set up a new anti-corruption bureau and establish a special prosecutor fighting corruption. The Office of the General Prosecutor desperately needs reform. The judiciary should be overhauled. The energy sector needs to be competitive, ruled by market principles—not sweetheart deals.”)

98. 166 Cong. Rec. 20, S727 (daily ed. Jan. 30, 2020) (statement of Mr. Counsel Philbin).

99. Entous, *supra* note 86.

100. See UNIAN, *Ukrainian Prosecutor General Lutsenko Admits U.S. Ambassador Didn’t Give Him a Do Not Prosecute List*, Apr. 18, 2019, <https://www.unian.info/politics/10520715-ukraine-prosecutor-general-lutsenko-admits-u-s-ambassador-didn-t-give-him-a-do-not-prosecute-list.html>; Daryna Krasnolutska, Kateryna Choursina and Stephanie Baker, *Ukraine Prosecutor Says No Evidence of Wrongdoing by Bidens*, Bloomberg, May 16, 2019, <https://www.bloomberg.com/news/articles/2019-05-16/ukraine-prosecutor-says-no-evidence-of-wrongdoing-by-bidens>; Michael Birnbaum, David L. Stern and Natalie Gryvnyak, *Former Ukraine Prosecutor Says Hunter Biden ‘Did Not Violate Anything’*, Washington Post, Sept. 26, 2019, <https://www.washingtonpost.com/world/europe/former-ukraine-prosecutor-says->

hunter-biden-did-not-violate-anything/2019/09/26/48801f66-e068-11e9-be7f-4cc85017c36f story.html; Andrew E. Kramer, Andrew Higgins and Michael Schwartz, *The Ukrainian Ex-Prosecutor Behind the Impeachment Furor*, N.Y. Times, Oct. 5, 2019, <https://www.nytimes.com/2019/10/05/world/europe/ukraine-prosecutor-trump.html>. (On April 21, 2019, Mr. Lutsenko admitted that the claim he made about U.S. ambassador Yovanovitch was false. In May 2019, Mr. Lutsenko said there was no evidence of wrongdoing by Vice President Biden or his son. In September 2019, Mr. Lutsenko said that Hunter Biden did not violate Ukrainian laws. In October 2019, Mr. Lutsenko told the New York Times, “I understood very well what would interest them . . . I have 23 years in politics. I knew. I am a political animal.”)

101. *Interview of Kurt Volker*, *supra* note 94, at 354.

102. Vogel, *supra* note, 67.

103. *Id.*

104. *Id.* (Mr. Giuliani said, “He basically knows what I am doing, sure, as his lawyer.”)

105. Letter from Rudolph Giuliani to Arsen Avakov, Minister of Internal Affairs, Ukraine (May 10, 2019) (on file with H. Perm. Select Comm. on Intelligence). (The letter was provided to the House Permanent Select Committee on Intelligence and was made public on January 14, 2020. In the letter, Mr. Giuliani wrote, “I will be accompanied by my colleague Victoria Toensing, a distinguished American attorney who is very familiar with this matter.”); Jo Becker, Walt Bogdanich, Maggie Haberman, and Ben Protess, *Why Giuliani Singled out 2 Ukrainian Oligarchs to Help Look for Dirt*, N.Y. Times, Nov. 25, 2019, <https://www.nytimes.com/2019/11/25/us/giuliani-ukraine-oligarchs.html>; (As noted prior, Victoria Toensing, along with her Partner Joe DiGenova, were retained by pro-Putin Ukrainian oligarch Dmitry Firtash in July 2019. Facing extradition related to a bribery charge in Chicago in 2014, Mr. Firtash was convinced by Mr. Giuliani and his associates to get new legal representation to better ingratiate himself with the leadership at the Department of Justice under the Trump Administration. Mr. Firtash told the New York Times that Mr. Parnas and Mr. Fruman told him: “We may help you, we are offering you good lawyers in D.C. who might represent you and deliver this message to the U.S. DOJ.” Mr. Firtash said that his contract to Ms. Toensing and Mr. DiGenova was \$300,000 per month. Mr. Parnas’s lawyer told the New York Times, “Per Mr. Giuliani’s instructions, Mr. Parnas told Mr. Firtash that Ms. Toensing and Mr. DiGenova were interested in collecting information on the Bidens.”)

106. See Eliana Johnson, Darren Samuelsohn, Andrew Restuccia, and Daniel Lippman, *Trump: Discussing a Biden Probe with Barr Would Be ‘Appropriate’*, Politico, May 10, 2019, <https://www.politico.com/story/2019/05/10/trump-biden-ukraine-barr-1317601>.

107. Charles Creitz, *Giuliani Cancels Ukraine Trip, Says He’d Be “Walking into a Group of People that are Enemies of the US,”* Fox News, May 11, 2019, <https://www.foxnews.com/politics/giuliani-i-am-not-going-to-ukraine-because-id-be-walking-into-a-group-of-people-that-are-enemies-of-the-us>.

108. *Interview of: Kurt Volker*, *supra* note 94, at 305; *Impeachment Inquiry: Ambassador Gordon Sondland Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 8, 21 (2019) (statement of Amb. Sondland).

109. *Interview of: Kurt Volker*, *supra* note 94, at 31. *Interview of: Ambassador Gordon Sondland Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 90 (2019).

110. *Interview of: Ambassador Gordon Sondland Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 91–92 (2019).

111. *Id.* at 71.

112. *Id.* at 22.

113. *Deposition of: William B. Taylor Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 23 (2019) (statement of Amb. Taylor).

114. *Impeachment Inquiry: Ambassador Gordon Sondland Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 27 (2019) (statement of Amb. Sondland).

115. *Impeachment Inquiry: Fiona Hill and David Holmes*, *supra* note 57, at 92.

116. *Impeachment Inquiry: Ambassador Gordon Sondland*, *supra* note 114, at 18.

117. *Impeachment Inquiry: Ambassador Kurt Volker and Timothy Morrison Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 18 (2019) (statement of Mr. Morrison).

118. *Id.* at 41.

119. *Id.* at 94.

120. *Id.* at 19.
121. *Impeachment Inquiry: Fiona Hill and David Holmes*, *supra* note 57, at 65–66.
122. *Id.* at 66.
123. *Impeachment Inquiry: Ms. Jennifer Williams and Lieutenant Colonel Alexander Vindman Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 19 (2019).
124. *Impeachment Inquiry: Fiona Hill and David Holmes*, *supra* note 57, at 66.
125. *Id.* at 67.
126. See Releases Under FOIA, Just Security (Dec. 20, 2019) (on file at <https://assets.documentcloud.org/documents/6590667/CPI-v-DoD-Dec-20-2019-Release.pdf>). (Released emails show that the OMB official Mike Duffey sent Acting Comptroller Elaine McCusker a copy of the Washington Examiner article on June 19, 2019, and said the President “has asked about this funding release.”); Eric Lipton, Maggie Haberman and Mark Mazzetti, *Behind the Ukraine Aid Freeze: 84 Days of Conflict and Confusion*, N.Y. Times, Dec. 29, 2019, [https://www.nytimes.com/2019/12/29/us/politics/trump-ukraine-military-aid.html?wpisrc=nl\\_powerup&wpmm=1](https://www.nytimes.com/2019/12/29/us/politics/trump-ukraine-military-aid.html?wpisrc=nl_powerup&wpmm=1). (The New York Times reported that OMB Officials learned President Trump had “a problem with the aid” on June 19, 2019. The report further indicates: “Typical of the Trump White House, the inquiry was not born of a rigorous policy process. Aides speculated that someone had shown Mr. Trump a news article about the Ukraine assistance and he demanded to know more . . . [Acting OMB Director Russell] Vought and his team took to Google, and came upon a piece in the conservative Washington Examiner saying that the Pentagon would pay for weapons and other military equipment for Ukraine, bringing American security aid to the country to \$1.5 billion since 2014.”)
127. *Deposition of: Mark Sandy Before the H. Perm. Select Comm. On Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 39 (2019). (OMB official Mark Sandy testified that he received an email on July 12, 2019, forwarded from White House aide Robert Blair, which stated that the President had directed a hold on Ukraine security assistance.); *Deposition of: Jennifer Williams Before the H. Perm. Select Comm. On Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 55 (2019). (Vice Presidential aide, Jennifer Williams testified that she learned of a hold on State Department security assistance funds (FMF) on July 3, 2019.)
128. *Impeachment Inquiry: Fiona Hill and David Holmes*, *supra* note 57, at 26. (Multiple witnesses testified to this announcement occurring at the July 18 inter-agency meeting on Ukraine, including Political Counselor to US Embassy in Ukraine, David Holmes.)
129. *Impeachment Inquiry: Ambassador William B. Taylor and Mr. George Kent Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 35 (2019). (For instance, Ambassador Taylor testified the directive had come from the President to the Chief of Staff to OMB, “but could not say why.”)
130. *Impeachment Inquiry: Ms. Jennifer Williams and Lieutenant Colonel Alexander Vindman*, *supra* note 123, at 14–15. (For instance, Vice Presidential aide Williams testified that from when she first learned about the hold on July 3, 2019, until it was lifted on September 11, 2019, she never came to understand why President Trump ordered the hold.); *Deposition of: Lieutenant Colonel Alexander S. Vindman Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 306 (2019). (Similarly, NSC official Lt. Col Vindman testified, none of the “facts on the ground” changed before the President lifted the hold.)
131. 166 Cong. Rec. 19, S688 (daily ed. Jan. 29, 2020) (statement of Mr. Manager Crow).
132. *Deposition of: Mark Sandy Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 51 (2019). (For instance, OMB official Mark Sandy testified that he conferred with other officials such as Acting Deputy Assistant Secretary (Comptroller) Elaine McCusker, “[t]he nature of the communication was that—how could we institute a temporary hold consistent with the Impoundment Control Act.”); *Deposition of: Laura Katherine Cooper Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 47 (2019). (Deputy Assistant Secretary of Defense Laura Cooper testified that at an interagency meeting soon after learning that the hold was implemented for Ukraine security assistance the “deputies began to raise concerns about how this [the hold] could be done a legal fashion . . .”)
133. Corey Welt, Cong. Research Serv., R45008, *Ukraine: Background Conflict with Russia and U.S. Policy* 30 (2019).

134. *Deposition of: Laura Katherine Cooper Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 47 (2019). (Deputy Assistant Secretary of Defense Cooper further explained that the conversation, “reflected a sense that there was not an understanding of how this [the hold] could legally play out,” and that “there was not an available [legal] mechanism to simply not spend money” authorized, appropriated and notified to Congress for Ukraine.)

135. See Just Security FOIA Releases, *supra* note 126.

136. See S. Rep. No. 93–688, at 75 (1987). (The legislative history indicates that the purpose of the ICA was to ensure that “the practice of reserving funds does not become a vehicle for furthering Administration policies and priorities at the expense of those decided by Congress.”)

137. U.S. Govt. Accountability Office, Legal Decision Regarding Office of Management and Budget—*Withholding of Ukraine Security Assistance*, File B–3311564, 1 (Jan. 16, 2020).

138. Memorandum from The White House of President Trump’s Telephone Conversation with President Zelenskyy of Ukraine (July 25, 2019).

139. Donald J. Trump (@realDonaldTrump), Twitter (Jan. 16, 2020, 3:39 PM), <https://twitter.com/realDonaldTrump/status/1217909231946477575?s=20> (President Trump has repeatedly claimed that his call with President Zelensky on July 25 was perfect. For example, on January 16, 2020 President Trump tweeted, “I JUST GOT IMPEACHED FOR MAKING A PERFECT PHONE CALL!”)

140. Memorandum from The White House of President Trump’s Telephone Conversation with President Zelenskyy of Ukraine 3 (July 25, 2019).

141. *Id.*

142. *Id.*

143. *Id.* at 4.

144. *Id.* at 4, 5. (The President referenced Attorney General Barr several times during his phone call with President Zelensky.)

145. See Katie Benner, *Justice Dept.’s Dismissal of Ukraine Call Raises New Questions About Barr*, N.Y. Times, Sept. 25, 2019, <https://www.nytimes.com/2019/09/25/us/politics/william-barr-trump-ukraine.html>. (As noted in the article, after the memorandum of telephone conversation from July 25th became public, the Justice Department spokesperson stated, “Mr. Trump has not asked Mr. Barr to contact Ukraine for any reason, Mr. Barr has not communicated with Ukraine on any topic and Mr. Barr has not spoken with Mr. Giuliani about the president’s phone call “or anything related to Ukraine.”)

146. See Mark Mazzetti & Katie Benner, *Trump Pressed Australian Leader to Help Barr Investigate Mueller Inquiry’s Origins*, N.Y. Times, Sept. 30, 2019, <https://www.nytimes.com/2019/09/30/us/politics/trump-australia-barr-mueller.html>. Kim Sengupta, *“It’s Like Nothing We Have Come Across Before”: UK Intelligence Officials Shaken By Trump Administration’s Requests For Help With Counter-Impeachment Inquiry*, The Independent, Nov. 1, 2019, <https://www.independent.co.uk/news/world/americas/us-politics/trump-impeachment-inquiry-latest-russia-mueller-ukraine-zelensky-a9181641.html>. Katie Benner & Adam Goldman, *Justice Dept. is Said to Open Criminal Inquiry Into Its Own Russia Investigation*, N.Y. Times, Oct. 24, 2019, <https://www.nytimes.com/2019/10/24/us/politics/john-durham-criminal-investigation.html>. (Despite denials that the Attorney General had no knowledge of the topics discussed on the call, the Attorney General opened a Department of Justice investigation in April 2019, into the origins of the counterintelligence investigation against the Trump campaign in 2016. Aspects of this investigation involved contacting foreign leaders and asking that their governments investigate aspects of their involvement in that investigation. For example, at the Attorney General’s request, the President asked the governments of Australia and the United Kingdom to assist with the investigation including looking at the role that their intelligence and law enforcement agencies played. The New York Times further reported that Attorney General Barr “is closely managing the investigation even traveling to Italy to seek help from foreign officials there . . . Mr. Barr has also contacted government officials in Britain and Australia about their roles in the early stages of the Russia investigation.”); Interview by Rachel Maddow *supra* note 88. (Additionally, Giuliani associate Lev Parnas stated publicly that Attorney General Barr, “had to know everything” and was “basically on the team.”)

