The Senate met at 12:30 p.m. and was called to order by the President pro tempore (Mr. GRASSLEY).

PRAYER
The Chaplain, Dr. Barry C. Black, offered the following prayer:
Let us pray.
Eternal God, You are our rock and fortress. Keep us from dishonor. Only by walking in Your precepts can our lawmakers remain within the circle of Your protection and blessings. Lord, turn their ears to listen to Your admonition, as You infuse them with the courage to obey Your commands. We have trusted You since the birth of this land we love. That is why we will declare Your glory as long as we have breath. Lord, as our Senators prepare to gather for today’s impeachment trial, we declare that You alone are our hope.
We pray in Your mighty Name. Amen.

PLEDGE OF ALLEGIANCE
The President pro tempore led the Pledge of Allegiance, as follows:
I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

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

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

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

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

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

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

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

This basic, four-part structure aligns with the first steps of the Clinton impeachment trial in 1998. Twenty-one years ago, 100 Senators agreed unanimously that this roadmap was the right way to begin the trial. All 100 Senators agreed the proper time to consider the question of potential witnesses was after—after—opening arguments and Senators’ questions.

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

The House was not facing any deadline. They were free to run whatever
Mr. President, after the conclusion of my remarks, the Senate will proceed to the impeachment trial of President Donald John Trump for committing high crimes and misdemeanors. President Trump is accused of using a foreign leader into interfering in our elections to benefit himself and then doing everything in his power to cover it up. If proved, the President’s actions are crimes against democracy itself.

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

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

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

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

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

On something as important as impeachment, the McConnell resolution is nothing short of a national disgrace. This will go down—this resolution—as
one of the darker moments in the Senate history, perhaps one of even the darkest.

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

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

Second, unlike the Clinton rules, the McConnell resolution limits presentation by the parties to 24 hours per side over only 2 days. We start at 1, 12 hours a day, we are at 1 a.m., and that is with half the lawyers. It will be later.

No. 3, unlike the Clinton rules, the McConnell resolution places an additional hurdle to get witnesses and documents by requiring a vote on whether such motions are even in order. If that vote fails, then no motions to subpoena witnesses and documents will be in order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I yield the floor.

RESERVATION OF LEADER TIME

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

RECESS SUBJECT TO THE CALL OF THE CHAIR

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

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

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

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

THE JOURNAL

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

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

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

Mr. INHOFE. I do.

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

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

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

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

The CHIEF JUSTICE. The majority leader is recognized.

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

UNANIMOUS CONSENT AGREEMENT—AUTHORITY TO PRINT SENATE DOCUMENTS

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

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

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

The documents follow:

[In Proceedings Before the United States Senate]

Answer of President Donald J. Trump

THE HONORABLE DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, HEREBY RESPONDS:

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

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

The Articles of Impeachment now before the Senate are an affront to the Constitution of the United States, our democratic institutions, and the American people. The In fact, a claim that would do lasting damage to the separation of powers. This claim would do lasting damage to the separation of powers under the Constitution. The first Article fails on its face to state an impeachable offense. It alleges no crimes at all, let alone ‘high Crimes and Misdemeanors,’ as required by the Constitution. In fact, a claim that would do lasting damage to the separation of powers. This claim would do lasting damage to the separation of powers under the Constitution. The first Article fails on its face to state an impeachable offense. It alleges no crimes at all, let alone ‘high Crimes and Misdemeanors,’ as required by the Constitution. In fact, a claim that would do lasting damage to the separation of powers. This claim would do lasting damage to the separation of powers under the Constitution.

Third, the two individuals who have stated for the record that they spoke to the President about the subject actually exonerate him. Ambassador to the European Union Gordon Sondland stated that he asked the President what he wanted from Ukraine, the President said: ‘I want nothing. I want no quid pro quo.’ Senator Ron Johnson reported that, when he asked the President whether there was any connection between security assistance and investigations, the President responded: ‘I would never do that.’ House Democrats ignore these facts and instead rely entirely on assumptions, presumptions, and speculation to advance false charges of wrongdoing. Their accusations are founded exclusively on inherently unreliable hearsay that would never be accepted in any court in our country.

Fourth, the bilateral presidential meeting took place in the ordinary course, and the President acted at all times with full constitutional and legal authority and in our national interest. He continued his Administration’s policy of unprecedented support for Ukraine, including the delivery of lethal military aid that was denied to the Ukrainian government announcing any investigations.

Not only does the evidence collected by House Republicans refute each and every one of the factual predicates underlying the first Article, the transcripts of the April 21 call and the July 25 call disprove what the Article alleges. When the House Democrats realized this, Mr. Schiff created a fraudulent version of the July 25 call and read it to the House. For these reasons, the following reasons, the first Article must be rejected.

The first Article fails on its face to state an impeachable offense. It alleges no crimes at all, let alone ‘high Crimes and Misdemeanors,’ as required by the Constitution. In fact, a claim that would do lasting damage to the separation of powers. This claim would do lasting damage to the separation of powers under the Constitution.

I. THE FIRST ARTICLE OF IMPEACHMENT MUST BE REJECTED

The first Article fails on its face to state an impeachable offense. It alleges no crimes at all, let alone ‘high Crimes and Misdemeanors,’ as required by the Constitution. In fact, a claim that would do lasting damage to the separation of powers. This claim would do lasting damage to the separation of powers under the Constitution.

The first Article fails on the facts, because President Trump has not in any way "abused the powers of the Presidency." At all times, the President has faithfully and effectively executed his Office on behalf of the American people. The President's actions on the July 25, 2019, telephone call with President Volodymyr Zelensky of Ukraine (the "July 25 call"), as well as on the earlier April 21, 2019, telephone call (the "April 21 call"), and in all surrounding and related events, were constitutional, perfectly legal, completely appropriate, and taken in the President’s duty. They sought testimony from a number of the President’s closest advisors declassifying

II. THE SECOND ARTICLE OF IMPEACHMENT MUST BE REJECTED

The second Article also fails on its face to state an impeachable offense. It does not allege any crime or violation of law whatsoever. To the contrary, the President’s assertion of legitimate Executive Branch confidentiality interests grounded in the separation of powers cannot constitute obstruction of Congress.

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

Following the President’s disclosure of the July 25 call transcript, House Democrats issued a series of unconstitutional subpoenas for documents and testimony. They issued the subpoenas without a congressional vote and, therefore, without constitutional authority. They sought testimony from a number of the President’s closest advisors declassifying

Fourth, the bilateral presidential meeting took place in the ordinary course, and the President acted at all times with full constitutional and legal authority and in our national interest. He continued his Administration’s policy of unprecedented support for Ukraine, including the delivery of lethal military aid that was denied to the Ukrainians by the prior administration. The first Article must be rejected.

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Fourth, the bilateral presidential meeting took place in the ordinary course, and the President acted at all times with full constitutional and legal authority and in our national interest. He continued his Administration’s policy of unprecedented support for Ukraine, including the delivery of lethal military aid that was denied to the Ukrainians by the prior administration. The first Article must be rejected.
they sought testimony disclosing the Executive Branch’s confidential communications and internal decision-making processes on matters of foreign relations and national security, despite the well-established constitutional privileges and immunity seeking such information. As the Supreme Court has recognized, the President’s constitutional authority to protect the confidentiality of Executive Branch information is at its apex in the field of foreign relations and national security. House Democrats also barred the attendance of Executive Branch counsel at witness proceedings, thereby preventing the President from protecting important Executive Branch confidentiality interests.

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

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

III. CONCLUSION

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

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

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

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

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

Dated this 18th day of January, 2020.

[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of President Donald J. Trump

THIRD MEMORANDUM OF THE UNITED STATES HOUSE OF REPRESENTATIVES IN THE IMPEACHMENT TRIAL OF PRESIDENT DONALD J. TRUMP

INTRODUCTION

President Donald J. Trump used his official position to solicit foreign government interference to influence a United States election in exchange for information useful to his political advantage. The evidence overwhelmingly establishes that he is guilty of both Articles of Impeachment. In the end, he attempted to cover up his scheme by obstructing Congress’s investigations. The Constitution provides a remedy when the President commits such serious abuses of power, and it specifies that the Senate has the authority to remove the President from his office by a two-thirds vote.

The Senate must use that remedy now to safeguard the 2020 U.S. election, protect our constitutional form of government, and vindicate the threat that the President poses to America’s national security.

The House adopted two Articles of Impeachment against President Trump: the first for abuse of power, and the second for obstruction of Congress.1 The evidence overwhelmingly establishes that he is guilty of both. The only remaining question is whether the Senate will acquit him or carry out the responsibility placed on them by the Framers of our Constitution and their constitutional Oaths.

HOUSE OF POWER

President Trump abused the power of his office by pressuring the government of Ukraine to interfere in the 2020 U.S. Presidential election for his personal benefit. In order to pressure the recently elected Ukrainian President, Volodymyr Zelensky, to announce investigations that would advance President Trump’s political agenda in 2020 in advance of the election bid, the President exercised his official power to withhold from Ukraine critical U.S. government support—a $391 million vital military aid and a coveted White House meeting.2

During a July 25, 2019 phone call, after President Zelensky expressed gratitude to President Trump for American military assistance, President Trump immediately responded by asking President Zelensky to “do us a favor though.” “The favor” he sought was for Ukraine to publicly announce two investigations that President Trump believed would improve his domestic political prospects.3 One investigation concerned former Vice President Joseph Biden—a political rival in the upcoming 2020 election—and the false claim that, in seeking the removal of a corrupt Ukrainian prosecutor four years earlier, then-Vice President Biden had acted to protect a company where his son was a board member.4 The second investigation concerned debunked conspiracy theory that Russia did not interfere in the 2016 Presidential election to aid President Trump, but instead that Ukraine interfered in that election to aid President Trump’s opponent, Hillary Clinton.5

These theories were baseless. There is no credible evidence to support the allegation that Russia did not interfere improperly in encouraging Ukraine to remove an incompetent and corrupt prosecutor in 2016.6 And the U.S. Intelligence Community, the Department of Justice, the Department of Homeland Security, and Special Counsel Robert S. Mueller, III unanimously determined that Russia, not Ukraine, interfered in the 2016 U.S. Presidential election “in obvious and systematic fashion” to help President Trump’s campaign.7 In fact, the theory that Ukraine, rather than Russia, interfered in the 2016 election has been the President’s Intelligence community’s assurance as part of Russia’s propaganda campaign.8

Although these theories were groundless, President Trump sought a public announcement by Ukraine of investigations into them in order to help his 2020 reelection campaign.9 An announcement by Ukraine of investigation into one of his key political rivals would be enormously valuable to President Trump in his reelection campaign in 2020—just as the FBI’s investigation into Hillary Clinton’s emails had helped him in 2016. And an investigation suggesting that Russia interfered in the 2016 election would give him a basis to assert—false—that he was the victim, rather than the beneficiary, of election interference. Thus, when the special counsel’s declaration that Ukraine’s announcement of that investigation would bolster the perceived legitimacy of his Presidency and, therefore, his political standing was going into the 2020 race.

Overwhelming evidence shows that President Trump solicited these two investigations in order to obtain a personal political benefit, not because the investigations served the national interest.10 The President’s own National Security Advisor characteristically characterized the efforts to pressure Ukraine to carry out the investigation as a “drug deal.”11 His Acting Chief of Staff candidly confirmed President Trump’s decision to withhold security assistance was tied to his desire for an investigation into alleged Ukrainian interference in the 2016 election, stating he was “going to be political influence in foreign policy,”12 and told the American people to “get over it.”13 Another one of President Trump’s key national security advisors admitted that the agents pursuing the President’s bidding were “involved in a domestic political errand,” not national security policy.14 And, immediately after speaking with President Trump by phone about the investigations, one of President Trump’s ambassadors involved in carrying out the campaign against Ukraine said that President Trump “did not give a [expletive] about Ukraine,” and instead cared only about “big stuff” that benefited him personally, like “the Biden investigation.”15

To execute his scheme, President Trump assigned his personal attorney, Rudy Giuliani, the task of securing the Ukrainian investigations.16 Mr. Giuliani repeatedly and publicly emphasized that he was not engaged in foreign policy but was instead seeking a personal benefit for his client, Donald Trump.17

President Trump used the vast powers of his office as President to pressure Ukraine into announcing these investigations. President Trump illegally withheld $391 million in taxpayer-funded military assistance to Ukraine that Congress had appropriated for expenditure in fiscal year 2019.18 That assistance was a critical part of long-running bipartisan efforts to advance the security interests of the United States by ensuring that Ukraine is properly equipped to defend itself against Russian aggression.19 Every relevant Executive Branch agency agreed that continued American support was in America’s national security interests, but President Trump ignored that view and personally ordered the assistance held back, even after serious concerns—now confirmed by the Government Accountability Office (GAO)—were raised within his Administration about the legality of withholding the aid.20 The President’s decision that Congress had already appropriated,21 President Trump released the funding only after he got caught trying to use the funding to frustrate an investigation, President Trump relented and released the aid.22
As part of the same pressure campaign, President Trump withheld a crucial White House meeting with President Zelensky—a meeting that he had previously promised and that would have occurred with both the United States and Ukraine.22 Such face-to-face Oval Office meetings with a U.S. President are immensely important for international credibility.23 In his Oval Office meeting with President Trump was critical to the integrity of our democratic processes and continuing presence in office undermines the integrity of our Constitution.28 On the strength of that evidence, the House Permanent Select Committee on Intelligence, and the American people. Although his sweeping cover-up effort ultimately failed—seventeen public officials being interrogated, and provided documentary evidence of the President’s wrongdoing—his obstruction will do long-lasting and potentially irreversible damage to our constitutional system of divided powers if it goes unchecked. Based on the overwhelming evidence of the President’s misconduct in attempting to thwart the impeachment inquiry, the House approved the Second Article of Impeachment, for obstruction of Congress.25 The Senate’s sole concern is President Trump on Article I of the Constitution. If it does not, future Presidents will feel empowered to resist any investigation into their own wrongdoing, effectively nullifying Congress’s power to exercise the Constitution’s most important safeguard against Presidential misconduct. That outcome would not only embolden this President to continue seeking foreign interference in our elections but would telegraph to future Presidents that they are free to engage in serious misconduct without accountability or repercussions. The Constitution entrusts Congress with the sole Power of Impeachment.26 The Framers thus ensured that the Constitution’s impeachment procedures require the existence, scope, and procedures of an impeachment investigation into the President’s conduct. The Senate, the ultimate check on a President’s misconduct, must exercise this power when the President places his personal and political interests above those of the Nation. President Trump has done exactly that. His misconduct challenges the fundamental principle that Americans should decide American elections, and that a divided system of government—when the branch of government other than the one controlling the White House, and not the President, determines the existence, scope, and procedures of an impeachment investigation into the President’s conduct.27 The Senate must conduct such an investigation effectively if it cannot obtain information from the President or the Executive Branch about the Presidential misconduct, and is unable to conduct a thorough, impartial, and constitutionally sound impeachment investigation effectively if it cannot obtain information from the President or the Executive Branch about the Presidential misconduct. Under our constitutional system of divided powers, a President cannot be permitted to hide his offenses from view by refusing to comply with a Congressional investigation or to direct Executive Branch agencies to do the same. That conclusion is particularly important given the Department of Justice’s position that the President cannot be indicted. If the President could both avoid accountability under the criminal laws and preclude an effective impeachment investigation, he would truly be above the law. But what is what President Trump has attempted to do? President Trump’s conduct is the Framers’ worst nightmare. He directed his Administration to defy every subpoena issued in the House’s impeachment investigation, the White House, Department of State, Department of Defense, Department of Energy, and Office of Management and Budget (OMB) refused to produce documents or respond to those subpoenas.27 Several witnesses also followed President Trump’s orders, defying requests for volumes of lawful分支and, and refusing to testify.28 And President Trump’s interference in the House’s impeachment inquiry was not an isolated incident—it was consistent with his past efforts to obstruct the Special Counsel’s investigation into Russian interference in the 2016 election. By categorically obstructing the House’s impeachment inquiry, President Trump claimed the House’s sole impeachment power for himself, and his misconduct from Congress and the American people. While President Trump is still in office, the danger will continue to this day. As George Mason warned the other delegates to the Constitutional Convention, “if we do not provide against corruption, our government will not be at all free.”29 The Framers stressed that a President who “act[s] from some corrupt motive or other” or “willfully abuse[es] his trust” must be impeached,30 because the President will have great opportuni- ties of abusing his power.31 Thus, the Framers resolved to hold the President “impeachable whilst in office” as a necessary check to prevent any future President from being able to manipulate the democratic process to his advantage.32 By empowering Congress to immediately remove a President when his misconduct warrants it, the Framers established the people’s elected representatives as the ultimate check on a President whose corruption threatened our democracy and the Nation’s core interests.33 The Framers particularly feared that foreign influence could undermine our new system of self-government.34 In his farewell address to the Nation, President George Washing- ton warned Americans “to be constantly on their guard against the encroachments of foreign influence.”35 By empowering Congress to immediately remove a President when his misconduct warrants it, the Framers intended to establish the people’s elected representatives as the ultimate check on a President whose corruption threatened our democracy and the Nation’s core interests.36
I. The Senate Should Convict President Trump of Abuse of Power

President Trump abused the power of the Presidency by pressuring a foreign government to interfere in an American adversary’s democratic process. His effort to gain a personal political benefit by encouraging a foreign government to undermine America’s democratic process strikes at the core of the Framers’ decision to denote “Treason” and “Bribery” as impeachable conduct reflects the Founders’ concern over foreign influence and corruption. But the Framers also recognized that “many great and dangerous offenses committed by public officials that inflict severe harm on the constitutional order.”

II. The House’s Impeachment of President Donald J. Trump and Presentation of This Matter to the Senate

Committees of the House have undertaken investigations into allegations of misconduct by President Trump and his Administration. On September 24, 2019, the House transmitted a large body of evidence that the President and his associates were seeking Ukraine’s assistance in the President’s reelection, the House Permanent Select Committee on Intelligence. Together with the Committees on Oversight and Reform and Foreign Affairs, announced a joint investigation into the President’s conduct, and issued document requests to the White House and State Department.

On September 24, 2019, Speaker Nancy Pelosi announced that the House was proceeding forward with an official impeachment inquiry and directed the Committees to “cooperate with their investigations under that umbrella, and an impeachment inquiry.” They subsequently issued multiple subpoenas for documents as well as requests and subpoenas for witness interviews and testimony.

Both before and after Speaker Pelosi’s announcement, the President refused to provide any information in response to the House’s inquiry. He stated that “we’re fighting all the subpoenas,” and that “I have an Article II, where I have the right to do whatever I want as president.”

Through his White House Counsel, the President later directed his Administration not to cooperate. Fedding the President’s directive, the Executive Branch did not produce any documents in response to subpoenas issued by the three investigating Committees, including twelve requests from witnesses.

NOTE: While the President attempted to remain in office, particularly to secure his own reelection.

In drafting the Impeachment Clause, the Framers adopted a standard flexible enough to respond to the threat of potential Presidential misconduct: “Treason, Bribery, or other high Crimes and Misdemeanors.” The decision to denote “Treason” and “Bribery” as impeachable offenses involves an “act or omission of public trust” and are of “a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself.” The Framers thus understood that “high crimes and misdemeanors” would encompass acts committed by public officials that inflict severe harm on the constitutional order.

The House’s investigation into the President’s campaign yielded overwhelming evidence of misconduct already uncovered by the investigation, on December 3, 2019, the Intelligence Committee released a detailed nearly 300-page report documenting its findings, which it transmitted to the Judiciary Committee. The Judiciary Committee held public hearings evaluating the constitutional standard for impeachment and the evidence against President Trump—in which the President’s counsel was invited, but declined, to participate—and then reported two Articles of Impeachment to the House.

On December 18, 2019, the House voted to impeach President Trump and adopted the Articles of Impeachment. The First Article of Impeachment stated that President Trump “abused the powers of the Presidency” by “soliciting the Government of Ukraine to publicly announce investigations that would harm the election prospects of a political opponent, and influence the 2020 United States Presidential election to his advantage.” President Trump sought to “pressure the Government of Ukraine to take these steps by conditioning official United States Government acts of significant value to Ukraine on its public statements” and by announcing investigations that were politically favorable for President Trump and designed to harm his political rival.

The Second Article of Impeachment stated that President Trump “abused the powers of the Presidency in a manner that compromised the national security of the United States and undermined the integrity of the United States democratic process.” These actions were “consistent” with President Trump’s “previous invitations of foreign interference in United States elections,” and demonstrated that President Trump “will remain, threaten, and the Constitution if allowed to remain in office.”

Second Article for Obstruction of Congress was based on the President’s “abused the powers of the Presidency in a manner offensive to, and subservient of, the Constitution” when he “directed the unprecedented, unconstitutional, and illegitimate destruction of subpoenas issued by the House of Representatives pursuant to its ‘sole power of impeachment.’” Without “lawful cause or excuse, President Trump directed Executive Branch agencies, offices, and officials not to comply with those subpoenas” and “thus impeded the powers of the Presidency.”

The President’s “complete defiance of an impeachment inquiry served to cover up the President’s own repeated misconduct and to seize and control the power of impeachment.” President Trump’s misconduct was “consistent” with his “previous efforts to undermine United States foreign policy and foreign assistance to undermine interference in United States elections,” demonstrated that he “acted in a manner grossly incompatible with self-government,” and that the Constitution would remain a threat to the Constitution if allowed to remain in office.

The Senate Select Committee on
Intelligence similarly concluded that Russia, not Ukraine, interfered in the 2016 U.S. Presidential election.\textsuperscript{105} President Trump never seized on the false theory and sought an investigation of former Vice President Biden’s son instead of an investigation of his rival in the 2020 U.S. Presidential race—the State Department executed President Trump’s order to recall the U.S. ambassador to Ukraine, a well-regarded career diplomat and anti-corruption crusader.\textsuperscript{106} President Trump needed her “out of the way” because “she was going to make the Ukraine case” and “be a problem.”\textsuperscript{107} President Trump then proceeded to exercise his official power to pressure Ukraine into announcing his desired investigation release of the much-needed security assistance for President Zelensky urgently needed this assistance—both because the funding itself was critically important to defend against Russia and because the funding was a highly visible sign of American support for President Zelensky in his efforts to negotiate an end to the conflict from Russia.\textsuperscript{108}

Every relevant Executive Branch agency supported the assistance, which also had broad bipartisan support in Congress.\textsuperscript{109} President Trump, however, personally ordered OMB to withhold the assistance after the bulk of it had been appropriated by Congress.\textsuperscript{110} The new and unambiguous government headed by President Zelensky urgently needed this assistance—both because the funding itself was critically important to defend against Russia and because the funding was a highly visible sign of American support for President Zelensky in his efforts to negotiate an end to the conflict from Russia.\textsuperscript{111}

The evidence is clear that President Trump conditioned release of the vital military assistance on Ukraine’s announcement of the sham investigations. During a telephone conversation between the two Presidents on July 25, immediately after President Zelensky raised the issue of U.S. military support for Ukraine, President Trump repeated: “I would like you to do us a favor though.”\textsuperscript{112} President Trump then explained that the “favor” he wanted President Zelensky to perform was to begin the sham investigations, and President Zelensky confirmed his understanding that the investigations should be done “openly.”\textsuperscript{113} In describing whom he wanted Ukraine to investigate, and instead were corruptly intended to assist Ukrainian foreign policy goals in Ukraine. Legitimate investigations could have been recognized as an anti-corruption foreign policy

\textbf{WITHHELD SECURITY ASSISTANCE}

President Trump illegally ordered the Office of Management and Budget to withhold $391 million in taxpayer-funded military and other security assistance to Ukraine.\textsuperscript{114} This assistance would provide Ukraine with sniper rifles, rocket-propelled grenade launchers, counter-artillery radars, electronic warfare detectors, night vision equipment, among other military equipment, to defend itself against Russian forces that occupied part of eastern Ukraine.\textsuperscript{115} The new and unambiguous government headed by President Zelensky urgently needed this assistance—both because the funding itself was critically important to defend against Russia and because the funding was a highly visible sign of American support for President Zelensky in his efforts to negotiate an end to the conflict from Russia.\textsuperscript{116}

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\textbf{WITHHELD WHITE HOUSE MEETING}

On April 21, 2019, the day President Zelensky was elected, President Trump invited him to a meeting at the White House.\textsuperscript{122} The meeting would have signaled American support for the new Ukrainian administration, its strong anti-corruption reform agenda, and its efforts to defend against Russian aggression and to make peace.\textsuperscript{123} President Trump, however, exerted his official power to prevent the meeting as leverage in his scheme to pressure President Zelensky into announcing the investigations to help his reelection campaign.\textsuperscript{124} President Trump released the security assistance for Ukraine only after he got caught.\textsuperscript{125}

\textbf{B. President Trump Exercised Official Power to Benefit Himself Personally}

Overwhelming evidence demonstrates that the announcement of investigations on which President Trump conditioned the official acts had no legitimate policy rationale, and President Trump continued to insist on his hold to assist his 2020 reelection campaign.\textsuperscript{126} First, although there was no basis for the two conspiracy theories that President Trump used to justify his official acts,\textsuperscript{127} the evidence is unambiguous that President Trump used the official power that he could leverage only by virtue of his office: $391 million in security assistance and a White House meeting.

\textbf{1. Evidence from the July 25, 2019, House Meeting}

On July 25, 2019, immediately after President Zelensky was elected, President Trump invited him to a meeting at the White House.\textsuperscript{128} The meeting would have signaled American support for the new Ukrainian administration, its strong anti-corruption reform agenda, and its efforts to defend against Russian aggression and to make peace.\textsuperscript{129} President Trump, however, exerted his official power to prevent the meeting as leverage in his scheme to pressure President Zelensky into announcing the investigations to help his reelection campaign.\textsuperscript{130} President Trump released the security assistance for Ukraine only after he got caught.\textsuperscript{131}

\textbf{2. Evidence from the July 25, 2019, House Meeting}

On July 25, 2019, immediately after President Zelensky was elected, President Trump invited him to a meeting at the White House.\textsuperscript{132} The meeting would have signaled American support for the new Ukrainian administration, its strong anti-corruption reform agenda, and its efforts to defend against Russian aggression and to make peace.\textsuperscript{133} President Trump, however, exerted his official power to prevent the meeting as leverage in his scheme to pressure President Zelensky into announcing the investigations to help his reelection campaign.\textsuperscript{134} President Trump released the security assistance for Ukraine only after he got caught.\textsuperscript{135}

\textbf{Third, the involvement of President Trump’s personal attorney, Mr. Giuliani—Who has professional obligations to the President but no actual knowledge about the investigations—played a key role in advancing the conspiracy theories that he used to justify his official acts. Mr. Giuliani was pushing for Ukraine to provide the investigations to help his opponent.}

\textbf{3. Evidence from the July 25, 2019, House Meeting}

On July 25, 2019, immediately after President Zelensky was elected, President Trump invited him to a meeting at the White House.\textsuperscript{136} The meeting would have signaled American support for the new Ukrainian administration, its strong anti-corruption reform agenda, and its efforts to defend against Russian aggression and to make peace.\textsuperscript{137} President Trump, however, exerted his official power to prevent the meeting as leverage in his scheme to pressure President Zelensky into announcing the investigations to help his reelection campaign.\textsuperscript{138} President Trump released the security assistance for Ukraine only after he got caught.\textsuperscript{139}

\textbf{4. Evidence from the July 25, 2019, House Meeting}

On July 25, 2019, immediately after President Zelensky was elected, President Trump invited him to a meeting at the White House.\textsuperscript{140} The meeting would have signaled American support for the new Ukrainian administration, its strong anti-corruption reform agenda, and its efforts to defend against Russian aggression and to make peace.\textsuperscript{141} President Trump, however, exerted his official power to prevent the meeting as leverage in his scheme to pressure President Zelensky into announcing the investigations to help his reelection campaign.\textsuperscript{142} President Trump released the security assistance for Ukraine only after he got caught.\textsuperscript{143}

\textbf{5. Evidence from the July 25, 2019, House Meeting}

On July 25, 2019, immediately after President Zelensky was elected, President Trump invited him to a meeting at the White House.\textsuperscript{144} The meeting would have signaled American support for the new Ukrainian administration, its strong anti-corruption reform agenda, and its efforts to defend against Russian aggression and to make peace.\textsuperscript{145} President Trump, however, exerted his official power to prevent the meeting as leverage in his scheme to pressure President Zelensky into announcing the investigations to help his reelection campaign.\textsuperscript{146} President Trump released the security assistance for Ukraine only after he got caught.\textsuperscript{147}

\textbf{6. Evidence from the July 25, 2019, House Meeting}

On July 25, 2019, immediately after President Zelensky was elected, President Trump invited him to a meeting at the White House.\textsuperscript{148} The meeting would have signaled American support for the new Ukrainian administration, its strong anti-corruption reform agenda, and its efforts to defend against Russian aggression and to make peace.\textsuperscript{149} President Trump, however, exerted his official power to prevent the meeting as leverage in his scheme to pressure President Zelensky into announcing the investigations to help his reelection campaign.\textsuperscript{150} President Trump released the security assistance for Ukraine only after he got caught.\textsuperscript{151}

\textbf{7. Evidence from the July 25, 2019, House Meeting}

On July 25, 2019, immediately after President Zelensky was elected, President Trump invited him to a meeting at the White House.\textsuperscript{152} The meeting would have signaled American support for the new Ukrainian administration, its strong anti-corruption reform agenda, and its efforts to defend against Russian aggression and to make peace.\textsuperscript{153} President Trump, however, exerted his official power to prevent the meeting as leverage in his scheme to pressure President Zelensky into announcing the investigations to help his reelection campaign.\textsuperscript{154} President Trump released the security assistance for Ukraine only after he got caught.\textsuperscript{155}
goal, but there was no factual basis for an investigation into the Bidens or into supposed Ukrainian interference in the 2016 election.146 To the contrary, the requested investigations were of the type that the President himself had requested and used ordinary means to encourage. White House officials testified that the President had requested an investigation into the Bidens and into Ukraine, and in prior years he approved military assistance to Ukraine without controversy.147 After his announcement, President Trump remained indifferent to anti-corruption measures beyond the two investigations he was demanding.148 When he first spoke with Ukrainian President Zelensky, President Trump ignored the recommendations of his national security advisors and did not mention corruption at all—even though the President's personal lawyer, Rudy Giuliani, had brought the potential to the White House.149 President Zelensky was provided a victory based on an anti-corruption platform.150 President Trump's entire policy team agreed that corruption investigations should be committed to reforms, yet President Trump refused a White House meeting that the team advised would support President Zelensky's anti-corruption agenda.151 President Trump's own Department of Defense, in consultation with the State Department, had certified in May 2019 that Ukraine satisfied all anti-corruption conditions needed to receive the Congressionally appropriated military aid, yet President Trump falsely claimed that his pursuit of anti-corruption standards needed to receive the Congressionally appropriated military aid, yet President Trump nevertheless withheld that announcement.152

Fifth, American and Ukrainian officials alike saw President Trump's scheme for what it was: improper and political. As we expect the testimony of Ambassador John Bolton, President Trump's National Security Advisor stated that he wanted no “part of whatever drug deal” President Trump was using to solicit investigations into Ukraine.153 Dr. Hill testified that Ambassador Sondland was becoming involved in a “domestic political errand” in pressing Ukraine on the investigations.154 Jennifer Williams, an advisor to Vice President Mike Pence, testified that the President's solicitation of investigations was a “domestic political matter.”155 Lt. Col. Alexander Vindman, the NSC's Director for Ukraine, testified that “[i]t is improper for the President of the United States to demand that the President of a foreign country, a U.S. citizen and a political opponent.”156 William Taylor, who took over as Chargé d'Affaires in Kyiv after President Trump recalled Ambassador Yovanovitch, emphasized that “I think it's crazy to withhold security assistance for help with a political campaign.”157 And George Kent, a State Department official, testified that “asking another national security official to obtain an exchange of information about the purpose” that President Trump's “conduct undermines the President's commitment to the rule of law. He must be removed.’’158

President Trump's purported concern about sharing the burden of assistance to Ukraine with Europe is equally without reason. From the time OMB announced the hold on security assistance, President Trump repeatedly ordered a review of the purpose.159 But actual investigations were neither the point. Trump’s first concern was that Ukraine would sign off on his personal lawyer’s efforts.160 The reason that the President Trump removed was provided to Executive Branch agencies for the hold, despite repeated efforts by national security officials to obtain an explanation.161 President Trump’s “conduct undermines the President’s commitment to the rule of law because that announcement would accomplish his real goal—bolstering his reelection efforts.”162

President Trump's abuse of power.

The United States has approved military assistance to Ukraine with bipartisan support since 2014, and that assistance is critical to preventing and deterring Russian aggression.163 The United States has approved military assistance to Ukraine with bipartisan support since 2014, and that assistance is critical to preventing and deterring Russian aggression.164 It is in the national security interest of the United States to support the anti-corruption agenda.165 President Trump falsely claimed that his pursuit of anti-corruption standards needed to receive the Congressionally appropriated military aid, yet President Trump nevertheless withheld that announcement.166

President Trump’s abuse of power.

Before news of former Vice President Biden’s candidacy broke, President Trump was engaged with Ukraine, and had been for years.167 And in prior years he approved military assistance to Ukraine without controversy.168 After his announcement, President Trump remained indifferent to anti-corruption measures beyond the two investigations he was demanding.169 When he first spoke with Ukrainian President Zelensky, President Trump ignored the recommendations of his national security advisors and did not mention corruption at all—even though the President's personal lawyer, Rudy Giuliani, had brought the potential to the White House.169 President Zelensky was provided a victory based on an anti-corruption platform.170 President Trump’s entire policy team agreed that corruption investigations should be committed to reforms, yet President Trump refused a White House meeting that the team advised would support President Zelensky’s anti-corruption agenda.171 President Trump’s own Department of Defense, in consultation with the State Department, had certified in May 2019 that Ukraine satisfied all anti-corruption conditions needed to receive the Congressionally appropriated military aid, yet President Trump falsely claimed that his pursuit of anti-corruption standards needed to receive the Congressionally appropriated military aid, yet President Trump nevertheless withheld that announcement.172

Equally troubling is that President Trump’s conduct underlines his commitment to the rule of law. President Trump’s “conduct undermines the U.S., exposes our friends, and widens the playing field for autocrats like Putin.”173 The President's conduct also undercuts President Zelensky’s domestic standing, diminishing his ability to advance his ambitious anti-corruption reforms.174 Equally troubling is that President Trump’s conduct underlines his commitment to the rule of law. President Trump’s “conduct undermines the U.S., exposes our friends, and widens the playing field for autocrats like Putin.”173

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right to information in an impeachment investigation is a critical safeguard in our system of divided powers. Otherwise, a President could hide his own wrongdoing to prevent Congress from discovering it or punishing him for it, effectively nullifying Congress’s impeachment power. President Trump’s sweeping effort to shield his misconduct from public view—by arbitrary and unsupported executive action—thus works a grave constitutional harm and is itself an impeachable offense.

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

The House has the power to issue subpoenas and demand compliance in an impeachment inquiry. The Supreme Court has long recognized that, “[w]ithout the power to investigate—including of course the authority to compel testimony, either through its own processes or through judicial trial—Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively.” The Court has stressed that it is the ‘duty of [himself] against the disgrace of a Story long ago explained, “the president investigation is ‘of great consequence’ be- 

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The House has the power to issue subpoenas and demand compliance in an impeach- ment inquiry. The principle that the President investigation is a matter of the most critical 

B. President Trump’s Obstruction of the Impeachment Inquiry Violates Fundamental Constitutional Principles

The Senate should convict President Trump of Obstruction of Congress as charged in the First Article of Impeachment. President Trump unilaterally declared the House’s investigation “illegitimate.” President Trump’s White House Counsel notified the House that President Trump cannot permit his Administration to participate in this partisan inquiry under these cir- 

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

President Trump has offered various unpersuasive excuses for his blanket refusal to comply with the House’s impeachment in- 

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to conceal wrongdoing—particularly in an impeachment inquiry—and because the President and his agents have already diminished any confidentiality interests by speaking about these events in public fora except Congress.219 President Trump has been impeached for Obstruction of Congress not based upon discrete invocations of privilege but, for his own admission, that the Executive Branch categorically stonewalled the House impeachment inquiry by refusing to comply with all subpoenas.

To President Trump’s claims that he has concealed evidence to protect the Office of the President, the Framers considered it unimportant. The President represents the Executive Branch at the Constitutional Convention warned that the impeachment power would be “destructive of [the executive’s] independenc[e].”220 But the Framers adopted an impeachment power anyway because, as Alexander Hamilton observed, “the powers relating to impeachments are “an essential check in the hands of Congress on the encroachments of the executive.”221 The impeachment power does not exist to protect the Presidency; it exists to protect the nation from a corrupt and dangerous President like Donald Trump.

Second, President Trump has no basis for objecting to how the House conducted its impeachment investigation. The Constitution vests the House with the “sole Power of Impeachment”222 and the power to “determine the Rules of its Proceedings.”223 The House’s impeachment inquiry has demanded never have been recognized and have not been afforded in any prior Presidential impeachment.224 President Trump has been afforded every procedural right or privilege that those afforded Presidents Nixon and Clinton during their impeachment proceedings in the House.225 Any claim that President Trump was ever deprived of any right is without merit. President Trump, in dealing with a criminal trial during the entirety of the House impeachment inquiry ignores both law and history. A House impeachment inquiry cannot be compared to a criminal trial because the Senate, not the House, possesses the “sole Power to try Impeachments.”226 The Constitution does not entitle President Trump to a separate, full trial first in the House.

Even indulging the analogy to a criminal trial, President Trump has no basis for objecting to how the House conducted its impeachment proceedings.227 President Trump’s demands are just another effort to obstruct the House in the exercise of its constitutional duty.

Third, President Trump’s assertion that his impeachment for obstruction of Congress is invalid because the Committees did not first seek judicial enforcement of their subpoenas ignores again the Constitutional dictate that the House’s impeachment inquiry cannot proceed before it has exhausted all other means of obtaining evidence. Failure to do so—however contemptuous—is a federal crime.228

The House has a duty to determine whether President Trump has committed “high crimes and misdemeanors.”229 The Constitution makes it a “judicial Power” for the House “to institute an impeachment”230 to determine whether the President has “committed impeachable offenses.”231

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

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President Trump’s approach to the Judicial Branch thus mirrors his obstruction of the Legislative Branch—in his view, neither can engage in any review of his conduct. This position conveys the President’s dangerously misguided belief that no other branch of government has the power to hold him accountable for abusing it.232 That belief is fundamentally incompatible with our form of government.233 Months of delay in the impeachment process has in every event no answer in this time-sensitive inquiry. The House’s subpoena to former White House Counsel Don McGahn was issued in April 2019, but it is still winding its way through the courts over President Trump’s strong objections.234 Litigating President Trump’s direction that each subpoena be denied would conflict with the House’s urgent duty to act on the compelling evidence of impeachable misconduct that it has uncovered. Further delay could also compromise the integrity of the 2020 election.

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

III. The Senate Should Immediately Remove

President Trump From Office to Prevent Further Abuses

President Trump has demonstrated his continued willingness to corrupt free and fair elections, betray national security, and subvert the constitutional separation of powers—all for personal gain. President Trump’s ongoing pattern of misconduct demonstrates that he is an immediate threat to the Nation and the rule of law. It is imperative that the Senate act on the compelling evidence of impeachable misconduct that has been uncovered.235

The Intelligence Committee’s report documents President Trump’s scheme to solicit and receive political favors from the President of Ukraine, to influence the 2020 Presidential election, and to obstruct the impeachment inquiry into his misconduct.

In its findings, the Intelligence Committee notes: "President Trump’s actions and statements related to the 2020 election and his dealings with Ukraine, including Mr. Zelensky, represent a threat to our republic.

President Trump’s solicitations of Ukrainian interference in the 2020 election are not an isolated incident. It is part of his ongoing and deeply troubling course of misconduct that, as the First Article of impeachment states, is “consistent with President Trump’s pervasive interference of foreign interference in United States elections.”236

These previous efforts include inviting Russian interference in the 2016 Presidential election; but the Mueller report concluded, the “Russian government interfered in the 2016 presidential election in sweeping and systematic fashion.”237 Throughout the 2016 election cycle, the Trump Campaign maintained significant contacts with agents of the Russian government who were offering damaging information concerning then-candidate Hillary Clinton and Michel Szubi’s interference.238 In the Trump-Campaign welcomed Russia’s election interference to undermine Special Counsel Mueller’s findings.239 President Trump still embraces that call as both “routine” and “perfect.”240 President Trump’s conduct would have horrified the Framers of our republic.

In its findings, the Intelligence Committee emphasized the “proximate threat of further presidential attempts to solicit foreign interference in our next election.”241 That threat is now upon us. In a sign that President Trump’s corrupt efforts to encourage interference in the 2020 election persist, he reiterated his desire for Ukraine to investigate a political rival in 2020. When President Trump spoke to President Zelensky, pressuring Ukraine to announce investigations to damage President Trump in the 2020 election and undermine Special Counsel Mueller’s findings,242 President Trump still embraces that call as both “routine” and “perfect.”243 President Trump’s conduct would have horrified the Framers of our republic.

In its findings, the Intelligence Committee described the threat posed by continued occupancy of the Office of the President. It also reiterates the assertion that “all of his misconduct should be decided by the voters in the 2020 election. The aim of President Trump’s Ukraine scheme was to corrupt the integrity of the 2020 election, using foreign power to give him an unfair advantage—in short, to cheat. That threat persists today.

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

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

President Trump has made clear that he refuses to accept Congress’s express—indeed, the very constitutional—mandate to investigate him. He has defied a House Committee’s subpoena for testimony and evidence.254 The Department of Justice has argued that the President cannot be required to testify or produce documents because to do so would infringe on his constitutional privilege against self-incrimination.255

The President has consistently sought to invalidate the Constitutional power of the House of Representatives to make all the laws. In the words of James Madison, no “higher magistrate” should be “subject to the punishment of any crime before the House of Representatives shall have issued an impeachment.”256

The President’s obstruction of external inquiries is an ominous pattern of efforts “to undermine the House’s impeachment inquiry at every turn: He has dismissed the patriotic public servants who honored their subpoenas and testified before the House.251 President Trump has defied a House Committee’s subpoena for testimony and evidence.254 And the President has repeatedly used the powers of his office to impede it. Among other actions, the President ordered the White House Counsel to fire the Special Counsel’s investigation, and then create a false record of the firing, tampered with witnesses in the Special Counsel’s investigation, and repeatedly and publicly attacked the legitimacy of the investigation.253

President Trump’s current obstruction of Congress is, therefore, not the first time he has committed misconduct concerning a federal investigation into election interference and then sought to hide it. Allowing this pattern to continue without repercussion would send the clear message that President Trump is correct in his view that no governmental body can hold him accountable for wrongdoing. That view is erroneous and exceptionally dangerous.

The Senate should convict and remove President Trump to protect Our System of Government and National Security Interests. If the Senate permits President Trump to remain in office, he and future leaders would be emboldened to embrace the view that no governmental body can hold him accountable for wrongdoing. That view is erroneous and exceptionally dangerous.

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January 21, 2020

CONGRESSIONAL RECORD — SENATE

86. Id. at 7.
87. Id. at 5, 8.
89. See id. §§ 1–157.
91. Id. (describing the first detailed discussion of abuse of power as an impeachable offense, see H. Rep. No. 116–346, at 43–48, 68–70, 78–81, 88.
93. Id. § 4, 11–12.
94. See id. § 12.
95. Id.
96. Id. § 11, 17.
97. Id. § 12.
98. Id.
99. Id.
100. Id.; see also id. §§ 83–84, 150.
101. Id. §§ 11, 84.
102. Id. §§ 8, 12–14.
103. Id. § 14.
104. Id. § 13.
105. Id.
106. See id. §§ 11–13, 83–84.
107. Id.
108. Id. §§ 7–9.
109. Id. § 10 (quoting Mr. Giuliani).
110. Id. §§ 28–48.
111. Id. § 5.
112. See id. §§ 30–31, 34–35.
113. Id. § 99.
114. Id. §§ 99, 41–42.
115. Id. § 46. The GAO opinion addresses only the portion of the funds appropriated to the Department of Defense. The opinion explains that OMB and the State Department have not provided the information GAO needs to evaluate the legality of the hold placed by the President on the remaining funds.
116. Id. § 76.
117. Id. §§ 76, 80.
118. Id. § 62.
119. Id. § 77.
120. Id. § 101.
121. Id. § 110.
122. Id. § 114.
123. Id. §§ 103, 139–31.
124. Id. § 3.
125. See, e.g., id. § 4.
126. Id. § 88.
127. Id. § 52.
128. Id. § 137.
129. Id. §§ 141–42, 150.
132. Id. §§ 16–19.
133. See id. § 154–56 (then-candidate Trump’s actions relating to the FBI’s investigation into Hillary Clinton).
134. Id. § 88.
135. Id. § 121. Mr. Mulvaney, along with his deputy Robert Blair and OMB official Michael Duffey—who were subpoenaed by the House, but refused to testify at the President’s direction, see id. § 187—would provide additional firsthand testimony regarding the President’s withholding of official acts in exchange for Ukraine’s assistance with his reelection.
136. Id. § 18.
137. Id.
138. Id. § 19 (emphasis added).
139. Id. § 24.
140. Id. § 443.
141. Id. §§ 11–15, 122.
142. Id.
143. Id. § 42.
144. Id. §§ 43–48.
145. Id. §§ 45–46.
146. Id. § 140.
147. Id. § 59. Although Bolton has not cooperated with the House’s inquiry, he has offered to testify to the Senate if subpoenaed.
148. Id. § 58.
149. Id. § 104.
150. Id. § 83.
151. Id. § 118.
152. Id. § 55 (recalling his statement to Ambassador Volker in July 2019).
153. Id. § 68.
154. Id. § 104.
155. Id. § 150.
156. Id. § 151.
157. Id. § 143.
158. See id. §§ 2, 33.
159. See id. § 88.
160. See id. §§ 1–2.
161. See id. §§ 22–24.
162. See id. §§ 73, 39.
163. See id. § 7.
164. See id. §§ 8–9, 81.
165. See id. § 82 n.138.
166. See id. §§ 62, 131.
168. See id. §§ 43–45.
169. See id. § 44.
170. See id.
171. See id. § 131.
172. Id. § 28.
173. Id. § 51.
174. Id.
175. Id.
176. Id. § 14.
177. Id. §§ 132–33.
178. Id. §§ 4 & n.8.
179. See id. § 50.
180. See id. § 18.
181. Transcript, Impeachment Inquiry: Fiona Hill and David Holmes: Hearing Before the H. Permanent Select Comm. on Intelligence, 116th Cong. 175 (Nov. 21, 2019).
182. Transcript, Impeachment Inquiry: Ambassador Marie “Masha” Yovanovitch: Hearing Before the H. Permanent Select Comm. on Intelligence, 116th Cong. 19 (Nov. 15, 2019) (Yovanovitch Hearing Tr.).
184. 4 Annals of Cong. 601 (1796) (statement of President James Madison).
190. Id. at 175.
192. 2 Joseph Story, Commentaries on the Constitution of the United States § 1501 (2d ed. 1851).
194. Kilbourn, 103 U.S. at 90. The Court in Kilbourn invalidated a contempt order by the House but explained that the “whole aspect of the case would have changed” if it had been an impeachment proceeding. Id. at 193.
STATEMENT OF MATERIAL FACTS—ATTACHMENT TO THE TRIAL MEMORANDUM

INTRODUCTION

The U.S. House of Representatives has adopted Articles of Impeachment charging President Donald J. Trump with abuse of office and obstruction of Congress. The House’s Trial Memorandum explains why the Senate should convict and remove President Trump from office, and permanently bar him from holding office, and permanently bar him from holding office, and permanently bar him from holding office.

As further described below, and as detailed in House Committee reports, President Trump used the powers of his office and U.S. taxpayers’ money to pressure a foreign country, Ukraine, to interfere in the 2020 U.S. Presidential election on his behalf. President Trump’s goals—borne known to multiple U.S. officials who testified before the House—were simple and starkly political: he wanted Ukraine’s new President to announce investigations that would assist his 2020 reelection campaign and tarnish political opponents, former Vice President Biden, and his son.

When this scheme became known and Committee of the House launched an investigation, the President, for the first time in American history, ordered the categorical obstruction of an impeachment inquiry. President Trump directed that no witnesses should testify and no documents should be produced. As a result, a co-equal branch of government endowed by the Constitution with the “sole Power of Impeachment” and President Trump’s conduct—both in soliciting a foreign country’s interference in a U.S. election and obstructing the ensuing investigation into that interference—was consistent with his prior conduct during and after the 2016 election.

STATEMENT OF MATERIAL FACTS

1. President Trump’s Abuse of Power

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

1. On April 21, 2019, Volodymyr Zelensky, a political neophyte, won a landslide victory in Ukraine’s Presidential Election.4 Zelensky campaigned on an anti-corruption platform, and his victory reaffirmed the Ukrainian people’s strong desire for reform.4

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

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

4. Both events would have demonstrated strong support by the United States as Ukraine fought a war—and negotiated for resources—while reaching closely to gauge the level of American support for the Ukrainian Government.”7 A White House visit also would have bolstered Zelensky’s standing in his home country as he pursued his anti-corruption agenda.8

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

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

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

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

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

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

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

12. There was no factual basis for either investigation. As to the first, witnesses unanimously testified that there was no credible evidence to support the allegations that, in 2015, Vice President Biden encouraged Ukraine to remove then-Prosecutor General Viktor Shokin because he was investigating Burisma.18 Rather, Vice President Biden had been carrying branch—by-bipartisan support19—and promoting anti-corruption reforms in Ukraine because Shokin was viewed by the United States, its partners and the International Monetary Fund to be ineffectual at prosecuting corruption and was himself corrupt.20 In fact, witnesses unanimously testified that the removal of Shokin made it “more likely that Ukraine would investigate corruption, including Burisma and its owner, not less likely.”21 The Ukrainian Parliament removed Shokin in March 2016.22

13. As to the second investigation, the U.S. Intelligence Community determined that Russia interfered in the 2016 election.23 The Senate Select Committee on Intelligence reached the same conclusion following its own lengthy bipartisan investigation.24

14. As Dr. Fiona Hill—who served until July 2019 as the Senior Director of European and Russian Affairs at the National Security Council (NSC) under the President and until July 2019, testified—the theory of Ukrainian interference in the 2016 election is a “fictional narrative that is being perpetrated and propagated by the Russian security services themselves” to deflect from Russia’s own culpability and to drive a wedge between the United States and Ukraine.25

15. In fact, shortly after the 2016 U.S. election, this conspiracy theory was promoted by none other than President Vladimir Putin himself.26 On May 3, 2019, shortly after President Zelensky’s election victory, President Putin spoke by telephone, including about the so-called “Russian Hoax.”27

16. President Trump’s senior advisors had attacked the theory to dissuade others from promoting this conspiracy theory, to no avail. Dr. Hill testified that President Trump’s former Homeland Security Advisor Tom Bossert and former National Security Advisor H.R. McMaster “spent a lot of time trying to refute this [theory] in the first year of the administration.”28 Bossert later said he was “surprised by the false narrative of Russian interference in the 2016 election” was “not only a conspiracy theory, it is completely debunked.”29

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

17. Shortly after his April 21 call with President Zelensky, President Trump began putting pressure on the Ukrainian Attorney General to investigate conclusions that he wanted Ukraine to pursue. On April 25—the day that former Vice President Biden announced his candidacy for the Democratic nomination for President—President Trump called into Sean Hannity’s prime time Fox News show. Referring alone Ukrainian interference in the 2016 election, President Trump said, “It sounds like big stuff,” and suggested that the Attorney General might investigate.30
17. On May 6, in a separate Fox News interview, President Trump claimed Vice President Biden’s advocacy for Mr. Shokin’s dismissal in 2016 was “a very serious problem” and “a very big problem.” Mr. Giuliani testified that President Trump had spoken with Mr. Shokin to express his support. Mr. Giuliani also acknowledged that “[e]verybody could say it’s improper” to pressure Ukraine to open investigations that would benefit President Trump.

18. On May 9, the New York Times reported that Mr. Giuliani was planning to travel to Ukraine to urge President Zelensky to pursue a “specific request.” Mr. Giuliani claimed “that’s not what I hear” from Mr. Trump in an Oval Office meeting for President Zelensky. Positive impressions to President Trump and positive foreign actions from Mr. Giuliani were discovered by the Ukrainian government. Ambassadors Sondland similarly testified that the agenda described by Mr. Giuliani became more “insidious” over time. Mr. Giuliani would propose that the President’s national security advisor, Ambassador Volker, who were in direct communications with Ukrainian officials, that a White House meeting would not occur until Ukraine announced its pursuit of the two political investigations.

29. On June 17, Ambassador Bill Taylor, whom Secretary of State Mike Pompeo had appointed to lead the US diplomatic mission to Ukraine, arrived in Kyiv as the new Chargé d’Affaires.

30. Ambassador Taylor quickly observed that there was an “irregular channel” led by Mr. Giuliani that, over time, began to undermine the official channel of U.S. diplomatic relations with Ukraine. Ambassador Sondland testified that the agenda described by Mr. Giuliani became more “insidious” over time. Mr. Giuliani would propose that the President’s national security advisor, Ambassador Volker, who were in direct communications with Ukrainian officials, that a White House meeting would not occur until Ukraine announced its pursuit of the two political investigations.

31. On June 17, Ambassador Bill Taylor, whom Secretary of State Mike Pompeo had appointed to lead the US diplomatic mission to Ukraine, arrived in Kyiv as the new Chargé d’Affaires.

32. On June 19, the Office of Management and Budget (OMB) issued a determination from President Trump about the funding for Ukraine. OMB, in turn, made inquiries with DOD officials.

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

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

35. On July 18, OMB announced to the relevant Executive Branch agencies during a secure videoconference that President Trump had ordered a hold on all Ukraine security assistance. No explanation for the hold was provided.

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

43. In late July, the NSC convened a series of interagency meetings during which senior Executive Branch officials discussed the hold on security assistance. At the conclusion of these meetings, a number of facts became clear: (1) the President personally directed the hold through OMB; (2) no credible justification was provided for the hold; and (3) with the exception of OMB, all relevant agencies supported the Ukraine security assistance because, among other things, it was in the national security interests of the United States; and (4) there were serious concerns about the legality of the hold.

44. Although President Trump later claimed that the hold was part of an effort to get European allies to share more of the costs for security assistance for Ukraine, officials from the security assistance community testified they had not heard that rationale discussed in June, July, or August. For example, Mark Sandy, OMB’s Deputy Associate Director for Budget, who is responsible for DOD’s portion of the Ukraine security assistance, testified that the European burden-sharing explanation was first provided to him in September—following his repeated requests to learn the reason for the hold. Deputy Secretary of Defense Laura Cooper, whose responsibilities include the Ukraine security assistance, testified that she had “no recollection of the issue of allied burden sharing coming up” in the three meetings she attended about the freeze on security assistance, nor did she recall hearing about a lack of funding from Ukraine’s allies as a reason for the freeze. Ms. Cooper further testified that there was no policy or interagency review process relating to the Ukraine security assistance that she “participated in or knew of” in August 2019. In addition, while the aid was withheld, Ambassador Sondland, the U.S. Ambassador to the EU, was never asked to reach out to the EU or its member states to ask them to increase their contributions.

45. Two OMB career officials, including one of its legal counsel, ultimately resigned, in part, over concerns about the handling of the hold on security assistance. A confidential White House review has reportedly turned up hundreds of documents that reveal extensive efforts to generate an after-the-fact justification for the hold.

46. Throughout August, officials from DOD warned officials from OMB that, as the hold continued, the increasing risk that the funds for Ukraine would not be timely obligated, in violation of the Impoundment Control Act of 1974.47 On January 16, 2020, the U.S. Government Accountability Office (GAO) concluded that OMB had, in fact, violated the Impoundment Control Act when it withheld from obligation funds appropriated by Congress.48 In a letter to the White House, GAO stated that “[f]aithful execution of the law does not permit the President to substitute his own policy priorities for those that Congress has enacted into law.”

47. In late August, Secretary of Defense Mike Esper, Secretary of State Pompeo, and National Security Advisor Bolton reportedly urged the President to release the aid to Ukraine, advising the President that the aid was in America’s national security interest.49 On August 30, however, an OMB official advised a Pentagon official by email that there was a “clear direction from POTUS to continue with the hold through August and into September, without any credible explanation.”

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

49. Upon his arrival in Kyiv in June 2019, Ambassador Taylor sought to schedule the promised White House meeting with President Zelensky, which was “an agreed-upon goal” of policymakers in Ukraine and the United States.50

50. Ambassador Volker explained, a White House visit by President Zelensky would constitute “a tremendous symbol of support” for Ukraine and would “enhance[] [President Zelensky’s] stature.”

51. Ambassador Taylor learned, however, that President Trump “wanted to hear from Zelensky,” who had to “make clear to President Trump that he would be undertaking the white house meeting in the way of investigations.” It soon became clear to Ambassador Taylor and others that the White House meeting would not be held until the Ukraine committed to investigations of “Burisma and alleged Ukrainian influence in the 2016 elections.”

52. Ambassador Sondland was unequivocal in describing this conditionality. He testified:

I know that members of this committee frequently frame these complicated issues in the form of a simple question: Was there a quid pro quo? As I testified previously with regard to the requested White House call and the White House meeting, the answer is yes.

53. According to Ambassador Sondland, the public announcement of the investigations—and not necessarily the pursuit of the investigations themselves—was the price President Trump sought in exchange for a White House meeting with Ukrainian President Zelensky.

54. Both Ambassadors Volker and Sondland explicitly communicated this quid pro quo to Ukrainian government officials. For example, on July 29, 2019, in Toronto, Canada, Ambassador Volker conveyed the message directly to President Zelensky and referred to the “Gianelli factor” in President Zelensky’s engagement with the United States.52 Ambassador Volker told Ambassador Taylor that during the Toronto conference, he counseled President Zelensky about how he “could prepare for the phone call with President Trump”—specifically, that President Trump “would like to hear about the investigations.

55. Ambassador Volker confirmed that, in a “pull aside” meeting in Toronto, he “advise[d] (President Zelensky) that he should call President Trump personally because he needed to be able to convey to President Trump that he was serious about fighting corruption, investigating things that happened in the past and so forth.”53 Upon this discussion, Deputy Assistant Secretary of State for European and Eurasian Affairs George Kent told Ambassador Volker that “asking for another White House meeting is a red flag for political reasons underlines our advocacy of the rule of law.”

56. On July 10, at a meeting with Ukrainian President Zelensky, this was the case at the White House, Ambassador Sondland was even more explicit about the quid pro quo. He stated—in front of multiple witnesses, including two top advisors to President Zelensky and Ambassador Bolton—that he had an arrangement with Mr. Mulvaney to call Mr. Volker later that day to “choreograph” the call. Ambassador Bolton later initiated the “investigations.”

57. In a second meeting in the White House with President Trump shortly thereafter, Ambassador Sondland, in front of the Ukrainians, was talking about how he had an agreement with Chief of Staff Mulvaney for a meeting with Ukrainians if they were going to forward with investigations.

58. During that meeting, Dr. Hill and Lt. Col. Vindman objected to Ambassador Sondland’s interference, describing what Dr. Hill later described as a “domestic political errand” with official national security policy toward Ukraine.

59. Following the July 10 meetings, Dr. Hill discussed what had occurred with Ambassador Bolton, including Ambassador Sondland’s “effort of making it known to the Ukrainians in the Ward Room, Ambassador Bolton told her to “go and tell [the NSC Legal Advisor] that I am not part of this quid pro quo crap and Mulvaney and Sondland are cooking up on this.”

60. Both Dr. Hill and Lt. Col. Vindman separately reported Ambassador Sondland’s efforts during the July 10 meetings to NSC Legal Advisor, John Eisenberg, who said he would follow up.54

61. After the July 10 meetings, Andry Yermak, a top aide to President Zelensky who was in the meetings, followed up with Ambassador Volker by text message: “Thank you for meeting and your logical position . . . I feel that the key for many things is Rud[i] [sic] and I am ready to talk with him at any time.”

62. Over the next two weeks, Ambassadors Sondland and Volker coordinated with Mr. Giuliani and senior Ukrainian and American officials to arrange a telephone call between President Trump and President Zelensky. They also worked to ensure that, during that phone call, President Zelensky would confirm President Trump’s willingness to undertake the investigations in order to get the White House meeting scheduled.

63. On July 19, Ambassador Volker had breakfast with Mr. Giuliani at the Trump Hotel in Washington, D.C. After the meeting, Ambassador Volker reported back to Ambassador Sondland that “President Trump and Mr. Giuliani talked about the conversation with Mr. Giuliani, stating, ‘Most imp[ortant] is for Zelensky to say that he will help investigation—and address any specific personnel issues—if there are any.’”

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

65. Following his conversation with President Zelensky, Ambassador Sondland emailed top Trump Administration officials, including Secretary Pompeo, Mr. Mulvaney, and Secretary Perry. Ambassador Sondland stated that President Zelensky confirmed that he would assure President Trump that “he intends to run a fully transparent investigation into every stone.”

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

67. According to Ambassador Sondland, this email—and other correspondence with
top Trump Administration officials—showed that his efforts regarding Ukraine were not part of a rogue foreign policy. To the contrary, Ambassador Sondland testified that “everything was on the table.”

68. The Ukrainians also understood the quid pro quo—and the domestic U.S. political ramifications of the investigations they were being asked to pursue. On July 25, a close advisor to President Zelensky warned Ambassador Taylor that the Ukrainian leader “did not want to be used as a pawn in a U.S. re-election political contest.” Vice President Pence, testifying that the call was “unusual and inappropriate” and that “the references to specific individuals and investigations, such as former Vice President Biden and his son, struck me as political in nature,”

72. On the morning of July 25, Ambassador Sondland, Volker, and envoy to the State Department’s Ukraine Desk, Mr. Yermak, approximately 30 minutes before the call.

75. During the roughly 30-minute July 25 call, President Zelensky thanked President Trump for the “great support in the area of assistance” and the “public statement announcing the investigations.”

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

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

81. During the call, President Trump also attacked Ambassador Yovanovitch. He said, “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.” He later added, “Well, she’s going to go through some things.” President Trump also defended then-Ukrainian Prosecutor General Yury Lutsenko, who was widely known to be connected to Mr. Giuliani.

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

83. Listening to the call as it transpired, several White House staff members became alarmed. Lt. Col. Vindman immediately reported his conversation to his superiors, as he testified, “[i]t is improper for the President of the United States to demand a U.S. citizen and a policy official’s son.”

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

85. Timothy Williams, the successor as the N.S.C.’s Senior Director for Europe and Russia and Lt. Col. Vindman’s supervisor, said that “the call was not the full-throated endorsement before the agenda that I was hoping to hear.” He too reported the call to N.S.C. lawyers, worrying that the call would be “damaging” if leaked publicly.

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

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

88. After the call, it was clear to Ambassador Sondland that “a public statement from President Zelensky” committing to the investigation was required, and he set this as the agenda for a White House meeting.

89. As discussed further below, following the July 25 call, President Trump’s response at the time of President Trump’s continuing hold on security assistance. President Trump, on the day of the call itself, D.O.D. officials learned that diplomats at the Ukrainian Embassy in Washington, D.C., had made multiple overtures to D.O.D. and the State Department “asking about security assistance.”

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

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

92. By mid-August, before the hold was public, Lt. Col. Vindman also received information from the Ukrainian Embassy, Lt. Col. Vindman testified that during this timeframe, “it was no secret, at least within government and official channels, that security assistance was on hold.”

93. The former Ukrainian deputy foreign minister, Olena Zerkal, has acknowledged that she became aware of the hold on security assistance no later than July 30 based on a diplomatic cable—transmitted the previous week—from Ukrainian officials in Washington, D.C.

94. In early August, Ambassador Sondland and Volker, in coordination with Mr. Giuliani, endeavored to pressure President Zelensky to make a public statement announcing the investigation.

95. On August 11, Ambassador Sondland emailed two State Department officials, one of whom acted as a direct line to Secretary Pompeo, to inform them about the agreement for President Zelensky to issue a statement. The agreement included language in a text message that showed the Ukrainians’ understanding of the quid pro quo—President Zelensky’s advisor, Mr. Yermak, told Ambassador Volker that, once the date was set for the White House meeting, he would “call for a press briefing, announcing upcoming visit and outlining vision for the US-Ukraine relationship, including among other things Burisma and election meddling investigations[.]”

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97. On August 12, Mr. Yermak and Ambassador Volker scheduled a call with Mr. Holmes, the Counselor for Political Affairs. Mr. Holmes was the only State Department official who had been present in the July 25 call and the only person who had spoken to the President on that call.

98. The Ukrainians understood the quid pro quo agreement for President Zelensky to issue a statement. The agreement included language in a text message that showed the Ukrainians’ understanding of the quid pro quo—President Zelensky’s advisor, Mr. Yermak, told Ambassador Volker that, once the date was set for the White House meeting, he would “call for a press briefing, announcing upcoming visit and outlining vision for the US-Ukraine relationship, including among other things Burisma and election meddling investigations[.]”

99. On August 12, Ambassador Volker, acting as a direct line to Secretary Pompeo, informed them about the agreement for President Zelensky to issue a statement. The agreement included language in a text message that showed the Ukrainians’ understanding of the quid pro quo—President Zelensky’s advisor, Mr. Yermak, told Ambassador Volker that, once the date was set for the White House meeting, he would “call for a press briefing, announcing upcoming visit and outlining vision for the US-Ukraine relationship, including among other things Burisma and election meddling investigations[.]”
interference in the political processes of the United States,” but it did not explicitly mention the two investigations that President Trump had requested in the July 25 call.157

97. The next day, Ambassadors Volker and Sondland discussed the draft statement with Mr. Giuliani, who told them, “If the statement is coming down as it is, it will be damaging to the President,” and added that “the announcement of the two investigations was important to the President.”158

98. Ambassadors Volker and Sondland relayed that information to Mr. Yermak, who immediately emailed Secretary Pompeo in an effort to obtain a response from the President. Mr. Yermak asked for clarification of OMB, which was acting under “guidance from the White House Chief of Staff Mulvaney to freeze the assistance.”161 But even officials within OMB had internal disagreements that the hold be removed because “assistance to Ukraine is consistent with [U.S.] national security strategy,” provides the “benefit . . . of opposing Russian aggression,” and is backed by “bipartisan support.”162

100. Meanwhile, there was growing concern about President Trump’s continued hold on the security assistance for Ukraine. The hold remained in place through late July, officials unanimously advocated for releasing the hold—with the sole exception of OMB, which was acting under “guidance from the White House Chief of Staff Mulvaney to freeze the assistance.”163 But even officials within OMB had internal disagreements that the hold be removed because “assistance to Ukraine is consistent with [U.S.] national security strategy,” provides the “benefit . . . of opposing Russian aggression,” and is backed by “bipartisan support.”164

101. Without an explanation for the hold, and with President Trump already conditionally announcing a White House visit on the announcement of the investigations, it became increasingly apparent to multiple witnesses that the security assistance was being withheld in order to pressure Ukraine to announce the investigations. As Ambassador Sondland testified, President Trump’s effort to condition release of the security assistance on Ukraine’s announcement of the investigations was as clear as “two plus two equals four.”165

102. On August 23, Ambassador Sondland emphasized the need for a “break the logjam” on the security assistance and the White House meeting. He proposed that President Trump should arrange to speak to President Zelensky during an upcoming trip to Warsaw, during which President Zelensky could “look [President Trump] in the eye and tell him” he was prepared to release the security assistance.166

103. On August 28, news of the hold was publicly reported by Politico.167

104. As soon as the hold became public, Ukrainian officials expressed significant concern to U.S. officials.168 They were deeply worried not only about the practical impact that the hold would have on efforts to fight Russian aggression, but also about the symbolic message the now-publicized lack of support from the Trump Administration sent to the Russian government, which would almost certainly seek to exploit and deepen the perceived crack in U.S. resolve toward Ukraine. Mr. Yermak and other Ukrainian officials told Ambassador Taylor that they were “alarmed by what Mr. Morrison told him about the Sondland-Yermak conversation.”169 He followed up by texting Ambassador Sondland, “Are we now saying that security assistance and the meeting are conditioned on investigations?” Ambassador Sondland responded, “Call me.”170

115. Ambassador Volker, in response to an inquiry from President Zelensky’s advisor, Mr. Yermak, who told him that “there was no quid pro quo,” President Zelensky must announce the opening of the investigations and he should want to do it.”192 Ambassador Volker, in response to an inquiry from President Zelensky’s advisor, Mr. Yermak, who told him that “there was no quid pro quo,” President Zelensky must announce the opening of the investigations and he should want to do it.”192 Ambassador Volker, in response to an inquiry from President Zelensky’s advisor, Mr. Yermak, who told him that “there was no quid pro quo,” President Zelensky must announce the opening of the investigations and he should want to do it.”192 Ambassador Volker, in response to an inquiry from President Zelensky’s advisor, Mr. Yermak, who told him that “there was no quid pro quo,” President Zelensky must announce the opening of the investigations and he should want to do it.”192
124. Within hours after the White House publicly released a record of the July 25 call, DOJ itself confirmed in a statement that no such request was ever made:

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

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

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

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

127. NSC staff members believed that the Congressional investigation “might have the effect of releasing the hold” on Ukraine military assistance, because it would have been “politically potentially challenging” to “justify that hold.”203

128. Later that day, the Inspector General of the Intelligence Community (ICIG) wrote to the Chair and Ranking Member of the Intelligence Committee notifying them that an whistleblower had filed a complaint on August 12 that the ICIG had determined to be both an “urgent concern” and “credible.” The ICIG did not disclose the contents of the complaint.204

129. The ICIG further stated that the Acting Director of National Intelligence (DNI) had told the whistleblower to hold the complaint in abeyance, withholding the whistleblower complaint from Congress.205 It was later revealed that the Acting DNI had done so as a result of communications from Vice President Pence’s Office, which was withholding the whistleblower complaint from the Department of Justice.206 The next day, September 10, Chairman Schiff wrote to Acting DNI Joseph Maguire to express his concern about the “unprecedented step of withholding a whistleblower complaint, as required by law, raising the prospect that an urgent matter of a serious nature is being purposefully concealed from Congress.”207

130. The White House was aware of the contents of the whistleblower complaint since at least August 26, when the Acting DNI informed the White House Counsel Pat Cipollone and Mr. Eisenberg reportedly briefed President Trump on the whistleblower complaint on the same day.208

131. On September 11—two days after the ICIG had determined the whistleblower complaint to be both an urgent and credible whistleblower complaint, and the three House Committees announced their investigation—President Trump lifted the hold on security assistance. As with other portions of this chapter, the White House by this point had not even contacted Cipollone or the Deputy Attorney General to contact him, and no credible reason was provided for lifting the hold.209 At the time of the release, there had been no discernible changes in international assistance commitments for Ukraine or Ukrainian anti-corruption reforms.210

132. Because of the hold the President placed on security assistance to Ukraine, the DOD was unable to spend approximately $35 million—or 14 percent—of the funds appropriated by Congress for fiscal year 2019.211

133. Congress passed a new law to extend the funding in order to ensure the full amount could be used by Ukraine to defend itself.212 Still, by early December 2019, Ukraine had not received approximately $20 million of the military assistance.213

134. Although the hold was lifted, the White House still announced a date for President Zelensky’s meeting with President Trump, and there were indications that President Zelensky’s interview with CNN would still occur.214

135. On September 18, a week before President Trump was scheduled to meet with President Zelensky on the sidelines of the U.N. General Assembly in New York, Vice President Pence had a telephone call with President Zelensky. During the call, Vice President Pence “asked[ed] a bit more about how Zelensky was going.”215

136. On September 19, at the urging of Ambassador Taylor,216 President Zelensky cancelled the CNN interview.217

137. To date, almost nine months after the initial invitations and before President Trump on April 21, a White House meeting for President Zelensky has not occurred.218 Since the initial invitation, President Trump has met with a dozen world leaders at the White House, including a meeting in the Oval Office with the foreign minister of Russia on December 10.219

138. Since lifting the hold, and even after the House impeachment inquiry was announced on September 24, President Trump has continued to press Ukraine to investigate Vice President Biden and alleged 2016 election interference by Ukraine.220

139. On September 24, in remarks at the opening of the House General Assembly, President Trump stated: “What Joe Biden did for his son, that’s something they [Ukraine] should be looking at.”221

140. On September 18, in joint public press availability with President Zelensky, President Trump stated that “I want him to do whatever he can” in reference to the investigation of the Bidens.222 The same day, President Trump denied that his pursuit of the investigations involved a quid pro quo.223

141. On September 18, during remarks at the swearing-in of the new National Security Advisor, President Trump stated: “Now, the new President of Ukraine ran on the basis of no corruption. But, unfortunately, there’s a lot of corruption having to do with the 2016 election against us. And we want to get to the bottom of it, and it’s very important that we do.”224

142. On October 5, when asked by a reporter what he had hoped President Zelensky would do following their July 25 call, President Trump responded: “Well, I would think that if they were honest about it, they’d start a major investigation into the Bidens. It’s a very simple answer.”225 The President also suggested that “China should start an investigation’ to help the investigation of two particular subjects: the Bidens and alleged Ukrainian interference in the 2016 election. He told reporters:

What I want to do—and I think I have an obligation to do it, probably a duty to do it: We are looking for corruption. When you look at what Biden and his son did, and when you look at other people—what they’ve done. And I believe there was corruption. So, I think there was beyond—I mean, beyond corruption—having to do with the 2016 campaign, and what those lowlifes did to so many people, to hurt so many people in the Trump campaign—which was successful, despite all of the fighting us. I mean, despite all of the unfairness.226

When asked by a reporter, “Is someone advising you that it is okay to solicit the help of other governments to investigate a potential political opponent?,” Trump replied in part, “Here’s what’s okay: If we feel there’s a right to go to a foreign country.”227

144. As the House’s impeachment inquiry unfolded, Mr. Giuliani, on behalf of the President, also continued to urge Ukraine to pursue the investigations and dig up dirt on Vice President Biden, as his own statements about these efforts further confirm that he has been working in furtherance of the President’s personal and political interests to this end.228

145. During the first week of December, Mr. Giuliani traveled to Kyiv and Budapest to meet with both current and former Ukrainian government officials,229 including a current Ukrainian member of Parliament who attended a KGB school in Moscow and has led calls to investigate Burisma and the Bidens.230 Mr. Giuliani also met with the current and former presidents of Ukraine, Victor Shokin and Yurii Lutsenko, who had promoted the false allegations underlying the investigations President Trump wanted.231 Mr. Giuliani told the New York Times that in meeting with Ukrainian officials he was acting on behalf of his client, President Trump: “I like a good lawyer. I am gathering evidence to defend my client against false charges being leveled against him.”232

146. During his trip to Ukraine, on December 3, Mr. Giuliani tweeted: “The conversations about corruption were based on compelling evidence of criminal conduct by then VP Biden, in 2016, that has not been resolved and until it is will be a major obstacle to U.S. assistance with its anti-corruption reforms.”233 Not only was Mr. Giuliani perpetuating the false allegations against Vice President Biden, but he was reiterating the threat that President Trump had used to pressure President Zelensky to announce the investigations: that U.S. assistance to Ukraine could be in jeopardy until Ukraine investigated Vice President Biden.