147. Text Message from Kurt Volker, U.S. Ambassador to NATO and Special Envoy to Ukraine, to Gordon Sondland, U.S. Ambassador to EU, and William B. Taylor, Charge d’affaires at the U.S. Embassy in Kyiv (July 19, 2019) (on file with H. Perm. Select Comm. on Intelligence).

148. *Impeachment Inquiry: Ambassador Gordon Sondland*, *supra* note 114, at 27.

149. *Id.* at 94–95.

150. *Id.* at 52–55.; Text Message from Gordon Sondland, U.S. Ambassador to EU, to Kurt Volker, U.S. Ambassador to NATO and Special Envoy to Ukraine (July 25, 2019) (on file with H. Perm. Select Comm. on Intelligence).

151. Text Message from Kurt Volker, U.S. Ambassador to NATO and Special Envoy to Ukraine, to Gordon Sondland, U.S. Ambassador to EU, and William B. Taylor, Charge d'affaires at the U.S. Embassy in Kyiv (July 19, 2019) (on file with H. Perm. Select Comm. on Intelligence); Text Message from Gordon Sondland, U.S. Ambassador to EU, to Kurt Volker, U.S. Ambassador to NATO and Special Envoy to Ukraine (July 25, 2019) (on file with H. Perm. Select Comm. on Intelligence). (Text messages between Ambassadors Sondland and Volker affirm that the message that Ambassador Volker passed to Mr. Yermak was passed by Ambassador Volker in coordination with Ambassador Sondland. On July 25, just prior to the phone call between Presidents Trump and Zelensky, Ambassador Sondland texted to Ambassador Volker: “call me.” Ambassador Volker replied, “Had a great lunch with] Yermak and then passed your message to him . . . think everything is in place.”)

152. Memorandum from The White House of President Trump’s Telephone Conversation with President Zelensky of Ukraine 5 (July 25, 2019).

153. *Impeachment Inquiry: Ms. Jennifer Williams and Lieutenant Colonel Alexander Vindman*, *supra* note 123, at 31.

154. 166 Cong. Rec. 19, S647 (daily ed. Jan. 29, 2020) (statement of Mr. Counsel Philbin). (For example, the President’s counsel falsely claimed that the House Impeachment Managers didn’t try to obtain first hand witnesses while they were making their case in the House. The President’s Counsel argued, “They didn’t even subpoena John Bolton. They didn’t even try to get his testimony. To insist now that this body will become the investigative body—that this body will have to do all of the discovery—then, this institution will be effectively paralyzed for months on end because it will have to sit as a Court of Impeachment while now discovery will be done. It would be Ambassador Bolton, and if there are going to be witnesses, in order for there to be, as they said, a fair trial, fair adjudication, then, the President would have to have his opportunity to call his witnesses, and there would be depositions. This would drag on for months. Then that will be the new precedent.” As the House Impeachment Managers argued, these assertions do not actually represent the facts, “We asked John Bolton to testify in the House, and he refused. We asked his deputy, Dr. Kupperman, to testify, and he refused. Fortunately, we asked their deputy, Dr. Fiona Hill, to testify, and she did. We asked her deputy, Colonel Vindman, to testify, and he did. We did seek the testimony of John Bolton as well as Dr. Kupperman, and they refused. When we subpoenaed Dr. Kupperman, he sued us. He took us to court. When we raised a subpoena with John Bolton’s counsel, the same counsel for Dr. Kupperman, the answer was, “. . . you serve us with a subpoena, and we will sue you, too.” We knew, based on the McGahn litigation, it would take months, if not years, to force John Bolton to come and testify.”)

155. Just Security FOIA Releases, *supra* note 126, at 40.

156. *Impeachment Inquiry: Fiona Hill and David Holmes* *supra* note 57, at 29.

157. *Id.* at 29–30.

158. Mick Mulvaney, Acting Chief of Staff, The White House, at Press Briefing by Acting Chief of Staff Mick Mulvaney (Oct. 17, 2019).

159. *Id.*

160. *Id.*

161. Caitlin Emma & Connor O’Brien, *Trump Holds Up Ukraine Military Aid Meant to Confront Russia*, Politico, Aug. 28, 2019, <https://www.politico.com/story/2019/08/28/trump-ukraine-military-aid-russia-1689531>.

162. *Impeachment Inquiry: Ms. Laura Cooper and Mr. David Hale Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 14 (2019) (statement of Ms. Cooper).

163. *Deposition of: Catherine Croft Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 86–87, 101 (2019). (Croft, a career foreign service officer, further testified that she was surprised at the effectiveness of their “diplomatic tradecraft,” noting that they “found out very early on” that the United States was withholding critical security assistance to Ukraine.)

164. Andrew E. Kramer & Kenneth P. Vogel, *Ukraine Knew of Aid Freeze by Early August, Undermining Trump Defense*, N.Y. Times, Oct. 23, 2019, <https://www.nytimes.com/2019/10/23/us/politics/ukraine-aid-freeze-impeachment.html>.

165. *Id.*

166. *Deposition of: Lieutenant Colonel Alexander S. Vindman Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 314 (2019).

167. Eric Lipton, Maggie Haberman and Mark Mazzetti, *Behind the Ukraine Aid Freeze: 84 Days of Conflict and Confusion*, N.Y. Times, Dec. 29, 2019, [https://www.nytimes.com/2019/12/29/us/politics/trump-ukraine-military-aid.html?wpisrc=nl\\_powerup&wpm=1](https://www.nytimes.com/2019/12/29/us/politics/trump-ukraine-military-aid.html?wpisrc=nl_powerup&wpm=1).

168. *Deposition of: Tim Morrison Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 268 (2019).

169. Maggie Haberman & Michael S. Schmidt, *Trump Tied Ukraine Aid to Inquiries He Sought, Bolton Book Says*, N.Y. Times, Jan. 26, 2020, <https://www.nytimes.com/2020/01/26/us/politics/trump-bolton-book-ukraine.html>.

170. Text Messages from Gordon Sondland, U.S. Ambassador to EU, to Kurt Volker, U.S. Ambassador to NATO and Special Envoy to Ukraine (Aug. 9, 2019) (on file with H. Perm. Select Comm. on Intelligence). (The effort began with a text message from Ambassador Sondland to Ambassador Volker stating, “I think POTUS really wants the deliverable.”) See *Interview of: Kurt Volker*, *supra* note 94, at 71–72.

171. *Interview of: Kurt Volker*, *supra* note 94, at 71.

172. *Interview of: Kurt Volker*, *supra* note 94, at 113.

173. Text Messages from Kurt Volker, U.S. Ambassador to NATO and Special Envoy to Ukraine, to Gordon Sondland, U.S. Ambassador to EU, and Andriy Yermak, Aide to Ukrainian President Zelensky (Aug. 13, 2019) (on file with H. Perm. Select Comm. on Intelligence); *Interview of: Kurt Volker*, *supra* note 94, at 71, 73.

174. *Interview of: Kurt Volker*, *supra* note 94, at 188–189; See generally Text Message from Gordon Sondland, U.S. Ambassador to EU, to Kurt Volker, U.S. Ambassador to NATO and Special Envoy to Ukraine (Aug. 9, 2019) (on file with H. Perm. Select Comm. on Intelligence); Text Messages from Kurt Volker, U.S. Ambassador to NATO and Special Envoy to Ukraine, to Andriy Yermak, Aide to Ukrainian President Zelensky (Aug. 10–12, 2019) (on file with H. Perm. Select Comm. on Intelligence); (Ambassador Volker testified in his closed interview regarding the process on the draft statement: “Rudy discussed, Rudy Giuliani and Gordon [Sondland] and I, what it is they are looking for. And I shared that with Andriy [Yermak]. And then Andriy came back to me and said: We don’t think it’s a good idea. So that was obviously before Andriy came back and said: We don’t want to do that.” Ambassador Volker further elaborated: “So the Ukrainians were saying that just coming out of the blue and making a statement didn’t make any sense to them. If they’re invited to come to the White House on a specific date for President Zelensky’s visit, then it would make sense for President Zelensky to come out and say something, and it would be a much broader statement about a reboot of U.S.-Ukraine relations, not just on we’re investigating these things [2016/Burisma].”)

175. *Deposition of: William B. Taylor*, *supra* note 113, at 190.

176. *Id.* at 36.

177. *Id.*

178. *Id.* at 39–40.

179. *Deposition of: David A. Holmes Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 28 (2019).

180. *Deposition of: William B. Taylor*, *supra* note 113, at 39. (For instance, Ambassador Taylor testified that he spoke to Sondland by phone and that Sondland, “said he had talked to President Trump . . . Trump was adamant that President Zelensky himself had to clear things up and do it in public.”); *Impeachment Inquiry: Ambassador Gordon Sondland*, *supra* note 114, at 109. (Ambassador Sondland did not dispute Taylor’s characterization of these accounts.)

181. *Impeachment Inquiry: Ambassador Gordon Sondland*, *supra* note 114, at 19.

182. *Impeachment Inquiry: Ambassador William B. Taylor and Mr. George Kent*, *supra* note 129, at 44.

183. *Id.* at 44, 46.

184. Letter from Whistleblower to Adam Schiff, Chairman, H. Perm. Select Comm. on Intelligence, and Richard Burr, Chairman, S. Select Comm. on Intelligence (August 12, 2019).

185. *Id.*

186. Michael S. Schmidt, Julian E. Barnes, and Maggie Haberman, *Trump Knew of Whistleblower Complaint When He Released Aid to Ukraine*, N.Y. Times, Nov. 26, 2019, <https://www.nytimes.com/2019/11/26/us/politics/trump-whistle-blower-complaint-ukraine.html>.

187. Letter from Michael K. Atkinson, Inspector General, the Intelligence Community, to Adam Schiff, Chairman, House Perm. Select Comm. on Intelligence, and

Devin Nunes, Ranking Member, House Perm. Select Comm. on Intelligence (Sep. 9, 2019).

188. Press Release, H. Perm. Select Comm. on Intelligence, Three House Committees Launch Wide-Ranging Investigation into Trump-Giuliani Ukraine Scheme (Sept. 9, 2019). (On September 9, 2019, the House Foreign Affairs Committee, in conjunction with the House Permanent Select Committee on Intelligence, and House Committee on Oversight and Government Reform launched “a wide-ranging investigation into reported efforts by President Trump, the President’s personal lawyer Rudy Giuliani, and possibly others to pressure the government of Ukraine to assist the President’s reelection campaign.”)

189. See Just Security Releases, *supra* note 126, at 1.

190. Kenneth P. Vogel & Benjamin Novak, *Giuliani, Facing Scrutiny, Travels to Europe to Interview Ukrainians*, N.Y. Times, Dec. 4, 2019, <https://www.nytimes.com/2019/12/04/us/politics/giuliani-europe-impeachment.html>.

(For instance, Mr. Giuliani met with Mr. Shokin in Ukraine as part of a trip to generate additional information on the Bidens and 2016 election collusion. According to the *New York Times*, Giuliani’s trip was intended “to help prepare more episodes of a documentary series for a conservative television outlet promoting his pro-Trump, anti-impeachment narrative.”)

191. Opinion Memorandum of United States Senator John F. Reed, *supra* note 38, at 3.

192. *Id.* at 9

193. *Deposition of: Lieutenant Colonel Alexander S. Vindman*, *supra* note 166, at 18.

194. *Impeachment Inquiry: Ms. Jennifer Williams and Lieutenant Colonel Alexander Vindman*, *supra* note 123, at 15.

195. *Deposition of: Jennifer Williams Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 149 (2019).

196. *Deposition of: Lieutenant Colonel Alexander S. Vindman*, *supra* note 166, at 97; *Deposition of: Tim Morrison*, *supra* note 168, at 16.

197. Letter from Whistleblower, *supra* note 184, at 3.

198. Letter from John C. Rood, Under Secretary of Defense, U.S. Department of Defense, to Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs (May 23, 2019).

199. *Deposition of: Laura Katherine Cooper*, *supra* note 134, at 49. (Ms. Cooper testified that the officials present at the July 26 meeting did not consider corruption to be a legitimate reason for the hold because they unanimously agreed that Ukraine was making sufficient progress on anti-corruption reforms, as certified by the Defense Department on May 23, 2019.)

200. *Deposition of: William B. Taylor*, *supra* note 113, at 28.

201. Memorandum from The White House of President Trump’s Telephone Conversation with President-Elect Zelenskyy of Ukraine (Apr. 21, 2019); Memorandum from The White House of President Trump’s Telephone Conversation with President Zelenskyy of Ukraine (July 25, 2019).

202. *Impeachment Inquiry: Ms. Jennifer Williams and Lieutenant Colonel Alexander Vindman*, *supra* note 123, at 24–25. (Lt. Col. Vindman testified that recommended talking points for the April 21 call included rooting out corruption.); See Memorandum from The White House of President Trump’s Telephone Conversation with President-Elect Zelenskyy of Ukraine (Apr. 21, 2019). (The memorandum of telephone call from April 21 shows the issue was not raised.); *Impeachment Inquiry: Ms. Jennifer Williams and Lieutenant Colonel Alexander Vindman*, *supra* note 123, at 31. (Lt. Col Vindman further testified that he prepared the President’s talking points for his July 25th phone call with President Zelensky and the topics for that call included, “cooperation on supporting a reform agenda, anticorruption efforts, and helping President Zelensky implement his plans to end Russia’s war against Ukraine.”); Memorandum from The White House of President Trump’s Telephone Conversation with President Zelenskyy of Ukraine (July 25, 2019). (The memorandum of telephone call from July 25, 2019, indicates that the President did not raise these issues.); *Impeachment Inquiry: Kurt Volker and Timothy Morrison*, *supra* note 117, at 34. (NSC official Morrison testified that references to CrowdStrike, the DNC server, and 2016 election, and to Vice President Biden and his son, were not included in the President’s talking points as written by the NSC.)

203. *Deposition of: Tim Morrison*, *supra* note 168, at 41.

204. See further discussion of this topic on pages 22–23.

205. See further discussion of this topic on page 23.

206. *Impeachment Inquiry: Ambassador Marie “Masha” Yovanovitch Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 115 (2019). (For instance, during her testimony, Ambassador Yovanovitch was asked whether it was appropriate to

investigate corruption including a potentially corrupt company such as Burisma. Ambassador Yovanovitch responded: “I think it’s appropriate if it’s part of our national strategy. What I would say is that we have a process for doing that. It’s called the Mutual Legal Assistance Treaty. We have one with Ukraine, and generally it goes from our Department of Justice to the Ministry of Justice in the country of interest.”); *Interview of: George Kent, supra* note 63, at 158. (Deputy Assistant Secretary Kent, a career diplomat and recognized expert on anti-corruption measures stated in his deposition: “. . . if there’s any criminal nexus for any activity involving the U.S., that U.S. law enforcement by all means should pursue that case, and if there’s an international connection, that we have mechanisms to ask either through Department of Justice MLAT in writing or through the presence of individuals representing the FBI, our legal attaches, to engage foreign governments directly based on our concerns that there had been some criminal act violating U.S. law.”)

207. Memorandum from The White House of President Trump’s Telephone Conversation with President Zelensky of Ukraine (July 25, 2019).

208. Caitlin Oprysko, *Trump pressed Ukraine’s president to work with Barr for dirt on Biden*, Politico, Sep. 25, 2019, <https://www.politico.com/story/2019/09/25/white-house-releases-transcript-of-trumps-call-with-ukraines-president-1510767>.

209. *Interview of: Kurt Volker, supra* note 94, at 191. (Ambassador Volker testified that “Andriy [Yermak, President Zelensky’s close aide] asked whether any request had ever been made by the U.S. to investigate election interference in 2016.” Ambassador Volker confirmed in his testimony that Yermak’s inquiry equated to “a request from the Department of Justice.”)

210. *Interview of: Kurt Volker, supra* note 94, at 199. (Ambassador Volker testified that to his knowledge there was not an official United States Department of Justice request.)

211. European Union External Action, EU-Ukraine Relations—Factsheet (Jan. 28, 2020), <https://eeas.europa.eu/headquarters/headquarters-homepage/en/4081/%20EU-Ukraine%20relations%20-%20factsheet>; Iain King, Not Contributing Enough? A Summary of European Military and Development Assistance to Ukraine Since 2014 (Ctr. for Strategic & Int’l Studies, Sept. 26, 2019), <https://www.csis.org/analysis/not-contributing-enough-summary-european-military-and-development-assistance-ukraine-2014>.

212. See further discussion of this topic at page 21.

213. *Id.*

214. *Deposition of: Mark Sandy Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 143 (2019). (Mr. Sandy testified that OMB Official Mike Duffey, “simply said, we need to let the hold take place . . . and then revisit this issue with the President.”)

215. *Id.* at 179. (Mr. Sandy responded “that’s correct” to the question: “at some point in early September, Mr. Blair stopped by your office and told you that the reason for the hold was out of concern that the United States gives more aid to Ukraine than other countries? Or, rather, that other countries should give more as well.”)

216. *Id.* at 180.

217. U.S. Govt. Accountability Office, *supra* note 137.

218. Kate Brannen, *Exclusive: Unredacted Ukraine Documents Reveal Extent of Pentagon’s Level Concerns*, Just Security, Jan. 2, 2020, <https://www.justsecurity.org/67863/exclusive-unredacted-ukraine-documents-reveal-extent-of-pentagons-legal-concerns/>.

219. *Deposition of: Laura Katherine Cooper, supra* note 134, at 79–81.

220. *Id.* at 80–81.

221. Office of the Director of National Intelligence, National Intelligence Council, *supra* note 63.

222. Staff of the S. Select Comm. on Intelligence, 115th Cong., Rep. on The Intelligence Community Assessment: Assessing Russian Activities and Intentions in Recent U.S. Elections 2 (Comm. Print 2018). (On July 3, 2018, the Senate Select Committee on Intelligence announced that they had concluded an in-depth review of the Intelligence Committee’s January 6, 2017, assessment and concluded that the assessment “is a sound intelligence product.”)

223. 1 Mueller, *supra* note 60, at 1. (Special Counsel Mueller concluded “the Russian government interfered . . . in sweeping and systematic fashion.”)

224. *Impeachment Inquiry: Fiona Hill and David Holmes, supra* note 57 (statement of Dr. Fiona Hill).

225. *Impeachment Inquiry: Ambassador Kurt Volker and Timothy Morrison, supra* note 117, at 11.

226. *Id.*

227. *Impeachment Inquiry: Ambassador William B. Taylor and Mr. George Kent*, *supra* note 129, at 169–170.
228. *Id.* at 57.
229. *Id.* at 54.
230. *Id.* at 45.
231. *Interview of: Kurt Volker*, *supra* note 94, at 15.
232. *Interview of: George Kent*, *supra* note 63, at 114.
233. 165 Cong. Rec. 205, H12193 (daily ed. Dec. 18, 2019) (statement of Rep. Adam Schiff).
234. H.R. Res. 755, 116th Cong. Art. II (2019).
235. *Id.*
236. *See generally* The Federalist Paper No. 47 (James Madison) (Jacob E. Cooke ed., 1961); The Federalist Paper No. 48 (James Madison) (Jacob E. Cooke ed., 1961); The Federalist Paper No. 49 (James Madison) (Jacob E. Cooke ed., 1961); The Federalist Paper No. 50 (James Madison) (Jacob E. Cooke ed., 1961); The Federalist Paper No. 51 (James Madison) (Jacob E. Cooke ed., 1961). (Federalist Papers No. 47 through No. 51 explain how the Executive, Legislative, and Judicial Branches were to be wholly separated from each other, yet accountable to each other through a system of checks and balances.); *See also* *Nixon v. Administrator of General Services*, 433 U.S. 425, 426 (1977). (In *Nixon v. GSA*, the Supreme Court articulated the test for a violation of the separation of powers as occurring when the action of one branch “prevents [another branch] from accomplishing its constitutionally assigned functions.”)
237. U.S. Const. art. II, § 3.
238. *McGrain v. Daugherty*, 273 U.S. 135, 174–175 (1927). (“A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—with enforcing process—was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed, was treated as inhering in it. Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised.”)
239. *Kilbourn v. Thompson*, 103 U.S. 168, 190 (1880).
240. U.S. Const. art. I, § 2, cl. 5.
241. Frank O. Bowman III, *High Crimes & Misdemeanors: A History of Impeachment for the Age of Trump 199–200* (2019). (“The subpoena power in impeachment cases arises directly from an explicit constitutional directive that the House conduct an adjudicative proceeding akin to a grand jury, the success of which is necessarily dependent on the availability of relevant evidence. Without the power to compel compliance with subpoenas and the concomitant right to impeach a president for refusal to comply, the impeachment power would be nullified.”)
242. Cong. Globe, 27th Cong., 2d Sess. 580 (1842) (statement of Rep. John Quincy Adams).
243. H.R. Rep. 93–1305, at 4 (1974).
244. H.R. Res. 660, 116th Cong. (2019).
245. Press Release, H. Perm. Select Comm. on Intelligence, Three House Committees Launch Wide-Ranging Investigation into Trump-Giuliani Ukraine Scheme (Sept. 9, 2019).
246. Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs, et al., to Pat Cipollone, Counsel to the President, The White House, (Sep. 9, 2019).
247. Nancy Pelosi, Speaker, U.S. House of Representatives, Impeachment Inquiry Announcement (Sep. 24, 2019).
248. Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, et al., to John Michael Mulvaney, Acting Chief of Staff to the President, The White House (Oct. 4, 2019).
249. Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs, et al., to Michael R. Pompeo, Secretary, U.S. Department of State (Sept. 27, 2019); Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs, et al., to T. Ulrich Brechbuhl, Counselor, U.S. Department of State (Oct. 25, 2019).
250. Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Mark T. Esper, Secretary, U.S. Department of Defense (Oct. 7, 2019).

251. Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Russell T. Vought, Acting Director, U.S. Office of Management and Budget (Oct. 7, 2019); Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs, et al., to Russell T. Vought, Acting Director, U.S. Office of Management and Budget (Oct. 25, 2019); Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs, et al., to Michael Duffey, Associate Director for National Security Programs, U.S. Office of Management and Budget (Oct. 25, 2019).

252. Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs, et al., to James Richard “Rick” Perry, Secretary, U.S. Department of Energy (Oct. 10, 2019).

253. Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Rudolph “Rudy” W. L. Giuliani, Giuliani Partners LLC (Sept. 30, 2019).

254. H.R. Rep. No. 116–266, at 3 (2019).

255. Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Paul W. Butler, Esq., Counsel to Michael Ellis, Senior Associate Counsel to the President, The White House, and Deputy Legal Advisor, National Security Council (Nov. 3, 2019); Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Karen Williams, Esq., Counsel to Preston Wells Griffith, Senior Director for International Energy and Environment, National Security Council (Nov. 4, 2019).

256. Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Whitney C. Ellerman, Counsel to Robert B. Blair, Assistant to the President and Senior Advisor to the Chief of Staff, The White House (Nov. 3, 2019); H. Perm. Select Comm. on Intelligence, Subpoena to John Michael Mulvaney, Acting Chief of Staff, The White House (Nov. 7, 2019).

257. Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs, et al., to Brian McCormack, Associate Director for Natural Resources, Energy and Science, U.S. Office of Management and Budget (Nov. 1, 2019).

258. Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Justin Shur, Esq., Counsel to Jennifer Williams, Special Advisor for Europe and Russia, Office of the Vice President (Nov. 4, 2019); H. Perm. Select Comm. on Intelligence, Subpoena to Jennifer Williams, Special Advisor for Europe and Russia, Office of the Vice President (Nov. 19, 2019).

259. Letter from Pat A. Cipollone, Counsel to the President, The White House, to Nancy Pelosi, Speaker, U.S. House of Representatives, et al. 7 (Oct. 8, 2019).

260. Jordyn Phelps, *We’re Fighting All the Subpoenas: Trump on Battle with House Democrats*, ABC News, Apr. 24, 2019, <https://abcnews.go.com/Politics/fighting-subpoenas-trump-battle-democrats/story?id=62600497>.

261. Donald J. Trump (@realDonaldTrump), Twitter (Oct. 3, 2019, 9:04 PM), <https://twitter.com/realDonaldTrump/status/1179925259417468928?s=20>.

262. Staff of H. Perm. Select Comm. on Intelligence, 116th Cong., Rep. on The Trump-Ukraine Impeachment Inquiry 220–224 (Comm. Print 2019).

263. *Id.* at 219–220.

264. *Id.* at 226–227.

265. *Id.* at 224–226.

266. Memorandum from The White House of President Trump’s Telephone Conversation with President-Elect Zelenskyy of Ukraine (Apr. 21, 2019).

267. Memorandum from The White House of President Trump’s Telephone Conversation with President Zelenskyy of Ukraine (July 25, 2019).

268. Donald Trump, President, United States of America, Remarks by President Trump and President Niinist of the Republic of Finland in Joint Press Conference (Oct., 2, 2019). (On October 2, 2019, President Trump stated, “All because they didn’t know that I had a transcript done by very, very talented people—word for word, comma for comma. Done by people that do it for a living. We had an exact transcript.”)

269. *Deposition of: Lieutenant Colonel Alexander S. Vindman*, *supra* note 166, at 53–55.

270. H.R. Rep. No. 116–346, at 134–135 (2019). (The following Trump Administration officials defied congressional subpoenas directing them to testify in the impeachment inquiry: John Michael Mulvaney, Acting Chief of Staff to the President, The White House; Robert B. Blair, Assistant to the President and Senior Advisor to the Chief of Staff, The White House; John A. Eisenberg, Deputy Counsel to the President for National Security Affairs, the White House and Legal Advisor, National Security Council; Michael Ellis, Senior Associate Counsel to the President, The White House, and Deputy Legal Advisor, National Security Council; Preston Wells Griffith, Senior Director for International Energy and Environment, National Security Council; Russell T. Vought, Acting Director, Office of Management and

Budget; Michael Duffey, Associate Director for National Security Programs, Office of Management and Budget; Brian McCormack, Associate Director for Natural Resources, Energy and Science, Office of Management and Budget, and former Chief of Staff to Secretary, U.S. Department of Energy; and T. Ulrich Brechbuhl, Counselor, Department of State).

271. Staff of H. Perm. Select Comm. on Intelligence, 116th Cong., Rep. on The Trump-Ukraine Impeachment Inquiry 222–224 (Comm. Print 2019).