147. Mr. Giuliani told the Wall Street Journal that when he returned to New York on December 7, President Trump called him as his plane was still taxying down the runway: “‘What did you get?’ he said Mr. Trump asked. ‘More than you can imagine,’ Mr. Giuliani replied.”234

148. Later that day, President Trump told reporters that he was aware of Mr. Giuliani’s efforts in Ukraine and believed that Mr. Giuliani wanted to report the information he had gathered to the Attorney General and Congress.235

149. On December 17, Mr. Giuliani confirmed that President Trump has been “very interested in having the President of Ukraine do dirt on Vice President Biden in Ukraine and that they are ‘on the same page.’”236
150. Such ongoing efforts by President Trump, including through his personal attorney, to solicit an investigation of his political opponent have undermined U.S. credibility. On May 13, Ambassador Volker had advised Mr. Yermak against the Zelensky Administration conducting an investigation into President Zelensky’s own former political rival, Vitali Klitschko.241

151. Mr. Holme, a career diplomat, highlighted the hypocrisy: “While we had advised our Ukrainian counterparts to voice a commitment to following the rule of law and generally investigating credible corruption allegations, U.S.-based advocates urged the Ukrainian President not to pursue an investigation into Russia’s interference in the 2016 Presidential election and President Trump’s efforts to undermine that investigation.”242

II. President Trump’s Conduct Was Consistent with His Previous Investigations of Foreign Interference in U.S. Elections

152. President Trump’s efforts to solicit Ukraine’s assistance to help his reelection campaign were consistent with his prior solicitation and encouragement of Russia’s interference in the 2016 U.S. election. When he met with President Zelensky, President Trump derided former Special Counsel Mueller’s “poor performance” in his July 24 testimony and speculated that “the whole nonsense ... started with Ukraine.”258

153. As a Presidential candidate, Mr. Trump repeatedly sought to benefit from Russian actions to help his campaign. For example, during a public rally on July 27, 2016, then-candidate Trump declared: “Russia’s actions to help his campaign.”245

154. Days earlier, WikiLeaks had begun releasing emails and documents that were stolen by Russian military intelligence services in order to damage the Clinton campaign.246

155. Like all Presidential campaigns, the Trump Campaign used additional channels to seek Russian assistance in obtaining damaging information about Clinton. Mr. Zelensky, then a candidate for the Ukrainian presidency, was a well-known advocate in the U.S. of a Ukraine-U.S. business relationship.255

156. President Trump’s direction. Indeed, President Trump told Mr. Yermak, “If you’re listening, I hope you’re able to find the 30,000 emails that are missing” from opposing candidate Hillary Clinton’s personal server.247

157. In addition, President Trump’s request for the investigations on the July 25 call with President Zelensky was consistent with his prior solicitations and encouragement of Russia’s interference in the 2016 Presidential election and President Trump’s efforts to undermine that investigation.259

158. President Trump ordered categorical obstruction of the impeachment inquiry under Article II, where I have the right to do whatever I want as President.”260

159. During the 8th Congress, a number of Committees of the House have undertaken investigations into allegations of misconduct by President Trump and his Administration, including the two recommendations of articles of impeachment.260

160. As discussed above, on September 9, the Intelligence Committee and the Committees of Oversight and Reform and Foreign Affairs announced they would conduct a joint investigation into the President’s scheme to pressure Ukraine to announce a joint investigation into the President’s scheme to pressure Ukraine to announce a joint investigation into [the] allegations of an impeachment inquiry.”259

161. On October 31, the House enacted a resolution confirming the Committees’ authority to conduct the impeachment inquiry and adopting procedures governing the inquiry.260

162. The procedures adopted by the House were consistent with the procedures the President that were equivalent to, or in some instances exceeded, those afforded during prior impeachment proceedings. Specifically, the House World News Service reported that “the House of Representatives in November 1, 2019. Given the gravity of the allegations and the potential impact on the Constitution and our democracy, we must act. We cannot afford to ignore this threat to our Nation’s future.”272

171. The letter’s rhetoric aligned with the President’s public campaign against the impeachment inquiry, which he has branded “a Coup, intended to take away the Power of the People,” “unconstitutional abuse of power,” and an “open war on American Democracy.”273

172. Although President Trump has categorically sought to obstruct the House’s impeachment inquiry, he has never formally asserted a claim of executive privilege as to any document or testimony. Mr. Cipollone’s October 8 letter refers to “long-established Executive Branch confidentiality interests in executive Branch communications with President Zelensky, Secretary Perry sought out Rudy Giuliani this spring at President Trump’s direction to address Mr. Trump’s concerns about alleged Ukrainian corruption.”274

173. In addition, Mr. Trump and his agents have spoken at length about these events to the press and on social media. Since the impeachment inquiry was announced, the President has made numerous public statements about his communications with President Zelensky and his decision-making relating to the hold on security assistance.275

174. The President’s agents have done the same. For example, on October 16, Secretary Perry gave an interview to the Wall Street Journal. During the interview Secretary Perry stated that after the May 23 meeting at which President Trump refused to schedule a White House meeting with President Zelensky, Secretary Perry sought out Rudy Giuliani this spring at President Trump’s direction to address Mr. Trump’s concerns about alleged Ukrainian corruption.”274

175. On September 24, 2019, three House Committees sent a letter to White House Counsel Pat Cipollone requesting six categories of documents relevant to the Ukraine investigation by September 30 when the White House did not respond, the Committees sent a follow-up letter on September 26.

176. Instead of responding directly to the Committees, the President publicly declared the impeachment inquiry “a disgrace,” and stated that “it should be stopped.” And that “[t]here should be a way of stopping it.”271

177. When the White House still did not respond to the Committees’ request, the Committees issued a subpoena compelling the White House to turn over documents.272
that tried to beat him during this presidential election. . . . He thinks they're corrupt and . . . that there are still people over there engaged that are absolutely corrupt.

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

176. On December 3, 2019, the Intelligence Community transmitted a detailed nearly 300-page report documenting its findings about the President’s efforts to obstruct the related investigation into it, to the Judiciary Committee.

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

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

179. Following President Trump’s directive, the Executive Branch refused to produce requested and subpoenaed documents.

180. In its response, the Office of the Vice President echoed Mr. Cipollone’s assertions that the impeachment inquiry was procedurally and factually invalid because—consistent with the House Depositions Rules drafted by the then-majority Republicans—agency counsel was not permitted in the depositions.

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

182. In response, the Office of the Vice President echoed Mr. Cipollone’s assertions that the impeachment inquiry was procedurally and factually invalid because—consistent with the House Depositions Rules drafted by the then-majority Republicans—agency counsel was not permitted in the depositions.

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

184. Certain witnesses, however, defied the President’s order and identified the substance of key documents. For example, Lt. Col. Vindman described a “Presidential Decision Memorandum” in August that conveyed the “consensus views” among foreign policy and national security officials that the hold on aid to Ukraine should be released.

185. Some responsive documents have been released by the State Department, DOD, and OMB pursuant to judicial orders issued in response to lawsuits filed under the Freedom of Information Act (FOIA).

186. President Trump directed government witnesses to violate their legal obligations and defy House subpoenas—regardless of whether there was any evidence of wrongdoing. In some instances, the President personally directed that senior aides defy subpoenas on the ground that they are “absolutely immune” from compelled testimony. Other officials refused to appear as directed by Mr. Cipollone’s October 8 letter.

187. This administration-wide effort to prevent witnesses from providing testimony was coordinated and comprehensive. In total, twelve current or former Administration officials refused to testify as part of the House’s impeachment inquiry into the Ukrainian matter, nine of whom did so in defiance of duly authorized subpoenas.

188. House Committees conducted depositions of thirty-three witnesses.

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

190. Under threat of contempt, President Trump resorted to intimidation tactics to penalize them.

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

192. President Trump repeatedly used his powers of office to undermine and derail the Mueller investigation—particularly after learning that he was personally under investigation for obstruction of justice.

193. Among other things, President Trump ordered White House lawyers to “unmask” Special Counsel Mueller; instructed Mr. McGahn to create a record and issue statements falsely denying this event; sought to curtail Mueller’s investigation in a manner exempting his own prior conduct; and tampered with at least two key witnesses.

194. President Trump has since instructed McGahn to defy a House Committee’s subpoena for testimony, and his DOJ has erroneously argued that the courts can prevent Congress from enforcing Congressional subpoenas.

195. Special Counsel Mueller’s investigation into the House’s inquiry—sought to uncover whether President Trump coordinated with a foreign government in order to obtain an improper advantage during a Presidential Election. And the Mueller investigation—like the House’s impeachment inquiry—exposed President Trump’s eagerness to benefit from foreign election interference. In the latter case, the President used his powers of office to undermine an investigation conducted by officials within the Executive Branch. In the former case, he attempted to block the United States House of Representatives from exercising its “sole Power of Impeachment” assigned by the Constitution. In both instances, President Trump obstructed investigations into foreign election interference to hide his own misconduct.

Before the H. Permanent Select Comm. on Intel-
ligence, 116th Cong. 21–22 (Nov. 15, 2019) (Yovanovitch Hearing Tr.); Transcript, Im-
pairment Inquiry: Fiona Hill and David Holmes, Before the H. Permanent Select Comm. on Intelligence, 116th Cong. 18–19 (Nov. 21, 2019) (Hill-Holmes Hearing Tr.); Holmes Dep. Tr. at 13–14, 142.
21. See Kent Dep. Tr. at 95, 93–94; Volker Interview Tr. at 36–37, 330, 355.
22. See Kent Dep. Tr. at 101–02.
23. Office of the Dir. of Nat’l Intelligence, ICA 2017–01D, Assessing Russian Activities and Intentions in Recent U.S. Election; Jan. 6, 2017, https://perma.cc/K4M2-6DZL, see, e.g., id. at 11 (“We assess Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the US presidential election. We base this finding on publicly available information.”). The Russian Government worked to undermine public faith in the US democratic process, deni-
grate Secretary Clinton, and harm her electoral potentiality and prestige. We further assess the Russian Government developed a clear preference for Presi-
dent-elect Trump. We have high confidence in these judgements.”
24. Senate Select Comm. on Intelligence, Russian Active Measures Campaigns and Inter-
ference in the 2016 U.S. Presidential Election, Vol. II (May 8, 2018), https://perma.cc/96EC-2HRI; see, e.g., id. at 4–5 (“The Committee found that the [Russian-based Internet Research Agency (IRA)] sought to influence the 2016 U.S. presi-
dential election by harming Hillary Clinton’s chances of success and supporting Don-
ald Trump at the direction of the Kreml-
in. . . . The Committee found that the Rus-
ian Government supported the IRA’s interference in the 2016 U.S. election.”).
25. Robert S. Mueller III, Report on the In-
26. Luke Barr & Alexander Mallin, FBI Direc-
27. Hill-Holmes Hearing Tr. at 40–41, 56–57.
28. Press Statement, President of Russia, Prime Minister Viktor Orban (Feb. 2, 2017), https://perma.cc/52ZR-ZECB (“[A]s we all know, during the presidential campaign in the United States, the Ukrainian govern-
ment adopted a unilateral position in favour of one candidate. More than that, certain oligarchs, certainly with the approval of the political leadership, funded this candidate, or female candidate, to be more precise.”).
29. See Kent Dep. Tr. at 336; @realDonaldTrump, Twitter (May 11, 2019; 10:06 AM) https://perma.cc/LS99-P3SU.
30. Hill Dep. Tr. at 234; see also id. at 235.
31. Chris Francescani, President Trump’s Former Aide: Russian Efforts “Deeply Dis-
32. Full Video: Sean Hannity Interviews Trump on Biden, Russia Probe, FISA Abuse, Comey, Real Clear Politics (Apr. 26, 2019).
34. https://perma.cc/YYX8-U33C (quoting Yurii Lutsenko, Ukraine’s then-Attorney General; “Hunter Biden did not violate any Ukrainian laws—at least as of now, we do not see any wrong-
doing. A company can pay however much it wants to a foreign government, but it’s not involved . . . . We do not have any grounds to think that there was any wrong-
doing starting from 2014 [when Hunter Biden joined the Burisma board].”)
36. Giiliani: I Didn’t Go to Ukraine to Start an Impeachment Inquiry, Fox News (May 11, 2019), https://perma.cc/HTTV-
22YA.
37. 40. Williams Dep. Tr. at 37; Volker Inter-
view Tr. at 288–90; Vindman Dep. Tr. at 125–
27.
38. Volker Interview Tr. at 29–30, 304.
39. Id. at 305.
40. Id. at 304; Transcript, Interview of Gor-
don Sondland Before the H. Permanent Se-
lect Comm. on Intelligence 337 (Oct. 17, 2019) (Sondland Dep. Tr.).
41. Sondland Dep. Tr. at 62, 69–70; Volker Interview Tr. at 358; Transcript, Impeachment Inquiry: Ambassador Gordon Sondland, Morrison: Hearing Before the H. Permanent Select Comm. on Intelligence, 116th Cong. 39–40 (Nov. 19, 2019) (Von der Heyden-Morrison Hearing Tr.).
42. Sondland Dep. Tr. at 90.
43. See id. at 77–78; Volker-Morrison Hear-
ing Tr. at 17, 19; see also Timothy Puko & Be-
nett Bulloch, Rick Perry Called Rudy Giuliani at Trump’s Direction on Ukraine Concerns, Wall Street J. (Oct. 16, 2019) (Rick Perry Called Rudy Giuliani), https://perma.cc/E4F2-
972S.
44. Giuliani Plans Ukraine Trip, https://
perma.cc/S6C3-4PL9.
45. See, e.g., Transcript, Impeachment In-
quiry: Ambassador Sondland: Hearing Before the H. Permanent Select Comm. on Intelligence, 116th Cong. 19 (Nov. 29, 2019) (Sondland Hear-
ing Tr.) (“[A]s Mr. Trump has made clear . . . Mr. Giuliani’s requests were a quid pro quo for arranging a White House visit for President Zelensky’”); id. at 34, 35.
47. Taylor-Kent Hearing Tr. at 34–36.
48. Sondland Dep. Tr. at 240.
49. Hill Dep. Tr. at 127 (Dr. Hill, quoting Mr. Bolton).
50. See Taylor Dep. Tr. at 20, 23, 27–28, 31, 33–34; Transcript, Deposition of Ambassador Taylor to Ukraine, Adam Plot to Help Clinton Emerges at 6M5R-XW7F (‘’[A]s we all know, during the presidential campaign in the United States, the Ukrainian govern-
ment adopted a unilateral position in favour of one candidate. More than that, certain oligarchs, certainly with the approval of the political leadership, funded this candidate, or female candidate, to be more precise.”).
53. Id. (quoting Mr. Giuliani).
54. Id. (quoting Mr. Giuliani).
55. Lev Parnas Testifies to the House Permanent Select Comm on Intelligence at 28 (Jan. 14, 2019), https://perma.cc/PWX4-
LE2M (letter from Rudolph Giiliani to Volodymyr Zelensky, President-elect of Ukraine (May 10, 2019)).
57. Giiliani: I Didn’t Go to Ukraine to Start an Impeachment Inquiry, Fox News (May 11, 2019), https://perma.cc/HTTV-
22YA.
plus two $1 billion—three $1 billion loan guarantees. That is not—those get paid back largely, so just over $3 billion.


62. Taylor Kent Hearing Tr. at 18.

63. Volker-Morrison Hearing Tr. at 11.


66. Id.

67. See EU Aid Explorer; Donors, European Comm’n, https://perma.cc/19H6-AFYH.


69. Transcript, Impeachment Inquiry: Ms. Laura Cooper and Mr. David Hale: Hearing Before the H. Permanent Select Comm. on Intelli-gence, 116th Cong. 22-23 (Nov. 20, 2019) (Coo-per-Hale Hearing Tr.); Cooper Dep. Tr. at 95–96.


71. Id.

72. Kent Dep. Tr. at 303, 307, 311; Taylor-Kent Hearing Tr. at 182-85, Cooper Dep. Tr. at 45.

73. Kent Dep. Tr. at 303-305; Hale Dep. Tr. at 81.

74. Croft Dep. Tr. at 15; Hale Dep. Tr. at 105; Holmes Dep. Tr. at 21; Kent Dep. Tr. at 304, 310; Cooper Dep. Tr. at 44-45; Sandy Dep. Tr. at 91, 97; Morrison Dep. Tr. at 162-63. Mr. Morrison testified that, during a Deputies Committee meeting on July 26, OMB stated that the “President was concerned about corruption in Ukraine, and he wanted to make sure that Ukraine was doing enough to manage that corruption.” Morrison Dep. Tr. at 165. Mr. Morrison did not testify that concerns about Europe’s contributions were raised during this meeting. In addition, Mark Sandy testified that, as of July 26, despite OMB’s own statement, senior OMB officials were unaware of the reason for the hold at that time. See Sandy Dep. Tr. at 55-56.

75. Sandy Dep. Tr. at 99; Vindman Dep. Tr. at 181-82; Kent Dep. Tr. at 305; Morrison Dep. Tr. at 264.

76. Morrison Dep. Tr. at 163; Cooper Dep. Tr. at 47-48. For example, Deputy Assistant Secretary of Defense Laura Cooper testified that, during an interagency meeting on July 26 involving senior leadership from the State Department and DOD and officials from the National Security Council, “immediately after the meeting, several deputies began to raise concerns about how this could be done in a legal fashion” and there was “a sense that there was not an available mechanism to simply not spend that money. Discussions into how to approach Congress and earmark for Ukraine. Cooper Dep. Tr. at 47-48.

77. Sandy Dep. Tr. at 42-43.

78. Sandy Dep. Tr. at 75-76.

79. Cooper Dep. Tr. at 91.


81. Sandy Dep. Tr. at 149-55.

82. Josh Dawsey et al., White House Review Turns Up Emails Showing Extensive Efforts to Justify Trump’s Decision to Block Ukraine Military Aid, Wash. Post (Nov. 24, 2019), https://perma.cc/67PP-2L3B; Jonathan Landman, Ambassador Sondland had basically indicated that there was an agreement with the office of the National Security Advisor that there would have a White House meeting or, you know, a Presidential meeting if the Ukrainians started these inves-tigations again,” Vindman Dep. Tr. at 37 ("Sir, I think I—I mean, the top line I just offered, I'll restate it, which is that Mr. Sondland asked for investigations, for these investigations into Bidens and Burisma. I actually recall having that particular conversation. Mr. Eisenberg doesn't really work on this issue, so I had to go a little bit into the story of what those investigations were, and that I expressed concerns and thought it was inappropriate."). A third NSC official, P. Wells Griffith, also reported the July 10 meeting to the NSC Legal Advisor, but he refused to comply with a subpoena and did not testify before the House.

83. Id. at 130 (“I told him exactly, you know, what had transpired and that Ambas-sador Sondland had basically indicated that there was an agreement with the office of the National Security Advisor that there would have a White House meeting or, you know, a Presidential meeting if the Ukrainians started these inves-tigations again,” Vindman Dep. Tr. at 37 ("Sir, I think I—I mean, the top line I just offered, I'll restate it, which is that Mr. Sondland asked for investigations, for these investigations into Bidens and Burisma. I actually recall having that particular conversation. Mr. Eisenberg doesn't really work on this issue, so I had to go a little bit into the story of what those investigations were, and that I expressed concerns and thought it was inappropriate."). A third NSC official, P. Wells Griffith, also reported the July 10 meeting to the NSC Legal Advisor, but he refused to comply with a subpoena and did not testify before the House.

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85. 103. Taylor Dep. Tr. at 36.

86. Sondland Hearing Tr. at 26.

87. Id. at 43.

88. Kurt Volker Text Messages Received by the House Committee, https://perma.cc/CG7Y-FHZN.

89. 107. Taylor Dep. Tr. at 55-56.

90. Sondland Hearing Tr. at 70.

91. Kent Dep. Tr. at 246-47.

92. Hill-Holmes Hearing Tr. at 92.

93. Id. at 69.

94. Vindman Dep. Tr. at 64.

95. Id. at 69-70; Vindman Dep. Tr. at 31; see Hill-Holmes Hearing Tr. at 92.

96. Id. at 69.

97. Id. at 129 (“I told him exactly, you know, what had transpired and that Ambas-sador Sondland had basically indicated that there was an agreement with the office of the National Security Advisor that there would have a White House meeting or, you know, a Presidential meeting if the Ukrainians started these inves-tigations again,” Vindman Dep. Tr. at 37 ("Sir, I think I—I mean, the top line I just offered, I'll restate it, which is that Mr. Sondland asked for investigations, for these investigations into Bidens and Burisma. I actually recall having that particular conversation. Mr. Eisenberg doesn't really work on this issue, so I had to go a little bit into the story of what those investigations were, and that I expressed concerns and thought it was inappropriate."). A third NSC official, P. Wells Griffith, also reported the July 10 meeting to the NSC Legal Advisor, but he refused to comply with a subpoena and did not testify before the House.

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Hale Dep. Tr. at 21. See, e.g., id. at KV0000019. 125. Sondland Hearing Tr. at 109. 126. Hale Dep. Tr. at 81; Vindman Dep. Tr. at 184. 127. Sondland Hearing Tr. at 56–58; see also Taylor-Kent Hearing Tr. at 119. 128. Vindman Dep. Tr. at 137–38. 129. Morrison Dep. Tr. at 182–83. 130. Vindman Dep. Tr. at 119–22. 131. Hale Dep. Tr. at 21. 132. Sondland Hearing Tr. at 23. 133. Vindman Dep. Tr. at 144. 134. Sondland Hearing Tr. at 31. 135. Morrison Dep. Tr. at 134. 136. Vindman Dep. Tr. at 158 ("[A]s we've determined, Ambassador Zelensky had to make a public statement announcing the investigations in order to obtain the White House meeting and security assistance. See Sondland Hearing Tr. at 109. Both documentary evidence and testimony confirmed that the conversation described by Mr. Morrison and Ambassador Taylor occurred on September 25, 2019.") 137. Taylor-Kent Hearing Tr. at 138 ("[A]s we've determined, as we've discussed here on September 11th, just before any CNN discussion or interview, the hold was released, the hold on the security assistance was released.") 138. Transcript, Whistleblower Disclosure: Hearing Before the H. Permanent Select Comm. on Intelligence, and Committee on Oversight & Government Reform, 120th Cong. 2d Sess. (Oct. 22, 2019) (testimony of Joseph Maguire, Acting Dir. of Intel., to Michael R. Pompeo, Sec'y, Dep't of State).

See, e.g., Resolution Recommending That the House of Representatives Find William B. Taylor Jr., former U.S. envoy to Ukraine, and Alexander Vindman, former White House aide to President Trump, to be witnesses. H. Res. 660, at 118 (2019). The purposes of this investigation include . . . considering whether any of the conduct described in the Special Counsel’s Report warrants the Committee in taking any further steps under Congress’ Article I powers. That includes whether to approve articles of impeachment with respect to the President [ ].” ;) Directing Certain Committees 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 Proceed with Its Constitutional Power to Impeach Donald John Trump, President of the United States of America, and for Other Purposes, H. Res. No. 116–266, at 4 (Oct. 2019).


258. Philip Bump, Giuliani Says Trump Still Supports His Dirt-Digging in Ukraine, perma.cc/F399-B9AY; see also Adam Suesbaug & Erin Banco, Trump Tells Rudy to Keep Pushing the Biden Consipicuus, Daily Beast (Dec. 18, 2019), https://perma.cc/S5K6-KBJ9 (quoting source who reported that President Trump told Mr. Giuliani “to keep at it.”)

259. Volker-Morrison Hearing Tr. at 139; see Kent Dep. Tr. at 329.


261. Kent-Holmes Hearing Tr. at 32.


263. Mueller Report, Vol. I at 49 (quoting then-candidate Trump’s statement that “Russia has been saying to us very strongly that they’re not behind the DNC hacking”).


265. Kulyk Hearing Tr. at 32; see also Bump, Trump Promised Zelenska a White House Meeting, More Than a Dozen Other States in Military Aid, Wash. Post (Dec. 13, 2019), https://perma.cc/4XR3-P3J3 (compiling White House meetings involving foreign officials since April 2019).

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


271. Id.


274. Id. at 1–3.

275. @realDonaldTrump (Oct. 1, 2019, 4:41 PM), https://perma.cc/UX3Z-BFKL.

283. Letter from Jason Yaworske, Associate Dir. for Leg. Affairs, Office of Mgmt. & Budget, to Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence, et al. (Oct. 15, 2019), https://perma.cc/79GZ-ASGM.


290. See, e.g., Trump Sept. 25 Remarks, https://perma.cc/7X3A-6LWK; YBLTR; Letter from Robert R. Hood, Assistant Sec’y of Def. for Legislative Affairs, Dep’t of Def., to Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence, et al. (Oct. 15, 2019), https://perma.cc/79GZ-ASGM.

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300. See Letter from Pat A. Cipollone, Counsel to the President, to William Burck, Counsel to Deputy Counsel to the President for Nat’l Security Affairs John Eisenberg (Nov. 4, 2019), https://perma.cc/3WCM-AQJQ.

301. See, e.g., Letter from Jason A. Yaworske, Associate Dir. for Leg. Affairs, Office of Mgmt. & Budget, to Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence (Nov. 4, 2019), https://perma.cc/4AYC-8SD9 (asserting OMB’s “position that, as directed by the White House Counsel’s Office on September 8, 2019, OMB will not participate in this partisan and unfair inquiry,” and that three OMB officials would therefore decline to appear).


303. See id. at 193–206 (describing and quoting from correspondence with each witness who refused to appear).

304. See H. Rep. No. 116–336, at 200, 365; see, e.g., Letter from Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence, et al., to Daniel Dufoff, Assoc. Dir. for Sec. Programs, Office of Mgmt. & Budget (Oct. 25, 2019), https://perma.cc/SS5B-FHP4; Email from Daniel S. Noble, Senior Investigative Counsel to the Select Comm. on Intelligence, to Mick Mulvaney, Acting Chief of Staff to the President (Nov. 7, 2019), https://perma.cc/A62P-524J.


310. Id.

1. By limiting impeachment to cases of "Treason, Bribery, or other High Crimes and Misdemeanors," the Framers restricted impeachment to specific offenses against "unalienable Rights." That was a deliberate choice designed to constrain the impeachment power. In keeping with that restriction, every prior presidential impeachment has been based on alleged violations of existing law—indeed, criminal law. House Democrats' newly invented "abuse of power" theory collapses at the threshold. It fails to allege any violation of law whatsoever.

2. House Democrats' concocted theory that the President acted unreasonably by taking "abuse of power" actions if he does what they believe to be the wrong reasons would also expand the impeachment power beyond the constitutional bounds. It would allow a hostile House to attack almost any presidential action by challenging a President's subjective motives. Worse, House Democrats' methods for identifying supposedly illicit motives ignore the constitutional structure of our government. As proof of improper motive, they claim that the President supposedly "purposely" pursued a course of foreign policy "towards Ukraine."4 That was "briefed on official policy"5 but chose to ignore it, and that he "ignored, defied, and undermined" the Department of Justice within the Executive Branch.6 These assertions are preposterous and dangerous. They misunderstand the assignment of power under the Constitution and the principle of democratic accountability. Article II states that "[t]he Executive Power shall be vested in a President."7 It is the President who determines the officials' duties.8 He is the one who instructed the subordinates who violated every precedent and every principle of fairness followed in impeachment inquiries for more than 150 years. Even so, all that House Democrats have succeeded in proving is that the President did absolutely nothing wrong.

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

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

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

House Democrats' concocted theory of "abuse of power" improperly supplants the standard of "high Crimes and Misdemeanors" with a made-up theory that would permanently weaken the separation of powers by belying the constitutional principle of orderly impeachments based merely on policy disagreements.

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II. The impeachment inquiry in the House was irredeemably flawed

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

1. The process that resulted in these Articles of Impeachment was flawed from the start. Since the founding of the Republic, the House has never launched an impeachment inquiry against a President without a vote authorizing the proceedings, and there is good reason for that. No committee can investigate pursuant to powers assigned by the Constitution to the House—including the “sole Power of Impeachment”21—from House Democrat leaders, who for decades, intentionally cast law and history aside and started their purported inquiry with nothing more than a press conference.22 On that authority alone, they issued nearly two dozen subpoenas that OLC determined were unauthorized and invalid.24 The full House did not vote to authorize the inquiry until five weeks later when it adopted House Resolution 660 on October 31, 2019. That belated action was a telling admission that the process was unauthorized.

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

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

This did not only violate every precedent from the Nixon and Clinton impeachment inquiries, it violated every principle of justice and fairness known to our legal tradi- tion. For more than 200 years, the common law system has regarded cross-examination as the “greatest legal engine ever invented for the discovery of truth.”25 House Demo- crats denied the President that right and every other right because they were not interested in the truth. Their only interest was an impeachment, and they knew that it could not get them any traction.

When the impeachment stage-show moved on to the Judiciary Committee, House Demo- crats again denied the President his rights. The Committee had already decided to fore- close any semblance of fair processo- dering.29 After initially lying about it, Chair- man Schiff was forced to admit that his staff had conferred with the so-called whistleblower before he filed his complaint. But the President’s conversation on July 25, 2019, with the President of Ukraine, was not revealed to the American public until the second-hand version of the call to the Inspec- tor General of the Intelligence Community (ICIG). When it adopted House Resolution 660 on October 24, 2019, it provided a “do-over” and developed the record itself.

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

House Democrats resorted to these unprecedented procedures because the goal was never to get to the truth. The goal was to impeach the President, no matter the facts. As Speaker Pelosi stated just before announcing the impeachment, “We have ended the special counsel investigation but there is no lack of evidence or witnesses, and we will not cross examine witnesses.”30

When those proceedings went nowhere, House Democrats seized on the next vehicle that could be twisted to carry their impeachment dream: a perfectly appropriate tele- phone recording of the President. House Democrats could not tolerate the President’s conversation on July 25, 2019, with the President of Ukraine. House Democrats have pursued their newly concocted charges for two reasons. First, they have been obsessed with years for overturning the 2016 election. Radical left Democrats have never been able to come to grips with losing the election, and impeachment provides them a way to nullify the judgment of the tens of millions of voters who rejected their candidate. Sec- ond, they want to use impeachment to inter- fere in the 2020 election. It is no accident that the impeachment trial is being held under a presidential impeachment during an election year. Put simply, Democrats have no re- sponse to the President’s achievements in restoring prosperity to the American economy, rebuilding America’s military, and confronting America’s adversaries abroad. Instead, they are held hostage by a radical left wing that has foisted on their party an agenda of socialism at home and appeasement abroad that Democrat leaders know the American people will never accept.

For the Democrats, impeachment became an electoral imperative. Congressman Al Green summarized that thinking best: “[I]f we do not impeach the [President], he will get re-elected.”31 In their scorched-earth campaign against the President, House Democrats view impeachment merely as the continuation of politics by other means.

The result of House Democrats’ pursuit of their obsessions—and their willingness to sacrifice every precedent and every principle standing in their way—is exactly what the President warned against: a wholly partisan impeachment. These articles were adopted without a single Republican vote. Indeed, there was bipartisan opposition to them.32

Democrats used to recognize that the mo- mentum of a vote to overturn an elec- tion by impeaching a President should never be done on a partisan basis. As Chairman Nadler explained:

There must never be a narrowly voted impeach- ment or an impeachment supported by one of our major political parties and op- posed by another. Such an impeachment will poison the democratic process in our politics for years to come, and will call into question the very legitimacy of our political institutions.33

Senator Patrick Leahy agreed: “A partisan impeachment cannot be the way in which we preserve the integrity of the American people. It is no more valid than a stolen election.”34 Chairman Nadler, again, acknowledged that merely “hav[ing] a partisan impeachment will not preserve the integrity of the democratic process in the House, without “the legitimacy of a national consensus,’’ is just an attempted “partisan coup d’état.”35 Just last year, even Speaker Pelosi acknowledged that an impeachment “would have to be so clearly bipartisan in terms of acceptance of it.”36 All of these prior invocations of principle have now been abandoned. With both parties, adding to the wake of House Democrats’ impeachment-at- all-costs strategy.
III. Article I fails because House Democrats have no evidence to support their claims

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

House Democrats have falsely charged that the President supposedly conditioned military aid or a presidential meeting on Ukraine investigations. But the long-recorded bipartisan commitment to the rule of law in Ukraine makes the charge a phony one. This is evidenced by the fact that the President never met with the Ukrainians on any condition. It was simply a non-event.

1. In an unprecedented display of transparency, the President released the transcript of his call with Volodymyr Zelensky, and it shows that the President did nothing wrong. The Department of Justice reviewed the transcript and did not find any evidence of wrongdoing.

2. President Zelensky, his Foreign Minister, and other Ukrainian officials have repeatedly said there was no quid pro quo and no pressure placed on them.

3. President Zelensky, his senior advisors, and House Democrats’ own witnesses have all confirmed that Ukraine’s senior leaders did not even know the aid was paused until after a Politico article was published on August 28, 2019 — over a month after the July 25 call and barely two weeks before the aid was released on September 11.

4. House Democrats’ case rests almost entirely on: (i) statements from Ambassador to the European Union Gordon Sondland that he had come to believe (before talking to the President) that the aid and a meeting were “likely” linked to investigations; and (ii) hearsay and speculation from others echoing Sondland second- or third-hand. But Sondland admitted that he was only “presuming” a link. He stated unequivocally that “I do not believe there was any underlying (other than (my) own presumption) that President Trump connected releasing the aid to investigations, and he agreed that “[i]n no one on this planet” expected that the aid was “tying aid to investigations.”

5. Similarly, as for a link between a meeting and investigations, Sondland admitted that he was speculating when he said that Trump was “tying aid to investigations.”

6. The undisputed reality is that U.S. support for Ukraine against Russia has increased under President Trump. President Trump provided Ukraine Javelin anti-tank missiles with the aid, even after the U.S.Šs decision to use against Russia after President Obama refused to provide that assistance. President Trump also imposed heavy sanctions on Russia, for which President Zelensky thanked him. A� Secretary of Defense and National Security Council (NSC) career officials universally acknowledged that President Trump’s policy was stronger in support of Ukraine than preceding predecessors. Ambassador Yovanovitch testified that “our policy actually got stronger” under President Trump, and Ambassador Taylor agreed that President Trump was a “substantial improvement” over the previous administration, largely because “this administration provided Javelin anti-tank weapons,” which “are serious weapons” that “will kill Russian tanks.”

The evidence shows that President Trump had legitimate concerns about corruption and burden-sharing with our allies — two consistent themes in his foreign policy. When his concerns had been addressed, the aid was released on September 11 without any action concerning investigations. Similarly, an informal bilateral meeting with President Zelensky was first scheduled for September 1 in Warsaw and, after rescheduling due to Hurricane Dorian, took place in New York, again, all without the Ukrainians doing anything related to investigations.

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

The charges in Article I are further flawed because they rest on the mistaken premise that it would have been illegitimate for the President to mention to President Zelensky either (i) possible Ukrainian interference in the 2016 election; or (ii) an incident in which then-Vice President Biden had forced the dismissal of a prosecutor by threatening to withhold $1 billion in IMF aid to Ukraine.

The prosecutor reportedly appeared to be, at the very least, a serious conflict of interest. The prosecutor reportedly had been investigating Burisma — an Ukrainian company notorious for corruption — and Biden’s son, Hunter, was sitting on Burisma’s board. Unless being son of the Vice President counted, Hunter had no statutory qualifications to merit that status, or to merit being compensated (apparently) more richly than board members at Fortune 100 energy giants like ConocoPhillips. In fact, numerous career State Department and NSC employees agreed that Hunter Biden’s connection with Burisma created, at a minimum, a perception of conflict.

But that is obviously the wrong question. The right question is whether or not the Bidens interfered in Ukraine’s election at the same time, in order to advance Hunter’s own interests. In that case, House Democrats’ preferred narrative about 2016 would have been improper. But former Vice President Biden did not immunize his past conduct (or his son’s) from scrutiny simply by declaring his candidacy for the presidency.

The problem with the House Democrats’ theory, ones against which the President’s case rests, is that they believe the case is “whether or not it fits with Democrats’ preferred narrative about 2016.” But that is obviously the wrong question. The right question is whether or not the Bidens interfered in Ukraine’s election at the same time, in order to advance Hunter’s own interests. In that case, it would have been improper. But former Vice President Biden did not immunize his past conduct (or his son’s) from scrutiny simply by declaring his candidacy for the presidency.

Importantly, even under House Democrats’ theory, mentioning the matter to President Zelensky would have been entirely justified as long as there was a legitimate reason that would advance the public interest. To defend merely asking a question, the President would have needed to show that mentioning the Biden-Burisma affair was not improper interference. If the Biden-Burisma affair was not improper interference, the President would have been improper. But former Vice President Biden did not immunize his past conduct (or his son’s) from scrutiny simply by declaring his candidacy for the presidency.

The articles are structurally deficient and can only result in acquittal

The articles are also defective because each charges multiple different acts as possible grounds for conviction. The problem with offering such a menu of options is that, for a valid conviction, the Constitution requires two-thirds of Senators present to vote guilty on each element. The specific grounds for conviction. The problem with offering such a menu of options is that, for a valid conviction, the Constitution requires two-thirds of Senators present to vote guilty on each element. If one vote on these articles, however, cannot ensure that a two-thirds majority agreed on a particular ground for conviction. Instead, the wrong vote could render the entire impeachment process invalid.

This structural problem cannot be remedied by dividing the different allegations within each article for voting, because...
that is prohibited under Senate rules. The only constitutional option is for the Senate to reject the articles as framed and acquit the President.

The Framers foresaw that the House might at times fail to prey to tempestuous partisan tempers. Alexander Hamilton recognized that the “perversion of an intemperate or designing majority in the House of Representatives” was a real danger in impeachments, and Jefferson acknowledged that impeachment provided “the most formidable weapon to the hands of a dominant faction that ever was contrived.” That is why the Framers entrusted the trial of impeachments to the Senate. As Justice Story explained, the Framers saw the Senate as a “tribunal ‘removed from popular power and passions . . . and from the more dangerous influence of mere party spirit,’” and guided by “a deep responsibility to future times.” Now, perhaps as never before, it is essential for the Senate to fulfill the role Hamilton envisioned for it as a “guard[ ] against the danger of mere party spirit.”

The Senate must speedily reject these deficiencies before proceeding to the President. The only threat to the Constitution that House Democrats have brought to light is their own degradation of the impeachment process. Having turned the power of impeachment by turning it into a partisan, election-year political tool. The consequences of accepting House Democrats’ diluted standards for impeachment would reverberate far beyond this election year and do lasting damage to our Republic. As Senator Lyman Trumbull, one of the senators who voted in 1868 to acquit President Andrew Johnson, explained: “Once [we] set the example of impeaching a President for what, when the execution of the hour shall have subsided, will be regarded as insufficient causes . . . no future President will be safe . . . . And what then becomes of the checks and balances of the Constitution, so carefully devised and so vital to its perpetuity? They are all gone.” It is the solemn duty of this body to rise above the limits of the Constitution protecting against exactly this result.

Enough of the Nation’s time and resources have already been devoted to House Democrats’ partisan obsessions. The Senate should bring a decisive end to these excesses so that Congress can get back to its real job: working together with the President to improve the lives of all Americans.

STANDARDS

The extraordinary process invoked by House Democrats under Article II, Section 4 of the Constitution is not, the Framers intentionally preferred means to determine who should lead our country. It is a mechanism of last resort, reserved for exceptional circumstances. The Framers understood, for example, that a President has engaged in unlawful conduct that strikes at the core of our constitutional system of government. A. The Senate Must Decide All Questions of Law and Fact

The Constitution makes clear that an impeachment by the House of Representatives is nothing more than an accusation. The Articles of Impeachment approved by the House come to the Senate with no presumption of regularity in their favor. On each of the two prior occasions that the House adopted and transmitted articles of impeachment, as President, the Senate refused to convict on them. Indeed, the Framers wisely forewarned

that the House could impeach for the wrong reasons. That is why the Constitution entrusts the Senate with the “sole Power to try all Impeachments.” Under that charge, the Senate is to “decide for itself all matters of law and fact bearing upon this trial.” These decisions include whether the accusation presented by the House is “merit[-]less.” In 1868, John Logan, a House manager in President Johnson’s impeachment trial, explained “all the defiance . . .[is] to be decided in these proceedings by the final vote[ ] of the Senate, and ‘in determining this general issue Senators must consider the sufficiency or insufficiency of the grounds, or in fact of every article of accusation.”

B. An Impeachable Offense Requires a Violation of Established Law that Inflicts Sufficiently Depressing Harm on the Government That It Threatens to Subvert the Constitution

The President of the United States occupies a unique position in the structure of our government. He is chosen directly by the People through an election to be the head of an entire branch of government and Commander-in-Chief of the armed forces and is entrusted with enormous responsibilities for the safety and security of the state. Whether Congress should superimpose the will expressed by tens of millions of voters by removing the President from office is a question of great consequence. The question requires a clear understanding of the limits the Constitution places on what counts—and what does not count—as an impeachable offense.

1. Text and Drafting History of the Impeachment Clause

Fearful that the power of impeachment might be abused, and recognizing that constitutional protections were required for the Executive, the Framers crafted a “limited power of impeachment.” The Constitution restricts impeachment to enumerated offenses: “Treason, Bribery, or other High Crimes and Misdemeanors.” Treason and bribery are well defined offenses and are not at issue in this case. The operative text here only the more “other high Crimes and Misdemeanors.”

The structure and language of the clause—the use of the adjective “other” and “high Crimes and Misdemeanors” in a list immediately following the specific offenses “Treason” and “Bribery”—calls for applying the ejusdem generis canon of interpretation. This canon instructs that “where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.” Under that principle, “other high Crimes and Misdemeanors” must be understood to have the same qualities—in terms of seriousness and their effect on the functioning of government—as the crimes of “Treason” and “Bribery.”

Treason is defined specifically in the Constitution and “consist[s] only in levying War against [the United States], or in adhering to their Enemies, giving them Aid and Comfort.” This offense is a “crime against and undermining the very existence of the Government.” Bribery, like treason, is a serious offense against the government that subverts the very existence of the state. Blackstone, a “dominant source of authority” for the Framers, called bribery an “offense against public justice.” Professor Akhil Amar describes bribery as “secretly indebting laws to favor the rich and powerful” and contends that in this context it involves official corruption of a highly malignant sort, threatening the very soul of a democracy committed to equality under the law. According to Professor Philip Bobbitt, “likewise, the fundamental offense of bribery . . . must be an act that actually threatens the constitutional stability of the very existence of the Constitution.” Thus indicates that the “other” crimes and misdemeanors that qualify as impeachable offenses must be sufficiently egregious, like treason, that they involve a fundamental betrayal that threatens to subvert the constitutional order of government.

Treason and bribery are also, of course, offenses defined by law. Each of the seven other references in the Constitution to impeachment also supports the view that impeachments must be evaluated in terms of offenses against settled law. The Constitution refers to “Conviction” for impeachable offenses twice and “Judgment” twice. Cases of Impeachment.

In addition, “high Crimes and Misdemeanors” had a technical meaning in English law, and there is evidence that the Framers were aware of this “limited,” “technical meaning.” In England, “high Crimes and Misdemeanors” referred to offenses that could be the subject of impeachment in parliament. No less an authority than Blackstone, however, made clear that “an impeachment before the lords by the commons of Great Britain, in parliament, is a prosecution of the already known and established law.” As a result, nothing in the Constitution’s use of the term “other high Crimes and Misdemeanors” suggests that impeachment under the Constitution could reach offenses narrower than a known offense defined in existing law.

Significantly, the records of the Constituent Convention also clarify that, in important respects, the Framers expanded the scope of impeachable offenses under the Constitution to be much narrower than under English practice. When the draft Constitution had limited the grounds for impeachment to “Treason, or bribery,” George Mason argued that the provision was too narrow because “[a]ttempts to subvert the Constitution may not be Treason” and that the clause “will not reach many great and dangerous offenses.” He proposed the additional clause “maladministration,” which had been a ground for impeachment in English practice. Madison opposed that change on the ground that “[s]o vague a term” would make the President subject to “a tenure during [the] pleasure of the Senate.”

The Convention agreed on adding “other high crimes & misdemeanors,” but by effecting “maladministration.” The Framers significantly narrowed impeachment under the Constitution and made clear that only offenses that qualified as “high crimes & misdemeanors” had been included as grounds for impeachment. “maladministration,” “practic[e] of maladministration.”
duty”97 and “neglect of duty [and] malversation,”98 but the Framers rejected all of these formulations. The ratification debates confirmed the point that differences of opinion, differences over policy could not justify impeachment. James Iredell warned delegates to North Carolina’s ratifying convention that “[a] mere difference of opinion, a contest for power, about the mode of exerting the authority of a party, into a deliberate, wicked action,”99 and thus should not provide the basis for impeachment. And Edmund Randolph pointed that the Virginia ratifying convention that “[n]o man ever thought of impeaching a man for an opinion.”100

Taken together, the text, drafting history, and constitutional context make several points clear. First, the debates “make quite plain that the Framers, far from proposing to confer illimitable power to impeach and convict, intended to confer a limited power.”101 As Senator Leahy has put it, “[t]he Framers purposely restrained the Congress and carefully circumscribed its power to remove the head of the co-equal Executive Branch.”102

Second, the terminology of “high Crimes and Misdemeanors” makes clear that an impeachment power is to be used only to address the rarest violations of established law. The Impeachment Clause did not confer upon Congress a roving license to make up a list of offenses by which government officials and to permit removal from office merely on a conclusion that conduct was “bad” if there was not an existing law that forbade it.103

Third, by establishing that “other” impeachable offenses must fall in the same class as the specific offenses of “treason and bribery,” the Framers intended to establish a requirement of particularly egregious conduct threatening the constitutional order to justify impeachment. Justice Story recognized that “[t]he Framers purposely restrained the executive branch of the federal government, [t]he chief executive officer of the United States involves the uniquely solemn act of having one branch essentially overthrow another.”104 As a result, “the application of the Impeachment Clause by Congress supports the conclusion that an impeachable offense requires more than an ordinary violation of law.105

For Professor Bobbitt, “[a]n impeachable offense is one that puts the Constitution in jeopardy.”106 Removal of the freely elected President of the United States based on any lesser standard would violate the plan of the Founders, who built our government on the principle it would “derive[ ] [its] just powers from the consent of the governed.”107

2. The President’s Unique Role in Our Constitutional Structure

For at least two reasons, the President’s unique constitutional role buttresses the conclusion that offenses warranting presidential impeachment must involve especially egregious conduct that threatens to subvert the constitutional order of government.

First, conviction of a President raises particularly profound issues under our constitutional structure. That it means it over- turns the democratically expressed will of the people in the only national election in which all eligible citizens participate. The impeachment of a President is a matter of extreme gravity. The Constitution permits the House to impeach only if that “the legislative branch [will] essentially cancel[ ] the results of the most solemn collective act of which we as a constitutional democracy are capable: the national election of a President.”108

As even the House Managers have acknowledged, “the issue” in a presidential impeachment proceeding is to determine the results of a national election, the free expression of the popular will of the American people.109 That step can be justified only by an offense of constitutional proportions. As Chairman Nadler has put it, “[w]e must not overturn an election and remove a President from office except to defend our system of government and our constitutional democracy against a dire threat . . . .”110 Especially where the American people are starting the process of voting for candidates for the next presidential election, removing a President from office and taking that decision away from the people requires meeting an equally extraordinary standard. As Senator Biden confirmed during President Clinton’s trial, “to remove a duly elected president will unavoidably harm our constitutional order, by compelling the President from office without compelling evidence would be historically anti-democratic.”111 Any lesser standard would be inconsistent with the unique importance of the President’s role in the structure of the government, the profound disruption and danger of removing the President, which all eligible citizens participate. The impeachment of Andrew Johnson proved the point. In 1868, the House Judiciary Committee reviewed charges of impeachment against President Johnson. The articles, however, did not allege any violation of law. Largely as a result of that feeble Committee’s approval for them from a majority of the House. The minority report from the Committee arguing against adoption of the articles of impeachment states “[t]he House of Representatives may impeach a civil officer, but it must be done according to law. It must be for a reason known to the House and not created by the fancy of the members of the House.”112 Rep. James F. Wilson argued the position of the minority report on the House floor, explaining that “no civil officer of the United States can be lawfully impeached except for a crime or misdemeanor known to the law.”113 As one historian has explained, “[t]he House refused to impeach Andrew Johnson . . . at least in part because many representatives did not believe he had committed a specific violation of law.”114

Even if judicial impeachments have been based on charges that do not involve a criminal offense or violation of statute,115 that would provide no sound basis for adopting the standards for presidential impeachment. Textually, the Constitution’s Good Behavior Clause alters the standard for impeachment. “For a civil officer, but it must be done according to law. It must be for a reason known to the House and not created by the fancy of the members of the House.”112 Rep. James F. Wilson argued the position of the minority report on the House floor, explaining that “no civil officer of the United States can be lawfully impeached except for a crime or misdemeanor known to the law.”113 As one historian has explained, “[t]he House refused to impeach Andrew Johnson . . . at least in part because many representatives did not believe he had committed a specific violation of law.”114

Unlike, a presidential impeachment inquiry, impeachment of a federal judge “does not paralyze the Nation” or “threaten the country’s domestic and foreign policy.”115 Instead, “[t]he grounds for the expulsion of the one person elected by the entire nation to preside over the executive branch are the same as those for one member of the almost four-thousand-member federal judiciary.”116 As Senator Biden has recognized: “The constitutional scholarship overwhelm- ingly recognizes that the fundamental structural commitment to a separation of powers requires [the Senate] to view the President as different from a Federal judge.”117 Indeed, “our history establishes that, as applied, the constitutional standard for impeaching the President has been distinctive, and properly so.”118

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

Given the profound implications of removing a duly elected president from office, an exceptionally demanding standard of proof must apply in a presidential impeachment trial. Senators should convict on articles of impeachment against a President only if they agree that the House has presented charges that “the President has been distinctive, and properly so.”118

The articles of impeachment approved by the House Judiciary Committee included multiple violations of law.120 Article I alleged obstruction of justice,121 and Article II alleged an egregious law violation, all of which the Senate found insu- fficient to warrant removal from office.

In addition, until now, even in the articles of impeachment that the Senate found insufficient, the House managers argued that the House impeached a President on charges that did not include a violation of established law. President Clinton was impeached on charges that included perjury and obstruction of justice, both offenses under federal law.122 Similarly, in the near-impeachment of President Nixon, the Senate found the charges brought by the House insufficient to warrant removal from office.

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

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

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

Cases trying the case in the Senate must be confined to the specific conduct alleged in the Articles of the House.

These restrictions follow both from the plain terms of the Constitution limiting the Senate to trying an “impeachment” framed by the House and from elementary principles of due process. “[T]he senator’s role is solely one of acting on the accusations (Articles of Impeachment) voted by the House of Representatives. The Senate cannot consider the president guilty of something not charged by the House, any more than a trial jury can find a defendant guilty of something not charged in the indictment.”141 No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused.”142 As the Supreme Court has explained, it has been the rule for over 130 years that “the defendant must be tried on charges that are not made in the indictment against him.”143 Doing so is “fatal error.”144

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

PROCEDURAL HISTORY

House Democrats have focused these proceedings on a telephone conversation between President Trump and President Zelensky of Ukraine on July 25, 2019.145 At some unknown time shortly after that call, a staffer in the Intelligence Community— who had no first-hand knowledge of the call—approached the staff of Chairman Adam Schiff of the House Permanent Select Committee on Intelligence (HPSCI) raising complaints about the call.146 Although it is known that Chairman Schiff’s staff provided the IC staff with “guidance,”147 the fact that the staff of the so-called whistleblower’s coordination with Chairman Schiff’s staff remains unknown.

The IC staffer retained counsel, including an attorney who had announced just days after President Trump took office that he supported the idea of “impeachment” to remove the President from office.148

On August 12, 2019, the IC staffer filed a complaint about the July 25 telephone call with the Inspector General of the Intelligence Community. The Inspector General found that there was “some indicia of an arguable political bias on the part of [the so-called whistleblower] in favor of a rival political candidate.”149

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

On September 25, pursuant to a previous announcement,151 the President declaredclass and released the complete record of the July 25 call.152

On September 26, HPSCI held its first hearing regarding the so-called whistleblower complaint.153 And just one week later, on October 3, Chairman Schiff began a series of secret, closed-door hearings regarding the so-called whistleblower’s complaint. HPSCI released a report on December 3, 2019.154

On December 4, the House Judiciary Committee held its first hearing, which featured presentations solely from staff members from HPSCI and the Judiciary Committee.155 The House Judiciary Committee did not hear from any fact witnesses at any time.

On December 10, Chairman Jerrold Nadler offered two articles of impeachment for the Judiciary Committee’s proceedings and directed Chairman Nadler to draft articles of impeachment.156

On December 9, four days after Speaker Pelosi announced that articles of impeachment would be drafted, the Judiciary Committee approved the articles for the first hearing, which featured presentations solely from staff members from HPSCI and the Judiciary Committee.157 The House Judiciary Committee did not hear from any fact witnesses at any time.

On December 13 on a party-line vote,158 on December 18, a mere 85 days after the press conference purportedly launching the inquiry, House Democrats completed the fastest presidential impeachment inquiry in history and adopted the Articles of Impeachment over bipartisan opposition.159

House Democrats justified their unseemly haste by claiming they had to move forward “without delay”160 because the President would allegedly “continue to threaten the Nation’s security, democracy, and constitutional system if he is allowed to remain in office.”161 In fact, however, as soon as they had voted, they decided that there was no urgency at all. House Democrats took a leisurely four weeks to complete the process of drafting and submitting the articles to the Senate—more than three times longer than the entire length of proceedings before the House Judiciary Committee.

The Senate now has the “sole Power to try” the Articles of Impeachment transmitted by the House.162

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

I. The Articles Fail to State Impeachable Offenses as a Matter of Law

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

House Democrats’ novel theory of “abuse of power” as a supposedly impeachable offense is constitutionally defective. It supplants the Framers’ standard of “high Crimes and Misdemeanors,”163 with a made-up theory that the President can be impeached and removed from office under an amorphous and undefined standard of “abuse of power.” The Framers’ standard is a constitutional test that requires a violation of established law to state an impeachable offense. By contrast, in their Articles of Impeachment, House Democrats have not even attempted to identify any law that was violated. Moreover, House Democrats’ theory in this case rests on the radical assertion that the President could be impeached and removed from office entirely for his subjective motives—that is, for undertaking permissible actions for supposably “corrupt or in bad faith.”164 The President’s constitutional freedom to act without fear of prosecution is retroactively authorized investigative efforts before October 5, 2019.165

On November 13, HPSCI held the first of seven public hearings featuring some of the witnesses who had already testified in secret. At this stage, too, the President and his counsel were denied any opportunity to participate. HPSCI released a report on December 3, 2019.157

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House Democrats’ novel theory of “abuse of power” as a supposedly impeachable offense subverts Constitutional Standards and Would Permanently Weaken the Presidency

House Democracy’s theory that the President could be impeached and removed from office under a vaguely defined concept of “abuse of power” would vastly expand the impeachment power beyond constitutional limits and would permanently weaken the President by permitting impeachments based on policy disagreements.

House Democrat cannot salvage their unprecedented “abuse of power” standard with fuzzy claims that the Framers particularly intended impeachment to address “foreign entanglements” and “corruption of elections.”166 The Framers’ standard is a constitutional test that distorts history and add no legitimacy to the radical theory of impeachment based on subjective motives alone.

Under the Constitution, impeachable offenses must be defined under established law. And they must be based on objective wrongdoing.167 And they must be based on objective wrongdoing.167

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

House Democracy’s theory that the President could be impeached and removed from office under a vaguely defined concept of “abuse of power” finds no support in the text or history of the Impeachment Clause. As explained above,168 by limiting impeachment to cases of “Treason, Bribery, and other high Crimes and Misdemeanors,”169 the Framers restricted impeachment to specific offenses against “already known and established crimes.”170 What would have been designed to constrain the power of impeachment?171 Restricting impeachment to offenses established by law provided a crucial safeguard for the integrity of the Executive from what James Madison called the “impetuous vortex” of legislative power.172 As many constitutional scholars have recognized,173 the Framers were concerned with protecting the presidency from the encroachments of Congress . . . than they were
with the potential abuse of executive power.174 The impeachment power nec-
ecessarily implicated that concern. If the power were too expansive, the Framers feared that it would give a legislative Branch the power to "hold [impeachments] as a rod over the Ex-
cutive and by that means effectually de-
stroy his independence."175 One key voice at the Constitutional Convention, James Madison, warned that, as they crafted a me-
chanism to make the President "amenable to Justice," the Framers "should take care to pro-
vide some mode that will not make him . . . strongly push back against any in-
quiry into either the motivations or subjectivity behind his actions.176

The Framers did not intend to expand the impeachment power infinitely by allowing Congress to attack objectively lawful presi-
dental conduct based merely on policy differ-
ces. For example, Madison and other Republicans favored removing the President from office for actions they characterized as "corrupt motives" and "corruption" under the "abuse of power," a term "well-defined" offense.177

Indeed, the debates over the text of the Impeachment Clause reflect the Framers’ concern that ill-defined standards could give free rein to Congress to utilize impeach-
ment to undermine the Executive. As explained above,178 when "maladministra-
tion" was proposed as a ground for impeach-
ment, it was rejected based on Madison’s con-
cern that "[s]o vague a term will be equiv-
calent to a tendering [of] the impeachment power to reach only existing,
and recreate the Parliamentary system they
had expressly rejected. Circumscribing the impeachment power to reach only existing,
defined offenses guarded against such misuse of the authority.179

As Luther Martin, who had been a delegate at the Constitutional Convention, summar-
ed at the time of the impeachment trial of Justice Samuel Chase in 1804, "[a]dmit that the House of Representatives have a right to impeach for acts which are not contrary to law, and that thereon the Senate may con-
vict and the officer be removed, you leave your judges and all your other officers at the mercy of the prevailing party."180 The Fram-
ers prevented that dangerous result by lim-
iting impeachment to defined offenses under the law.181

House Democrats cannot reconcile their amorphous "abuse of power" standard with the constitutional text simply by asserting that, "[[t]he founding generation, abuse of power was a charged subject of
focus."182 In fact, they conspicuously fail to provide any citation for that assertion. Nowhere have they identified any contempo-
ranous definition delimiting this purportedly "well-defined" offense.

Nor can House Democrats shore up their theory by invoking English practice.183 Ac-
cording to House Democrats, 400 years of parl
diamentary history suggests that the par-
ticular offenses charged in English impeach-
ments can be abstracted into several cat-
egories of offenses, including one involving abuse of power.184 From there, they jump to the conclusion that "abuse of power" itself can be treated as an offense and that any fact pattern that could be described as showing abuse of power can be treated as an impeach-
able offense. But that entire method-
ology is antithetical to the approach the Framers took in defining the impeachment power. The Framers sought to confine impeach-
able offenses within known bounds to protect the Executive from arbitrary exer-
cises of the Legislative Branch. In particular, the Framers expressly rejected vague standards such as "maladministration" that had been used in England in order to constrain the im-
peachment power.185

That standard is so malleable that it would be so vague and malleable that en-
compassing virtually any of his actions, mischaracterize any presidents as having mis-
used the power, it is inconceivable
that the Framers crafted a purely intent-
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House Democrats’ conception of "abuse of power" is especially dangerous because it rests on the even more radical claim that a President can be impeached and removed from office if he is allowed to do, if he did it for the wrong "subjective reasons. Under this view, impeach-
ment can turn entirely on whether the President’s actions were motivated solely by his private interests, which is an inadmissible criterion of impeachment."186

First, by making impeachment turn on nearly impossible inquiries into the subject-
ive intent behind entirely lawful conduct, House Democrats’ standard would open vir-
tually every presidential decision to partisan attack based on questioning a President’s motives. By elimi-
nating any requirement for wrongful con-
duct, House Democrats have tried to make
thinking the wrong wrongs an impeachable offense.

House Democrats’ theory of impeachment based on subjective motives is unwork-
able and constitutionally impermissible. First, by making impeachment turn on nearly impossible inquiries into the subject-
ive intent behind entirely lawful conduct, House Democrats’ standard would open vir-
tually every presidential decision to partisan attack based on questioning a President’s motives. As courts have repeatedly observed, "[[a] inquiry into the motives of elected offi-
cials can be both difficult and undesirable, and such inquiry should be avoided when possible."187

Second, Congress’s inability to invalidate laws within Congress’s con-
titutional authority based on allegations about legislators’ motives.188 As constitu-
tional law has long established, the principle "is equally applicable to exec-
utive action within statutory or constitu-
te limitations."189 Even House Democrats’ own expert, Professor Michael Gerhardt, has previously explained (in defending the Obama Administration against charges of "executive privilege") that his "ability to . . . strongly push back against any inquiry into either the motivations or subjectivity behind his actions."190

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between political parties and that, due to a lack of "charity," each might often "attribute every opposition" to its own views "to an ill motive."220 In that environment, he warned, even "the difference of opinion" might be interpreted, by the malignity of party, into a deliberate, wicked action."221 That, he argued, should not be a basis for impeachment.

House Democrats’ assertions that past presidential impeachments provide support for their current "subjective motives-alone" theory are also wrong.217 Contrary to their claims, neither the Nixon impeachment inquiry nor the impeachment of President Johnson supports their assertions.

In the impeachment inquiry, none of the articles recommended by the House Judiciary Committee charged the violation of the Tenure of Office Act, "[t]he House had removed the President . . . which unlawfully utilized the investigative unit within the office of the President."218 These allegations did not turn on an unanswerable question of what constitutes impeachable conduct. Just as importantly, House Democrats have invented standards for identifying "illicit motives"—because they failed to conform to a purported "consensus" of career bureaucrats—would fundamentally subvert the democratic principles at the core of our Constitution.

This very impeachment show how anti-democratic House Democrats’ theory really is. Millions of Americans voted for President Trump precisely because they disapproved of his "illicit motives"—because they failed to disrupt the foreign policy status quo. He promised a new, "America First" foreign policy that would end American imperialism. Under that standard, a President could potentially be impeached and removed from office for taking any action with his political interests in view. In a representative democracy, that kind of power is too dangerous to re- sign the constitution and the Constitution to any person specifically responsible to the people through a quadren- nial election.222 This ensures that the people themselves will regularly and frequently have a say in the Nation’s policy, including foreign policy. As a result, removing a President on the ground that his foreign policy decisions were allegedly based on "illicit motives"—because they failed to conform to a supposed "consensus" of career bureaucrats—would fundamentally subvert the democratic principles at the core of our Constitution.

In the impeachment of President Johnson, the House sought to remove President John- son for violating the Tenure of Office Act, "[t]he House had removed the President . . . which unlawfully utilized the investigative unit within the office of the President."218 Those allegations did not turn on an unanswerable question of what constitutes impeachable conduct. Under that standard, a President could potentially be impeached and removed from office for taking any action with his political interests in view. In a representative democracy, that kind of power is too dangerous to sign the constitution and the Constitution to any person specifically responsible to the people through a quadren- nial election.222 This ensures that the people themselves will regularly and frequently have a say in the Nation’s policy, including foreign policy. As a result, removing a President on the ground that his foreign policy decisions were allegedly based on "illicit motives"—because they failed to conform to a purported "consensus" of career bureaucrats—would fundamentally subvert the democratic principles at the core of our Constitution.

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they define the contours of impeachable offenses. As explained above, the Framers intended a limited impeachment power. But when House Democrats find the Framers raising any risks to the new government, they leap to the conclusion that those concerns must identify impeachable offenses. Such transparently results-driven historical reasoning misses the point: foreign influence—to create a false impression that there is something sinister about anything involving a foreign connection to the President—as they claim it is a particularly ripe ground for impeachment.

When the Framers spoke about foreign “entanglements” they had a particular danger in mind. That was the danger of the young country becoming enmeshed in alliances that would draw it into conflicts between European powers. When President Washington asserted that “history and experience prove that foreign influence is one of the most baneful foes of republican government,” he was writing about executives meriting removal from office.238 He was advocating for neutrality in American foreign policy, and in particular, with respect to the apportionment of presidential power. Washington’s most controversial decisions was establishing American neutrality in the escalating war between Great Britain and revolutionary France.239 He then used his Farewell Address to argue against “entangling alliances” between European powers and that the United States was being drawn into foreign alliances that would trap the young country in disputes between European powers. House Democrats’ false allegations here have nothing to do with the danger of a foreign entanglement as the Founders understood that term, and the admonitions from the Founding era they cite are irrelevant.240

The Framers were also concerned about the distinct problem of foreign attempts to influence the governance of the United States.241 Based on historical score, they identified particular concerns based on historical examples and addressed them specifically. They were concerned about officials being bought off. As Chief Justice Marshall Morris articulated this concern: “Our Executive . . . may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard [against it] by discharging him.”242 He specifically mentioned the bribe King Louis XIV of France had paid to King Charles II of England to influence English policy.243 This is why “Bribery” was made into its own specific offenses. The Framers also addressed the danger of foreign influences directed at the President by barring his acceptance of “any present, gift, or emolument” from the foreign Emoluments Clause.244 House Democrats’ Articles of Impeachment make no allegations under any of these specific offenses.

In the end, House Democrats’ historical arguments rest on a non sequitur. They essentially argue that because the Framers showed concern for the Nation being entangled in the foreign Emoluments Clause,245 House Democrats’ Articles of Impeachment make no allegations under any of these specific offenses. That is a mistake. The Framers specifically state in these specific provisions, any accusations that relate to foreign influence must equally amount to impeachable conduct. That is not the case. Moreover, the Framers made specific provisions for the types of foreign interference they feared, there is no reason to think that the Impeachment Clause must be stretched and contorted to reach other conduct simply because it has to do with something foreign. The Framers, in particular, suggests that House Democrats’ logic is wrong. The Framers defined treason in the Constitution to limit it.246 Nothing in the Constitution suggests that it must not be twisted to reach an impeachable offense. To the contrary, House Democrats’ charge of “obstruction” comes nowhere close to the constitutional standard. It does not charge a violation of established law. More important, it is based on the fundamentally mistaken premise that the President can be removed from office for establishing legal defenses and immunities against defective subpoenas from House committees.

The President does not commit “obstruction” by asserting legal rights and privileges.247 And House Democrats turn the law on its head with their unprecedented claim that it is “obstruction” for anyone to assert rights that normally belong to the House, so try to establish the validity of its subpoenas in court.248 House Democrats’ radical theories are especially misplaced where, as here, the legal principles invoked by the President and other Administration officials are critical for preserving the separation of powers—and based on advice from the Department of Justice.249

Treating a disagreement regarding constitutional limits on the House’s authority to compel documents or testimony as an impeachable offense would do permanent damage to the Constitution’s separation of powers and our structure of government. It would allow the House of Representatives to demand Supreme Court agreements with the Executive over informational demands into a purported basis for removing the President from office. As Professor Toobin explains, treating impeachment on this obstruction theory would itself be an abuse of power . . . by Congress.”250

1. President Trump acted properly—and upon advice from the Department of Justice—by refusing to comply with subpoenas that lacked authority to demand legally defective subpoenas for information from House committees.

House Democrats’ purported “obstruction” charge is based on three actions by the President or Executive Branch officials acting under his authority, each of which was entirely proper and taken only after securing advice from OLC.

(a) Administration officials properly refused to comply with subpoenas that lacked authority to demand legally defective subpoenas issued pursuant to a purported “impeachment inquiry” before the House of Representatives had authorized any such inquiry. House committee subpoenas pursuant to the House’s impeachment power without authorization from the House itself. On precisely that basis, OLC determined that all subpoenas issued before the adoption of House Resolution 660 on October 31, 2019, purportedly to advance an “impeachment inquiry,” were unauthorized and invalid.251 Numerous witness subpoenas and all of the document subpoenas cited in Article II are invalid for this reason alone. These invalid subpoenas imposed no legal obligations on the President or his advisors. As the Supreme Court has explained, the privilege protecting the confidentiality of presidential communications “is fundamental to the operation of the presidency, and it is the separation of powers under the Constitution.”252 For future occupants of the Office of President, it was essential for the President, like past occupants of the Office, to protect Executive Branch confidentiality against House Democrats’ overreaching investigation.

The President’s proper concern for requiring the House to proceed by lawful measures and for protecting long-settled Executive Branch confidentiality against House Democrats’ overreaching investigation is precisely what the Framers understood by “continental standard.”253 The Framers intended that the President should be able to take a different approach. The Framers understood that the President should be able to take a different approach. The President should be able to take a different approach. The President should be able to take a different approach. The President should be able to take a different approach. The President should be able to take a different approach. The President should be able to take a different approach. The President should be able to take a different approach. The President should be able to take a different approach.
(i) A delegation of authority from the House is required before any committee can investigate pursuant to the impeachment power. No committee can exercise authority assigned by the Constitution to the House absent a clear delegation of authority from the House itself. The Constitution assigns the "sole power of impeachment" to the House as a chamber—not to individual Members or subordinate units. Assessing the validity of a committee's inquiry and subpoenas requires attributing the authority which the House of Representatives gave to" the committee. Where a committee cannot demonstrate that its investigation has been authorized by an affirmative vote of the House assigning the committee authority, the committee's actions are ultra vires, and its subpoenas have no force.

To pursue an "impeachment inquiry," and to compel testimony and the production of documents for such an inquiry, the committee must be authorized to conduct an inquiry pursuant to the House's impeachment power. That power is distinct from the power to legislate assigned to Congress in Article I, Section 8. No invocation of legislative support of its power to legislate is limited to inquiring into topics "on which legislation could be had." An impeachment inquiry is not the same as the "initially included within the jurisdiction of the House Judiciary Committee" that then-Chairman Peter Rodino announced that the "Committee on the Judiciary" had "power from the House" for the Nixon impeachment inquiry. The House majority, minority, and Parliamentarian, as well as the Department of Justice, all agreed on this point.

(ii) Nothing in existing House rules authorized any committee to pursue an impeachment inquiry.

Nothing in the House Rules adopted at the beginning of this Congress delegated authority to pursue an impeachment inquiry to any committee. In particular, Rule X, which defines each committee's jurisdiction, makes clear that it addresses only committees' "legislative powers." Notwithstanding, Rule X does not assign any committee any authority whatsoever in respect to impeachment. It does not even mention impeachment, let alone authorize the Democrats to invoke the House's formidable investigative powers to pursue divisive investigations for partisan purposes that a House majority might deem to authorize. As the Speakers have noted, the Democrats have not identified any credible support for their theory of authorization by press conference.

(iii) More than 200 years of precedent confirm that the House must vote to begin an impeachment inquiry.

Historical practice confirms the need for a House vote to launch an impeachment inquiry. Since the Founding of the Republic, the House has never undertaken the solemn responsibility of bringing charges to the floor by starting an inquiry without first authorizing a particular committee to begin the inquiry. That has also been the House's nearly unbroken practice for every judicial impeachment for two hundred years. In every prior presidential impeachment inquiry, the House did not begin the fact-finding process pursuant to any committee's authorization. As the Judiciary Committee Chairman explained during President Nixon's impeachment, an "authorization...resolution has always been passed by the House of Representatives and is a necessary step." Thus, he recognized that, without authorization from the House, "the committee's subpoena power [did] not now extend to impeachment." Indeed, with respect to impeachments of judges or lesser officers in the Executive Branch, the requirement that the full House pass a resolution authorizing an impeachment inquiry traces back to the first impeachments under the Constitution. That historical practice has continued into the 21st century. Thus, we have been involved in only three impeachments that did not begin with a House resolution authorizing an inquiry. Each of those three outcomes involved a fact-finding process during a short interlude in the 1980s. Those outcomes provide no precedent for a presidential impeachment. To paraphrase the Supreme Court, "when considered against 200 years of settled practice, we regard these few scattered examples as anomalies." In addition, the Resolution of Impeachment of 1974, which stated that a federal judge does not provide the same weighty considerations as the impeachment of a president, setting aside these three adjudicated proceedings when a House vote is required to initiate an impeachment inquiry for judges and subordinate executive officials. At least the same level of process would be required by a House vote for the far more serious process of inquiring into impeachment of the President.

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

The impeachment inquiry was unauthorized and all the subpoenas issued by House committees in pursuit of the inquiry were therefore invalid. OLC reached the same conclusion. The bulk of the proceedings in the House were thus founded on the use of unlawful process to compel testimony. Until now, House Democrats have consistently agreed that a vote by the House is required to authorize an impeachment inquiry. In 2019, the Democratic Judiciary Committee agreed that "[i]n the modern era, the impeachment process begins in the House of Representatives only after the House has voted to authorize the Judiciary Committee to investigate whether charges are warranted." As current Judiciary Committee member Rep. Hank Johnson said in 2019, "The impeachment process cannot begin until the 435 Members of the House of Representatives adopt a resolution authorizing the House Judiciary Committee to conduct an independent investigation." As Chairman Nadler put it, an impeachment inquiry without a House vote is "an obvious sham" and a "fake impeachment," or as House Manager Rep. Hakeem Jeffries explained, it is "a political charade," "a sham," and "a Hollywood-style production." These invalid subpoenas remain invalid today. House Resolution 660 merely directed the six investigating committees to "committee any authority whatsoever in respect to impeachment. It does not even mention impeachment, let alone authorize the Democrats to invoke the House's formidable investigative powers to pursue divisive investigations for partisan purposes that a House majority might deem to authorize. As the Speakers have noted, the Democrats have not identified any credible support for their theory of authorization by press conference.

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Schiff and his colleagues who refused to engage in any accommodation process with the White House.

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

The President also properly directed his senior advisers not to testify in response to subpoenas.303 Those subpoenas suffered from a separate problem: they were unenforceable because the President’s senior advisers are immune from compelled testimony before Congress.304 Consistent with the longstanding guidance of the Executive Branch, OLC advised the Counsel to the President that those senior advisers (the Acting Chief of Staff, the Legal Advisor to the National Security Council, and the Deputy National Security Advisor) were immune from the subpoenas issued to them.305

Across administrations of both political parties, OLC “has repeatedly provided for nearly five decades” that “Congress may not constitutionally compel the President’s senior advisers to testify about their official duties.”306 For example, President Obama asserted the same immunity for a senior adviser in 2014.307 Similarly, during the Clinton administration, Attorney General Janet Reno and White House Counsel were advised to the President are immune from being compelled to testify before Congress, and that “the immunity such advisers enjoy from testimony before a congressional committee is absolute and may not be overborne by competing congressional interests.”308 She explained: “compelling one of the President’s immediate advisers to testify on a matter of executive decision-making would . . . raise serious constitutional problems, no matter what the assertion of congressional privilege is.”309

This immunity exists because senior advisers “function as the President’s alter egos.”310 Allowing Congress to summon the President’s alter ego “would be intolerable: the President could not reasonably rely on the immunity such advisers enjoy from testifying before a congressional committee.”311

The President’s powers under the Constitution: “Congress may not override these constitutional principles, constitutionally based confidentiality interests in the course of the constitutionally mandated accommodation process, as well as the President’s constitutional authority to consider and assert executive privilege where appropriate.”312

Requiring agency counsel to be present when Executive Branch employees testify does not raise any insurmountable problems for congressional information gathering. To the contrary, as recently as April 2019, the House Committee on Oversight and Government Reform and the Trump Administration were able to work out an accommodation that satisfied both an information request and the President’s right to have his senior advisers present for an interview. In that case, after initially threatening contempt proceedings over a dispute, the late Chairman Elijah Cummings allowed White House attorneys to attend a transcribed interview of the former Director of the White House Personnel Security Office.313 House Democrats could have eliminated a significant legal defect in the subpoenas simply by following Chairman Cummings’ example. They did not take this step, so the Administration properly accepted the advice of OLC that House Democrats’ actions were unconstitutional and directed witnesses not to appear without agency counsel present.

2. Asserting Legal Defenses and Immunities

Under fundamental principles of our legal system, asserting legal defenses cannot be labeled unlawful “obstruction.” In a government of laws, asserting legal defenses is a fundamental right. As the Supreme Court has explained: “[F]or an agent of the State to pursue a course of action whose objective is to penalize a person’s reliance on his legal rights is ‘patently unconstitutional.’”314 As Harvard Law Professor Laurence Tribe correctly explained in 1998, the same basic principles apply in impeachment proceedings.

The allegations that invoking privileges and otherwise using the judicial system to inform Congress is “abuse of power” that should lead to impeachment and removal from office is not only frivolous, but also dangerous.315

Similarly, in a now-Chairman Nadler of the House Judiciary Committee agreed that a president cannot be impeached for asserting a legal privilege. As he put it, “the use of the judicial system is not illegal or impeachable by itself, a legal privilege, executive privilege.”316

House Democrats, however, ran roughshod over the President’s constitutional authorities by attempt to compel Executive Branch officials with obstruction charges if the officials dared to
assert legal rights against defective subpoenas. They claimed that any “failure or refusal to comply with [a subpoena, including at the direction or behest of the President or one of his subordinates] would constitute evidence of obstruction.” Even worse, Chairman Schiff made the remarkable claim that any action “that forces us to litigate that demand” would be considered further evidence of obstruction of justice. These assertions turn core principles of the law inside out.

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

When the Legislative and Executive Branches disagree about their constitutional duties with respect to sharing information, the proper and historically accepted solution is not an article of impeachment. Instead, it is for the branches to engage in a constitutionally mandated accommodation process in an effort to resolve the disagreement. As courts have explained, “in [negotiation between the two branches] is a dynamic process affirmatively furthering the constitutional scheme.” When that accommodation process fails, Congress has other tools at its disposal to address a disagreement with the Executive. Historically, Congress has had and continues to have the power to demand evidence from the Executive Branch officials in contempt. The process of holding a formal vote of the House on a contempt resolution ensures that the House itself takes the decision in question and weighs in on launching a full-blown confrontation with the Executive Branch. In addition, in recent times, the House of Representatives has taken the view that it can sue in court to obtain a judicial determination of the validity of its subpoenas and an injunction to enforce them.

In the Trump impeachment, House Democrats had actually been interested in securing information (rather than merely adding a phony count to their impeachment charge sheet), the proper course the House has always taken when faced with withholding witnesses and documents. Instead of a rash rush to impeach the President immediately, House Democrats secured a favorable custody ruling from the United States District Court of the Southern District of New York, including a contempt resolution ensuring that the House could sue regular oversight, the Administration would “stand ready to engage in that process as we have in the past, in a manner consistent with well-established bipartisan constitutional protections.” It was House Democrats who refused to engage in the accommodation process, considering to nominate to various confirmable positions and his vetoing of a wide range of Whig-sponsored legislation.”

If House Democrats’ unprecedented theory of “obstruction of Congress” were correct, virtually every President could have been impeached. Throughout our history, Presidents have exercised their constitutional power of impeachment. For example, when Congress investigated Operation Fast and Furious during the last administration, President Obama issued an assertion of executive privilege. In response to the assertion, the Executive Branch made a blank check for the House to expand its power without limit. OLC has determined that Executive Privilege principles continue to apply in an impeachment inquiry. And scholars agree that Presidents may assert privileges in response to congressional subpoenas. For these reasons, Executive Privilege is “essential to the . . . dignified conduct of the presidency and to the free flow of candid advice and open discussion of policy with the President.”

None of the excuses House Democrats have offered justifies their unprecedented leap to
impeachment while bypassing any effort either to seek constitutionally mandated accommodations or to go to court. Their claim that there was no time is no justification. As President Clinton has explained, "[t]he refusal to adopt an abbreviated schedule for the investigation and not to seek to compel such testimony [in court] is a strategic choice of the congressional leadership. It is the grounds for an impeachment." 374 Nor is their claim about urgency credible. The only constant on timing here came from House Democrats who set a deadline in advance that this impeachment charade would not drag on into the Democratic primary season. They knew that an urgency was required because four weeks after they waited four weeks to send the Articles of Impeachment to the Senate. If House Democrats had cared about constitutional precedent, they would have adhered to the ordinary timetable for something as momentous as a presidential impeachment and would have taken the time to work out disputes with the Executive Branch on subpoenas. House Democrats arbitrarily decided to skip that step.

Next, Democrats falsely claim that that "the House has never before relied on litigation to compel witness testimony or the production of documents in a Presidential impeachment proceeding." 375 But the House has filed such lawsuits, including just last year. In one case, the House made a court filing asserting that its impeachment inquiry entitled it to a jury impanelment on the same day the House Judiciary Committee issued its report. 376 And in another case purportedly based on an impeachment inquiry, House Democrats recently argued that, when an impasse, disputes with the Executive Branch can "only be resolved by the courts." 377 These filings are flatly inconsistent with House Democrats’ position elsewhere, where they claim that any impasse should lead to impeachment.

Lastly, House Democrats also find no support for their theory of "obstruction" in the Clinton and Nixon impeachment proceedings. To the contrary, the Clinton proceedings finish conclusively that there is no plausible basis for an article of impeachment based on the assertion of rights and privileges. In 1997 and 1998, there had been numerous court rulings rejecting various assertions of Executive Privilege by President Clinton. 378 The House Judiciary Committee concluded that Clinton’s assertions of Executive Privilege were frivolous, especially because of the "purely private" matters—not official actions. 379 Nevertheless, the Committee decided that the assertions of privilege did not constitute an "impeachable offense[]." 376

Nothing from the Nixon impeachment proceedings supports House Democrats either. The next glaring defect in House Democrats’ theory is that part of its effort to cover up the Watergate break-in, the President had (among other things): provided information from the Department of Justice about other subjects of OLC investigations to help them evade justice; used the FBI, Secret Service, and Executive Branch personnel to conduct illegal electronic surveillance; and illegally attempted to secure access to tax return information in order to influence individuals. 377 Moreover, the Committee had transcripts of tapes on which President Nixon discussed asserting privileges, not to protect governmental decision making, but solely to stymie the investigation into the break-in. 375 It was only in that context that the House Judiciary Committee narrowly recommended an article of impeachment asserting that President Nixon had "failed without lawful cause or excuse to produce evidence sought by Congress." 377 There is nothing remotely comparable in this case. Among other things, every step the Trump Administration has taken has been well-founded in law and supported by the opinion of the Department of Justice. Moreover, the subpoenas here are not comparable to those purporting to interfere with the conduct of foreign relations—matters squarely at the core of Executive Privilege where the President’s powers and need to protect classified information are paramount.

(c) The President cannot be removed from office based on a difference in legal opinion

House Democrats’ reckless “obstruction” theory is further flawed because it asks the Senate to remove the President from office based on differences of legal opinion in which the President acted on the advice of OLC. As explained above, the Framers intended impeachment proceedings to protect the constitutional structure of government. No matter how House Democrats try to dress up an assertion of grounds to resist subpoenas does not rise to that level. The Framers themselves recognized that differences of opinion could not justify impeachment. As Edmund Randolph explained in the Virginia ratifying convention, “[n]o man ever thought of impeaching a man for an opinion.” 378

Until now, that principle has prevailed, as the House has expressly rejected attempts to advance an impeachment inquiry to resolve disputes over assertions of privilege. As noted above, in the Clinton impeachment, the House Judiciary Committee rejected a draft article alleging that President Clinton had “frivolously and corruptly asserted executive privilege.” 376 Even though the Committee concluded that “the President had[d] improperly and has[ ] successfully asserted privilege.” 376 it decided that this was not an “impeachable offense[].” 376 The Committee concluded it did not have “the ability to second guess the President’s assertions that what was in his mind in asserting that executive privilege” and it “ought to give . . . the benefit of the doubt [to the President] in the assertion of executive privilege.” 377 As the Committee recognized, members of Congress need not agree that a President’s assertion of a privilege or immunity is correct to recognize that making the assertion privileges itself an impeachable offense is a dangerous and unwarranted step. The House took a similar view in rejecting an attempt to impeach President Tyler in 1843 when he refused congressional demands for information. As Professor Gerhardt has explained: Tyler’s attempts to protect and assert what he regarded as the prerogatives of his office were a function of his constitutional and policy judgment. They might have been wrong-headed or even policy perceived at least in the view of many Whigs in Congress, but they were not malicious efforts to abuse or extort power.

President Trump’s resistance to congressional subpoenas here was similarly “a function of his constitutional and policy judgment.” As the House recognized in the cases of President Tyler and President Clinton, divergent views on such matters cannot possibly be sufficient to remove a duly elected president from office. And that is especially the case here, where President Trump’s actions were expressly based on advice from the Department of Justice.

II. The Articles Resulted from an Impeachment Inquiry That Violated All Precedent and Deprived the President Constitutionally Required Due Process

Three defects make the House’s purported impeachment proceeding fundamentally flawed. First, as the Department of Justice advised at the time, the House’s investigating committee compelled testimony and documents by issuing subpoenas that were invalid when issued and are invalid today. See Parts I.B.1(a), I.B.2, the impeachment inquiry irredeemably flawed. Second, the President did not have the right to provide due process to the President as required by the Constitution. See Part I.B. Contrary to 150 years of precedence, the House excluded the President from the proceedings, denying him any right to participate or defend himself. House Democrats only pretended to provide the President any rights after the entire factual record had been compiled in ex parte hearings and Speaker Pelosi had predetermined the result by instructing the Judiciary Committee to draft articles of impeachment. Third, the House’s factual inquiry was supervised by an interested fact witness, Chairman Schiff, who—after falsely denying it—admitted that his staff had been in contact with the whistleblower and had given him guidance. See Part I.C. These three fundamental errors infected the underpinnings of this trial, and the Senate cannot constitutionally rely upon House Democrats’ tainted record to reach any verdict other than acquittal. See Part II.D. Nor is it the Senate’s role to give House Democrats a “do-over” to develop the record anew in the event errors require rejecting the Articles and acquitting the President.

A. The Purported Impeachment Inquiry Was Unauthorized at the Outset and Compelled Testimony Based on Nearly Two Dozen Invalid Subpoenas

It is emblematic of the rush to judgment throughout the House’s slap-dash impeachment inquiry that Chairman Schiff’s investigating committees began issuing subpoenas and compelling testimony when they might not have no authority to House committees built their one-sided record by purporting to compel testimony and documents using nearly two dozen subpoenas (some issued to the Executive Branch) “in violation of the impeachment inquiry.” 378 But their only authority was Speaker Pelosi’s announcement at a press conference on September 24, 2019. As a result, the inquiry and the almost two dozen subpoenas issued before October 31, 2019 came before the House delegated any authority under its “sole Power of Impeachment” to any committee. 399 As OLC summarized: The Constitution vests the “sole Power of Impeachment” in the House of Representatives. Article I, Section 2. It is clear that precisely that reason, the House itself must authorize an impeachment inquiry, as it has done in virtually every prior impeachment investigation in our Nation’s history, including every one involving a President. A congressional committee’s “right to exact testimony and to call for the production of documents” is limited by the “controlling charter” the committee has received from the House. United States v. Rumely, 345 U.S. 41, 44 (1953). Yet the House, by its rules, has authorized its committees to issue subpoenas only for matters within their legislative jurisdiction. Accordingly, no committee may unilaterally authorize impeachment investigations in our Nation’s history, including every one involving a President. A congressional committee’s “right to exact testimony and to call for the production of documents” is limited by the “controlling charter” the committee has received from the House. United States v. Rumely, 345 U.S. 41, 44 (1953). Yet the House, by its rules, has authorized its committees to issue subpoenas only for matters within their legislative jurisdiction. Accordingly, no committee may unilaterally authorize impeachment investigations in our Nation’s history, including every one involving a President.

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

The most glaring defect in House Democrats’ impeachment proceedings was the wholly unfair procedures used to conduct the
inquiry and compile the record. The Constitution requires that something as momentous as impeaching the President be done in a fundamentally fair way. Both the Due Process Clause and the separation of powers principles require the House to provide the President with fair process and an opportunity to defend himself. Every modern president’s inquiry—whether during an impeachment investigation for the last 150 years—has expressly preserved the accused’s rights to a fundamentally fair process and ensured the development of evidence. These included the rights to cross-examine witnesses, to call witnesses, to be represented by counsel at all hearings, to make objections to the examination of witnesses or the admissibility of evidence, and to respond to evidence and testimony received. There is no reason to think that the framers intended a procedure far more procedurally disruptive of impeaching the President that could be accomplished through any unfair and arbitrary means that the House might invent.

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

(a) The Due Process Clause Requires Fair Process

The federal Due Process Clause broadly states that “[n]o person shall . . . be deprived of life, liberty, or property without due process of law.” It applies to every part of the federal government. In any proceeding that may lead to deprivation of a protected interest, it requires fair procedures commensurate with the interests at stake. There is no exemption from the clause for Congress. Thus, for example, the Supreme Court has held that due process protections attached to the impeachment process to be governed by procedures that would ensure a fair assessment of evidence. The Bill of Rights guarantees due process, not out of an abstract, academic interest in process as an end in itself, but rather due to a belief, deeply rooted in the Anglo-American system of law, that procedural protections reduce the chances of erroneous judgments. The framers surely did not intend to approve a process for determining impeachments that would be wholly cut loose from all traditional mechanisms deemed essential in our legal heritage for discovering the truth.

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

(b) The Separation of Powers Requires Fair Procedures

A proper respect for the head of a co-equal branch of the government also requires that the House use procedures that are not arbitrary and that allow the President a fair development of evidence. The framers intended the impeachment power to be limited to “guard[ing] against the danger of persecution of a factional spirit.” The Constitution places the power of impeachment in the entire House precisely to ensure that a majority of the elected Representatives decide to move an impeachment forward. That design would be undermined if a House vote were shaped by an investigatory process so lopsided as to leave only one party in the entire House with a chance to develop evidence and foreclose the ability of others—including the accused—to develop the facts. Rather than promoting deliberation by a majority of the people’s representatives, that approach would foster precisely the factionalism that the framers expected the process to prevent.

(b) The Separation of Powers Requires Fair Procedures

Finally, every federal officer has a protected liberty interest in his reputation that would be directly impaired by impeachment charges. Impeachment by the House alone has an immeasurable effect on the political future of the accused. The fact that impeachment is a constitutionally prescribed mechanism for removing federal officials from office does not make it any the less a mechanism protecting rights within the ordinary ambit of the clause.

The gravity of the deprivation at stake in an impeachment—especially a presidential impeachment—is the conclusion that the Due Process Clause demands that some due process limitations must apply. It would be incompatible with the framers’ understanding of the “delicacy and magnitude of a trust which so deeply concerns the political reputation and existence of every man engaged in the administration of public affairs” to think that they envisioned a system in which the House was free to devise any arbitrary or unfair mechanism it wished for impeaching individuals. The Supreme Court has described due process as “the guiding principle behind our system of government . . . aimed at stripping individuals of their governmental privileges not out of an abstract, academic interest in process as an end in itself, but rather due to a belief, deeply rooted in the Anglo-American system of law, that procedural protections reduce the chances of erroneous judgments.” The framers surely did not intend to approve a process for determining impeachments that would be wholly cut loose from all traditional mechanisms deemed essential in our legal heritage for discovering the truth.

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

Nothing in the House’s “sole Power of Impeachment” and power to “determine the Rules of its Proceedings” undermines the House’s obligation to use fundamentally fair procedures in impeachment. Those provisos simply mean that no other entity, has these powers. The Supreme Court has made clear that independent constitutional constraints limit otherwise plenary congressional power to “determine the Rules of its Proceedings.” Each House may not by law prevent a constitutional constraint from intervening.

Similarly, the doctrine of Executive Privilege, which is rooted in the separation of powers, constrains Congress’s exercise of its constitutionally assigned powers. A congressional committee cannot simply demand access to information protected by the doctrine of Executive Privilege. If a court were to accede to such information at all, it must show that the information “is demonstrably critical to the responsible fulfillment of the Committee’s functions.” The Court could not evade that constraint by invoking its plenary authority to “determine the Rules of its Proceedings” and adopting a rule allowing its committees to override Executive Privilege. Executive Privilege, which is itself grounded in the Constitution, similarly constrains the House’s ability to demand information. Nixon v. United States, in any case, does not suggest otherwise.

Nixon addressed whether a House impeachment inquiry that included a Senate impeachment trial violated the direction in the Constitution that the Senate
shall have “sole Power to try all Impeachments.” 419 The Court held that the challenge presented a non-justiciable political question—specifically, that “[i]n the case before us, it is a question of constitutional power.” 420 The Court held that all questions related to impeachment are non-justiciable 421 or that there are no constitutional constraints on impeachment, 422 or that the term of separation of powers is constitutional. 423 More importantly, the justiciability of such questions is irrelevant. Constitutional obligations need not be enforceable by the judiciary to exist and constrain the political branches. As Madison explained, “as the Legislative, Executive, and Judicial departments of the United States are co-ordinate, and each equally bound to support the Constitution, if each exercise its powers so that each must in the exercise of its functions, be guided by the text of the Constitution according to its own interpretation of it.” 424 Particular processes are context-specific, “we have to divest ourselves of the common misconception that constitutionality is discernable or determinable only in the courts, and that anything is constitutional which a court cannot or will not overturn. . . . Congress’s responsibility to preserve the forms and the precepts of the Constitution is, rather than less, because the judicial forum is unavailable, as it sometimes must be.” 425 A holding that a particular question is a non-justiciable political question minimizes a challenge to the political branches to use “nonjudicial methods of working out their differences” 426 and does not relieve the House of its constitutional obligation.

2. The House’s Consistent Practice of Providing Due Process in Impeachment Investigations for the Last 150 Years Confirms that the Constitution Requires Due Process

Historical practice provides a gloss on the requirements of the Constitution and strongly confirms that impeachment investigations must adhere to basic forms of due process. “In separation-of-powers cases, the [Supreme] Court has often put significant weight on historical practice.” 427 As Madison explained, it “was foreseen at the birth of the Constitution, that difficulties and differences of opinion might occasionally arise in the wording terms [and] phrases necessarily used in such a charter . . . and that it might require a regular course of practice to liquidate [and] settle the meaning of them.” 428 Although constitutional re-

The Framers, who debated impeachment with reference to the contemporaneous English impeachment of Warren Hastings, 430 knew that “the House of Commons did hear the accused, and did permit him to produce testimony, before they voted an impeachment against him.” 431 But Nixon provides that “the request of the Judge is supported by the whole train of English decisions in the impeachment context, and did permit him to produce testimony from Missouri in support of his state-

The exact contours of the procedural protections required during an impeachment investigation must, of course, be adapted to the nature of that proceeding. The hallmarks of a full blown trial are not required, but procedures must reflect, at a minimum, basic protections that are essential for ensuring a fair process that is designed to get at the truth.

The Supreme Court’s “precedents establish the general rule that individuals must receive notice and an opportunity to be heard in any proceeding that imperils a constitutionally protected interest.” 439 That means, at a minimum, that the evidence must be disclosed to the accused, and the accused must be permitted an opportunity to test and respond to the evidence—particularly through “[t]he rights to confront and cross-examine witnesses,” which “have long been recognized as a vital part of a fair impeachment process.” 440 Cross-examination is “the greatest legal engine ever invented for the discovery of
truth.’’ 462 “shed[ding] light on the witness’ perception, memory and narration’’ 463 and “expos[ing] inconsistencies, incompleteness, and inaccuracies in his testimony.’’ 464 Thus, “[j]n presenting their evidence, it is unthinkable that the Framers, steeped in the history of Anglo-American jurisprudence, would create a system that would allow the Chief Executive and Commander-in-Chief of the armed forces to conduct a high-stakes process that developed evidence without providing any of the elementary procedures that the common law has developed over centuries for ensuring the proper testing of evidence in an adversarial process.

The most persuasive source indicating what the Constitution requires is an impeachment investigation. The first phase of the impeachment investigation is the record of the House’s own past practice, as explained above.466 The due process rights consistently afforded by the House to the accused over the past 150 years have generally included the right to appear and to be represented by counsel at all hearings, to have access to and respond to, to submit evidence, and to question witnesses and object to evidence, and to make opening statements and closing arguments.467 Chairman Nadler’s majority report; Speaker Pelosi’s; and then-Representative Schu­mmer have repeatedly confirmed these procedural requirements.

4. The House Impeachment Inquiry Failed to Provide the Due Process Demanded by the Constitution and Generated a Fundamentally Skewed Record That Cannot Be Re­lied Upon to Guide the Senate

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

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

The first phase involved secret proceedings in a basement bunker where the President was not allowed to sit at all. This phase consisted of depositions taken by joint hear­ings of the House Permanent Select Committee on Intelligence (HPSCI), the House Committee on Foreign Affairs, and the House Committee on Oversight and Reform. To ensure there would be no transparency for the President or the American people, depositions were conducted in a facility designed for securing highly classified information—even though all of the depositions were “conducted entirely at the unclassified level, and the witnesses were denied the opportunity to participate. He was denied the right to have counsel present. He was denied the right to cross-examine witnesses, call witness­es, and object to evidence. He was denied the right to have Executive Branch counsel present during depositions of Execu­tive Branch officials, thereby undermining any accountability to the American people. Standing constitutional privileges over Execu­tive Branch information.479 Members in the Republican minority on the investigating committees were provided the weight to remedy the lack of process for the President. They were denied subpoena au­thority to call witnesses, and they were blocked even from asking questions that would ensure a balanced development of the facts. For example, Chairman Schiff repeatedly claimed that the process was justified by the fact that he would have exposed personal self-interest, prejudice, or bias of the whistleblower.480

Finally, it was made clear that the proceedings’ secrecy was just a partisan stratagem. Daily leaks describing purported testimony of witnesses were calculated to present a partial and distorted view of what was taking place behind closed doors and further the narrative that the President had done something wrong.481 Actually, the House authorized that the base­ment Star Chamber hearings were justified because the House “serves in a role analo­gous to a grand jury and prosecutor.”482 As a means of providing due process over the last 150 years confirms that the House is not merely a grand jury.483 Chairman Nadler, other House Democrats, and then-Representative Schu­mmer rejected such analogies as “a cramped view of the appropriate role of the House [that] finds no support in the Constitution and would give the danger of a great weight of historical precedent.”484 The Judi­ciary Committee’s own impeachment counsel and staff in the “[grand] jury analogies” as “badly misplaced when it comes to impeachment.’’485

More importantly, the narrow rationale that justifies protections in grand juries simply do not apply here.486 For example, it is primarily grand jury se­crecy—not the preliminary nature of grand jury proceedings in developing the basis for an indictment—that “[justif[i]es the limited proce­dural safeguards available to . . . persons under investigation.”487 That secrecy, in turn, protects rights. It al­lows an investigation to proceed without notice to those under suspicion and thus may further the investigation.488 In addition, a “cornerstone” of grand jury secrecy is the policy of protecting the public reputations of those who may be investigated but never charged.

Neither rationale applied to Chairman Schiff’s proceedings for a straightforward reason: in relevant respects, the proceedings were entirely public. Chairman Schiff made no secret that the investigation was President Trump. He and his colleagues held news conferences to announce that fact, and they leaked information intended to undermine the President’s ability to challenge the record of the otherwise secret hearings.489 In addition, the exact wit­ness list with the dates, times, and places of witnesses’ testimony were announced to the world long in advance of each hearing. And witnesses’ opening statements, as well as slanted summaries of their testimony, were released to the press in real time. The entire direction of the investigation, as well as specific testimony, was thus telegraphed to the world. These acts would have violated a fundamental right if grand jury rules had applied.490

It is also well settled that the one-sided procedures employed by Chairman Schiff were not designed to protect a constitutional mechanism for getting at the truth. Grand jury proce­dures have never been justified on the theory that they are well adapted for uncovering un­lawfulness. To the contrary, as explained above, the Anglo-American legal system has long recognized that “adversarial testing,” particularly cross-examination, “will ulti­mately produce truths in truth and fairness.”491 Those essential procedural rights are no less necessary in impeachment proceedings unless one adopts the counter­intuitive and unconvincing view that this provided no intent an impeachment inquiry to use any of the familiar mechanisms developed over centuries in the common law to get at the truth.

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

After four weeks of secret—and wholly un­authorized—hearings, the House finally intro­duced a resolution to have the House authorize an impeachment inquiry and procedure. Resolu­tion 660, however, merely compounded the fundamentally unfair procedures from the secret cellar hearings by subjecting the proceedings to a秀a秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀秀Show Trial—a stage-managed inquisition in front of the cameras, choreographed with pre-screened testimony to build a narrative aiming at a pre-determined result. The President was still denied any opportunity to participate, to cross-examine witnesses, to present witnesses or evidence, or to protect constitutionally privileged Executive Branch information by having agency counsel of the President testify to the rules that had governed the Nixon and Clinton impeachment inquiries. There, the President had been allowed to cross-examine adverse witnesses if present. In the current impeachment inquiry, the President was not even permitted to call witnesses, and the ranking member on the investigating committee had been permitted co-equal subpoena authority.492

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

The House Committee on the Judiciary simply rubber-stamped the ex parte record compiled by Chairman Schiff and, per the Speaker’s direction, relied on it to draft arti­cles of impeachment. Instead of Resolution 660, it was only during this third phase that the President was even nominally al­lowed a chance to participate and some rudi­mentary elements of process.493 With fact-find­ing already over, there was no mean­ingful way to allow the President to use those rights for a balanced factual inquiry. In­stead, the Judiciary Committee simply rubber-stamped the ex parte record developed by Chairman Schiff. Thus, the only procedural protections that House Res­olution 660 had provided the President inad­equately from the outset because they came far too late in the proceedings to be effec­tive. Constitutional protections such as cross­examination are essential if the factual record is being developed. Providing process only after the record has been compiled and after charges are being drafted can do little to remedy the distortions built into the record. Here, most witnesses testified twice under oath on the same topic—once in a se­cret rehearsal to preview their testimony, and again in public—without any cross-ex­amination by the President’s counsel. Look­ing witnesses into their stories by having them testify twice effectively translates the benefit of cross-examination. Any deviation from prior testimony potentially exposes a wit­ness to a double perjury charge, and, worse, the ex parte testimony injected in each witness’s mind in place of actual mem­ory.

While it would have been next to impos­sible for a proceeding before the Judiciary Committee to remedy the defects in the prior two rounds of hearings, Chairman Nad­ler and his colleagues twice took the opportunity to do that. His only interest was following march­ing orders to report articles of impeachment to the House so they could be voted on before the election.494 This bill was written so vague and inadequate notice about what pro­ceedings were planned until ultimately
informed the President that he had no plans for any evidentiary hearings at all.

For example, on November 26, 2019—two days before Thanksgiving—Chairman Nadler informed the President and the House Majority Leader that the Judiciary Committee would hold a hearing on December 4 vaguely limited to "facts and constitutional basis of impeachment." 490 The Chairman provided no further information about the hearing, including the identities of the witnesses. 491 The President was required to indicate whether he wished to participate by Sunday, December 1. Every aspect of the planning for this hearing departed from the norm. The date was not set until November 29 and no scheduling input was requested from the President's attorneys. 492 President Trump underwrote the President's decision that Committee staff were authorized to conduct a "hearing on December 4 to address constitutional law seminar and other than a hearing on December 9 involving a presentation of the law and facts, including requesting witnesses." 494 Chairman Nadler trying to find out about the process the Committee would follow and requesting specific rights to review the presentation of the law and facts, including requesting witnesses. 495 Chairman Nadler simply ignored them. He offered only an after-the-fact request that denied his request for witnesses in part on the misleading claim that "the President is not requesting any witnesses." When it was Chairman Nadler who ordered in order to assert another, the President to call witnesses in the first place. 496 A backdrop to all of this, Chairman Nadler had taken an unprecedented provision of the Committee's Impeachment Inquiry Procedures Pursuant to House Resolution 660 that allowed him to refuse to disclose the legal rights if the President continued to assert long-standing privileges and immunities to protect Executive Branch information and to challenge the validity of the "impeachment proceeding committees' subpoenas." 497 This approach also departed from all precedent in the Clinton and Nixon administrations. In both those administrations the President had asserted numerous privileges, the Judiciary Committee never contemplated that offering the opportunity to present a defense in a fair hearing should be conditioned on forcing the President to abandon the longstanding constitutional rights and privileges of the Executive Branch. The Supreme Court has already addressed such Catch-22 choices and has made clear that it is "intolerable that one constitutional right should have to be surrendered in order to exercise another." 498 The condition access to basic procedural rights on an agreement to waive other fundamental rights is the same as denying procedural rights altogether.

As a result, by the December 6 deadline, the President had been left with no meaningful choice. The subpoena was already under instructions to draft articles of impeachment before hearing any evidence; Chairman Nadler had kept the President in the dark until the last minute about how and when the Committee would proceed; and Committee counsel had finally confirmed that the Committee's plan was to hear solely a staff presentation of the HPSCI report and not to hold any other hearings. It was abundantly clear that, if the President asked to present or cross examine any witnesses, any future hearings were to be conducted by window-dressing designed to place a veneer of fair process on a stage-managed show trial already hurtling toward a preordained result. The President would not be given any meaningful opportunity to question fact witnesses or otherwise respond to the one-sided factual posture. According to the Judiciary Committee's assertion that the President "could have had his counsel make a presentation of evidence or request that other wit-
contact with the whistleblower, but apparently played some still-unverified role in advising the whistleblower before the complaint was filed.525 And Chairman Schiff began to sound like a habitual liar. But facts are facts. This matter has been investigated once again and again and reading a fabricated version of the President’s telephone conversation with President Zelensky to the American people.

Given the role that Chairman Schiff and his staff apparently played in advising the whistleblower, one might ask whether he is in fact a neutral “investigator.” But no wonder Schiff cannot covertly assist with the investigation. Chairman Schiff repeatedly denied requests to subpoena the whistleblower and shut down any questions that he feared might identify the whistleblower. Questioning the whistleblower would have exposed before the American people the role Chairman Schiff and his staff had in concocting the very complaint they purported to be investigating.

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

The Senate may not rely on a corrupted factual record derived from constitutionally deficient proceedings to support a conviction of the President. The Senate afforded the President’s own Executive Branch practice of granting case-by-case exceptions to the President’s voluntarily unemployment by restricting U.S. entry by nationals of Russia’s adversaries abroad. They have no policies and no ideas to contest against.

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Instead, they are held hostage by a radical left wing that has foisted on the party a radical agenda of socialism at home and appeasement abroad that Democrat leaders know—and every person who will never agree to the adoption. For Democrats, President Trump’s record of success made impeachment an electoral imperative. As Congressman Al Green explained, they don’t impeach the President, he will get re-elected.”

The result of House Democrats’ relentless pursuit of the President—and their willingness to sacrifice every precedent, every principle, and every procedural standing in their way—is exactly what the Framers warned against: a wholly partisan impeachment. The Articles of Impeachment now before the Senate were adopted without a single Republican vote. Indeed, the only bipartisan article was congressional opposition to their adoption.

Democrats used to recognize that the momentous act of overturning a national election by impeaching a President should never take place on a partisan basis, and that impeachment should not be used as a partisan tool in electoral politics. As Chairman Nadler explained in 1998: “The effect of impeachment is to overturn the popular will of the voters. We must not overreach, and remove a President from office except to defend our system of government or our constitutional liberties against a dire threat, and we must not do so without a clear and convincing consensus among the American people.” There must never be a narrowly voted impeachment or an impeachment supported by one of our major political parties and opposed by another. Such an impeachment will produce divisiveness and bitterness in our politics for years to come, and will call into question the very legitimacy of our political process.

Senator Leahy agreed: “A partisan impeachment cannot command the respect of the American people. It is no more valid than a stolen election.” Chairman Schiff likewise recognized that a partisan impeachment would be “doomed for failure,” adding that there was “little to be gained by putting the country through that kind of wrenching experience.”

Now, however, House Democrats have completely abandoned the standards placed before the Senate Articles of Impeachment that are partisan to their core. In their rush to impeach the President before Christmas, Democrats allowed speed and political expediency to conquer fairness and truth. As Professor Turley explained, this impeachment “stands out among modern impeachments supported by one of our major political parties and opposed by another.” Such an impeachment would produce divisiveness and bitterness in our politics for years to come, and will call into question the very legitimacy of our political process.

Democrats forewarned the possibility of such an improper, partisan use of impeachment. As Hamilton recognized, impeachment could be a powerful tool in the hands of determined “pre-existing factions.” The Framers foresaw clearly the possibility of such an improper, partisan use of impeachment. As Hamilton recognized, impeachment could be a powerful tool in the hands of determined “pre-existing factions.” The Framers fully recognized that the “persecution of an intemperate or defaming character [was] the business of House of Representatives.” A real danger was the “danger that the decision” to remove a President would be based on the “comparative strength of parties” rather than “by the real demonstrations of innocence or guilt.” The Senate would thus “guard[] against the danger of a very prevalent and infectious spirit” in the House. It now falls to the Senate to fulfill the role of guardian that the Framers envisioned to reject these wholly insubstantial Articles of Impeachment that have been propelled forward by nothing other than partisan enmity toward the President.

III. Article I Facts

A. The Evidence

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

This entire impeachment charade centers on a telephone call that President Trump had with President Zelensky on July 25, 2019. There is no mystery about what happened on that call, because the President has been completely transparent: he released a transcript of the call months ago. And that transcript shows conclusively that the call was perfectly appropriate. Indeed, the person on the other end of the call, President Zelensky, has confirmed in multiple public statements that it was entirely normal. Before they had even seen the transcript, though, House Democrats concocted all their charges based on distortions peddled by a so-called whistleblower who had no first-hand knowledge of the call. And contrary to their claims, the transcript proves that the President did not seek to use either security assistance or foreign loan guarantees to leverage his rush to impeach the President before the White House without any condition whatsoever. When the President released the transcript of the call on September 25, 2019, he cut the legs out from under all of House Democrats’ phony claims about a quid pro quo. That should have ended this entire matter.

Nevertheless, House Democrats forged ahead, determined to gin up some other evidence to prop up their false narrative. But even their rigged process failed to yield the evidence they claimed to need. The record affirmatively refutes House Democrats’ claims. In addition to the transcript, the central fact in this case is this: there are only two people who have made statements on the record who say they spoke directly to the President about the heart of this matter—Ambassador Gordon Sondland and former Attorney Generalности. Both confirmed that the President stated unequivocally that he sought nothing and no quid pro quo of any kind from Ukraine. House Democrats’ claims about the influence of Ukraine loan guarantees on the universe of corruption investigations by Ukraine’s officials are the product of nothing other than partisan enmity to oust the President. And he certainly did not make any connection between the assistance and any investigation involving then-Vice President Joe Biden and his son. Hunter, to sit on its board. The President did not even mention the security assistance on the call, and he invited President Zelensky to the White House without any condition whatsoever. When the President released the transcript of the call on September 25, 2019, it cut the legs out from under all of House Democrats’ phony claims about a quid pro quo. That should have ended this entire matter.

Nevertheless, House Democrats forged ahead, determined to gin up some other evidence to prop up their false narrative. But even their rigged process failed to yield the evidence they claimed to need. The record affirmatively refutes House Democrats’ claims. In addition to the transcript, the central fact in this case is this: there are only two people who have made statements on the record who say they spoke directly to the President about the heart of this matter—Ambassador Gordon Sondland and former Attorney Generalности. Both confirmed that the President stated unequivocally that he sought nothing and no quid pro quo of any kind from Ukraine. House Democrats’ claims about the influence of Ukraine foreign assistance on an Announcement of Investigation into Burisma’s efforts to pressure Ukrainians to announce in investigations by Ukraine of corruption investigations involving Burisma’s big partner, and they were surprisedly not.

President Trump also raised concerns about corruption. He first raised these concerns in connection with reports of Ukrainian investigations in the 2016 presidential election. Numerous media outlets have reported that Ukrainian officials took steps to influence and interfere in the 2016 election to undermine then-candidate Trump, and three Senate committee chairmen are currently investigating this interference. President Trump raised “this whole situation” and noted that the Ukrainian officials were “surrounding [him]self with some of the same people.” President Zelensky responded by noting that he had recalled the Ukrainian Ambassador to the United States—an individual who had sought to influence the U.S. election by authoring an anti-Trump op-ed. As Democrats’ witness Dr. Hill testified, many officials in the State Department and NSC were similarly concerned about individuals surrounding Zelensky.

President Trump also mentioned an incident involving then-Vice President Joe Biden and a corruption investigation involving Burisma. In that incident, a corruption investigation involving Vice President Biden reportedly had been stopped after Vice President Biden threatened to withhold one billion dollars in U.S. loan guarantees unless the Ukrainian government fired a prosecutor. At the time, Vice President Biden’s son, Hunter, was sitting on the Burisma’s board of directors. The fired prosecutor reportedly had been investigating Burisma’s corruption. In fact, on July 22, 2019—just days before the July 25 call—The Washington Post reported that the prosecutor “said he believes his appointment was overturned by then-Vice President Biden (‘Burisma’) and ‘[had] remained in his post...he would have questioned Hunter
Similarly, National Security Advisor to the Vice President Keith Kellogg said that he "heard nothing wrong or improper on the call."592

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

The Ukrainian government also made clear that President Zelensky did not connect security assistance and investigations on the call. The Ukrainians' official statement did not reflect any such link,593 and President Zelensky has been crystal clear about this in his public statements. He has explained that he "never talked to the President from the position of a quid pro quo"594 and stated that they did not discuss security assistance on the call at all.595 Indeed, President Zelensky has confirmed several separate times that his communications with President Trump were "good" and "normal," and "no one pushed me."596 The day after the call, President Zelensky met with Ambassador Volker, Ambassador Sondland, and Ambassador Taylor in Kyiv. Ambassador Volker reported that the Ukrainians "thought [the call] went well."597 Likewise, Ambassador Taylor reported that President Zelensky was "happy with the call."598 And Ms. Croft, who met with President Zelensky's chief of staff Andriy Bohdan the day after the call, heard from Bohdan that they were "very, very positive, they had good chemistry."599

Other high-ranking Ukrainian officials confirmed that there was no connection between security assistance and investigations. Ukrainian Foreign Minister Vadym Prystaiko stated his belief that "there was never a direct link between investigations and security assistance," and "there was no clear connection between these events."600 Similarly, President Zelensky's chief of staff Andriy Yermak, was asked if "he had ever felt there was a connection between the U.S. military aid and the requests for investigations," he was "adamant" that "[w]e never had that feeling" and "[w]e did not have the feeling that this aid was connected to any one specific issue.

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

House Democrats' theory is further disproved by the straightforward fact that not a single witness with actual knowledge ever testified that the President suggested any connection between announcing investigations and security assistance. Assumptions, speculations, and speculation based on hearsay are all that House Democrats can claim to support their quid pro quo theory. House Democrats' claims are refuted first and foremost by the fact that there are only two people with statements on record who claim to have knowledge about the matter—and both have confirmed that the President expressly told them there was no connection whatsoever between the security assistance and investigations. Ambassador Taylor testified that he asked President Trump directly about these issues, and the President explicitly told him that he did not want anything from Ukraine:

I want nothing. I want nothing. I want no quid pro quo. Tell Zelensky to do the right thing.614

Similarly, Senator Ron Johnson has said that he asked the President "whether there was some kind of arrangement where the President would take action on Burisma, the Bidens, or the 2016 election if the Ukrainian government did not provide security assistance. And the President—just directly to me—said, ‘that’s not going to happen.’"

For example, adviser to President Zelensky Andriy Yermak told Bloomberg that President Zelensky and his key advisers learned of the pause only from the Politico article.607 Foreign Ministry spokesman Denys Merkyn learned of the pause in the aid "by reading a news article," and Deputy Minister of Defense Oleh Shevchuk learned "through media reports."610

Further confirmation that the Ukrainians did not know about the pause comes from the fact that the Ukrainians did not raise the security assistance in any of the numerous high-level meetings held over the summer—something Yermak told Bloomberg they would have done had they known.609 President Zelensky did not raise the issue in meetings with Ambassador Taylor on either July 26 or August 27.611 And Volker—who was in touch with the highest levels of the government at that time—also indicated that Ukrainian officials "would confide things" in him and "would have asked" if they had any questions about the aid. Things cannot be clearer:

The House Democrats’ entire theory falls apart because President Zelensky and other officials at the highest levels of the Ukrainian government did not even know about the temporary pause until shortly before the President released the security assistance. As Ambassador Volker said: "I don’t believe we were aware of the time, so there was no leverage implied."612 These facts alone vindicate the President.

4. House Democrats Rely Solely on Speculation to See What They Want to See

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meeting with the President of the United States, a phone call with the President of the United States, military aid or foreign aid from the United States, or the 2016 elections?

[A.] No, they did not.616

Against all of that unequivocal testimony, House Democrats’ assertion that the release of security assistance was conditioned on some other conversation with the President is untenable.

4. The Security Assistance Flowed Without Preconditions

The made-up narrative that the security assistance was conditioned on Ukraine taking some action on investigations is further disproved by the straightforward fact that the aid resumed immediately. On September 11, 2019, without the Ukrainians taking any action on investigations, President Zelensky never made a statement about investigations, nor did any Ukrainians mention any investigation.

5. The Security Assistance Flowed Without Any Precondition

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

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

Part of House Democrats’ baseless charge is that the temporary pause on security assistance compromises the national security of the United States by leaving Ukraine vulnerable to Russian aggression. As we have repeatedly disproved that claim. In fact, Chairman Schiff’s hearings established beyond a doubt that the Trump Administration has been a stronger, more reliable friend to Ukraine than the prior administration.

Ambassador Yovanovitch testified that “our policy actually got stronger” under President Trump, largely because, unlike the Obama administration, “this administration made the decision to provide lethal weapons to Ukraine” to help Ukraine fend off Russian aggression.620 Yovanovitch explained that “we all felt [that] was very significant.”621 Ambassador Taylor similarly explained that the aid package provided by the Trump Administration “on the basis of the policy of the prior administration, because “this administration provided Javelin antitank weapons,” which “are serious weapons and very effective.”622 Deputy Assistant Secretary Kent agreed that Javelins “are incredibly effective weapons at stopping armored advance, and the Russians are scared of them.”623

Under Secretary of State for Political Affairs David Hale explained that “President Trump approved each of the decisions made along the way,” and as a result, “America’s policy toward Ukraine continues under the Trump Administration has been a stronger, more reliable friend to Ukraine than the prior administration.”624 Yovanovitch explained that “we all felt [that] was very significant.”625 And Ms. Crotts also heard the President raise the issue of corruption directly with then-President Poroshenko of Ukraine during a bilateral meeting at the United Nations General Assembly in September 2017.626 She also understood the President’s concern “[t]hat Ukraine is corrupted” because she had been “tasked” by then-National Security Advisor General McMaster “to write [a] paper to help [McMaster] make the case to the President” in connection with prior security assistance.627

Concerns about corruption in Ukraine were also entirely justified. As Dr. Hill affirmed, “eliminating corruption in Ukraine was one of, if not the central, goals of U.S. foreign policy” in Ukraine.628 Virtually every witness agreed that confronting corruption should be at the forefront of U.S. policy with respect to Ukraine.629

2. The President Had Legitimate Concerns About Foreign Aid Burden-Sharing, Including With Respect to Ukraine

President Trump had well-documented concerns regarding American taxpayers being forced to cover the cost of foreign aid while other countries refuse to pitch in. In fact, “another factor in the foreign affairs review” discussed by Under Secretary Hale was “appropriate burden sharing.”630 The President’s 2018 Budget discussed this precise issue.

The Budget proposes to reduce or end direct funding for international programs and organizations whose missions do not substantially advance U.S. foreign policy interests. The Budget also renews attention on the appropriate U.S. share of international spending at the United Nations, at the World Bank, and for multilateral issues where the United States currently pays more than its fair share.631

Burden-sharing was reemphasized in the President’s 2020 budget when it advocated for reforms that would “prioritize the efficient use of taxpayer dollars and increased burden-sharing and contributions to international organizations.”632

House Democrats wrongly claim that “[i]t was not until September . . . that the hold, which apparently was the first time to the President’s concern about other countries not contributing more to Ukraine”633 and
that President Trump "never ordered a review of burden-sharing." These assertions are demonstrably false.

Mr. Morrison testified that he was well aware of Mr. Trump’s "skeptic view" on foreign aid generally and Ukrainian aid specifically. He confirmed that the President was "very interested in [aid] to make sure the U.S. taxpayers were getting their money’s worth" and explained that the President "was concerned that the United States seemed to be providing huge amounts of security assistance to Ukraine. He wanted to see the Europeans step up and contribute more burden-sharing." The conversation took place as well. In a June 24 email with the subject line "POTUS follows up," a Department of Defense official relayed several questions from a meeting with the President asking what steps NATO members spend to support Ukraine.622 Moreover, as discussed above, President Trump personally raised the issue of burden-sharing with President Zelensky on July 25.623 Senator Johnson similarly related that the President had shared concerns about burden-sharing with him. He recounted that President Trump described discussions he would have with Angela Merkel, Chancellor of Germany, and added, "President Trump explained: ‘Ron, I talk to Angela and ask her, ‘Why don’t you fund these things,’ and she tells me, ‘Because we know you’re going to schmuck. Ron, we’re schmucks.’"645 And Ambassador Taylor testified that, when the Vice President met with President Zelensky on September 1, the Vice President reiterated that "President Trump wanted the Europeans to do more to support Ukraine."652

President Trump’s burden-sharing concerns were not unique or one-time. The evidence shows that the United States pays more than its fair share for Ukrainian assistance. As Deputy Assistant Secretary Cooper testified, "U.S. contributions [to Ukraine] are far more significant than any individual country and ‘EU funds tend to be on the economic side,’ rather than for ‘defense and security.’" Even President Zelensky noted in the July 25 call that the Europeans were not helping Ukraine as much as they should and certainly not as much as the United States.655

3. Pauses on Foreign Aid Are Often Necessary and Appropriate. Placing a temporary pause on aid is not unusual. Indeed, the President has often paused and even canceled foreign aid programs. For example:

- In September 2019, the Administration announced that it was withholding over $100 million in aid to Afghanistan over concerns about government corruption.656
- In August 2019, President Trump announced that the administration and Senate were in talks to "substantially" increase South Korea’s share of the expense of U.S. military support for South Korea.660
- In a September 2017, or paused over $500 million in foreign aid to El Salvador, Honduras, and Guatemala because those countries were not fairly sharing the burden of protecting migrant families.664
- In or around June, the Administration temporarily paused $100 million in military aid to Lebanon. The Administration lifted the hold in December, with one official explaining that the Administration "continually reviews and renews [aid] to make sure we are not the only countries providing huge amounts of security assistance to Ukraine. We want to see the Europeans step up and contribute more burden-sharing."624

In September 2018, the Administration canceled $300 million in military aid to Pakistan because it was not meeting its counterterrorism obligations.662

Indeed, Under Secretary Hale agreed that "aid has been withheld from several countries for reasons of reassurance and, in some cases, for reasons that are still unknown just in the past year."663 Dr. Hill similarly explained that "there is afreeze put on all kinds of assistance because it was in the process at the time of an awful lot of reviews of foreign assistance."664 She added that, in her experience, "stops and starts [are] sometimes common with foreign assistance and that "OMB [Office of Management and Budget] holds up dollars at times because there are new dollars going to Ukraine."665 Similarly, Ambassador Volker affirmed that aid gets "held up from time-to-time for a whole assortment of reasons, typically to try to root out corruption."666 This explains what had happened in [his career in the past]."667

4. The aid was released after the President’s concerns were addressed. To address President Trump's concerns about corruption and burden-sharing, a temporary pause was placed on the aid to Ukraine. Specifically, "OMB represented that . . . the President was concerned about corruption in Ukraine, and he wanted to make sure that Ukraine was doing things to improve. There was a freeze on OMB Deputy Associate Director for National Security Mark Sandy testified that he understood the pause to have been a result of President Trump’s concerns, including his assessment that "there was a freeze on OMB funding for Ukraine saying or doing anything related to investigations."667

Monitoring any evidence to show a connection between releasing the security assistance and the President’s concerns fell back on the alternative theory that President Trump used a bilateral meeting as leverage to pressure Ukraine to announce investigations. But no witness or direct knowledge supported that claim either. It is undisputed that a bilateral presidential-level meeting was scheduled for September 1 in Warsaw and then moved forward to New York City on September 25, 2019, without Ukraine saying or doing anything related to investigations.

1. A Presidential Meeting Occurred Without Precondition

Contrary to House Democrats’ claims, the evidence shows that a bilateral meeting between President Trump and President Zelensky was scheduled without any connection to any statement about investigations. Mr. Morrison—whose “responsibilities” included "helping" arrange visits to the White House or other head of state meetings—testified that he was trying to schedule a meeting without any restrictions related to investigations. He testified that he understood that arranging "the White House visit" was a "do-out" that "came from the President’s office" and that the President used bilateral meetings to "determine dates that would be acceptable to the President."688 Mr. Morrison testified that "President Trump was aware that Mr. Zelensky was scheduled to visit the United States in September, but the White House did not want to schedule a meeting without any restrictions related to investigations."689

2. Mr. Morrison—whose "responsibilities" included "helping" arrange visits to the White House or other head of state meetings—testified that he was trying to schedule a meeting without any restrictions related to investigations. He testified that he understood that arranging "the White House visit" was a "do-out" that "came from the President’s office" and that the President used bilateral meetings to "determine dates that would be acceptable to the President."688 Mr. Morrison testified that "President Trump was aware that Mr. Zelensky was scheduled to visit the United States in September, but the White House did not want to schedule a meeting without any restrictions related to investigations."689

As a result of these developments, Mr. Morrison affirmed that by Labor Day there had been "defensive developments" to "demonstrate that President Zelensky was committed to the issues he campaigned on."676 Second, the President heard from multiple parties about Ukraine, including trusted advisors. Senator Johnson has said that he spoke to the President on August 31 urging release of the security assistance. Senator Portman thus “convinced the President that the aid should be disbursed immediately”660—and the temporary pause was lifted after the meeting.666 C. The Evidence Refutes House Democrats’ Claims That President Trump Condoned a Meeting with President Zelensky on Investigations

Lacking any evidence to show a connection between releasing the security assistance and the President’s concerns, investigations fell back on the alternative theory that President Trump used a bilateral meeting as leverage to pressure Ukraine to announce investigations. But no witness or direct knowledge supported that claim either. It is undisputed that a bilateral presidential-level meeting was scheduled for September 1 in Warsaw and then moved forward to New York City on September 25, 2019, without Ukraine saying or doing anything related to investigations.

1. A Presidential Meeting Occurred Without Precondition
was trying to schedule the meeting in the ordinary course. He did not say that anyone told him to delay scheduling the meeting until President Zelensky had made some announced investigations. So Sondland is refuted by one man explained that, after the July 25 call, he understood that it was the President’s directive to schedule a visit, and he proceeded to execute that directive.

Ultimately, the notion that a bilateral meeting between President Trump and President Zelensky was conditioned on a statement that there would be no linkage of investigations is refuted by one straightforward fact: a meeting was planned for September 1, 2019, in Warsaw without the Ukrainians saying a word about investigations. As Ambassador Volker testified, administration officials were “working on a bilateral meeting to take place in Warsaw on the margins of the commemoration on the beginning of World War II.”693 Indeed, by mid-August, U.S. officials expected the meeting to occur,694 and the Ukrainian government was making preparations.695 As it turned out, President Trump had to stay in the U.S. because Hurricane Dorian rapidly intensified to a Category 5 hurricane, so he sent the Vice President to Warsaw in his place.

Even that natural disaster did not put off the meeting between the Presidents for long. They met at the next earliest possible date—September 25, 2019, on the sidelines of the United Nations General Assembly. President Zelensky confirmed that there were no preconditions for this meeting.696 Nor was there anything unusual about the meeting occurring in New York rather than Washington. As Ambassador Volker verified, “most meetings sometimes take a long time to get scheduled” and “[i]t’s sometimes just doesn’t happen.”697

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

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

The Ukrainians had such a meeting scheduled for September 1 in Warsaw (until Hurricane Dorian). But in other words, a White House-level meeting, not the location of the meeting. But in other words, a White House-level meeting, not the location of the meeting.

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

House Democrats’ tale of a supposed quid pro quo involving a presidential meeting is further undermined by the fact that there is no one even on mere speculation, hearsay, and innuendo. Not a single witness provided any first-hand evidence that the President ever linked a presidential meeting to announcing investigations.

Once again, House Democrats’ critical witness—Sondland—actually destroys their case. Witness who repeatedly testified directly to President Trump on the subject. And Sondland testified that, when he broadly asked the President what he wanted from Ukraine, the President answered unequivocally: “I want nothing. I want no quid pro quo. I just want Zelensky to do the right thing, to do what he ran on.”700

Sondland asserted that “the President never discussed” a link between investigations and a White House meeting.701 and Sondland’s mere presumptions about such a link are not evidence. As he put it, the most he could do is “repeat . . . what [he] heard through Ambassador Volker from President Zelensky.”702 By never speaking to the President on this issue,703 But Ambassador Volker testified unequivocally that there was no connection between the meeting and investigations.

Q. Did President Trump ever withhold a meeting with President Zelensky or delay a presidential meeting with President Zelensky because the Ukrainians committed to investigate the allegations that you just described concerning the 2016 presidential election?
A. The answer is no, if you want a yes-or-no answer. But the reason the answer is no is we did have difficulty scheduling a meeting, but there was no linkage like that.

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

Sondland confirmed the same point. When asked if “the President ever [told him] personally about any preconditions for a White House meeting,” Sondland responded, “No.”704 And when asked if the President ever “told [him] about any preconditions for a White House meeting with the President, personally, no.”705 No credible testimony has been advanced supporting House Democrats’ claim of a quid pro quo.

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

The charges in Article I are further flawed because they rest on the transparently erroneous proposition that it would have been illegitimate for the President to mention two matters to President Zelensky: (i) possible Ukrainian interference in the 2016 election; and (ii) an incident in which then-Vice President Biden forced the dismissal of a Ukrainian anti-corruption prosecutor who reportedly had been investigating Burisma.

House Democrats’ characterizations of the President’s conversation are false. Moreover, as House Democrats frame their charges, to prove the element of “corrupt motive” at Article I, the House would have to establish (in their own words) that the “only reason for raising those matters would have been ‘to obtain an improper personal political benefit.’”706 And as they cast their case, any investigation into those matters would have been “bogus” or a “sham” because, according to House Democrats, neither investigation was based on any legitimate national security or foreign policy interest.707 That is obviously incorrect. It would have been entirely proper for the President, as a member of Ukraine’s Parliament, also proclaimed the Ukrainian government coordinated with the Trump campaign in advance of the 2016 presidential election.710 And Neillie Ohr, a former foreign policy analyst for the FBI, testified that his Office of the Director of National Intelligence had a “northern lights” role, triggering the Steele Dossier, testified to Congress that Serhiy Leshchenko, then a member of Ukraine’s Parliament, also provided her firm with information as part of the firm’s opposition research on behalf of the DNC and the Clinton Campaign.714 Even high-ranking Ukrainian government officials have made their voices. For example, Arsen Avakov, Ukraine’s Minister of Internal Affairs, called then-candidate Trump “an even bigger danger to the US than terrorism.”715 And last year, at least two news organizations conducted their own investigations and concluded Ukraine’s government sought to interfere in the 2016 election. In January 2017, Politico concluded that “Ukrainian officials tried to help Hillary Clinton and undermine Trump by publicly questioning his fitness for office.”716 And on the other side of the Atlantic, a separate Politico/The Financial Times confirmed Ukrainian election interference. The newspaper found that opposition to President Trump led “Kiev’s wider political leadership” to believe “they would never have attempted before: intervene, however indirectly, in a US election.”711 These efforts were designed to undermine Trump’s campaign and were conducted by a member of the Ukrainian parliament put it, the majority of Ukrainian politicians were “on Hillary Clinton’s side.”712 And even one of House Democrats’ own witnesses, Dr. Hill, acknowledged that some Ukrainian officials “bet on Hillary Clinton winning the election,” and so it was “quite plausible” to them “to curry favor with the Clinton campaign,” including by “trying to collect information . . . on Mr. Manafort and on other people as well.”713 Yet what the Ukrainians did was true, Ukrainian interference in the 2016 election is a matter of national interest. It is well settled that the United States has a legitimate national security interest in the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over our political process. The proposition that foreign citizens’ involvement in American elections,714 And President Trump made clear more than a year ago that “the United States will not tolerate foreign meddling in our elections” during his Administration.715 Even Chairman Schiff is on
record agreeing that the Ukrainian efforts to aid the Clinton campaign described above would be “problematic,” if true.\textsuperscript{723} A request for Ukraine’s assistance in this case was particularly appropriate because the Department of Justice had already opened a probe on a similar subject matter as the origins of foreign interference in the 2016 election that led to the false Russian-collusion allegations against the Trump Campaign. In May of last year, Attorney General Barr publicly announced that he had appointed U.S. Attorney John Durham to lead a review of the origins and conduct of the Department of Justice’s Russia investigation and targeting of the Trump Campaign, including any potential wrongdoing.\textsuperscript{724} As of October, it was publicly revealed that aspects of the probe were ongoing and appeared to be criminal investigations.\textsuperscript{725} As the White House explained when the President announced measures to ensure cooperation across the federal government with Mr. Durham’s probe, his investigation will “ensure that all Americans learn the truth about the events that occurred, and the actions that were taken, during the last President’s term and will restore confidence in our public institutions.”\textsuperscript{726}

Asking for foreign assistance is also routine.\textsuperscript{727} In a cooperation agreement with another country, a party may ask for and take many different forms, both formal and informal.\textsuperscript{728} Requests can be made pursuant to a Mutual Legal Assistance Treaty (MLAT) or such as a treaty between the United States and Ukraine that specifically authorizes requests for cooperation.\textsuperscript{729} There can also be informal requests for assistance.\textsuperscript{720} Because the President is the Chief Executive and chief law enforcement officer of the federal government—as well as the “sole organ of the federal government in the field of international relations”—requesting foreign assistance is well within his ordinary role.

Given the self-evident national interest at stake in identifying any Ukrainian role in the 2016 election, House Democrats resort to distorting the President’s words. They strain to recast his request to uncover historical truth about the last election as if it were something relevant only for the President’s personal political interest in the next election. Putting words in the President’s mouth, House Democrats pretend that, because they have mentioned a DNC server, he must have been pursuing a claim that Ukraine “rather than Russia” had interfered in the 2016 election—and that such a claim was relevant only for boosting President Trump’s 2020 presidential campaign. But that convoluted chain of reasoning is hopelessly flawed.

To start, simply asking any Ukrainian involvement in the 2016 election—including with respect to hacking a DNC server—does not imply that Russia did not attempt to interfere with the 2016 election. It is entirely possible that foreign nationals from more than one country sought to interfere in our election through different means (emails, social media, etc.) and for different reasons. Uncovering all the facts about any interference benefits the United States by laying bare all foreign attempts to meddle in our elections. And if the facts uncovered end up having any influence on the 2020 election, that would not be improper. House Democrats cannot place an inquiry into historical facts off limits based on fears that the facts might harm their interests in the next election.

In addition, House Democrats have simply misrepresented the President’s interest in the Burisma matter. The President did not ask narrowly about a DNC server alone, but rather raised a whole collection of issues related to the 2016 election, and their introduction is reinforced by noting that “our country has been through a lot,”\textsuperscript{727} which referred to the entire Mueller investigation and false allegations about the Trump Campaign colluding with Russia. He then broadly expressed interest in “finding out what happened with the Server”\textsuperscript{728} After mentioning a DNC server, the President made clear that he was casting a wider net as he said that “[t]here are a lot of things that I’m interested in “the whole situation.”\textsuperscript{729}

He then noted his concern that President Zelensky was “surrounding [him]self with personalities that are not good for Ukraine”, which Zelensky clearly understood this to be a reference to Ukrainian officials who had sought to undermine then-candidate Trump during the campaign, as he responded by immediately noting that he “just recalled our ambassador from the United States.”\textsuperscript{729} That ambassador, of course, had harassed a, undiplomatic op-ed criticizing then-candidate Trump, and it had been widely reported that a DNC operative met with Ukrainian embassy officials during the campaign to dig up information detrimental to Trump’s campaign.\textsuperscript{727}

Notably, Democrats have not always believed that Hunter Biden’s receipt of a large sum of money was appropriate for opening an investigation into Hunter Biden, as he was paid a million dollars under the “appearance of a conflict of interest for his father.”\textsuperscript{730} On February 2, 2016, the Ukrainian President Poroshenko obtained a court order to seize Zlochevsky’s property.\textsuperscript{731} According to press reports, Vice President Biden then spoke with Ukraine’s President Poroshenko three times in a week on February 11, 18, and 19, 2016.\textsuperscript{732} Vice President Biden has openly bragged that, around that time, he threatened President Poroshenko that he would withhold one billion dollars in U.S. loan guarantees unless the Ukrainians fired the Prosecutor General who was investigating Burisma.

Deputy Assistant Secretary Kent testified that the Prosecutor General’s removal “became a condition of the loan guarantee.”\textsuperscript{733} On March 29, 2016, Ukraine’s parliament dismissed the Prosecutor General.\textsuperscript{734} In September 2016, a Kiev court cancelled an arrest warrant for Zlochevsky.\textsuperscript{735} In January 2017, Burisma announced that all cases against the company and Zlochevsky had been closed.\textsuperscript{736}

As the transcript shows, President Zelensky explained the whole Biden-Burisma affair a legitimate subject to raise.

Burisma is a Ukrainian energy company with a reputation for corruption. Lt. Col. Vindman called it a “corrupt entity.”\textsuperscript{737} It was created in 2002 by Mykola Zlochevsky, who has been under several investigations for money laundering.\textsuperscript{738} Deputy Assistant Secretary of State Kent testifying before the impeachment discussed a decision that, around that time, he threatened Poroshenko that he would withhold one billion dollars in U.S. loan guarantees unless the Ukrainians fired the Prosecutor General who was investigating Burisma.\textsuperscript{739} Deputy Assistant Secretary Kent testified that the Prosecutor General’s removal “became a condition of the loan guarantee.”\textsuperscript{733} Vice President Biden has openly bragged that, around that time, he threatened President Poroshenko that he would withhold one billion dollars in U.S. loan guarantees unless the Ukrainians fired the Prosecutor General who was investigating Burisma.

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It is absurd for House Democrats to argue that any reference to the Biden-Burisma affair had no purpose other than damaging the President’s political opponent. The two parties and two sovereign nations—clearly understood as the leaders of two different actors on the call—the leaders of Ukraine’s security service, and the President himself—were not free, in President Zelensky’s words, to “restore the honesty” to corruption investigations.766

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

Impeachment proceedings before the whole Senate were intended as a danger of the procedures that the Senate would adopt to determine forever the issue of whether Vice President Biden himself is (or his family is) guilty of the corruption that the articles are intended to punish.768 The procedure is based on the constitutional principles of fairness. These Articles reflect nothing more than the “persecution of an innocent person” for the President’s act for the purpose of holding him accountable.769 That Vice President Biden (or his son) actually committed any wrongdoing is outside the scope of their impeachment articles.770

By contrast, under their own theory of the case, for the House Managers to carry their burden of proving that merely raising the matter would advance the public interest. To defend merely asking a question, the President would not bear any burden of showing that Vice President Biden (or his son) actually committed any wrongdoing. According to the House Managers’ own witnesses, could testify that the Bidens’ conduct did not at least factually raise an appearance of a conflict of interest. And while House Democrats repeatedly insist that any suggestions that Vice President Biden was “the mastermind” of a “smorgasbord conspiracy theories” and “without merit,”768 they lack any evidence to support those bald assertions, because they have steadfastly cut off any real inquiry into the Bidens’ conduct. For example, they have refused to call Hunter Biden to testify.771 Instead, they have been adamant that Americans must simply accept the dictat that the Bidens’ conduct could not possibly have been part of a course of conduct in which the Office of the Vice President was misled to protect the financial interests of a family member.

The Senate cannot accept House Democrats’ mere say-so as proof. Especially in the contemporary partisan impeachment House Democrats’ assurance of, “trust us, there’s nothing to see here,” is not a permissible foundation for building a case to remove the Vice President from office—especially given Chairman Schiff’s track record for making false claims in order to damage the President.772

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

The Articles also suffer from a fatal structural defect. Put simply, the articles are impermissibly duplicative—that is, each article contains multiple distinct acts of alleged wrongdoing that are not only distinct from one another, but also utterly failures of due process. Under the constitutional principles of fairness. These Articles reflect nothing more than the “persecution of an innocent person” for the President’s act for the purpose of holding him accountable.769 That Vice President Biden (or his son) actually committed any wrongdoing is outside the scope of their impeachment articles.770

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The Senate also rejected unconstitutionally duplicative articles of impeachment against judges. In the impeachment of Judge Nixon, for example, Senate Frankfurter rejected the omnibus nature of article III, which charged the judge with making multiple different false statements, and he “agreed[d] with the argument that the House’s article charged against Judge Nixon by less than the super majority vote required by the Constitution.”773 Senator Herbert Kohl explained why this defect was particularly critical, because it “forces the Framers warned against the Senate should reject the Articles of Impeachment and acquit the President immediately.

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Counsel to President
Donald J. Trump,
Washington, D.C.

PAT A. CIPOLLONE,
Counsel to the Presi-
dent,
The White
House.


ENDNOTES

2. 4 William Blackstone, Commentaries on the Laws of England (1769 ed.).
5. 2019), https://perma.cc/3THR-HNC4 (“House leaders have signaled they hope to wrap up proceedings in their chamber before Congress leaves for the December holidays . . . . ’Wouldn’t that be a beautiful Christmas gift for it to all wrap up by Christmas?’ Rep. Val
Domings (D-FL) asked.”); Mary Clare Jalonick, What’s Next in Impeachment: A Busy December for Congress (Nov. 25, 2019), https://perma.cc/2JHJ-QLMR (“Time is running short if the House is to vote on
impeachment by Christmas, which Democrats privately say is their goal.

27. Examining the Allegations of Misconduct Against IRS Commissioner John Koskinen (Part II): Hearing Before the H.R. Comm. on the


32. Mark S. Zaid @MarkSZaidEsg, Twitter (Jan. 30, 2017 6:54 PM), https://twitter.com/BSFV6-MKKE.


34. Rebecca Sabed and Alex Moe, Impeachment Inquiry Ramps up as Judiciary Panel Adopts Procedural Guidelines, NBC News (Sept. 12, 2019), https://perma.cc/4HTN-6ZPD.

35. See Clerk, H.R., Final Vote Results for Roll Call 965 on Agreeing to Article I of the Resolution (Dec. 18, 2019), http://clerk


42. Id. at 150–51.


44. Sondland Public Hearing, supra note 41, at 70.


46. Id.

47. Sondland Public Hearing, supra note 41, at 40.

48. Letter from Sen. Ron Johnson to Jim Jordan, Ranking Member, H.R. Comm. on Oversight & Reform, and Devin Nunes, Ranking Member, H.R. Permanent Select Comm. on Intelligence, at 1 (Dec. 1, 2019).

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


52. Hurley Written Statement, supra note 3, at 4.


54. H.R. Res. 755 art. I.

55. Trial Mem. of the U.S. House of Representatives at 2; HJC Report at 10.

56. Impeachment Inquiry: Dr. Fiona Hill and Mr. David Holmes Before the H.R. Permanent Select Comm. on Intelligence, 116th Cong. 1122–2 9 (Nov. 21, 2019) (Hill-Holmes Public Hearing).


58. Shokin [the fired prosecutor] said he believed his ouster was because of his interest in [Burisma] ... had he remained in his post, Shokin said, he would have questioned Hunter Biden.”).


64. Letter from Thomas Jefferson to James Madison (Feb. 15, 1788), in 3 Memorandum, Correspondence, and Miscellanies, from the Papers of Thomas Jefferson 373 (Thomas Jefferson Randolph ed., 1880).
65. 2 Joseph Story, Commentaries on the Constitution §743 (1833).
70. Michael J. Gerhardt, The Lessons of Impeachment History, 67 Geo. Wash. L. Rev. 683, 677 (1999) (noting the division of impeachment authority between the House and the Senate, the Senate has . . . the opportunity to review House decisions on what is impeachable (and has rejected House judgments in the past).
71. Proceedings in the Trial of Andrew Johnson, President of the United States, Before the U.S. Senate on Articles of Impeachment, 40th Cong. 524 (1868).
72. Id.
76. Treasury and History of Impeachment: Hearing Before the Subcomm. on the Constitution of the H.R. Comm. on the Judiciary, 105th Cong., 69 (1998) (Clinton Judiciary Comm. Hearing on Background of Impeachment) (statement of Professor Matthew Holden, Jr., Univ. of Va., Dept. of Gov’t and Foreign Affairs) (“[T]here seems to be a late-added provision to such ‘other high Crimes and Misdemeanors,’ as would be comparable in their significance to ‘treason’ and ‘bribery.’”); Arthur M. Schlesinger, Jr., Reflections on Impeachment, 67 Geo. Wash. L. Rev. 693, 693 (1999) (“According to the legal rule of construction ejusdem generis, the other high crimes and misdemeanors must be on the same level and of the same quality as treason and bribery.”).
77. U.S. Const. art. III, §3, cl. 1. This definition is repeated in the United States criminal code. The word-alleging to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere of treason or bribery . . . .” 18 U.S.C. §2381 (2018).
79. See Clinton Judiciary Comm. Hearing on Background of Impeachment, supra note 78, at 40 (statement of Gary L. McDowell, Director, Insl. Res. Office, OMB, Univ. of Va.) (“The most dominant source of authority on the common law for those who wrote and ratified the Constitution was Sir William Blackstone and his justly celebrated Commentaries on the Laws of England (1765-69). That was a work that was described by Madison in the Virginia ratifying convention as ‘nothing less than a book which is in every man’s hand.’”).
82. Charles L. Black, Jr. & Philip Bobbitt, Impeachment: A Handbook 11 (1999) (quoting Gouverneur Morris’s comments at the Constitutional Convention indicate the para-
digm of bribery that the Framers had in mind as he cited King Louis XIV of France’s bribe of England’s King Charles II and argued, “no one would say that we ought to ex-
pose ourselves to the danger of impeaching the first Magistrate in foreign pay without being able to guard [against] it by displacing him.”)
83. 2 The Records of the Federal Convention of 1787, at 171 (1841).
85. Id.
86. U.S. Const. art. III, §2, cl. 3 (“The Trial of All Crimes, except in Cases of Impeachment, shall be by Jury . . . .”); U.S. Const. art. II, §2. (1891) (“He shall have Power to grant Reprisals and Paroles for Offenses against the United States, except in Cases of Impeachment.”).
87. See 4 Blackstone, Commentaries *74-75.
88. See Berger, supra note 73, at 71.
89. Id. at 66-67. Shortly before the Convention agreed to the “high Crimes and Misdemeanors” standard, delegates rejected the use of the term “misdemeanor” in the Extra-
dition Clause because “high misdemeanor” was thought to have a “technical meaning too limited.” 2 Records of the Federal Conven-
tion, supra note 16, at 486; see also Berger, supra note 73, at 74.
90. 4 Blackstone, Commentaries *256 (emphasis added). Blackstone, in fact, listed numerous “high misdemeanors” that might subject an official to impeachment, including “mal-
administration.” Id. at *121.
91. 2 Records of the Federal Convention, supra note 82, at 499.
92. Id. at 550.
93. Id.
94. Id. see also id. at 550.
95. Id. (“The conscious and deliberate char-
acter of [the Framers] rejection of [mal-]
administration]” is accentuated by the fact that a good many state constitutions of the time did have ‘maladministration’ as an im-
peachment ground.”) Black & Bobbitt, supra note 27, at 27.
96. 2 Records of the Federal Convention, supra note 82, at 64.
97. Id. at 337.
98. 4 The Debates in the Several State Con-
ventions on the Adoption of the Federal Constitution at 127 (Jonathan Elliot 2nd ed. 1877).
99. 3 The Debates in the Several State Con-
ventions on the Adoption of the Federal Con-
stitution, supra, at 172 (1st ed. 1806).
100. Berger, supra note 73, at 86.
101. Clinton Senate Trial, supra note 78, vol. IV at 2542 (statement of Sen. Patrick J. Leahy; see also id. at 2583 (statement of Sen. James M. Jeffords)) (“The framers inten-
tionally set this standard at an extremely high level to ensure that only the most seri-
os offenses would justify overturning a pop-
ular election.”).
102. Joseph Story, Commentaries on the Constitution §749 (1830); see also 1 James Bryce, The American Commonwealth 286 (1888) (“Impeachment . . . is the heaviest piece of artillery in the congressional arsenal, but because it is so heavy it is unfit for ordinary use. It is like a hundred-ton gun which needs complex machinery to bring it into position, an enormous charge of powder to fire it, and a large mark to aim at.”).
103. Black & Bobbitt, supra note 82, at 111.
104. The Declaration of Independence para. 2 (U.S. 1776).
105. Tribe, supra note 106.
zens” and “contravene[d] the laws governing agencies of the executive branch.”).
108. Id. at 34 (asserting that Nixon “caused action . . . to cover up the Watergate break-
in. This concealment required perjury, de-
struction of evidence, obstruction of jus-
tice—all of which are crimes.”).
109. Article II claimed that President Nixon “violat[ed] the rights of citizens,” “contraven[ed] the laws governing agencies of the executive branch,” and “authorize[d] and permitted to be maintained a secret in-
vestigative unit within the Office of the Presi-
dent . . . [that] engaged in covert and illegal activities.” Clinton was alleged that the House Judiciary Committee’s report described Article II generally as involving “abuse of the powers of the office of Presi-
dent.” Id. at 139, that was not the actual charge included in the articles of impeach-
ment. The actual charges in the rec-
commended article of impeachment included specific violations of Article III.
111. See, e.g., Berger, supra note 73, at 56-57. Some scholars dispute the characterization that high judicial impeachments do not in-
clude charges that amount to violations of law. See, e.g., Frank Thompson, Jr., & Daniel H. Pollitt, Impeachment of Federal Judges: An Historical Overview, 49 N.C. L. Rev. 129, 138 (1970) (“Except for a few aberrations [sic] in the early-1800[s] period of unprecedented po-
itical upheaval, Congress has refused to im-
peach judges for bad behavior unless the behavior was both job-related and criminal.”).
6. Clinton Senate Trial, supra note 78, vol. IV at 2575 (statement of Sen. Joseph R. Biden, Jr.). Numerous other Senators distinguished the lower standard for judicial impeachments. See, e.g., id. at 2692 (statement of Sen. Max Cleland) (“After review of the record, the historical precedents, and consideration of the different roles of Presidents and Federal judges, I have concluded that there is indeed a different legal standard for impeachment of judges.”); id. at 2811 (statement of Sen. Edward Kennedy) (“Removal of the President of the United States and removal of a Federal judge are vastly different.”).

61. 1986, supra, at 2642 (statement of Sen. George Voinovich). See, e.g., id. at 2623 (statement of Sen. Max Cleland) (citing the “Good Behaviour” clause and explaining “that there is indeed a different legal standard for impeachment of Federal judges.”).

112. A. Mikulski). See cases from specific prosecutions. See, e.g., id. at 39. House Democrats rely on sentences to the effect that turned largely on claims that he had mishandled the law in his rulings while sitting as a circuit justice. See William H. Rehnquist, Grand Inquests 76-77, 114 (1992). House Democrats’ charge of a “profound effect on the American judicary,” because the Senate’s rejection of the charges was widely viewed as “safeguarding the independence” of federal judges. Id. at 114.

116. HJC Report at 23.


30. Id. at 70 (Gouverneur Morris). Hamilton observed that the subjects of impeachment are “offenses which proceed from the misbehavior of public men, or, in other words, from the abuse or violation of some public trust.” The Federalist No. 65, at 396 (Alexander Hamilton) (Clinton Rossiter ed., 1961).


19. See also Consumer Energy Council of Am. v. Fed. Energy Regulatory Comm’n, 673 F.3d 425, 446 (D.C. Cir. 1982) ("Perhaps the greatest fear of the Framers was that in a representative democracy the Legislature would be capable of using its plenary lawmaking power to swallow up the other departments of the Government.").

17. 2 The Records of the Federal Convention of 1787, supra, note 175, at 550 (James Madison).


124. Id. at 119.

169. Id. at 39.


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


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

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

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

190. H.R. Rep. Com. No. 7, 40th Cong. 60 (1867) (Minority Views) (emphasized added; see also Michael Gerhardt, The Impeachment and Trial of Andrew Johnson 102 (1973)).


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


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

195. Id. at 295.


197. 2 Records of the Federal Convention, supra note 175, at 566.


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


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

204. Id.

205. U.S. Const. art. III, § 2, cl. 3 (“The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury.” . . .); U.S. Const. art. II, § 2, cl. 1 (“[H]e shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.”).

206. A bribe, being one of bribery, of course, involves an element of intent, and thus requires some evaluation of the accused’s motivations and state of mind. See 4 Blackstone, Commentaries *139 (“BRIBERY, is when a judge, or other person concerned in the administration of justice, takes any undue reward to influence his behavior in his office.”).

207. Jefferson, supra note 139, at 7 (“JEREMY, is when that any lawful act of a President or Governor of a State, may be treated as an impeachable offense based on a characterization of subjective intent alone.”).

First, the court, like the Committees, misread a House annotation to Jefferson’s Manual. See, e.g., Letter from Elijah É. Cummins, Chairman, House Oversight Comm., to John Michael Sullivan, Acting White House Chief of Staff, at 2 (Oct. 4, 2019). The language quoted by the court states that “various events have been credited to the Executive.” H. Doc. 114–192, 114th Cong. § 603 (2017). But that does not mean that any of these “various events” automatically confers au-
tority on the President as a basis for an impeach-
ment inquiry. It merely acknowledges the historical fact that there is more than one way the President may prompt the House to then authorize a committee to pursue an impeachment inves-
tigation.