272. *Id.* at 225.

273. *Id.* at 226–227.

274. *Id.* at 25, 108–109, 134–135, 137–138.

275. Donald J. Trump (@realDonaldTrump), Twitter (Oct. 8, 2019, 9:23 AM), <https://twitter.com/realDonaldTrump/status/1181560772255719424>. (Ten days before Ambassador Sondland's deposition before the House Permanent Select Committee on Intelligence, the President issued two tweets, indicating that Ambassador Sondland should not cooperate because he had done nothing wrong: "I would love to send Ambassador Sondland, a really good man and great American, to testify, but unfortunately he would be testifying before a totally compromised kangaroo court, where Republican's rights have been taken away, and true facts are not allowed out for the public. . . . to see. Importantly, Ambassador Sondland's tweet, which few report, stated, I believe you are incorrect about President Trump's intentions. The President has been crystal clear: no quid pro quo's of any kind.' That says it ALL!")

276. Donald J. Trump (@realDonaldTrump), Twitter (Oct. 23, 2019, 2:58 PM), <https://twitter.com/realdonaldtrump/status/1187080923961012228?lang=en>. (The day after Ambassador Taylor's October 22, 2019, deposition before the House Permanent Select Committee on Intelligence, President Trump suggested that Ambassador Taylor's testimony was politically motivated: "Never Trumper Republican John Bellinger, represents Never Trumper Diplomat Bill Taylor (who I don't know), in testimony before Congress! Do Nothing Democrats allow Republicans Zero Representation, Zero due process, and Zero Transparency. . . .")

277. Donald J. Trump (@realDonaldTrump), Twitter (Nov. 15, 2019, 10:01 AM), <https://twitter.com/realDonaldTrump/status/1195356211937468417>. (The morning of her hearing on November 15, 2019, President Trump issued a series of disparaging, accusatory tweets saying: "Everywhere Marie Yovanovitch went turned bad. She started off in Somalia, how did that go? Then fast forward to Ukraine, where the new Ukrainian President spoke unfavorably about her in my second phone call with him. It is a U.S. President's absolute right to appoint ambassadors. . . . They call it "serving at the pleasure of the President." The U.S. now has a very strong and powerful foreign policy, much different than proceeding administrations. It is called, quite simply, America First! With all of that, however, I have done FAR more for Ukraine than O.")

278. The White House (@WhiteHouse), Twitter (Nov. 19, 2019, 12:49 PM), <https://twitter.com/whitehouse/status/1196848072929796096?lang=en>. (During the hearing of Lt. Col Vindman on November 19, 2019, the official White House twitter account tweeted the following message, suggesting that Lt. Col. Vindman was not a reliable witness: "Tim Morrison, Alexander Vindman's former boss, testified in his deposition that he had concerns about Vindman's judgment.")

279. Donald J. Trump (@realDonaldTrump), Twitter (Nov. 17, 2019, 2:57 PM), <https://twitter.com/realdonaldtrump/status/1196155347117002752?lang=en>. (On Sunday, November 17, 2019, two days before Ms. Williams scheduled hearing before the House Permanent Select Committee on Intelligence on November 19, the President attempted to influence her testimony by tweeting: "Tell Jennifer Williams, whoever that is, to read BOTH transcripts of the presidential calls, & see the just released statement (sic) from Ukraine. Then she should meet with the other Never Trumpers, who I don't know & mostly never even heard of, & work out a better presidential attack!")

280. Trial Memorandum of President Donald J. Trump, *supra* note 25, at 37.

281. Staff of H. Perm. Select Comm. on Intelligence, 116th Cong., Rep. on The Trump-Ukraine Impeachment Inquiry 235–236, 239–241, 243–250 (Comm. Print 2019). (From the Department of State, that included Marie Yovanovitch, Gordon Sondland, George Kent, William Taylor, and T. Ulrich Brechbuhl. From the Department of Defense, that included Laura Cooper. In addition, the White House directed Charles Kupperman not to cooperate.)

282. *See* *Watkins v. United States*, 354 U.S. 178, 187 (1957). (Even in exercising its ordinary oversight powers, the Supreme Court held in *Watkins v. United States* that "[t]he power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of ena-

bling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste.”)

283. *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927). (The Supreme Court in *McGrain v. Daugherty* elaborated on Congress’ occasional need to compel information, writing that “A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed.”); *See also* *Watkins v. United States*, 354 U.S. 178, 187–95 (1957); *See also* *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 504–05 (1975).

284. H.R. Doc. No. 115-77, at 586–588 (2019).

285. *Watkins v. United States*, 354 U.S. 178, 179 (1957). (The Supreme Court held in *Watkins* that “In authorizing an investigation by a committee, it is essential that the Senate or House should spell out the committee’s jurisdiction and purpose with sufficient particularity to insure that compulsory process is used only in furtherance of a legislative purpose.” As such, the Court also held that “a congressional investigation into individual affairs is invalid if unrelated to any legislative purpose, because it is beyond the powers conferred upon Congress by the Constitution.”)

286. Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Paul W. Butler, Esq., Counsel to Michael Ellis, Senior Associate Counsel to the President, The White House, and Deputy Legal Advisor, National Security Council (Nov. 3, 2019); Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Karen Williams, Esq., Counsel to Preston Wells Griffith, Senior Director for International Energy and Environment, National Security Council (Nov. 4, 2019); Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Whitney C. Ellerman, Counsel to Robert B. Blair, Assistant to the President and Senior Advisor to the Chief of Staff, The White House (Nov. 3, 2019); H. Perm. Select Comm. on Intelligence, Subpoena to John Michael Mulvaney, Acting Chief of Staff, The White House (Nov. 7, 2019); Letter from Eliot L. Engel to Brian McCormack, *supra* note 257; Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs, et al., to John A. Eisenberg, Deputy Counsel to the President for National Security Affairs, the White House and Legal Advisor, National Security Council (Nov. 1, 2019); H.R. Rep. No. 116–346, at 134–135 (2019).

287. Letter from Pat A. Cipollone to Nancy Pelosi, *supra* note 259, at 2.

288. Donald Trump, President, United States of America, Remarks by President Trump in Press Conference, Davos, Switzerland (Jan. 22, 2020).

289. *United States v. Nixon*, 418 U.S. 683, 706 (1974).

290. *Id.* at 706, 713. (Dicta from *United States v. Nixon* further suggests that a claim of confidentiality of presidential communications would be stronger if a need to protect military, diplomatic, or sensitive national security secrets is claimed.)

291. Senate Select Comm. on Presidential Campaign Activities v. Nixon, 498 F.2d 725, 730 (D.C. Cir. 1974).

292. *Id.* at 731.

293. Letter from Pat A. Cipollone to Nancy Pelosi, *supra* note 259, at 2.

294. *See* The Federalist No. 66, at 446 (Alexander Hamilton) (Jacob E. Cooke ed., 1961). (The Framers created impeachment as an “essential check in the hands of [Congress] upon the encroachments of the executive” and to ensure that the President could not be above the law.)

295. Comm. on the Judiciary, U.S. House of Representatives v. Miers, 558 F. Supp. 2d 53, 102–103 (2008). (“Congress’s power of inquiry is as broad as its power to legislate and lies at the very heart of Congress’s constitutional role. Indeed, the former is necessary to the proper exercise of the latter: according to the Supreme Court, the ability to compel testimony is “necessary to the effective functioning of courts and legislatures . . . . Thus, Congress’s use of (and need for vindication of) its subpoena power in this case is no less legitimate or important than was the grand jury’s in *United States v. Nixon*. Both involve core functions of a co-equal branch of the federal government, and for the reasons identified in *Nixon*, the President may only be entitled to a presumptive, rather than an absolute, privilege here. And it is certainly the case that if the President is entitled only to a presumptive privilege, his close advisors cannot hold the superior card of absolute immunity.”)

296. Comm. on Judiciary, U.S. House of Representatives v. McGahn, \_\_\_ F. Supp. 3d \_\_\_, No. 19–cv–2379 (KBJ), 2019 WL 6312011 (D.D.C. Nov. 25, 2019) (Ketanji Brown Jackson, J.) (Rejecting the Department of Justice’s argument that presi-

dential advisors like Don McGahn enjoy absolute immunity from compelled congressional testimony.)

297. William French Smith, *Assertion of Executive Privilege in Response to a Congressional Subpoena* in Opinions of the Legal Counsel, Department of Justice 31 (October 13, 1981) (“The accommodation required is not simply an exchange of concessions or a test of political strength. It is an obligation of each branch to make a principled effort to acknowledge, and if possible to meet, the legitimate needs of the other branch.”)

298. *United States v. AT&T Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977).

299. See e.g. Neal Devins, *Congressional-Executive Information Access Disputes: A Modest Proposal—Do Nothing*, 48 Admin. L. Rev. 109, 116 (1996).

300. See *id.* at 122, 125. (“Types of intermediate options [when there are executive privilege claims] include the executive providing the requested information in timed stages, the executive releasing expurgated or redacted versions of the information, the executive preparing summaries of the information, Congress promising to maintain confidentiality regarding the information, and Congress inspecting the material while it remains in executive custody.”)

301. William P. Barr, *Congressional Requests for Confidential Executive Branch Information* in Opinions of the Legal Counsel, Department of Justice 153, 162 (June 19, 1989).

302. See John E. Bies, *Primer on Executive Privilege and the Executive Branch Approach to Congressional Oversight*, Lawfare, June 16, 2017, <https://www.lawfareblog.com/primer-executive-privilege-and-executive-branch-approach-congressional-oversight>. (“If negotiations reach a standstill and these officials conclude that the circumstances warrant invocation of executive privilege, they prepare materials for the White House counsel to present the issue to the president for his or her decision. Traditionally, this presentation involves a memorandum from the head of the agency that received the congressional request explaining the information sought by Congress, why the information is privileged, and the efforts that the agency has made to date to accommodate the congressional request; a memorandum from the attorney general evaluating the legal basis for a privilege assertion over the requested information, including whether the qualified privilege might be overcome in the balancing of interests and needs; and the White House counsel’s recommendation to the president. Pending the president’s decision, the agency is directed to ask Congress to hold the request in abeyance, and to explain that this is simply to protect the president’s ability to assert the privilege and does not itself constitute a claim of privilege.”)

303. 166 Cong. Rec. 16, S575 (daily ed. Jan. 25, 2020) (Statement of Mr. Counsel Philbin).

304. Trial Memorandum of President Donald J. Trump, *supra* note 25, at 75.

305. Alison Durkee, *Lev Parnas: Trump “Knew Exactly What Was Going On” in Ukraine*, Vanity Fair, Jan. 6, 2020, <https://www.vanityfair.com/news/2020/01/lev-parnas-maddow-ukraine-trump>; Olivia Rubin & Soo Rin Kim, *Giuliani’s Associate Lev Parnas Speaks Again: ‘It Was All About 2020.’*, ABC News, Jan. 17, 2020, <https://abcnews.go.com/Politics/giulianis-associate-lev-parnas-speaks-2020/story?id=68340258>.

306. Maggie Haberman & Michael S. Schmidt, *Trump Told Bolton to Help His Ukraine Pressure Campaign, Book Says*, N.Y. Times, Jan. 31, 2020, <https://www.nytimes.com/2020/01/31/us/politics/trump-bolton-ukraine.html>.

307. Adam Edelman, *Lev Parnas, the Indicted Associate of Giuliani, Tries to Attend Trump Impeachment Trial*, NBC News, Jan. 29, 2020, <https://www.nbcnews.com/politics/trump-impeachment-inquiry/lev-parnas-indicted-associate-giuliani-tries-attend-trump-impeachment-trial-n1125601>; Nicholas Fandos & Michael S. Schmidt, *Bolton is Willing to Testify in Trump Impeachment Trial, Raising Pressure for Witnesses*, N.Y. Times, Jan. 6, 2020, <https://www.nytimes.com/2020/01/06/us/politics/bolton-testify-impeachment-trial.html>.

308. Fred Barbash, *Trump Denies Telling Bolton that Ukraine Aid was Tied to Investigations, as Explosive Book Claiming Otherwise Leaks*, Washington Post, Jan. 27, 2020, <https://www.washingtonpost.com/nation/2020/01/27/trump-bolton-ukraine/>; Justin Wise, *Trump Again Denies Knowing Lev Parnas: ‘He’s a Con Man,’*, The Hill, Jan. 22, 2020, <https://thehill.com/homenews/administration/479317-trump-again-denies-knowing-lev-parnas-hes-a-conman>.

309. Caitlin Oprysko, *Trump Suggests He’d Invoke Executive Privilege to Block Bolton Testimony*, Politico, Jan. 10, 2020, <https://www.politico.com/news/2020/01/10/trump-john-bolton-testimony-097349>.