Second, the court misread III Hinds’ Prece-
dents §2400 as showing that “a resolution ‘authoriz[ing]’ HJC ‘to inquire into the official 
conduct of Andrew Johnson’ was passed after HJC ‘was already considering the sub-
ject.’” Id. at *27. That section discusses two House votes on separate resolutions that occurred weeks apart. The House first voted to authorize HJC to investigate Johnson (which the court missed), and then it voted to refer a second matter (the resolution cited by the court), which touched upon President John-
son’s unfortunate conduct on the Judiciary, which was already considering the subject.” III Hinds’ Precedents §2400. The court also misread the Nixon precedent as showing a “viable method” (involving referral to the House) for passing a resolution authorizing an impeach-
ment inquiry. In re Application of the Comm. on the Judiciary, 1991 WL 5485221, at *28 (N.D. Calif. 1991). But that resolution did not in-
volve any exercise of the House’s impeach-
ment power and was instead limited to pre-
liminary, self-organizing work conducted by Resolution 359 of the 101st Congress, de-
fining the grounds for impeachment” and “collecting and sift[ing] the evidence available 
in the public domain.” Staff of H.R. Comm. on the Judiciary, Constitutional Grounds for Presidential Impeachment, 93d Cong. 1–3 (Comm. Print 1974). The Chairman of the Committee himself acknowledged that, to actually launch an inquiry, a House 
resolution “is a necessary step.” 120 Cong. Rec. 2351 (Feb. 6, 1974 statement of Rep. Ro-
dino).

Third, the court misread House Resolution 430, which was adopted on June 11, 2019. The court quoted out language from the resolu-
tion granting the Committee “any and all necessary authority under Article I of the Consti-
tution,” as if to suggest that the Judiciary Committee could, under that grant, initiate an impeachment inquiry. In re Application of Comm. on Judiciary, 2019 WL 5485221, at *29 (quoting H.R. Res. 430, 116th Cong. (2019)). But House Resolution 430 is ac-
tually much more narrow. After providing certain authorizations for filing lawsuits, the resolution simply gave committees authority to pursue litigation effectively by providing that “any judicial pro-
ceeding brought under the first or sec-
ond resolving clauses, the chair of any stand-
ing or permanent select committee exer-
cising any such authority, and all necessary authority under Article I of the Constitution.” H.R. Res. 430 (emphasis added). Simply by providing authority to pursue lawsuits, House Resolution 430 did not authorize any committee to initiate an impeachment investiga-
tion.


365. H.R. Rule XI(b)(1) (limiting the power to conduct “investigations and stud-
ies” to those “necessary or appropriate in the exercise of its responsibilities under rule X”); H.R. Rule XI.5(m)(1) (limiting the power to hold hearings and issue subpoenas to “the purposes of the Committee’s functions and duties under this rule and rule X (including any matters referred to it under clause 2 of rule XII)).”

The mere referral of an impeachment resolution by itself could not authorize a committee to begin an impeachment in-
quiry. The “Speaker’s referral authority” under Rule XII (vesting authority over matters within a committee’s Rule X legislative jur-
sisdiction) and “may not expand the jurisdic-
tion of a committee by referring a bill or resolution falling within the scope of Rule X legislative authority.” Impeachment Inquiry Authorization, infra Appendix C, at 30; see also H.R. Rule XII.3(a); 18 Sec’y’s Prece-
dents of the House of Representatives, ap.

359. Memorandum from Steven A. Engel, Asst. Attorney General, Office of Legal Counsel, to Pat A. Cipollone, Counsel to the President; to Sen. Susan Collins; to Cong. Rep. Adam Schiff, Chairman, House Intelligence Committee, stating that “any action like that, forces us to litigate or have to consider litigation, will be considered fur-
ther evidence of obstruction of justice”.

360. Impeachment Inquiry into President Don-

361. See Watkins v. United States, 354 U.S. 178, 206, 215 (1957) (holding that congressional subpoenas were invalid where they exceeded the “mission[] delegated to” a committee by the House); see also Rupe v. United States, 345 U.S. 41, 44 (1953) (holding that the congressional committee was without power to compel the production of certain information because the requests exceeded the scope of the au-
thorizing resolution); Tobin v. United States, 306 F.2d 270, 276 (D.C. Cir. 1962) (reversing a contempt conviction on the basis that the subpoena requested documents outside the scope of the Subcommittee’s authority to in-

363. U.S. Const. art. I, § 2, cl. 5.

364. Rupe, 345 U.S. at 42–44; see also Trump v. Mazare USA, LLP, 940 F.3d 710, 722 (D.C. Cir. 2019) (per curiam); FTC, 589 F.2d 582, 592 (D.C. Cir. 1979); Tobin, 306 F.2d at 275.

365. E.g., Watkins, 354 U.S. at 207 (“[C]ommittees are restricted to the mis-
sions delegated to them . . . .”); Tobin, 306 F.2d at 276; Alissa M. Dolan et al., Cong. Re-


367. Senate Select Comm. on Presidential Ca-

368. Nothing in the recent decision in In re Application of Committee on the Judiciary es-
tablishes that a committee can pursue an in-
vestigation pursuant to the impeachment pow-
er without authorization by a vote from the House. See F. Supp. 3d , 2019 WL 5485221, at *25 (Oct. 25, 2019). To our knowledge, such discussion wasdicta. The question before the court was whether a particular Judi-
iciary Committee inquiry was being con-
ducted in violation of an impeachment tri-
ail in the Senate, a question that the court viewed as depending on the inquiry’s “pur-
purpose” and whether it could lead to such a trial; “the authorization of the inquiry acts under.” Id. at *28 n.37. In any event, the court’s analysis was flawed. 369. Nixon, 418 U.S. at 708.

370. See Prosecution for Contempt of Congress of an Executive Branch Official Who Has A-
serted a Claim of Executive Privilege, 8 Op. O.L.C. 101, 140 (1984) (“The Constitution does not permit Congress to make it a crime for an official to assist the President in as-
serting a constitutional privilege that is an integral part of the President’s responsibil-
ties under Article II.”)
The House accepted and ratified this advice in its first impeachment the next year and in each of the next twelve impeachments of judges and subordinate executive officers. III Hinds' Precedents at 291, 294–295, 314, 323, 324, 326, 328, 2344–2445, 2417–2448, 2469, 2504; VI Cannon's Precedents of the House of Representatives, supra at 109 (96th Congress, 2nd Session, H. Res. 563, 99th Cong.); 3 Descher's Precedents ch. 14, §18.1. In some cases before 1870, such as the impeachment of Judge Pickering, the House relied on a matter presented directly to the House to impeach an official before conducting an inquiry, and then authorized a committee to draft specific articles of impeachment. The House concluded that investigatory powers are House Standing Committees as well as with the Committee on the Judiciary as appropriate—all to be used in impeachment inquiry, supra at 5 (emphasis added).


See supra Part I.B.1a; infra Part II. Letter from Pat A. Cipollone, Counsel to the President, to Nancy Pelosi, Speaker, House of Representatives, et al., at 7 (Oct. 8, 2019).


307. Id. at *4 ("Like executive privilege, the immunity protects confidentiality within the Executive Branch. A subpoena power that the Supreme Court has acknowledged is essential to presidential decision-making.").

308. Nixon, 418 U.S. at 798.

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

310. See, e.g., 2014 OLC Immunity Opinion, 38 Op. O.L.C. at *6 ([S]ubjecting an immediate past President to a subpoena power would threaten the President's autonomy and his ability to receive sound and candid advice.").

311. See, e.g., O.L.C. at *3 (June 19, 2008) ("Documents generated for the purpose of assisting the President in making a decision or in taking official action and these protections also "encompass[ ] Executive Branch deliberative communications")
that do not implicate presidential decision-making”.


317. Letter from James Madison to Mr. Madison, 398 (1998) (citations omitted); Remarks of Mr. Adam Schiff (emphasis added). 318. Id. at *2; see generally Implied Exclusion of Agency Counsel from Congressional Depositions of Agency Employees, 43 Op. O.L.C. at *8 (Nov. 5, 2019).

319. Id. at *5 n.6 (Jan. 18, 2017).

320. Letter from Rep. Elijah E. Cummings, Chairman, H.R. Comm. on Oversight & Reform, to Carl Kline, at 2 (Apr. 27, 2019) (“Both your personal counsel and attorneys from the White House Counsel’s office will be permitted to attend.”); see also Kyle Cheney, Cummings Demands Contempt Threat Against Former White House Politics, Tease, NBC News (Nov. 27, 2019), https://www.nbcnews.com/politics/trump-impeachment-n1058351 (”[R]ight now, we have to strike while the iron is hot. . . . And, we want this to be done expeditiously.”); Ben Upham, Jr., Schiff Says House Will Move Forward with Impeachment Inquiry After ‘Overwhelming’ Evidence from Hearings, NBC News (Nov. 24, 2019), https://www.nbcnews.com/politics/trump-impeachment-inquiry-transcript-nancy-pelosi-speech-trump-impeachment-n1058351 (“[R]ight now, we have to strike while the iron is hot. . . . And, we want this to be done expeditiously.”).

321. Id. at *6.


323. Letter from Rep. Elijah E. Cummings, Chairman, H.R. Comm. on Oversight & Reform, to Carl Kline, at 2 (Apr. 27, 2019) (“Both your personal counsel and attorneys from the White House Counsel’s office will be permitted to attend.”); see also Kyle Cheney, Cummings Demands Contempt Threat Against Former White House Politics, Tease, NBC News (Nov. 27, 2019), https://www.nbcnews.com/politics/trump-impeachment-n1058351 (”[R]ight now, we have to strike while the iron is hot. . . . And, we want this to be done expeditiously.”); Ben Upham, Jr., Schiff Says House Will Move Forward with Impeachment Inquiry After ‘Overwhelming’ Evidence from Hearings, NBC News (Nov. 24, 2019), https://www.nbcnews.com/politics/trump-impeachment-inquiry-transcript-nancy-pelosi-speech-trump-impeachment-n1058351 (“[R]ight now, we have to strike while the iron is hot. . . . And, we want this to be done expeditiously.”).

324. As examples of such lawsuits, see Compl., United States, v. Welch, 498 F.3d 725, 733 (D.C. Cir. 1974) (holding that a congressional committee’s need for subpoenaed material “is too attenuated and too tangential to its functions to permit a judicial determination that the President is required to comply with the Committee’s subpoena”); Gojak v. United States, 384 U.S. 702, 716 (1966) (reversing Petitioner’s contempt of Congress conviction on the ground that he was “without authority which can be vindicated by criminal sanctions”); United States v. Rumely, 345 U.S. 41, 47–48 (1953) (holding that a federal court lacked jurisdiction to entertain a motion to quash materials outside the scope of the authorizing resolution); United States v. McSurely, 473 F.3d 1178, 1194 (D.C. Cir. 1974) (reversing a congressional contempt conviction and applying Fourth Amendment protections to a congressional investigation).

325. Id. at 84 (quoting Rep. Bob Goodlatte).

326. See, e.g., Senate Select Comm. on Presidential Campaign Activities v. Nixon, 438 F.2d 535, 539 (D.C. Cir. 1970) (holding that a congressional committee need’s for subpoenaed material “is too attenuated and too tangential to its functions to permit a judicial determination that the President is required to comply with the Committee’s subpoena”); Gojak v. United States, 384 U.S. 702, 716 (1966) (reversing Petitioner’s contempt of Congress conviction on the ground that he was “without authority which can be vindicated by criminal sanctions”); United States v. Rumely, 345 U.S. 41, 47–48 (1953) (holding that a federal court lacked jurisdiction to entertain a motion to quash materials outside the scope of the authorizing resolution); United States v. McSurely, 473 F.3d 1178, 1194 (D.C. Cir. 1974) (reversing a congressional contempt conviction and applying Fourth Amendment protections to a congressional investigation).

327. Writen Statement, supra note 252 (citing report of Professor Susan Low Bloch, George-town University Law Center); see also Alan Dershowitz, Supreme Court Routs out from under Article of Impeachment, The Hill (Dec. 16, 2019), https://perma.cc/H5BA-KVX (stating that “the Judiciary Committee has arrogated to itself the power to decide the validity of subpoenas, and the power to determine whether claims of executive privilege may be recognized” and arguing that those authorities “properly belong with the judicial branch of our government, not the legislative branch”).

328. Id. at 85.

329. See, e.g., United States v. Rumely, 345 U.S. 41, 47–48 (1953) (holding that a federal court lacked jurisdiction to entertain a motion to quash materials outside the scope of the authorizing resolution).

330. Letter from James Madison to Mr. Madison, 398 (1998) (citations omitted); Remarks of Mr. Adam Schiff (emphasis added). 331. Id. at *2; see generally Implied Exclusion of Agency Counsel from Congressional Depositions of Agency Employees, 43 Op. O.L.C. at *8 (Nov. 5, 2019).


333. Id. at *3.

334. Congressional Requests for Confidential Executive Branch Information, 13 Op. O.L.C. 151, 162 (1999) (“Executive privilege the committee remains unsatisfied with the agency’s response, it may vote to hold the agency head in contempt of Congress.”).

335. As the Majority Views on the House Judiciary Committee’s Report in the Nixon proceedings pointed out, it is important to have a body other than the committee that issued a subpoena evaluate the subpoena before there is a move to contempt. “[I]f the Committee were to act as the final arbiter of the legality of its own demand, the result would seldom be in doubt.... It is for the reason just stated that, when a witness before a Congressional Committee refuses to give testimony or produce documents, the Committee cannot itself hold the witness in contempt. Rather, the established procedure is for the witness to be given an opportunity to appear before the Chief Justice of the United States, as the case may be, and give reasons, if he can, why he should not be held in contempt.” H.R. Rep. No. 99–135, at 484 (1974) (incorporating views of Rep. William Cohen).

336. As examples of such lawsuits, see Compl., United States, v. Welch, 498 F.3d 725, 733 (D.C. Cir. 1974) (holding that a congressional committee’s need for subpoenaed material “is too attenuated and too tangential to its functions to permit a judicial determination that the President is required to comply with the Committee’s subpoena”); Gojak v. United States, 384 U.S. 702, 716 (1966) (reversing Petitioner’s contempt of Congress conviction on the ground that he was “without authority which can be vindicated by criminal sanctions”); United States v. Rumely, 345 U.S. 41, 47–48 (1953) (holding that a federal court lacked jurisdiction to entertain a motion to quash materials outside the scope of the authorizing resolution); United States v. McSurely, 473 F.3d 1178, 1194 (D.C. Cir. 1974) (reversing a congressional contempt conviction and applying Fourth Amendment protections to a congressional investigation).

337. Id. at *3.

338. See Transcript: Nancy Pelosi’s Public and Private Remarks on Trump Impeachment, NBC News (Sept. 24, 2019), https://www.nbcnews.com/politics/trump-impeachment-inquiry-transcript-nancy-pelosio-speech-trump-impeachment-n1058351 (“[R]ight now, we have to strike while the iron is hot. . . . And, we want this to be done expeditiously.”).
Presidents have acknowledged their obligation to comply with an impeachment investigation. Id. at 32–33. OLC has clarified that, when read in context, President Ford’s statement was a confirmation of the continued availability of executive privilege because President Ford explained that “even in the impeachment context, the Executive Branch retains the prerogatives to prevent the exposure of all matters such the publication of which might injuriously affect the public interest, except as far as this might be necessary to accomplish the great ends of public justice.” “Impeachment Inquiry Authorization, infra Appendix C, at 11 n.13 (quoting Memorandum for Elliot Richardson, Attorney General, U.S. Dep’t of Justice, Assistant Attorney General, Office of Legal Counsel, Re: Presidential Immunity from Coercive Congressional Demands for Information at 22); Trial Mem. of the U.S. House of Representatives at 33–34; HJC Report at 30–31.

359. The Federalist No. 51, supra note 331, at 322.

360. Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context, 43 Op. OLC at *2 (discussing the “same principles apply to a congressional committee’s attempt to obtain the testimony of an executive branch official in an impeachment inquiry” as in other contexts).

361. Black & Bobbitt, supra note 191, at 20; see also id. at 19 (noting President Eisenhower refused to provide press conference notes on April 22, 1948. President Truman indicated that he would not comply with the request to turn the papers over to the Committee.

362. History of Refusals, 6 O.L.C. Op. at 771 (“President Truman issued a directive providing for the confidentiality of all loyalty files or all request for such files from sources outside the Executive Branch be referred to the Office of the President, for such response as the President may determine.”)

363. History of Refusals, 6 O.L.C. Op. at 771 (noting President Coolidge refused to provide the Senate “a list of all companies in which the Secretary of the Treasury was interested” and instead “calling the Senate investigation an ‘unwarranted intrusion,’ born of a desire other than to secure information for legitimate legislative purposes” (quoting 65 Cong. Rec. 6887 (1921))); id. at 757 (noting President Jackson refused to provide to the Senate any paper purportedly read by the President to his Cabinet and instead asserted “the Legislature had no constitutional authority to ‘require of me an account of any communication, either verbally or in writing, made to the heads of Departments acting as executive officers of the Government, or (as the case may be) required to detail to the Senate the free and private conversations I have held with those officers on any subject relating to their respective departments.’”)

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


366. see, e.g., Clinton v. Jones, 520 U.S. 681, 692 (1997) (holding that a sitting president does not have immunity during his term from civil litigation about events occurring prior to entering office); In re Grand Jury Proceedings, 5 F. Supp. 2d 21 (D.D.C. 1998) (rejecting the privilege for information sought from a Deputy White House Counsel pertaining to potential presidential criminal misconduct, affid’t in part, rev’d in part sub nom. In re Lindsey, 158 F.3d 1263 (D.C. Cir. 1998).

367. H.R. Rep. No. 105–830, at 92 (“[I]ndeed, the President repeatedly argued that he should not be impeached precisely because of the rights of the political process.”); id. (quoting Rep. Bill McCollum) (“With regard to executive privilege, I don’t think that there is any question that the President abused executive privilege here, because it can only be used to protect official functions.”)

368. Id. at 84 (quoting Rep. Bob Goodlatte).


370. Id. at 203–04 (quoting President Nixon and asserting “I want you to know it all, let them plead the Fifth Amendment, let them over or anything else, if it’ll save it—the plan, That’s the whole plan.”)

371. Id. at 188 (reflecting of vote of 21–17).

372. 3 The Debates in the Several State Conventions on the Adoption of the Federal Constitution, at 401 (Jonathan Elliott 2nd ed. 1967).


374. Id. at 84 (quoting Rep. Bob Goodlatte).

375. Id.

376. Id. at 92 (quoting Rep. George Gekas).


381. Impeachment is not just a political process unconstrained by law. The subjects of any impeachment trial are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust—that is, "POLITICAL, as they relate chiefly to injuries done immediately to the society itself." The Federalist No. 65, at 396 (Alexander Hamilton) (Clinton Rossiter ed., 1961). But "[i]f the President didn’t say the impeachment is entirely political. He said the offense has to be political.” Alan M. Dershowitz, Hamilton Wouldn’t Impeach Trump, Wall St. J. (Oct. 13, 2019), https://perma.cc/4YQT-TQ8A (emphasis in original). "Hamilton’s description in Federalist 65 should not be taken to mean that impeachments have a conventional political nature, rooted from traditional criminal process." J. Richard Broughton, Conviction, Nullification, and the Limits of Impeachment As Politics, 68 Chicago W. Res. L. Rev. 275, 278 (2017). Federalist No. 65 goes to “pains to show that the Senate can act in ‘their judicial character as a court for the trial of impeachments,’ and ‘[h]e must be entirely free to act as a court in order that the trial of the President be conducted without the consequences involving ‘real demonstrations of innocence or guilt’ rather than purely political factors like ‘the comparative strength of parties.’” (quoting The Federalist No. 65). Thus, “one should not diminish the significance of impeachment’s legal aspects, particularly as they relate to the House as an instrument of law enforcement process. It is a hybrid of the political and the legal, a political process moderated by legal
formalities . . .” Broughton, supra note 383, at 289.
384. U.S. Const. amend. V.
385. See, e.g., Walters v. Nat’l Ass’n of Radi.
386. See supra Standards Part B.2.
387. Akhil Reed Amar. On Impeaching
388. United States v. Louisiana, 363 U.S. 1, 35
389. See supra Standards Part B.2.
390. See also United States v. Curtis-Wright
shall); Ex parte Hennen, 38 U.S. (13 Pet.) 225,
390. Crosby v. Nat’l Foreign Trade Council,
392. See, e.g., INS v. Aguirre-Aguirre, 482 U.S.
393. See supra Standards Part B.2.
394. United States v. Ballin, 144 U.S. 1, 5 (1892); see also Barry v. United States ex rel. Cunningham, 279 U.S. 597, 614 (1928); Morgan v. United States, 601 F.2d 445, 451 (D.C. Cir. 1979); (Scalia, J.).
395. Senate Select Comm. on Presidential Cam-
397. See Attempted Exclusion of Agency Coun-
399. Id. at 237–38. Nixon did not address whether the Due Process Clause constrained the conduct of an impeachment trial in the Senate because no due process claim was raised by the parties.
400. Letter from James Madison to Mr. Ma-
401. See also supra Standards Part B.2.
402. United States v. Herring, 300 F.2d 1280 (D.C. Cir. 1960) (per cur-
403. Note, supra note 385, at 1011 (noting, in Judge Durrell’s im-
406. Id. at 228–29.
408. Id. at 25–26 (Souter, J., concurring).
409. Id. at 257 (Souter, J., concurring in judgment)
410. Id. at 257–58 (Souter, J., concurring in judgment).
411. Id. at 257–58 (Souter, J., concurring in judgment).
412. U.S. Const. art. II, § 1, cl. 5.
417. Id. at 228–29.
418. U.S. Const. art. I, § 3. See for instance,
419. Id. at 228 (White, J., concurring).
420. Id. at 255 (id.) (noting, in Judge Durrell’s im-
421. United States v. Bell, 70th Cong. 1–2, 4, 15, 18
422. Id. at 254–55 (Souter, J., concurring in judgment).
423. Id. at 257–58 (Souter, J., concurring in judgment).
424. U.S. Const. art. I, § 3. See for instance,
425. Id. at 238–40 (Hastings).
426. Id. at 254–55 (Souter, J., concurring in judgment).
427. Id. at 237–38. Nixon did not address whether the Due Process Clause constrained the conduct of an impeachment trial in the Senate because no due process claim was raised by the parties.
428. 299 U.S. 433, 454 (1939).
429. See supra Standards Part B.2.
431. See supra Standards Part B.2.
432. Id. at 232–33 (Souter, J., concurring).
434. See supra Standards Part B.2.
436. 383, at 289.
437. 383, at 289.
438. See supra Standards Part B.2.
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that the first time that you believe the Ukrainians may have had a real sense that the aid was on hold? [A.] Yes.

606. Taylor-Kent Public Hearing, supra note 604, at 150:14–23. [Q.] And when was the first time a Ukrainian official contacted you, concerned about potential withholding of USAID [sic]? [A.] I was after the intense week of September.


609. Ukraine’s Fraud Summer Included a Rogue Embassy in Washington, supra note 607.


612. Volker Public Hearing, supra note 563, at 68 ("I received a text message from one of my Ukrainian counterparts on August 29th forwarding that article, and that’s the first time I raised it with him."); Text Message from Andry Yermak, Adviser to President Zelensky, to Kurt Volker, U.S. Special Rep. for Ukraine Negotiations, at KY000000020 (Aug. 27, 2019, 3:04:14 AM). https://perma.cc/PV4B-76HM.

613. Volker Interview Tr. at 124:11–125:1 (emphasis added).


617. Taylor-Kent Public Hearing, supra note 604, at 109:18–20 (testifying that his “clear understanding” “came from Ambassadors Gordon and Sondland” id. at 110:6–8 (“[Q.] You said you got this from Ambassador Sondland. [A.] That is correct.”); Taylor Dep. Tr. at 297:21–298:1 (“[Q.] But if I understand this correctly, you’re telling us that Tim Morrison told you that Ambassador Sondland told him that the President told Ambassador Sondland that Zelensky would have to open an investigation into Bideno?” [A.] That’s correct.”); see also, e.g., id. at 35:20–25, 38:13–16.

618. Morrison Dep. Tr. at 17:13–16.

619. Sondland Interview Tr. at 35:8–11.


622. HJC Report at 97 (quotations omitted).


624. See, e.g., Yovanovitch Dep. Tr. at 17:9–12; Taylor Dep. Tr. at 87:29–28; Kent Interview Tr. at 105:18–11, 151:222.


628. The Clerk of the U.S. House of Representatives at 28.

629. Id.

630. Volker-Morrisson Public Hearing, supra note 563, at 63.

631. Id. at 64.


633. Volker-Morrisson Public Hearing, supra note 563, at 58; see also id. at 58–59 ("[Q.] And for many years, there had been an initiative to— an interagency to advocate for lethal defensive weaponry for Ukraine. Is that correct? [A.] That is correct. [Q.] And it wasn’t until President Trump and his administration that the— that went through? [A.] That is correct.").


635. Volker Voter Interview Tr. at 80:6–7.

636. D. Hale Dep. Tr. at 85:2–3 (Nov. 6, 2019).

637. Trump’s Hold on Military Aid Blindsided Top Ukrainian Officials, supra note 608.


641. Croft Dep. Tr. at 21:20–22:5; see also The White House, Press Sec., Trump Meets with President Poroshenko of Ukraine (Sept. 22, 2017), https://perma.cc/A5AC-PN82 ("The President recommended that President Poroshenko continue to work to eliminate corruption and improve Ukraine’s business climate.").


643. Hill Dep. Tr. at 17:9–12.

644. See, e.g., Yovanovitch Dep. Tr. at 17:9–12; Taylor Dep. Tr. at 87:29–28; Kent Interview Tr. at 105:18–11, 151:222.


649. Id.

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653. See supra Part III.A.1.
655. Taylor Dep. Tr. at 35-9:19; also see supra note 566.
656. Id. at 81:7-11 (Nov. 7, 2019) (the Vice President wanted to ‘‘hear if there was more that European countries could do to support Ukraine’’); Morrison Dep. Tr. at 224:19–225:6 (‘‘[T]he President believed that the Europeans should be contributing more in security-sector assistance.’’).
657. Cooper Dep. Tr. at 14.
665. Hale Dep. Tr. at 72:4–7, 73:1; Volker Interview Tr. at 127:12–14.
666. see supra note 569.
667. Morrison Dep. Tr. at 225:8–11.
668. see supra note 569.
669. see supra note 570.
671. Id. at 106:15–107:5.
672. Id. at 106:19. (internal quotation marks omitted).
673. see supra note 571.
741. Kent Interview Tr. at 88:8–9.
744. Approved Judgement of the Central Criminal Court, Serious Fraud Office v. Mykola Zlochevskyi, 1, 7 (Jan. 21, 2015), https://perma.cc/TJ9W-Q5WD (‘‘I think that it could raise the appearance of a conflict of interest.’’); Taylor-Kent Public Hearing, supra note 694, at 25, 94–95 (Kent raised the concern that Hunter Biden’s status as a board member would create the perception of a conflict of interest because of the possibility that there was the possibility of a perception of a conflict of interest.

757. John Solomon, The Ukraine Scandal

759. See Letter from Devin Nunes, Ranking Member, H.R. Permanent Select Comm. on Intelligence, to Adam Schiff, Chairman, House Permanent Select Comm. on Intelligence (Nov. 9, 2019); Letter from Doug Collins, Ranking Member, H.R. Comm. on Judici, to Jerrold Nadler, H.R. Comm. on Judiciary (Dec. 6, 2019).
761. ‘‘Duplicity’’ is the joining of two or more distinct and separate offenses in a single transaction. See, e.g., United States v. Buretta, 565 F.3d 145, 150 (3d Cir. 2009); United States v. Chvane, 529 F.2d 1236, 1237 n.3 (5th Cir. 1976).
763. President Clinton was charged in one article of providing perjurious, false and misleading testimony on any ‘‘one or more’’ of four topics and in another article of obstruction through ‘‘one or more’’ of seven discrete ‘‘acts’’ that involved different behavior in different months with different persons. H.R. Res. 611, 106th Cong. (Dec. 19, 1998); see Proceedings of the U.S. Senate in the Impeachment Trial of President William Clinton Jefferson Jackson, 106th Cong., vol. I at 472–75 (1999) (Clinton’s Impeachment Trial) (Trial Mem. of President Clinton).
766. Proceedings in the Trial of Andrew Johnson, President of the United States, Before the U.S. Senate on Articles of Impeachment, 40th Cong. 6 (1868).
767. Id. at 1073–75 (statement of Sen. John Henderson).
768. Id. at 912 (statement of Sen. Garrett Davis).
770. Judge Nixon Senate Trial, supra note 782, at 449 (statement of Sen. Herbert Kohl); The Washington Post, Sen. Lindsey Graham, a Judge Loudback on an ominous article. In that case, Senator Joseph Bailey asserted that the article ‘‘ought not to have been considered’’ and ‘‘properly disposed of by the Senate’’ (statement of Sen. John L. McClellan).
President Zelensky: Well, you tell me the truth, we are trying to work hard because we can help you 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 little bit of a new form of government. You are a great teacher for us and in that.

The President: Well it’s very nice of you to say that, there’s 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 us, I mean, you modernize does almost nothing for you. All they do is talk and I think it’s something that you should really ask them about. When I was speaking to Angela Merkel she talks Ukraine, but she doesn’t do anything. A lot of the European countries are the same way so it’s something you want to look at but the US has been very very good to Ukraine. I wouldn’t say that it’s reciprocal necessarily because things are happening that are not good but the United States has been very very good to Ukraine.

The President: Yes you are absolutely right. Not only 100%, but actually 100% and I can tell you that I asked to Angela Merkel and I met with her, I also met and talked with Macron and I told them that they are not doing quite as much as they should, in line with the issues with the sanctions. They are not enforcing the sanctions. They are not working as much as they should work for Ukraine. It turns out that the 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 with you and the next steps specifically we are almost ready to buy more Javelins from the United States for defense purposes.

President Zelensky: I wanted to tell you that’s a very good idea. I think your country is very happy about that. The other thing is that Ukraine. I wouldn’t say that it’s reciprocal because things are happening that are not good but the United States has been very very good to Ukraine.

The President: Well it’s very nice of you to say that, that’s a lot for Ukraine.

President Zelensky: That’s a very good idea. I think your country is very happy about that. The other thing is that Ukraine.
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. Finally, we had a very fair prosecutor so good luck with everything. Your economy is going to get better and better I have a lot of assurance. It’s a great country. I have many Ukrainian friends, incredible people.

President Zelensky: I would like to tell you that I have a few friends who are 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. I will talk to them and I hope to see them again in the future. I also wanted to thank you for your visit in the United States. I stayed 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 time when we will have more trade 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 will 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 to know you better. I had been 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 we will be in Poland and we can meet in Poland hopefully. After that, it might be possible for you to travel to Ukraine. We can either take your plane and go to Ukraine or we can take your plane, which is 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 can meet in Poland at that time.

President Zelensky: Thank you very much Mr. President.

The President: Congratulations on a fantastically job you’ve done. The world was watching. I’m not sure it was so much of an upset but congratulations.

President Zelensky: Thank you Mr. President bye-bye.

APPENDIX B:
UNAUTHORIZED SUBPOENAS PURPORTED TO GRANT THE HOUSE’S IMPEACHMENT POWER BEFORE HOUSE RESOLUTION 660

1. Subpoena from Elliot L. Engel to Michael R. Pompeo, Secretary of State (Sept. 27, 2019)
2. Subpoena from Adam B. Schiff to Rudy Giuliani (Nov. 30, 2019)
3. Subpoena from Elijah E. Cummings to John R. Bolton, Acting White House Chief of Staff (Oct. 4, 2019)
5. Subpoena from Adam B. Schiff to Christopher Anderson, former Special Advisor for Ukraine Negotiations, Department of State (Oct. 30, 2019)

APPENDIX C:
OFFICE OF LEGAL COUNSEL, MEMORANDUM OF LAW DISCUSSING COMMITTEES’ AUTHORITY TO INVESTIGATE FOR IMPEACHMENT (JAN. 19, 2019)

U.S. DEPARTMENT OF JUSTICE,
WASHINGTON, DC, JANUARY 19, 2020.

MEMORANDUM FOR PAT A. CIPOLLINE
COUNSEL TO THE PRESIDENT

Re: House Committees’ Authority to Investigate for Impeachment

On September 24, 2019, Speaker of the House Nancy Pelosi “announced” at a press conference that “the House of Representatives is moving forward with an official impeachment inquiry” into the President’s actions and that she was “directing six committees to proceed with” several previously pending “investigations under that umbrella of impeachment inquiry.” Shortly thereafter, the House Committee on Foreign Affairs issued a subpoena directing the Secretary of State to produce a series of documents and things relevant to the impeachment inquiry. The House Committee on Foreign Affairs subpoenaed all of the House committees to produce a series of documents and things relevant to the impeachment inquiry. The House Committee on Foreign Affairs subpoenaed all of the House committees to produce a series of documents and things relevant to the impeachment inquiry.

In marked contrast with these historical precedents, in the weeks after the Speaker’s announcement, House committees issued subpoenas without any House vote authorizing them to exercise the House’s authority under theimpeachment inquiry. While the House of Representatives’ committees justified the subpoenas based upon the Rules of the House, which authorize subpoenas for matters within a committee’s jurisdiction, the House Rules Committee’s majority counsel has stated that their committees jointly sought these documents, not in connection with legislative oversight, but “purposely pursuant to the House of Representatives’ impeachment inquiry.” In the following days, the committees issued subpoenas to the Acting White House Chief of Staff, the Secretary of Defense, the Secretary of Energy, and several others within the Executive Branch.

If, as a Representative of the People, you asked whether these committees could compel the production of documents and testimony in furtherance of an asserted impeachment inquiry, the House Rules Committee lacked authority because, at the time the subpoenas were issued, the House had not adopted any resolution authorizing the issuance of these subpoenas. We would have expected the delegation to the House itself to have authorized the issuance of these subpoenas. The Constitution vests the “sole Power of Impeachment” in the House of Representatives. For precisely that reason, the House itself must authorize an impeachment inquiry, as it has done in virtually every prior impeachment investigation in our Nation’s history, including every one involving a President. A congressional committee’s “right to exact testimony and to call for the production of documents for impeachment purposes” is subject to “investigative character” the committee has received from the House. United States v. Ramsey, 365 U.S. 403 (1961) (Judiciary Committee Elected).

The House Rules Committee lacks the power to issue subpoenas only for matters within their legislative jurisdiction. Accordingly, no committee may undertake the momentous legislative oversight to impeachment without a delegation by the full House of such authority.

We are not the first to reach this conclusion. This was the position of the House in the impeachments of Presidents Nixon and Clinton in the case of the House. Following a preliminary inquiry, the House adopted a formal resolution as a “necessary step” to confer the “investigative powers” of the House “to their full extent” on the Judiciary Committee. 120 Cong. Res. 2350-51 (1974) (statement of Rep. Rodino); see H.R. Res. 803, 93d Cong. (1974). As the House Parliamentarian explained, it had been “considered necessary for the House to specifically vest the Committee on Judiciary with the investigatory and subpoena power to conduct an impeachment inquiry.” 3 Lewis Deschler, Deschler’s Precedents of the United States House of Representatives ch. 14, § 5, at 2172 (1949) (Parliamentarian’s Note). Thus, it was followed the House adopted a resolution in the impeachment of President Clinton. After reviewing the Independent Counsel’s referral, the Judiciary Committee “decided that it must receive authorizations from a full House before proceeding on any further course of action.” H.R. Rep. No. 105-795, at 24 (1998). The House again adopted a resolution authorizing the committee to issue compulsory process in support of an impeachment investigation. See H.R. Res. 581, 106th Cong. (1999). As Representative John Conyers summarized in 2016: “According to parliamentarians of the House past and present, the impeachment process does not begin until the House adopts a formal resolution of the House (a) Committee to investigate the charges.”
the House’s legislative power is distinct from its impeachment power. Compare U.S. Const. art. I, §1, with id. art. I, §2, cl. 5. Although committees had that same delegation during the Nixon impeachment investigation, materially similar one during the Nixon impeachment, the House determined on both occasions that the Judiciary Committee required a resolution to investigate. Speaker Pelosi purported to direct the committees to conduct an “official impeachment inquiry,” but the House Rules do not give the Speaker any authority to delegate his impeachment power. The committees thus had no delegation authorizing them to issue subpoenas pursuant to the House’s impeachment power. In the discussion to the validity of the committee subpoenas that were expressed by the Administration, by ranking minority members in the House, and by many Senators, among others, on October 31, 2019, the House adopted Resolution 660, which “directed” six committees to “continue their ongoing investigations” as part of their practical “oversight” role, whether into whether grounds existed to impeach President Trump, H.R. Res. 660, 116th Cong. (2019). Resolution 660’s direction was, prospectively, entirely prospective. The resolution did not purport to ratify any previously issued subpoenas or even make any mention of them. Accordingly, the pre-October 31, 2019 subpoenas had not been authorized by the House, continued to lack compulsory force.5

I. Since the start of the 116th Congress, some members of Congress have proposed that the House investigate and impeach President Trump. On January 3, 2019, the first day of the new Congress, Representative Brad Sherman introduced a resolution to impeach President Donald John Trump, President of the United States, for high crimes and misde­meanors. H.R. Res. 15, 116th Cong. (2019). The Sherman resolution was adopted on October 31, 2019, by a recorded vote of 232–196 (by a majority of the total Senate membership). The resolution called upon the President’s firing of the Director of the Federal Bureau of Investigation, James Comey. See id. Consistent with settled practice, the resolution was referred to the Judiciary Committee. See H.R. Doc. No. 115–177, Jefferson’s Manual §605, at 324 (2019).

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

After the Special Counsel finished his investigation, the Judiciary Committee demanded his investigative files, describing its request as an exercise of legislative oversight authority. See Letter for William P. Barr, Attorney General, from Jerrold Nadler, Chairman, Committee on the Judiciary, U.S. House of Representatives at 3 (May 3, 2019) (assessing that “[t]he Committee has ample authority under House Rule XI to conduct oversight of the Department [of Justice], undertake necessary investigations, and compel witnesses regarding several obstruction of justice statutes, campaign-related crimes, and special counsel investigations, among other things”). The committee’s request was accompanied by requests and statements likewise described its inquiry as serving a “legislative purpose.” E.g., Letter for Pat Cipollone, White House Counsel, from Jerrold Nadler, Chairman, Committee on the Judiciary, U.S. House of Representatives at 3–4 (May 16, 2019) (describing the “legislative character of the Committee’s investigation” (capitalization altered)).

Over time, the Judiciary Committee expanded the definition of the opposition to claim that it was considering impeachment. The committee first mentioned impeachment in a May 8, 2019 report recommending that the committee proceed in contempt of Congress. In a section entitled “Authority and Legislative Purpose,” the committee stated that one purpose of the inquiry was to “have Congress consider articles of impeachment with respect to the President or any other Administration official.” H.R. Rep. No. 116–105, at 12, 13 (2019).7 The committee is purported to be investigating impeachment when it petitioned the U.S. District Court for the District of Columbia to release grand jury information related to the Special Counsel’s investigation. See Application at 1–2, in re Application of the Comm. on the Judiciary, U.S. House of Reps., No. 19–c–4 (D.D.C. July 26, 2019); see also Memorandum for Members of the Committee on the Judiciary from Jerrold Nadler, Chairman, Re: Lessons from the Mueller Report, Part II: “Conduct Addressing Presidential Misconduct” at 3 (July 11, 2019) (advising that the committee would seek documents and testimony “to determine whether to recommend articles of impeachment against the President or any other Article I remedies, and if so, in what form”). The committee advanced the same reasoning in a May 8, 2019 report recommending the district court to compel testimony before the Judiciary Committee was “now determin­ing whether to recommend articles of impeachment against the President based on the obstructive conduct described by the Special Counsel”). In connection with this litigation, Chairman Nadler described the committee as conducting “formal impeachment proceedings.” David Press & Margaret Taylor, What if the House Held No Impeachment Inquiry? The Washington Post, May 8, 2019, at A1, A14 (quoting letter from Jerrold Nadler). That letter noted that “the House has not yet approved a formal impeachment inquiry” and that she was “direct[ing] . . . six [c]ommittees to proceed with their investigations under that umbrella of impeachment inquiry.”

II. On September 24, the day before the release of the call record, Speaker Pelosi announced (that) “the House of Representa­tives is moving forward with an official impeach­ment inquiry” and that she was “direct[ing] . . . six [c]ommittees to proceed with their investigations under that umbrella of impeachment inquiry.” Pelosi Press Release, supra note 1. In an October 8, 2019 court hearing, the House’s General Counsel told the court that Speaker Pelosi purported to direct the committees to (chronicling the evolution in Chairman Nadler’s descriptions of the investigation). Those assertions coincided with media reports that Chairman Nadler had privately asked Speaker Pelosi to support the opening of an impeachment inquiry. See, e.g., Andrew Desiderio, Nadler: ‘This is Formal Impeachment Proceedings.’ Politico (Aug. 8, 2019), www.politico.com/story/2019/08/08/nadler­this­is­formal­impeachment­proceedings­1454969 (noting that Nadler “has privately asked Pelosi whether she will support a formal inquiry of whether to remove the president from office”). On September 12, the Judiciary Committee approved a resolution directing the Committee to consider impeachment inquiry and adopting certain procedures for the investigation. See Resolution for Investigative Procedures Offered by an amendment of Jerrold Nadler, Chairman, Committee on the Judiciary, 116th Cong. (Sept. 12, 2019), docs.house.gov/meetings/JU/JU09/20190912/109921/BILLS-116hprResolutio­nsforInvestigativeProcedures.pdf. Speaker Pelosi did not endorse the Judiciary Committee’s characterization of its investigation during the summer of 2019. But she expressly described a “formal impeach­ment inquiry in connection with a separate­ matter arising out of a complaint filed with the Inspector General of the Intelligence Community.” The complaint, cast in the form of an unsigned letter to the congressional intelligence committees, alleged that on July 25, 2019, the President sought to pressure Ukrainian President Volodymyr Zelensky to in­vestigate the prior activities of one of the Presi­dent’s political rivals. See Letter for Richard Burr, Chairman, Select Comm­ittee on Intelligence, U.S. Senate, and Adam Schiff, Chairman, Permanent Select Committee on Intelligence, U.S. House of Rep­resentatives at 2–3 (Aug. 12, 2019). After the Inspector General reported the existence of the complaint to the Speaker and to the House Admin­istration, the President declassified the official record of the July 25 telephone call and the complaint, and they were publicly released on September 24, 2019.

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Following service of these subpoenas, you and other officials within the Executive Branch requested our advice with respect to the obligations of the subpoenas’ recipients. We advised that the subpoenas were invalid because, among other reasons, the committees lacked the authority to conduct the purported inquiry and, with respect to several testimonial subpoenas, the committees sought to obtain agency counsel from scheduled depositions. In reliance upon that advice, you and other responsible officials directed employees within their respective departments and agencies not to provide the documents and testimony requested under those subpoenas.

On October 8, 2019, you sent a letter to Speaker Pelosi and the three chairmen advising them that their purported impeachment inquiry was “constitutionally invalid” because the House had not authorized it.8 Chairman Burr and the Ranking Member of the Judiciary Committee, Doug Collins, had already made the same objection.9 Senator Lindsey Graham also joined a letter, co-sponsored by 49 other Senators, which objected to the House’s impeachment

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process because it had not been authorized by the full House and did not provide the President with the procedural protections enjoyed in past impeachment inquiries. S. Res. 378, 116th Cong. (2019).

On October 25, 2019, the U.S. District Court for the District of Columbia granted the Judicial Committee’s request for grand-jury information on the grounds that the special counsel’s investigation, holding that the committee was conducting an impeachment inquiry that was “preliminary to . . . a judicial proceeding” for purposes of the exceptions to grand-jury secrecy in Rule 6(e)(3)(E)(i) of the Federal Rules of Criminal Procedure. See In re Application of the Com., on the Judiciary, U.S. Dist. Ct., No. 19–19–48 (D.C. Cir. April 1, 2020) (argued D.C. Cir. Jan. 3, 2020). In so holding, the court concluded that the House had not adopted a resolution before a committee may begin an impeachment inquiry. Id. at *28–29. As we discuss below, the district court’s analysis of this point relied on a misreading of the historical record.

Faced with continuing objections from the Administration and members of Congress to the validity or propriety of the House’s investigations, the House decided to take a formal vote to authorize the impeachment inquiry. See Legislative Branch Access to Information Act of 2019, Pub. L. No. 116–26, 133 Stat. 702 (2019); Pub. L. No. 116–93, 133 Stat. 2588 (2019); Pub. L. No. 116–194, 134 Stat. 2730 (2020). On October 31, the House adopted a resolution “direct[ing]” several of its committees to conduct impeachment investigations as part of the existing House of Representatives inquiry into whether sufficient grounds exist for the House of Representatives to remove the President from office (House Resolution 596, 116th Cong., 1st Sess. (Dec. 12, 2019)). Thereafter, the House approved a resolution that authorizes the House Judiciary Committee to investigate through court-like procedures differing significantly from those used in routine oversight. See, e.g., Johnson v. United States, 592 F.3d 1333, 1336, 273 U.S. 135, 175 (1927), “legisla-
tive judgments normally depend more on the predicted consequences of proposed legislative actions and their political acceptability, than on precise reconstruction of past legislative action or Republican Presidential Campaign Activities v. Nixon, 436 F.2d 725, 732 (D.C. Cir. 1971) (en banc). By contrast, an impeachment inquiry must evaluate whether adverse inferences may be drawn from the actions of the House’s judicial, legislative, or executive branches against the President, for the purpose of determining if the House’s impeachment authority differs fundamentally from its powers to investigate in the course of determining the scope of the constitutional inquiry that follows.”

The Constitution vests the House of Representatives as a share of Congress’s legislative power and, separately, “the sole Power of Impeachment.” U.S. Const. art. I, § 1; id. art. I, § 2, cl. 5. Both the legislative power and the impeachment power include implied authority to investigate, including by means of compulsory process. But those investigative powers are not interchangeable. The House has delegated to committees its power to investigate for legislative purposes, but it has held impeachment authority more closely, granting authority to conduct impeachment investigations only as the need has arisen. The House has followed that approach from the very first impeachment inquiry through dozens more that have followed over the past two hundred years, including every inquiry involving a President.

In so doing, the House has recognized the fundamental difference between a committee’s oversight investigation and an impeachment investigation. The House does more than simply pick a label when it “debate[s] and decide[s] when it wishes to shift from legislating to impeaching” and to authorize a committee to take responsibility for “the grave and weighty process of impeachment.”" We begin with the federal courts. In Kilbourn, the Supreme Court held that a House committee could not investigate a bankruptcy company indebted to the United States because its request exceeded the scope of the legislative power. According to the Court, the committee had employed investigative power to promote the United States’s statutory interests as a means to achieve the House’s non-legislative purposes for the sole purpose of impeachment."

The Constitution vests several different powers in the House of Representatives. As one half of Congress, the House shares with the Senate the powers granted in the Constitution (U.S. Const. art. I, § 1), which include the ability to pass bills (id. art. I, § 7, cl. 2) and to override presidential vetoes (id. art. I, § 7, cl. 3) in the process of enacting laws pursuant to Congress’s enumerated legislative powers (e.g., id. art. I, § 8), including the power to appropriate federal funds (id. art. I, § 9). The House has other, non-legislative powers. It is, for instance, “the Judge of the Elections, Returns and Qualifications of its own Members.” U.S. Const. art. I, § 6. Thus, the House’s power over the impeachment process is broader than any other power that is “vested in the sole Power of Impeachment.” Id. art. I, § 2, cl. 5.

The House and Senate do not act in a legislative role in connection with impeachment. Instead, it is the Speaker of the House, who serves as the investigating authority to accuse civil officers of “Treason, Bribery, or other high Crimes and Mis
demeanors” that warrant removal and dis
guishment. U.S. Const. art. I, § 4, cl. 3. In this context, the House’s power over impeachment arises under the Constitution, not from its delegated legislative powers. The House has the power to impeach and try a President, and the Senate conducts the impeachment trial. See, e.g., United States v. Clinton, 113 S. Ct. 2631, 2636 (1993) (recognizing that “the Constitution vests the [House’s] impeachment authority ‘encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.’”)

With respect to both its legislative and its impeachment powers, the House has corroboration for its powers of investigation, which enable it to collect the information necessary for the exercise of those powers. The Supreme Court has explained that “[t]he power of inquiry—with process to enforce it—is essential and appropriate auxiliary to the legislative function.” McGraw, 273 U.S. at 174. Thus, in the legislative context, the House’s investigative power “encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.” Watkins v. United States, 354 U.S. 178, 197 (1957) (en banc). In fact, the “Scope of Congressional Oversight and Investigative Power with Respect to the Executive Branch,” 9 Op. O.L.C. 60, 60 (1985) (“Congress may conduct investigations ‘not only proper, but necessary to the proper discharge of its Constitutionally authorized functions’”)

Because the House has different investigative powers, establishing which authority has been delegated has often been necessary in the course of determining the scope of a committee’s authority to compel witnesses and testimony. In addressing the scope of the House’s investigative powers, all three branches of the federal government have recognized the constitutional distinction between a legislative investigation and an impeachment inquiry. 1.

1. We begin with the federal courts. In Kilbourn, the Supreme Court held that a House committee could not investigate a bankruptcy company indebted to the United States because its request exceeded the scope of the legislative power. According to the Court, the committee had employed investigative power to promote the United States’s statutory interests as a means to achieve the House’s non-legislative purposes for the sole purpose of impeachment."

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legislative oversight. See Senate Select Comm., 498 F.2d at 732. The court recognized that the impeachment investigation was rooted in “an express constitutional source” and that the House’s investigative purpose “differed in kind from the Senate committee’s oversight needs.” Id. In finding that the Senate committee had not demonstrated that President Nixon’s impeachment powers were “essential to the performance of its legislative functions,” the court recognized “a clear difference between Congress’s legislative tasks and the functions of the Court of Inquiry.” Id. at 731. Framers established a mechanism for Congress to hold even the highest officials accountable “without imposing on the judiciary the duty to take responsibility for invoking this power.”). Judge Rao disagreed with the majority insofar as she understood Congress’s impeachment power to be the sole means for investigating past misconduct by impeachable officers. But both the majority and the dissent agreed with the fundamental proposition that the distinction between investigations pursuant to the House’s impeachment authority and those that serve its legislative authority (including oversight).

2. The Executive Branch similarly has long distinguished between investigations for legislative and for impeachment purposes. In 1793, when debating the House’s resolution that it “[r]esolved that President Washington be requested to lay before the House a copy of the instructions” given to John Jay in preparation for his negotiation of a peace treaty with Great Britain, 5 Annals of Cong. 429–30 (1796), the House distinguished the House’s “Legislative capacity” and its role as “the grand inquest of the Nation” from the House’s “investigation[s]” and “much more rare[ly]” “impeachment investigation[s]”

3. For instance, in 1973, when debating the House’s resolution did not act “with a view to an[.]” Id. at 760–61. “It [did] not occur” to Washington that “the inspection of the papers asked for, could be relative to any purpose under the cognizance of Representatives, except that of an impeachment.” Id. at 760. Because the House’s “resolution had[d] not expressed” any purpose of pur- suing impeachment, Washington concluded that “a just regard to the constitution . . . forbade a compliance with the House’s request” for documents. Id. at 760, 762.

In 1814, President Madison drew the same line. A select committee of the House had requested that the Secretary of War “furnish[]” it “with a copy of an unratified 1804 treaty with the Chickasaw Tribe and ‘the journal of the commissioners’” who negotiated it. H.R. Rep. No. 22–488, at 1 (1832). The Secretary conferred with Jackson, who refused to comply with the committee’s request on the same ground cited by President Washington: he “[d]id not perceive that a copy of any part of the incomplete and un- ratified treaty could be relative to any purpose under the cognizance of the House of Representatives, except that of an impeachment, which the resolution has not expressed.” Id. at 439. See Charles A. Wickliffe, Chairman, Committee on Public Lands, U.S. House of Representa-

4. In 1866, another House select committee requested that President Polk account for his administration’s expenditures in the War of 1812 by producing documents from the Treasury Department. Polk refused to disclose information but “challenged” that the House may have been entitled to such information if it had “instituted[d] an [impeachment] inquiry into the matter.” Cong. Globe, 41st Cong., 1st Sess., p. 830. In fact, Judge Rao took this position even though some members of Congress had suggested that evidence about the expenditures could support an impeachment. See id. at 760–61. No committee has consistently drawn a distinction between the power of legislative oversight and the power of impeaching. See supra Part III.B.3(d). By 1866, the Executive Branch had acknowledged this same distinction in Watkins, 940 F.3d at 761–64 (Rao, J., dissenting) (drawing examples from the Buchanan, Grant, Cleveland, Theodore Roosevelt, and Coolidge Administrations).

b. Although the House of Representatives has “the sole Power of Impeachment,” U.S. Const. art. I, § 2, cl. 5, the associated power to conduct an investigation for impeachment purposes may, like the House’s other investigative powers, be delegated to full House committees or subcommittees. See supra Part III.B.3(b). The House’s committee may exercise its investigatory powers in the absence of such a delegation.

As the Supreme Court has explained in the context of legislative oversight, “[t]he theory of a committee inquiry is that the committee ‘are endowed with the representative of the parent assembly in collecting information for a legislative purpose’ and, in such circumstances, committees ‘are endowed with the authority of the Congress to compel testimony.’” Watkins, 354 U.S. at 200–01. The same is true for impeachment investigations. Thus, the House has broad discretion in determining the conduct of its own proceedings. See, e.g., NLRB v. Noel Canning, 573 U.S. 513, 531–52 (2014); United States v. Ballin, 144 U.S. 1, 5 (1892); see also Deschler’s precedents ch. 5, ¶ 44, at 305–06. But the House may not actually exercise its discretion by making that judgment in the first instance, and its resolution sets the terms of a committee’s inquiry. See United States v. Rumely, 345 U.S. 41, 43 (1953). No committee may exercise the House’s investigatory powers in the absence of such a delegation.
found in this language." Rumely, 345 U.S. at 44; see also Watkins, 354 U.S. at 201 ("Those instructions are embodied in the authorizing resolution. That document is the committee's charter of authority, at 204 ("[P]roposition 22 is too vague and it is not clear that the House's committees are restricted to the missions delegated to them. . . . No witness can be compelled to make disclosures on matters and subjects which are not within the legislative jurisdiction of the committee's charter.")"); United States v.among the House.

Judges. While committees have sometimes

investigative committee and authorizing the

authorized every impeachment investigation

U.S. at 514 (same). The House has expressly


From the impeachment, the House has recognized that a committee would require a delegation to conduct an

impeachment inquiry. In 1797, when House members considered whether a letter con- tained evidence of criminal misconduct by Senator William Blount, they sought to con- firm Blount’s handwriting but concluded that they did not have the power of taking evidence. See 7 Annals of Cong. 436-58 (1837); 3 Asher C. Hinds, Hinds' Precedents of Representa- tives of the United States 2294, at 644-45 (1907). Thus, the committee “rose,” and the House itself took testimony. 3 Hinds’ Precedents § 2408, at 195-97. In both the House of Representatives and the Senate, there was no provision permitting a committee to conduct the investigation itself. H.R. Rep. No. 39–31, at 2

The impeachment investigation of President Andrew Johnson. On January 7, 1867, the House adopted a resolution authorizing the House to conduct an impeachment inquiry into the official conduct of Andrew Johnson...and to report to this House whether, in their opinion, the President “has been guilty of any of the offenses and mis- deemors” (Cong. Globe, 39th Cong., 2d. Sess. 320-21 (1867); Senate 3 Hinds’ Precedents § 2400, at 824. The resolution conferred upon the committee the “power to send for persons, papers, and records.” 7 Annals of Cong. 463-64, 466; 3 Hinds’ Precedents § 2297, at 648. As we discuss in this section, we have identified dozens of other instances where the House referred proposed articles of impeachment, author- ized formal impeachment investigations.

Against this weighty historical record, which involves nearly 100 authorized impeach- ment investigations, the outliers are few and far between. In 1787, it appears that the House committee, which was expressly au- thorized to conduct an oversight investiga- tion into the administration of the U.S. con- stable in Shanghai, ultimately investigated and recommended that the former consul- general of France be impeached. In addition, between 1866 and 1869, the Judiciary Committee considered the impeachment of three federal judges who had been convicted (two of whom had been convicted). The Judiciary Com- mittee’s report did not require a full House vote, and issued sub- poenas in two of those inquiries. Since then, however, the Judiciary Committee re- affirmed during the impeachment of Presi- dent Clinton and endorsed the need for an im- peachment investigation, it needed an ex- press delegation of investigative authority from the House. And in all subsequent cases the House has approved the House practice of authorizing each impeachment investigation.

The U.S. District Court for the District of Columbia recently reviewed a handful of his- torical examples and concluded that House committees may conduct impeachment in- vestigations without a vote of the full House. See In re Application, the Committee on the Judiciary, 2019 WL 5485221, at *26-28. Yet, as the discussion below confirms, the district court misread the lessons of history. The district court recognized that the House Committees on Judicial Edu- cation and the House Committee on Oversight and Government Reform, together with the Committee on Government Operations, authorized the subcommittee to conduct the House’s investigation. See Cong. Globe, 40th Cong., 2d Sess. 784-85, 1087 (1868); 3 Hinds’ Precedents § 2408, at 816.

On February 21, 1968, the impeachment ef- fort received new impetus when Johnson re- moved the Secretary of War without the
Senate’s approval, contrary to the terms of the Tenure of Office Act, which Johnson (correctly) held to be an unconstitutional limit on his authority. See Cong. Globe, 40th Cong., 2d Sess., § 2204 (1868); 3 Hinds’ Prece-
dents §2409–09, at 845–47; see also Myers v. United States, 272 U.S. 52, 176 (1926) (finding that provision of the Tenure of Office Act “was arbitrary, and in derogation of the Constitution,” id.) (footnotes omitted). The Reconstruction reported an impeachment resolution to the House, which was debated on February 22 and passed on February 24. Cong. Gage, 25th Cong., 1st Sess., 70 (1868); 3 Hinds’ Prece-
dents §§2409–12, at 846–51.

The impeachment investigation of President Nixon under Resolution 803, introduced in support of President Nixon’s impeachment earlier in 1973, the House’s formal impeachment inquiry arose in the months following the August 8, 1973, speech during which President Nixon caused the termination of Special Prosecutor Archibald Cox at the cost of the resignations of his At-
torney General and Deputy Attorney Gen-
eral. See Letter Directing the Acting Attor-

Richard Nixon 891 (1973). Immediately there-
after, House members introduced resolutions calling for the removal of President Nixon’s powers for the opening of an investigation.22

The Speaker of the House referred the resolu-
tions calling for an investigation to the Rules Committee. A majority of those cases called for impeachment to the Judiciary Committee. See Office of Legal Counsel, U.S. Dep’t of Jus-
tice, Legal Aspects of Impeachment: An Over-
view at 40 (Feb. 1974) (“Legal Aspects of im-

Following the referrals, the Judiciary Com-
mittee began “an inquiry into whether Presi-
dent Nixon ha[d] committed any offenses that could lead to impeachment,” an exercise that the committee considered “pre-
liminary.” Richard L. Madden, Democrats Agree on House Inquiry into Nixon’s Acts, N.Y.
Times, Oct. 23, 1973, at 1. The committee started “publically available materials,” and Chairman Peter Rodino Jr. stated that he would set up a separate committee to “collate investigative files from Sen-
ate and House committees that have exam-
ined a number of matters, to form a basis for an impeachment to the Judiciary Committee.” James M. Naughton, Ro-
dino Vows Fair Impeachment Inquiry, N.Y. Times, Jan. 8, 1974, at 14; 3 Deschler’s Prece-

Although the committee “adopted a reso-
lution permitting Mr. Rodino to issue sub-
poenas without the consent of the full com-
mittee,” Rodino, House Starts Inquiry on Impeachment Question, N.Y.
Times, Oct. 31, 1973, at 1, no subpoenas were ever issued under that purported author-
ity. Instead, the committee delayed acting on the impeachment resolutions, James M. Naughton, House Unit Looks to Impeachment, N.Y.
Times, Dec. 2, 1973, at 54. By late De-
cember, the committee had hired a sub-
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Times, Dec. 21, 1973, at 20. The staff continued “wading through the mass of material al-
ready made public,” and the committee’s members began considering “the areas in which the inquiry should go.” Bill Kovach, Vote Would Go for or Against Impeachment, N.Y.
Times, Jan. 8, 1974, at 14; see also Staff of the H. Comm. on the Judiciary, H. Res. 803, Cong. Rep. on Work of the Impeachment Inquiry 5 (Feb. 5, 1974) (noting that the staff was “first col-
lecting and sifting the evidence available in the public domain,” then “marshaling and digesting this available material in preparing governmental investigations”). By Jan-
uary 1974, the committee’s actions had con-
sisted of digesting publicly available docu-
ments and prior impeachment precedents. That was consistent with the committee’s “only mandate,” which was to “study more thoroughly the question of impeachment sub-
mitted” in 1973. James M. Naughton, Im-
peachment Panel Seeks House Mandate for In-

In January 1974, the committee determined that a formal investigation was necessary, and it requested “an official House mandate to conduct the inquiry,” relying on the “precedent in each of the earlier [impeach-
ment] inquiries.” Id. at 17. On January 7, Chairman Rodino announced that the Com-
mittee’s subpoena power does not now extend to impeachment proceedings, saying that it was based on its charge of “study more thoroughly the question of impeachment sub-
mitted” in 1973. Rodino described the resolution as a “necessary step” to confer the House’s investigative powers on the Judiciary with the investigatory and subpena power to conduct the impeachment investigation.” 3 Deschler’s Prece-

Speaking on the House floor, Chairman Ro-
dino described the resolution as a “necessary step” to confer the House’s investigative powers on the Judiciary Committee. We have reached the point where it is im-
portant that the American people understand the gravity of this mandate and clearly confirm our responsibility under the Constitution. We are asking the House of Representa-
tives, by this resolution, to authorize and di-
rect the Committee on the Judiciary to in-
vestigate the conduct of the President of the United States. . . .

As part of this resolution, we are asking the House to give the Judiciary Committee the power of subpoena in its investigations. Such a resolution has always been passed by the House. . . . It is a necessary step if we are to meet our obligations. . . .

The sole power of impeachment carries with it the power and com-
plete investigation of whether sufficient ground for impeachment exist or do not exist, and by this resolution these investigative powers are given the full extent upon the Committee on the Judiciary. 120 Cong. Rec. 2350–51 (1974) (emphasis added). During the debate, others recognized that the resolution would delegate the House’s investigative powers to the Judici-
ary Committee. See, e.g., id. at 2361 (state-
ment of Rep. Rostenkowski) (“By delegating to the Judiciary Committee the powers con-
ained in this resolution, we will be pro-
viding that committee with the resources it needs to inform the whole House of the facts.”)

resentatives that he had uncovered substan-
tial and credible information that he be-
lieved could constitute grounds for the im-
peachment of President Clinton. 18 Deschler’s Prece-
dents app. at 548–49 (2013). Two days later, the House adopted a resolution that referred the matter, along with Starr’s re-
port and 36 boxes of evidence, to the Judici-
ary Committee. H.R. Res. 525, 105th Cong.

(1998). The House directed that committee to “inves-
tigate fully and completely whether suf-
cient ground exists for the House of Repre-
sentatives to exercise its constitutional power to impeach Richard M. Nixon, Presi-
dent of the United States of America.” H.R.
Res. 803, 93d Cong. § 1. The resolution specifi-
cally authorized the committee “to require . . . subpoena persons and documents with regard to the impeachment inquiry.” Legal Aspects of Impeachment 43; see also Richard L. Lyons,
G.O.P. Picks Jenner as Counsel, Wash. Post, Jan.
8, 1974, at A1, A6 (“Rodino said the com-
mittee will ask the House when it recon-
venses Jan. 21 to give it power to subpoena persons and documents for the inquiry. The committee’s subpoena power does not now extend to impeachment proceedings, saying that it was based on its charge of “study more thoroughly the question of impeachment sub-
mitted” in 1973. James M. Naughton, Im-
peachment Panel Seeks House Mandate for In-
rimary, N.Y. Times, Jan. 25, 1974, at 17. On January 7, Chairman Rodino announced that the Com-
mittee’s subpoena power does not now extend to impeachment proceedings, saying that it was based on its charge of “study more thoroughly the question of impeachment sub-
mitted” in 1973. Rodino described the resolution as a “necessary step” to confer the House’s investigative powers on the Judiciary with the investigatory and subpena power to conduct the impeachment investigation.” 3 Deschler’s Prece-

Following the referrals, the Judiciary Com-
mittee began “an inquiry into whether Presi-
dent Nixon ha[d] committed any offenses that could lead to impeachment,” an exercise that the committee considered “pre-
liminary.” Richard L. Madden, Democrats Agree on House Inquiry into Nixon’s Acts, N.Y.
Times, Oct. 23, 1973, at 1. The committee started “publically available materials,” and Chairman Peter Rodino Jr. stated that he would set up a separate committee to “collate investigative files from Sen-
ate and House committees that have exam-
ined a number of matters, to form a basis for an impeachment to the Judiciary Committee.” James M. Naughton, Ro-
dino Vows Fair Impeachment Inquiry, N.Y. Times, Jan. 8, 1974, at 14; 3 Deschler’s Prece-

Although the committee “adopted a reso-
lution permitting Mr. Rodino to issue sub-
poenas without the consent of the full com-
mittee,” Rodino, House Starts Inquiry on Impeachment Question, N.Y.
Times, Oct. 31, 1973, at 1, no subpoenas were ever issued under that purported author-
ity. Instead, the committee delayed acting on the impeachment resolutions, James M. Naughton, House Unit Looks to Impeachment, N.Y.
Times, Dec. 2, 1973, at 54. By late De-
cember, the committee had hired a sub-
poena team. A Hard-Working Legal Adviser: John Michael Doar, N.Y.
Times, Dec. 21, 1973, at 20. The staff continued “wading through the mass of material al-
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Times, Jan. 8, 1974, at 14; see also Staff of the H. Comm. on the Judiciary, H. Res. 803, Cong. Rep. on Work of the Impeachment Inquiry 5 (Feb. 5, 1974) (noting that the staff was “first col-
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In a resolution precedent, the district court in *In re Application of the Committee on the Judiciary* treated the D.C. Circuit’s approval of the disclosure of Starr’s report as an evidentiary impeachment investigation as evidence that the Judiciary Committee may “commence an impeachment investigation” without a House vote. 2019 WL 5485221, at *27. But the D.C. Circuit did not authorize that disclosure because of any pending House investigation. It did so because a statutory provision required an independent counsel. House of Representatives resolutions of any substantial and credible information which such independent counsel receives . . . that may constitute grounds for an impeachment.” 28 U.S.C. § 595(c) (emphasis added). And the D.C. Circuit viewed the report as reflecting “information of the type described in 28 U.S.C. § 595(c).” *In re Madison Guar.* 524 F.3d 44, 56 (D.C. Cir. Spec. Div. July 7, 1998), reprinted in H.R. Doc. No. 105–331, pt. 1, at 10 (1998). The order authorizing the transmission of that information did not imply that the committee was conducting an impeachment investigation. To the contrary, after the House had received information “no person had access to” it until after the House adopted a resolution referring the matter to the Judiciary Committee. H.R. Rep. No. 195–796, at 5. And the House then adopted a second resolution (Resolution 381) to authorize a formal investigation. In other words, the House voted to authorize the Judiciary Committee to conduct an impeachment investigation. Neither the D.C. Circuit nor the Judiciary Committee suggested that any committee could have taken such action on its own.

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

For example, in March 1867, the House approved a resolution directing the Committee on Public Expenditures “to inquire into the conduct of Henry A. Smythe, collector of the port of New York.” Cong. Globe, 40th Cong., 1st Sess. 2, 203 (1867). See also id. at 199 (noting that the resolution had been modified following debate “so as to leave out that part about bringing articles of impeachment”). Weeks later, the House voted to authorize an impeachment investigation. Id. at 290 (authorizing the investigating committee to “send for persons and papers”). The House followed this same procedure in 1916 for U.S. Attorney General William E. Belknapp (who was then Secretary of War) in the course of another investigation, the House approved a resolution charging that the Committee had the responsibility to “prepare and report without unnecessary delay suitable articles of impeachment.” 4 Cong. Rec. 1425, 1433 (1876).

It was only when a committee determined that additional investigation was warranted, and it asked to be authorized “to take further steps” and “hold further depositions” that the House adopted a resolution authorizing the Committee to begin an impeachment inquiry. For example, in 1876, the committee determined that additional investigation was warranted, and the House approved a resolution authorizing the Committee to begin an impeachment investigation. Id. at 1541, 1566; see also 3 Hinds’ Precedents §§2444–45, at 902–04.

In some cases, the House declined to authorize a committee to investigate impeachment with the aid of compulsory process. In 1873, the House authorized the Judiciary Committee “to inquire whether anything” in testimony presented to a different committee implicating Vice President Schuyler Colfax “warrants articles of impeachment of any officer of the United States not a member of this House, or makes it proper that further investigation should be ordered in this case.” Cong. Globe, 40th Cong., 2d Sess. 1545 (1873); see 3 Hinds’ Precedents §2510, at 1016–17. No further investigation was authorized. A similar sequence occurred in 1917 in the case of an impeachment resolution offered against members of the Federal Reserve Board. See 54 Cong. Rec. 3126–30 (1917) (impeachment resolution); H.R. Rep. No. 64–1564, at 2 (1918). Following the referral of the impeachment resolution, the Committee had reviewed available information and determined that no further proceedings were warranted. In 1912, the House referred to the Judiciary Committee a resolution calling for the investigation of the possible impeachment of Secretary of the Treasury Andrew Mellon. H.R. Res. 92, 72nd Cong. (1932); see also 3 Deschler’s Precedents ch. 14, §14.1, at 2134–39. The following month, the Committee filed an opposition to the House’s authorization of continuing any investigation of the charges. 75 Cong. Rec. 3850 (1932); see also 3 Deschler’s Precedents ch. 14, §14.2, at 2139–40.

While the House in 1917 had authorized the committee to investigate impeachment, the House then adopted a resolution appointing a select committee “to inquire into the official conduct” of Chase and Peters and “to report” the committee’s “opinion whether either or both of the judges had possessed a judicial capacity, as to require the interposition of the constitutional power of this House.” 13 Annals of Cong. 850, 875–76 (1804); see 3 Deschler’s Precedents §2344, at 712. The House then referred to the Judiciary Committee the case of an impeachment resolution of—officer of the United States not a member of this House, or makes it proper that further investigation should be ordered in this case.” Cong. Globe, 40th Cong., 2d Sess. 1545 (1873); see 3 Hinds’ Precedents §2510, at 1016–17. No further investigation was authorized. A similar sequence occurred in 1917 in the case of an impeachment resolution offered against members of the Federal Reserve Board. See 54 Cong. Rec. 3126–30 (1917) (impeachment resolution); H.R. Rep. No. 64–1564, at 2 (1918). Following the referral of the impeachment resolution, the Committee had reviewed available information and determined that no further proceedings were warranted. In 1912, the House referred to the Judiciary Committee a resolution calling for the investigation of the possible impeachment of Secretary of the Treasury Andrew Mellon. H.R. Res. 92, 72nd Cong. (1932); see also 3 Deschler’s Precedents ch. 14, §14.1, at 2134–39. The following month, the Committee filed an opposition to the House’s authorization of continuing any investigation of the charges. 75 Cong. Rec. 3850 (1932); see also 3 Deschler’s Precedents ch. 14, §14.2, at 2139–40.

Moore’s Notes. In the 114th Congress, the House referred the Judiciary Committee resolutions concerning the impeachment of the Commissioner of the Internal Revenue Service, J. Koskinen. 114th Cong. (2015); H.R. Res. 828, 114th Cong. (2016). Shortly after an attempt to force a floor vote on one of the resolutions, Koskinen voluntarily appeared before the Committee “to inquire into the official conduct” of Chase and Peters and “to report” the committee’s “opinion whether either or both of the judges had possessed a judicial capacity, as to require the interposition of the constitutional power of this House.” 13 Annals of Cong. 850, 875–76 (1804); see 3 Deschler’s Precedents §2344, at 712. The House then referred to the Judiciary Committee the case of an impeachment resolution of

Without providing any investigative authority. See 162 Cong. Rec. H7251–54 (daily ed. Dec. 6, 2016). The committee never sought to compel the appearance of Koskinen or any other witness. The Committee’s impeachment investigations have been authorized by a specific resolution conferring subpoena power: Labovitz, *Presidential Impeachment* at 1564–66. In view of the history, we have identified one case from that era where a House committee commenced a legislative oversight investigation and authorized its own separate authority, to consider impeachment.23 But the overwhelming historical practice to the contrary confirms the Judiciary Committee’s well-considered conclusions in 1974 and 1998 that a committee requires specific authorization from the House before it may use compulsory process to investigate for impeachment purposes.

3. The House has followed the same practice in connection with nearly all impeachment investigations involving judges. As described above, committees sometimes studied initial referrals, but they waited for authorization from the full House before conducting any formal impeachment investigation. In the late 1980s departed from that pattern, but the House has returned during the past three decades to the practice here described, repeatedly ensuring that the Judiciary Committee had a proper delegation for each impeachment investigation.

Most recently, in the 114th Congress, the House authorize each specific impeachment inquiry is reflected in the earliest impeachment investigations involving judges. In 1864, the House considered proposals to impeach two judges: Samuel Chase, an associate justice of the Supreme Court, and Richard Peters, a district judge. See 3 Hinds’ Precedents §2342, at 711–16. There was a “lengthy debate” about whether the evidence was appropriate to warrant the institution of an inquiry, Id. at 712. The House then adopted a resolution appointing a select committee “to inquire into the official conduct” of Chase and Peters and “to report” the committee’s “opinion whether either or both of the judges had possessed a judicial capacity, as to require the interposition of the constitutional power of this House.” 13 Annals of Cong. 850, 875–76 (1804); see 3 Deschler’s Precedents §2344, at 712. The House then referred to the Judiciary Committee the case of an impeachment resolution of

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appointment of a committee “to inquire into the propriety of impeaching.” Id. at 984; see 18 Annals of Cong. 2069 (1889). The House then passed a resolution forming a committee to conduct an inquiry, which included “power to send for persons, papers, and records” but, like most inquiries to follow, did not result in impeachment. 18 Annals of Cong. at 2189; 3 Hinds’ Precedents §2319, at 1023. In order to “cure” that “defect,” the committee reported a provision to the floor of the House that would grant the committee “power to call for such persons, papers, and records as part of the impeachment investigation. 2 Cong. Rec. at 3438. The House promptly agreed to the resolution, enabling the committee to “examine” the witnesses that day.

In other cases, however, no full investigation occurred. In 1800, Judiciary Committee, a district judge, was impeached, but the House voted to impeach him without conducting any investigation at all, relying instead upon documents supplied by President Jefferson. See 3 Hinds’ Precedents §2319, at 681–82; see also Lynn W. Turner, The Impeachment of John Pickering, 54 Am. Hist. Rev. 279, 280 (1949). The House did not authorize only a preliminary inquiry to determine whether an investigation would be warranted. In 1908, for instance, the House asked the Judiciary Committee to consider proposed articles impeaching Judge Lebbeus Willey of the U.S. Court for China. In the ensuing hearing, the Representative who had introduced the resolution acknowledged that the committee was not “authorized to sub poena witnesses” and had been authorized to conduct only “a preliminary examination, which I think the House respectfully hold by the House,” but was instead dedicated solely to determining “whether you believe it is a case that ought to be investigated.” Id. at 2151–54; see also Labovitz, Presidential Impeachment at 182 n.18 (noting that “[t]he Douglas inquiry was the first impeachment investigation in twenty-five years, and deviation from the older procedural pattern was not surprising”). Yet, the subcommittee did not resort to any compulsory process during its inquiry, and it did not recommend impeachment. 3 Deschler’s Precedents ch. 14, §§14.15–14.16, at 2158–63. Accordingly, the committee did not actually exercise any of the impeachment powers.