310. Trial Memorandum of President Donald J. Trump, *supra* note 25, at 40.

311. Bowman, *supra* note 241, at 164–165.

312. H.R. Rep. No. 93–1305, at 6 (1974).

313. U.S. Const. art. I, § 3, cl. 6.
314. Todd Garvey, Cong. Research Serv., R45983, Congressional Access to Information in an Impeachment Investigation 21 (2019).
315. Comm. on Judiciary, U.S. House of Representatives v. McGahn, \_\_\_ F. Supp. 3d \_\_\_, No. 19-cv-2379 (KBJ) 57-58, 2019 WL 6312011 (D.D.C. Nov. 25, 2019) (Ketanji Brown Jackson, J.).
316. *Id.* at 59.
317. 2 The Records of the Federal Convention of 1787, *supra* note 12, at 65.
318. *Id.* at 64.
319. *Id.*
320. Letter from Pat A. Cipollone to Nancy Pelosi, *supra* note 259, at 4.
321. Hebert v. State of La., 272 U.S. 312, 316-317 (1926).
322. H.R. Rep. No. 105-795, at 25-26 (1998).
323. H.R. Rep. No. 116-346, at 17-19 (2019).
324. Staff of H. Comm on the Judiciary, 93rd Cong., Impeachment Inquiry Procedures 1-2 (Comm. Print 1974).
325. H.R. Rep. No. 116-266, at 9-11 (2019).
326. Letter from Jerrold Nadler, Chairman, H. Comm. on the Judiciary, to Donald Trump, President, United States of America (Nov. 29, 2019).
327. Letter from Pat A. Cipollone, Counsel to the President, The White House, to Jerrold Nadler, Chairman, H. Comm. on the Judiciary (Dec. 6, 2019).
328. Trial Memorandum of the United States House of Representatives, *supra* note 66, at SMF 58.
329. 166 Cong. Rec. 12, S381-S382 (daily ed. Jan. 21, 2020) (statement of Mr. Manager Schiff).
330. Claudia Grisales & Kelsey Snell, *After Pressure, McConnell Makes Last-Minute Changes to Impeachment Trial Procedure*, NPR, Jan. 20, 2020, <https://www.npr.org/2020/01/20/798007597/read-mcconnell-lays-out-plan-for-senate-impeachment-trial-procedure>; See S. Res. 483, 116th Cong. (2019).
331. Claudia Grisales & Kelsey Snell, *After Pressure, McConnell Makes Last-Minute Changes to Impeachment Trial Procedure*, NPR, Jan. 20, 2020, <https://www.npr.org/2020/01/20/798007597/read-mcconnell-lays-out-plan-for-senate-impeachment-trial-procedure>.
332. S. Res. 483, 116th Cong. (2019).
333. *Id.*
334. See S. Amdt. 1284 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1285 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1286 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1287 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1288 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1289 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1290 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1291 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1292 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1293 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1294 to S. Res. 483, 116th Cong. (2020). (These amendments included: subpoenas for relevant documents held by the White House related to meetings and calls between President Trump and the President of Ukraine; subpoenas compelling the Secretary of State, Acting Director of the Office of Management and Budget, and Secretary of Defense to produce documents and records related to the July 25 phone call between President Trump and the Ukrainian President and records related to the freezing of assistance to Ukraine; and subpoenas for the testimony of Acting Chief of Staff Mick Mulvaney and Ambassador John Bolton, both of whom have significant firsthand knowledge of the events that are the subject of this impeachment trial. Other amendments sought to ensure that there would be votes on motions to subpoena witnesses, provide additional time to respond to motions, and require the Chief Justice to rule on motions to subpoena witnesses and documents.)
335. 166 Cong. Rec. 12, S385-S431 (Jan. 21, 2020).
336. 166 Cong. Rec. 21, S766-S769 (daily ed. Jan. 31, 2020).
337. *Id.*
338. Nicholas Fandos, *McConnell Says He Will Proceed on Impeachment Trial Without Witness Deal*, N.Y. Times, Jan. 7, 2020, <https://www.nytimes.com/2020/01/07/us/politics/impeachment-trial-witnesses.html>.
339. H.R. Rep. 116-346, at 20, 24 (2019).
340. Opinion Memorandum of United States Senator John F. Reed, *supra* note 38, at 4.
341. *Id.*
342. 166 Cong. Rec. 19, S650-S651 (daily ed. Jan. 29, 2020) (statement of Mr. Counsel Dershowitz).
343. 166 Cong. Rec. 17, S614 (daily ed. Jan. 27, 2020) (statement of Mr. Counsel Dershowitz). (In response to the report in the New York Times on January 26, 2020,

that the manuscript of a book by former National Security Adviser John Bolton contends that President Trump directly tied the freeze on security assistance for Ukraine to Ukraine agreeing to conduct investigations into the 2016 campaign and Biden/Burisma theories, defense counsel Alan Dershowitz argued that “if a President-any President-were to have done what ‘The Times’ reported about the content of the Bolton manuscript, that would not constitute an impeachable offense. Let me repeat it. Nothing in the Bolton revelations, even if true, would rise to the level of an abuse of power or an impeachable offense . . . You cannot turn conduct that is not impeachable into impeachable conduct simply by using words like ‘quid pro quo’ and ‘personal benefit.’”)

344. Ashley Parker & David E. Sanger, *Donald Trump Calls on Russia to Find Hillary Clinton’s Missing Emails*, N.Y. Times, July 27, 2016, <https://www.nytimes.com/2016/07/28/us/politics/donald-trump-russia-clinton-emails.html>.

345. I Mueller, *supra* note 60, at 5. (The Special Counsel’s investigation concluded that, “[t]he presidential campaign of Donald J. Trump . . . showed interest in WikiLeaks’s releases of documents and welcomed their potential to damage candidate Clinton.”)

346. Interview by George Stephanopoulos with Donald Trump, President, United States of America, in Washington, D.C. (June 16, 2019).

347. Peter Baker & Eileen Sullivan, *Trump Publicly Urges China to Investigate the Bidens*, N.Y. Times, Oct. 3, 2019, <https://www.nytimes.com/2019/10/03/us/politics/trump-china-bidens.html>.

348. *See* discussion at page 21.

349. Donald J. Trump (@realDonaldTrump), Twitter (Jan. 16, 2020, 3:39 PM), <https://twitter.com/realDonaldTrump/status/1217909231946477575?s=20>. (President Trump has repeatedly claimed that his call with President Zelensky on July 25 was perfect. For example, on January 16, 2020 President Trump tweeted, “I JUST GOT IMPEACHED FOR MAKING A PERFECT PHONE CALL!”)

350. The Federalist No. 68, at 459 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).

351. Letter from John Adams to Thomas Jefferson (Dec. 6, 1787).

352. Ellen L Weintraub (@EllenLWeintraub), Twitter (June 13, 2019, 7:11 PM), <https://twitter.com/EllenLWeintraub/status/1139309394968096768/photo/1>. (In response to President Trump’s statement to George Stephanopoulos that he would consider taking information from a foreign government on one of his political opponents, Ellen Weintraub, Chair, Federal Election Commissioner, wrote, “Let me make something 100% clear to the American public and anyone running for public office: It is illegal for any person to solicit, accept, or receive anything of value from a foreign national in connection with a U.S. election. This is not a novel concept. Electoral intervention from foreign governments has been considered unacceptable since the beginning of our nation. Our Founding Fathers sounded the alarm about ‘foreign interference, intrigue and influence.’ They knew that when foreign governments seek to influence American politics, it is always to advance their own interests, not America’s.”)

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[From the CONGRESSIONAL RECORD, February 27, 2020]

STATEMENT OF SENATOR ROBERT P. CASEY, JR.

Mr. CASEY. Mr. President, I ask unanimous consent that the text of a more comprehensive version of my statement regarding the impeachment trial of President Donald John Trump be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT ON THE IMPEACHMENT OF PRESIDENT DONALD JOHN TRUMP

I. INTRODUCTION

Throughout this impeachment trial, I have often thought of an inscription above the front door of the Finance Building in Harrisburg, Pennsylvania from the 1930s: “All public service is a trust, given in faith and accepted in honor.”

This inscription helped me frame my own understanding of the evidence offered during this trial because I believe that President Trump and every public official

in America must earn that trust every day. That sacred trust is given to us “in faith” by virtue of our election. The question for the President—and every official—is: Will we accept that “trust” by our honorable conduct? The trust set forth in the inscription is an echo of Alexander Hamilton’s words in Federalist No. 65, where he articulated the standard for impeachment as “offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.”<sup>1</sup>

Much time has been devoted to why and how we got here. Let us make no mistake about this—we are here because of the President’s conduct. He solicited the interference of a foreign government in our next election and demanded that same government announce an investigation of his political opponent, as well as an investigation into a debunked conspiracy theory about the last presidential election.

President Trump has exhibited an unmistakable pattern of behavior that indicates a predisposition toward autocratic leadership and a willingness to embrace an agenda based on foreign propaganda, directly undermining the national interests of the United States.<sup>2</sup> The world watched President Trump stand next to Russian President Vladimir Putin in Helsinki, Finland in July 2018.<sup>3</sup> When President Trump was asked whether he believed President Putin or his intelligence agencies—all of which definitively concluded that Russia interfered in the 2016 election<sup>4</sup>—President Trump responded: “My people came to me . . . [and] said they think it’s Russia. I have President Putin. He just said it’s not Russia. I will say this: I don’t see any reason why it would be.”<sup>5</sup>

After this press conference and despite his attempts to retract his comments, President Trump faced widespread and bipartisan condemnation. Republican members of Congress called his performance “troubling,” “a step backwards,” “shameful,” “untenable,” “bizarre and flat-out wrong.”<sup>6</sup> However, only Senator John McCain offered a forceful rebuke of President Trump:

Today’s press conference in Helsinki was one of the most disgraceful performances by an American president in memory. The damage inflicted by President Trump’s naiveté, egotism, false equivalence, and sympathy for autocrats is difficult to calculate.

No prior president has ever abased himself more abjectly before a tyrant. Not only did President Trump fail to speak the truth about an adversary; but speaking for America to the world, our president failed to defend all that makes us who we are—a republic of free people dedicated to the cause of liberty at home and abroad. American presidents must be the champions of that cause if it is to succeed. Americans are waiting and hoping for President Trump to embrace that sacred responsibility. One can only hope they are not waiting totally in vain.<sup>7</sup>

Over a year and a half later, the President’s pattern of conduct has made it clear. Just as Senator McCain feared, Americans have waited in vain for President Trump to embrace—or even understand—his duties as a public servant. This President has not and never will be faithful to the “sacred responsibility” that he holds as President of the United States, nor will he ever truly honor the trust that the people placed in him.

Besides Senator McCain, Republican Senators failed to fully confront the President when he chose the word of a former KGB agent over the United States Intelligence Community. For this reason, it is unsurprising that our Nation has found itself imperiled yet again by another example of President Trump’s shameful and dishonorable conduct. In response to Republican Senators who have expressed concern about the President’s “inappropriate” conduct but have repeatedly refused to hold him accountable, I must ask: What will it take? What action will finally be so objectionable, so inappropriate to break from this President? He will not learn. He will not change. When confronted with a choice between the national interests and his personal political interests, President Trump will always choose the latter. The Senate’s failure to hold him accountable in this impeachment trial would be a stain on American history.

After a thorough, careful review of all of the available evidence in this impeachment trial, I have determined that House Managers have not only met, but exceeded, their burden of proof in this case. President Trump violated his duty as a public servant by corruptly abusing his power to solicit foreign interference in the 2020 election and by repeatedly obstructing Congress’s constitutionally-based investigation into his conduct. President Trump’s clearly established pattern of conduct indicates he will continue to be a “threat to national security and the Constitution if allowed to remain in office.”<sup>8</sup> For these reasons, I will vote “guilty” on both Article I and Article II.

## II. PROCEDURAL HISTORY

Before discussing the facts of this case, it is important to address the Senate trial itself. To ensure a full and fair trial for all parties, Senate Democrats repeatedly called for relevant witnesses and relevant documents to be subpoenaed during this trial in the Senate.<sup>9</sup> The testimonial and documentary evidence would supplement an already substantial record presented by the House Managers and ensure that this was a fair trial for all parties involved. Senate Republicans refused to allow any witnesses and documents.<sup>10</sup>

Seventy-five percent of Americans supported calling witnesses during his trial.<sup>11</sup> Unfortunately, President Trump has been calling the shots and dictating the Republican approach to this trial.<sup>12</sup> This is the third Presidential impeachment trial in our country's history, and it is the only one to be completed without calling a single witness.<sup>13</sup> In fact, every completed impeachment trial in history has included *new* witnesses that were not even originally interviewed in the House of Representatives.<sup>14</sup>

By blocking relevant witnesses and relevant documents, Senate Republicans have denied the American people the full and fair trial they deserve. It is clear that this proceeding was rigged from the start to protect President Trump rather than to hear all of the facts.