In the late 1980s, the House Judiciary Committee considered the impeachment of three district-court judges without any express authority to conduct a formal investigation. House Resolution 105, 102d Cong. (1992). The Committee voted to issue a subpoena to the district-court judge, Alceste Hastings, and Harry Claiborne. See In re Application of the Comm. on the Judiciary, 1992 WL 5845221, at *26 (discussing these investigations). All three judges had been criminally prosecuted, and two had been convicted. See H.R. Rep. No. 101–36, at 12–13 (1989) (describing Hastings and G. Thomas Porteous conviction); H.R. Rep. No. 101–810, at 7–9, 29–31, 38–39 (1988) (describing Claiborne’s indictment and trial and the subsequent decision not to bring an impeachment proceeding in lieu of another prosecution); H.R. Rep. No. 99–688, at 9, 17–20 (1986) (describing Clauborne’s prosecution and conviction). In the Claiborne inquiry, the House did not appear to have issued any subpoenas. See H.R. Rep. No. 99–688, at 4 (noting that the House’s inquiry was “part of the Committee’s investigation of the matter,” and not “an inquiry to secure evidence necessary to act on impeachment,” or to secure evidence of “witnesses,” who apparently cooperated to the Committee’s satisfaction). The committee did issue subpoenas in the Nixon and Hastings investigations, yet no witness appears to have objected on the ground that the committee lacked jurisdiction to issue the subpoenas, and at least one witness appears to have requested a subpoena.29 In those two cases, though, the Judiciary Committee effectively compelled production without any explicit authorization from the House.30

In the years after these outliers, the Judiciary Committee returned to the practice of seeking specific authorization from the House before conducting impeachment investigations. Most notably, as discussed above, the Judiciary Committee “decided that it must issue a full House resolution before proceeding” with an impeachment investigation of President Clinton. H.R. Rep. No. 105–795, at 24 (emphasis added). And the House has used the same practice with respect to federal judges.31 Thus, in 2008, the House adopted a resolution authorizing the Judiciary Committee to investigate the impeachment of Judge Richard Posner, Jr., including the grant of subpoena authority. See H.R. Rep. No. 111–427, at 7 (2010); H.R. Res. 1448, 110th Cong. (2008); 154 Cong. Rec. 19502 (2008). After the Congress expired, the House in the next Congress adopted a new resolution re-authorizing the inquiry, again with subpoena authority. See H.R. Res. 15, 111th Cong. (2009); 155 Cong. Rec. 998, 971 (2009). Several months later, another district judge, Samuel Kent, pleaded guilty to obstruction of justice and was sentenced to 35 months in prison. See 179 Cong. Rec. S371, S479, 99th Cong. (1986). The resolution authorizing a congressional investigation of Judge Kent’s conduct was adopted mostly as a matter of practice. See 179 Cong. Rec. XII, ch. 14, at 2152–54 (1983).32 The most obvious conclusion to draw from this silence is that the current House, like its predecessors, retains impeachment authority at the level of the full House, subject to potential delegations in resolutions tailored for that purpose.

The standing committees of the House trace their general subpoena powers back to the House Rules, which the 118th Congress adopted by formal resolution. See H.R. Res. 6, 118th Cong. (2023). The House has more than 60,000 words, but they do not include the word “impeachment.” The Rules’ silence on that topic is particularly notable because the Rules have adopted specific “Rules of Procedure and Practice” for impeachment trials. S. Res. 479, 99th Cong. (1986). The most obvious conclusion to draw from that silence is that the current House, like its predecessors, retains impeachment authority at the level of the full House, subject to potential delegations in resolutions tailored for that purpose.

Rule XI of the Rules of the House affirms that the Standing Committees are empowered “to issue subpoenas,” but only for matters within their legislative jurisdiction. The provision has been a part of the House Rules since 1975. See H.R. Res. 988, 99th Cong. §301 (1975). Clause 2(m)(1) of Rule X vests each committee with the authority to issue subpoenas “[f]or the purpose of carrying out any of its functions and duties under this rule and rule X (including any matters referred to it under clause 2 of rule XII).” Rule XI, cl. 2(m)(1); see also Rule X, cl. 1(d)(1) (making clause 2 of Rule X applicable to House Rules). The committees therefore have subpoena power to carry out their authorities under three rules: Rule X, Rule XI, and clause 2 of Rule XII. The Standing Committee on Ethics does not possess impeachment authority by way of a specific delegated power by the House. The Standing Committees have legislative authority to conduct their own investigations. The Rules vest the Standing Committees with jurisdiction over impeachment. Rule X establishes the “standing committees” of

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the House and vests them with “their legislative jurisdictions.” Rule X, cl. 1. The jurisdiction of each committee varies in subject matter and scope. While the Committee on Ethics has jurisdiction over “[t]he Code of Official Conduct” (Rule X, cl. 1(g)), the jurisdiction of the Foreign Affairs Committee spans seventeen subjects, including “direction of the United States’ relations with foreign nations generally,” “[i]ntervention abroad and declarations of war,” and “[t]he American National Red Cross.” (Rule X, cl. 1(b)). The rule likewise spells out the jurisdiction of the Committee on Oversight and Reform (Rule X, cl. 1(b)).

Clause 11 of Rule X establishes HPSCI and vests it with jurisdiction over “[t]he Central Intelligence Agency, the Defense Intelligence Agency, the National Reconnaissance Office, the National Geospatial-Intelligence Agency, and the National Intelligence Program” and over “[t]he intelligence and intelligence-related activities of all other departments and agencies.” Rule X, cl. 11(a)(1), (b)(1)(A)–(B).

The text of Rule X confirms that it addresses the legislative jurisdiction of the standing committees, not the separate powers of impeachment. See supra Part II.A. Clause 3 of Rule X further articulates “[s]pecial oversight functions” with respect to particular subject-matter committees: for example, the Committee on Foreign Affairs “shall review and study on a continuing basis laws, programs, and Government activities relating to foreign policy,” Rule X, cl. 3(f). And clause 4 addresses “[a]dditional functions of committees,” including functions related to the review of appropriations and the special authorities of the Committee on Oversight and Reform, Rule X, cl. 4(a)(1), (c)(1). But none of the “[s]pecial oversight” or “[a]dditional” functions specified in clauses 3 and 4 includes any reference to the House’s impeachment power. The text of Rule X establishes HPSCI and is not given “[g]eneral oversight responsibilities” in clause 2. But clause 3 gives it the “[s]pecial oversight functions” of “review[ing] and study[ing] on a continuing basis laws, programs, and activities of the intelligence community” and of “[m]onitor[ing] and study[ing] available sources and methods of specified entities that engage in intelligence activities. Rule X, cl. 3(m). And clause 11 further provides that “[a]ny standing or special committee of a House standing committee or subcommittee” may conduct “any investigations in connection with foreign intelligence activities” and “subpoena evidence for the purpose of determining whether to recommend that the House open a formal impeachment investigation.”

Accordingly, when those subpoenas were issued, the House had established and whether they have been followed. Christofle v. United States, 338 U.S. 88, 89 (1949); see also Yellin v. United States, 374 U.S. 109, 121 (1963) (stating that the House’s resolution “has established and whether they have been followed.”). The House has established and whether they have been followed. Christofle v. United States, 338 U.S. 88, 89 (1949); see also Yellin v. United States, 374 U.S. 109, 121 (1963) (stating that the House’s resolution “has established and whether they have been followed.”).
the question presented is of necessity a judicial one."). Statements by the Speaker or by committee chairmen are not statements of the House itself. Cf. Noel Canning, 573 U.S. at 552–553. Proceedings and rules of the Senate itself, as reflected in the Journal of the Senate and the Congressional Record, to determine when the Senate was "in session" pursuant to the regular sessions, is nothing more, and nothing less, than the rules and resolutions that had been adopted by a majority vote of the full House.

The provisions determined whether the House had delegated the necessary authority. See id. at 552 ("Our definition of the Senate cannot be absolute. When it is to be considered in regular session, or not, is determined by its own rules, and is not in session even if it so declares."). Thus, the Supreme Court has repeatedly made clear that a target of the House’s compulsory process may question whether a House resolution has actually conferred the necessary powers upon a committee, because the committee’s "right to exact testimony and to call for the production of documents must be found in [the resolution’s] language." Rumely, 345 U.S. at 44; see also Watkins, 345 U.S. at 201. In Rumely, the Court decided that the House had confirmed the committee’s jurisdiction by adopting a resolution that authorized the use of compulsory process after the fact. As the Court explained, what was said was "after the controversy had arisen regarding the scope of the resolution...had the usual infirmity of post mortem, self-serving declarations." Id. at 48. In other words, even a vote of the full House could not "enlarge[] a committee’s authority after the fact for purposes of finding that a witness had failed to comply with the obligations imposed by the subpoena.

Here, the House committees claiming to investigate the President issued subpoenas before they had received any actual delegation of impeachment-related authority from the House. Before October 31, the committees relied solely upon statements of the Speaker, the committee chairmen, and the Judiciary Committee, all of which merely asserted that one or more House committees had already been conducting a formal impeachment inquiry. There was, however, no House resolution actually delegating such authority to any committee, let alone one that could be said to "authorize[] the committees to compel witnesses to respond. Watkins, 354 U.S. at 201; cf. Gojack v. United States, 384 U.S. 702, 716-17 (1966). At the opening of this Congress, the House had granted investigatory authority over impeachment upon any committee, and therefore, no House committee had authority to compel the production of documents or testimony in furtherance of an impeachment inquiry that it was not authorized to conduct.

B.

Lacking a delegation from the House, the committees could not compel the production of documents or the testimony of witnesses for purposes of an impeachment inquiry. Because the first impeachment-related subpoenas, issued before October 31, subordinated the Foreign Affairs Committee—rested entirely upon the purported impeachment inquiry, see Three Chairmen’s Letter, supra note 2, at 1, it was understood that the House had authorized the committees to compel witnesses to respond. Watkins, 354 U.S. at 44. Perhaps recognizing this infirmity, the committee chairmen invoked not merely the impeachment inquiry in connection with the earlier subpoenas but also the committees’ "oversight and legislative jurisdiction." See supra note 9 and accompanying text. That assertion of investigatory power over the committees could leverage their oversight jurisdiction to require the production of documents and testimony that the committees avowedly intended to use for an unauthorized impeachment inquiry. We advised that, under the circumstances of these subpoenas, the committees could not do so.

Any congressional inquiry “must be related to and serve a legitimate legislative purpose.” Watkins, 354 U.S. at 187. The Executive Branch need not presume that such a purpose exists or accept a ‘make-work’ determination of legislative jurisdiction. Mazaris USA, 940 F.3d at 725–26, 277; see also Shelton v. United States, 404 F.2d 1292, 1297 (D.C. Cir. 1968) ("in deciding whether the purpose of a particular inquiry is legitimate, the mere assertion of a need to consider ‘remedial legislation’ may not alone justify an investigation accompanied with compulsory process."). Ratification from a committee chairman may not prevent the Executive from confirming the legitimacy of an investigative request. “Congressional Committee’s Request for the President’s Tax Returns Under 26 U.S.C. §6103(f), 43 Op. O.L.C., at *20 (June 13, 2019). To the contrary, “a threshold inquiry that should be made upon receipt of request is, ‘whether any pending investigation is as to which any information is whether the request is supported by any legitimate legislative purpose.’” Response to Congres sional Requests for Confidential Executive Branch Information, 133 Cong. Rec. S150, 159 (1989) (recognizing that the constitutionally mandated accommodation process ‘‘requires that each branch explain to the other what it believes its needs to be legitimate’’). Here, the committee chairmen made clear upon issuing the subpoenas that the committees were interested in the requested materials to support the potential impeachment of the President, not to uncover information necessary for potential legislation within their respective areas of legislative jurisdiction. In marked contrast with routine oversight, each of the subpoenas was accompanied by a letter signed by the chairs of three different committees, who transmitted a subpoena “[p]ursuant to the House of Representatives’ impeachment inquiry” and recited that the documents would “be collected as part of the House’s impeachment inquiry and that they would be ‘shared among the Committees, as well as with the Committee on the Judiciary as appropriate’.” Id. supra note 2, and accompanying text. Apart from their token invocation of “oversight and legislative jurisdiction,” the letters offered no hint of any legislative purpose. The committee chairmen were therefore seeking to do precisely what they said—compel the production of information to further an impeachment inquiry.

In reaching this conclusion, we do not foreclose the possibility that the Foreign Affairs Committee or the other committees could have issued similar subpoenas in the bona fide exercise of their legislative oversight jurisdiction, in which event the requests would have been evaluated consistent with the long-standing confidentiality interests of the Executive Branch. See Watkins, 354 U.S. at 187 (recognizing that Congress’s general investigative authority “comprehends probes into departments of the Federal Government to exact information, check efficiency or waste”); McGrain, 273 U.S. at 179–80 (observing that it is not “a valid objection to the investigation that it might possibly disclose crime or wrongdoing (general’s part”). Should the Foreign Affairs Committee, or another committee, articulate a legitimate oversight purpose for a future investigation, the Committee on the Judiciary would assess that request as part of the constitutionally required accommodation process. But the Executive Branch was not confronted with that situation. The committee chairmen unequivocally attempted to conduct an impeachment inquiry into the President. The Executive Branch’s understanding was that the “sole Power of Impeachment,” having authorized such an investigation. Absent such an authorization, the committee chairmen’s "determination of[‘]oversight and legislative jurisdiction’” did not cure that fundamental defect.

We next address whether the House ratified any of the previous committee subpoenas when it adopted Resolution 660 on October 31, 2019—after weeks of objections from the Committee on the Judiciary to the House’s actions, and a pair of Court opinions to the committees’ efforts to conduct an unauthorized impeachment inquiry. Resolution 660 provides that six committees of the House “are directed to continue their ongoing investigations as part of the existing House of Representatives inquiry into whether sufficient grounds exist for the House of Representatives to exercise its Constitutional power to impeach Donald John Trump, President of the United States of America.” Resolution 660, § 1. The resolution is directed at the committees by which HPSCI and the Judiciary Committee may conduct hearings in connection with the investigation defined by that resolution. It does not refer to the committees’ past actions or seek to ratify any subpoenas previously issued by the House committees. See Trump v. Mazars USA, LLP, 941 F.3d 1392 (D.C. Cir. 2019) (Rosen, dissenting from the denial of rehearing en banc); see also Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context, 43 Op. O.L.C. at *1 (Nov. 1, 2019). The resolution “direct[s]” HPSCI and other committees to “continue” their investigations, and the Rules Committee apparently endorsed, incorporated, or otherwise validated, that earlier subpoenas were legally valid. See H.R. Rep. No. 116–266, at 3 (“All subpoenas to the Executive Branch remain in full force.”). But the resolution’s operative language does not address any previously issued subpoenas or provide the imprimatur of the House to give those subpoenas legal force.

And the House knows how to ratify existing subpoenas when it chooses to do so. On July 24, 2019, the House adopted a resolution that expressly “ratif[ied] and affirm[ed] all current and future investigations, as well as all subpoenas previously issued” or to be issued in the future,” related to certain enumerated subjects, within the standing or select committees of the House “as established by the Constitution of the United States and rules X and XI of the Rules of the House of Representatives.” H.R. Res. 507, 116th Cong. § 1 (2019) (emphasis added). There, as here, the House acted in response to questions regarding “the validity of... (committee) investigations.” Id. In contrast, despite that recent model, Resolution 660 contains no comparable language seeking to ratify previously issued subpoenas. The resolution directs committees to “continue” investigations, and it specifies procedures to govern future hearings, but nothing in the resolution looks backward to authorize previously taken subpoenas. Resolution 660 did not ratify or otherwise authorize the impeachment-related subpoenas issued before October 31, which therefore still lack any compulsory effect on their recipients.

IV.

Finally, we address some of the consequences that followed from our conclusion that the impeachment-related subpoenas were unauthorized. First, because the subpoenas exceeded...
the committees' investigative authority and lacked compulsory power, the committees were mistaken in contending that the recipients' "failure or refusal to comply with the subpoenas constituted evidence of obstruction of the House's impeachment inquiry." Three Chairmen's Letter, supra note 1, at *2. As explained at length above, when the authorities told the House they had no lawful authority to require Kilbourn to testify as a witness beyond what he voluntarily chose to answer questions, the House had not used sufficient "care . . . in authorizing the use of compulsory process" and the committee had not shown that the information was pertinent to a subject within "the mission[] delegated to it by the House"; Rumely, 345 U.S. at 42 (contending that the House was not entitled to compulsory process for contempt of Congress because it was not clear at the time of questioning that "the committee was authorized to exact the information [the witness was withholding]"); Kilbourn, 103 U.S. at 196 (sustaining action brought by witness for false imprisonment because the witness had "no lawful authority" to require Kilbourn to testify); Lamon, 18 F.R.D. at 31 (dismissing indictment for contempt of Congress in part because the indictment did not sufficiently allege, among other things, "that the [Permanent Subcommittee on Investigations] . . . without authorization of either House of Congress to conduct the particular inquiry" or "that the inquiry was within the scope of the authority granted to the [subcommittee]");. That alone suffices to prevent noncompliance with the subpoenas from constituting "obstruction of the House's impeachment inquiry." Second, we note that whether or not the impeachment inquiry was authorized, there were other, independent grounds to support directions by the Executive Branch that witnesses not comply with the committees' subpoenas. We recently advised you that absent any authorization from either House of Congress to conduct the particular inquiry or that the inquiry was within the scope of the authority granted to the committees, investigation of the appropriate protection of privileged information during the deposition. See id. at *4-5. In addition, we have concluded that the testimonial immunity of the President's senior political advisers is not implicated by a contempt proceeding initiated before an inquiry just as it applies in a legislative oversight inquiry." Letter for Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel at 2 (Nov. 3, 2019).

Thus, even when the House takes the steps necessary to authorize a committee to investigate and compel the production of needed information, the Executive Branch continues to have legitimate interests to protect. The Constitution does not oblige either branch of government to surrender its prerogatives, but expects that each branch will negotiate in good faith with mutual respect for the needs of the other branch. See United States v. Am. Tel. & Tel. Co., 507 F.2d 121, 127 (D.C. Cir. 1977) ("[E]ach branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation."); see also Memorandum for the Heads of Executive Departments from President Ronald Reagan, Re: Procedures Governing Responses to Congressional Requests for Information (Nov. 4, 1982). The two branches should work to accommodate in the context of the particular requests of an investigating committee that accommodate both the committee's needs and the Executive Branch's interests.

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

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

V.

For the reasons set forth above, we conclude that the House must expressly authorize a committee to conduct an impeachment investigation before it may compel the production of documents or testimony in support of the House's "sole Power of Impeachment." U.S. Const. art. I, §2, cl. 5. The House had not authorized such an investigation in connection with the impeachment inquiry. The resolution authorizing impeachment-related subpoenas issued after October 31, 2019, and the subpoenas therefore had no compulsory effect. The House's adoption of Resolution 660 did not alter the legal status of those subpoenas since the resolution did not ratify them or otherwise address their terms.

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

STEVEN A. ENGEL, Assistant Attorney General.


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

3. Although volume 3 of Deschler's Precedents was published in 1979, our citations of Deschler's Precedents use the continuously paginated version that is available at www.govinfo.gov/collection/precedents-of-the-house/3 chased-1979.

8. While the House has delegated to the Bipartisan Legal Advisory Group the ability to “artifically prolong a formal investigation into the affairs of the House, it has done so only for purposes of “litigation matters.” H.R. Rule II, cl. 8(b). Therefore, neither the group, nor the House counsel that groups such directions, could assert the House’s authority in connection with an impeachment investigation, which is not a litigation matter.

9. See Michael O’Neil, Acting Chief of Staff to the President, from Elijah E. Cummings, Chairman, Committee on Oversight & Reform, U.S. House of Representatives, Permanent Select Committee on Intelligence, U.S. House of Representatives, and Elliot L. Engel, Chairman, Committee on Foreign Affairs, U.S. House of Representatives at 1 (Oct. 4, 2019); Letter for Mark T. Esper, Secretary of Defense, from Adam Schiff, Chairman, Permanent Select Committee on Intelligence, U.S. House of Representatives, Elliott L. Engel, Chairman, Committee on Foreign Affairs, U.S. House of Representatives, Adam B. Schiff, Permanent Select Committee on Intelligence, U.S. House of Representatives, and Elijah E. Cummings, Chairman, Committee on Oversight & Reform, U.S. House of Representatives, from Kevin G. McCarthy, Majority Leader, U.S. House of Representatives at 1 (Oct. 7, 2019); Letter for Gordon Sondland, U.S. Ambassador to the European Union, from Adam Schiff, Chairman, Permanent Select Committee on Intelligence, U.S. House of Representatives, and Elijah E. Cummings, Chairman, Committee on Oversight & Reform, U.S. House of Representatives, and Elliot L. Engel, Chairman, Committee on Foreign Affairs, U.S. House of Representatives at 1 (Oct. 4, 2019); Letter for James Richard Rick Perry, Secretary of Energy, from Elliot L. Engel, Chairman, Committee on Foreign Affairs, U.S. House of Representatives, Elijah E. Cummings, Chairman, Committee on Oversight & Reform, U.S. House of Representatives, and Jim McGovern, Representative from Massachusetts, at 5–21, Mem. Amicus Curiae of Ranking Member McCarthy, Republican Leader, U.S. House of Representatives, et al., from Pat A. Cipollone, Counsel to the President to the 2-3 (Oct. 8, 2019).

10. Letter for Nancy Pelosi, Speaker, U.S. House of Representatives, et al., from Pat A. Cipollone, Counsel to the President to the 2-3 (Oct. 8, 2019).


12. The House Judiciary Committee permitted President Nixon’s counsel to submit and respond to evidence, to request to call witnesses, to question witnesses and to question witnesses to object to the examination of witnesses, to object to the examination of witnesses to question witnesses. See H.R. Rep. No. 93–1305, at 8–9 (1974); 3 Deschler’s Precedents ch. 14, § 6.5, at 2045–47. Later, President Clinton acknowledged that the Judiciary Committee was invited to attend all executive session and open committee hearings, “at which they were permitted to “cross examine witnesses,” make objections “concerning the pertinent matters and to question witnesses.” See H.R. Rep. No. 95–1590, at 8–9 (1978); 3 Deschler’s Precedents at 548 (2013) (noting that, during the House impeachment investigation, the House made a “deliberate attempt to mirror the precedents and procedures” of the Nixon investigation). In a departure from the Nixon and Clinton precedents, the House committees did not provide President Trump with any right to attend, participate in, or cross-examine witnesses in connection with the impeachment-related subpoenas the House Committees before October 31. Resolution 660 similarly did not provide any such rights with respect to any of the public hearings conducted by HPSAC. The Judiciary Committee had the opportunity to participate in the Judiciary Committee, which did not itself participate in developing the investigative record upon which the articles of impeachment were premised. See H.R. Res. 660, 116th Cong. § 4(a); 165 Cong. Rec. El1357 (daily ed. Oct. 29, 2019) (“Impeachment Investigation Procedures in the Committee on the Judiciary”).

13. In denying the congressional request before him, President Polk suggested, in the equivalent of what would be an impeachment inquiry, “all the archives and papers of the Executive departments, public or private, would be subject to the inspection and control of a committee of their body.” Cong. Globe, 29th Cong., 1st Sess. 698 (1846). That statement, however, dramatically understates the degree to which executive privilege remains available during an impeachment investigation to protect confidentiality interests necessary to preserve the separation of branches. See In re Application of Agency Counsel from Congressional Depositions in the Impeachment Context, 43 Op. O.L.C. , at 3 & n.1 (Nov. 1, 2019). In contrast, the President, in Polk's view, would “ordinarily affect the public interest, except so matters the publication of which might injuriously concern and embarrass the Executive Branch.” Id. (2007). Since 2007, two more judges have been appointed to the House’s impeachment inquiry by declining to comply with the pre-October 31 impeachment-related subpoenas. H.R. Rep. No. 116–346, at 10, 13–16 (2019). But those reports were authorized because the committee misunderstood the historical practice concerning the House’s impeachment inquiries (as we discuss in Part II.C) and they misread the committees’ subpoena authority under the House Rules (as we discuss in Part III.A.).


16. In 1860, the House authorized an investigation into the actions of President Buchanan, but that investigation was not styled as an impeachment investigation. See H.R. Res. 167, 36th Cong. (1860) (resolution establishing a committee of five members to “investigate[] whether the President of the United States, or any other officer of the government, has used or retained any money, or other improper means, sought to influence the action of Congress” or “by combination or otherwise, . . . attempted to influence the action of Congress”). It appears to have been understood by the committee as an oversight investigation. See H.R. Rep. No. 36–648, at 1–28 (1860). However, it was in fact objected to the House’s use of its legislative jurisdiction to circumvent the protections traditionally provided in connection with impeachment. See Message from the President of the United States, James Buchanan (June 22, 1860), reprinted in 5 A Compilation of the Messages and Papers of
the Presidents 625 (James D. Richardson ed., 1897) (objecting that if the House suspects presidential misconduct, it should “transfer the question from [its] legislative to [its] ac- cuatorial powers and take care that all the preliminary judicial proceedings pre- paratory to the vote of articles of impeachment the accused should enjoy the benefit of cross-examination and other safeguards with which the Constitution surrounds every American citizen”); see also Mazer USA, 940 F.3d at 762 (Kao, J., dis- senting) (discussing the episode).

21. The district court’s recent decision in In re Application of the Committee on the Judiciary for a Surprise and Secretary of the Senate’s power to call for an investigation.

22. For example, the Committee on the Judiciary (which the court called “HJC”) began investigating President Johnson’s impeachment without any authorizing resolution. According to the district court, “a resolution authorizing [HJC] to inquire into the official conduct of Andrew Johnson” was passed after HJC was already considering the subject.” 2019 WL 5485221, at *27 (quoting 3 Hinds’ Precedents §2000, at 823). In fact, the committee was “already considering the subject” at the time of the President’s violation. See, e.g., 3 Hinds’ Precedents §2379, at 826 (President's Precedents of the House of Represent- atives pursuant to subpoena in the Nixon investi- gation.

23. A New York Times article the following day characterized House Resolution 803 as “formally ratify[ing] the impeachment inquiry in- itiated by the House Judiciary Committee [the De- tober.” James M. Naughton, House, 410–4, Gives Subpoena Power in Nixon Inquiry, N.Y. Times, Feb. 7, 1974, at 1. But the resolution did not grant after-the-fact authorization for any prior action. To the contrary, the reso- lution “authorized and directed” a future in- vestigation, including by providing subpoena power. In the report recommending adoption of the resolution, the committee likewise de- scribed its plans in the future tense: “It is the intention of the committee that its investi- gation shall proceed pursuant to the resolu- tion on a fair, impartial and bipartisan basis.” H.R. Rep. No. 93–774, at 3 (1974).

24. None of these reso- lutions remained with the committees until they expired at the end of the Congress. Sev- eral merely articulated impeachments. For exam- ple, H.R. Res. 939, 97th Cong. (1976) (certain federal judges); H.R. Res. 101, 99th Cong. (1985) (Chairman of the House Ways and Means Committee, which had been investigating congress, but the Judiciary Committee conducted no further investigation); 6 Cannon’s Precedents §535, at 769 (Renesa Mountain Landis, 1921; the Judiciary Committee reported that “charges were filed too late in the present session of the Congress” to enable investiga- tion); 3 Deschler’s Precedents ch. 14, at 2145–46 (1989) (noting the issuance of “sub- poenas duces tecum” in the investigation of Judge Nixon); 134 Cong. Rec. S3772 (1988) (statement of Rep. Edwards) (explaining the subcommittee’s need to depose some wit- nesses pursuant to subpoena in the Nixon investi- gation); Judge Walter L. Nixon, Jr., Impeachment Inquiry: Hearing Before the Subcomm. on Civil & Constitutional Rights of the Judiciary, 90th Cong., 2d Sess. 606 (1968) (reprinting deposition of Mag- istrate Judge Roper).
30. The House did pass resolutions authorizing funds for investigations with respect to the Hastings impeachment, see H.R. Res. 134, 100th Cong. (1987); H.R. Res. 386, 100th Cong. (1988), authorizing the committee to permit its counsel to take affidavits and depositions in both the Nixon and Hastings impeachments, see H.R. Res. 362, 100th Cong. (1988); H.R. Res. 320, 100th Cong. (1987) (Hastings).

31. In the post-1989 era, as before, most of the impeachment investigations authorized by these that were referred to the Judiciary Committee did not result in any further investigation. See, e.g., H.R. Res. 916, 100th Cong. (2006) (Spygate Resolution of Powers); H.R. Res. 2768, 109th Cong. (2006) (Robert Collins); H.R. Res. 277, 103d Cong. (1993) (Robert Algerii); H.R. Res. 276, 103d Cong. (1993) (Robert Collins).

32. See also see supra note 2, containing similar threats that the recipients’ “failure or refusal to comply with a previously issued subpoena” could give rise to contempt proceedings against the House, would constitute “evidence of obstruction of the House’s impeachment inquiry.”

33. Nor do the Rules otherwise give the Speaker authority to compel the production of documents or testimony in an impeachment investigation.

34. Clause 2(a) of Rule XI was initially adopted on October 18, 1774, and took effect on January 3, 1775. See H.R. Res. 988, 93d Cong. The rule appears to have remained materially unchanged from 1775 to the present (including in the provisions of the Clinton investigation). See H.R. Rule XI, cl. 2(m), 105th Cong. (Jan. 1, 1998) (version in effect during the Clinton investigation); Jefferson’s Manual §865, at 386-89 (reprinting current version and describing the provision’s evolution).

35. At the start of the 93rd Congress in 1973, the Judiciary Committee was “authorized to conduct full and complete studies and investigations and make inquiries within its jurisdiction as set forth in [the relevant provision] of the Rules of the House of Representatives.” As it has traditionally held power to hold hearings and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, papers, and depositions, as it deems necessary. H.R. Res. 74, 93d Cong. §§ 1, 2(a) (1973); see also Cong. Research Serv., R45769, Procedures for Considering Changes in Senate Rules 9 (Jan. 22, 2013). Of course, like the House, the Senate may change its rules by simple resolution.

36. See supra note 2, discussing the Speaker’s authority to determine the scope of any documents or testimony that are to be received as part of the impeachment inquiry, and therefore, the Committee may not compel testimony in connection with the inquiry. Setting aside the question whether the Court has the power to order a presidential advisor to testify about his communications with a previously authorized subpoena. 37. Even if the House had sought to ratify a previously issued subpoena, it could give the subpoena only prospective effect. As discussed above, the Supreme Court has recognized that the House may not cite a witness for contempt for failure to comply with a previously issued subpoena, even without any delegating authority at the time it was issued. See U.S. v. Nixon, 418 U.S. 683, at *522 (1974). See also Mayor of Largo v. Bureau of Internal Revenue, 767 F.3d 1395, 1401 (11th Cir. 2014) (en banc) (recognizing that the House may ratify the issuance of an atypical subpoena, even without any delegating authority).
during the frequent periods when Mr. Bolton was traveling. Mr. Kupperman participated in sensitive internal deliberations with the President and other senior advisers, maintained his connection to the White House, traveled with the President on official trips abroad on multiple occasions, and regularly attended the presentation of the President’s brief and management of the National Security Council presided over by the President.

Mr. Kupperman’s immunity from compelled testimony is strengthened because his duties concerned national security. The Supreme Court held in Harlow v. Fitzgerald, 457 U.S. 800 (1982), that senior presidential advisers do not enjoy absolute immunity from civil liability—a holding that, as we have previously explained, does not conflict with our recognition of federal employees’ immunity from compelled congressional testimony for such advisers, see, e.g., Immunity of the Former Counsel, 43 Op. O.L.C. at *13-14. Yet the Harlow Court recognized that “[f]or aides en trusted with discretionary authority in such sensitive areas as national security or foreign policy,” even absolute immunity from suit “may not, however, be deemed purely unqualifying, performance of functions vital to the national interest.” 457 U.S. at 812; see also id. at *14. In Harlow, the Supreme Court recognized that Presidential immunity would be strongest in such “central” Presidential domains as foreign policy and national security, in which the President’s power to discharge regularly vital mandates without delegating functions nearly as sensitive as his own”).

Immunity is also particularly justified here because the Committee apparently seeks Mr. Kupperman’s testimony about the President’s conduct of relations with a foreign government. The President has the constitutional authority to conduct diplomatic relations, see Assertion of Executive Privilege for Documents Concerning Conduct of Foreign Affairs with Respect to Haiti, 29 Op. O.L.C. 5, 7 (1996) (A.G. Reno), and as a result, the President has the “exclusive authority to determine the time, scope, and objectives of international negotiations.” Unconstitutional Restrictions on Activities of the Office of Science and Technology Policy in Section 1340(a) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011, 35 Op. O.L.C. at *3 (Nov. 9, 2010) (footnotes omitted). Compelling testimony about these sensitive constitutional responsibilities would only deepen the very concerns the President has regarding confidentiality—that underlie the rationale for testimonial immunity. See New York Times Co. v. United States, 403 U.S. 713, 738 (1971) (Stewart, J., concurring) ("[I]t is elementary that the successful conduct of international diplomacy and the maintenance of an effective national defense require both confidentiality and secrecy.")

Finally, it is inconsequential that Mr. Kupperman is now a private citizen. In Immunity of the Former Counsel, we concluded that for purposes of testimonial immunity, there is “no material distinction” between “current and former senior advisers to the President,” and therefore, an adviser’s departure from the White House staff “does not alter his immunity from compelled congressional testimony on matters related to his service to the President.” 43 Op. O.L.C. at *16; see also Immunity of the Former Counsel to the President from Compelled Congressional Testimony, 31 Op. O.L.C. 191, 192-93 (2007). It is sufficient that the Committee and Mr. Kupperman’s testimony on matters related to his official duties at the White House.

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

STEVEN A. ENGEL, Assistant Attorney General.
not enjoy absolute immunity from civil liability—a holding that, as we have previously explained, does not conflict with our recognition of absolute immunity from compelled testimony for such advisers, see Immunity of the Assistant to the President, 38 Op. O.L.C. at *5-9. Yet the Harlow Court recognized that “[f]or aides entrusted with discretionary authority in such sensitive areas as national security or foreign policy[,] ‘even absolute immunity from suit ‘might well be justified to protect the unhindered performance of functions vital to the national interest.’” 457 U.S. at 812; see also id. at 812 n.19 (“a derivative claim to President would be strongest in such ‘central’ Presidential domains as foreign policy and national security, in which the President could not discharge his singularly important function without delegating functions nearly as sensitive as his own”).

Moreover, the Committee seeks Mr. Eisenberg’s testimony about the President’s conduct of relations with a foreign government. The President has the constitutional responsibility to conduct diplomatic relations, see Assertion of Executive Privilege for Documents Concerning Conduct of Foreign Affairs with Respect to Haiti, 20 Op. O.L.C. 5, 7 (1996) (A.G. Reno), and as a result, the President has the “exclusive authority to determine the foreign relations of the United States, and to declare war.” See U.S. Const. art. II, §3, cl. 2.

In re Sealed Case, 121 F.3d 729, 757 (D.C. Cir. 1997), who works closely with the President in supervising the Office of the President and managing the advice the President receives. See David B. Cohen & Charles E. Walcott, White House Transition Project Report: Jan. 17-21, 2017, Office of Chief of Staff 15-26 (2017). Mr. Mulvaney meets with and advises the President on a daily basis about the most sensitive issues confronting the government. See Statement of Deputy Chief of Staff to the Office of Legal Counsel (Aug. 1, 2007) (former Deputy Chief of Staff Pat A. Cipollone, Counsel to the President, and Assistant Attorney General Charlie E. Walcott, White House Transition Project); id. at *5 (Sept. 19, 2011) (quotation marks omitted). Compelling testimony about these sensitive constitutional responsibilities would only deepen the very concerns—about separation of powers and confidentiality—that may support Mr. Mulvaney’s claim to absolute immunity. See New York Times Co. v. United States, 493 U.S. 713, 728 (1989) (Stewart, J., concurring) (“[I]t is elementary that the successful conduct of international diplomacy and the maintenance of an effective national defense require both confidentiality and secrecy.”).

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

STEVEN A. ENGEL,
Assistant Attorney General.

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

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

DEAR MR. CIPOLLONE: On November 7, 2019, the Permanent Select Committee on Intelligence of the House of Representatives issued a subpoena seeking to compel Mick Mulvaney to testify at a deposition on Friday, November 8. The Committee subpoenaed Mr. Mulvaney as part of its inquiry into the President’s dereliction of duty. See H.R. Res. 660, 116th Cong. (2019). You have asked whether the Committee may compel him to testify. We conclude that Mr. Mulvaney is absolutely immune from compelled congressional testimony in his capacity as a senior adviser to the President.

The Executive Branch has taken the position for decades that “Congress may not constitutionally compel the President’s senior advisers to testify about their official duties.” Testimonial Immunity of the Former Counsel to the President, 43 Op. O.L.C. at *1 (May 20, 2019). The immunity applies to those “immediate advisers . . . who could discharge their duties with the President on a regular or frequent basis.” Memorandum for John D. Ehrlichman, Assistant to the President for Domestic Affairs, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, Re: Power of Congressional Committee to Compel Appearance or Testimony of Attorney General (Feb. 5, 1971) (“Rehnquist Memorandum”). We recently advised you that this immunity applies in an impeachment inquiry just as in an investigation by Congress. See Letter from Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel at 2 (Nov. 3, 2019). “Even when the impeachment proceedings are underway,” we explained, “the President must remain able to continue to discharge his duties.”

Compelling testimony about the President’s conduct of foreign relations is an important limitation to protect the independence and autonomy of the President’s senior advisers. This immunity applies in connection with the Committee’s subpoena for Mr. Mulvaney’s testimony. The Committee intends to question Mr. Mulvaney about matters related to his official duties at the White House—specifically the President’s conduct of foreign relations with Ukraine. See H.R. Res. 660, 116th Cong. (2019). As a result, the President could not discharge his singularly important function without delegating functions nearly as sensitive as his own.

This immunity applies in connection with the Committee’s subpoena for Mr. Mulvaney’s testimony. The Committee intends to question Mr. Mulvaney about matters related to his official duties at the White House—specifically the President’s conduct of foreign relations with Ukraine. See H.R. Res. 660, 116th Cong. (2019). Therefore, the President remains an important limitation to protect the independence and autonomy of the President’s senior advisers.

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

STEVEN A. ENGEL,
Assistant Attorney General.

[In the Senate of the United States Sitting as a Court of Impeachment]


Republican Majority Statement

In Re Impeachment of President Donald J. Trump

REPLICATION OF THE UNITED STATES HOUSE OF REPRESENTATIVES TO THE ANSWER OF
PRESIDENT DONALD J. TRUMP TO THE ARTICLES OF IMPEACHMENT

The House of Representatives, through its Managers and counsel, replies to the Answer of President Donald J. Trump as follows:

The House denies each and every allegation and defense in the Preamble to the Answer.

The American people entrusted President Trump with the extraordinary powers vested in his Office by the Constitution, powers which he swore a sacred Oath to use for the Nation’s benefit. President Trump broke that promise. He used Presidential powers to pressure a vulnerable foreign partner to interfere in our elections for his own benefit. In doing so, he jeopardized our national security and our democratic self-governance. He then used his Presidential powers to orchestrate a cover-up unprecedented in the history of our Republic: a complete and relentless blockade of the House’s constitutional power to investigate high Crimes and Misdemeanors.

President Trump maintains that the Senate cannot remove him even if the House proves every claim in the Articles of Impeachment. That is a chilling assertion. It is also dead wrong. The Framers deliberately drafted a Constitution that allows the Senate to remove Presidents who, like President Trump, abuse their power to cheat in elections, betray our national security, and ignore checks and balances. That President Trump believes otherwise, and insists he is free to engage in such conduct again, only highlights the continuing threat he poses to the Nation if allowed to remain in office.

Despite President Trump’s stonewalling of the impeachment inquiry, the House amassed overwhelming evidence of his guilt. It did so through fair procedures rooted firmly in the Constitution and precedent. It extended President Trump protections equal to those given to other Presidents in prior impeachment inquiries. To prevent President Trump’s obstruction of delaying justice until after the election, the Framers deliberately drafted a Constitution that allows the Senate to adopt the two Articles of impeachment. Still, new evidence continues to emerge, all of which confirms these charges.

Despite President Trump’s continued refusal to conduct a fair trial—fair for President Trump, and fair for the American people. Only if the Senate sees and hears all relevant evidence—only if the Senate examines the President’s citation for his obstruction of justice—will the Senate be able to make a fact-based decision and determine whether to convict and remove President Trump from office.

President Trump has consistently argued that his impeach- ment constitutes a partisan ‘hoax.’ The House duly approved Articles of impeachment because its Members swore Oaths to support and defend the Constitution against all enemies, foreign and domestic. The House has fulfilled its constitutional duty. Now, Senators must honor their own Oaths by
holding a fair trial with all relevant evidence. The Senate should place truth above faction. And it should convict the President on both Articles.

ARTICLE I

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

Article I charges President Trump with Abuse of Power. The President solicited and pressured a foreign nation, Ukraine, to help him cheat in the next Presidential election by announcing two investigations: the first into an American citizen who was also a political opponent of his; the second into a baseless conspiracy theory promoted by Russia that Ukraine, not Russia, interfered in the 2016 election. President Trump sought to coerce Ukraine into making these announcements to President Zelensky at the U.N. General Assembly and releasing the aid without Ukraine announcing the investigations. But he did so only after he was caught red-handed. And he still has not met with President Zelensky at the White House, which Ukraine has long sought to demonstrate United States support in the face of Russian aggression.

The Answer offers an unconvincing and implausible defense against the factual allegations in Article I. The ‘simple facts’ that it cites are not even true. The answer is a cover-up and provides no explanation for his across-the-board refusal to turn over every single document and testimony. He cannot deny facts to avoid angering President Trump. Not only has every single subpoena served by the House been defied; the President is now in contempt of court. And he is the first in history to be charged with Abuse of Power.

Abuse of Power is an impeachable offense. In his Answer, the President describes several denials that prove he “did nothing wrong.” This is false. President Trump cites the record of his July 25, 2019 phone call with President Volodymyr Zelensky of Ukraine, where he repeatedly pressured for the release of desperately needed military aid and a vital White House meeting. These are overwhelmingly the evidence in Article I. The House denies each and every statement of material facts that the House submitted on January 18, 2020.

In his Answer, the President describes “several denials that prove he ‘did nothing wrong.’” This is false. President Trump cites the record of his July 25, 2019 phone call with President Volodymyr Zelensky of Ukraine, where he repeatedly pressured for the release of desperately needed military aid and a vital White House meeting. These are overwhelmingly the evidence in Article I. The House denies each and every statement of material facts that the House submitted on January 18, 2020.

Lastly, the President notes that he met with President Zelensky at the U.S. Embassy and released the aid without Ukraine announcing the investigations. But he did so only after he was caught red-handed. And he still has not met with President Zelensky at the White House, which Ukraine has long sought to demonstrate United States support in the face of Russian aggression.

The Answer offers an unconvincing and implausible defense against the factual allegations in Article I. The ‘simple facts’ that it cites are not even true. The answer is a cover-up and provides no explanation for his across-the-board refusal to turn over every single document and testimony. He cannot deny facts to avoid angering President Trump. Nor has there been any President or other official who defied such a subpoena—except for President Nixon, who, like President Trump, faced an article of impeachment for Obstruction of Congress. Indeed, Presidents have been recognized that Congressional power is at its apex in an impeachment. President James Polk stated: the “power of the House” in case of impeachment extends into the most secret recesses of the Executive Departments.”

President Trump’s defense is wrong. At his personal direction, nine officials refused subpoenas to testify and the White House, Office of Management and Budget, and Departments of State, Defense, and Energy all defied valid subpoenas. The fact that President Trump caved to public pressure and released two call transcripts—which, in fact, expose his guilt—hardly mitigates his obstruction.

Nor is President Trump’s Obstruction of Congress excused by his incorrect legal arguments. First, the impeachment inquiry was properly authorized and Congressional subpoenas do not require a vote of either house. Second, President Trump’s blanket and categorical defiance of the House stemmed from ‘his unilateral decision not to participate’ in the impeachment investigation, not from any legal assertion.

Third, President Trump never actually asserted the Presidents’ privilege of immunity that has never been accepted as a basis for defying impeachment subpoenas. The foreign affairs and national security settings of this impeachment do not require a different result here; it makes the President’s obstruction all the more alarming. The Framers explicitly stated that betrayal involving foreign enemies is a core impeachable offense, and the House’s recent actions make clear that the House is empowered to investigate such abuses, as all 17 current and former Executive Branch officials who testified about these matters recognized.

Fourth, the President’s invocation of “absolute immunity” fails because this fictional doctrine has been rejected by every court to consider it in similar circumstances; President Trump extended it far beyond any understanding by prior Presidents; and it offers no explanation for his across-the-board refusal to turn over every single document subpoenaed.

Finally, the President’s lawyers have argued before the court that it is forbidden for the House to seek judicial enforcement of its subpoenas, even as they now argue in the Senate that the House is required to seek such enforcement. Again, President Trump would have it both ways: he argues simultaneously that the House must use the courts and that it is prohibited from using the courts. This duplicity is poor camouflage for the weakness of President Trump’s legal arguments. More significantly, any judicial enforcement effort would involve exposing the House to the sole Power of Impeachment, along with the power to investigate grounds for impeachment. The Framers did not require the House to exhaust all alternative methods of obtaining evidence, especially when those alternatives would fail to deal with an immediate threat. To protect the Nation, the House had to act swiftly in addressing the clear and present danger posed by President Trump’s misconduct.

President Trump engaged in a cover-up that is designed to establish a pattern of guilt. Innocent people seek to bring the truth to light. In contrast, President Trump has acted in the way that guilty people do. He has defied his own counsellors and the law. In a way that only he could, the stakes here are even higher than that. In completely obstructing an investigation into
The House denies each and every allegation and defense in the Conclusion to the Answer.

President Trump did not engage in this corrupt scheme to retain power and then attempts to cover it up by obstructing a Congressional inquiry. The Senate should swiftly reject President Trump's assertion that he was acting in the Constitution's best interests. The Framers of our Constitution took pains to ensure that such egregious abuses of power would be impeachable offenses. The Constitution limits impeachable offenses to treason and bribery and included the term "other high Crimes and Misdemeanors."5

There was no plausible dispute that the Framers would have considered a President's solicitation of a foreign country's election interference as exchange for personal political favor. The Framers of our Constitution included the impeachment mechanism in the Constitution to: save the American people from a President who would sell out our democracy. And he will persist in that misconduct—which he deems "perfect"—unless and until he is removed from office.


[In the Senate of the United States Sitting as a Court of Impeachment]

IN RE IMPEACHMENT OF PRESIDENT DONALD J. TRUMP

REPLY MEMORANDUM OF THE UNITED STATES HOUSE OF REPRESENTATIVES MANAGERS

President Trump's brief does not meaningfully attempt to defend his misconduct, which amount to the frightening assertion that he wishes, at whatever cost to the Nation, and then hide his actions from the representatives of the American people without repercussion.

First, President Trump's argument that abuse of power is not an impeachable offense is wrong—and dangerous. That argument would mean that the House's recitation of the facts is correct—which it is—the House lacks authority to remove a President who sells out our democracy and national security for personal political favor. The Framers of our Constitution took pains to ensure that such egregious abuses of power would be impeachable offenses. The Constitution limits impeachable offenses to treason and bribery and included the term "other high Crimes and Misdemeanors."5

Second, President Trump's assertion that impeachable offenses must involve criminal misconduct is indefensible. To obtain a perjury conviction, the only crime in President Trump's conduct—which he deems "perfect"—unless and until he is removed from office. The Senate should do so following a fair trial.

Respectfully submitted,

UNITED STATES HOUSE OF REPRESENTATIVES

ADAM B. SCHIFF,
ZOE LOFGREN,
JERROLD NADLER,
VAL BUTLER DEMINGS,
JASON CROW,
Sylvia R. Garcia,
U.S. House of Representatives Managers

FIRST, President Trump's assertion that his "personal gain, like President Trump."
and political interests above those of our Nation, and they understood that foreign interference in our elections was one of the gravest threats to our democracy. The Framers were correct that periodic democratic elections cannot serve as an effective check on a President who seeks to manipulate the those elections. The ultimate check on Presidential power is the Framers through the power to impeach and remove a President—a power that the Framers vested in the representatives of the American people.

Indeed, on the eve of his impeachment trial, President Trump continues to insist that he has done nothing wrong. President Trump argues that he can abuse his power impunity—in his words, “do whatever I want as President”—provided he does not technically violate a statute in the process. That argument is both wrong and remarkable. History, precedent, and the words of the Framers conclusively establish that serious abuses of power—of offenses to the “abuse” of “power” that threaten our democratic process and system—may be impeachable.

President Trump’s own misconduct illustrates the implications of his position. In President Trump’s view, as long as he does not violate a specific statute, then the only check on his corrupt abuse of his office for his personal gain is the need to face reelection—and the very goal of his abusive behavior is to cheat in that election. If President Trump were to succeed in his scheme and win a second and final term, he would face no check on his conduct. The Senate should reject that dangerous position.

1. The Framers Intended Impeachment as a Remedy for Abuse of High Office. President Trump contends that the fear that Presidents would abuse their power was among the key reasons that the Framers adopted an impeachment remedy. But he contends that abuse of power was never intended to be an impeachable offense in its own right.

President Trump’s focus on the label to be applied to a misconduct, as distinct from the fundamental point: His conduct is impeachable whether it is called an “abuse of power” or something else. The Senate is not engaged in an exercise to pick the exact terminology that would encompass the particular acts at issue; the question instead is whether President Trump’s conduct is impeachable because it is a serious threat to our republic. For the reasons set forth in the House Manager’s opening brief, the answer is plainly yes.

In any event, President Trump is wrong that abuses of power are not impeachable. The Framers focused on the toxic combination of corruption and foreign interference—what the Framers in his Federalist No. 58 described as “one of the most baneful foes of republican government.” James Madison put it simply: The President “must betray his trust.”

To the Framers, such an abuse of power was the quintessential impeachable conduct. They therefore rejected a proposal to limit impeachable offenses to only treason and bribery. They recognized the peril of setting a rigid standard for impeachment, and adopted a much broader standard that was rejected. George Mason termed the many “great and dangerous offenses” that might “subvert the Constitution.” The Framers considered and rejected the idea that offenses “are not offenses against the criminal code, but consist in abuses or betrayals of trust, or inexcusable neglects of duty.” In the words of the Court in United States v. Justice Joseph Story similarly explained that impeachment encompasses “misdeeds . . . as peculiarly injure the commonwealth by the abuse of high offices of trust,” whether or not those misdeeds violate existing statutes intended for other circumstances.

The Framers focused on the toxic combination of corruption and foreign interference—that abuses of power are not impeachable. The Framers were correct that the focus was not “crimes of a strictly legal character,” but instead “what are aptly termed, political growing out of misconduct, or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office.” The fact that impeachment is not limited to violations of “established law” reflects its basic function as a remedy reserved for offenses that undermine our institutions of trust and power. Statutes of general applicability do not address the ways in which those official misconducts harm the public that we have identified as impeachable. Limiting impeachment only to those statutes would defeat its basic purpose.

Even if President Trump were correct that the Impeachment Clause covers only conduct that violates established law, his argument would fail. President Trump concedes that “crimes and misdemeanors” encompasses conduct that is akin to the terms that precede it in the Constitution—treason and bribery. And there can be no reasonable doubt that his misconduct is close akin to bribery. “The corrupt exercise of power in exchange for a personal benefit defines impeachable bribery.” Here, President Trump conditioned his performance of a required duty (disbursement of Congressionally appropriated aid funds to Ukraine) on the receipt of a personal benefit (the announcement of investigations designed to skew the upcoming election in his favor). This conduct carries all the essential qualities of bribery found in constitutional American precedents familiar to the Framers. It would be all the more wrong in their view because it involves a solicitation of a foreign government to manipulate an electoral process. And President Trump did actually violate an “established law”: the Impoundment Control Act. Thus, even under his own standard, President Trump’s conduct is impeachable.

3. Corrupt Intent May Render Conduct an Impeachable Abuse of Power. President Trump next contends that the Impeachment Clause does not encompass any abuse of power that turns on the President’s reasons for acting. President Trump observes that if he could perform an act for legitimate reasons, then he necessarily could perform the same act for corrupt reasons. That argument is obviously wrong.

The Impeachment Clause itself forecloses President Trump’s argument. The specific offenses of impeachment—treason and bribery—both turn on the subjective intent of the actor. Treason requires a “disloyal mind” and bribery requires corrupt intent. A President, for example, can form a military alliance with a foreign nation because he believes that doing so is in the Nation’s strategic interests, but if the President forms that same alliance with the taking up arms and overthrowing the Congress, his conduct is treasonous. Bribery
turns on similar considerations of corrupt intent. And, contrary to President Trump’s assertion, past impeachments have concerned “permissible conduct that had been simply more wrong subjectively than objectively.” The first and second articles of impeachment against President Nixon, for example, charged him with using the powers of his office to obstruct justice and targeting his political opponents—in other words, for exercising Presidential power based on impermissible reasons.

There are many acts that a President has “objective” authority to perform that would constitute grave abuses of power if done for corrupt reasons. A President may issue a pardon because the applicant demonstrates remorse and meets the standards for clemency, but if a President issued a pardon in order to hide from the American people his crimes against him, or in exchange for campaign donations, or for other corrupt motives, his conduct would be impeachable—as we Supreme Court unanimously recognized nearly a century ago. The same principle applies here.

B. The House Has Proven that President Trump’s Interference on Ukraine for His Personal Benefit

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

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

Although President Trump argues that he “did not make any connection between the assistance investigation,” Acting Chief of Staff, Mick Mulvaney, admitted the opposite during a press conference—conceding that the investigation into alleged Ukrainian interference was part of “why we held up the money.” After a reporter inquired about this concession of a quid pro quo, Mr. Mulvaney replied, “We do this all the time with foreign policy, added, “get over it,” and then refused to explain these statements by testifying in response to a House subpoena. The President’s brief does not even address Mr. Mulvaney’s admission. Ambassador Taylor also acknowledged the quid pro quo, stating, “I think it’s crazy to withhold security assistance with a political campaign.” And Ambassador Sondland testified that the existence of a quid pro quo regarding the security assistance was as clear as “two plus two equals four.” President Trump’s lawyers also avoid responding to these statements.

The same is true of the long探寻 Oval Office meeting. As Ambassador Sondland testified: “I know that members of this committee frequently frame these complicated issues in the form of a simple question: Was there a quid pro quo? I answered, “with regard to the requested White House call and the White House meeting, the answer is yes.” Ambassador Taylor re-affirmed the existence of a quid pro quo regarding the Oval Office meeting, testifying that “the meeting President Zelensky wanted was conditioned on the investigations of Burisma and alleged Ukrainian interference in the 2016 U.S. elections.” Other witnesses testified similarly. The President’s principal argument to this evidence is to point to two conversations in which he declared to Ambassador Sondland and Senator Richard Johnson that there was “no quid pro quo.” But both came after the President had been informed of the whistleblower complaint against him, at which point he obviously had a strong motive to come up with seemingly innocent cover stories for his misconduct.

In addition, President Trump’s brief omits the second conversation that Ambassador Sondland and President Zelensky had during their call. Immediately after declaring that there was “no quid pro quo,” the President insisted that “President Zelensky ‘must’ announce the sham investigations in exchange for American support—the very definition of a quid pro quo, notwithstanding President Trump’s self-serving, false statement to the contrary. President Trump also asserts that there cannot have been a quid pro quo because U.S. Ambassadors and officials have denied that President Trump acted improperly. But the evidence shows that Ukrainian officials understood that President Trump was demanding investigations and he should want to do it.” President Trump thus conveyed that President Zelensky “must” announce the sham investigations in exchange for American support—”the very definition of a quid pro quo, notwithstanding President Trump’s self-serving, false statement to the contrary.”

Indeed that statement shows his conscious-ness of guilt. President Trump also argues that the evidence of a quid pro quo cannot be trusted because it is “hearsay” is incorrect. The White House’s readout of the July 25 phone call itself establishes that President Trump linked military assistance on President Zelensky’s willingness to do him a “favor”—which President Trump made clear was to investigate former Vice President Biden and allegations of corruption. One of the people who spoke directly to President Trump—and whose testimony therefore was not hearsay—was Ambassador Sondland who was aware of a quid pro quo and provided some of the most damning testimony against President Trump. Other witnesses provided compelling corroborating evidence of the President’s scheme.

President Trump’s denials of the quid pro quo are, therefore, plainly false. There is a veritable flood of evidence from foreign political campaigns—a “false exculpatory”—which is strong evidence of guilt. When a defendant “intentionally offers an explanation, excuse, or justification that will show his innocence, and this explanation or statement is later shown to be false,” such a false statement tends to show the defendant’s consciousness of guilt. President Trump’s denial of the quid pro quo under- scores that he knows his scheme to procure the sham investigations was improper, and that he is now trying to cover it up.

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

President Trump never attempted to jus-tify the decision to withhold the military aid and Oval Office meeting on foreign policy grounds when it was underway. To the contrary, President Trump’s lawyer Rudy Giuliani acknowledged that his Ukraine operations were “not in the interest.” President Trump sought to hide the scheme from the public and refused to give any explanation for it even within the U.S. government at the time. After his own Defense Department warned—correctly—that withholding military aid appro- priated by Congress would violate federal law, and after his National Security Adviser likened the arrangement to a “drug deal.” And he released the military aid shortly afterwards. The various explanations that President Trump now press is after-the-fact pre-text cannot be reconciled with his ac-tual conduct.

The Anti-Corruption Pretense. The evidence shows that President Trump was actually in- different to corruption in Ukraine before Vice President Biden became a candidate for President. After Biden’s candidacy was announced, President Trump remained uninter-ested in anti-corruption efforts. President Trump did not seek investigations into alleged corruption—as one would expect if anti-corruption efforts were his goal—but instead sought only an- nouncements of investigations—because those announcements are what would help him politically.

Ambassador Sondland testified, President Trump “did not give a [expletive] about Ukraine,” and instead cared only about “big stuff” that benefitted him personally like “the Biden investigation.” While President Trump asserts that he released the aid in re- sponse to Ukraine’s actual progress on cor- ruption, in fact he released the aid two days after Congress announced an investiga- tion into his misconduct. And President Trump’s claim that the removal of the former Ukrainian prosecutor general encouraged him to release the aid is astonishing.

On the July 25 call with President Zelensky, President Trump praised that very same prosecutor general for his anti-corruption efforts. He released the aid two days after learning that the President would meet with that prosecutor to try to dig up dirt on Vice President Biden to this day.

The Burden-Sharing Pretense. Until his second impeachment, President Trump never even attempted to attribute his hold on military aid to a concern about other countries not sharing the burden of supporting Ukraine. One reason he never attempted to justify the hold on these grounds is that it is not grounded in reality. Other countries in fact contribute substantially to Ukraine. Since 2010, European Union financial institutions have committed over $16 billion to Ukraine.
support the allegation that Vice President Biden encouraged Ukraine to remove one of its prosecutors in an improper effort to protect his son. To the contrary, Biden was carrying out his policy—consistent with the established foreign policy of his Administration—when he sought that prosecutor’s ouster because the prosecutor was known to be corrupt.77 In any event, the prosecutor he wanted to remove—Nastia Zubkova, a career prosecutor in Ukraine who would have investigated Burisma, not the company—was not the one whose removal President Biden sought. Thus, there is no basis for concluding that President Trump did not act to protect American interests when he directed Ukraine to investigate Burisma, not the company.

C. President Trump’s Actions Are Consistent with the Separation of Powers and the Rule of Law

1. The President’s Speeches and Statements

President Trump’s public statements about the impeachment inquiry did not constitute obstruction. The President’s statements do not constitute obstruction because he repeatedly announced his willingness to testify, even if not under oath, in the Senate impeachment trial.78 Moreover, the President’s refusal to testify was a matter of principle, not an effort to obstruct the impeachment inquiry or avoid an investigation into one of his actions. The Supreme Court has long recognized the President’s powers to declare a state of emergency and to order military actions, and the President is not bound to answer questions about those actions in his capacity as President.

2. The President’s Public Statements Are Not Obstruction

President Trump’s public statements about the impeachment inquiry do not constitute obstruction. The President’s statements do not constitute obstruction because the President repeatedly announced his willingness to testify, even if not under oath, in the Senate impeachment trial.78 Moreover, the President’s refusal to testify was a matter of principle, not an effort to obstruct the impeachment inquiry or avoid an investigation into one of his actions. The Supreme Court has long recognized the President’s powers to declare a state of emergency and to order military actions, and the President is not bound to answer questions about those actions in his capacity as President.

3. The President’s Use of Executive Privilege

President Trump’s use of executive privilege is not obstruction. Executive privilege is a constitutional right that protects the confidentiality of communications made in the course of executive branch deliberations.79 The President’s use of executive privilege in this case was consistent with the longstanding practice of Presidents and their representatives to assert executive privilege to protect the confidentiality of communications made in the course of executive branch deliberations.

4. The President’s Refusal to Comply with Subpoenas

President Trump’s refusal to comply with the House’s subpoenas is not obstruction. President Trump’s refusal to comply with the House’s subpoenas was consistent with his constitutional right to assert executive privilege. The President’s refusal to comply with the House’s subpoenas was also consistent with the longstanding practice of Presidents and their representatives to assert executive privilege to protect the confidentiality of communications made in the course of executive branch deliberations.

5. The President’s Statements about Subpoenas

President Trump’s statements about the House’s subpoenas are not obstruction. President Trump’s statements about the House’s subpoenas were consistent with his constitutional right to assert executive privilege. The President’s statements about the House’s subpoenas were also consistent with the longstanding practice of Presidents and their representatives to assert executive privilege to protect the confidentiality of communications made in the course of executive branch deliberations.

6. The President’s Public Statements about the Impeachment Inquiry

President Trump’s public statements about the impeachment inquiry do not constitute obstruction. The President’s statements do not constitute obstruction because he repeatedly announced his willingness to testify, even if not under oath, in the Senate impeachment trial.78 Moreover, the President’s refusal to testify was a matter of principle, not an effort to obstruct the impeachment inquiry or avoid an investigation into one of his actions. The Supreme Court has long recognized the President’s powers to declare a state of emergency and to order military actions, and the President is not bound to answer questions about those actions in his capacity as President.
A. The Constitution Does Not Authorize President Trump to Second Guess the House’s Exercise of Its “ Sole Power of Impeachment.”

President Trump’s attack on the House’s conduct of its impeachment proceedings disregards the text of the Constitution, which gives the House the “sole Power of Impeachment,” and empowers it to “determine the Rules of its Proceedings.” As the Supreme Court has observed, the word “sole” “which appears only twice in the Constitution—‘is of considerable significance.” In the context of the House’s authority over impeachment trials, the Court stressed that this term means that authority is “reposed in the Senate and nowhere else” and that the House “shall have authority to determine whether an individual should be acquitted or convicted.” The House’s “sole Power of Impeachment” likewise vests it with the independent authority to structure its impeachment proceedings in the manner it deems appropriate. The Constitution leaves no room for President Trump to object to how the House, in the exercise of its “sole” power to determine impeachment, conducted its proceedings here.

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

President Trump is similarly mistaken that a formal “delegation of authority” to the Committees was needed at the outset. The House adopted its Rules on January 31, 2019, before President Trump’s impeachment inquiry had begun. The House Rules Committee reserved the right to amend its Rules, as it has done in the past, and has not yet done so. The House’s Rules Committee is a separate body from the full House, and the House has not “delegated” its authority to it in any way. President Trump’s claims are baseless objections to the House’s process raised in the impeachment proceedings that the Senate has rejected.

B. President Trump Received Fair Process

As his lawyers well know, the various criminal proceedings against President Trump’s demands have no place in the House’s impeachment process. It is not a trial, much less a criminal trial to which Fifth or Sixth Amendment rights apply. The rights President Trump has demanded have never been recognized in any prior Presidential impeachment investigation, just as they have never been recognized for a person under investigation by a grand jury—a more apt analogy to the House’s proceedings here. Although President Trump faults the House for not allowing him to participate in depositions and witness interviews, no President has ever been permitted to participate during this initial fact-finding process. For example, in both the President Nixon and President Clinton impeachment inquiries, the President’s counsel was not permitted to attend depositions and interviews of witnesses. And in both cases, the House relied substantially on investigative findings by special prosecutors and grand juries, neither of which allowed the participation of the target of the investigation. Indeed, the reasons grand jury proceedings are kept confidential—to prevent subornation of perjury or tampering with the witnesses who may testify before grand jury and “encourage free and untrammeled disclosures by persons who have information”—apply with special force here, given President Trump’s chilling pattern of witness intimidation.

In July of 2018, after litany of process complaints, President Trump’s lawyers wrote that his counsel could have participated in the proceedings before the Judiciary Committee in late July or early August, through his counsel, could have observed during witness examinations, cross-examinations, and submitted evidence of his own. President Trump has never said he would do so. Having deliberately chosen not to avail himself of these procedural protections, President Trump cannot now pretend they did not exist.

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

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

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

Respectfully submitted,

United States House of Representatives

ZOE LOFGREN, JERROLD NADLER, HAKEEM S. JEFFRIES

ENDNOTES

2. 2 U.S. Const., Art. I, § 2, cl. 5.
5. Statement of Material Facts *121 (Jan. 18, 2020) (Statement of Facts) (filed as an attachment to the House’s Trial Memorandum).
7. As the then-House Managers explained in President Clinton’s impeachment trial, “[T]he 25th Amendment to the Constitution explicitly provides that the President would not overturn an election because it is the elected Vice President who

9. Opp. at 57 n.383.
10. Opp. at 1–2.

13. Id. at 550.
14. The Federalist No. 65 (Alexander Hamilton); see The Federalist Nos. 65 (Alexander Hamilton); The Federalist No. 69 (Alexander Hamilton).
15. Opp. at 14–16.
17. 2 Joseph Story, Commentaries on the Constitution of the United States *762 (1833).

The President’s brief selectively quotes Blackstone’s Commentaries for the proposition that impeachment in Britain required a violation of the common law and established law. Opp. at 15. But that reflected the well-known and established nature of the parliamentary impeachment process, not some requirement that the accused could not violate then-existing law. See also 4 William Blackstone, Commentaries on the Law of England *8 n.7 (1806) ("The word crime has no technical meaning in the law of England. It seems, when it has a reference to positive law, to comprehend those acts which subject the offender to punishment. When the words high crimes and misdemeanors are used in prosecutions by impeachment, the words high crimes have no definite signification, but are used merely to give greater solemnity to the charge.").

19. See id. at 136.


23. Id. at 156.

25. Transcript, Impeachment Inquiry: Fiona Hill and David Holmes: Hearing Before the H. Permanent Select Comm. on Intelligence, 118th Cong. 18–19 (Nov. 21, 2019) (statement of Mr. Holmes) ("[I]t was made clear that I was acting on Burisma/Biden investigation was a precondition for an Oval Office visit.").

26. See Opp. at 43–44.
27. Statement of Facts *114.
28. Opp. at 84–85.
30. Opp. at 87.
32. See, e.g., id. *52.
33. See, e.g., id. *49.
35. United States v. Penn, 974 F.2d 1026, 1029 (8th Cir. 1992).
36. Opp. at 69.
37. As the Supreme Court reiterated in rejecting a different pretextual Trump Administration scheme, when reviewing the Executive’s action, it is not appropriate to “exhibit a naivete from which ordinary citizens are free.” Dep’t of Commerce v. New York, 139 S. Ct. 2551, 2575 (2019) (quoting United States v. Stanchich, 550 F.2d 1294, 1300 (24 Cir. 1977) (Friendly, J.)).

38. Statement of Facts *18. President Trump’s brief hereoverstates the role of Ambassador Gluckman, who served as President Trump’s principal agent in seeking an announcement of the investigations.
39. Id. *121.

40. Id. *131.
41. After Congress began investigating President Trump’s conduct, the White House Counsel’s Office reportedly conducted an internal review of “hundreds of documents,” which “reveal[ed] extensive efforts to generate an after-the-fact justification” for the hold ordered by President Trump. Josh Dawsey et al., White House Review Turns Up Emails Showing Extensive Effort to Justify Trump’s Decision to Block Ukraine Military Aid, https://perma.cc/9TX-3KFE. These documents would be highly relevant in this Senate trial.
42. See Statement of Facts *88.
43. Id. *114.
44. Opp. at 94–95.
45. Opp. at 94.
CONGRESSIONAL RECORD — SENATE

January 21, 2020

S377

CORRECTION

122. Id. at 19, 21.
123. See id. at 17–22.
125. Statement of Facts ¶ 177, 190.
126. Statement of Facts ¶ 163; 165 Cong. Rec. E1337 (1993) (Impeachment Inquiry Procedures in the Senate Pursuant to H. Res. 660); see id. at (A(3), (B(2)–(3), (C(1))–(2), (4).
127. Opp. at 20–21.
133. H. Res. No. 116–346, at 12 (quoting letter from Pat A. Cippollone, Counsel to the President, to Jerrold Nadler, Chairman, H. Comm. on the Judiciary (Dec. 6, 2019)).
134. Mr. MCCONNELL. Mr. Chief Justice, I send to the desk a list of floor privileges for closed sessions. It has been agreed to by both sides. I ask that it be inserted in the RECORD and agreed to by unanimous consent.

As an attorney for the Senate, I am not required to be present for participation in the proceedings.

Mr. MCCONNELL. I am standing by. We can do it now.

Mr. Chief Justice, a resolution (S. Res. 483) to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States, is now before the Senate.

A resolution (S. Res. 483) to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States.

Resolved, That the House of Representatives shall file its record with the Secretaries of the Senate, which will consist of those publicly available materials that have been submitted to or produced by the House Judiciary Committee, including transcripts of public hearings or markups and any materials printed by the House of Representatives pursuant to any hearsay, evidentiary, or other objections that the Senate may make after opening presentations are concluded. All materials filed pursuant to this paragraph shall be made available to all parties.

The President and the House of Representatives shall have until 9 a.m. on Wednesday, January 22, 2020, to file any motions permitted under the impeachment rules with the exception of motions to subpoena witnesses or documents or any other evidentiary motions. Responses to any such motions may be filed no later than 11 a.m. on Wednesday, January 22, 2020. All materials filed pursuant to this paragraph shall be

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filed with the Secretary and be printed and made available to all parties.

Arguments on such motions shall begin at 1 p.m. on Wednesday, January 22, 2020, and each side may determine the number of persons to make its presentation, following which the Senate shall deliberate, if so ordered under the impeachment rules, and vote on any such motion.

Following the disposition of such motions, or if no motions are made, then the House of Representatives shall make its presentation in support of the articles of impeachment for a period of time not to exceed 24 hours, over up to 3 session days. Following the House of Representatives' presentation, the President shall make his presentation for a period not to exceed 24 hours, over up to 3 session days. Each side may determine the number of persons to make its presentation.

Upon the conclusion of the President's presentation, Senators may question the parties for a period of time not to exceed 16 hours.

Upon the conclusion of questioning by the Senate, there shall be 4 hours of argument by the parties, equally divided, followed by deliberation by Senate, if so ordered under the impeachment rules, on the question of whether it shall be in order to consider and debate under the impeachment rules any motion to subpoena witnesses or documents. The Senate, without any intervening action, motion, or amendment, shall then decide by the yeas and nays whether it shall be in order to consider and debate under the impeachment rules any motion to subpoena witnesses or documents.

Following the disposition of that question, other motions provided under the impeachment rules shall be in order. If the Senate agrees to allow either the House of Representatives or the President to depose such witnesses, it shall first be deposed and the Senate shall decide after deposition which witnesses shall testify, pursuant to the impeachment rules. No testimony shall be admissible in the Senate unless the parties have had an opportunity to depose such witnesses.

At the conclusion of the deliberations by the Senate, the Senate shall vote on each article of impeachment.

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

Mr. Manager SCHIFF. Are you a proponent or an opponent of this motion?

Mr. SCHIFF. Mr. Chief Justice, the House managers are in opposition to this resolution.

The CHIEF JUSTICE. Thank you.

Mr. Counsel CIPOLLO. We are a proponent of the motion.

The CHIEF JUSTICE. Mr. Chipolone, your side may proceed first, and we will be happy to reserve rebuttal time if you wish.

Mr. Counsel CIPOLLO. Thank you, Mr. Chief Justice.

Majority Leader McCONNELL. Democratic Leader SCHUMER, Senators, my name is Pat Chipolone. I am here as counsel to the President of the United States. Our team is proud to be here, representing President Trump.

We support this resolution. It is a fair way to proceed with this trial. It is modeled on the Clinton resolution, which had 100 Senators supporting it the last time this body considered impeachment. It requires the House managers to stand up and make their opening statement and make their case. They have delayed bringing this impeachment to this body for 33 days, and it is time to start with this trial. It is a fair process. They will have the opportunity to make their opening statement. They will get 24 hours to do that. Then the President’s attorneys will have a chance to respond. After that, all of you will have 16 hours to ask whatever questions you have on this. If that is finished and you have all of that information, we will proceed to the question of witnesses and some of the more difficult questions that will come before this body.

We are in favor of this. We believe that once you hear those initial presentations, the only conclusion will be that the President has done absolutely nothing wrong and that these Articles of Impeachment do not begin to approach the Constitution, and, in fact, they themselves will establish nothing beyond those articles. You will look at those articles alone, and you will determine that there is absolutely no case.

So we respectfully ask you to adopt this resolution so that we can begin with this process. It is long past time to start this proceeding, and we are here today to do it, and we hope that the House managers will agree with us and begin this proceeding today.

We reserve the remainder of our time for rebuttal.

Mr. Manager SCHIFF. Mr. Chief Justice, Senators, and counsel for the President, the House managers, on behalf of the House of Representatives, rise in opposition to Leader McCONNELL’s resolution.

Let me begin by summarizing why.

Mr. Counsel CIPOLLO. Are you a proponent or an opponent of the motion?

Mr. Counsel CIPOLLO. Thank you, Mr. Chief Justice.

Majority Leader McCONNELL. Democratic Leader SCHUMER, Senators, my name is Pat Chipolone. I am here as counsel to the President of the United States. Our team is proud to be here, representing President Trump.

We support this resolution. It is a fair way to proceed with this trial. It is modeled on the Clinton resolution, which had 100 Senators supporting it the last time this body considered impeachment. It requires the House man-
these are not the most important decisions you will make.

How can that be? How can any decision you will make be more important than guilt or innocence, than removing the President or not removing the President?

I believe the most important decision in this case is the one you will make today. The most important question is the question you must answer today. Will the President and the American people have a fair trial? Will there be a fair trial?

I submit that this is an even more important question than how you vote on guilt or innocence, because whether we have a fair trial will determine whether you have a basis to render a fair and impartial verdict. It is foundational—the structure upon which every other decision you will make must rest.

If you only get to see part of the evidence or only one side, or only the witnesses of the side you choose to accept, you are denied a full and fair presentation of the case, your verdict will be predetermined by the bias in the proceeding. If the defendant is not allowed to introduce evidence of his innocence, it is not a fair trial. So too for the prosecution. If that side cannot call witnesses, introduce documents and evidence, it is not a fair trial. It is not really a trial at all.

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

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

Under the Constitution, this proceeding, the one we are in right now, is the trial. This is not the appeal from a trial. You are not appellate court judges. OK, one of you is. And unless this trial is going to be different from any other impeachment trial or any other kind of trial, for that matter, you are not on an appeal. I note that the House managers and the President's lawyers, to call relevant witnesses. You must subpoena documents that the President has blocked but which bear on his guilt or innocence. You must impartially do just as your predecessor did. You must have an impartial jury.

So what does a fair trial look like in the context of impeachment? The short answer is it looks like every other trial. First, the resolution should allow the House managers to obtain documents that have been withheld—not last—but the documents will inform the decision about which witnesses are most important to call. And when the witnesses are called, the documentary evidence will be available and must be available to question them with. Any other order makes no sense.

Next, the resolution should allow the House managers to call their witnesses, and the President should be allowed to do the same, and any rebuttal witnesses. And when the evidentiary portion of the trial ends, the parties argue the case. You deliberate and render a verdict.

If there is a dispute as to whether a particular witness is relevant or material to the charges brought, under the Senate rules, the Chief Justice would rule on the issue of materiality. Why should this trial be different than any other trial? The short answer is it shouldn't. But Leader McConnell's resolution would turn the trial process on its head. His resolution requires the House to prove its case without witnesses, without documents, and only after it is done will such questions arise. This entices the Senate to guarantee that any witnesses or any documents will be allowed even then. That process makes no sense. So what is the harm of waiting until the end of the trial, of kicking the can down the road on the question of documents and witnesses? Beside the fact it is completely backwards—trial first, then evidence—beside the fact that the documents would inform the decision on which witnesses and help in their questioning, the harm is this: You will not have any of the evidence the President continues to conceal throughout most or all of the trial.

And although the evidence against the President is already overwhelming, you may never know the full scope of the President's misconduct or those around him, and neither will the American people.

The charges here involve the sacrifice of our national security at home and abroad, and a threat to the integrity of the next election. If there are additional remedial steps that need to be taken after the President's conviction, the American people must know about it.

But if, as a public already jaded by experience has come to suspect, this resolution is merely the first step of an effort orchestrated by the White House to rush the trial, hide the evidence, and render a fast verdict, or worse, a fast, unfair and partial verdict, are you not doing a disservice to those who placed their trust in you to have the trial first and then decide on witnesses and evidence later? Would it be fair to both sides? I have to think that your answer would be no. Let me be blunt. Let me be very blunt. Right now a great many, perhaps even most, Americans do not believe there will be a fair trial. They don't believe that the Senate will be impartial. They believe that the result is preordained. The President will be acquitted, not because he is innocent—he is not—but because the Senators will vote by party, and he has the votes—the votes to prevent the evidence from coming out, the votes to make sure the public never sees it.

The American people want a fair trial. They want to believe their system of governance is still capable of rising to the occasion. They want to believe that we can rise above party and do what is best for the country, but a great many Americans don't believe that will happen.

Let's prove them wrong. Let's prove them wrong.
How? By convicting the President? No, nor by conviction alone, by convicting him if the House proves its case and only if the House proves its case, but by letting the House prove its case, by letting the House call witnesses, by letting the House introduce documents, by letting the House decide how to present its case and not deciding it for us—in sum, by agreeing to a fair trial. Now let’s turn to the precise terms of the resolution, the history of impeachment trials, and what fairness and impartiality require.

Although we have many concerns about the resolution, I will begin with its single biggest flaw. The resolution does not ensure that subpoenas will, in fact, be issued for additional evidence that the Senate and the American people should have—and that the President continues to block—to fairly decide the President’s guilt or innocence. Moreover, it guarantees that such subpoenas will not be issued now, when it would be essential to the Senate, the parties, and the American people.

According to the resolution the leader has introduced, first the Senate receives briefs and filings from the parties. Now, the House hearing—presentation from the House and the President. Now my colleagues, the President’s lawyers, have described this as opening statements. But let’s not kid ourselves; that is the trial that they contemplate. The opening statements are the trial. They will either be most of the trial or they will be all of the trial. If the Senate votes to deprive itself of witnesses and documents, the opening statements will be the end of the trial. So to say “Let’s just have the opening statements, and then we will see” means “Let’s have the trial, and maybe we can sweep this all under the rug.”

So we will hear these lengthy presentations from the House. There will be a question-and-answer period for the Senators, and then—and only then—after, essentially, the trial is over, after the briefs have been filed, after the arguments have been made, and after Senators have exhausted other questions, only then will the Senate consider whether to subpoena crucial documents and witness testimony that the President has desperately tried to conceal from this Congress and the American people—documents and witness testimony that, unlike the Clinton trial, have not yet been seen or heard.

It is true that the record compiled by the House is overwhelming. It is true the record already compiles the conviction of the President in the face of unprecedented resistance by the President. The House has assembled a powerful case, evidence of the President’s high crimes and misdemeanors that includes direct evidence and testimony of officials who were unwilling and unwittingly led to believe it was. Yet there is still more evidence—relative and probative evidence—that the President continues to block that would flesh out the full extent of the President’s misconduct and those around him.

We have seen that, over the past few weeks, new evidence has continued to come to light as the nonpartisan Government Accountability Office determined that the hold on military aid to Ukraine was illegal and broke the law; as John Bolton has offered to testify in the trial; as one of the President’s agents, Lev Parnas, has produced documentary evidence that clarifies Mr. Giuliani’s activities on behalf of the President and corroborates Ambassador Sondland’s testimony that everyone was in the loop; as documents released under the Freedom of Information Act have documented the alarm at the Department of Defense that the President illegally withheld military support for Ukraine, an ally at war with Russia, without explanation; as the senior Office of Management and Budget official, Michael Duffey, instructed Department of Defense officials on July 25, 90 minutes after President Trump spoke by phone with President Zelensky, that the Defense Department should pause all obligation of Ukraine military assistance under its purview—90 minutes after that call. Duffey added, “Given the sensitive nature of the request, I appreciate your keeping that information closely held to those who need to know to execute the direct.”

Although the evidence is already more than sufficient to convict, there is simply no rational basis for the Senate to deprive itself of all relevant information in making such a hugely consequential judgment. Moreover, as the President’s answer to his summons and his trial brief made clear, the President intends to contest the facts in false and misleading ways. Indeed, in some cases agencies have already produced documents in FOIA lawsuits, albeit in heavily redacted form. Witnesses with direct knowledge or involvement should be heard. That includes the President’s Acting Chief of Staff Mick Mulvaney; one former National Security Advisor, John Bolton, who has publicly offered to testify—two senior officials integral to implementing the President’s freeze on Ukraine’s military aid also have very direct testimony. Who do you hear it?—Robert Blair, who served as Mr. Mulvaney’s senior advisor; Michael Duffey, a senior official at OMB; and other witnesses with direct knowledge whom we reserve the right to call later—but these witnesses with whom we wish to begin the trial.

Last month, President Trump made clear that he supported having senior officials testifying before the Senate during his trial, declaring that he would “love” to have former Secretary Pompeo, Mr. Mulvaney, now former Secretary Perry, and “many other people testify” in the Senate trial: (Text of Videotape presentation:)

So, when it’s fair, and it will be fair in the Senate, I would love to have Mike Pompeo, I’d like to have Rick, I’d love to have Rick Perry and many other people testify.

Mr. Manager SCHIFF. The Senate has an opportunity to take the President up on his offer up to make all senior aides available, including Secretaries Perry and Pompeo.

But now the President is changing his tune. The bluster of wanting these witnesses to testify after posturing the fact that he has never asserted the claim of privilege in the course of the House impeachment proceedings, he threatens to invoke one now in a last-ditch effort to keep the rest of the truth from coming out. The President sends his lawyers here breathlessly claim that these witnesses or others cannot possibly testify because it involves national security. Never mind that the most impeachable, serious offenses will always involve national security because they will involve other nations, and that misconduct based on foreign entanglement is what the Framers feared most.

The President’s absurdist argument amounts to this: We must endanger national security to protect national security. We must make the President’s conduct threatening our security beyond the reach of impeachment powers if we are to save the Presidency. This is dangerous nonsense.

As Justices of the Supreme Court have underscored, the Constitution is not a suicide pact.

But let us turn from the abstract to the very concrete, and let me show you just one example of what the President is hiding in the name of national security.

There is a document, which the President has refused to turn over, in
which his top diplomat in Ukraine says to two other appointees of the President: “As I said on the phone, I think it’s crazy to withhold security assistance for help with a political campaign.”

The administration refuses to turn over that document and so many more. We only know about its existence, we have only seen its contents because it was turned over by a cooperating witness.

This is what the President would hide from you and from the American people. In the name of national security, he would hide graphic evidence of his dangerous misconduct. The only question is—and it is the question raised by this resolution—Will you let him?

Last year, President Trump said that article II of the Constitution would allow him to do anything he wanted, and evidently believing that article II empowered him to denigrate and defy a coequal branch of government, he also declared that he would fight all subpoenas. Let’s hear the President’s own words: “Then I have an Article II, where I have the right to do whatever I want as President.”

True to his pledge to obstruct Congress, when President Trump faced an impeachment inquiry in the House of Representatives, he ordered the executive branch to defy every single request on every single subpoena. He issued this directive on the advice of his White House Counsel, Pat Cipollone, on October 8—the same counsel who stood before you a moment ago to defend the President’s misconduct. He then affirmed it again at a rally on October 10.

Following President Trump’s categorical order, we never received the documents and communications. It is important to note, in refusing to respond to Congress, the President did not make any—any—formal claim of privilege, ever. Instead, Mr. Cipollone’s letter stated, in effect, that the President would withhold all evidence from the executive branch unless the House surrendered to demands that would effectively place President Trump in charge of the inquiry into his own misconduct. He then affirmed it again at a rally on October 10.

Needless to say, that was a nonstarter and designed to be so. The President was determined to obstruct Congress no matter what we did, and his only means for this attack on the impeachment inquiry, his attacks on witnesses—has affirmed that the President never had any intention to cooperate under any circumstance. And why? Because the evidence and testimony he conceals would only further prove his guilt. The innocent do not act this way.

Simply stated, this trial should not reward the President’s obstruction by allowing him to control what evidence is seen and when it is seen and what evidence will remain hidden. The documents the President seeks to conceal include White House records, including records about the President’s unlawful hold on military aid; State Department records, including text messages and WhatsApp messages exchanged by the State Department and Ukrainian officials and notes to file by career officials as they saw the President’s schemes; OMB records demonstrating evidence to fabricate an after-the-fact rationale for the President’s order, showing internal objections that the President’s orders violated the law; Defense Department records showing that, after the President suspended military aid to a key security partner without explanation.

Many of the President’s aides have also followed his orders and refused to testify. These include essential figures in the impeachment inquiry, including White House Chief of Staff Mick Mulvaney, former National Security Advisor John Bolton, and many others with and allowed the President’s order to freeze vital military and security assistance to Ukraine.

The Trump administration has refused to disclose their communications, even though we know from written testimony, public reporting, and even Freedom of Information Act lawsuits that they were instrumental in implementing the hold and extending it at the President’s express direction even—as career officials warned accurately that doing so would violate the law.

The President has also made the insupportable claim that the House should have enforced its subpoenas in its impeachment to delay for years. If we had done so, we would have abdicated our constitutional duty to act on the overwhelming facts before us and the evidence the President was seeking to cheat in the next election.

We could not engage in a deliberately protracted court process while the President continued to threaten the sanctity of our elections.

Resorting to the courts is also inconsistent with the Constitution that gives the House the sole power of impeachment. If the House were compelled to exhaust all legal remedies before impeaching the President, it would interpret the dismissal of a single judge between the House and the power to impeach. Moreover, it would invite the President to present his own impeachment by endlessly litigating the matter in court—appealing from the lower courts to the Supreme Court. Indeed, in the case of Don McGahn—the President’s lawyer, who was ordered to fire the special counsel and lie about it—he was subpoenaed by the House in April of last year, and there is still no final judgment.

A President may not defeat impeachment or accountability by engaging in endless litigation. Instead, it has been the long practice of the House to compile core evidence necessary to reach a reasoned decision about whether to impeach and then to bring the case here to the Senate for a full trial. That is exactly what we did here, with an understanding that it is our own power to compel documents and testimony.

It would be one thing if the House had shown no interest in documents or witnesses during its investigation—albeit, even there, the House has the sole right to determine its proceedings as long as it makes the full case to the House, as it did—but it is quite another when the President is the cause of his own complaint, when the President withholds witnesses and documents and then attempts to rely on his own noncompliance to justify further concealment.

President Trump made it crystal clear that we would never see a single document—whether in a single moment when he declared, as we just watched, that he would fight all subpoenas. As a matter of history and precedent, it would be wrong to assert that the Senate is unable to obtain and review new evidence during a Senate trial regardless of why evidence was not produced in the House.

You can and should insist on receiving all the evidence so you can render impartial justice and can earn the confidence of the public in the Senate’s willingness to hold a fair trial.

Under the Constitution, the Senate does not just vote on impeachments. It does not just debate them. Instead, it is commanded by the Constitution to try all cases of impeachment. If the Founders intended for the House to try the matter and the Senate to consider an appeal based on the cold record from the other Chamber, they would have said so, but they did not. Instead, they gave us the power to carry out the President’s order, showing internal objections that the House has its sole right to determine its proceedings as long as it makes the full case to the House, as it did—but it is quite another when the President is the cause of his own complaint, when the President withholds witnesses and documents and then attempts to rely on his own noncompliance to justify further concealment.

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Following President Trump’s categorical order, we never received the documents and communications. It is important to note, in refusing to respond to Congress, the President did not make any—any—formal claim of privilege, ever. Instead, Mr. Cipollone’s letter stated, in effect, that the President would withhold all evidence from the executive branch unless the House surrendered to demands that would effectively place President Trump in charge of the inquiry into his own misconduct. He then affirmed it again at a rally on October 10.

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Under the Constitution, the Senate does not just vote on impeachments. It does not just debate them. Instead, it is commanded by the Constitution to try all cases of impeachment. If the Founders intended for the House to try the matter and the Senate to consider an appeal based on the cold record from the other Chamber, they would have said so, but they did not. Instead, they gave us the power to carry out the President’s order, showing internal objections that the President’s order to freeze vital military and security assistance to Ukraine.

The Framers chose their language and the structure for a reason. As Alexander Hamilton said, the Senate is given “awful discretion” in matters of impeachment. The Constitution thus speaks to Senators in their judicial character as a court for the trial of impeachments. It requires them to aim at real demonstrations of innocence or guilt and requires them to do so by hearing the trial.

The Senate has repeatedly subpoenaed and received new documents, often many of them while adjudicating cases of impeachment. Moreover, the Senate has heard witness testimony in every one of the 15 Senate trials—full Senate trials—in the history of this Republic, including those of Presidents Andrew Johnson and Bill Clinton. Indeed, in President Andrew Johnson’s Senate impeachment trial, the House managers were permitted to begin presenting documents to the Senate on the very first day of the trial. The House managers’ initial presentation of documents in President
Johnson’s case carried on for the first 2 days of trial and immediately after witnesses were called to appear in the Senate.

This has been the standard practice in prior impeachment trials. Indeed, in most trials the body has heard from many witnesses, ranging from 3 in President Clinton’s case to 40 in President Johnson’s case and well over 60 in other impeachments. As these numbers make clear, the Senate has always heard from key witnesses when trying an impeachment.

The notion that only evidence that was taken before the House should be considered is squarely and unequivocally contrary to Senate precedent. Nothing in law or history supports it.

To start, consider Leader McConnell’s own description of his work in a prior Senate impeachment proceeding. In the case of Judge Claiborne, after serving on the Senate trial committee, Leader McConnell described how the Senate committee “labored intensively for more than 2 months, amassing the necessary evidence and testimony.” In the same essay, Leader McConnell recognized the full body’s responsibility for amassing and digesting evidence preliminary to a vote on whether the Senate should dismiss the charges and send the matter to the House, or whether it should proceed to hear from key witnesses when trying an impeachment. These rules plainly contemplate a robust role for the Senate in gathering and considering evidence. They reflect centuries of practice of accepting and requiring new evidence in Senate impeachment trials, which date back to 19th century, devote more attention to the gathering, handling, and admission of new evidence than any other single subject. These rules express the tradition that the Senate will hear evidence for the Senate to amass and digest in that proceeding, which involved charges against a district court judge. The Senate heard testimony from 19 witnesses, and it allowed for over 2,000 pages of documents to be entered into the record over the course of that trial.

At no point did the Senate limit evidence to what was before the House. It did the opposite, consistent with unbroken Senate practice in every single impeachment trial—every single one.

For example, of the 40 witnesses who testified during President Johnson’s Senate trial, only 3 provided testimony to the House during its impeachment inquiry—only 3. The remaining 37 witnesses—Presidential impeachment trial testified before the Senate.

Similarly, the Senate’s full first impeachment trial—when sitting as a Court of Impeachment—every single one. The Senate should address all the documentary issues and most of the witnesses now, not later. The need to subpoena documents and testimony now has only increased due to the President’s obstruction for several reasons.

First, the process for the Clinton trial was worked out by mutual consent among the parties. That is not true here, where the process is sought to be imposed by one party on the other.

Second, all of the documents in the Clinton trial were turned over prior to the trial—all 90,000 pages of them—so they could be used in the House’s case. None of the documents have been turned over by the President in this case, and under Leader McConnell’s proposal, none may ever be. They certainly will not be available to you or to us during most or all of the trial. If we are really going to follow the Clinton precedent, the Senate must insist on the documents now before the trial begins.

Third, the issue in the Clinton trial was not one of calling witnesses but of recalling witnesses. All of the key witnesses in the Clinton trial had testified before the grand jury or had been interrogated under oath before the Clinton trial. We did not call these witnesses before the House when their unavailability was caused by the President himself.

Last, as you will remember—those of you who were here—the testimony in the Clinton trial involved decorum issues that are not present here. You may rest assured, whatever else the case may be, such issues will not be present here.

In sum, the Clinton precedent—if we are serious about it, and we are very serious about it, it is not being replicated by the Clinton resolution—not in any way, not in any shape, not in any form. It is far from it. The traditional model followed in President Johnson’s case and all of the others is really the one that is most appropriate to the circumstances.

The Senate should address all the documentary issues and most of the witnesses now, not later. The need to subpoena documents and testimony now has only increased due to the President’s obstruction for several reasons.

First, his obstruction has made him uniquely and personally responsible for the absence of the witnesses before the House. Having ordered them not to appear, he may not be heard to complain now that they followed his orders and refused to testify. To do otherwise only rewards the President’s obstruction.
and encourages future Presidents to defy lawful process in impeachment investigations.

Second, if the President wishes to contest the facts—and his answer and trial brief indicate that he will try—he must now comply with the Senate's demand to produce all relevant documents that shed light on the very factual matters he wishes to challenge. The Senate trial is not analogous to an appeal where the parties must argue the facts on the basis of the record below. There is no appeal. This is the trial.

Third, the President must not be allowed to mislead the Senate by selectively introducing documents while withholding the vast body of documents that may contradict them. This is very important. The President must not be allowed to mislead you by introducing documents selectively and withholding all of the rest. All of the relevant documents should be produced so there will be full disclosure of the truth; otherwise, there is a clear risk that the President will continue to hide all evidence harmful to his position, while selectively producing documents without any context or opportunity to examine their full context.

Finally, you may infer the President's guilt from his continuing efforts to obstruct the production of documents and witnesses. The President has said he wants witnesses like Mulvaney and Pompeo and others to testify and that his interactions with Ukraine have been perfect. Counsel has affirmed today that would be the President's defense: His conduct was perfect. It was perfectly fine to coerce an ally with withholding military aid to get help cheating in the next election. That will be part of the President's defense, although albeit not worded in that way.

Now he has changed course. He does not want witnesses to be asked logical inference in any court of law would be that the party's continued obstruction of lawful subpoenas may be construed as evidence of guilt.

Let me conclude. The facts will come out in the end. The documents which the President is hiding will be released, through the Freedom of Information Act or through other means over time. Witnesses will tell their stories in books and film. The truth will come out. The question is, Will it come out in time? And what answer shall we give if we did not pursue the truth now and let it remain hidden until it was too late to consider on the profound issue of the President's guilt or innocence?

There are many overlapping reasons for voting against this resolution, but they all converge on this single idea: fairness.

The trial should be fair to the House, which must be given the opportunity to depose and examine evidence by a President who wishes to conceal it. It should be fair to the President, who will not benefit from an acquittal or dismissal if the trial is not viewed as fair, if it is not viewed as impartial. It should be fair to Senators, who are tasked with the grave responsibility of determining whether to convict or acquit and should do so with the benefit of all the facts. And it should be fair to the American people, who are the ultimate jury, or maybe extinction.

Somebody said—one of the Members of the House said treason. Instead, we get two Articles of Impeachment—two Articles of Impeachment that have a vague allegation about a noncrime allegation of abuse of power and obstruction of Congress.

Members, managers—right here before you today—who have said that executive privilege and constitutional privileges have no place in these proceedings—on June 28, 2012, Attorney General Eric Holder became the first U.S. Attorney General to be held in both civil and criminal contempt. Why? Because President Obama asserted executive privilege.

With respect to the Holder contempt proceedings, Mr. Manager SCHIFF wrote: "The White House assertion of privilege is backed by decades of precedent that has recognized the need for the President and his senior advisers to receive candid advice and information from their top aides."

Indeed, that is correct—not because Manager SCHIFF said it but because the Constitution requires it.

Mr. Manager Nadler said that the effort to hold Attorney General Holder in contempt for refusing to comply with various subpoenas was "political motivated," and Speaker PELOSI called the Holder matter "little more than a witch hunt."

What are we dealing with here? Why are we here? Are we here because of a phone call or are we here before this great body because, as the President was sworn into office, there was a desire to see him removed?

I remember in the Mueller report there were discussions about—remember—insurance policies. The insurance policy didn't work out so well, so then we moved to other investigations. I guess you would call them a reinsurance or an umbrella policy. That didn't work out so well, and here we are today.

Manager SCHIFF quoted the Supreme Court, and I would like to make reference to the Supreme Court as well. It was then-Justice Rehnquist, later to be Chief Justice Rehnquist, who wrote for the majority in United States v. Russell in 1973. These are the words: "...we may someday be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial process to obtain a conviction..." That day is today. That day was a year ago. That day was in July when the Mueller report was released.

Believe me, what has taken place in these proceedings is not to be confused with due process because due process demands and the Constitution requires that fundamental parities and due process—we are hearing a lot about due process. Due process is designed to protect the person accused.

When the Russia investigation failed, it devolved into the Ukraine, a quid pro quo. When that didn't prove out, it was an extortion or maybe extortion. Somebody said—one of the Members of the House said treason. Instead, we get two Articles of Impeachment—two Articles of Impeachment that have a vague allegation about a noncrime allegation of abuse of power and obstruction of Congress. The Senate trial is not analogous to an appeal where the parties must argue the facts on the basis of the record below. There is no appeal. This is the trial.

Let me quote from the House impeachment report at page 18. Although, Mr. Counsel, Mr. Counsel has at times invoked the notion of due process, an impeachment trial, impeachment inquiry, is not a criminal trial and should not be confused with it. Believe me, what has taken place in these proceedings is not to be confused with due process because due process demands and the Constitution requires that fundamental parities and due process—we are hearing a lot about due process.
from the outset; but to say that the courts have no role, the rush to impeachment, to not wait for a decision from a court on an issue as important as executive privilege—as if executive privilege hasn’t been utilized by Presidents since our founding. This is not some new concept. We don’t waive executive privilege, and there is a reason we keep executive privilege and we assert it when necessary, and that is to protect—to protect the Constitution and the separation of powers.

The President and his colleagues in their rush to impeach, if they had refused to wait for a complete judicial review. That was their choice. Speaker Pelosi clearly expressed her impatience and contempt for judicial proceedings when she said: “We cannot be at the mercy of the courts.” Think about that for a moment. We cannot be at the mercy of the courts.

So take article III of the U.S. Constitution and remove it. We are acting as if it was an improper venue to determine constitutional issues of this magnitude? That is why we have courts. That is why we have a Federal judiciary.

It was interesting when Professor Turley testified before the House Judiciary Committee, in front of Mr. Nadler’s committee. He said:

We have three branches of government, not two. If you impeach a President and you make a high crime and misdemeanor out of going to court an abuse of power, it’s your abuse of power.

You know it is more than that. It is a lot more than that. There is a lot more than abuse of power if you say the courts don’t apply, constitutional principles don’t apply.

Let’s start with a clean slate as if nothing happened. A lot has happened. As we proceed in the days ahead, we will lay out our case. We are going to put forward to the American people—but, frankly, for the Constitution’s sake—what is taking place here; that this idea that we should ignore what is taking place over the last 3 years is outrageous.

We believe that what Senator McConnell has put forward provides due process and allows the proceedings to move forward in an orderly fashion. Thirty-three days—thirty-three days—they hold on to those impeachment articles. Thirty-three days. It was a rush for our national security to impeach this President before Christmas that they then held them for 33 days. To do what: to act as if the House of Representatives should negotiate the rules of the U.S. Senate. They didn’t hide this. This was the expressed purpose. This was the reason they did it.

We are prepared to proceed. Majority leader, Democratic minority leader, we are prepared to proceed. In our view, these new concerns should begin.

Mr. Chief Justice, I yield the rest of my time to my colleague, the White House Counsel.

The CHIEF JUSTICE. Mr. Cipollone.

Mr. Counsel CIPOLLINE, Mr. Chief Justice, I just want to make a couple of additional points.

It is very difficult to sit there and listen to Mr. SCHIFF tell the tale he just told. Let’s remember how we all got here: They made false allegations about the President. They threatened him. They sent him a subpoena. The President didn’t tell them it was a complete fake. Do you want to know about due process? I will tell you about due process. Never before in the history of our country has a President of the United States been confronted with this kind of impeachment proceeding in the House. It wasn’t conducted by the Judiciary Committee. Mr. NADLER, when he applied for that job, told his colleagues, when they took over the House, that he was really good at impeachment.

But what happened was the proceedings took place in a basement of the House of Representatives. The President was forbidden from attending. The American people was not allowed to have a lawyer present.

In every other impeachment proceeding, the President has been given a minimal due process. Nothing here. Not even Mr. SCHIFF’s Republican colleagues were allowed into the SCIF. Information was selectively leaked out. Witnesses were threatened. Good public servants were told that they would be held in contempt. They were told that they were obstructing.

What does SCHIFF mean by “obstructing”? He means that unless you do exactly what he says, regardless of your constitutional rights, then, you are obstructing.

The President was not allowed to call witnesses. By the way, there is still evidence in the SCIF that we haven’t been allowed to see. I wonder why. No witnesses.

Let’s think about something else for a second. Let’s think about something else. They held these articles for 33 days. We have all this talk about an overwhelming case—an overwhelming case that they are not even prepared today to stand up and make an opening argument about. That is because they have no case. Frankly, they have no charge.

When you look at these Articles of Impeachment, they are not only ridiculous; they are dangerous to our republic. And why? First of all, the notion that the President, in his constitutional rights to protect the executive branch, has been done by just about every President since George Washington—that is obstruction.

That is our patriotic duty. Mr. SCHIFF, particularly when confronting with a wholesale trampling of constitutional rights that I am unfamiliar with in this country. Frankly, it is the kind of thing that our State Department would criticize if we see it in foreign countries. We have never seen anything like it.

And Mr. SCHIFF said: Have I got a deal for you. Abandon all your constitutional rights, forget about your lawyers, and come in and do exactly what I say.

No, thank you. No, thank you.

And then has the temerity to come into the Senate and say: We have no use for courts. It is outrageous.

Let me tell you another story. There is a man named Charlie Kupperman. He is the Deputy National Security Advisor. He is the No. 2 to John Bolton.

You have to remember that Mr. SCHIFF wants you to forget, but you have to remember how we got here.

They threatened him. They sent him a subpoena. Mr. Kupperman did whatever any American should be allowed to do, used to be allowed to do. He was forced to get a lawyer. He was forced to pay for that lawyer, and he went to court. Mr. SCHIFF doesn’t like courts. He went to court.

And he said: Judge, tell me what to do. I have obligations that, frankly, rise to what the Supreme Court has called the apex of executive privilege in the area of national security. And then I have a subpoena from Mr. SCHIFF. What do I do?

You know what Mr. SCHIFF did? Mr. Kupperman went to the judge, and the House said: Never mind. We withdraw the subpoena. We promise not to issue it again.

And then they come here and ask you to do the work that they refused to do for themselves. They ask you to trample on executive privilege.

Would they ever suggest that the executive could determine on its own what the speech or debate Clause means? Of course not. Would they ever suggest the House could invade the discussions the Supreme Court has behind closed doors? I hope not. But they come here, and they ask you to do what they refuse to do for themselves.

They had a court date. They withdraw the subpoena. They evaded the decision, and they are asking you to become complicit in that evasion of the courts. It is ridiculous. We should call it out for what it is.
Obstruction for going to court? It is an act of patriotism to defend the constitutional rights of the President, because if they can do it to the President, they can do it to any of you and do it to any American citizen, and that is wrong. Laurence Tribe, who has advised us, didn’t tell you that in the Clinton impeachment, it is dangerous to suggest that invoking constitutional rights is impeachable. It is dangerous.

You know what? It is dangerous, Mr. Schiff.

What are we doing here? We have the House that completely concocted a process that we have never seen before. They lock the President out. By the way, will Mr. Schiff give documents? We asked them for documents. We asked them for documents when, contrary to his prior statements, it turned out that his staff was working with the whistleblower.

We said: If you see the documents, release them to the public.

We are still waiting.

The idea that they would come here and lecture the Senate—by the way, I was surprised to hear that. Did you realize you are on trial? Mr. NADLER is putting you on trial.

Everybody is on trial except for them. It is ridiculous. It is ridiculous.

They said in their brief: We have overwhelming evidence. And they are afraid to make their case. Think about it. Think about this common-sense—overwhelming evidence to impeach the President of the United States. And then, they come here on the first day and say: You know what, we need some more evidence.

Let me tell you something. If I showed up in any court in this country and said: Judge, my case is overwhelming, but I am not ready to go yet; I need more evidence before I can make my case, I would get thrown out in 2 months. That is exactly what should happen here. That is exactly what should happen here.

It is too much to listen to almost—

...the hypocrisies of the whole thing. What are the stakes? What are the stakes? There is an election in almost 9 months. Months from now, there is going to be an election. Senators in this body the last time had very wise words.
First, it is worth noting they said nothing about the resolution. They said nothing about the resolution. They made no effort to defend it. They made no effort to even claim that this was like the Senate trial in the Clinton proceeding. They never argued that what they argued was different. There is no difference because of this or that. They made no argument about that whatsoever. They made no argument that it makes sense to try the case and then consider documents. There is no argument as to why it makes sense to have a trial without witnesses. And why? Because it is indefensible. It is indefensible. No trial in America has ever been conducted like that, and so you heard nothing about it. And that should be the most telling thing about counsel’s argument.

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

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

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

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

Why didn’t the Founders require the exhaustion of legal remedies? Because they didn’t want to put the impeachment process in the hands of the courts. And you know what is interesting is that while these lawyers for the President are in court saying the exact opposite of what they are telling you today. They are saying: You cannot enforce congressional subpoenas. That is nonjusticiable. You can’t do it.

Counsel brings up the case involving Charles Kupperman, a deputy to John Bolton on the National Security Council, and says: He did what he should do. He went to court to fight us. Well, the Justice Department took the position that he can’t do that. So these lawyers are saying he should, and then those lawyers are saying he shouldn’t. They can’t have it both ways.

Now, interestingly, while Mr. Kupperman—Dr. Kupperman—went to court—and they applaud him for doing that—his boss, John Bolton, now says there is no necessity for him to go to court. He doesn’t have to do it. He is willing to come and talk to you. He is willing to do it. Are you telling us what you know? The question is. Do you want to hear it? Do you want him to hear it? Do you want to hear from someone who was in the meetings, someone who described what the President did—this former White House aide from Ukraine—"I have never heard him talk about—" as a drug deal? Do you want to know why it was a drug deal? Do you want to ask him why it was a drug deal? Do you want to ask him why he repeatedly told people: Go talk to the lawyers? You should want to. Why? They don’t want you to know. They don’t want you to know. The President doesn’t want you to know. Can you really live up to the oath you have taken to be impartial and not know? I don’t think you can.

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

Now they say: Oh, the President is very transparent. He may have refused every subpoena, every document request, but he released two documents—the document on the July 25 call and the document on the April 21 call. Well, let’s face it. He was forced to release the report on the July 25 call when he got caught, when a whistleblower filed a complaint, when we opened an investigation. He was forced because he got caught. You don’t get credit for transparency when you get caught. And what they’re saying is revealed in that, of course, is damning.

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

Now, Mr. Cipollone and Mr. Sekulow made the representation that Republicans were not even allowed in the depositions conducted in the House. Now, I am not going to suggest to you that Mr. Cipollone would deliberately make a false statement. I will leave to it to make those allegations against others. But I will tell you this: He is mistaken. He is mistaken. Every Republican on the three investigative committees was allowed to participate in the depositions, and, more important, they got the same time we did. You show me another proceeding, another Presidential impeachment or other that had that kind of access for the opposite party. And, now, there were depositions in the Clinton impeachment. There were depositions in the Nixon impeachment. So what they would say is some secret process. Well, they were the same private depositions in these other impeachments as well.

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

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

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

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

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

He withheld that money and he withheld even meeting with him in the Oval Office—the President of Ukraine—because he wanted to coerce Ukraine to announce an investigation into his political opponent to interfere with the election. That is the story goes, the documents don’t lie. Are we really going to say that that is OK? Their brief says that is OK. The President has a right to do it. Under article II, we heard the President can do whatever he wants. You want to say that is OK? Then you have got to say that every future President can come into office and they can do the same thing, can they? Are we really going to say that? That’s why we are here.

I now yield to Representative LOFGREN.

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

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

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

The documents will reveal the extent of the White House’s coordination with the President’s agents, such as Ambassador Sondland and Rudy Giuliani, who pushed the President’s so-called “drug deal” on Ukrainian officials. The documents will also show us how key players inside the White House, such as the President’s Acting Chief of Staff, Mick Mulvaney, and his deputy, Robert暖, are responsible for executing the freeze on all military aid and withholding a promised visit to the White House. The documents include records of the people who may have objected to this scheme, such as Ambassador Bolton.

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

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

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

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

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

Documentary evidence in Senate trials has never been limited to the documents sent by the House. The Senate, throughout its existence, has exercised its authority pursuant to its constitutional powers, including Freedom of Information Act requests, in its own impeachment proceedings. The Senate has already seen the documents it needs to decide this case.

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

There are key reasons why this amendment is necessary. We will begin by walking through the history and precedent of Senate impeachment trials. I will let you know about the House’s efforts to get the documents, which were met by the President and
his administration’s categorical commitment to hide all the evidence at all costs, and we will address the specific need for these subpoenaed White House documents. I will tell you why these documents are needed now, not at the end of the trial, in order to ensure a full, fair trial based on a complete evidentiary record.

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

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

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

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

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

The first-ever impeachment trial in 1808 against President Andrew Johnson allowed the House managers to spend the first 2 days of the trial introducing new documentary evidence. It was the same in Judge John Pickering’s trial in 1804. New documents were presented to the Senate nearly a week before House managers made their opening statements and later throughout the trial.

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

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

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

The Senate should issue a subpoena for documents at the very outset of the proceedings so that this body, the House managers, the President can all account for those documents in their presentations and deliberations. It doesn’t make sense to request and receive documents after the parties present their cases. The time is now to do that. So why is the amendment needed? Why would President Trump from continuing his categorical commitment to hide the evidence?

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

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

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

On October 4, the House Committee on Oversight Reform sent a subpoena to the White House Acting Chief of Staff, Mick Mulvaney, this time compelling the production of documents from the White House by October 18. On October 8, before the White House documents were due, the White House Counsel sent a letter to Speaker PELOSI, stating the President’s position that President Trump and his administration cannot participate in this partisan inquiry under the circumstances. The President simply declared that he will not participate in an investigation held by the Senate.

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

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

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

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

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

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

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

When President Nixon tried that argument by refusing to produce tape recordings to prosecutors and to Congress, he was soundly rebuked by the other two branches of government. The
Supreme Court unanimously ruled against him. The House Judiciary Committee voted that he be impeached for obstruction of Congress.

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

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

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

The first set of documents the Senate should get about President Trump’s communication with the President of Ukraine would include the phone calls on April 21 and July 25, as well as the September 25, 2019, meeting with President Trump. We know, for example, that NSC officials prepared talking points for the President in preparation for both calls to the Ukrainian President. The talking points were about American policy, as reflected by the votes of Congress, as well as the Trump administration itself. They didn’t include any mention of the Bidens or the 2016 election interference or investigations that President Trump requested on the July 25 call.

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

[Text of Videotape presentation:]

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

Colonel VINDMAN. Yes, I did.

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

Colonel VINDMAN. Yes.

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

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

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

These documents also include handwritten notes and other documents that White House officials generated during the calls and meetings. We know, for example, that Lieutenant Colonel Vindman and Jennifer Williams all testified to talking contemporaneous handwritten notes during the July 25 call. Ms. Williams and Lieutenant Colonel Vindman both testified that President Zelensky made an exclusive reference to Burisma that included in the memorandum that the White House released to the public. Here is a clip of their testimony.

[Text of Videotape presentation:]

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

Ms. WILLIAMS. That is correct.

Colonel VINDMAN. Correct.

Ms. SCHIFF. The word “Burisma” appears nowhere in the call record that has been released to the public, is that right?

Ms. WILLIAMS. That is right.

Colonel VINDMAN. Correct.

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

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

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

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

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

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

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

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

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

[Text of Videotape presentation:]

Ambassador SONDLAND. First, let me say precisely, because we did not think that we were engaging in improper behavior, we made every effort to ensure that the relevant decision makers at the National Security Council and the State Department knew the important details of our efforts. The suggestion that we were engaged in some irregular or rogue diplomacy is absolutely false. I have now identified certain State Department emails and messages that provide contemporaneous evidence of our efforts. The emails show that the leadership of the State Department, the National Security Council, and the White House were all informed about Ukraine efforts from May 23, 2019, until the security aid was released on September 11, 2019.
Ms. Manager LOFGREN. These emails referenced in this testimony are in the possession of the White House, the State Department, and even the Department of Energy since officials from all three entities communicated together.

Now, during his testimony, Ambassador Sondland described it this way: Everyone was in the loop. It was no secret. These emails are therefore important to understanding the full scope of the scheme.

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

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

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

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

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

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

(Text of Videotape presentation:)

Ms. HILL. I had a discussion with Ambassador Bolton both after the meeting in his office, a very brief one, and then one immediately afterward, the subsequent meeting, for GOLDMAN. So the subsequent meeting—after both meetings when you spoke to him and relayed to him what Ambassador Sondland said, what did Ambassador Bolton say to you?

Ms. HILL. Well, I just want to highlight, first of all, that Ambassador Bolton wanted the Ukraine security assistance. But OMB wouldn’t release them in a Freedom of Information lawsuit, and they have refused to produce these documents at the direction of the President in response to the House’s lawful subpoena.

The Washington Post reported that a “confidential White House review” of President Trump’s decision to hold up hundreds of documents that reveal extensive efforts to generate an after-the-fact justification for the scheme is known as a coverup, actually. The White House lawyers had, apparently, uncovered “early August email exchanges between acting chief of staff Mick Mulvaney and White House budget officials seeking to provide some explanation for withholding the funds the president had already ordered a hold on.

The documents also reportedly include communications between White House officials and outside agencies. Not only does Congress have a right to see them, but the public does, too, under freedom of information laws. As a matter of constitutional authority, the Senate has the greatest interest in and the right to compel those documents. Indeed, as the news article explains, White House lawyers are reportedly worried about “unflattering exchanges and facts that could at a minimum embarrass the president.” Perhaps they should be worried about that, but the risk of embarrassment cannot outweigh the constitutional interests in this impeachment proceeding.

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

There are key White House documents that the aid was in the national security interest of the United States and that there was no legitimate reason to hold up the aid. There are documents that include after-the-fact justifications to try to overcome legal problems and the unanimous objections to freezing the assistance to Ukraine, and we know these documents exist.

On January 3, 2020, OMB stated in a letter to the New York Times that it had disclosed responsive documents reflecting ongoing 40 pages of emails between White House official Robert Blair and OMB official Michael Duffey that relate directly to the freezing of the Ukraine security assistance.
me to hold back in the room immediately after the meeting. Again, I was sitting on the sofa with a colleague—

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

Ms. HILL. Yes, but he was making a very strong point that he wanted to know exactly what was going on and why I had to go back and related it to him, he had some very specific instruction for me. And I'm assuming that that's—

Mr. GOLDMAN. What was that specific instruction?

Ms. HILL. The specific instruction was that he had to go to the lawyers—John Eisenberg, the senior counsel for the National Security Council, to basically say: You tell Eisenberg Ambassador Bolton told me the other day [whatever this—whatever drug deal that Mulvaney and Sondland are cooking up.]

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

Ms. HILL. I took it to mean investigations that the Senate shall have the power and constitutional duty to try impeachment. It is faithful to the Constitution's provisions, it is supported by 200 years of precedent. It is an important privilege issues, if any exist, would let us immediately engage with the White House officials were told repeatedly: Go tell the lawyers about it—Dr. Hill, Lieutenant Colonel Vindman, and Mr. Morrison, who reported to Mr. Eisenberg at least two conversations. We need the notes of those documents to find out more. Again, the White House—client privilege cannot shield information about misconduct from the impeachment trial of the President of the United States.

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

The final point I will make today concerns urgency. The Senate should act on this subpoena now, at the outset of the trial. In 14 of the Senate's 15 full impeachment trials, threshold evidentiary matters, including the timing, nature, and scope of witness testimony, and the gathering of all relevant documents, were addressed at the very outset of the trial. If the Senate compiles and then has you defer, whether there is any “there” or subpoenas for documents. Why is it that the House managers are so afraid to have to present their case? Remember, they have had weeks of a process that they entirely controlled. They had 17 witnesses who testified first in secret and then in public. They have compiled a record with thousands of pages of reports, and they are apparently afraid to just make a presentation based on the record that they complied and then have you defer, before you decide whether there is any “there”—whether there is anything worth trying to talk to more witnesses about. Why is it that they can't wait a few days to make their presentation on everything they have been preparing for weeks and then have that issue considered? It is because they don't think there is any “there” and, they want to ram this through now. They want to ram this through now when it is something that they, themselves, don't want to do.

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

First, as to the process in the House. What the House managers are asking this body to do now is to really do...
their job for them because they didn’t take the measures to pursue these documents in the House proceedings. There have been a number of statements made that they tried to get the documents and no executive privilege was asserted, and things like that.

Let’s look at what actually happened.

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

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

Did the House take any steps to remedy that? Did they try to dispute that? Did they go to court? Did they do anything to resolve that problem? No, because, as we know, all that they wanted to do was issue a subpoena and move on. The House managers had to say about that. The House has not done the investigation and to be doing discovery is the role of the Senate, not to any other part of the government.

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

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

This is what one Attorney General explained. The immunity such advisers enjoy from testimonial compulsion by a congressional committee is absolute and may not be overborne by competing congressional interests. That was Attorney General Janet Reno in the Clinton administration explaining that senior advisers to the President are immune from congressional constraints, that immunity, is rooted in the same principles of executive privilege that has been asserted by all Presidents since the 1970s, and that was the basis on which a number of these advisers whose pictures they put up were directed not to testify. Did they try to challenge that inquiry? Did they go to court on that one? Did they try to go through the constitutionally mandated accommodations process to see if there was a way to come up with some aspect of testimony to be provided? No, none of that. They just wanted to forge ahead, rush through the process, not have the evidence, and then use that as another charge in their charging sheet for the impeachment, calling it obstruction of Congress.

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

We just heard Manager LOFgren refer to executive privilege as a distraction. She was asserting that these issues of executive privilege are just a distraction that shouldn’t hold things up. She would want to get to the core of what the White House has said about executive privilege in Nixon v. United States; that the protections for confidentiality and executive privilege are “fundamental to the operations of government and inextricably rooted in the separation of powers, the powers of the Senate from the powers of the House.”

Inextricably rooted in the separation of powers. That is why it is the President’s duty to defend executive branch confidentiality and interests, and that is what the President was doing here. That is what he said, if you go to the Supreme Court and read what the Supreme Court has said about executive privilege in Nixon v. United States: that the protections for confidentiality and executive privilege are “fundamental to the operations of government and inextricably rooted in the separation of powers, the powers of the Senate from the powers of the House.”

No, it is not true. In a letter of December 18, the White House Counsel Pat Cipollone explained about that: “The immunity, is rooted in the same principles of executive privilege that has been asserted by all Presidents since the 1970s, and that was the basis on which a number of these advisers whose pictures they put up were directed not to testify. Did they try to challenge that inquiry?”

So this is something that is important for this institution. I believe, not to allow the House to turn it into a situation where this body would have to be doing the White House’s work for it. If there is not evidence to support the impeachment, then they are not going to be able to support their case. Again, what is at issue here—and I think it is important to recall—on the issue of this amendment, is whether the House has issued subpoenas, whether this body, will be considering whether there should be witnesses or not but when that should be considered. There is no reason not to take the approach that was done in the Clinton impeachment. One hundred and seventy-six Senators affirmed that it made sense to hear from both sides before making determination on that, to hear from both sides to see what sort of case the House could present and the President’s defense.

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

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

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

That is exactly what happened in the House. Let’s recall that the process they had in the House was one-sided. They locked the President and his lawyers out. There was no due process for the President. They started in secret hearings in the basement. The President couldn’t be present or, by his counsel, couldn’t present evidence. He could only present evidence in public where, again, they locked the President out.
We have heard—and they just said—that the President had an opportunity to participate in the third round of hearings that they held before the Judiciary Committee. After one hearing on December 4, Speaker PELOSI, on the morning of December 5, went ahead and announced the conclusion of the Judiciary Committee proceedings. She announced that she was directing Chairman NADLER to draft Articles of Impeachment. That was before the day they had set for the President to even tell us what his case was, if he wanted to have and to exercise in their proceedings.

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

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

This amendment should be rejected.

Thank you.

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

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

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

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

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

Mr. Manager SCHIFF. Mr. Chief Justice, Mr. Philbin says that the House is not ready to present its case. Of course, that is not something you heard from any of the managers. We are ready. The House calls John Bolton. The House calls John Bolton. The House calls Mick Mulvaney. Let’s get this trial started, shall we? We are ready to present our case. We are ready to call our witnesses. The question is, Will you let us? That is the question before us.

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

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

So let’s step out of this body for a moment and imagine what a real trial would be. A fair process would be, when you come to the day of trial, be ready to start the trial and present your case and not ask for more discovery. The President is ready to proceed. The House managers should be ready to proceed.

This amendment should be rejected.

Thank you.

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

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

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

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

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

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

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

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

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

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

The President should want to use those documents. You should want to see them. You should want to know what these private emails and text messages have to say. If you are going to make a decision about whether he should be removed from office, you should want to see what these documents say.
If you don’t care, if you have made up your mind—be it the President of my party or, for whatever reason, I am not interested, and what is more, I don’t really want the country to see this—that is a totally different matter, but that is not what your oath requires. It is not what your oath requires. The oath requires you to do impartial justice, which means to see the evidence—to see the evidence. That is all we are asking. Just don’t blind yourself to the evidence.

I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

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

The CHIEF JUSTICE. The question is on agreeing to the motion to table. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk calls the roll.

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

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

[Roll Call Vote No. 15]

YEAS—53

Alexander  Fischer  Perdue
Barrasso  Gardner  Portman
Blackburn  Graham  Risch
Blumenthal  Grassley  Rounds
Boozman  Hawley  Romney
Braun  Hoeven  Rounds
Burr  Hyde-Smith  Risch
Capito  Inhofe  Sasse
Cassidy  Johnson  Scott (FL)
Collins  Kennedy  Scott (SC)
Coryn  Lankford  Shelby
Cotton  Lee  Sullivan
Crapo  Loeffler  Tillis
Cruz  McCain  Young
Crucifixion  McSally  Young
Daines  Moran  Toomey
Eskridge  Markowski  Wicker
Ernst  Paul  Young

NAYS—47

Baldwin  Hassan  Rosen
Bennet  Heinrich  Sanders
Blumenstiel  Hirono  Schatz
Boozman  Jones  Schumer
Brown  Kaine  Shaheen
Cantwell  King  Sinema
Cardin  Klobuchar  Smith
Carper  Lee  Stabenow
Casey  Manchin  Tester
Coons  Markey  Udall
Cortez Masto  Menendez  Van Holten
Durbin  Murphy  Warner
Feinstein  Murray  Warren
Gillibrand  Peters  Whitehouse
Harriss  Reed  Wyden

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

The CHIEF JUSTICE. The Democratic leader is recognized.

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

The CHIEF JUSTICE. The clerk will read the amendment.

The senior assistant legislative clerk reads as follows:

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

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

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

Sec. 607. Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials—

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

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

(B) the actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or assistance of any kind to Ukraine, including but not limited to the Ukraine Security Assistance Initiative (USAI) and Foreign Military Financing (FMF), including but not limited to all communications with the White House, Department of Defense, and the Office of Management and Budget, as well as the Ukrainian government’s knowledge prior to August 26, 2019, of any actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance to Ukraine, including all meetings, calls, or other engagements with Ukrainian officials regarding potential or actual suspensions, holds, or delays in United States assistance to Ukraine;

(C) all documents, communications, notes, and other records created or received by, Senator Michael R. Pompeo, Counselor T. Ulrich Sch={$\text{ruhl}}$, former Special Representative for Ukraine Negotiations Ambassador Kurt Volker, Deputy Assistant Secretary George Kent, then-United States Embassy in Kyiv Chargers William B. Tayl=$\text{lor}}$, and Ambassador to the European Union Gordon Sondland, and other State Department officials, relating to efforts to—

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

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

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

(D) any meetings or telephone calls, scheduling items, calendar entries, State Department visitor records, and email or text messages using personal or work-related devices, between or among—

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

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

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

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

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

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

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

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

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

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

The CHIEF JUSTICE. The majority leader is recognized.

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

RECESS SUBJECT TO THE CALL OF THE CHAIR

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

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

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

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

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

The CHIEF JUSTICE. Thank you. And Mr. Cipollone?

Mr. Counsel CIPOLLONE. Opponent. The CHIEF JUSTICE. Mr. Schiff, you have an hour, and you will be able to reserve time for rebuttal.

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

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

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

As the second Article of Impeachment charges, the President sought to conceal evidence of this conduct. He did so by ordering his entire administration—to defy every subpoena, to withhold every official—to defy every subpoena to issue a subpoena for documents to the State Department.

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

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

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

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

In prior impeachment trials, this body has issued subpoenas requiring
the recipient to hand over relevant documents. It must do so again here, and it must do so now at the beginning of the trial, not the end.

Of course the need for a Senate subpoena arises because, as I have noted, the Department of State, acting under the President's direction, made a decision to defy the subpoena.

On September 9, exercising their Article I oversight authority, the House investigating committee sent a document request to the State Department. The committee sought materials related to the President's effort to pressure Ukraine to announce investigations into his political rival, as well as his dangerous, unexplained withholding of billions of dollars in vital military aid.

After the State Department failed to produce any documents, the House Committee on Foreign Affairs issued a subpoena to the State Department on September 27.

In a letter on October 1, Secretary Pompeo acknowledged receipt of the subpoena. At that time, he stated that he would respond to the committee's subpoena for documents by the return date, October 4, but his response never came.

Instead, on October 8, President Trump's lawyer—writing on the President's behalf—issued a direction confirming that the administration would stonewall the impeachment inquiry.

To date, the State Department has not produced a single document—not a single document—in response to the congressional subpoena, but witnesses who testified indicated that the State Department had gathered all of the records and was prepared to provide them before the White House directed it to defy the subpoena.

Notwithstanding this unlawful obstruction, through the testimony of brave State Department employees, the House was able to identify, with remarkable precision, several categories of documents relevant to the first Article of Impeachment that are sitting right now—right now—the documents are sitting right now at the State Department.

I would like to walk you through four key categories of documents that should be subpoenaed and which illustrate the highly relevant documents the State Department could produce immediately to this trial.

The first category consists of WhatsApp and other text messages from State Department officials caught up in these events, including Ambassadors Sondland and Taylor and also Deputy Assistant Secretary George Kent, all three of whom confirmed in their testimony that they regularly use WhatsApp to communicate with each other and foreign government officials.

As Deputy Assistant Secretary Kent explained, WhatsApp is the dominant form of electronic communication in certain parts of the world. We know that the Department possesses records of WhatsApp and text messages from critical eyewitnesses to these proceedings, including from Ambassadors Sondland and Taylor and Deputy Assistant Secretary Kent.

We know that the Department is deliberately concealing these records at the direction of the President, and we know that they could contain highly relevant testimony about the President's plan to condition official Presidential acts on the announcement of investigations for his own personal and political gain.

We know this not only from testimony but also because Ambassador Volker was able to provide us with a small but telling selection of his WhatsApp messages, which confirm that a full review of these texts and WhatsApp messages from relevant officials would help to paint a vivid, firsthand picture of statements, decisions, concerns, and beliefs held by important players unfolding in real time.

For example, thanks to Ambassador Volker's messages, we know that Ambassador Sondland—a key player in the President's pressure campaign who tested a quid pro quo arrangement—texted directly with the Ukrainian President, President Volodymyr Zelensky. This image produced by Ambassador Volker appears to be a screenshot of a text message that Ambassador Sondland exchanged with President Zelensky about plans for a White House visit—the very same visit that President Zelensky badly needed and that President Trump later withheld as part of the quid pro quo described by Ambassador Sondland in his testimony.

This body and the American people have a right to know what else Ambassador Sondland and President Zelensky said in this and other relevant exchanges about the White House meeting or about the military aid and the President's demands, but we don't know exactly what was conveyed and when. We don't know it because President Trump directed the State Department to conceal these text records. These records would show that the State Department would have otherwise turned over if not for the President's direction and desire to cover up his wrongdoing.

At this point, I would like to walk you through four key categories of documents that should be subpoenaed and which illustrate the highly relevant documents the State Department could produce immediately to this trial.

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To get a sense of why texts and WhatsApp messages are so vital, just consider yet another piece of evidence we have gleaned from Ambassador Volker's partial production.

On July 10, after the White House meetings at which Ambassador Sondland pressured Ukrainian officials to announce investigations President Trump's political opponents, a Ukrainian official texted Ambassador Volker: "I feel that the key for many things is Rudi and I ready to talk with him at any time."

This is evidence that, immediately following Ambassador Sondland's ultimatum, Ukrainian officials recognized that they needed to appease Rudy Giuiliani by carrying out their investigations. Of course, Mr. Giuiliani had publicly confirmed that he was not engaged in "foreign policy" but was instead advancing his client's—the President's—own personal interests.

Further, in another text message exchanged prior to the meeting, Ambassador Volker confirmed that he was sitting right now at the State Department.

On the morning of July 25, half an hour before the infamous call between President Trump and President Zelensky, Ambassador Volker wrote to a senior Ukrainian official: "Headed from White House—assuming President Z convinces trump he will investigate/ get to the bottom of what happened" in 2016 "and will not make visit to Washington. Good luck! See you tomorrow— Kurt."

Ambassador Sondland confirmed that this text accurately summarized the President's directive to him earlier that morning.

After the phone call between President Trump and President Zelensky, the Ukrainian official responded, pointedly: "Phone call went well." He then discussed potential dates for a White House meeting.

Then, the very next day, Ambassador Volker wrote to Rudy Giuliani: "Exactly the right messages as we discussed."

These messages confirm Mr. Giuliani's central role, the premeditated nature of President Trump's solicitation of political investigations, and the pressure campaign on Ukraine waged by Mr. Giuliani and senior officials at President Trump's direction.

Again, this is just some of what we learned from Ambassador Volker's records. As you will see during this trial presentation, there were numerous WhatsApp messages in August while Ambassador Volker and Sondland and Mr. Giuliani were pressuring President Zelensky's top aide to issue a statement announcing the investigation that President Trump wanted. Ambassador Taylor's text that you saw earlier about withholding the aid further reveals how much more material there likely is that relates to the Articles of Impeachment.

There can be no doubt that a full production of relevant texts and WhatsApp messages from other officials involved in Ukraine and in touch with Ukrainian officials—including Ambassador Sondland, Ambassador Taylor, and Deputy Assistant Secretary Kent—would further illuminate the malfeasance addressed in our first article.

This leads to the second category of documents that the State Department is unlawfully withholding—emails involving key State Department officials...
concerning interactions with senior Ukrainian officials and relating to military aid, a White House meeting, and the President’s demand for an investigation into his rivals.

For example, on July 19, Ambassador Gordon Sondland spoke, directly with President Zelensky, about the upcoming July 25 call between President Trump and President Zelensky.

Ambassador Sondland sent an email updating key officials, including Secretary Pompeo, Acting White House Chief of Staff Mulvaney, and senior adviser, Robert Blair. In this email, he noted that he “prepared” President Zelensky, who was willing to make the announcements of political investigations that President Trump desired. Secretary Perry and Mick Mulvaney then responded to Sondland, acknowledging they received the email and recommending to move forward with the phone call that became the July 25 call between the Presidents of the United States and Ukraine.

We know all this not because the State Department provided us with critical documents but, instead, because Ambassador Sondland provided us a reproduction of the email.

In his further testimony, Ambassador Sondland correctly explained that this email demonstrated “everyone was in the loop.”

(Text of Videotape presentation:)

Everyone was in the loop. It was no secret. Everyone was informed via email on July 19th, a Presidential call. I communicated to the team, I told President Zelensky in advance that assurances to run a fully transparent investigation and turn over every stone were necessary in his call with President Trump.

Mrs. Manager DEMINGS. Even viewed alone, this reproduced email is damning. It was sent shortly after Ambassador Sondland personally conveyed the President’s demand for investigations to Ukrainians at the White House, leading several officials to sound alarms. It was said just a few days before the July 25 call, where President Trump asked for a “favor,” and, by itself, this email shows who was involved in President Trump’s plan to pressure the Ukrainian President for his own political gain.

But it is obvious that the full email chain and other related emails to this key time period would also be highly relevant. We don’t have those emails because the State Department is hiding them, at the direction of the President. The Senate should issue the proposed subpoena to ensure a complete record of these and other relevant emails.

Any doubt that the State Department is concealing critical evidence from this body was resolved when the State Department was recently ordered to release documents, including emails, pursuant to a lawsuit under the Freedom of Information Act. These documents are limited to a very narrow time period, but, nevertheless, despite the heavy redactions, this highly limited glimpse into the State Department’s secret records demonstrates that those records are full of information relevant to this trial.

For example, several of these newly released emails show multiple contacts between the State Department, including Secretary Pompeo, and Mr. Giuliani throughout 2019. This is an important fact.

Mr. Giuliani served as the President’s point person on his cut-off point scheme. Mr. Giuliani repeatedly emphasized that his role was to advance the President’s personal agenda—the President’s political interests, not to promote the national security interests of the United States. The fact that the President’s private attorney was in contact at key junctures with the Secretary of State, whose senior officials were directed by the President to support Mr. Giuliani’s efforts in Ukraine, is relevant, disturbing, and telling.

For example, we know that on March 26, as Mr. Giuliani was pursuing the President’s private agenda in Ukraine, and just 1 week after The Hill published an article featuring Mr. Giuliani’s Ukraine conspiracy theories, Secretary Pompeo and Mr. Giuliani spoke directly on the phone.

That same week, President Trump’s former personal secretary was asked by Mr. Giuliani’s assistant for a direct connection to Secretary Pompeo.

Based on these records, it is also clear that Secretary Pompeo was already actively engaged with Mr. Giuliani in early spring of 2019. It also appears that the efforts were backed by the White House, given the involvement of President Trump’s personal secretary.

This body and the American people need to see these emails and other files that we know exist, but there are undoubtedly more, including, for example, Ambassador Yovanovitch’s request for the State Department to issue a statement of support of her around the time that Mr. Giuliani was speaking directly with Secretary Pompeo, but the statement never came.

The State Department has gathered these records, and they are ready to be turned over pursuant to a subpoena from the Senate. It would not be a time-consuming or lengthy process to obtain them, and there are clearly — clearly — important and relevant documents to the President’s scheme. If we want the full and complete truth, then we need to see those emails.

The Senate should also seek a third item that the State Department has refused to provide, and that is Ambassador Taylor’s extraordinary first-person diplomatic cable to Secretary Pompeo, dated August 29 and sent at the recommendation of the National Security Advisor, John Bolton, in which Ambassador Taylor strenuously objected to the withholding of military aid from Ukraine, as Ambassador Taylor recounted in his deposition.

(Text of Videotape presentation:)

Ambassador TAYLOR. Near the end of Ambassador Bolton’s visit, I asked to meet him privately, during which I expressed to him my serious concern about the withholding of military assistance to Ukraine while the Ukrainian media was reporting from Russian aggression. Ambassador Bolton recommended that I send a first-person cable to Secretary Pompeo directly relaying my concerns.

I wrote and transmitted such a cable on August 29th, describing the folly I saw in withholding military aid to Ukraine at a time when hostile rhetoric was on the rise in the east and when Russia was watching closely to gauge the level of American support for
the Ukrainian Government. The Russians, as I said at my deposition, would love to see the humiliation of President Zelensky at the hands of the Americans. I told the Secretary that I could not and would not defend such a policy.

Although I received no specific response, I heard later that the Secretary carried the cable with him to a meeting at the White House focused on security assistance for Ukraine.

Mrs. Manager DEMINGS. While we knew from Ambassador Taylor and Deputy Assistant Secretary Kent that the cable was received, we do not know whether or how the State Department responded, nor do we know if the State Department possesses any other internal records relating to this cable.

This cable is vital for three reasons. First, it demonstrates the harm that President Trump did to our national security when he used foreign policy as an instrument of his own personal, political advantage. Second, it is contemporaneous, first-person accounts from State Department officials who were caught up in President Trump’s scheme unfolded in real time and how the Ukrainians reacted. Mr. Kent wrote notes or memos to file at least four times, according to his testimony. Ambassador Taylor took extensive notes of nearly every conversation he had—some in a little notebook. David Holmes, the Embassy official in Ukraine, was a consistent notetaker of important meetings with Ukrainian officials.

(Text of Videotape presentation:)

Mr. GOLDMAN. Did you take notes of this conversation on September 1st with Ambassador Sondland?

Ambassador TAYLOR. I did.

Mr. GOLDMAN. And did you take notes related to most of the conversations, if not all of them, that you recited in your opening statement?

Ambassador TAYLOR. All of them, Mr. Goldman.

Mr. GOLDMAN. And you are aware, I presume, that the State Department has not provided those notes to the committee. Is that right?

Ambassador TAYLOR. I am aware.

Mr. GOLDMAN. So we don’t have the benefit of reviewing them to ask you these questions.

Ambassador TAYLOR. Correct. I understand that they may be coming, sooner or later.

Mr. GOLDMAN. Well, we would welcome that.

Mrs. Manager Demings. The State Department never produced those notes.

As another example, Deputy Assistant Secretary Kent testified about a key document that he drafted on August 16, describing his concerns that the Trump administration was attempting to pressure Ukraine into opening politically motivated investigations.

(Text of Videotape presentation:)

Mr. SPEIER. I’d like to start with you, Mr. Kent. In your testimony, you said that you had—"In mid-August, it became clear to me that Giuliani’s efforts to gin up politically motivated investigations were now infecting U.S. engagement," leveraging President Zelensky’s desire for a White House meeting." Mr. Kent, did you actually write a memo documenting your concerns that there was an effort under way to pressure Ukraine to open an investigation to benefit President Trump?

Mr. KENT. Yes, ma’am. I wrote a memo to the file on August 16th.

Ms. SPEIER. But we don’t have access to that memo, do we?

Mr. KENT. I submitted it to the State Department, subject to the September 27th subpoena.

Ms. SPEIER. And we have not received one piece of paper from the State Department relative to this investigation.

Mrs. Manager Demings. Deputy Assistant Secretary Kent also memorialized a September 15 conversation in which Ambassador Taylor described an Ukrainian official accusing America of hypocrisy for advising President Zelensky against investigating a prior Ukrainian president. Mr. Kent described that conversation during his testimony.

But the more awkward part of the conversation came after Special Representative Volker made the point that the Ukrainians, who had opened their authorities under Zelensky, had opened investigations of former President Poroshenko. He didn’t think that was appropriate.

Then Ambassador Volker said: What? You mean the type of investigations you’re pushing for us to do on Biden and Clinton?

The conversation makes clear the Ukrainian officials understood the core thrust of Trump’s request and therefore doubted American credibility on anti-corruption measures.

Records of these conversations—and other notes and memoranda by senior American officials in Ukraine—would flesh out and help complete the record for the first Article of Impeachment. They would tell the whole truth to the American people and to this body. You should require the State Department to provide them.

To summarize, the Senate should issue the subpoena proposed and the amendment requiring the State Department to turn over relevant text messages and WhatsApp messages, emails, diplomatic cables, and notes. These documents bear directly on the trial of this body—the trial that this body is required by the Constitution to hold. They are immediately relevant to the first Article of Impeachment. Their existence has been attested to by credible witnesses in the House, and the only reason we don’t already have them is that the President has ordered his administration, including Secretary Pompeo, to hide them.

The President’s lawyers may suggest that the House should have sought these materials in court or awaited further lawsuits under the Freedom of Information Act, a.k.a. FOIA lawsuits. Any such suggestion is meritless.

To start, the Constitution has never been understood to require such lawsuits, which has never occurred—never occurred—in any previous impeachment.

Moreover, the President has repeatedly and strenuously argued that the House is not even allowed to file a suit to enforce its subpoenas.

In the Freedom of Information Act cases, the administration has only grudgingly and slowly produced an extremely small set of materials but has insisted on applying heavy and dubious redactions.

FOIA lawsuits filed by third parties cannot serve as a credible alternative to congressional oversight. In fact, it is still alarming that the administration has produced more documents pursuant to Freedom of Information Act lawsuits by private citizens and entities than congressional subpoenas.

Finally, as we all know, litigation would take an extremely long time—likely years, not weeks or months—while the misconduct of this President requires immediate attention. The misconduct of this President requires immediate attention.

If this body is truly committed to a fair trial, it cannot let the President play a game of “keep away” and dictate what evidence the Senators can
and cannot see bearing on his guilt or innocence. This body cannot permit him to hide all the evidence while disingenuously insisting on lawsuits that he doesn’t actually think we can file—ones that he knows will not be resolved until after the election he is trying to cheat. Instead, to honor our oaths to do impartial justice, we urge each Senator to support a subpoena to the State Department. And that subpoena should be issued now, at the beginning of the trial, rather than at the end of the trial. As protected by the communications privilege, their importance weighed by the parties, by the Senate, and by the American people. That is how things work in every courtroom in the Nation, and it is how they should work here, especially because the stakes, as you all know, are so high.

The truth is there. Facts are stubborn things. The President is trying to hide it. This body should not surrender to his obstruction by refusing to demand a full record. That is why the House managers support this amendment.

Mr. Chief Justice, the House managers reserve the balance of our time.

The CHIEF JUSTICE. Mr. Cipollone.

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice.

In the interest of time, I will not repeat all of the arguments we have made already with respect to these motions. I would say one thing before I turn it over to my co-counsel. Mr. SCHIFF came here and said he is not asking you to do something he wouldn’t do for himself, and the House manager said: We were not asking you to do our jobs for us.

Mr. SCHIFF came up here and said: “I call Ambassador Bolton.” Remember Paul Harvey? It is time for the rest of the story. He didn’t call him in the House. He didn’t subpoena Ambassador Bolton in the House.

I have a privilege here from Ambassador Bolton’s lawyer. He is the same lawyer that Charlie Kupperman hired. It is dated November 8. He said: I write as counsel to Dr. Charles Kupperman and to Ambassador John Bolton in response to, one, the letter of November 5 from Chairman SCHIFF, Chairman ENGEL, and Acting Chair MALONEY, the House chairs, withdrawing the subpoena to Dr. Kupperman—I mentioned that earlier—and to recent published reports announce that the House chairs do not intend to issue subpoenas to Ambassador Bolton.

He goes on to say: “We are dismayed that committees have chosen not to join in seeking resolution from the Judicial Branch of this momentous constitutional question.” He ends the letter by saying: “If the House chooses not to pursue subpoena the testimony of Dr. Kupperman and Ambassador Bolton, let the record be clear: that is the House’s decision.”

The managers’ decision. They never subpoenaed Ambassador Bolton. They didn’t try to call him in the House. They withdrew the subpoena for Dr. Kupperman before the judge could rule, and they asked that the case be mooted. Now they come here, and they ask you to issue a subpoena for John Bolton. It is not right.

I yield the remainder of my time to Mr. Sekulow.

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, the managers said facts are a stubborn thing. Let me give you some facts. It is from the transcripts.

Ambassador Sondland actually testified unequivocally that the President did not tie aid to investigations. Instead, he acknowledged that any leak he had suggested was based entirely on his own speculation, unconnected to any conversation with the President. Here is the question: What about the aid? Ambassador Volker says that the aid was not tied. Answer. I didn’t say that they were conclusively tied either. I said I was presuming it. Question. OK. And so the President never told you they were tied? Answer. That is correct.

Question. So Senateimony and Ambassador Volker’s testimony is consistent, and the President did not tie investigations, aid to investigations, correct?

Answer. That is correct.

Ambassador Sondland also testified that he asked President Trump directly about these issues, and the President explicitly told him that he did not want anything from Ukraine. He said: I want nothing. I want nothing. I want no quid pro quo. Tell Zelensky to do the right thing.

Similar comments were made to Senator JOHNSON.

Those are the facts—stubborn, but those are the facts.

No one is above the law. Here is the law. As every Member of Congress knows and is undoubtedly aware, separate from even state sacred privileges is the Presidential communication exception: “Communications which these advisers solicited and received must rely on their staffs to investigate an issue and formulate advice given to the President.”

Lawsuits, the Constitution—it is a dangerous moment for America when the President of the United States is being rushed through because of lawyer lawsuits. The Constitution allows it, if necessary. The Constitution demands it, if necessary. Thank you, Mr. Chief Justice.

Mr. Counsel SEKULOW. Mr. Chief Justice.

Mr. Chief Justice.

That was his answer: “I will sue you.”

Mr. Bolten is represented by the same lawyer who represents Dr. Kupperman, who actually did sue us when he was subpoenaed. So we knew that John Bolton would make good on that threat.

Mr. Sekulow said something about lawyer lawsuits. I have to confess, I wasn’t completely following the argument, but he said something about lawyer lawsuits and that we are against lawyer lawsuits. I don’t know what that means, but I can tell you this: The Constitution demands that in court in that case and in other cases arguing that Congress cannot go to court to enforce its subpoenas. So when they say
something about lawyer lawsuits and they say there is nothing wrong with the House suing to get these witnesses to show up and they should have sued to get them to show up, their own lawyers are in court saying that the House has no such right. They are in court saying it’s not a problem. That argument cannot be made in both directions.

What is more, in the McGahn issue, which tested this same bogus theory of absolute immunity against a court lawsuit involving the President’s lawyer, Don McGahn, the one who was told to fire the special counsel and then to lie about it, that lawsuit to get his testimony—Judge Jackson ruled on that very recently when they made the same bogus claim, saying that he is absolutely immune from showing up.

The judge said:

That is nonsense. There is no support for that—not in the Constitution, not in the case, not in whole cloth.

But the judge said something more that was very interesting. What we urged John Bolton’s lawyer was, you don’t need to file a lawsuit. Dr. Kupperman, you don’t need to file a lawsuit. There is one already filed involving Don McGahn that is about to be decided. So unless your real purpose here is delay, unless your real purpose here is to avoid testimony and you just wish to give the impression of a willingness to come forward, you just want to hold that information back, then Dr. Kupperman is absolutely, 100% true, agree to be bound by the McGahn decision.

Well, of course, they were not willing because they didn’t want to testify. Now, for whatever reason, John Bolton is now willing to testify. I don’t know why that is. Maybe it is because he has a book coming out. Maybe it is because it would be very hard to explain why he was unwilling to share important information with the Senate; that he could refuse to testify in a House investiga-
tion or interview because he would need court permission to do it, but he could put it in the book. I don’t know. I can’t speak to his motivation. I can tell you he is willing to come now, if you are willing to hear him.

Of course, they weren’t willing to be bound by that court decision in McGahn, but the court said something very interesting, because one of the arguments they happened to make—one of the arguments is that John Bolton’s lawyer had been making as to why they needed their own separate litiga-
tion was, well, John Bolton and Dr. Kupperman, they are national security people, and Don McGahn is just a White House Counsel. No offense to the White House Counsel but apparently it had nothing to do with the national security so they couldn’t be bound by what the court in the McGahn case said. Well, the judge in the McGahn case said this applies to national security as well. So we do have the court decision. What is more, we have the court decision in the Harriet Miers case, in the George W. Bush administration, where, likewise, the court made short shrift of this claim of absolute, complete, and total immunity.

Now, there were also comments made about Ambassador Volker’s testimony where Mr. Cipollone, and then one along these same lines that Mr. Volker said that the President never told him that the aid was being conditioned or that the meeting was being conditioned on Ukraine doing the sham investigation. So I guess that is case closed—unless the President told everyone, called them into the office and said: Hey, I am going to tell you now; and then: I am going to tell you now. If he didn’t tell everyone, I guess it is case closed.

Well, you know who the President did tell, among others? He told Mick Mulvaney. Mick Mulvaney went out on national television and said, yes, they discussed it, this Russian narrative that it wasn’t Ukraine that intervened in 2016; it was Russia, it wasn’t Russia; it was Ukraine, Yes, that bogus 2016 the-
ory; yes, they discussed it; yes, it was part of the reason why they withheld the money.

When a reporter said: Well, you are kind of describing a quid pro quo, his answer was: Yes, get used to it—or get over it. We do it all the time.

Now, they haven’t said they want to hear from Ambassador Volker. I wonder why. The President did talk to Mick Mulvaney, and I am not sure if you like to hear what Mick Mulvaney has to say? If you really want to get to the bottom of this, if they are really challenging the fact that the President conditioned $400 million in military aid to an ally at war, if Mick Mulvaney has already said publicly that he talked to the President about it, and this is part of the reason why, don’t you think we should hear from him? Wouldn’t you think impartial justice requires you to hear from him?

Now, counsel also referred to Ambas-
sador Sondland and Sondland saying: Well, the President told me there was no quid pro quo. Now, of course, at the time the President said to Sondland no quid pro quo, he became aware of the whistleblower complaint, presumably by Mr. Cipollone. So the President knew that this was going to come to light. On the advice, apparently, of Mr. Cipollone, or maybe others, the Direc-
tor of the National Security Council for the first time in history, withheld a whis-
tleblower complaint from Congress, its intended recipient. Nonetheless, the White House was aware of that complaint. We launched our own investiga-
tions.

Yes, they got caught. In the midst of being caught, what does he say? It is called a false exculpatory. For those people at home, that is a fancy word of saying it is a false, phony alibi. No quid pro quo. He wasn’t even asked the question. He just blurted it out. That is the defense? The President denies it? What is more interesting, he didn’t tell you about the other half of that conversation where the President says no quid pro quo. He says: No quid pro quo, but Zelensky needs to go to the mike, and he should want to do it, which is the equivalent of saying no quid pro quo, except that he does want to do it, and here is a quid pro quo. The question is, would he want to go to the mike, and he should want to do it. That is their alibi?

They didn’t also mention, of course—and you will hear about this during the trial. If we have a real trial, Ambassador Sondland also said: We are often asked was there a quid pro quo, and the answer is, yes, there was a quid pro quo. There was an absolute quid pro quo.

What is more, when it came to the military aid, it was as simple as two plus two. Well, I will tell you something. We are not the only people who can add up two plus two. There are millions of people watching this who can add up two plus two also. When the President tells you: We are holding up the aid because of this, as the Chief of Staff admitted; when the President gives no plausible or other explanation for holding up aid that you all and we all supported and voted on in a very bipartisan way, has no explanation for it; when in that call he never brings up corruption except the corruption he wants to bring about, it doesn’t take a genius, it doesn’t take Albert Einstein to add up two plus two. It equals four. In this case, it equals guilt.

Now, you are going to have 16 hours to ask questions. You are going to have 16 hours. That is a long time to ask questions. Wouldn’t you like to be able to ask about the documents in that 16 hours? Would you like to be able to say: Counsel for the President, what did Mick Mulvaney mean when he emailed so-and-so and said such and such? What is your explanation for that? What is your explanation for that, that there is pretty damnning evidence of exactly what the House is saying. What is your expla-
nation of that? Mr. Sekulow, what is your explanation?

Wouldn’t you like to be able to ask about the documents or ask the House: Mr. SCHIFF, what about this text message? Doesn’t that suggest such—what the President is arguing? Wouldn’t you like to be able to ask me that question, or one of my colleagues? I think you would. I think you should. But the backward way this resolution is drafted, you get 16 hours to ask questions about documents you have never seen. You know what is more? If you do decide at that point, after the trial is essentially over, that you do want to see the documents after all and the documents are produced, you don’t get another 16 hours. You don’t get 16 minutes. You don’t get 16 seconds to ask about those documents. Does that make any sense to you? Does that make any sense at all? I will tell you something I would like to know that may be in the documents. You probably heard before about the
three amigos. My colleague has mentioned two of the three amigos: Amigo Volker and Amigo Sondland. These are two of the three people whom the President put in charge of Ukraine policy. The third amigo is Secretary Rick Perry, former Secretary of Energy. We know from Amigo Sondland’s testimony that he was certainly in the loop, knew exactly all about this scheme, and we knew from Ambassador Volker’s testimony and his text messages and his WhatsApps that that amigo was also in the loop.

What about the third amigo? Wouldn’t you like to know if the third amigo was in the loop? Now, as my colleagues will explain when we get to the Department of Energy records, well, surprisingly, we didn’t get those either. Any communication between the Department of Energy and the Department of State is covered by this amendment. Wouldn’t you like to know? Don’t you think the American people have a right to know what the third amigo knew about this scheme? I would like to know. I think you should be able to ask questions about it in your 16 hours.

At the end of the day, I guess I will finish with something Mr. Sekulow said. He said this was a dangerous moment because we are trying to rush through this somehow. It is a dangerous moment, but we are not trying to rush through this trial. We are actually trying to have a real trial here. It is the President who is trying to rush through this.