## III. MATERIAL FACTS

*Special Counsel Mueller & Russian Interference in the 2016 Presidential Election*

To fully understand the facts established by the House Managers in this case, it is necessary to first understand the context in which President Trump engaged in this behavior. In May 2017, Special Counsel Robert Mueller was appointed to investigate “the Russian government’s efforts to interfere in the 2016 presidential election,” including any links or coordination between the Russian government and individuals associated with the Trump Campaign.<sup>15</sup> Special Counsel Mueller released his comprehensive report in April 2019, which established in meticulous detail that Russian President Vladimir Putin personally directed an ongoing and systemic Russian attack in the 2016 presidential election in the United States.<sup>16</sup>

Special Counsel Mueller’s conclusions were also confirmed by the United States Intelligence Community<sup>17</sup> and the bipartisan Senate Select Committee on Intelligence.<sup>18</sup> The Mueller investigation did not find evidence that President Trump’s 2016 campaign conspired or coordinated with the Russian government, but Special Counsel Mueller did confirm that “the Russian government perceived it would benefit from a Trump presidency and worked to secure that outcome, and that the [Trump] Campaign expected it would benefit electorally from information stolen and released through Russian efforts.”<sup>19</sup> For example, then-candidate Trump declared during a public rally in July 2016: “Russia, if you’re listening, I hope you’re able to find the 30,000 emails that are missing” from then-candidate Hillary Clinton’s email server.<sup>20</sup> Russian hackers targeted Clinton’s personal server within hours of Trump’s request.<sup>21</sup> After the Mueller Report, in June 2019, President Trump was asked whether he would accept opposition research from a foreign government against his political opponent. President Trump responded “I think I’d take it.”<sup>22</sup>

Rather than embrace the Special Counsel’s investigation and condemn Russian interference in the election, President Trump reportedly tried to undermine the investigation by calling it a “witch hunt”<sup>23</sup> and a “hoax.”<sup>24</sup> In fact, in Volume II of his report, Special Counsel Mueller detailed the President’s numerous efforts to obstruct the Special Counsel’s investigation into Russian interference and his attempts to remove the Special Counsel in order to end the investigation. The Special Counsel identified ten separate episodes of potential obstruction of justice including, but not limited to: (1) President Trump firing former FBI Director James Comey;<sup>25</sup> (2) President Trump attempting to fire Special Counsel Mueller;<sup>26</sup> and (3) President Trump requesting his White House Counsel lie and publically deny that President Trump tried to fire Special Counsel Mueller.<sup>27</sup>

Neither Special Counsel Mueller nor Attorney General William Barr charged President Trump with a crime for the actions detailed in Special Counsel Mueller’s report,<sup>28</sup> in part because of a controversial Office of Legal Counsel opinion indicating that a sitting President cannot be indicted for a crime.<sup>29</sup> However, over a thousand former federal prosecutors, who served under Republican and Democratic administrations, issued a statement shortly after the release of the Special Counsel’s report that stated, in part, as follows:

Each of us believes that the conduct of President Trump described in Special Counsel Robert Mueller’s report would, in the case of any other person not covered by the Office of Legal Counsel policy against indicting a sitting President, result in multiple felony charges for obstruction of justice.<sup>30</sup>

After releasing his report in April, Special Counsel Mueller testified in front of the House Judiciary Committee and the House Intelligence Committee on July 24, 2019.<sup>31</sup> During his testimony, Special Counsel Mueller confirmed that Russia was still engaging in ongoing efforts to attack future elections and warned that the United States must “use the full resources that we have to address this” interference.<sup>32</sup> On July 25, one day after Special Counsel Mueller testified, President Trump spoke on the phone with the newly-elected President of Ukraine, President Volodymyr Zelensky.<sup>33</sup> Unknown at the time, this phone call would soon set off the comprehensive investigation leading to President Trump’s impeachment and the current trial in the Senate.

#### *Ukraine*

On April 21, 2019, several months before Special Counsel Mueller’s public testimony, Volodymyr Zelensky was elected President of Ukraine and later that day, President Trump called him to congratulate him on his victory.<sup>34</sup> On that call, President Trump extended a future invitation to the White House and he also promised that he would send a “very, very high level” representative from the United States to attend President Zelensky’s inauguration.<sup>35</sup>

Two days after President Trump’s call with President Zelensky, on April 23, media reports confirmed that former Vice President Joe Biden would enter the 2020 presidential race.<sup>36</sup> Around this time, the President’s personal attorney, Rudy Giuliani, was leading a smear campaign to tarnish and remove then-U.S. ambassador to Ukraine, Marie Yovanovitch, a respected diplomat known for advancing the United States’ anti-corruption efforts abroad.<sup>37</sup> The smear campaign was also advanced by two “corrupt former prosecutors”—Mr. Lutsenko and Mr. Shokin—in Ukraine.<sup>38</sup> It was widely confirmed that the corrupt Ukraine prosecutors were seeking “revenge against” Ambassador Yovanovitch for exposing their misconduct.<sup>39</sup> On the day after the media reported that former Vice President Biden was entering the presidential race, President Trump recalled Ambassador Yovanovitch from her position in Ukraine.<sup>40</sup>

Mr. Lutsenko and Mr. Giuliani both promoted two conspiracy theories that have been pursued by President Trump.<sup>41</sup> One of the conspiracy theories alleged that Ukraine hacked a Democratic National Committee (DNC) server in 2016 in order to frame Russia for election interference and help the Clinton Campaign.<sup>42</sup> The other theory alleged that former Vice President Biden coerced the Ukrainian government into firing Mr. Shokin to “prevent an investigation into Burisma Holdings, a Ukrainian energy company for which Vice President Biden’s son, Hunter, served as a board member.”<sup>43</sup> Both theories have been criticized and debunked by officials in the Trump Administration.<sup>44</sup>

On May 3, 2019, shortly after President Zelensky’s election, President Trump and President Putin spoke by telephone and discussed, in part, the so-called “Russian Hoax,” referring to Special Counsel Mueller’s investigation.<sup>45</sup> During that conversation, President Putin reportedly spoke negatively about Ukraine, suggesting that it was corrupt and that President Zelensky was “in the thrall of oligarchs.”<sup>46</sup> A *Washington Post* article, published on December 19, 2019, reported that a senior White House official even indicated that President Trump suggested that “he knew Ukraine was the real culprit [of 2016 election interference] because ‘Putin told me.’”<sup>47</sup>

On May 9, the *New York Times* reported that the President’s personal attorney, Mr. Giuliani, would be traveling to Ukraine to pressure the government to open investigations into the conspiracy theories about Burisma and the 2016 election.<sup>48</sup> Mr. Giuliani specifically acknowledged “[t]his isn’t foreign policy” but that the investigations “will be very, very helpful to my client.”<sup>49</sup>

Around May 13, President Trump ordered Vice President Pence not to attend President Zelensky’s inauguration and sent a lower-ranking delegation, despite his promise to President Zelensky to send a “very, very high level” representative.<sup>50</sup> This delegation included Secretary of Energy Rick Perry, Ambassador to the European Union Gordon Sondland, Special Representative for Ukraine Negotiations Ambassador Kurt Volker and NSC Director for Ukraine Lieutenant Colonel Alexander Vindman.<sup>51</sup>

On May 23, despite positive reports from the delegation regarding President Zelensky’s effort to combat corruption, President Trump said he “didn’t believe” the delegation because that was not what Mr. Giuliani had told him.<sup>52</sup> The President also reiterated that Ukraine “tried to take me down” during the 2016 election, confirming that he still believed the conspiracy theory that Ukraine, not Russia, was actually responsible for 2016 election interference.<sup>53</sup> President Trump directed Ambassador Sondland, Secretary Perry and Ambassador Volker to “talk to Rudy” and coordinate engagement with the Ukraine government.<sup>54</sup>

Despite President Trump's misplaced concerns about Ukrainian conspiracy theories, in May 2019, the Department of Defense (DOD) and the State Department *certified* that Ukraine had "taken substantial actions" to decrease corruption.<sup>55</sup> This was important because it was a necessary requirement in order for DOD to release \$250 million in Ukrainian military assistance that had been appropriated and authorized by Congress.<sup>56</sup> Congress had also appropriated and authorized another \$141 million to be administered by the State Department for security assistance to Ukraine.<sup>57</sup>

However, by July 12, the President had ordered a block on all military and security assistance for Ukraine against overwhelming recommendations from across the Executive Branch and strong bipartisan support for the aid.<sup>58</sup> The hold continued throughout August in violation of the Impoundment Control Act of 1974.<sup>59</sup> The President did not initially give a reason for the hold, although by September, the President claimed that the hold was because he was concerned about corruption in Ukraine and burden-sharing for Ukrainian assistance among European allies.<sup>60</sup>

Throughout this time period, it also became clear that President Trump was withholding the White House meeting that he promised President Zelensky during their April 21 phone call.<sup>61</sup> Ambassador Taylor, Ambassador Yovanovitch's replacement in Ukraine, pushed for the White House meeting, but he learned that the meeting was conditioned explicitly on Ukraine publically announcing investigations into the 2016 election and Burisma.<sup>62</sup> Ambassador Sondland was unequivocal in his description during his testimony: "Was there a quid pro quo? As I testified previously with regard to the requested White House call and the White House meeting, the answer is yes."<sup>63</sup>

After a July 10 meeting, Dr. Fiona Hill, former Senior Director of European and Russian Affairs at the National Security Council, informed then-National Security Advisor John Bolton that Ambassador Sondland reiterated the quid pro quo to Ukrainian officials during a meeting at the White House.<sup>64</sup> Dr. Hill testified that Mr. Bolton advised her to "go and tell [the NSC Legal Advisor] that I am not part of whatever drug deal Sondland and Mulvaney are cooking up on this."<sup>65</sup> Over the next two weeks, Mr. Giuliani coordinated with Ambassadors Sondland and Volker to arrange a phone call between President Trump and President Zelensky for President Zelensky to inform President Trump that he would announce the investigations.<sup>66</sup>

On July 25, President Trump spoke on the phone with President Zelensky.<sup>67</sup> At one point, President Zelensky thanked President Trump for the "great support" in military assistance and indicated that Ukraine would be interested in purchasing more Javelin anti-tank missiles soon.<sup>68</sup> In response, immediately after the Javelin reference, President Trump stated as follows: "I would like you to do us a favor though."<sup>69</sup> President Trump brought up the investigations that he sought into the Ukrainian election interference and Biden conspiracy theories.<sup>70</sup> After the call, Ambassador Sondland informed a State Department aide that President Trump "did not give a [expletive] about Ukraine" and he only cared only about "big stuff," meaning "the Biden investigation" that Mr. Giuliani was pushing.<sup>71</sup>

Around that time, the Ukrainian government also became aware that President Trump was withholding military aid.<sup>72</sup> On August 12, Ambassadors Volker and Sondland, with consultation from Mr. Giuliani, edited a draft statement for President Zelensky to publically release that included explicit references to "Burisma and the 2016 U.S. elections."<sup>73</sup> On that same day, a whistleblower filed a complaint with the Intelligence Community Inspector General expressing concerns about President Trump's phone call with President Zelensky on July 25.<sup>74</sup>

Ukraine ultimately did not release the statement regarding investigations and no further action was taken regarding a White House meeting.<sup>75</sup> Furthermore, there were increasing concerns among national security officials regarding President Trump's hold on military aid, which many began to understand was meant to pressure Ukraine too.<sup>76</sup> Ambassador Sondland testified that President Trump's effort to condition release of the security assistance on Ukraine announcing investigations was as clear as "two plus two equals four."<sup>77</sup>

On September 7, President Trump and Ambassador Sondland spoke on the telephone and Ambassador Sondland explained that President told him "there was no quid pro quo, but President Zelensky must announce the opening of the investigations and he should want to do it."<sup>78</sup> Shortly after, on September 9, Ambassador Taylor texted Ambassadors Sondland and Volker and explicitly said, "I think it's crazy to withhold security assistance for help with a political campaign."<sup>79</sup> On that same day, the Intelligence Community Inspector General notified Congress of the August 12 whistleblower complaint regarding President Trump's July 25 phone call with President Zelensky.<sup>80</sup>

Two days later, President Trump unexpectedly released his hold on Ukraine's security assistance.<sup>81</sup> Since President Trump lifted the hold, however, he has continued to press Ukraine, and even other foreign countries, to open investigations into his political rival.<sup>82</sup> For example, on October 3, President Trump stated as follows on the White House lawn:

Well I would think that if they [Ukraine] were honest about it, they'd start a major investigation into the Bidens. It's a very simple answer. They should investigate the Bidens. . . . Likewise, China should start an investigation into the Bidens because what happened in China is just about as bad as what happened with Ukraine. So, I would say that President Zelensky, if it were me, I would recommend that they start an investigation into the Bidens.<sup>83</sup>

To date, President Zelensky still has not met with President Trump at the White House.

#### *Congressional Investigations*

As noted above, Congress was notified on September 9 of the August 12 whistleblower complaint regarding President Trump's phone call with Ukraine.<sup>84</sup> Speaker Nancy Pelosi announced on September 24 that the House would move forward with an official impeachment inquiry.<sup>85</sup>

On September 9 and September 24, three House Committees sent letters to White House Counsel Pat Cipollone asking for six specific categories of documents related to the Ukraine investigation.<sup>86</sup> The White House did not respond, and as a result, the Committees issued a subpoena to Acting White House Chief of Staff, Mick Mulvaney.<sup>87</sup>

On October 8, Mr. Cipollone responded and indicated that "President Trump cannot permit his Administration to participate in this partisan inquiry under these circumstances."<sup>88</sup> The letter called the inquiry "constitutionally invalid" even though the Constitution grants the House the sole power of impeachment.<sup>89</sup> The letter made reference to "long-established Executive Branch confidentiality interests and privileges,"<sup>90</sup> although President Trump has never specifically asserted an executive privilege over a single piece of information related to the inquiry.

As a result of President Trump's blanket directive, every Executive Branch agency that received an impeachment inquiry request or subpoena has not complied with the request.<sup>91</sup> Specifically, the Executive Branch has not produced a single document or permitted a single witness to testify in response to a subpoena.<sup>92</sup> The only witnesses who did testify or submit documents did so in direct violation of the White House's directive.<sup>93</sup>

#### IV. ARTICLES OF IMPEACHMENT

As we know, Article I, Section 2, Clause 5 of the Constitution states that "[t]he Senate shall have the sole Power to try all Impeachments."<sup>94</sup> As a Senator reviewing this case, I have based my assessment of the evidence on the following two questions:

- (1) Did the president do what he is charged with in the Articles?; and
- (2) If so, is that action an impeachable offense that warrants removal from office?

#### *Abuse of Power*

In the first Article of Impeachment, the House of Representatives charged President Trump with abusing his power as President by corruptly "soliciting the Government of Ukraine to publicly announce investigations that would benefit his reelection, harm the election prospects of a political opponent, and influence the 2020 United States Presidential election to his advantage."<sup>95</sup> In this case, I have found that the House has presented substantial, persuasive evidence to prove the allegations in Article I.

First, there is no dispute that the White House directly withheld \$391 million dollars in military aid from Ukraine.<sup>96</sup> The Office of Management and Budget (OMB) held the aid, at the direction of the President, despite the Department of Defense and the State Department certifying that Ukraine was taking necessary measures to reduce corruption.<sup>97</sup> Furthermore, all agencies—except OMB—strongly supported the release of the aid because it was in the national interest of the United States.<sup>98</sup>

Nor is there dispute that President Trump withheld a White House meeting with President Zelensky. On his April 21 phone call, President Trump explicitly invited President Zelensky to the White House in the future.<sup>99</sup> However, after former Vice President Joe Biden announced his candidacy for President just a few days later, President Zelensky—despite numerous efforts—still has not met with President Trump at the White House.

Second, the evidence establishes that President Trump conditioned the aid and the White House meeting on Ukraine announcing investigations into Burisma and

the 2016 election. In the July 25 phone call, President Trump asked President Zelensky to “do us a favor though” and referenced the 2016 election and Burisma investigations immediately after President Zelensky brought up military assistance.<sup>100</sup>

Related to the White House meeting, Ambassador Sondland could not have been more clear when he testified that “yes,” there was a quid pro quid conditioning a White House meeting with Ukraine announcing investigations into the Bidens and Burisma.<sup>101</sup> He further testified that the conditioning of the White House meeting and military assistance on Ukraine publically announcing investigations was as clear as “2+2=4.”<sup>102</sup>

So, the question is: Why? Was President Trump acting corruptly to advance his own political interests, or was he, as his defense attorneys would have us believe, deeply concerned about ongoing “corruption” in Ukraine and “burden-sharing?”<sup>103</sup> The facts clearly established that President Trump was acting corruptly to further his own political interests.

First, while the President’s defense lawyers have rightly argued that the President “defines foreign policy,”<sup>104</sup> the facts do not support that the President’s actions related to Ukraine were based on “legitimate concerns” regarding corruption and burden-sharing.<sup>105</sup> Also, if the President was so concerned about corruption in Ukraine, why did he dismiss one of the Nation’s best corruption-fighting diplomats, Ambassador Marie Yovanovitch?<sup>106</sup>

Second, the President was utilizing his personal attorney, Mr. Giuliani, to coordinate the announcement of investigations in Ukraine. Mr. Giuliani explicitly said that he was not engaged in foreign policy, but was acting on behalf of President Trump in his “personal capacity.”<sup>107</sup> The State Department also released a statement in August emphasizing that Mr. Giuliani is a private citizen acting in his personal capacity and “does not speak on behalf of the U.S. government.”<sup>108</sup> Accordingly, one cannot reasonably argue that the investigations pursued by Mr. Giuliani were related to “legitimate” foreign policy when they were coordinated by the President’s personal attorney for the President’s personal benefit.

Third, it was the prior practice of the Administration to release aid to Ukraine without delay or regard to alleged corruption and burden-sharing concerns. Both of these asserted concerns were an after-the-fact distraction from the truth. The Trump Administration disbursed—without question—approximately \$511 million and \$359 million to Ukraine in 2017 and 2018, respectively.<sup>109</sup> The only thing that changed in 2019 was that former Vice President Joe Biden announced that he was running for President.

Finally, the proposed investigations into Burisma and 2016 election interference were debunked conspiracy theories that would have only benefited one person—Donald Trump. Regarding Burisma, President Trump claimed that former Vice President Biden corruptly forced Ukraine to fire then-Prosecutor General Shokin to avoid further investigation into Burisma.<sup>110</sup> The truth is that Vice President Biden was actually pursuing Mr. Shokin’s termination—with bipartisan and international support—because Mr. Shokin was a corrupt and ineffective prosecutor.<sup>111</sup> In fact, Mr. Shokin was not actively investigating Burisma and his removal would have made it *more likely*—not less—that Burisma would be investigated in the future.<sup>112</sup>

Furthermore, even if we were to accept that President Trump had legitimate interests regarding alleged corruption in Ukraine, he certainly should not have asked a foreign government to announce the investigation. Rather, he should have gone through official channels and asked the Department of Justice to look into the allegations.<sup>113</sup> Ambassador Sondland indicated that President Trump was only concerned about the *announcement* of investigations—he was not concerned with the actual completion of investigations.<sup>114</sup> President Trump was not actually interested in corruption in Ukraine, but was only concerned with harming a political opponent with the announcement of an investigation.

Regarding Ukrainian election interference, President Trump has suggested that Ukraine attempted to help the Hillary Clinton campaign in 2016 by framing Russia and hacking a Democratic National Committee server.<sup>115</sup> This theory is not supported by any evidence. The U.S. Intelligence Community, the Senate Select Committee on Intelligence and Special Counsel Robert Mueller all came to the conclusion that *Russia*, not Ukraine, interfered in the 2016 election.<sup>116</sup> Dr. Fiona Hill called this Ukraine theory a “fictional narrative that is being perpetrated and propagated by the Russian security services” to raise doubts about Russia’s own culpability and to harm the relationship between the United States and Ukraine.<sup>117</sup> President Trump’s former Homeland Security Advisor, Tom Bossert, also indicated that the Ukraine theory was “not only a conspiracy theory, it is completely debunked.”<sup>118</sup> Pursuing such a clearly debunked conspiracy theory only served to ben-

efit President Trump, and Putin, by raising doubts regarding Russia's own election interference and its preference for President Trump's election in 2016.

Based on this evidence, it is clear that President Trump acted corruptly by conditioning the release of military aid and a White House meeting on Ukraine announcing investigations into his political opponent.

#### *Obstruction of Congress*

Under the second Article of Impeachment, the House charged that President Trump has obstructed Congress by directing the "the unprecedented, categorical, and indiscriminate defiance of subpoenas issued by the House of Representatives pursuant to its 'sole Power of Impeachment.'" <sup>119</sup> I have concluded that the House has presented substantial evidence to prove the allegations in this Article.

On October 8, 2019, during the House impeachment inquiry, the White House Counsel wrote that "President Trump cannot permit his Administration to participate in this partisan inquiry under these circumstances." <sup>120</sup> As a result of President Trump's directives, the House did not receive a "single document" from the White House, the Vice President, OMB, the Department of State, DOD or the Department of Energy—despite 71 requests and demands. <sup>121</sup> Furthermore, the only witnesses who testified or produced documents did so in opposition to the President's directive. <sup>122</sup>

President Trump did not assert a single claim of "executive privilege" over any specific document or piece of testimony during this inquiry. <sup>123</sup> Rather, he issued a blanket directive that completely denied the constitutional oversight responsibilities of the House. <sup>124</sup> Based on this evidence, it is clear that President Trump has obstructed Congress.

#### V. IMPEACHABLE CONDUCT

Having established that the President did, in fact, engage in the conduct alleged in these Articles—I now turn to whether this conduct warrants removal from office.

During the Constitutional Convention of 1787, our Founders grappled significantly with how to elect the Executive, but they also debated how to hold the Executive accountable. While some delegates believed that the President should only be held accountable at the ballot box through elections, others voiced the logical concern that "if [the President] be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected." <sup>125</sup> After much debate, the Convention voted that the Executive shall be "removable on impeachments" <sup>126</sup> and later confirmed the grounds for impeachment included "Treason, bribery and other high crimes and misdemeanors." <sup>127</sup>

"High Crimes and Misdemeanors" is left ambiguous in the Constitution. At the time of the drafting, the Founders' understanding of "high Crimes and Misdemeanors" was informed by centuries of English legal precedent. <sup>128</sup> This understanding was reflected in Federalist No. 65, written by Alexander Hamilton, which explained that impeachment should stem from an "abuse or violation of some public trust." <sup>129</sup> Noted historian Ron Chernow explained that Hamilton's understanding of impeachment should "count heavily because he was the foremost proponent of a robust presidency, yet he also harbored an abiding fear that a brazen demagogue could seize the office." <sup>130</sup> Informed by this history, Congress has consistently interpreted "high Crimes and Misdemeanors" broadly to mean "serious violations of the public trust." <sup>131</sup>

The President's defense lawyers argued that impeachment requires a violation of a criminal statute to be constitutionally valid. <sup>132</sup> This argument is not supported by historical precedent, credible scholarship or our common sense about the sacred notion of the public trust. <sup>133</sup> When applying the accurate Hamiltonian standard for impeachment—an "abuse or violation of some public trust"—it is clear that President Trump's conduct exceeds that standard. Any effort to corrupt an election must be met with a swift measure of accountability as provided for under the impeachment clause in the Constitution. There is no other remedy to constrain a President who has acted, time and again, to advance his personal interests over those of the Nation.

Furthermore, since his candidacy, President Trump has engaged in substantial and ongoing efforts to solicit foreign interference in our elections. As detailed in Special Counsel Mueller's report, the Trump campaign routinely welcomed Russian interference in the 2016 presidential election because they "expected [the Campaign] would benefit electorally from information stolen and released through Russian efforts." <sup>134</sup> As an illustration of just how brazen President Trump has become in his conduct, his July 25 phone call with President Zelensky occurred just one day after Special Counsel Mueller testified in Congress, where he warned of the ongoing threat of foreign interference in elections. <sup>135</sup> As the *Washington Post* reported on

September 21 in a story written by three reporters who have covered the President for several years, the President's conduct on the Ukraine call revealed "a president convinced of his own invincibility—apparently willing and even eager to wield the vast powers of the United States to taint a political foe and confident that no one could hold him back."<sup>136</sup>

The President's blanket obstruction of Congress also substantially imperils our constitutional system of checks and balances. Not only has this President taken the unprecedented step of issuing an outright refusal to cooperate with Congressional oversight in this case, but President Trump has exhibited an ongoing hostility to oversight of his administration. As detailed in Special Counsel Mueller's report, President Trump engaged in ten distinct efforts to obstruct and curtail investigations into his conduct and Russia's interference in the 2016 election.<sup>137</sup> It is clear that this President has engaged in an ongoing pattern of behavior that threatens to diminish any meaningful future oversight of the Executive Branch.

Given the President's ongoing pattern of corrupt behavior, especially as it relates to the next election, I find him "guilty" under both Articles of Impeachment.

#### VI. CONCLUSION

Our Founders had the foresight to ensure that the power of the President was not unlimited and that Congress could—if necessary—hold the Executive accountable for abuses of power through the impeachment process. This Senate trial is not simply about *grave* presidential *abuse of power*, it is about our Democracy, the sanctity of our elections and the very values that the Founders agreed should guide our Nation.

The inscription—"[a]ll public service is a trust, given in faith and accepted in honor"—serves as a reminder to us all of the bedrock principles of our republic. We must hold those accountable who violate this sacred trust. President Trump *dishonored* that public trust given to him by abusing his power for personal, political gain. In order to prevent continuing interference in our upcoming election and blatant obstruction of Congress, the Senate should find him guilty under both Articles.

#### ENDNOTES

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38. *Id.* at 28.

39. *Id.*

40. *Id.* at 26–27.

41. *Id.* at 29.

42. *Id.* at 29–30.

43. *Id.*

44. *Id.* at 88–89. Related to the Ukraine election interference theory, President Trump's former Homeland Security Advisor, Tom Bossert, publicly stated that it was “not only a conspiracy theory, it is completely debunked.” *Id.* at 89. Dr. Fiona Hill, former Senior Director of European and Russian Affairs at the National Security Council, called it a “fictional narrative that is being perpetrated and propagated

by the Russian security services.” *Id.* at 88. She also indicated that former National Security Advisor H.R. McMaster “spent a lot of time” trying to convince President Trump that the theory was Russian propaganda. *Id.* at 89. Furthermore, FBI Director Christopher Wray confirmed that the FBI had “no information that indicates that Ukraine interfered with the 2016 presidential election.” Luke Barr & Alexander Mallin, *FBI Director Pushes Back On Debunked Conspiracy Theory About 2016 Election Interference*, ABC NEWS (Dec. 9, 2019), <https://abcnews.go.com/Politics/fbi-director-pushes-back-debunked-conspiracy-theory-2016/story?id=67609244>.

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66. *Id.* at 79–84.

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 106. *See supra* text accompanying notes 36–40.  
 107. EVIDENTIARY RECORD, vol. IV, *supra* note 49, at 7639.  
 108. Allan Smith, *Giuliani Says State Dept. Aided His Effort to Press Ukraine on Trump Opponents*, NBC NEWS (Aug. 22, 2019), <https://www.nbcnews.com/politics/donald-trump/giuliani-says-state-dept-aided-his-effort-press-ukraine-trump-n1045171>.  
 109. Statement of Material Facts: Attachment to the Trial Memorandum of the United States House of Representatives at 14, In Re Impeachment of President Donald J. Trump (Jan. 18, 2020) [hereinafter House Manager’s Statement of Material Facts].  
 110. HPSCI REPORT, *supra* note 33, at 42–43.  
 111. *Id.*  
 112. *Id.* at 43.  
 113. *Id.* at 108–09.  
 114. House Manager’s Statement of Material Facts, *supra* note 109, at 20.  
 115. HPSCI REPORT, *supra* note 33, at 88.  
 116. *Id.* at 29.  
 117. *Id.* at 88.  
 118. *Id.* at 89.  
 119. H.R. Res. 755, 116th Cong. art. II (2019) (quoting U.S. CONST. art. I, § 2, cl. 5).  
 120. HPSCI REPORT, *supra* note 33, at 175  
 121. *Id.* at 180.  
 122. *Id.*  
 123. *Id.* at 179.  
 124. *Id.*  
 125. 2 MAX FARRAND, ED., THE RECORDS OF THE FEDERAL CONVENTION OF 1787, 64 (1911) (Madison).  
 126. *Id.* at 69 (Madison).  
 127. *Id.* at 550 (Madison). *See also* U.S. CONST. art. II, § 4 (“The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”).  
 128. *See* CHARLES L. BLACK, JR. & PHILIP BOBBITT, IMPEACHMENT: A HANDBOOK, NEW EDITION 43 (2018) (“The phrase ‘high Crimes and Misdemeanors’ comes to us out of English law and practice, starting (as far as we know) in 1386.”).  
 129. THE FEDERALIST NO. 65 (Alexander Hamilton).  
 130. Ron Chernow, *Hamilton Pushed For Impeachment Powers. Trump Is What He Had In Mind.*, WASH. POST (Oct. 18, 2019), <https://www.washingtonpost.com/out->

look/2019/10/18/hamilton-pushed-impeachment-powers-trump-is-what-he-had-mind/?arc404=true.