I have to tell you that whatever you decide here—maybe this is a waste of time and maybe it is already decided, but whatever you decide here—I don’t know who the next President is going to be; maybe it will be someone in this Chamber, but I guarantee you this: Whoever that next President is going to be, they did something right or they did something wrong, there is going to come a time where you, in this body, are going to subpoena that President and that administration. You are going to want to get to the bottom of serious allegations. Are you prepared to say that that President can simply say: I am going to fight all the subpoenas. Are you prepared to say and accept that President saying: I have absolute immunity. You want me to come testify? Senator, do you want me to come testify? No, no. I have absolute immunity. You can subpoena me all you like. I will see you in court. And when you get to court, I am going to tell you, you can’t see me in court.

Are you prepared for that? That is what the future looks like. Don’t think this is the last President, if you allow this to happen, who is going to allow this to take place.

Mr. Chief Justice, I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. MCCONNELL. Mr. Chief Justice, I send a motion to the desk to table the amendment.

The CHIEF JUSTICE. The question is on agreeing to the motion to table. Mr. MCCONNELL, I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

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

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

[Rollcall Vote No. 16]

YEAS—53

Alexander Fischer Perdue
Barrasso Gardner Portman
Barrasso Gardner Portman
Blount Grassley Roberts
Bosman Hawley Romney
Burr Hyde-Smith Rounds Rubio
Capito Inhofe Scott (FL)
Capito Johnson Scott (SC)
Collins Kennedy Sullivan
Cornyn Lankford Thune
Cotton Loeffler Toomey
Cramer Loesch Wicker
Crapo McConnell Young
Crutch McSally Young
Crusi Moran Young
Daines Moran Young
Reed
NAYS—47

Balduin Hassan Rosen
Bennet Heinrich Sanders
Bhuma Herring Schacht
Booker Jones Schuyler
Brown Kaine Shaheen
Casswell Klain Sinema
Cardin Klobuchar Smith
Carper Leahy Stabenow
Casey Malinich Tester
Coons Markley Udall
Cortez Masto Menendez Van Hollen
Durbin Murphy Warner
Fristenstein Murray Whitehouse
Gillibrand Peters Young
Harris Reed

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

The CHIEF JUSTICE. The Democratic leader is recognized.

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to subpoena certain Office of Management and Budget documents, and I ask that it be read.

The CHIEF JUSTICE. The clerk will read the amendment.

The legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1286.

(Purpose: To subpoena certain Office of Management and Budget documents and records.)

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

SEC. ____. Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of the Senate, the President, by and with the advice and consent of the Senate, shall issue a subpoena to the Acting Director of the Office of Management and Budget commanding him to produce, for the time period from January 1, 2019, to the present, all documents, communications, and other records within the possession, custody, or control of the Office of Management and Budget, referring or relating to—

(A) the actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign, military, or security assistance or security assistance of any kind to Ukraine, including but not limited to the Ukraine Security Assistance Initiative (referred to in this section as ‘‘USAI’’); and

(B) the actual or potential suspension, withholding, delaying, freezing, or releasing of security assistance to Ukraine including legal aid, military assistance, or security assistance to Ukraine, including all meetings, calls, or other communications with Ukrainian officials regarding potential suspensions or actual suspensions, holds, or delays in United States assistance to Ukraine; and

(C) the actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or security assistance to Ukraine including legality under the Impoundment Control Act; and

(D) all meetings related to the security assistance to Ukraine including but not limited to interagency meetings on July 18, 2019, July 23, 2019, July 26, 2019, and July 31, 2019, including any directions provided to staff participating in those meetings and any readouts from those meetings; and

(E) the decision announced on or about September 11, 2019, to release appropriated foreign assistance, military assistance, or security assistance to Ukraine, including but not limited to any non-personal communications or correspondence related to the decision; and

(F) all draft and final versions of the August 7, 2019, memorandum prepared by the National Security Division, International Affairs and National Security Division, and Office of General Counsel of the Office of Management and Budget about the release of foreign assistance, security assistance, or security assistance to Ukraine;

(G) the Ukrainian government’s knowledge prior to August 28, 2019, of any actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or security assistance to Ukraine, including all meetings, calls, or other communications with Ukrainian officials regarding potential suspensions or actual suspensions, holds, or delays in United States assistance to Ukraine; and

(H) Associate Director Michael Dufey, Deputy Associate Director Mark Sandy, or any other Office of Management and Budget employee; and

(I) all communications among, between, or referring to Director Michael John ‘‘Mick’’ Mulvaney, Assistant to the President Russell Vought, Associate Director Michael Dufey, or any other Office of Management and Budget employee; and

(J) communications related to requests by President Trump for information about Ukraine security or military assistance and responses to those requests;

(K) communications related to concerns raised by any Office of Management and Budget employee related to the legality of any hold on foreign assistance, military assistance, or security assistance to Ukraine;

(L) communications to the Department of State regarding a hold or block on congressional notifications regarding the release of IMF funds to Ukraine;

(M) communications between—

(1) officials at the Department of Defense, including but not limited to Undersecretary of Defense Elaine McC mut and

(2) Associate Director Michael Dufey, Deputy Associate Director Mark Sandy, or any other Office of Management and Budget employee; and

(N) all draft and final versions of the August 7, 2019, memorandum prepared by the National Security Division, International Affairs and National Security Division, and Office of General Counsel of the Office of Management and Budget about the release of foreign assistance, security assistance, or security assistance to Ukraine; and

(O) the American people; and

(P) any other communication, advice, counsel, approvals, or concurrences provided by any employee in the Office of Management and Budget regarding the actual or potential suspension, withholding, delaying, freezing, or releasing of security assistance to Ukraine including legality under the Impoundment Control Act; and

(Q) any other communication, advice, counsel, approvals, or concurrences provided by any employee in the Office of Management and Budget regarding the actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or security assistance to Ukraine; and

(R) the American people.

The motion to take up the amendment is agreed to; the amendment is read.
communications with the Department of Defense related to concerns about the accuracy of the talking points; and

(G) all meetings and calls between President Trump and OMB, including documents, communications, and other records related to the scheduling of, preparation for, and follow-up from the President’s July 25, 2019, phone call with President Zelenskyy, including documents from the Office of Management and Budget, or OMB. These documents from the Office of Management and Budget, or OMB. These documents would provide insight into critical aspects of the decision-making process and motivations behind President Trump’s freeze. They would reveal the concerns expressed by career OMB officials, including lawyers, that the hold was violating the law. They would expose the lengths to which OMB went to justify the President’s hold. They would reveal concerns about the impact of the freeze on Ukraine and U.S. national security. They would show that senior officials repeatedly attempted to convince President Trump to release the hold. In short, they would show exactly how the President carried out the freeze. The Senate can get them by passing a resolution. We know that OMB has documents that relayed the President’s instructions and implemented them. It was OMB that scrambled to justify the freeze.

OMB has key documents that President Trump has refused to turn over to Congress. It is time to subpoena those documents. These documents would provide insight into critical aspects of the decision-making process and motivations behind President Trump’s freeze. They would show. The documents offer stark examples of the chaos and confusion that the President’s scheme set off across our government and made clear the importance of the documents that are still being concealed by the President.

We know that OMB has documents that reveal that as early as June, the President was considering holding military aid for Ukraine. The President began questioning military aid to Ukraine after Congress appropriated and authorized the money—$250 million in DOD funds and $140 million in State Department funds. This funding had wide bipartisan support because, as many witnesses testified, providing military aid to Ukraine to defend itself against Russian aggression also benefits our own national security. Importantly, the President’s questions came weeks after the Department of Defense already certified that Ukraine had undertaken the anti-corruption reforms and other measures mandated by Congress as a condition for receiving that aid. There is a process for making sure that the funds make it to the right place and to the right people—a process that has been followed repeatedly that we have been providing that security assistance to Ukraine, including the first 2 years under the Trump administration.

Nonetheless, the President’s questions came days after DOD issued a press release on June 18, announcing they would provide its $250 million portion of the taxpayer-funded military aid to Ukraine. According to public reporting, the day after DOD’s press release, a White House official named Robert Blair called OMB’s Acting Director, Russell Vought, to talk about the military aid to Ukraine. According to public reports, Mr. Blair told Vought: “We need to hold it up.” OMB has refused to produce any documents related to this conversation. The Senate can get them by passing the amendment and issuing a subpoena.

But there is more. The same day Blair told Vought to hold up the aid, Michael Duffey, a political appointee at OMB who reports to Vought, emailed Deputy Under Secretary of Defense Elaine McCusker and told her that the President had questions about the aid. Duffey copied Mark Sandy, a career official at OMB, who told us about the email in his testimony before the House.

Like all others, that email was not produced by the Trump administration in the House impeachment investigation. We know this email exists, however, because in response to a Freedom of Information Act lawsuit, the Trump
administration was forced to release a redacted email consistent with Sandy’s description.

But OMB provided none of those documents to the House. With this proposed amendment, the Senate has an opportunity to obtain and review the full record that can further demonstrate how and why the President was holding the aid. These documents would also shed light on the President’s order to implement the hold.

On July 3, the State Department told various individuals that OMB blocked it from dispensing $141 million in aid. OMB had directed the State Department not to send a notification to Congress about spending the money, and without that notification, the aid was effectively blocked. Why did OMB block the congressional notification? Who told them to do it? What was the reason? The Senate would get those answers if it issued this subpoena.

But there is more. On July 12, Blair—the White House official who has called Vought on June 19 and said “We need to hold it up”—sent an email to Duffey at OMB. Blair said: “The President is directing a hold on military support funding for Ukraine.”

We didn’t see this email. The only reason we know about it is from the testimony of Mark Sandy, the career OMB official who followed the law and complied with his subpoena. As you can see from the transcript excerpt in front of you, Sandy testified that the July 12 email mentioned a concern about any other country or any other aid packages, just Ukraine. So of the dozens of countries we provide aid and support for, the President was only concerned about one of them—Ukraine. Why? Well, we know why. But OMB has still refused to provide a copy of this July 12 email and has refused to provide any documents surrounding it, all because the President told OMB to continue to hide the truth from Congress and from the people.

What was he afraid of? A subpoena issued by the Senate would show us.

OMB also has documents about a key series of meetings triggered by the President’s order to hold military aid. In the second half of July, the National Security Council convened a series of interagency meetings about the President’s hold on military aid. OMB documents would show what happened during those meetings. For example, on July 18, the National Security Council staff convened a routine interagency meeting to discuss Ukraine policy. During the meeting, it was the OMB representative who announced that President Trump placed a hold on all military aid to Ukraine.

A witness who was Taylor, our most senior diplomat to Ukraine, participated in that meeting, and he described his reaction at his own hearing.

(Text of Videotape presentation:)

Mr. TAYLOR. In a regular NSC secure video conference on July 18, I heard a staff person from the Office of Management and Budget say that there was a hold on security assistance to Ukraine but could not say why. Toward the end of an otherwise normal meeting, a voice on the call—the person was off-screen—said that she was from OMB and her boss had directed her not to approve any additional spending on security assistance for Ukraine until further notice.

OMB did not provide any documents to us that showed what happened in that meeting. The Ukrainians were fighting the Russians and counted on not only the training and weapons but also the assurance of U.S. support. Taylor reiterated that the OMB staff person said was that the directive had come from the President, to the Chief of Staff, to OMB. In an instant, I realized that one of the key pillars of our strategy was simply conveyed by the directive as written. Mr. Manager CROW. It is hard to believe OMB would not have any documents following this bombshell announcement. It surely does. It was the agency that delivered the shocking news to the rest of the U.S. Government that the President was withholding the vital military aid from our partner, and we would see these documents if the Senate issued a subpoena.

But there is more. July 12 was just the first in a series of meetings where OMB held the line and enforced the President’s hold on the aid. But there was a second meeting on July 23, where we understand agency officials raised concerns about the legality of OMB’s hold on the aid and then a third meeting, at a more senior level, on July 26. Witnesses testified that at that meeting, OMB struggled to offer an explanation for the President’s hold on the aid. Then there was a fourth meeting on July 31, where the legal concerns about the hold were raised. At each of these meetings, there was confusion about the scope and the reasons for the hold. Nobody seemed to know what was going on. But that was exactly the point.

All of the agencies—except OMB, which was simply conveying the President’s order—supported the military aid and argued for lifting the hold. OMB did not produce a single document providing information about its participation, preparation, or followup from any of these meetings.

Did Duffey come prepared with talking points for these meetings? Did OMB officials take notes during any of these meetings? Did they exchange emails about what was going on? Did OMB discuss what reasons they could give everyone else for the hold? By issuing this subpoena, the Senate can find out the answers to all of those questions and others like them. The American people deserve answers.

OMB documents would also reveal key facts about what happened on July 25. On July 25, President Trump conducted his phone call with President Zelensky, during which he demanded “a favor.” This favor was for Ukraine to conduct an investigation to benefit the President’s campaign. That call was at 9 a.m. Just 90 minutes after President Trump hung up the phone, Duffey, the political appointee at OMB who is in charge of national security programs, emailed DOD to “formalize” the hold on the military aid, just 90 minutes after President Trump’s call—a call in which the President had asked for “a favor.”

That email is on the screen in front of you. We have a redacted copy of this email because it was recently released through the Freedom of Information Act. It was not released by the Trump administration in response to the House’s subpoenas.

In this email, Duffey told DOD officials that, based on the guidance it received, they should “hold off on any additional DOD obligations of these funds.” He added that the request was “sensitive” and that they should keep the information they had, “meaning, don’t tell anybody about it.

Why did Duffey consider the information sensitive? Why didn’t he want anyone to learn about it? Answers to those questions may be found in OMB emails—emails that we could all see if you issue a subpoena.

But there is more. Remember, the administration needed to create a way to stop funding that was already underway. The train had already left the station. Nothing had ever been done before. Later in the evening of July 25, OMB found a way, even though DOD had already notified Congress that the funds would be released. How did OMB get this scheme to work?

OMB sent DOD an email that included a carefully worded footnote directing DOD to hold off on spending the funds “to allow for an interagency process to determine the best use.” Remember that language, “allow for an interagency process to determine the best use.”

Let me explain that. The footnote stated this “brief pause” would not prevent DOD from spending the money by the end of the fiscal year, which was coming up on September 30. OMB had to do this because it knew that not spending the money was illegal, and they knew that DOD would be worried about that. And they were right; DOD was worried about it. Mr. Sandy testified that in his 12 years of experience at OMB, he could not recall anything like this ever happening before. The drafting of this unusual funding document and the issuance of the document must have generated a significant amount of email traffic, memos, and other documentation at OMB—memos, email traffic, and documentation that we would all see if the Senate issued a subpoena.

What was the result from this series of events on July 25? Where was Mr. Duffey’s guidance on where the hold coming from? Why was the request “sensitive”? What was the connection between OMB’s direction to DOD and the call President Trump had with President Zelensky just 90 minutes before? Did agency officials communicate about the questions coming from Ukrainian officials?

The American people deserve answers. A subpoena would provide those answers.

OMB documents also would reveal information about the decision to have a political appointee take over Ukraine funding responsibility. The tensions
and chaos surrounding the freeze escalated at the end of July, when Duffey, a political appointee at OMB with no relevant experience in funding approvals, took authority for releasing military aid to Ukraine away from Sandy, a career OMB official. Sandy could think of nothing other than a political appointee’s taking on this responsibility. Sandy was given no reason other than Mr. Duffey wanted to be “more involved in daily operations.” During his deposition, Sandy confirmed that he was removed from the funding approval process after he had raised concerns to Duffey about whether the hold was legal under the Impoundment Control Act. Needless to say, OMB has refused to turn over any documents or communications involving that decision to replace Mr. Sandy.

Why did Duffey—a political appointee with no relevant experience in this area—take over responsibility for Ukraine’s funding approval? Was the White House involved in that decision? Was Sandy removed because he had expressed concerns about the legality of the hold?

By August 7, people in our government were worried, and when people in the government get worried, sometimes what they do is they draft memos, because when they are concerned about getting caught up in something that doesn’t seem right, they don’t want to be a part of it. So, on that day, Mark Sandy and other colleagues at the OMB drafted and sent a memo about Ukraine military aid to Acting Director Vought. According to Sandy, the memo advocated for the release of the funds. It said that the military aid was consistent with American national security interests, that it would help to oppose Russian aggression, and that it was backed by strong bipartisan support. But President Trump did not lift the hold.

Over the next several weeks, the OMB continued to issue funding documents that kept kicking the can down the road, supposedly to allow for more of this “interagency process” while interspersing those footnotes throughout the apportionment documents, stating that the delay wouldn’t affect the funding. But here is the really shocking part: There was no interagency process. They made it up. It had ended months before. It was just a way to delay. Who did the White House direct the OMB to continue issuing the hold? What was OMB told about the President’s reasons for releasing the hold? What communications did the OMB officials have with the White House around the time of the release? As the President’s scheme unraveled, did anyone at the OMB connect the dots for the real reason for the hold? The OMB documents would shed light on these questions, and the American people deserve answers.

I remember what it feels like to not have the equipment you need when you need it. Real people’s lives are at stake. That is why this matters. We need the information so we can ensure that this never happens again. Eventually, this will all come out. We will have answers to these questions.

I reserve the balance of our time for an opportunity to respond to the President’s argument.

The CHIEF JUSTICE. Thank you.

Mr. Sekulow. Mr. Chief Justice and Members of the Senate.

Manager Crow, you should be happy to know that the aid that was provided to Ukraine over the course of the summer of 2019. There was no lack of equipment due to the temporary pause. It was for future funding.

Ukraine’s Deputy Minister of Defense, who oversaw the U.S. aid shipment, said: “The hold went and came so quickly they did not notice any change.”

Under Secretary of State David Hale explained: “The pause to aid was for future assistance, not to keep the army going.”

So the made-up narrative that security assistance was conditioned on Ukraine’s taking some action on investigations is further disproved by the straightforward fact that the aid was delivered on September 11, 2019, without Ukraine’s taking any action on any investigation.

It is interesting to note that the Obama administration withheld $385 million of promised aid to Egypt in 2013, but the administration’s public claim that it was withholding aid was not officially on hold as, technically, it was due until September 30—the end of the fiscal year—so that then they didn’t have to disclose the halt to anyone.

It sounds like this may be a practice of a number of administrations. In fact, this President has been concerned about how aid is being put forward, so there have been pauses on foreign aid in a variety of contexts.

In September of 2018, the administration announced that it was withholding over $100 million in aid to Afghanistan over concerns about government corruption. In August of 2019, President Trump announced that the administration and Seoul were in talks to substantially increase South Korea’s share of the expense of U.S. military support for South Korea. In June, President Trump cut or paused over $550 million in foreign aid to El Salvador, Honduras, and Guatemala because those countries were not fairly sharing the burden of preventing mass migration to the United States.

It is not the only administration. As I said, President Obama withheld hundreds of millions of dollars of aid to Egypt.

To be clear—and I want to be clear—Ambassador Yovanovitch herself testified that our policy actually got stronger under President Trump, largely because, unlike the Obama administration, “this administration made the decision to provide lethal weapons to Ukraine to help Ukraine fend off Russian aggression.” She testified in a deposition before your various committees the 3 years that I was there, partly because of my efforts but also the interagency team and President Trump’s decision to provide lethal weapons to Ukraine, that our policy actually got stronger.

The Assistant Secretary, whose name has come up a couple of times, agrees that Javelins are incredibly effective weapons at stopping advance and that the Russians are scared of them.

Ambassador Volker explained that President Trump approved each of the decisions along the way, and as a result, America’s policy toward Ukraine strengthened.

So when we want to talk about facts, go to your own discovery and your own witnesses that you called.

This all supposedly started because of a whistleblower. Where is that whistleblower?

The CHIEF JUSTICE. The House managers have 35 minutes remaining.

Mr. Manager CROW. Mr. Chief Justice, in war, time matters; minutes and hours can seem like years. So the idea that, well, it made it there eventually just doesn’t work. And, yes, the aid was provided. It was provided by Congress—this Senate and the House of Representatives—with the President’s signature. The Congress is the one that sends the aid, and millions of dollars of this aid would have been lost because of the delay. Congress passed another law that extended that deadline to allow the funds to be spent. Let me repeat that. The delay had jeopardized the expenditure of the money to such an extent that Congress had to pass another law to extend the deadline so that the money and the equipment got to the people on the frontlines.

Need I reiterate, as to the supposed interagency process—the concern that the President and his counsel continue to raise, about corruption and making sure that the process went right—there was no interagency process. The whole thing was made up. It
was a phantom. There was a delay, and delays matter.

Mr. Chief Justice, I reserve the balance of my time for Mr. SCHIFF.

The CHIEF JUSTICE. Mr. SCHIFF.

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

There are just a few additional points I would like to make on this amendment and on my colleagues’ arguments.

First of all, Mr. Sekulow makes the point that the aid ultimately got released. They ultimately got the money, right? Yes, they got the money after the President got caught, after the President was forced to relieve the hold on the aid. After he got caught, yes, but even then, they had held on to the aid so long that it took a subsequent act of Congress to make sure it could all go out the door.

So, what is the President supposed to get credit for that—that we had to intervene with the aid withholding agency—found that that hold was illegal. So it not only violated the law, it not only took an act of Congress to make sure they ultimately got the aid, but this is supposed to be the defense counsel to the President got caught, after the President was forced to relieve the hold on the aid. After he got caught, yes, but even then, they had held on to the aid so long that it took a subsequent act of Congress to make sure it could all go out the door.

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about the tens of thousands of troops we have in Europe. And if we undercut our own ally, if we give Russia reason to believe we will not have their back, that we will use Ukraine as a plaything or worse to get them to help us cheat in an election, that will only embolden them to do more.

You said it as often as I have—the only thing he respects is strength. You think that looks like strength to Vladimir Putin? I think that looks like something that Vladimir Putin is only too accustomed to, and that is the kind of cooperation that he finds and perpetuates in his own regime and pushes all around the world.

My colleague VAL DEMINGS made reference to a conversation which I think is one of the other key vignettes in this whole sad saga, and that is a conversation that Ambassador Volker had with Andriy Yermak, one of the top aides to President Zelensky.

This is a conversation in which Ambassador Volker is doing exactly what he is supposed to be doing, which is he is telling Yermak: You know, you guys shouldn’t really do this investigation of your former President Poroshenko because it would be for a political reason. You really shouldn’t engage in political investigations. And as Representative DEMINGS said: What is the response of the Ukrainians? Oh, you mean like the one you want us to do to the Bidens and the Clintons. Threw it right back in his face. Ukraine is not oblivious to that hypocrisy.

Mr. Sekulow says: What are we here for? You know, part of our strength is not only our support for our allies, it is not only our military might, it is what we stand for.

We used to stand for the rule of law. We used to champion the rule of law around the world. Part of the rule of law is, of course, that no one is above the law.

But to be out in Ukraine or anywhere else in the world championing the rule of law and not engage in political prosecutions and having them throw it right back in our face: Oh, you mean like the one you want us to do to the Bidens and the Clintons. Threw it right back in his face. Ukraine is not oblivious to that hypocrisy.

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I yield back.

Mr. MCCONNELL. Mr. Chief Justice. The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. MCCONNELL. Mr. Chief Justice, I send a motion to the desk to table the amendment, and I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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YEAS—53

Alexander 
Barrasso 
Blackburn 
Blumenthal 
Barrasso 
Barrasso 
Boxer 
Brown 
Brown 
Cassidy 
Cardin 
Cotulla 
Crapo 
Cruz 
Daines 
Enzi 
Ernst 

NAYS—47

Baldwin 
Bennett 
Blumenthal 
Boozman 
Brady 
Capito 
Cassidy 
Collins 
Collins 
Corzine 
Cotton 
Cramer 
Cruz 
Curney 
Daines 
Enzi 
Ernst

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

The CHIEF JUSTICE. The Democratic leader is recognized.

AMENDMENT NO. 1287

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to issue a subpoena to John Michael "Mick" Mulvaney, and I ask that it be read.

The CHIEF JUSTICE. The clerk will report.

The legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1287.

(Purpose: To subpoena John Michael "Mick" Mulvaney)

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

Sec. 2. By this amendment that provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena for the taking of testimony of John Michael “Mick” Mulvaney, and the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the Senate in serving the subpoena authorized to be issued by this section.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent that the Senate stand in recess until 8 p.m.

There being no objection, at 7:31 p.m., the Senate, sitting as a Court of Impeachment, recessed until 8:13 p.m. and reassembled when called to order by the Presiding Officer, the CHIEF JUSTICE.

The CHIEF JUSTICE. Mr. SCHIFF, are you in favor of the motion or opposed? Mr. Manager SCHIFF. In favor, Your Honor.

The CHIEF JUSTICE. Mr. Cipollone? Mr. Counsel CIPOLLINE. We are opposed.

The CHIEF JUSTICE. Mr. SCHIFF, the managers will go first and are able to reserve time for rebuttal.

Mr. Manager JEFFRIES. Mr. Chief Justice, distinguished Members of the Senate, counsel for the President, my name is HAKEEM JEFFRIES, and I have the honor of representing the 8th Congressional District of New York, in Brooklyn and Queens. It is one of the most diverse districts in the Nation. In fact, I have been told that I have the 9th most African-American district in the country and the 16th most Jewish. Here on the Hill, some folks have said: Hakeem, is that complicated?

But as my friend Leon Goldenberg says back at home: Hakeem, you have the best of both worlds.

You see, in America, our diversity is a strength; it is not a weakness. And one of the things that binds us together—all of us, regardless of race, regardless of religion, regardless of region, regardless of sexual orientation, and regardless of gender is that we believe in the rule of law and the importance of a fair trial.

The House managers strongly support this amendment to subpoena witness testimony, including with respect to Mick Mulvaney.

Who has ever heard of a trial with no witnesses? But that is exactly what some are contemplating here today. This amendment would address that fundamental flaw. It would ensure that the trial includes testimony from a key witness: the President’s Acting Chief of Staff and head of the Office of Management and Budget, Mick Mulvaney, and it would ensure that the Senate can consider his testimony immediately.

Let’s discuss why the need to hear from Mick Mulvaney is so critical.

Mulvaney’s resolution undercuts more than 200 years of Senate impeachment trial practice. It departs from every impeachment trial conducted to date. It goes against the Senate’s own longstanding impeachment rules, which contemplate the possibility of new witness testimony. In fact, it departs from any criminal or civil trial procedure in America. Why should this President be held to a different standard?

Second, the proposed amendment for witness testimony is necessary in light of the President’s determined effort to bury the evidence and cover up his corrupt abuse of power.
The House tried to get Mr. Mulvaney’s testimony. We subpoenaed him. Mr. Mulvaney, together with other key witnesses—National Security Advisor John Bolton, senior White House aide Robert Blair, Office of Management and Budget official, Michael Duffield, National Intelligence Director John Eisenberg—and aides were called to testify before the House as part of this impeachment inquiry, but President Trump was determined to hide from the American people what they had to say. He directed the entire executive branch and all of his top aides and advisers to defy all requests for their testimony. That cannot be allowed to stand.

Third, Mr. Mulvaney is a highly relevant witness to the events at issue in this trial. Mr. Mulvaney was at the center of every stage of the President’s substantial pressure campaign against Ukraine. Based on the extensive evidence the House did obtain, it is clear that Mr. Mulvaney was at the center of every stage of the scheme, executing its implementation, and carrying out the coverup.

Emails and witness testimony show that Mr. Mulvaney was in the loop on the President’s decision to explicitly condition the delivery of Ukrainian security assistance on Ukraine’s announcement of investigations beneficial to the President’s reelection prospects.

He was closely involved in implementing the President’s hold on the security assistance and subsequently admitted that the funds were being withheld to put pressure on Ukraine to conduct one of the phony political investigations that the President wanted—phony political investigations.

A trial would not be complete without the testimony of Mick Mulvaney. Make no mistake. The evidentiary record that we have built is powerful and can clearly establish the President’s guilt on both of the Articles of Impeachment. It is hardly complete. The record comes to you without the testimony of Mr. Mulvaney and other important witnesses.

That brings me to one final preliminary observation. The American people agree that there cannot be a fair trial without hearing from witnesses who have relevant information to provide.

The Constitution, our democracy, the Senate, the President and, most importantly, the American people deserve a fair trial. A fair trial requires witnesses. It provides the truth, the whole truth, and nothing but the truth. That is why this amendment should be adopted.

Before we discuss Mr. Mulvaney’s knowledge of the President’s geopolitical shakedown, it is important to note that an impeachment trial without witnesses would be a stunning departure from this institution’s past practice.

The distinguished body has conducted 15 impeachment trials. All have included witnesses. Sometimes those trials included just a handful of witnesses, as indicated on the screen. At other times, they included dozens. In one case, there were over 100 different witnesses.

As the slide shows, the average number of witnesses to appear at a Senate impeachment trial is 33, and in at least 3 of those instances, including the impeachment of Bill Clinton, witnesses appeared before the Senate who had not previously appeared before the House. That is because the Senate, this great institution, has always taken its responsibilities for a fair trial seriously. The Senate has always taken its duty to obtain evidence, including witness testimony, seriously. The Senate has always taken its obligation to evaluate the President’s conduct based on full and open consideration of all evidence seriously. This is the only way to ensure fundamental fairness for everyone involved.

Respectfully, it is important to honor that unbroken precedent today. The Senate’s impeachment trial, without fear or favor as to what he might say, can inform this distinguished body of Americans.

This amendment is also important to counter the President’s determination to bury the evidence of high crimes and misdemeanors.

As we have explained in detail today, despite considerable efforts by the House to obtain relevant documents and testimony, President Trump has directed the entire executive branch to execute a coverup. He has ordered the entire administration to ignore the powers of Congress’s separate and equal branch of government to investigate his actions in a manner that is unprecedented in American history.

There were 71 requests by the House for relevant evidence. In response, the White House produced zero documents in this impeachment inquiry—71 requests, 0 documents.

President Trump is personally responsible for depriving the Senate of information important to consider in this trial. This point cannot be overstated. When a congressional impeachment inquiry, a process expressly set forth by the Framers of the Constitution in article I, the President refused to comply in any respect, and he ordered his senior aides to fall in line.

As shown on the slide, as a result of President Trump’s obstruction, 12 key witnesses, including Mr. Mulvaney, refused to appear for testimony in the House impeachment inquiry. No one has heard what they have to say. These witnesses include central figures in the abuse of power charged in article I.

What is the President hiding?

Equally troublesome, President Trump and his administration did not make any legitimate attempts to reach a reasonable accommodation with the House or compromise regarding any document requests or witness subpoenas. Why? Because President Donald Trump wasn’t interested in cooperating. He was plotting a coverup.

It is important to take a step back and think about what President Trump is doing. Complete and total Presidential obstruction is unprecedented in American history. Even President Nixon, whose Articles of Impeachment included obstruction of Congress, did not block key White House aides from testifying in Front of Congress during the Watergate hearings. As a matter of fact, he publicly urged White House aides to testify.

Remember all of those witnesses who came in front of this body? Take a look at the screen. John Dean, the former White House Counsel, testified for multiple days pursuant to a subpoena. H.R. Haldeman, President Nixon’s former Chief of Staff, was subpoenaed and testified. Alexander Butterfield, the White House official who revealed the existence of the tapes, testified publicly before the Senate, and so did several others. President Trump’s complete and total obstruction makes Richard Nixon look like a choirboy.

Two other Presidents have been tried before the Senate. How did they conduct themselves?

William Jefferson Clinton and Andrew Johnson did not block any witnesses from participating in the Senate trial. President Trump, by contrast, refused to permit addressing witnesses from testifying to this very day.

Many of President Clinton’s White House aides testified in front of Congress, even before the commencement of formal impeachment proceedings. During various investigations in the mid-1990s, the House and the Senate heard from more than two dozen White House aides, including the White House Counsel, the former Chief of Staff, and multiple senior advisers to President Clinton.

President Clinton himself gave testimony on camera and under oath. He also allowed his most senior advisers, including multiple Chiefs of Staff and White House Counsels, to testify in the investigation that led to his impeachment.

As you can see in the chart, their testimony was packaged and delivered to the Senate. There were no missing witnesses who had defied subpoenas. No aides who had personal knowledge of his misconduct were directed to stay silent by President Clinton.

We have an entirely different situation in this case. Here we are seeking witnesses the President has blocked from testifying by fulfilling his request to do so. Apparently, President Trump thinks he can do what no other President before him has attempted to do in such a brazen fashion: float above the law and hide the truth from the American people. That cannot be allowed to stand.

Let me make the following important principles about the Congress’s authority to conduct investigations. Our broad powers of inquiry are at their strongest during an impeachment proceeding, when the House and Senate exercise responsibilities expressly set forth in article I of the Constitution.

Nearly 140 years ago, the Supreme Court recognized that, when the House...
or Senate is determining a question of impeachment, there is 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. Our Nation’s Constitution and greatest legal minds recognized these principles early on. Supreme Court Justice Joseph Story explained that the President should not have the power of preventing a thorough investigation of his conduct and in this way prevent the exposure of the disgrace of a public conviction by impeachment, if he should deserve it.

President Trump cannot function as judge, jury, and executioner of our democracy. It wasn’t just the courts that confirmed this for us. It was some of our Nation’s leading public servants. Representative John Quincy Adams, speaking on the floor of the House, after he had served as President, once explained: “What mockery would it be for the Constitution of the United States to say that the House should have the power of impeachment, extending even to the President of the United States himself, and yet to say that the House had not the power to obtain the evidence and proofs on which their impeachment was based?”

As Hamilton, Story, Adams, and others have recognized, the President cannot insulate himself from Congress’s investigations of his wrongdoing. If the President could decide what evidence gets to be presented in his own trial, that would fundamentally nullify the constitutional power of impeachment.

This amendment is important because President Trump simply cannot be allowed to hide the truth. No other President has done it; the Supreme Court does not allow it; and the President is not above the law.


Let me now turn to the third justification for this amendment. Mr. Mulvaney’s testimony is critical to considering the case for removal. It is imperative that we hear from the President’s closest aide, a man intimately involved at key stages of this extraordinary abuse of power. President Trump knows this. Why else would he be trying so hard to prevent Mick Mulvaney from testifying before you?

There are at least four reasons why Mr. Mulvaney’s testimony is critical. To begin with, as Acting White House Chief of Staff and head of the Office of Management and Budget, Mick Mulvaney has firsthand knowledge about President Trump’s efforts to shake down Ukraine and pressure its new President in announcing phony investigations.

Mr. Mulvaney was in the loop at each critical stage of President Trump’s scheme, and in the loop in the planning of the scheme; he was in the loop in its implementation; and he was in the loop when the scheme fell apart. He even admitted publicly that the aid was withheld in order to pressure Ukraine into announcing an investigation designed to elevate the President’s political standing.

Mr. Mulvaney, perhaps more than any other witness, excepting the President, has firsthand insight into the decision to withhold $391 million in military and security aid to a vulnerable Ukraine without justification. Indeed, our investigation revealed that President Trump personally ordered Mr. Mulvaney to execute the freeze in July of 2019. Mr. Mulvaney holds the senior-most staff position at the White House. He is a member of President Trump’s Cabinet, and he is responsible for President Trump’s team at 1600 Pennsylvania Avenue. He remains the Director of the Office of Management and Budget, which implemented the hold on the security assistance, in violation of the law, as the Government Accountability Office recently concluded.

In short, respectfully, the Senate’s responsibility to conduct a complete and fair trial demands that Mr. Mulvaney testify.

Second, Mr. Mulvaney’s testimony is critical because of his knowledge of the planning of President Trump’s abuse of power. Ambassador Gordon Sondland, the U.S. Ambassador to the European Union, testified that there was a quid pro quo. Ambassador Sondland is not a politician. He was not part of whatever drug deal Sondland and Mulvaney were cooking up. He made that statement after Ambassador Sondland specifically said that he had a deal with Mr. Mulvaney to reschedule a White House visit for President Zelensky in Ukraine and announced the two phony investigations involving the Bidens and 2016 election interference—investigations that were sought by President Donald John Trump.

Here is Dr. Hill’s testimony about Sondland describing this drug deal he had with Mulvaney.

(Text of Videotape presentation:)

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

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

Dr. HILL. I took it to mean investigations for a funding.

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

Dr. HILL. I certainly did.

Mr. Manager JEFFRIES. Sondland’s testimony not only corroborates Dr. Hill’s account. He actually says that Mick Mulvaney, the subject of this amendment, who should appear before the Senate if we are going to have a free and fair trial—Sondland says Mick Mulvaney knew all about it.

(Text of Videotape presentation:)

The CHAIRMAN. What I want to ask you about is, he makes reference in that drug deal to a drug deal cooked up by you and Mulvaney. It’s the reference to Mulvaney that I want to ask you about. You’ve testified that Mulvaney was aware of this quid pro quo, of this condition that the Ukrainians knew of. Yes, sir, announcing these public investigations to get the White House meeting. Is that right?

Mr. SONDLAND. Yeah. A lot of people were aware of it.

The CHAIRMAN. Including Mr. Mulvaney?

Mr. SONDLAND. Correct.

Mr. Manager JEFFRIES. The documents also highlight the extensive involvement of Mick Mulvaney in this geopolitical shakedown scheme. Email messages summarized by Ambassador Sondland during his sworn testimony show that he informed Mr. Mulvaney, as well as Secretary Pompeo and Secretary Perry, of his efforts to persuade President Zelensky to announce the investigations desired by President Trump.

For example, as shown on the screen, on July 19, Ambassador Sondland emailed several top administration officials, including Mr. Mulvaney, stating that only a call to President Zelensky to help prepare him for a phone call with President Trump, and he reported that President Zelensky planned to assure President Trump that he intends to run a fully transparent investigation and will turn over every stone.

Ambassador Sondland made clear in his testimony that he was referring to the Burisma/Biden and 2016 election interference investigations that were explicitly mentioned by President Trump on the July 25 phone call.

Mr. Mulvaney wrote in a response: I asked NSC to set it up.

What exactly did Mr. Mulvaney know about the Ukrainian commitment to turn over every stone? And when did he know it?

These are many of the questions that require answers, under oath, from Mr. Mulvaney. Mr. Mulvaney is also a central figure with respect to how President Trump implemented his pressure campaign in the form of a quid pro quo.

According to public reports and witness testimony, Mr. Mulvaney was deeply involved in implementing the scheme, including the unlawful White House freeze on $391 million in aid to Ukraine.

This isn’t just other people fingerling Mr. Mulvaney. Mr. Mulvaney has himself admitted that he was involved. (Text of Videotape presentation: Mr. MULVANEY. Again, I was involved with the process by which the money was held up temporarily, okay?)

Mr. Manager JEFFRIES. The public reports confirm Mr. Mulvaney’s own account that he has information that goes to the heart of this inquiry, specifically related to why the President ordered the hold on aid to Ukraine and kept it in place, despite deep-seated concerns among Trump administration officials.

This New York Times article on the screen summarizes an email conversation between Mr. Mulvaney and Robert Blair, a senior administration adviser, on June 27, when Mr. Mulvaney asked: “Did we ever find out about the money for Ukraine and whether we can hold it back?”

What prompted that email? According to public reports, Mr. Mulvaney was on Air Force One—Air Force One—with President Trump when he sent it. What other conversations did Mr. Mulvaney have with the President and White House officials about this unlawful freeze? The American people deserve to know.

There is other significant evidence concerning Mr. Mulvaney’s role in implementing the scheme. According to multiple witnesses, the direction to freeze the security assistance to Ukraine was delivered by Mick Mulvaney himself.

Office of Management and Budget official Mark Sandy testified about a July 12 email from Mr. Will Blair stating that President Trump “is directing a hold on military support funding for Ukraine.”

Was Mr. Blair acting at Mr. Mulvaney’s express direction? The members of this distinguished body deserve to know.

On July 18, the hold was announced to the agencies in the administration overseeing Ukraine policy matters. Those present were blindsided by the announcement that the security aid appropriated by this Congress on a bipartisan basis to Ukraine, which is still at war with Russian-backed separatists in the east, were alarmed that that aid had inexplicably been put on hold.

Meanwhile, officials at the Defense Department and within the Office of Management and Budget became increasingly concerned that the hold also violated the law. Their concerns turned out to be justified.

Public reports have indicated that the White House is in possession of early August emails, exchanges between Acting Chief of Staff Mick Mulvaney and White House budget officials seeking to provide an explanation for the money. I should note, that they were trying to provide after the President had already ordered the hold.

Mr. Mulvaney presumably has answers to these questions. We don’t know what those answers are, but he should provide them to this Senate and to the American people.

Finally, on October 17, 2019, at a press briefing at the White House, Mr. Mulvaney left no doubt that President Trump withheld the essential military aid as leverage to try to extract phony political investigations as part of his effort to solicit foreign interference in the 2020 election—a conspiracy theory promoted by none other than the great purveyor of democracy, Vladimir Putin himself.

When White House reporters attempted to clarify this acknowledge—this quid pro quo involving a security assistance, Mr. Mulvaney replied, “We do that all the time with foreign policy. I have news for everybody: get over it.”

Let’s listen to a portion of that stunning exchange.

(Text of Videotape presentation:)

Answer. Did he also mention to me in the past that the corruption related to the DNC server, absolutely. No question about that. That’s it. And that’s why we held up the money. Now there was a report—

Question. So the demand for an investigation into the Democrats was part of the reason that he wanted to withhold funding to Ukraine.

Answer. The look back to what happened in 2016—

Question. The investigation into Democratic—

Answer.—certainly was part of the thing he was worried about in corruption with that nation. That is absolutely appropriate.

Question. But to be clear, what you just described is a quid pro quo. It is: Funding will not flow unless the investigation into the Democratic server happens as well.

Answer. We do that all the time with foreign policy. We were holding money at the same time for—what was it? The Northern Triangle countries. We were holding up aid at the Northern Tribal countries so that they would change their policies on immigration. By the way—and this speaks to an important point—I’m sorry? This speaks to an important point, because I heard this yesterday and I can never remember the gentleman who testified. Was it McKinney, the guy—was that his name? I don’t know him. He testified yesterday. And if you go—and I look at the news reports because we’ve never seen any transcripts of this. The only transcript I’ve seen was Sondland’s testimony this morning. If you read the news reports and you believe them—what did McKinney say yesterday? Well, McKinney said yesterday that he was really upset with the political influence in foreign policy. This was one of the reasons he wanted to withhold funding about this. And I have news for everybody: Get over it. There’s going to be political influence in foreign policy.

Mr. Manager JEFFRIES. In this extraordinary press conference, Mr. Mulvaney spoke with authority on the conviction about why President Trump withheld the aid. He did not mince his words. But then following the press
conference, he tried to walk back his statements, as if he had not said them, or had not meant them. We need to hear from Mick Mulvaney directly so he can clarify his true intentions.

Having gone through the need for the evidence, let’s briefly address the President’s arguments that he can block this testimony. That argument is not only wrong, it fundamentally undercuts our system of checks and balances.

Step back for a moment and consider the extraordinary position that President Trump is trying to manufacture for himself.

The Department of Justice has already said that the President cannot be indicted or prosecuted in office. As we sit here today, the President has actually filed a brief in the Supreme Court saying he cannot be criminally investigated while in the White House.

The Senate and the House are the only check that is left when the President tries to cheat. In the next election, undermines our national security, breaks the law in doing so, and then tries to cover it up. This is America. No one is above the law.

But if the President is allowed to determine he is even investigated by Congress, if he is allowed to decide whether he should comply with lawful subpoenas in connection with an impeachment inquiry or trial, then he is the ultimate arbiter of whether he did anything wrong. That cannot stand.

If he can’t be indicted, and he can’t be impeached, and he can’t be removed, then he can’t be held accountable. That is inconsistent with the U.S. Constitution.

You will no doubt hear that the reason the President blocked all of these witnesses, including Mr. Mulvaney, from testifying is because of some lofty concern for the Office of the Presidency and the preservation of executive privilege.

Let’s get real. How can blocking witnesses from telling the truth about the President’s misconduct help preserve the Office of the Presidency? This type of blanket obstruction undermines the credibility of the Office of the Presidency and deals the Constitution a potentially mortal death blow.

To be clear, executive privilege does not provide a legally justifiable basis for the complete and total blockage of evidence. In fact, as you heard earlier today, President Trump never even invoked executive privilege—not once. And without ever asserting this privilege, how can you consider his argument in a serious fashion?

Instead, speaking through Mr. Cipollone, the distinguished White House Counsel, in a letter dated October 8, 2019, President Trump simply decided that he did not want to participate in the investigation into his own wrongdoing.

It was a categorical decision not to cooperate, without consideration of specific facts or legal arguments. In fact, even the words President Trump used through his White House Counsel were made up.

In the letter, Mr. Cipollone referred to so-called “executive branch confidentiality interests.” But that is not a recognized jurisprudential shield, not a recognized basis in law and should yield to this legal fiction has rejected it.

As the Supreme Court emphatically stated, in unanimous fashion, in its decision on the Nixon tapes, confidentiality interests of the President must yield to an impeachment inquiry when there is a legitimate need for the information, as there is here today.

There is no doubt that Mr. Mulvaney, as the President’s Chief of Staff and head of the Office of Management and Budget, is uniquely situated to provide this distinguished body with relevant and important information about the charges in the Articles of Impeachment.

The President’s obstruction has no basis in law and should yield to this body’s coequal authority to investigate impeachable and corrupt conduct.

On a final point bears mentioning. If the President makes witnesses available, even while preserving the limited protections of executive privilege, he can do so. In fact, President Trump expressed his desire for witnesses to testify in the Senate just last month.

Let’s go to the videotape.

(Text of Videotape presentation:)

President TRUMP. So, when it’s fair, and it will be fair in the Senate, I would love to have Mike Pompeo, I’d love to have Mick. I’d love to have Rick Perry and many other people testify.

Mr. Manager JEFFRIES. If President Trump had nothing to hide, as he and his advisers repeatedly claim, they should all simply testify in the Senate trial. What is President Donald John Trump hiding from the American people?

The Constitution requires a fair trial. Our democracy needs a fair trial.

The American people deserve a fair trial. The President should provide a fair trial. A fair trial means witnesses. A fair trial means documents. A fair trial means a consideration of all of the available evidence. A fair trial means testimony from Mick Mulvaney.

Mr. Chief Justice, the House managers reserve the balance of our time.

The CHIEF JUSTICE. Mr. Cipollone.

Mr. Counsel CIPOLLINE. Thank you.

Mr. Mike Purpura from the White House Counsel’s Office, Deputy Counsel to the President, will give the argument.

Mr. Counsel PURPURA. Mr. Chief Justice, Members of the Senate, good evening. My name is Michael Purpura. I serve as Deputy Counsel to the President.

We strongly oppose the amendments and support the resolution. There is simply no need to alter the process on witnesses and documents of executive privilege. To the extent that there are privilege issues to consider, those can be resolved during their testimony, as they have been for decades.

As the Supreme Court emphatically stated, in unanimous fashion, in its decision on the Nixon tapes, confidentiality interests of the President must yield to an impeachment inquiry when there is a legitimate need for the information, as there is here today.

There is no doubt that Mr. Mulvaney, as the President’s Chief of Staff and head of the Office of Management and Budget, is uniquely situated to provide this distinguished body with relevant and important information about the charges in the Articles of Impeachment.

The President’s obstruction has no basis in law and should yield to this body’s coequal authority to investigate impeachable and corrupt conduct.

Finally—and I ask that you not lose sight of the big picture here—by providing legal aid to Ukraine, President Trump has proven himself to be a better friend and ally to Ukraine than his predecessor.

The time for the House managers to bring their case is now. They had their chance to develop their evidence before they sent the Articles of Impeachment to this Chamber. This Chamber’s role is not to do the House’s job for it.

I yield the balance of my time to Mr. Cipollone.

Mr. Counsel CIPOLLINE. Thank you, Mr. Chief Justice.

Just a couple of observations. First of all, as Mr. Purpura said, what we are talking about is when this question is addressed. Under the resolution, that will be next week. This resolution was accepted 100 to 0. Some of you were here then and thought it was great. If we keep going like this, it will be next week. For those of you keeping score at home, they haven’t started yet.

We are here today. We came hoping to have a trial. They spent the entire day telling you and the American people that they can’t prove their case. I could have told you that in 5 minutes and saved us all a lot of time.

The Constitution requires a fair trial. Our democracy needs a fair trial.

They came here talking about the GAO. It is an organization that works for Congress. Do you know who disagrees with the GAO? Don’t take it from me; they do. They sent you transcripts which the President released—transparent and unprecedented. There was no quid pro quo for anything. Security assistance funds aren’t even mentioned on the call.

Second, President Zelensky and the highest ranking officials in the Ukrainian Government repeatedly have said there was no quid pro quo and there was no pressure.

Third, the Ukrainians were not even aware of the pause in the aid at the time of the call and weren’t aware of it—they did not become aware of it until more than a month later.

Fourth, the only witnesses in the House record who actually spoke to the President about the aid—Ambassador Sondland and Senator Ron Johnson—say the President was unequivocal in saying there was no quid pro quo.

Fifth, and this one is pretty obvious, the aid flowed an the Trump administration and President Zelensky met without any investigations started or announced.

Finally—and I ask that you not lose sight of the big picture here—by providing legal aid to Ukraine, President Trump has proven himself to be a better friend and ally to Ukraine than his predecessor.

The time for the House managers to bring their case is now. They had their chance to develop their evidence before they sent the Articles of Impeachment to this Chamber. This Chamber’s role is not to do the House’s job for it.

I yield the balance of my time to Mr. Cipollone.
and you know what it doesn’t say? It doesn’t say “quid pro quo” because there wasn’t any. Only in Washington would someone say that it is wrong when you don’t spend taxpayer dollars fast enough even if you spend them on time.

Let’s talk about the Judiciary Committee for a second. They spent 2 days in the Judiciary Committee—2 days. The Judiciary Committee is supposed to be in charge of impeachments. The delivery time for the articles they have produced was 33 days. I think this might be the first impeachment in history where the delivery time was longer than the investigation in the Judiciary Committee.

They come here and falsely accuse people—by the way, they falsely accused you. You are on trial now. They falsely accused people of phony political investigations. Really. Since the House Democrats took over, that is all we have heard from them. They have used their office and all the money that the taxpayers send to Washington to pay them to conduct phony political investigations against the President, against his family, against anyone who knew about it. And, you know, they impounded the impeachment articles and made it look like the Pram of the Constitution were concerned about—betrayal of one’s oath of office for personal gain and the corruption of our democracy. High crimes and misdemeanors are what this trial is all about.

Counsel for the President again has declined to address the substantive merits of the amendment that has been offered and tried to suggest that House Democrats have only been focused on trying to oust President Trump. Nothing could be further from the truth.

In the last year, we passed 400 bills and sent them to this Chamber, and 275 of those bills are bipartisan in nature, addressing issues like lowering drug prices, trying to deal with the gun violence epidemic. We have worked with President Trump on criminal justice reform. I personally worked with him, along with all of you, on the First Step Act. We worked with him on the U.S.-Mexico-Canada trade agreement. We worked with him to fund the government. We don’t hate this President, but we love the Constitution. We love America. We love our democracy. That is why we are here today.

The question was asked by Mr. Sekulow as he opened before this distinguished body: Why? Why are we here?

Let me see if I can just posit an answer to that question. We are here, sir, because President Trump pressured a foreign government to target an American citizen for political and personal gain. We are here, sir, because President Trump solicited foreign interference in our election and corrupted our democracy. We are here, sir, because President Trump withheld $391 million in military aid from a vulnerable Ukraine without justification in a manner that has been deemed unlawful. We are here, sir, because President Donald Trump elevated his personal political interests and subordinated the national security interests of the United States of America. We are here, sir, because President Trump corrupted his power, and then he tried to cover it up. And we are here, sir, to follow the facts, apply the law, be guided by the Constitution, and present the truth to the American people. That is why we are here, Mr. Sekulow. And if you don’t know, now you know.

I yield to my distinguished colleague, Chairman Schiff.

Mr. Manager SCHIFF. I thank the gentleman for yielding and just want to provide a couple of quick fact checks to my colleagues at the other table.

First, Mr. Purpura said that security assistance funds were not mentioned at all in the July 25 call between President Trump and President Zelensky. Let’s think back to what was discussed in that call. You might remember from that call that President Zelensky thanks President Trump for the Javelin anti-tank weapons and says they are ready to order some more. And I think this is President Trump’s immediate response:

I have a favor to ask, though. What was it about the President of Ukraine’s bringing up military assistance that triggered the President to go immediately to the favor that he wanted? I think that it is telling that it takes place in that part of the conversation.

So, yes, security assistance, military assistance did come up in that call. It came up immediately preceding the ask. What kind of message do you think that sends to Ukraine? They are not stupid. The people watching this aren’t stupid.

Now, Mr. Purpura said: Well, they never found out about it—or they didn’t find out about the freeze of the aid until a month later. Mr. Purpura needs to be a little more careful with his facts. Let me tell you about some other dishonesty you are going to hear, and you will only hear it because it took place in the House. These were other witnesses from whom you wouldn’t be able to hear it.

You had Catherine Croft, a witness from the State Department, a career official at the State Department, who talked about how quickly, actually, after the freeze went into place that the Ukrainians found out about it, and she started getting contacts from the Ukrainian Embassy here in Washington. She said she was really impressed with her diplomatic tradecraft. What does that mean? It means she was really impressed with how quickly the Ukrainians found out about something that the administration was trying to hide from the American people.

Ukraine found out about it. In fact, Laura Cooper, a career official at the Defense Department, said that her office started getting inquiries from Ukraine about the issue with the aid on July 25—the very day of the call. So much for Ukraine’s not finding out about this until a month later.

I thought this was very telling, too: The New York Times disclosed that by July 30—so within a week of the call between President Trump and President Zelensky—Ukraine’s Foreign Ministry received a diplomatic cable from its Embassy, indicating that Trump had frozen the military aid. Within a week, that cable is reported to have gone from the Ukrainian Embassy to the Ukrainian Foreign Ministry.

Former Ukrainian Deputy Foreign Minister Olena Zerkal said:

We had this information. It was definitely mentioned that there were some issues.

She went on to say that the cable was simultaneously provided to President Zelensky’s office, but Andrii Derkach, whom you will hear more about later—a top aide to President

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Zelensky—reportedly directed her to keep silent and not discuss the hold with reporters or Congress.

Now, we heard testimony about why the Ukrainians wanted to keep it secret that they knew about the hold. You may say Zelensky didn’t want his own people to know that the President of the United States was holding back aid from him. What does that look like for a new President of Ukraine who is trying to make the case that he is going to be able to defend his own country because he has such a great relationship with the great patriarch, the United States? He didn’t want the Ukrainians to know about it. But do you know? Even more than that, he didn’t want the Russians to know about it for the reasons we talked about earlier. So, yes, the Ukrainians kept it close to the vest.

Mr. Purpura also went on to say: Well, the Ukrainians say they don’t feel any pressure.

This is what they say now. Of course, we know that it is not true.

We have had testimony that they didn’t want to be used as a political pawn in U.S. domestic politics. They resist it. You will hear more testimony about that, about the effort to push back on this public statement—how they tried to water it down and how they tried to leave out the specifics of how Giuliani, at the President’s behest, forced them: You know, no, this isn’t going to be credible if you don’t add in Burisma and if you don’t add in 2016.

You will hear about the pressure. They felt it. So why isn’t President Zelensky now saying he was pressured? Well, can you imagine the impact if President Zelensky were to acknowledge today: Hello, yes, we felt pressured. You would, too. We are at war with Russia for crying out loud. Yes, we felt pressured. We needed billions of dollars in military aid. Do you think I am going to say that now? I still can’t get in the White House door. They let Lavrov in, the Russian Foreign Minister. They let him in, but I can’t even get in the White House door. Do you think I am going to go out now and admit to this scheme?

I mean, anyone who has watched this President in the last 3 years knows how vindictive he can be. Do you think it would be smart for the President of Ukraine to contradict the President of the United States so directly on an issue he is being impeached for? That would be the worst form of malpractice for the new President of Ukraine. We shouldn’t be surprised he would deny it. We should be surprised if he were to admit it.

Let me just end with a couple of observations about Mr. Cipollone’s comments.

He says: This is no big deal. We are not talking about when we are going to have witnesses—or if we are going to have witnesses. We are just talking about when. We are just talking about when, as if, well, later, they are going to say: Oh, yes, well, we are happy to have the witnesses now. It is just a question of when.

OK. As my colleague said, let’s be real. There will be no “when.” Do you think they are going to have an epiphany any few days from now and say: OK, we are ready for witnesses? No. No, their goal is to get you to say no now, to get you to have the trial, and then argue to “make it go away.” Let’s dismiss the whole thing.

That is the whole thing. A vote to delay is a vote to deny. Let’s make no mistake about that. They are not going to have an epiphany a few days from now and suddenly say: OK, the American people deserve the answers. Their whole goal is that you will never get to that point. You will never get to that point. When they say when, they mean never.

I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. MCCONNELL. Mr. Chief Justice, I make a motion to table the amendment, and I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

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

[Roll Call Vote No. 18]

YEAS—53

Alexander    Fischer    Perdue
Barasso    Gardner    Portman
Blackburn    Graham    Risch
Blunt    Grassley    Roberts
Boozman    Hawley    Romney
Braun    Hoeven    Rounds
Burr    Hyde-Smith    Rubio
Capito    Inhofe    Saxby
Capito    Johnson    Scott (FL)
Collins    Kennedy    Scott (JL)
Coryn    Lankford    Shelby
Cotton    Lee    Sullivan
Cramer    Leahy    Thune
Crapo    McConnell    Tillis
Cruz    Corker    Toomey
Daines    Duckworth    Wicker
Bennet    Donnelly    Young
Brown    Ernst    Pence
Carper    Emmerich    Sanders
Caswell    Enzi    Schatz
Cardin    Ernst    Schumber
Carper    Emmerich    Sanders
Carper    Emmerich    Schumer
Carper    Emmerich    Shaheen
Cardin    Emmerich    Sinema
Cardin    Klobuchar    Smith
Casey    Cardin    Stabenow
Casey    Cardin    Tester
Coons    Carper    Tester
Cortez Masto    Duckworth    Udall
Durbin    Murray    Whitehouse
Fusbridge    Nelson    Wyden
Harriss    Reed

NAYS—47

Balduin    Hasan    Rosen
Bennet    Heinrich    Sanders
Blumenthal    Risch    Schatz
Booker    Jones    Schumber
Brown    Kaine    Shaheen
Cantwell    King    Sinema
Cardin    Klobuchar    Smith
Carper    Leahy    Stabenow
Casey    Cardin    Tester
Coons    Carper    Tester
Cortez Masto    Duckworth    Udall
Durbin    Murray    Whitehouse
Fusbridge    Nelson    Wyden
Harriss    Reed

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

The UNANIMOUS CONSENT REQUEST

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent to ask the Democratic leader, as there are certain similarities to all of these amendments, whether he might be willing to enter into a unanimous consent agreement to stack these votes.

The CHIEF JUSTICE. Without objection, it is so ordered.

The inquiry is permitted.

Mr. SCHUMER. Thank you, Mr. Chief Justice.

The bottom line is very simple. As has been clear to every Senator and the country, we believe witnesses and documents are extremely important and that a compelling case has been made for them. We will have votes on all of those.

Also, the leader, without consulting us, made a number of significant changes that significantly deviated from the 1999 Clinton resolution. We want to change those, so there will be a good number of votes. We are willing to do some of those votes tomorrow. There is no reason we have to do them all tonight and inconvenience the Senate and the Chief Justice, but we will not back off on getting votes on all of these amendments, which we regard as extremely significant and important to the country.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. MCCONNELL. Mr. Chief Justice, as I have said repeatedly, all of these amendments under the resolution could be dealt with at the appropriate time.

I suggest the absence of a quorum.

The CHIEF JUSTICE. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent that the order of the quorum call be rescinded.

The CHIEF JUSTICE. Without objection, it is so ordered.

Mr. SCHUMER. Mr. Chief Justice. The CHIEF JUSTICE. The Democratic leader is recognized.

AMENDMENT NO. 1288

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

The CHIEF JUSTICE. The clerk will read the document.

The senior assistant legislative clerk read as follows:

The amendment proposes an amendment numbered 1288. At the appropriate place in the resolving clause, insert the following:

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

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

(A) the actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military
assistance, or security assistance of any kind to Ukraine, including but not limited to the Ukraine Security Assistance Initiative (USAI) and Foreign Military Financing (FMF) not limited to:

(i) communications among or between officials at the Department of Defense, White House, Office of Management and Budget, Department of State, or Office of the Vice President;

(ii) documents, communications, notes, or other records created, sent, or received by Secretary of Defense Mark Esper, Deputy Secretary David Norquist, Undersecretary of Defense Elaine McCusker, and Deputy Assistant Secretary of Defense Laura Cooper, or Mr. Eric Cheung;

(iii) draft or final letters from Deputy Secretary David Norquist to the Office of Management and Budget;

(iv) unredacted copies of all documents released in response to the September 25, 2019, Freedom of Information Act request by the Center for Public Integrity (tracking number 19-P-1948);

(B) the Ukrainian government’s knowledge prior to August 28, 2019, of any actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or security assistance to Ukraine, including but not limited to limited to all meetings, calls, or other communications with Ukrainian officials regarding potential or actual suspensions, holds, or delays in United States assistance to Ukraine.

(i) communications received from the Department of State concerning the Ukrainian Embassy’s inquiries about United States foreign assistance or military assistance, and security assistance to Ukraine; and

(ii) communications received directly from the Ukrainian Embassy about United States foreign assistance, military assistance, or security assistance to Ukraine;

(C) communications, opinions, advice, counsel, approvals, or concurrences provided by the Department of Defense, Office of Management and Budget, or the White House, on the legality of any suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, and security assistance to Ukraine;

(D) planned or actual meetings with President Trump or Vice President; and

(E) the decision announced on or about September 11, 2019, to release appropriated foreign assistance, military assistance, and security assistance to Ukraine, including but not limited to any notes, memoranda, document, or correspondence related to the decision; and

(F) all meetings and calls between President Trump and the President of Ukraine, including but not limited to documents, communications, and other records related to the scheduling of, preparation for, and follow-up from the President’s April 21 and July 25, 2019, telephone calls, as well as the President’s September 25, 2019, meeting with the President of Ukraine in New York; and

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

The Chief Justice. The amendment is arguable by the parties for 2 hours.

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

Mr. Manager SCHIFF. We are a proponent.

The Chief Justice. Mr. Schiff, the House managers can proceed first and reserve their time for rebuttal.

Mr. Manager CROW. Mr. Chief Justice, the House managers will be reserving the balance of our time to respond to the argument of the counsel for the President.

Mr. Chief Justice, Senators, counsel for the President, and the American people, I would like to begin by getting something off my chest, something that has been bothering me for a little while.

Counsel for the President and some other folks in this room have been talking a lot about how late it is getting. The whole time, the only thing I can think of is—where is it in other places because right now, it is the middle of the night in Europe, where we have over 60,000 U.S. troops. There are helicopter pilots flying training missions, tankers maneuvering across fields, infantrymen walking with 150-pound packs, and, yes, Ukrainian soldiers getting ready to wake up in their trenches facing off against Russian tanks right now. I don’t think any of those folks want to hear us talk about how tired it is. We have time to have this debate.

That is why the House managers strongly support this amendment to subpoena key documents from the Department of Defense, because just like the DOD documents, these documents from DOD speak directly to one of President Trump’s abuses—his withholding of critical military aid from our partner Ukraine to further his personal political campaign.

In fact, Section 253 of the taxpayer-funded military aid for Ukraine was managed by the Department of Defense as part of the Ukraine Security Assistance Initiative. These funds, approved by 87 Senators in this very room, would purchase additional training, equipment, and advising to strengthen the capacity of Ukraine’s Armed Forces.

The equipment approved for Ukraine included sniper rifles, rocket-propelled grenade launchers, counter-artillery radar, and other medical supplies. This equipment was to be purchased almost exclusively from American businesses. This equipment, along with the training and advising provided by DOD, was intended to protect our national security by helping our friend Ukraine fight against Vladimir Putin’s Russia.

Earlier, counsel for the President tried to make the argument: Well, it made it there. The aid eventually made it there. The delay doesn’t really matter.

You heard me talk about why the delay does matter, but what counsel for the President didn’t say is that all of their aid has not made it there. Congress had to pass another law so that $5.2 million of that aid wouldn’t expire and lapse. We did, but to this day, $18.5 million of that money remains outstanding and hasn’t made its way to the battlefield.

It was DOD that repeatedly advised the White House and OMB of the importance of security assistance not to Ukraine but also for national security. It was DOD in August of 2019 that warned OMB that the freeze was unlawful and that the funds could be lost as a result. It was DOD that scrambled, after the hold was lifted, without explanation on September 11, to spend the funds before they expired at the end of the month.

Without a doubt, DOD has key documents that the President has refused to turn over to Congress—key documents in which the President abused his power. It is time to subpoena those documents.

DOD documents would provide insight into critical aspects of this hold. They would show the decision-making process and motivations behind President Trump’s freeze. They would reveal the concerns expressed by DOD and OMB officials that the hold was violating the law. They would reveal our defense officials’ grave concerns about the impact of the freeze on Ukraine and U.S. national security. They would show that senior Defense Department officials repeatedly attempted to convince President Trump to release the aid. In short, they would further establish the President’s scheme to use our national defense funds to benefit his personal political campaign.

We are not speculating about the existence of these documents. We are not guessing about what they might show because during the course of the investigation in the House, witnesses who testified before the committees identified multiple documents directly related to the inquiry that DOD continues to withhold. We know these documents exist, and we know that the only reason we do not have them is because the President himself directed the Pentagon not to produce them because he knows what they would show.

To demonstrate the significance of the DOD documents and the value they would provide in this trial, I would like to provide you through the lens of factual aspects of what we know exists but that the Trump administration continues to refuse to turn over. Again, based on what is known from the testimony and the few documents that have been obtained from public reporting and lawsuits, it is clear that the President is trying to hide this evidence because he is afraid of what it would show the American people.

We know that DOD has documents that reveal that as early as June, the President was considering withholding military aid for Ukraine. As I mentioned earlier, the President began...
questioning military aid to Ukraine in June of last year. The President’s questions came days after DOD issued a press release on June 18 announcing it would provide its $250 million portion of the aid to Ukraine.

According to testimony before the Senate Rules Committee last week, Deputy Secretary of Defense Christopher Miller stated that “the President of the United States made clear at the beginning that she would not sign theses documents to the House. DOD would provide none of those documents to the House.

With this proposed amendment, the Senate has an opportunity to obtain and review the full record that can further demonstrate how and why the President was holding the aid.

Laura Cooper also testified about the interagency meetings that occurred in late July and early August at which DOD was shocked to learn that President Trump had placed a mysterious hold on the security assistance. We know what happened at several of those meetings because Ms. Cooper participated in them, in some cases with other senior Defense Department officials. However, we don’t have Laura Cooper’s notes from those meetings. We don’t have the emails she sent to senior DOD officials reporting the stunning news about the President’s hold on the funds. We don’t have the emails show the response from the Secretary of Defense and other senior defense officials because DOD has refused to provide them.

Separately, Laura Cooper testified about what the Ukranian Embassy and congressional staff were communicating to the American people about the funds. We know from these communications that there is a secret hold on the funds even though the funds were on tap to provide the equipment that was on tap to provide the equipment to Ukraine. We know that the hold was never lifting. We know that the Secretary of Defense was never informed about the hold and that DOD’s ability to spend the funds was never restored.

President Trump certainly hasn’t made this information public. In response to a Freedom of Information Act request, the Trump administration released this August 9 email from Elaine McCusker, the Pentagon’s chief budget officer. As you can see from the slide in front of you, it is almost entirely blacked out.

According to public reporting, the email said:

As we discussed, as of 12 AUG, we don’t think we can agree that the pause “will not preclude timely execution.” We hope it won’t and will do all we can to execute once the policy decision is made, but can no longer make that decision.

Let me interpret what is actually being said here. What is actually being said is: We are in trouble. We can’t spend the money in the time that we have left, and we are not going to cover your tracks anymore and say that we are going to use it. The hold on the funds in the Freedom of Information Act production highlight the administration’s efforts to conceal the President’s wrong doing. They also underscore why the Senate must subpoena DOD documents to ensure that all of the relevant facts come to light, and, yes, there is more.

Based on the concerns expressed by McCusker and others at DOD, OMB also provided the statement that the hold would not preclude timely execution of the funds. But OMB also circulated talking points claiming: “No action has been taken by OMB that would preclude the obligation of these funds before the end of the fiscal year.”

Let me just explain what is going on here. Everybody is getting worried. Everybody knows that something bad is about to happen. Nobody has a good explanation, and nobody wants to be left holding the bag. So they are sending the emails, and they are sending the memos to say: I told you so, and I am not going to be held responsible. DOD’s McCusker took issue with OMB’s talking point. She did so in writing. Ms. McCusker emailed Mr. Dufey to tell him that OMB’s talking points were “just not accurate” and that DOD had been consistently concerned about the point from the start. Again, we know this from a press report—not from documents produced to Congress by the Trump administration.

Now, President Trump did release some documents in response to a lawsuit under the Freedom of Information Act, but here is what Ms. McCusker’s email looked like when it was released by the Trump administration.

Her concern that OMB’s talking points was “just not accurate” and that DOD had been consistently concerned about the point from the start. Again, we know this from a press report—not from documents produced to Congress by the Trump administration.

McCusker responded: “You can’t be serious, I am speechless.

It will come as no surprise, then, that the administration, entirely redacted this email, too, when it produced the documents in connection with the Freedom of Information Act lawsuit. Thanks to public reporting, though, we do know its contents, but we continue to be very concerned about the American people? What other reactions did this exchange set off within DOD? And were those concerns brought back to the White House?

The Department of Defense’s documents would shed light on these questions. The American people deserve answers.

Make no mistake, the record before the House fully supports the conclusion that President Trump froze vital military aid to Ukraine to pressure Ukraine into helping the President’s political campaign. The DOD documents would provide further evidence of this scheme.

They
would expose the full extent of the truth to Congress and the American people and would firmly rebut any notion that President Trump was acting based on concerns about corruption or other countries’ contributions, and the President’s knowledge. If there was any doubt, recent events prove that DOD has documents that are directly relevant to this trial.

As I spoke about earlier, before I was a Member of Congress, I was a soldier in Iraq and Afghanistan. I do know what it feels like to not have the equipment that you need. The men and women who work at the Department of Defense and administer this vital aid understand that reality too. That is why they repeatedly made the case to President Trump that military assistance to Ukraine is important and that it would not only help Ukraine but also bolster our deterrence against further Russian aggression in Europe. Every time we have those discussions that might seem abstract to people around the country. I do think about those 60,000 U.S. troops we have in Europe, many of whom, by the way, are stationed there with their families, their spouses, their children, and how they are training and working every day to hold the line and fight for freedom and liberty in Europe. And if the war in Ukraine spills over outside of Ukraine, it is those men and women who will have to get into their tanks and their helicopters and do their job.

The United States Senate cannot let this information remain hidden. It goes directly to one of President Trump’s abuses of power—again, withholding aid that 87 people in this room already voted for. The President, the Senate, and the American people deserve a fair trial. Let’s see the documents and let’s see them now and let the facts speak for themselves.

I would like to end by reading a short transcript of something that I was thinking about earlier this evening. This is a transcript from Ambassador Taylor’s testimony. I just want to take a minute to read it to you. He was talking about a trip that he made to visit our friends in Ukraine.

We had a meeting with the defense minister. It was the first meeting of the day. We went over there. They invited us to a ceremony that they have in front of their ministry every day. Every day they have this ceremony, and it is about a half-an-hour ceremony where soldiers are in formation, the defense minister and families of soldiers who have been killed all are there. The selection of which soldiers who have been killed are honored is on the date of it.

So whatever today’s date is, you know if we were there today, on the 22nd, 23rd, 24th, 25th, you know all the soldiers who were killed on any 22nd of October in the previous 5 years would be there. Ambassador Taylor was talking about our friends. At least 15,000 of them have given their lives in the last 5 years in the fight for liberty in Europe. This, ladies and gentleman, is a national disgrace, and only the people in this room can fix it. It is time to issue the subpoenas.

Mr. Chief Justice, the House managers reserve the balance of our time for an opportunity in the House to present any evidence whatsoever in support of the President’s argument.

The CHIEF JUSTICE. Mr. Cipollone? Mr. Counsel CIPOLLONE. Mr. Chief Justice, Mr. Philbin will address the argument.

The CHIEF JUSTICE. Mr. Philbin.

Mr. Counsel PHILBIN. Mr. Chief Justice, Members of the Senate, I will be brief. This may seem like some déjà vu all over again because we have been arguing about the same issues, really, over and over again for a long time. I think something that Americans don’t really understand about Washington is how the House Democrats think that it is the best use of time for this body to spend an entire day deciding simply the issue of when this body should decide about whether or not there should be witnesses and documents subpoenaed? That is the issue before the body now. It is not the question, finally, of whether there should be witnesses.

As the majority leader has made clear multiple times, the underlying resolution simply allows that issue to be addressed a week from now. The only question at issue now—and the House managers are saying: How can you have a trial without witnesses? How can you have a trial without documents? That is not even the issue. The only issue now is whether you have to decide that issue to subpoena documents or witnesses now or decide it in a week after you hear the presentations. Why are they so eager to have you buy a pig in a poke? Why is it necessary to make that decision without having more information?

In the Clinton trial, this body agreed 100 to 0 that it made more sense to have more information and then decide how to proceed and that it was rational to have more information to hear the presentations on it to decide what more was necessary. Why is it so important that you have to make that decision now without that information? That doesn’t make any sense.

The rational thing to do is to hear what sort of case they present and, importantly, to hear the President’s defense because the President had no opportunity in the House to present any defense.

We have heard a lot about the rule of law and about precedent. What was unprecedented was the process that was used in the House, a process that began with an impeachment inquiry that started without any vote by the House. This is the point I made earlier: The Constitution assigns the sole power of impeachment to the House, not to any single Member of the House. So the press conference that Speaker PELOSI held on September 24 did not validly initiate an impeachment inquiry, nor did it validly give power to committees to issue subpoenas.

We are talking now about the DOD documents. What efforts did they make in their proceeding to get these documents? They issued one invalid subpoena totally unauthorized under the Constitution. It was unprecedented because it was issued in an impeachment inquiry reportedly without any vote from the House. It had never happened before in our history. With Presidential impeachment, it was unlawful. It was unauthorized. That is why no documents were produced, and they made no other efforts to pursue that.

We have heard a lot about the rule of law. The rule of law applies to House Democrats, as well, and they didn’t abide by it. It was unprecedented to have a process in which the President had no opportunity to present his defense, no opportunity to present witnesses, no opportunity to be represented by counsel, and no opportunity to present evidence whatsoever in three rounds of hearings.

They will mention: Oh, in the Judiciary Committee, they were willing to let the President, in the Judiciary Committee, after one hearing, the Speaker announced the conclusion that articles were going to be drafted and the committee had already decided it would hear no fact witnesses. There were no right to a trial.

So it makes sense, what is rational—what 100 Senators 21 years ago thought was rational was to hear the case that can be presented on the record established so far and then decide if something else needs to happen. I think the President make his case. We are ready to get this started. The House managers should be as well.

Mr. Counsel CIPOLLONE. Mr. Chief Justice, we yield the balance of our time.

The CHIEF JUSTICE. The House managers have 38 minutes remaining.

Mr. Manager CROW. Mr. Chief Justice, I will be brief.

Counsel for the President continues to raise a lot of things that just really rubs me the wrong way. When he says: You know, we are talking and saying the same argument over and over and over again, well, I am ready to keep going because this is an important debate, and we need to have it now.

He also said something about what the American people don’t understand about Washington. Well, I haven’t been here very long, but I can tell you that I don’t think the American people care too much about what people in Washington are sitting around debating all the time and thinking about what you are concerned about right now. What they are concerned about is whether or not their government is working for them and whether or not there is corruption in their government. That is what they understand, and that is what this debate is about.

Counsel for the President said: Why now? Why the information now? The better question is: Why not now? This trial has started. Let’s have the facts and information now.

Ladies and gentlemen, the time is right. There is no reason why we
shouldn’t issue those subpoenas, get the facts, get the testimony, have the debate, and let the American people see what is really going on.

Mr. Chief Justice, I yield the balance of my time to Mr. Schiff.

The CHIEF JUSTICE. Thank you.

Mr. Manager SCHIFF, Senators, I will be brief, but I do want to respond to a couple of points my colleagues have made.

First is the argument that you heard before and I have no doubt you will hear again—that the subpoenas issued by the House are invalid. Well, that is really wonderful. I imagine when you issue subpoenas, they will declare yours invalid as well.

What is the basis of the claim that they are invalid? It is because they weren’t issued the way the President wants.