131. H.R. REPT. NO. 101–36, at 5 (1989).

132. 166 CONG. REC. S611 (daily ed. Jan. 27, 2020) (statement of Counsel Dershowitz explaining that “[p]urely non-criminal conduct, including abuse of power and obstruction of Congress, are outside the range of impeachable offenses”).

133. See e.g., S. MISC. DOC. NO. 40–42, at 8 (1868) (impeaching President Johnson for bringing “the high office of the President of the United States into contempt, ridicule and disgrace”); H.R. REPT. NO. 93–1305, at 2 (1974) (recommending Articles of Impeachment against President Nixon because he “prevented, obstructed, and impeded the administration of justice”); H.R. Res. 601, 105th Cong. art. IV (1998) (impeaching President Clinton for an “abuse of high office”).

134. I MUELLER REPORT, *supra* note 15, at 5.

135. See *supra* text accompanying note 31–33.

136. Philip Rucker et al., *Trump’s Ukraine Call Reveals a President Convinced of His Own Invincibility*, WASH. POST (Sept. 21, 2019), [https://www.washingtonpost.com/politics/trumps-ukraine-call-reveals-a-president-convinced-of-his-own-invincibility/2019/09/21/1a56466c-dc6a-11e9-ac63-3016711543fe\\_story.html](https://www.washingtonpost.com/politics/trumps-ukraine-call-reveals-a-president-convinced-of-his-own-invincibility/2019/09/21/1a56466c-dc6a-11e9-ac63-3016711543fe_story.html).

137. See II MUELLER REPORT, *supra* note 15, at 3–4 (summarizing the ten incidents).

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[From the CONGRESSIONAL RECORD, February 27, 2020]

STATEMENT OF SENATOR KEVIN CRAMER

Mr. CRAMER. Mr. President, I seek recognition today regarding the recent impeachment trial of President Donald Trump. This was a rare moment in our young Nation’s history. We had little to guide us other than the Founding Fathers’ collective wisdom and sparse precedent.

The process may seem daunting, and the debate over even the most basic mechanics of the trial could leave the future Members of this body susceptible to deception or misinformation. I therefore want to offer my thoughts for future Senators when this issue inevitably rises again.

The impeachment trial proceedings are unique. It is an inherently political process analogous to a legal trial. There is a prosecution, represented by the House managers, as well as a defense, representing the President. There is also a presiding judge, the Chief Justice of the Supreme Court.

As in a courtroom, the prosecution and defense take opposite sides of the judge as they make their arguments. The burden of proof is on the prosecutors, who must present their evidence, and it is the job of the defense to refute the arguments.

There is also a jury, the U.S. Senate. Like a courtroom jury, we sit in silence throughout the trial listening to the arguments of both sides and are asked to render a verdict at the conclusion. However, unlike a courtroom but as instructed by the Constitution, we are not jurors subject to peremptory challenge; we are elected officials instructed to offer impartial justice based on the evidence presented to us.

We are not expected to check our knowledge or our existing relationships at the door. If this were a true trial, all Senators would have to recuse themselves for the inherent bias connected to the election certificate they earned. As Alexander Hamilton wrote in Federalist Paper 65, “In many cases, it [impeachment] will connect itself with the pre-existing factions, and will enlist all their animos-

ities, partialities, influence, and interest on one side or on the other.” Rather, we are asked to follow our conscience, to hear the arguments of both sides with an open mind and deliver a verdict. We also differ from courtroom jurors in that we establish the rules for the proceedings. This is done through organizing resolutions we debate and pass.

Before considering the merits of this particular case, it is important to discuss the idea of impeachment itself in light of the present context. During President Trump’s hearing, the President’s legal team alluded to the idea that a President can do essentially whatever he or she wants, and it will not be considered an impeachable offense as long as that President’s interests in doing so align with the interests of the United States.

“If a President does something which he believes will help him get elected in the public interest, that cannot be the kind of quid pro quo that results in impeachment,” said Alan Dershowitz, a member of the President’s legal team, during the trial.

I feel that particular statement is wrong. The Constitution grants no President absolute power. There is a threshold that can be reached. Thankfully, this was later clarified by Mr. Dershowitz in an opinion piece he wrote for The Hill entitled “I never said the President could do anything to get re-elected.” In it, he said:

Any action by a politician motivated in part by a desire to be reelected was, by its nature, corrupt. Moving to my response, I listed three broad categories of relevant motives, which are pure national interest to help the military, pure corrupt motive to obtain a kickback, and mixed-motive to help the national interest in a way that can also help a reelection effort. I said the third motive was often the reality of politics, and helping your own reelection effort cannot by itself necessarily be deemed corrupt.

In the end, it is the duty of every Senator to determine whether the President acted in a purely self-interested manner without any regard for the national interest. Given the full context of his actions, it is clear President Trump did not act in a purely selfish, boundless manner.

While the question of whether a President can commit a crime and therefore be impeached is firmly settled, there arises another question this impeachment trial did not sufficiently answer but must be addressed in the future.

The Constitution says it is the job of the House of Representatives to impeach a President whose trial is held before the Senate. According to current Senate rules, our body must move forward with impeachment proceedings, but is that according to the Constitution?

Article I, section 3 of the Constitution states:

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

With this impeachment behind us, now is the time we as a body need to evaluate the constitutionality and wisdom of our rules requiring the Senate to move forward with any impeachment articles. We must reaffirm our right to dictate what is considered on the Senate floor and when it is considered, which is not without precedent.

Article II, section 2 of the Constitution says:

He [the President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States.

In 2016, after the passing of Supreme Court Justice Antonin Scalia, President Barack Obama appointed a Supreme Court nominee to replace him. However, with the election of a new President just months away, the Senate declared it would not consider this particular nominee and would instead let the people decide whom they would like to nominate a Supreme Court Justice.

The Senate was well within its right to decide the timing and consideration, or lack thereof, of this constitutional obligation to consider judicial nominations, and the same should be true of impeachment trials.

This is a question in need of an answer for future impeachment proceedings because impeachment articles brought by the House completely derail Senate legislative activity. We are unable to consider legislation, nominations, or conduct any floor activity.

While I agree such an enormous responsibility should elicit our undivided attention, it seems illogical to automatically grant primacy to impeachment articles, especially those as flawed as the ones presented by House Democrats.

The House's impeachment process was entirely partisan. Since the moment he was sworn in, Democrats schemed to remove Donald Trump from office. By May of 2017, 26 Democratic Members of Congress had called for the impeachment of President Trump. Speaker PELOSI herself said impeachment was 2½ years in the making.

When House Democrats finally agreed on a reason to impeach the President, their vote to begin the process received no Republican votes, and multiple Democrats voted against it. It does not seem unreasonable to me that a vote to begin an impeachment inquiry which has only partisan support and bipartisan opposition—as this one did—is not what the Founders had in mind and is what they firmly rejected and cautioned us against.

“Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority,” Founding Father James Madison wrote in Federalist Paper 10. “However anxiously we may wish that these complaints had no foundation, the evidence, of known facts will not permit us to deny that they are in some degree true.”

When it came time for the House to vote on impeaching the President, the same “overbearing majority” outcome occurred. No minds were changed, but the country was further torn apart and the process strayed beyond the original intent of the Founding Fathers. The two Articles of Impeachment before this body were, in my view, without merit. They were an affront to this institution and to our Constitution, representing the very same partisan derangement that worried our Founding Fathers so much that they made the threshold for impeachment so high.

I think it would be universally agreeable that Impeachment Articles passed by a majority of one party and opposed by members of both parties at the very least fail the spirit of the Constitution. To this point, detractors could say the partisan nature of this impeachment proceeding is the fault of Republicans who blindly follow President Trump, rather than Democrats whose hatred for this President compels them to act more than the facts in front of them.

Such an argument quickly falls apart when you read the statements of Republicans who found the President's actions inappropriate but did not believe they rose to the level of impeachment. That argument further corrodes when you consider the content of the Impeachment Articles and the partisan and secretive process House Democrats followed in writing them.

Fundamentally, the Articles of Impeachment were incomplete. Democrats did not complete their own investigation before drafting and ultimately passing the articles, which is why Senate Democrats spent most of their time demanding witnesses and more documents. The House also did not provide due process to the President, nor to the minority during the House investigation. In October of 2019, as the House began formally considering impeachment in earnest, Senator LINDSEY GRAHAM led several Senators in introducing S. Res. 378. It laid out specific issues we had with the House process in hopes it would remedy the situation before sending the articles to the Senate.

In it, we mentioned five rights President Trump was being denied, although the House had provided similar due process to Presidents Nixon and Clinton during their impeachments. The denied rights included allowing the President to be represented by counsel, permitting the President's counsel to be present at all hearings and depositions, permitting the President's counsel to present evidence and object to the admission of evidence, allowing the President's counsel to call and cross-examine witnesses; and giving the President's counsel access to and the ability to respond to the evidence offered by the Committee.

The impeachment process against President Trump had been nothing more than secretive hearings and selective leaks designed to sway public opinion and hurt the President politically. It was a hyper-partisan process completely void of due process, and that never changed until it reached the Senate. In our resolution, we also highlighted the fact that "the main allegations against President Trump are based on assertions and testimony from witnesses whom he is unable to confront, as part of a process in which he is not able to offer witnesses in his defense or have a basic understanding of the allegations lodged against him."

The issue of evidence, both its origin and the lack of compelling proof from the House managers, became the foundation of this impeachment. This investigation began because an anonymous national security official approached Democratic chairman ADAM SCHIFF with a secondhand claim that President Trump sought to withhold aid to a foreign country to force it to announce it would launch an investigation into one of the President's political rivals.

President Trump was quick to offer the transcript of the phone call where this allegedly occurred. He did, and it showed there was, in fact, no quid pro quo, and House Democrats in their investiga-

tion were never able to produce a firsthand witness to testify otherwise.

Future Senators should be sure to note the eagerness or reluctance of an accused President to share clarifying information. President Trump took unprecedented action to release the transcript of the conversation Democrats called into question—an action he was not legally required to take and most of his predecessors have never done. Contrast that with President Nixon, who fought until the end to hide his recorded conversations because he knew the contents were damning. Contrast President Trump's actions even further with the House Democrats who pursued a secretive, one-sided process to craft the narrative they wanted.

Despite several pieces of information demonstrating the President's innocence and none to the contrary, House Democrats continued this crusade. Their fixation on his removal was a conclusion in search of a justification.

They manufactured criminality from a simple phone conversation between world leaders, leaked by one of the many career bureaucrats who seem to have forgotten they work for the elected leaders in this country, not the other way around. Motives matter. In the future, Senators should be vigilant in figuring out an accuser's intention.

There is a common narrative that career bureaucrats are simply righteous, opinion-less civil servants. This impeachment and the actions leading up to it prove the exact opposite. By no means are all of them evil or ill-willed, but this proceeding showed they are far from unbiased, and they are capable of weaponizing the tools and access they are given.

Unsurprisingly, this led to two Impeachment Articles being sent to the Senate on a party-line vote that were without merit. They were an affront to this institution and to our Constitution, representing the very same partisan derangement that worried our Founding Fathers so much they made the threshold for impeachment this high.

The Founders created the Senate for moments just like this. When Impeachment Articles are sent to the Senate, it is not our job to fix the mistakes made by the House, and it is not our job to finish an investigation it admittedly did not complete. It is the Senate's solemn duty to set aside the heat of the moment, prevent short-term stress from leading to long-term decay, and deliver impartial justice.

As James Madison said at the Constitutional Convention, "The Senate is to consist in its proceeding with more coolness, with more system, and with more wisdom, than the popular branch." That is why, even under the cloud of purely partisan politics of the House of Representatives, the Senate conducted a complete, comprehensive trial. The obvious result of which was the conclusion that the Democratic-led House of Representatives failed to meet the most basic standards of proof and dramatically lowered the bar for impeachment in the future to unacceptable levels.

With all of this established, we as a Congress and as a nation must unite around some commonsense changes, both to institutional rules and to our understanding of the impeachment process.

Lowering the bar for impeachment undermines our shared democratic principles.

Impeachment must be a tool employed only when the evidence is overwhelming and well-founded. We must discourage future House actions like what we just witnessed from ever occurring again.

We must also find ways to take on a bureaucracy run rampant. President Trump was impeached because an unelected bureaucrat provided falsehoods to an overly receptive Democratic House chairman's office with a directive to remove President Trump. The opinion of Federal career staff is not sacrosanct. Without further action, these impeachment proceedings will be interpreted as empowering to them, rather than a reminder of who holds constitutional power.

Finally, as we seek to apply the lessons learned from this historic time, I was reminded of the words Chaplain Black offered to us during his daily opening prayer. "We must pray for God's will to be done." There is a higher power than any of us, and our country would benefit from remembering that more often.