Part of the argument is that you have to issue the subpoenas the way we say, and that only be done after there is a resolution that we approve of adopted by the full House. First, they complained there was no resolution, no formal resolution of the impeachment inquiry, and then when we passed the formal resolution, they complained about the subpoena. We didn’t have one, and they complained when we did have one.

They made that argument already in court, and they lost. In the McGahn case, they similarly argued that this subpoena had to be done this way. Do you know what the judge said? The judge essentially said: That is nonsense.

The President doesn’t get to decide how the House conducts an impeachment proceeding. The President doesn’t get to decide whether a subpoena at issue is valid or invalid. No, the House gets to decide because the House is given the sole power of impeachment, not the President of the United States. Why are we going through all of these documents? Arent all of these motions the same? The fact is, we are not talking about the same documents here. They would like nothing better than for you to know nothing about the documents we seek. They don’t want you to know what Defense Department documents they are withholding. Of course, they don’t want you to hear that. They don’t want you to know what State Department documents we are going to hear from these people. I don’t want you to hear from these witnesses about the detailed personal notes they took. Ambassador Taylor told detailed personal notes.

They want to try to contest what Ambassador Sondland said about his conversations with the President because Sondland, after he talked with the President, talked directly with Ambassador Taylor and talked directly with Mr. Morrison and explained his conversation to the President. Guess what. Mr. Morrison and Ambassador Taylor told detailed notes. If there is a dispute about what the President told Mr. Sondland, wouldn’t you like to see the notes? They don’t want you to know the notes exist.

They don’t want to have this debate. They would rather just argue: No, it is just about the documents. It is just about when. We want the Senators to have their 16 hours of questions before they can see any of this stuff. And do you know what? Then we are going to move to dismiss the case. As I said earlier, the ‘‘when’’ means never.

Finally, the Clinton precedent. President Clinton turned over 90,000 pages of documents before the trial. I agree. Let’s follow the Clinton precedent. It is not going to take 90,000 documents. The documents are already collected.

You heard the testimony on the screen of Ambassador Taylor saying: Oh, they are going to turn them over shortly. But we are still waiting. They are still sitting there at the State Department.

We even played a video for you of Secretary Esper on one of the Sunday shows saying, we are going to comply with these subpoenas.

That was one week. Then somebody got to him and all of a sudden he was singing a different tune. They don’t want you to know what these documents hold. And, yes, we are showing you what these witnesses can tell you. We are showing you what Mulvaney can tell you. And, yes, we are making it hard for you. We are making it hard for you to say no. We are making it hard for you to say yes. I don’t want you to see from these people. I don’t want to see these documents.

We are making it hard. It is not our job to make it easy for you. It is our job to make it hard to deprive the American people of a fair trial, and that is why we are taking the time to do it.

I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. McCONNELL, Mr. Chief Justice, I make a motion to table the amendment, and I ask for the yeas and nays. The CHIEF JUSTICE. Is there a suffi- cient second?

There is a sufficient second. The clerk will call the roll.

The senior assistant legislative clerk called the roll.

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

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

[Call Vote No. 19] 

YEAS—

Alexander
Barrasso
Blumenthal
Boehner
Burr
Capito
Cassidy
Collins
Cornyn
Cotton
Cramer
Crapo
Cruz
Daines
Daines
Daines
Daines
Daines
Ernst

NAYS—

Baldwin
Benning
Berkowitz
Bongino
Brown
Brower
Bucco
Brower
Cantwell
Cardin
Cashe
Cassidy
Coons
Cortez Masto
Duckworth
Durbin
Emerson
Gillibrand
Harris

fiscal for reduction under the Freedom of Information Act. That is what we call a coverup.

They don’t want you to see that today. They don’t want you to see the before and the after, the redacted and the unredacted. They don’t want you to hear from these witnesses about the detailed personal notes they took. Ambassador Taylor told detailed personal notes.

They want to try to contest what Ambassador Sondland said about his conversations with the President because Sondland, after he talked with the President, talked directly with Ambassador Taylor and talked directly with Mr. Morrison and explained his conversation to the President. Guess what. Mr. Morrison and Ambassador Taylor told detailed notes. If there is a dispute about what the President told Mr. Sondland, wouldn’t you like to see the notes? They don’t want you to know the notes exist.

They don’t want to have this debate. They would rather just argue: No, it is just about the documents. It is just about when. We want the Senators to have their 16 hours of questions before they can see any of this stuff. And do you know what? Then we are going to move to dismiss the case. As I said earlier, the ‘‘when’’ means never.

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We even played a video for you of Secretary Esper on one of the Sunday shows saying, we are going to comply with these subpoenas.

That was one week. Then somebody got to him and all of a sudden he was singing a different tune. They don’t want you to know what these documents hold. And, yes, we are showing you what these witnesses can tell you. We are showing you what Mulvaney can tell you. And, yes, we are making it hard for you. We are making it hard for you to say no. We are making it hard for you to say yes. I don’t want you to see from these people. I don’t want to see these documents.

We are making it hard. It is not our job to make it easy for you. It is our job to make it hard to deprive the American people of a fair trial, and that is why we are taking the time to do it.

I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. McCONNELL, Mr. Chief Justice, I make a motion to table the amendment, and I ask for the yeas and nays. The CHIEF JUSTICE. Is there a sufficient second?

There is a sufficient second. The clerk will call the roll.

The senior assistant legislative clerk called the roll.

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

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

[Call Vote No. 19] 

YEAS—

Alexander
Barrasso
Blumenthal
Boehner
Burr
Capito
Cassidy
Collins
Cornyn
Cotton
Cramer
Crapo
Cruz
Daines
Daines
Daines
Daines
Daines
Ernst

NAYS—

Baldwin
Benning
Berkowitz
Bongino
Brown
Brower
Bucco
Brower
Cantwell
Cardin
Cashe
Cassidy
Coons
Cortez Masto
Duckworth
Durbin
Emerson
Gillibrand
Harris

There is a sufficient second. The clerk will call the roll.

The senior assistant legislative clerk called the roll.

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

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

[Call Vote No. 19] 

YEAS—

Alexander
Barrasso
Blumenthal
Boehner
Burr
Capito
Cassidy
Collins
Cornyn
Cotton
Cramer
Crapo
Cruz
Daines
Daines
Daines
Daines
Daines
Ernst

NAYS—

Baldwin
Benning
Berkowitz
Bongino
Brown
Brower
Bucco
Brower
Cantwell
Cardin
Cashe
Cassidy
Coons
Cortez Masto
Duckworth
Durbin
Emerson
Gillibrand
Harris

There is a sufficient second. The clerk will call the roll.

The senior assistant legislative clerk called the roll.

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

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

[Call Vote No. 19] 

YEAS—

Alexander
Barrasso
Blumenthal
Boehner
Burr
Capito
Cassidy
Collins
Cornyn
Cotton
Cramer
Crapo
Cruz
Daines
Daines
Daines
Daines
Daines
Ernst

NAYS—

Baldwin
Benning
Berkowitz
Bongino
Brown
Brower
Bucco
Brower
Cantwell
Cardin
Cashe
Cassidy
Coons
Cortez Masto
Duckworth
Durbin
Emerson
Gillibrand
Harris

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

Mr. SCHUMER, Mr. Chief Justice, The DEMOCRATIC leader is recognized.

AMENDMENT NO. 1289

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to issue subpoenas to Robert B. Blair and Michael P. Duffey, and I ask that it be read.

The CHIEF JUSTICE. The clerk will report the amendment.

The senior assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1289.

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

(A) issue a subpoena for the taking of testimony of Robert B. Blair and Michael P. Duffey, and

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

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

Mr. Manager SCHIFF, are you a proponent or opponent?
Mr. Manager SCHIFF. Mr. Chief Justice, we are a proponent.

The CHIEF JUSTICE. Mr. Cipollone?

Mr. Counsel CIPOLLONE. Mr. Chief Justice, we are an opponent.

The CHIEF JUSTICE. Mr. SCHIFF and the House managers will proceed and reserve time for rebuttal.

Ms. Manager GARCIA of Texas. Mr. Chief Justice, Senators, counsel for the President, my name is SYLVIA GARCIA, Chief Justice, Senators, counsel for the House managers will proceed and reserve time for rebuttal.

Ms. Manager GARCIA of Texas. Mr. Chief Justice, Senators, counsel for the President, my name is SYLVIA GARCIA, and I am a Congresswoman from Texas in the Houston region.

I have been sitting for some time, as well as you, and it brought to mind the many years I spent as a judge, just as all of you today are judges in this hearing.

It is important that I say a few words before I start our argument for this amendment because, in the scheme of things, it is really not that very complicated. The American people, everyday Americans, know what a trial looks like, they have seen it on "Perry Mason" or "Law & Order," or maybe they have been in court themselves. They know what a trial is. It is about making sure that people have an opportunity to be heard—both sides. It is about witnesses. It is about documents. It is about getting a fair shot.

That is all we are asking for today, is to make sure we give the American people the trial they expect, to make sure the American people know that this President had to be held accountable, because if it were they who were accused or alleged to have done something, they would want the same thing.

So, for me, it is about making sure we get a fair trial, which is why I am here representing the House managers with strongly support this amendment to subpoena Robert Blair and Michael Duffey. Blair and Duffey are the two officials who carried out President Trump's order to freeze vital military aid to Ukraine. Their testimony would shed light on central facts the House uncovered in our impeachment inquiry. Their testimony will further affirm that President Trump had no legitimate policy reason for the order.

Blair works in the White House as a senior adviser to the Acting Chief of Staff, Mick Mulvaney. Duffey is a political appointee. He works in the Office of Management and Budget. There, he serves as the Associate Director for OMB's Machinery of the Executive Branch. They are the two presidential appointees who carried out President Trump's order to freeze military aid to Ukraine. Their testimony would be important, because if it were they who were accused or alleged to have done something, they would want the same thing.

To explain why this amendment should be passed, I would like to walk you through some key events in which Blair and Duffey participated. To start, Blair and Duffey were directly involved in the initial stages of President Trump's freeze of the military aid.

On June 18, the Department of Defense issued a statement that it would be providing its $250 million share of military aid to Ukraine. That meant the administration had to produce the requested information to the President and the Department of Defense. Blair and Duffey provided the requested information to the President.

Now let's move on to the implementation. Despite Blair's warning about how Congress would react, President Trump ordered a freeze on military aid to Ukraine in July. Blair and Duffey were directly involved in executing the President's order. To be clear, decisions remain shrouded in secrecy, but key actions have been revealed.

On July 30, the State Department told various officials that OMB was blocking it from spending its $141 million share of the aid. More specifically, the OMB administration refused to produce that email to the House—and all other documents—a copy of that email was recently produced in response to a Freedom of Information Act lawsuit. The email, Duffey informed OMB that "the President has asked about this funding release."

Duffey copied Mark Sandy, a career official who reports to him and who testified before the House about OMB's review of the aid. More specifically, OMB directed the State Department not to send a notification to Congress about spending the aid. Without that notification, the aid was effectively frozen.

Who from OMB ordered the State Department not to send its congressional notification? Did they give a reason? We just don't know. Remember, at President Trump's instruction, OMB and the State Department refused to produce a single document to the House, but the dispute almost certainly came from Duffey or one of his subordinates, acting on behalf of President Trump.

We also know that on July 12, Blair sent an email to Duffey. Duffey's subordinate, Mark Sandy, saw the email and described it in his testimony before the House. As Sandy testified, it was Blair who conveyed that "the President is directing a hold on military support funding for Ukraine." And that email explains why Blair and Duffey have communications about the military aid to Ukraine with the President.

Blair's email raises seven questions. What other discussions took place about the President's decision to freeze military aid to Ukraine with the President? Was there further discussion about the issue in this email? Did Blair raise any objections to this seemingly unexplained decision to freeze the funds? The Senate could obtain these answers by hearing from these witnesses directly.

The next significant event in our timeline happened at the end of June. On June 27, Blair got an email from his boss, Mulvaney. Mulvaney was on Air Force One with President Trump. According to public reports, Mulvaney asked Blair: "Did we ever find out about the money for Ukraine and whether we can hold it back?" Blair responded it would be possible, but he said they should "expect Congress to become unhinged."

When did Mulvaney and Blair first discuss the President's freeze on military aid? Was there further discussion about the issue in this email? Did Mulvaney explain why it was so important to freeze the money, even if it would cause Congress "becoming unhinged?" Did they discuss why Congress would have such a strong reaction and whether it would be justified? Did Blair raise any objections to this seemingly unexplained decision to freeze the funds? The Senate could obtain these answers by hearing from these witnesses directly.

Mr. Counsel CIPOLLONE. Mr. Chief Justice?

The CHIEF JUSTICE. Mr. Cipollone?
the aid? Did the President or Mulvaney give Blair a reason for the freeze? Did Blair know that the President was holding the aid to pressure Ukraine to announce investigations of his political rival?

We also know that 2 days before Blair sent his email to Duffey, Ambassador Sondland told Ukrainian officials that he had a deal with Mulvaney. The deal consisted of a White House visit for President Zelensky on Ukraine conduct of investigations, and that President Trump sought. That is what prompted Ambassador Bolton to say he was "not part of whatever drug scandal Sondland and Mulvaney are cooking up."

Blair is Mulvaney's senior adviser. Did Blair know about the Sondland/ Mulvaney deal? Did he know that they were leveraging an official White House visit for the President to get Ukraine to investigate Trump's political rival? The White House was unable to provide any reason for the hold.

Throughout this period, officials across the executive branch started asking questions—questions about the freeze. Was military aid cut from Mulvaney? Around July 17 or 18, Duffey emailed Blair. He asked about the reason for the freeze, but he got no explanation. Instead, Blair insisted: We need to let the hold take place and they could revisit the issue with the President later.

In the House, we heard testimony from multiple officials, including Ambassador Taylor, who was until very recently our top diplomat in Ukraine, our envoy to Russia. We also heard from several other officials from the Department of Defense, the NSC staff, and OMB, but no one—no one—heard any credible evidence, any credible explanation for the freeze at the time. No one.

Yet, Blair, along with other officials, received an email from Ambassador Sondland. The email described a conversation he had just had with President Zelensky. Ambassador Sondland stated that Zelensky was "prepared to receive POTUS' call," and "will assure him that he intends to run a fully transparent and transparent" and "will turn over every stone."

As reflected in this email and confirmed by his testimony, Ambassador Sondland had helped President Zelensky prepare for his July 25 phone call with President Trump, telling him that it was necessary to assure President Trump that he would conduct the investigations. Ambassador Sondland then reported back to Blair and others that President Zelensky was prepared to do just that.

Blair knew the plan. As Ambassador Sondland put it, he was in the loop on the scheme.

Why was Blair part of this group? What was his involvement in setting up the call? What did he understand Sondland’s message to mean? What did he know about the investigations sought by the President? Did he have any conversations with the President about what the President wanted to ask for the investigations? We need Blair’s testimony to answer these questions.

And then, 6 days later, Blair was in the Situation Room, listening in—listening in—on President Trump’s July 25 call with President Zelensky. He heard President Zelensky raise the issue of U.S. aid to Ukraine. He heard President Trump respond but asked him for "a favor, though"—namely, investigations of the 2016 election and Vice President Biden.

The House heard the testimony of three of the other officials who listened into the President’s July 25 call—Colonel Vindman, Tim Morrison, and Jennifer Williams—each of them expressed concerns about the call. Lieutenant Colonel Vindman and Tim Morrison immediately reported the call to NSC lawyers. Jennifer Williams said the call "struck her as unusual and inappropriate," and further, "more political in nature."

Senators, the American people deserve to hear if Blair shared the concerns of the other officials who listened to the President’s call. What was his reaction to the call? Did he take notes? Was he at all concerned like the other officials that Blair was part of the President’s illegal scheme? Did he know exactly what was happening and why? Did the evidence we have suggest he did know? But the Senate should have the opportunity to ask him directly.

Just 90 minutes after that July 25 call, Blair’s contact at OMB, Michael Duffey, sent officials of the Department of Defense an email to make sure that DOD continued to freeze the military aid to Ukraine so desperately needed. This email, like all others, was not produced to the House. However, it was produced pursuant to court order in a Freedom of Information Act lawsuit.

As the email reflects, Duffey held the "DOD's” contact at OMB, and the guidance he had received, they should "hold off any additional DOD obligations of these funds."

Duffey added that the request was sensitive and that they should keep this information "highly confidential. This email, too, raises questions that Duffey should answer. What exactly was the guidance Duffey received? Who gave it to him? Was it connected to President Trump’s phone call? And why was it so sensitive that he directed DOD to keep it closely held? The Senate should demand the answers to these questions.

The Senate should also hear from Duffey as to why he abruptly removed Sandy and other officials from OMB and the Pentagon who questioned the freeze on military aid to Ukraine and whether he did so at the direction of the White House or President Trump. Throughout July, Mark Sandy, OMB career official who handled the aid, toldafa official who had actually tried to get Duffey to provide an explanation for the freeze. He was unsuccessful.

Sandy and other officials from OMB and the Pentagon also raised questions about the freeze. An OMB office issued a detailed legal opinion finding that OMB had violated Federal law by executing the President’s order to freeze military aid to Ukraine. Remarkably, on July 29, after Sandy had expressed his concerns, Sandy was abruptly removed from his position. The freeze, Duffey removed Sandy from responsibility for Ukraine military aid.

Instead, Duffey took over responsibility for withholding the aid himself. He was a political appointee. He had no relevant experience. He had no demonstrable interest in such matters. His last job had been as a State-level Republican Party official.

Therefore, we have only more questions: What was Sandy's role in this freeze? Was he part of the group who arranged the hold on the aid? Did he know about the investigations sought by the President? Did he hear the President's July 25 call? What was Sandy's role in directing DOD to freeze the aid? Did Sandy know about any additional DOD obligations of the aid?

The Senate should also hear from Sandy and other officials who were removed from their leadership roles at OMB and the Pentagon. The Senate should also hear from Sandy and other officials who were removed from their leadership roles at OMB and the Pentagon. The Senate should also hear from Sandy and other officials who were removed from their leadership roles at OMB and the Pentagon.
He is the one who took over responsibility for withholding the aid? He gave no credible explanation for his decision. He only said that he wanted to become “more involved in daily operations.”

Sandy, who has decades of experience, testified that nothing like this had ever happened in his career. His boss, a political appointee, just happened to have a sudden interest in being more hands-on and was now laser-focused exclusively on Ukraine. 'Thenceforth', ask Duffey why he took over the handling of the Ukraine military aid. Was he directed to? Why was Sandy removed from his responsibility over Ukraine aid? Was it because he expressed concerns about the legality of the freeze?

These questions are those that Duffey should be able to answer.

Now we move on to warnings from DOD. Around this period, in late July and early August, Duffey also ignored warnings from DOD about the legality of the freeze. The Senate should hear from him and judge what he has to say. Throughout July and August, Duffey executed President Trump’s freeze of the military aid through a series of funding documents from OMB.

In carefully worded footnotes, OMB tried to claim that this “was a brief pause and it would not affect DOD’s ability to spend the money on time.” As we now know from public reporting, a freeze continued, DOD officials grew more and more alarmed. They knew the freeze would impact DOD’s ability to spend the funds before the end of the fiscal year. DOD officials, including Deputy Under Secretary McCusker, voiced these concerns to Duffey on multiple occasions.

First, in an email on August 9, McCusker told Duffey DOD could no longer support OMB’s claim that the freeze would not preclude timely execution of the aid for Ukraine. Her email read:

As we discussed, as of 12 August, I don’t think we can agree that the pause will not preclude timely execution. We hope it won’t, and we will do all we can to execute once the policy decision is made but can no longer make a declarative statement.

Then, again, on August 12, McCusker warned Duffey in an email: The footnotes needed to include a caveat that “execution risk increases continued delays.”

The House never received these documents from OMB or DOD. We know what they contain because of public reporting, despite persistent efforts by the Trump administration to keep them from Congress and the public.

The Pentagon’s alarm should have raised concerns for Duffey. Did he share DOD’s concerns with anyone else? Did he agree with those concerns or take any actions in response? Did he take direction from Blair, the White House, or President Trump? There are questions that Duffey should answer.

Despite his actions executing the President's freeze, Duffey internally expressed reservations about it. In August, he signed off on a memorandum to Acting Director Vought that recommended releasing the aid. That memo stated that the military aid was consistent with the United States’ national security strategy in the region, that it supported Ukraine’s resistance against Russian aggression, and that the aid was rooted in bipartisan support in Congress. This is contrary to Duffey’s actions leading up to the memo. What changed? What caused Duffey to disagree with the President’s decision to continue to withhold the aid? Duffey should be called to explain why he recommended that the President release the aid, what other steps he took to advocate for the release. Does he know why Vought and the White House apparently disagreed with the recommendations?

Based on public reporting, we know, after the press reported the freeze in late August, OMB circulated talking points claiming the action had been taken by OMB that would preclude the obligation of these funds before the end of the fiscal year.” According to public reporting, McCusker responded with an email to Duffey in which he said he had been “consistently conveying” that for weeks. Due to the public release of these emails and recent reporting, we also know that Duffey emailed McCusker on August 30 and told her there was a “clear direction from POTUS” to continue the freeze.

McCusker continued to warn that the freeze was having real effects on DOD’s ability to spend the military aid, and the impact would keep growing if the freeze continued. According to recent reports, around September 9, after the President’s scheme had been exposed and the House had launched its investigations, Duffey responded to McCusker’s warning with a formal and lengthy email. He asserted it would be DOD’s fault, not OMB’s, if DOD was unable to spend funds in time. Deputy Under Secretary of Defense Elaine McCusker reportedly responded: “I am speechless.”

We now know that DOD’s concerns were well-founded. The President’s freeze on the security aid was illegal. Duffey should be called to testify about why DOD’s repeated warnings went unheeded. What prompted his emails that attempted to shift blame to DOD about the fact that the President released the aid only after his scheme was exposed?

Senators, make no mistake. We have a detailed factual record showing the President’s decision and that he did it to pressure Ukraine to announce the political investigations he wanted. But President Trump’s decisions also set off a cascade of confusion and misdirection within the executive branch. As the President’s political appointees carried out his orders, career officials tried to do their jobs—or, at the very least, not break the law. Blair and Duffey would help shed more light on how the President’s orders were carried out. That is why committees of the House issued subpoenas for both of their testimony, but Blair and Duffey, as I said earlier, like many other Trump officials, refuse to appear because the President ordered them not to appear. I might add, as a former judge, I have never seen anything like this before, where someone is ordered not to appear by one party and the witness just don’t appear.

The Senate should not allow the President and his administration to continue to evade accountability based on these ever-shifting and ever-meritorious excuses. We need to hold him accountable because no one is above the law. (English translation of statement made in Spanish is as follows:)

No one is above the law. Blair and Duffey have valuable testimony to offer. The Senate should call upon them to do their duty by issuing this subpoena.

Mr. Chief Justice, the House managers reserve the balance of our time for an opportunity to respond to the President’s arguments.

The CHIEF JUSTICE. Mr. Cipollone.

Mr. Counsel CIPOLLONE. Mr. Chief Justice, Pam Bondi, Special Advisor to the President, former attorney general of Florida.

The CHIEF JUSTICE. Ms. Bondi.

Ms. Counsel BONDI. Honorable Senators, just to fact-correct, please, a few things. Mr. Duffey didn’t come from a State job. Mr. Duffey came from Deputy Chief of Staff at DOD before he went to OMB. There is a big difference there.

Manager Garcia said he failed to appear. Well, the House committee would not allow agency counsel to appear with Mr. Duffey or Mr. Blair. They weren’t put in debt. agency counsel appear with either of them.

Office of Legal Counsel determined, of course, that the exclusion of agency counsel from House proceedings is unconstitutional. It is a pretty basic right. So what did they do? They took no action on the subpoenas, but now they want you to take action on them.

What the House managers have been telling you all day is that the White House is trying to hide from American people what witnesses had to say. They have been saying we want to bury evidence; we want to hide evidence. That hypocrisy is astounding. They have been saying: Let’s not forget why we are here.

Well, we are here tonight because they threw due process, fundamental fairness, and our Constitution out the window in the House proceedings. That is why we are here—because they started in the secret bunker hearings where the President and his counsel weren’t even allowed to participate when they were trying to impeach him.

Intell and Judiciary Committee was a one-sided circus. Ranking Member...
Nunes asked to call witnesses. He explained why in detail. It was denied by Manager Schiff. Ranking Member Collins asked to call witnesses, which was denied by Manager Nadler. And that is what they call fairness? That is not how our American justice system works. We only report. Our impeachment process is designed by our Constitution.

The House took no action on the subpoenas issued to Mr. Duffy and Mr. Blair because they didn’t want a court to tell them what they were trampling on their constitutional rights. Now they want this Chamber to do it for them.

Mr. Counsel Cipollone. Mr. Chief Justice, we yield the remainder of our time.

The CHIEF JUSTICE. House managers have 24 minutes remaining.

Mr. Manager Schiff. Mr. Chief Justice, a couple of fact checks, once again.

First of all, the complaint is made that well, the House wouldn’t allow agency counsel. Why wouldn’t the House allow agency counsel to be present in those secret depositions that you have been hearing so much about? As I mentioned earlier, those secret depositions allowed 100 Members of the House to participate. There are 100 Members of the Senate. We could have had that secret deposition right here on the Senate floor. During those depositions, both parties were given equal time to ask questions of these witnesses.

By the way, where did Democrats get that rule of no agency counsel during these depositions? We got it from the Republicans. This was the Republican deposition rule, and we can cite you adumbrant explanations by Trey Gowdy and others about how these rules are so important that the depositions not be public, that agency counsel be excluded.

And why? Well, you get a good sense of it when you see the testimony of Deputy Assistant Secretary George Kent. Kent describes how he is at a meeting with some of the State Department lawyers and others, and they are talking about the document request from Congress and what are they going to do about these and what documents are responsive and what documents aren’t responsive. The issue came up in a letter the State Department sent to Congress saying: You are intimidating the witnesses. Secretary Kent testified: No, no, no. The Congress wasn’t intimidating witnesses; it was the State Department that was intimidating witnesses to try to prevent them from testifying.

My colleagues at the other table say: Why aren’t you allowing the Members from the State Department to sit next to those witnesses and hear what they have to say in the depositions? We have seen much witness intimidation in this investigation, to begin with, without having an agency minder sitting in on the deposition.

By the way, those agency minders don’t get to sit in on grand jury interviews either. There is a very good investigative reason that has been used by Republicans and Democrats who have been adamant about the policy of excluding agency counsel.

It was also represented that the Intelligence Committee and the Judiciary Committee wouldn’t allow the minority to call any witnesses. That is just not true. In fact, fully one-third of the witnesses who appeared in open hearing in our committee were minority-chosen witnesses. What they ended up having to say was pretty darn incriminating of the President, but nonetheless, they chose them.

So about this idea that, well, we had no due process, the fact of the matter is, we followed the procedures in the Clinton and Nixon impeachments. They can continue to say we didn’t, but we did. In some respects, we gave even greater due process opportunities here than there. The fact that the President wouldn’t take no advantage of them doesn’t change the fact that they had that opportunity.

Finally, the claim is made that we trampled on the constitutional rights by daring to subpoena these witnesses. How dare we subpoena administration officials—right?—because Congress never does that. How dare we do that. How dare we subpoena them. Well, the court heard that argument in the case of Don McGahn, and you should read the judge’s opinion in finding that this claim of absolute immunity has no support, no substance; it would have resulted in a monarchy. It is essentially the judicial equivalent of: Don’t let the door hit you in the backside on the way out, Counsel. There is no merit there.

Counsel can repeat that argument as often as they like, but there is no support in the courts for it. There should be no support for it in this body, not if you want any of your subpoenas in the future to mean anything at all.

I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. McConnelly. Mr. Chief Justice, I have a motion at the desk to table the amendment.

I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

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

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

[Rollcall Vote No. 20]

YEA—53

Alexander       Boozman       Boozman
Barrasso       Boozman       Collins
Blackburn       Burr        Capito
Blunt        Cotton

NAY—47

Baldwin       Blumenthal       Booker
Blunt        Bourne        Hyde-Smith
Carter       Casey        Corcoran
Conlon        Cortez Masto       Duckworth
Durbin        Feinstein       Gillibrand
Harr        Harris       Reed

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

The CHIEF JUSTICE. The Democratic leader is recognized.

AMENDMENT NO. 1290

Mr. Schumer. Mr. Chief Justice, I send an amendment to the desk to prevent the Select Committee from exercising the right to subpoena officials—right?—because Congress has not been as diligent as the House and the Senate in exercising the constitutional right to obtain information to prepare the impeachment inquiry. We propose that the Select Committee be provided with the constitutional right to compel the attendance of all witnesses and the production of all documents in the possession of the executive branch of government, including the executive privilege. We propose that the Select Committee have the authority to compel the production of any document in the possession of the executive branch of government, including the executive privilege. We propose that the Select Committee have the authority to compel the production of any document in the possession of the executive branch of government, including the executive privilege. We propose that the Select Committee have the authority to compel the production of any document in the possession of the executive branch of government, including the executive privilege.

The amendment is tabled.

The legislative clerk read as follows:

The Senator from New York [Mr. Schumer] proposes an amendment numbered 1290. On page 2, between lines 4 and 5, insert the following:

If, during the impeachment trial of Donald Trump, any party seeks to admit evidence that has not been submitted as part of the record of the House of Representatives and that was subject to a duly authorized subpoena, that party shall also provide the opposing party all other documents responsive to that subpoena. For the purposes of this paragraph, the term “duly authorized subpoena” includes any subpoena issued pursuant to the impeachment inquiry of the House of Representatives and that was subject to a duly authorized subpoena. During the impeachment trial of Donald Trump, any party seeking to admit evidence that has not been submitted as part of the record of the House of Representatives and that was subject to a duly authorized subpoena, that party shall also provide the opposing party all documents responsive to that subpoena. For the purposes of this paragraph, the term “duly authorized subpoena” includes any subpoena issued pursuant to the impeachment inquiry of the House of Representatives and that was subject to a duly authorized subpoena.

The Senate shall take all necessary measures to ensure the proper handling of confidential and classified information in the record.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. McConnell. Let’s take a 5-minute break. I ask everybody to stay close to the Chamber. We will go with a hard 5 minutes.

RECESS SUBJECT TO THE CALL OF THE CHAIR

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

There being no objection, the Senate, at 11:09 a.m., recessed until 11:39 p.m., and reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. Mr. Schiff, are you in favor or opposed?
Mr. Manager SCHIFF. In favor.
The CHIEF JUSTICE. Mr. Cipollone.
Mr. Counselor CIPOLLONE. Mr. Chief Justice, we are opposed.
The CHIEF JUSTICE. There are 2 hours for argument, equally divided.
Mr. Manager SCHIFF. Senators, the majority leader amended his resolution earlier today to allow the admission of the House record into evidence, though the resolution leaves the record subject to objections.

But there is a gaping hole—another gaping hole—in the resolution. The resolution would allow the President to cherry-pick documents he has refused to produce to the House and attempt to admit them into evidence here.

That would enable the President to use his obstruction not only as a shield to his misconduct but also as a sword in his defense. That would be patently unfair and wholly improper. It must not be allowed, and that is what the Schumer amendment addresses.

The amendment addresses that issue by providing that if any party seeks to admit, for the first time here, information that was previously subject to subpoena, that party must do a simple and fair thing: it must provide the opposing party all of the other documents responsive to the subpoena. That is how the law works in America. It is called the rule of completeness.

When the selective introduction of evidence distorts facts or sows confusion in a trial, there is a solution. It is to ensure that documents that provide for a complete picture can be introduced to avert such distortions and confusion.

The rule of completeness is rooted in the commonsense evidentiary principle that a fair trial does not permit the parties to selectively introduce evidence in a way that would mislead factfinders. The Senators should embrace it as a rule for this trial, and the amendment does just that.

This amendment does not in any way limit the evidence the President may introduce during his trial. He should be able to defend himself against the charges against him as every defendant has the right to do around the country. But this amendment does make sure that he does it in a fair way and that his obstruction cannot be used as a weapon.

It is an amendment based on simple fairness, and it will help the Senate and the American people get to the truth.

House managers are not afraid of the evidence, whatever it may be. We want an open process designed to get to the truth, no matter whether it helps or hurts our case. That is what the Senate should want, and that is what the American people certainly want.

This amendment helps that process of getting more evidence so we can get to the truth, and we urge you to vote for it.

The amendment also addresses another omission in the majority leader’s resolution by providing for the proper handling of confidential and classified information for the record. This amendment seeks to balance the public’s interest in transparency with the importance of protecting limited, sensitive information directly on the case you are trying.

As for confidential information, some of the evidence in this case includes records of phone calls. They establish important patterns of conduct, as we explain in the Ukraine impeachment report.

But the original phone records, including a great deal more information in context, should be available for this body to evaluate—just as you are doing in the Senate.

I reserve the balance of our time.

The CHIEF JUSTICE. Mr. Cipollone.
Mr. Counselor CIPOLLONE. Thank you, Mr. Chief Justice. Mr. Philbin and Mr. Sekulow will argue.

The CHIEF JUSTICE. Mr. Philbin, Mr. Counselor PHILBIN. Mr. Chief Justice and Members of the Senate, the President opposes this amendment, and I can be brief in explaining why. This amendment addresses whether any subpoena that was issued pursuant to the House’s impeachment inquiry—any subpoena that they issued at all—becomes defined as a duly authorized subpoena for purposes of this amendment.

As we have explained several times today, because the House began this inquiry without taking a vote, it never authorized any of its committees to issue subpoenas pursuant to the impeachment power.

In Rumsfeld, the Court explains that to determine the validity of a subpoena requires “construing the scope of the authority which the House of Representatives gave to the committee.” It is a legal inquiry into the authority of the House of Representatives against a President of the United States without it being authorized by a vote of the full House. This is a principle that the Supreme Court has made clear in cases such as United States vs. Rumely and United States vs. United States vs. Florida.

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Look at what they did in response to the FOIA, or Freedom of Information Act, requests. They blacked out all the incriminating information. They blacked out the “we can’t represent anything more than we are going to be able to actually spend this money in time.” We can’t represent that, that we are not going to be in violation of the law of the Impoundment Act.” We redact that.

Is that what you want in this trial, for them to be able to introduce one part of an email chain and not show you the rest?

You want to be able to have a situation where the President has withheld all these documents from you, can introduce a document that suggests a benign explanation but not the reply that confirms the corrupt explanation, because that is what we are really talking about here.

Now they make the same point, this is the argument that, well, we don’t think these were duly authorized subpoenas. We are merely categorizing the universe of documents they should turn over if they want to turn over selective documents, but it is not unduly authorized, therefore. The point is, that the documents that should be turned over should not be cherry-picked by a White House that has already shown such a deliberate intent to deceive.

Really, counsel says they can’t tell whether we are dealing with a trial here. Well, do you know something? Neither can we. If they are confused, they are confused for a good reason, because the history of this body confirms the corrupt explanation, that this is the history of this body. That has been the history of this body.

Now I know it is late, but I have to tell you it doesn’t have to be late. We don’t control the schedule here. We are not deciding we want to carry on through the evening. We don’t get to decide the schedule.

There is a reason for why we are still here at 5 minutes to midnight. There is a reason that we are here at 5 minutes to midnight, and that is because they don’t want the American people to see what is going on here. They are hoping people are asleep. You know, a lot of people are asleep right now, all over the country, because it is midnight.

Now, maybe in my State of California people are still awake and watching, but is this really what we should be doing when we are deciding the fate of a Presidency—that we should be doing this in the midnight hour?

I started out the day asking whether there could be a fair trial and expressing the skepticism I think the country feels about whether that is possible, how much they want to believe this is possible. But I have to say, watching now at midnight, this effort to hide this in the dead of night cannot be encouraging to them about whether there will be a fair trial.

I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. McCONNELL. Mr. Chief Justice, I have a motion at the desk to table this amendment.

The CHIEF JUSTICE. The question is on agreeing to the motion. Is there a sufficient second?

There is a sufficient second.

Mr. McCONNELL. I ask for the yeas and nays.

The CHIEF JUSTICE. The clerk will call the roll.

The legislative clerk called the roll.

The CHIEF JUSTICE. Does any Senator in the Chamber wish to change his or her vote?

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

[Rollcall Vote No. 21 Leg.]

YEAS—53

Alexander  Perdue  Portman
Barrasso  Fischer  Risch  Roberts  Rounds
Blackburn  Gardner  Romney  Sasse
Biden  Graham  Rounds  Rubio  Scott (FL)
Biden  Grassley  Romney  Scott (SC)
Burr  Hawley  Sasse
Capito  Hyde-Smith  Smith  Sullivan
Collins  Johnson  Smith
Coons  Kennedy  Tester
Cotton  Lee  Torney
Cramer  Loeffler  Tubman  Tillis
Crage  McConnell  Topping
Cruz  McSally  Toomey
Daines  Moran  Wicker
Ernst  Murkowski  Young

NAYS—47

Baldwin  Hassan  Rosen
Bennet  Heinrich  Sanders
Bischopingal  Hirono  Schatz
Booker  Jones  Schumer
Brown  Kaine  Shaheen
Cantwell  Klobuchar  Simon
Cardin  Lezak  Smith
Carper  Manchin  Stabenow
Cassidy  Tester  Tennille
Coons  Markley  Udall
Cortez Masto  Menendez  Van Hollen
Duckworth  Merkley  Warner
Durbin  Murphy  Warren
Feinstein  Murray  Whitehouse
Gilbrand  Peters  Wyden
Harris  Reed

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

The CHIEF JUSTICE. The Democratic leader is recognized.

AMENDMENT NO. 1291

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to issue a subpoena to John Robert Bolton, and I ask that it be read.

The CHIEF JUSTICE. The clerk will read the amendment.

The legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1291.

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

Snc. Notwithstanding any other provision of this resolution, pursuant to

rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Chief Justice of the United States, through the Secretary of the Senate, authorized the issuing of a subpoena for the taking of testimony of John Robert Bolton, and the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employees of the Senate in serving the subpoena authorized to be issued by this section.

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

Mr. Manager SCHIFF, are you a proponent?

Mr. Manager SCHIFF. Yes, I am.

The CHIEF JUSTICE. Mr. Cipollone, are you an opponent?

Mr. Counsel CIPOLLONE. Yes, Mr. Chief Justice.

The CHIEF JUSTICE. Mr. SCHIFF, you may proceed, and you may reserve time for rebuttal.

Mr. Manager NADLER. Before I begin, Mr. Chief Justice, the House managers will be reserving the balance of our time to respond to the arguments of the counsel for the President.

Mr. Chief Justice, Senators, counsel for the President, the House managers strongly urge this amendment to subpoena John Bolton. I am struck by what we have heard from the President’s counsel so far tonight. They complain about process, but they do not seriously contest any of the allegations against the President. They insist that the President has done nothing wrong, but they refuse to allow the evidence and hear from the witnesses. They will not permit the American people to hear from the witnesses, and they lie and lie and lie and lie.

For example, for months, President Trump has repeatedly complained that the House denied them the right to call witnesses, to cross-examine witnesses, and so forth. You heard Mr. Cipollone repeat this morning. Well, I have with me the letter that I sent as Chairman of the House Judiciary Committee last November 26, inviting the President and his counsel to attend our hearings, to cross-examine the witnesses, to call witnesses of his own, and so forth. I also have the White House letter signed by Mr. Cipollone, rejecting that offer. We should expect at least a little regard for the truth from the White House, but that is apparently too much to expect.

Ladies and gentlemen, this is a trial. At a trial, the lawyers present evidence. The American people know that. Most 10-year-olds know that. If you vote to block this witness or any of the evidence that should be presented here, it can only be because you do not want the American people to hear the evidence, that you do not want a fair trial, and that you are complicit in President Trump’s efforts to hide his misconduct and hide the truth from the American people.

Ambassador Bolton was appointed by President Trump. He has stated his willingness to testify in this trial. He is prepared to testify. He says that he has relevant evidence not yet disclosed to the public. His comments reaffirm what is obvious from the testimony and documents obtained by the House, which highlight Ambassador Bolton’s role in the repeated criticism of the President’s conduct. In fact, extensive evidence collected by the House makes clear that Ambassador Bolton not only had firsthand knowledge of the Ukraine scheme but that he was deeply concerned with it. He described the scheme as a “drug deal” to a senior member of the staff. He warned that President Trump’s personal lawyer, Rudy Giuliani, would “blow everybody up.” Indeed, in advance of the July 25, 2019, call, Ambassador Bolton expressed concern that President Trump would ask the Ukrainian President to announce these political investigations, which is, of course, exactly what happened. Of course, there weren’t to be any investigations. All he cared about was an announcement of a political rival in the United States. He repeatedly urged his staff to report their own concerns about the President’s conduct to legal counsel—that is, Ambassador Bolton did not, the President—as the scheme unfolded.

Finally, as National Security Advisor, he also objected to the President’s freezing of military aid to Ukraine and advocated for the release of that aid, including directly with President Trump. Of course, as we all know, the Impoundment Control Act makes illegal the President’s withholding of that aid after Congress had voted for it, but the President ignored the warnings about that because all he cared about was smearing a political rival. The law meant nothing to him.

Ambassador Bolton has made clear that he is ready, willing, and able to testify about everything he witnessed, but President Trump does not want you to hear from Ambassador Bolton, who was directly involved in many of the events, meetings, and conversations about which the House heard testimony, as well as many relevant meetings and conversations that have not yet been discussed in the testimony thus far.

Ambassador Bolton has said both that he will testify and that he has relevant information that has not yet been disclosed. A key witness has come forward and confirmed not only that he participated in critically important events but that he has new evidence we have not yet heard. That is precisely what Ambassador Bolton has done. His lawyer tells us that Ambassador Bolton was directly involved in many of the events, meetings, and conversations about which the House heard testimony, as well as many relevant meetings and conversations that have not yet been discussed in the testimony thus far.

Mr. Manager NADLER. But I would further point out that Ambassador Bolton was called drug deal he would later warn of, and the reason has nothing to do with executive privilege or this other nonsense. The reason has nothing to do with national security. If the President cared about national security, he would not have blocked military assistance to a vulnerable strategic ally in the scheme was unfolding.

Bolton did, not the President—as the Ambassador Bolton is clear. It comes down to this: Will the Senate do its duty and hear all the evidence? Or will it slam this door shut and show it is participat- ing in a coverup because it fears to hear from Ambassador Bolton—because they know he knows too much.

There is also substantial evidence that Ambassador Bolton kept a keen eye on Rudy Giuliani, who was acting on behalf of the President, in connection with Ukraine. As we will describe, Ambassador Bolton communicated directly with Mr. Giuliani at key moments. He knows the details of the so-called drug deal he would later warn against and thus far. Ambassador Bolton was requested as a witness in the House inquiry, but he refused to appear voluntarily. His lawyers informed the House Intelligence Committee that Ambassador Bolton would not take the matter to court if issued a subpoena, as his subordinate did, but the Ambassador changed his tune. He recently issued a statement confirming that “if the Senate issues a subpoena for my testimony, I am prepared to testify.”

Ambassador Bolton was appointed by President Trump. He has stated his willingness to testify in this trial. He is prepared to testify. He says that he has relevant evidence not yet disclosed to the public. His comments reaffirm what is obvious from the testimony and documents obtained by the House, which highlight Ambassador Bolton’s role in the repeated criticism of the President’s conduct. In fact, extensive evidence collected by the House makes clear that Ambassador Bolton not only had firsthand knowledge of the Ukraine scheme but that he was deeply concerned with it. He described the scheme as a “drug deal” to a senior member of the staff. He warned that President Trump’s personal lawyer, Rudy Giuliani, would “blow everybody up.” Indeed, in advance of the July 25, 2019, call, Ambassador Bolton expressed concern that President Trump would ask the Ukrainian President to announce these political investigations, which is, of course, exactly what happened. Of course, there weren’t to be any investigations. All he cared about was an announcement of a political rival in the United States. He repeatedly urged his staff to report their own concerns about the President’s conduct to legal counsel—that is, Ambassador Bolton did not, the President—as the scheme unfolded.

Finally, as National Security Advisor, he also objected to the President’s freezing of military aid to Ukraine and advocated for the release of that aid, including directly with President Trump. Of course, as we all know, the Impoundment Control Act makes illegal the President’s withholding of that aid after Congress had voted for it, but the President ignored the warnings about that because all he cared about was smearing a political rival. The law meant nothing to him.

Ambassador Bolton has made clear that he is ready, willing, and able to testify about everything he witnessed, but President Trump does not want you to hear from Ambassador Bolton, who was directly involved in many of the events, meetings, and conversations about which the House heard testimony, as well as many relevant meetings and conversations that have not yet been discussed in the testimony thus far.

Ambassador Bolton has said both that he will testify and that he has relevant information that has not yet been disclosed. A key witness has come forward and confirmed not only that he participated in critically important events but that he has new evidence we have not yet heard. That is precisely what Ambassador Bolton has done. His lawyer tells us that Ambassador Bolton was directly involved in many of the events, meetings, and conversations about which the House heard testimony, as well as many relevant meetings and conversations that have not yet been discussed in the testimony thus far.

Ambassador Bolton was requested as a witness in the House inquiry, but he refused to appear voluntarily. His lawyers informed the House Intelligence Committee that Ambassador Bolton would not take the matter to court if issued a subpoena, as his subordinate did, but the Ambassador changed his tune. He recently issued a statement confirming that “if the Senate issues a subpoena for my testimony, I am prepared to testify.”

So the question presented as to Ambassador Bolton is clear. It comes down to this: Will the Senate do its duty and hear all the evidence? Or will it slam this door shut and show it is participating in a coverup because it fears to hear from Ambassador Bolton—because they know he knows too much?
Consider this as well: Why is President Trump so intent on preventing us from hearing Ambassador Bolton, his own appointee, his formerly trusted confidant? Because he knows—he knows—his guilt and he knows that he doesn’t have people who know about it to testify. The question is whether Republican Senators here today will participate in that coverup.

The reasons seem clear. President Trump wants to block this witness because Ambassador Bolton has direct knowledge of the Ukraine scheme, which he called a drug deal. Let’s start with the key meeting that took place on July 10.

Just 2 weeks before President Trump’s now famous July 25 call with President Zelensky. Ambassador Bolton hosted senior Ukrainian officials in his West Wing office. That meeting included Dr. Hill, Lieutenant Colonel Vindman, Ambassador Sondland and Volker, and Energy Secretary Rick Perry. As they did in every meeting they had together with U.S. officials, Ukrainian officials asked when President Trump would schedule a White House meeting for the newly elected Ukrainian President because it was very important for the Ukrainian President, a new President of an embattled democracy being invaded by Russia, to show that he had legitimacy by a meeting with the United States.

Dr. Hill testified that Ambassador Sondland blurted out that he had a deal with Mr. Mulvany for a White House meeting for the newly elected Ukrainian President. Bolton immediately stiffened and ended the meeting. Dr. Hill’s testimony is on the screen.

In other words, Ambassador Bolton and others at the meeting were interested in the national security of the United States. They were interested in protecting an American ally against Russian invasion. They couldn’t understand why this sudden order was coming from the President to abandon that ally because they didn’t yet know—they didn’t yet know—the President’s plot to try to extort the Ukrainian Government into doing him a political favor by announcing an investigation of a political rival.

When Dr. Hill reported back to Ambassador Bolton about the meeting with Dr. Hill and other members of the National Security Council’s legal advisor, John Eisenberg, and tell him: “I am not part of whatever drug deal Sondland and Mulvany are cooking up on this.”

Here is an excerpt of her hearing testimony.

(Text of Videotape presentation:)

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

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

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

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

Ms. HILL. I certainly did.

Mr. Manager NADLER. These statements of events are real enough to insist that Ambassador Bolton testify. He can explain the misconduct that caused him to characterize the Ukraine scheme as a drug deal and why he directed his subordinates to report their concerns to a legal counsel. He can tell us everything about how Ambassador Bolton, Sondland, Mr. Mulvany, and others were attempting to press the Ukrainians to do President Trump’s political bidding. Once more, only Ambassador Bolton can tell us what he was thinking and what he knew as this scheme developed. That is why the President fears his testimony. That is why some Members of this body fear his testimony.

Ambassador Bolton’s involvement was not limited to a few isolated events; he was a witness at key moments in the course of the Ukraine scheme, especially in July, August, and September of last year. I would like to walk through some of these events. Please remember, as I am describing them, that this is not the entire universe of issues to which Ambassador Bolton could testify; they are only examples that show why he is such an important witness and why the President is desperate to block his testimony.

We know from Ambassador Bolton’s attorney that there may be other meetings and conversations that have not yet come to our attention. To take one example, we know from witness testimony that Ambassador Bolton repeatedly expressed concerns about the involvement of President Trump’s personal lawyer, Mr. Giuliani.

In the spring and summer of 2019, Ambassador Bolton caught wind of Mr. Giuliani’s involvement in Ukraine and soon began to express concerns. Ambassador Bolton made clear that he was a witness at key junctures. According to call records obtained by the House, Mr. Giuliani connected with Ambassador Bolton’s office three times for brief calls between April 23 and May 10, 2019, a time period that corresponds with the recall of Ambassador Yovanovitch and the acceleration of Mr. Giuliani’s efforts on behalf of President Trump to pressure Ukraine into opening investigations that would benefit his reelection campaign.

For instance, on April 23, the day before the State Department recalled Ambassador Yovanovitch from Ukraine, Mr. Giuliani had an 8-minute 28-second call from the White House. Thirty minutes later, he had a 48-second call with a phone number associated with Ambassador Bolton.

If we were called to testify, we could ask Ambassador Bolton directly what transpired on that call and whether that phone call informed his assessment that Mr. Giuliani was “a hand grenade that was going to blow everybody up,” it was based on his fear that Mr. Giuliani’s work on behalf of the President, his attempts to have Ukraine announce these investigations—these sham investigations—and his campaign to smear Ambassador Yovanovitch would ultimately backfire and cause lasting damage to the President. It turns out he was right.

(Text of Videotape presentation:)

Ms. SEWELL. Did you bear your boss, Dr. Bolton— I mean Ambassador Bolton, tell you that Giuliani was “a hand grenade”?

Ms. HILL. He did, yes.

Ms. SEWELL. What do you think he meant by his characterization of Giuliani as a hand grenade?

Ms. HILL. What he meant by this was pretty clear to me in the context of all of the statements that Mr. Giuliani was making publicly about the investigations that he was promoting, that the story line he was promoting, the narrative he was promoting was going to backfire. I think it has backfired.

Mr. Manager NADLER. In June, as Ambassador Bolton became aware of Mr. Giuliani’s coordination with Ambassadors Volker and Sondland, he told Dr. Hill and other members of the National Security Council Staff that “no one should be meeting with Giuliani.” But, of course, did not know of the President’s plot as to why people were meeting with Giuliani.

Dr. Hill also testified that Ambassador Bolton was “closely monitoring what Mr. Giuliani was doing and the messaging that he was sending out.” But Ambassador Bolton was keenly aware that Mr. Giuliani was doing the President’s bidding. That is also why the President fears his testimony.

During a meeting on June 13, 2019, Ambassador Bolton made clear that he supported more engagement with Ukraine by senior White House officials but questioned that “Mr. Giuliani was the key voice with the President on Ukraine.” He joked that every time Ukraine is mentioned, Giuliani pops up.

Ambassador Bolton also communicated directly with Mr. Giuliani at key junctures. According to call records obtained by the House, Mr. Giuliani connected with Ambassador Bolton’s office three times for brief calls between April 23 and May 10, 2019, a time period that corresponds with the recall of Ambassador Yovanovitch and the acceleration of Mr. Giuliani’s efforts on behalf of President Trump to pressure Ukraine into opening investigations that would benefit his reelection campaign.
Zelensky in which President Trump asked the Ukrainian President a favor—a favor to investigate one company and Joe Biden’s son—we have learned from witness testimony that Ambassador Bolton was opposed to scheduling the call in the first place. Why? Because he accurately predicted, in the words of Ambassador Taylor, that “there could be some talk of investigations or worse on the call.” In fact, he did not want the call to happen at all because he “thought it was going to be a disaster.”

How did Ambassador Bolton know that President Trump would bring this up? What made him so concerned that a call would be a disaster? I think we know, but only Ambassador Bolton can answer these questions.

Based on extensive witness testimony, we also know that throughout this period, multiple people on the National Security Council’s staff reported concerns to Ambassador Bolton about tying foreign policy to President Trump’s personal political agenda. We also know that Ambassador Bolton spoke to Dr. Hill and directed her to report her concerns to National Security Council’s legal advisor John Eisenberg.

At the end of August, Ambassador Bolton advised Ambassador Taylor to send a first-person cable to Secretary Pompeo to relay concerns about the hold on the military aid.

Ambassador Bolton also advised Mr. Morrison—Dr. Hill’s successor as the top Russia and Ukraine official on the National Security Council—on at least two different occasions to report what he had heard to the National Security Council’s lawyers, it sounding so suspicious.

On September 1, Ambassador Bolton directed Mr. Morrison to report to the National Security Council’s lawyers an explicit proposal from Ambassador Sondland to a senior Ukrainian official that “what could help them move the aid was if the prosecutor general would go to the mike and announce that he was opening the Burisma investigations.”

On September 7, Ambassador Bolton instructed Mr. Morrison to report to the lawyers another conversation Mr. Morrison had with Ambassador Sondland. This time, Ambassador Sondland had conveyed that the administration would not release the military aid unless President Zelensky announced the investigations demanded by President Trump—the investigations of one company because the President was so concerned about the corruption in Ukraine. It was one company that had Vice President Biden’s son on the board, and the President just happened to pick that company from hundreds of thousands to be concerned about corruption. And the President also opposed funding for corruption aid to Ukraine.

Why did Ambassador Bolton tell his subordinates to report these issues to the national security lawyers? What did the lawyers respond to the concerns of Dr. Hill or of Lieutenant Colonel Vindman and Mr. Morrison? Again, only Ambassador Bolton can answer these questions, and we must assume that the answers go to the heart of the President’s misdeeds.

Ambassador Bolton had a one-on-one meeting with President Trump in late August of last year, and the President was not yet ready to approve the release of the military assistance to Ukraine. Ambassador Bolton told Mr. Morrison that the freeze on the military aid was a personal political end-run, as Dr. Hill so aptly put it.

After he abruptly ended the July 10 meeting—the meeting in which Ambassador Bolton asked Mr. Morrison to order by President Trump was illegal through the National Security Council’s lawyers an explicit ruling from the Government Accountability Office, which we didn’t yet believe the President was ready to approve the call.

By July of last year, Ambassador Bolton had a one-on-one meeting with President Trump in which Ambassador Bolton told the President that he knew about the freeze and that he had subordinates tried to convince the President to pursue America’s national security interests and release the aid instead of continuing to withhold the aid. Ambassador Bolton told the President that he knew about the freeze and that he had subordinates tried to convince the President to pursue America’s national security interests and release the aid instead of continuing to withhold the aid.

Throughout the rest of July, over the course of several interagency meetings, the National Security Council repeatedly discussed the freeze on Ukraine’s security assistance. As National Security Advisor, Ambassador Bolton supervised that process. These meetings worked their way up to the level of Cabinet deputies, and every agency involved, except for the Office of Management and Budget, supported releasing the aid. OMB, meanwhile, said its position was based on President Trump’s express orders.

We know that a number of individuals at OMB and the Department of Defense raised serious concerns about the legality of freezing the funds, which we know is illegal. We now have an explicit ruling from the Government Accountability Office, which we didn’t need because we knew that is why the law was passed in 1974, that the freeze ordered by President Trump was illegal—and he was obviously told this— and violated the Impoundment Control Act.

We also know that after the meeting of Cabinet deputies on July 26, Mr. Morrison talked to Ambassador Bolton, and according to Mr. Morrison, Ambassador Bolton said that the entire Cabinet supported releasing the freeze and wanted to get the issue to President Trump as soon as possible.

When did Ambassador Bolton first become aware that President Trump had instructed his subordinates to request of Ukraine and conditioning the release of that aid on Ukraine announcing political investigations? What was he told was the reason? What else did he learn about the President’s actions in these meetings? Again, only Ambassador Bolton can answer these questions, and again we must presume that President Trump is desperate for us not to hear these answers. I hope not too many of the Members of this body are desperate to make sure that the American people don’t hear these same answers.

We know that Ambassador Bolton tried throughout August, without success, to persuade the President that the aid to Ukraine had to be released because that was in America’s best interest and necessary for our national security.

In mid-August, we knew Lieutenant Colonel Vindman wrote a Presidential decision memorandum recommending that the freeze be lifted based on the consensus views of the entire Cabinet. The memo was given to Ambassador Bolton, who subsequently had a direct, one-on-one conversation with the President in which he tried but failed to convince him to release the hold.

(Text of Videotape presentation:)

Mr. SWALWELL. You said Ambassador Bolton had a one-on-one meeting with President Trump in late August and the President was not yet ready to approve the release of the assistance. Do you remember that?

Mr. MORRISON. This was 226?

Mr. SWALWELL. Yes, 266 and 268. But I am asking you: Did that happen or did it not?

Mr. MORRISON. Sir, I just want to be clear characterizing it, OK, sir.

Mr. SWALWELL. Yes. You testified to that. What was the outcome of that meeting between Ambassador Bolton and President Trump?

Mr. MORRISON. Ambassador Bolton did not yet believe the President was ready to approve the assistance.

Mr. SWALWELL. Did Ambassador Bolton inform you of any reason for the ongoing hold that stemmed from this meeting?

Mr. Manager NADLER. Ambassador Bolton’s efforts failed. By August 30, OMB informed DOD that there was “clear direction from POTUS to continue to hold.” What rationale did President Trump give Ambassador Bolton and other officials for refusing to release the aid? Were these reasons convincing to Ambassador Bolton, and did they reflect the best interests of our national security or the President’s personal political interests?

Only Ambassador Bolton can tell us the answers. A fair trial in this body would ensure that he testifies. The President does not want you to hear Ambassador Bolton’s testimony. Why is that? For all the obvious reasons I have stated.

The President claims that he froze aid to Ukraine in the interest of our
national security. If that is true, why would he oppose testimony from his own former National Security Advisor?

Make no mistake. President Trump had no legal grounds to block Ambassador Bolton’s testimony in this trial. Executive privilege is not a shield that the President can cast to cover up evidence of his own misconduct. It is a qualified privilege that protects senior advisers performing official functions. Executive privilege is a shield, not a sword. It cannot be used to block a witness from testifying, as Ambassador Bolton says he is.

As we know from the Nixon case in Watergate, the privilege also does not prevent us from obtaining specific evidence of wrongdoing. The Supreme Court unanimously rejected President Nixon’s attempts to use executive privilege to conceal incriminating tape recordings. All the similar efforts by President Trump must also fail.

The President sometimes relies on a theoretical privilege that says that he can order anybody in the executive branch not to testify to the House or the Senate or to a court. Obviously, this is ridiculous. It has been flatly rejected by every Federal court to consider this issue. It is embarrassing that the President’s counsel would talk about this today.

Again, even if President Trump asserts that Ambassador Bolton is absolutely immune from compelled testimony, he has no authority to block Ambassador Bolton from appearing here. As one court recently explained, Presidents are not Kings, and they do not have subjects whose destiny they are entitled to control.

This body should not act as if the President is a King. We will see, with the next vote on this question, whether the Members of this body want to protect the President against all investigation, against all suspicion, against any crimes, or any... or any... or any.

The Framers of our Constitution were most concerned about abuse of power where it affects national security. President Trump has been impeached for placing his political interests ahead of our national security. It is imperitive, therefore, that we hear from the National Security Advisor who witnessed the President’s scheme from start to finish. To be clear, the record, as it stands, fully supports both Articles of Impeachment. It is the President who argues otherwise. President Trump mounted a sustained pressure campaign to get Ukraine to announce in our name the most outrageous explicit charge. He demanded the next vote on this question, whether the Senate or any relevant witness who might shed additional light on the President’s obvious misconduct.

The President is on trial in the Senate, but the Senate is on trial in the eyes of the American people. Will you vote to deny the American people evidence to be presented here, or will you betray your pledge to be an impartial juror? Will you bring Ambassador Bolton here? Will you permit us to present you with the entire record of the President’s misconduct, or will you, instead, choose to be complicit in the President’s coverup?

So far, I am sad to say, I see a lot of Senators voting for a coverup, voting to deny witnesses—an absolutely indefensible vote, a vote against an honest consideration of the evidence against the President, a vote against an honest trial, a vote against the United States.

A real trial, we know, has witnesses. We urge you to do your duty, permit a fair trial. All the witnesses must be permitted. That is elementary in American justice. Either you want the truth and you must permit the witness, or you want a shameful coverup. History will judge. So will the electorate.

Mr. Chief Justice, we reserve the balance of our time—the managers.

The CHIEF JUSTICE. Mr. Cipollone.

Mr. Counsel CIPOLLINE. Mr. Chief Justice. Members of the Senate, we came here today to address the false case brought to you by the House managers. We have been respectful of the Senate. We have made our arguments to you.

You don’t deserve and we don’t deserve what just happened. Mr. NADLER came up here and made false allegations against our team. He made false allegations against all of you. He accused you of a coverup. He has been making false allegations against the President. The only one who should be embarrassed, Mr. NADLER, is you, for the way you have addressed this body. This is the U.S. Senate. You are not in charge here.

Now let me address the issue of Mr. Bolton. I have addressed it before. They don’t tell you that they didn’t bother to call Mr. Bolton themselves. They didn’t subpoena him. Mr. COOPER wrote them a letter. He said very clearly: If the House chooses not to pursue through subpoena the testimony of Dr. Kupperman and Ambassador Bolton, let the record be clear. That is the House’s decision.

That they didn’t pursue Ambassador Bolton, and they withdrew the subpoena to Mr. Kupperman. So, for them to come here now and demand that, before we even start the arguments—they ask you to do something that they refused to do for themselves, and then refuse you of a coverup when you don’t do it—is ridiculous. Talk about out-of-control governing.

Now, let me read you a quote from Mr. NADLER not so long ago: The effect of impeachment is to overturn the popular will of the voters. There must never be a narrowly voted impeachment or an impeachment supported by one of our major political parties and opposed by the other. Such an impeachment would produce divisiveness and bitterness in our politics for years to come and will call into question the very legitimacy of our government. Mr. Chairman.

Well, you have just seen it for yourself. What happened, Mr. NADLER? What happened?

The American people pay their salaries, and they are here to take away their vote. They are here to take away their voice. They have come here, and they have attacked every institution of our government. They have attacked the President, the executive branch. They have attacked the judicial branch. They say they don’t have time for courts. They have attacked the U.S. Senate, repeatedly. It is about time we bring this power trip in for a landing.

President Trump is a man of his word. He made promises to the American people, and he delivered—over and over and over again. And they come here and say, with no evidence, spending the day complaining, that they can’t make their case, attacking a resolution that had 100 percent support in this body. And some of the people here supported it at the time. It is a farce, and it should end.

Mr. NADLER, you owe an apology to the President of the United States and his family. You owe an apology to the Senate. But, most of all, you owe an apology to the American people.

Mr. Chief Justice, I yield the remainder of my time to Mr. Sekulow.

The CHIEF JUSTICE. Mr. Sekulow.

Mr. Counsel SEKULOW. Mr. Chief Justice. Members of the Senate, the chairman NADLER talked about treacherous, and at about 12:10 a.m., January 22, the chairman of the Judiciary Committee, in this body, on the floor of this Senate, said "executive privilege and other nonsense." Now, think about that for a moment—"executive privilege and other nonsense." Mr. NADLER, it is not nonsense. These are privileges recognized by the Supreme Court of the United States. To shred the Constitution on the floor of this Senate—what purpose? The Senate is not on trial. The Constitution doesn’t allow what just took place.
Look at what we have dealt with for the last now 13 hours. We, hopefully, are closing the proceedings, but not on a very high note. Only guilty people try to hide evidence? So, I guess, when President Obama back in the Attorneys General he said: If you refuse to give information, he was guilty of a crime. That is the way it works, Mr. NADLER? Is that the way you view the U.S. Constitution? Because that is not the way it was written. That is not the way it was interpreted, and that is not the way the American people should have to live. I will tell you what is treacherous: To come to the floor of the Senate and say "executive privilege and other nonsense." Mr. Chief Justice, we yield the rest of our time.

The CHIEF JUSTICE. The managers have 27 minutes remaining.

Mr. Manager NADLER, Mr. Chief Justice, Members of the Senate, the President's counsel has no standing to talk about lying. He told this body today—the President has told this body—and told the American people repeatedly, for example, that the House of Representatives refused to allow the President due process. I told you that it is available—public document, November 26 letter from me, as chairman of the Judiciary Committee, to the President, offering him due process, offering witnesses, offering cross-examination.

A few days later, we received a letter from Mr. Cipollone on White House stations that said: No, we have no interest in appearing.

On the one hand, the House is condemned by the President for not giving him due process after they rejected the offer of due process. That letter rejecting it was December 1.

The President's counsel says that the House should have issued subpoenas. We did issue subpoenas. The President, you may recall—you should recall—said he would oppose all subpoenas, and he did. So many of those subpoenas are still being fought in court—subpoenas issued last April. So that is also untrue. It takes a heck of a lot of nerve to criticize the House for not issuing subpoenas when the President said he would oppose all subpoenas. We have issued a lot of subpoenas. He opposes all of them, and they are tied up in court.

The President claims—and most Members of this body know better, executive privilege, which is a limited privilege, which exists but not as a shield, not as a shield against wrongdoing, as the Supreme Court specifically said in the Nixon case in 1974. The President claims absolute immunity. Mr. Cipollone wrote some of those letters, not only saying the President but that nobody should testify that he doesn't want, and then they have the nerve to say that is a violation of the constitutional rights of the Representatives and the Senate and of the American people represented through them.

It is an assertion of the kingly prerogative, a monarchical prerogative. Only the President—only the President has rights, and the people as represented in Congress cannot get information from the executive branch at all. The body has committed it. It has 200-year record of issuing subpoenas, of having the administration of the day testify, of sometimes having subpoena fights, but no President has ever claimed the right to stonewall Congress on everything. period. Congress has no right of immunity. The American people have no right to get information. That, in fact, is article II of the impeachment that we have voted.

It is beyond belief that the President claims monarchical powers—I can do whatever I want under article II, says he—and then acts on that, defies everything. defies the law to withhold aid from Ukraine, defies the law in a dozen different directions all the time, and lies about it, and says to Mr. Cipollone to lie about it. These facts are undeniable—undeniable. I reserve.

Mr. Manager SCHIFF, Mr. Cipollone, once again, complained that we did not subpoena Dr. Kupperman to testify in the House, but of course we did. We did request his testimony, and he was a no-show.

When we talked to his counsel about subpoenaing his testimony, the answer was: You give us a subpoena, and we will sue you. And, indeed, that is what Mr. Bolton's attorney did with the subpoena for Dr. Kupperman.

There was no willingness by Mr. Bolton to testify before the House. He said he would sue us. What is the problem with his suing us? Their Justice Department, under Bill Barr, is in court arguing—actually in that very case involving Dr. Kupperman—that Dr. Kupperman can't sue the administration and the Congress.

That is the same position that Congress has taken, the same position the administration is taking but, apparently, not the same position these lawyers are taking.

Here is the bigger problem with that. We subpoenaed Don McGahn, as I told you earlier. You should know we subpoenaed Don McGahn in April of 2019. It is January of 2020. We still don't have a final decision from the court requiring him to appear. In a couple of months, it will be 1 year since we issued that subpoena.

The President would like nothing more than for us to have to go through 1 year or 2 years or 3 years of litigation to get any witness to come before the House. The problem is, the President is trying to cheat in this election. We don't have the luxury of waiting 1 year or 2 years or 3 years, when the very object of this scheme was to cheat in the next election. It is not like that threat has gone away.

Just last month, the President's lawyer was in Ukraine still trying to smear his opponent and still trying to get Ukraine to interfere in our election. The President said, even while the impeachment investigation was going on, when he was asked: What did you want in that call with Zelensky, and his answer was: Well, if we are interrogating him, then he should do that investigation of the Bidens. He hasn't stopped asking them to interfere. Do you think the Ukrainians have any doubt about what he wants? One of the witnesses, David Holmes, was talking about the pressure that Ukraine feels. He made a very important point: It isn't over. It is not like they don't want anything else from the United States.

This effort to pressure Ukraine goes on to this day, with the President's lawyer continuing the scheme, as we speak, with the President inviting other nations to also involve themselves in our election.

The managers have 20 minutes remaining.

Russian documents, to now investigate the Bidens. This is no intangible threat to our elections. Within the last couple of weeks, it has been reported that the Russians have tried to hack Burisma. Why do you think they are hacking Burisma? Because, NADLER says, everybody seems to be interested in this one company out of hundreds of thousands of Ukrainian companies. It is a coincidence that the same company that the President has been trying to smear Joe Biden over happens to be the company the Russians are hacking.

Why would the Russians do that? If you look back to the last election, the Russians hacked the DNC, and they started to leak campaign documents in a drip, drip, drip, and the President was only too happy—over 100 times in the last couple of months in the campaign—to cite those Russian-hacked documents and now the Russians are at it again.

This is no illusory threat to the independence of our elections. The Russians are at it, as we speak. What does the President do? Is he saying: Back off, America; I am not interested in your help; I don't want foreign interference? No, he is saying: Come on in, China. He has his guy in Ukraine continuing the scheme.

We can't wait a year or 2 years or 3 years, like we have had to wait with Don McGahn, to get John Bolton in to testify to let you know that this threat is ongoing.

Counsel also says: Well, this is just like Obama, right? This is just like Obama, citing, I suppose, the Fast and Furious case. They don't mention to you that in that investigation, the Obama administration turned over tens of thousands of documents. They don't want to know about that. They say it is just like Obama.

When you find video of Barack Obama saying that under article II he can do anything, then you can compare Barack Obama to Donald Trump. When you find a video of Barack Obama saying: I am going to fight all subpoenas, then you can compare Barack Obama to Donald Trump.
And finally, Mr. Cipollone says, President Trump is a man of his word. It is too late in the evening for me to go into that one, except to say this. President Trump gave his word he would drain the swamp. He said he would drain the swamp. What have we seen? We have seen the personal lawyer go to jail, his campaign chairman go to jail, his deputy campaign chairman convicted of a different crime, his associates' associate, Lev Parnas, under indictment. The list goes on and on. That is, I guess, how you drain the swamp. You have all your people go to jail.

I don't think that is really what was meant by that expression. For the purposes of why we are here today, how does someone who promises to drain the swamp cohere an ally of ours into doing a political investigation? That is the swamp. That is not draining the swamp; that is exporting the swamp.

I yield back.

The CHIEF JUSTICE. I think it is appropriate at this point for me to admonish both the House managers and the President's counsel in equal terms to remember that they are addressing the world's greatest deliberative body. One reason it has earned that title is because its Members avoid speaking in a manner and using language that is not conducive to civil discourse.

In the 1905 Swayne trial, a Senator objected when one of the managers used the word "pettifogging," and the Presiding Officer said the word ought not have been used. I don't think we need to aspire to that high a standard, not have been used. I don't think we need to aspire to that high a standard, but I think those addressing the Senate should remember where they are.

The majority leader is recognized.

Mr. MCCONNELL. Mr. Chief Justice, it will surprise no one that I move to table the amendment and ask for the yeas and nays.

Mr. MCCONNELL. Mr. Chief Justice, it will surprise no one that I move to table the amendment and ask for the yeas and nays.

The CHIEF JUSTICE. Is there any objection to the waiving of the question period, and I waive its reading?

The CHIEF JUSTICE. Is there any objection to the waiving of the reading?

Mr. Counsel CIPOLLONE. I object. Mr. SCHUMER. I withdraw my request for a waiver.

The CHIEF JUSTICE. Does any Senator have an objection to the waiving of the reading?

Mr. MURKOWSKI. I object.

The CHIEF JUSTICE. The clerk will read the amendment.

The legislative clerk reads as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1292. On page 3, line 14, insert "any such motion" after "decide".

On page 3, line 15, strike "whether" and all that follows through "hours" on line 11.

On page 3, line 14, insert "any such motion" after "decide".

On page 3, line 15, strike "whether" and all that follows through "hours" on line 11.

On page 3, line 18, strike "that question" and insert "any such motion".

On page 3, lines 23 and 24 strike "and the Senate shall dispose of the witnesses shall testify" and insert "and then shall testify in the Senate".

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

Mr. Manager Schiff, are you a proponent or opponent?

Mr. Manager SCHIFF. Proponent.

Mr. Counsel CIPOLLONE. We oppose it.

The CHIEF JUSTICE. Mr. Schiff, you may proceed and reserve time for rebuttal.

Mr. Manager SCHIFF. Senators, this amendment makes two important changes to the McConnell resolution.

The first is, the McConnell resolution does not specify, provide for an immediate vote even later on the witnesses we have requested.

What the McConnell resolution says is that at some point after, essentially, the trial is over—after you have had the arguments of both sides and you have had the opportunity of questioning—then there will be a debate as to whether to have a vote and a debate on a particular witness. There is no guarantee that you are going to get a chance to vote on specific witnesses.

All the resolution provides is that you are going to get an opportunity to vote to have a debate on whether to ultimately have a vote on a particular witness. This would strip that middle layer. It would go right to whether a vote on a particular witness.

If my counsel, my colleagues for the President's team, are making the point that "Well, you are going to get that opportunity later," then the reality is that under the McConnell resolution, we may never get to have a debate about particular witnesses.

You heard the discussion of four witnesses tonight. There may be others who come to the attention of this body who are able to get documents that we should also call. But will you ever get to have a debate about why a particular witness is necessary? Well, you may only get a debate over the debate. This amendment would remove that debate over debate regarding particular witnesses.

The other thing this resolution would provide is that you should hear from these witnesses directly. The McConnell resolution says that we depose, and that is it. It doesn't say you are ever going to actually hear these witnesses for yourself, which means that you, as the triers of fact, may not get to see and witness the credibility of these witnesses. You may only get to see a deposition or deposition transcript or maybe a video of a deposition. I don't know. But if there is any contesting of facts, wouldn't you like to hear from the witnesses yourself and very directly?

Now, the reason why it was done this way in the Clinton case and why there were depositions—and again, in the Clinton case, all these people had been interviewed and deposed or testified before. The reason it was done that way in the Clinton case is because of the salacious nature of the testimony. Nobody wanted witnesses on the Senate floor talking about sex. Well, as I said earlier, I can assure you that will not be the issue here.

To whatever degree there was a reluctance in the Clinton case to have live testimony because of its salacious character, that is not an issue here. That is not a reason here not to hear from those witnesses yourself.

This resolution makes those two important changes, and I would urge your support.

I reserve time.

Mr. Counsel CIPOLLONE. We oppose this motion.

Mr. Purpura will argue this motion.

Mr. Manager SCHIFF. Proponent. Mr. Counsel CIPOLLONE. We oppose it.

Mr. Purpura will argue this motion.
questions and strikes the impeachment balance in the Senate’s discretion as the sole trier of impeachments. The rules in place here in the resolution are similar to the Clinton proceeding in that regard in the sense that this debate is about whether to hear from the witness live, if there are witnesses at some point, or not.

But, more fundamentally, the preliminary question has to be overcome, which is there will be 4 hours total, with 2 hours for them to try to convince you, after the parties have made their presentation—which they will have 24 hours to do—as to the preliminary question of whether it shall be in order to consider and debate any motion to subpoena witnesses or documents.

Those were precisely the Clinton rules—actually, stronger than the Clinton rules. Those rules, as I have indicated before, passed 100 to 0. We think that this resolution strikes the appropriate balance, and we urge that the amendment be rejected.

I yield my time.

Mr. SCHIFF. Thank you, counsel.

Mr. SCHIFF, you have 57 minutes.

Mr. Manager SCHIFF. Don’t worry. I won’t use it.

I will say only that if there were any veneer left to camouflage where the President’s counsel is really coming from, the veneer is completely gone now. After saying we are going to have an opportunity to have a vote on these witnesses later, now they are saying: No, you are just going to have a vote on whether to debate having a vote on the witnesses.

The camouflage was pretty thin to begin with, but it is completely gone now. What they really want is to get to that generic debate about whether or not to have a debate on witnesses and have you vote it down so you never actually have to vote to refuse these witnesses, although you had to do that tonight. I don’t see what purpose that serves except, I suppose, to put one more layer in the way of accountability.

But the veneer is gone. All this promise about “You are going to get that opportunity, it is just a question of when”—no, the whole goal is for you to never get the change to take that vote. And what is more, the vote on this resolution is a vote that says that you don’t want to hear from these witnesses yourself. You don’t want to evaluate the credibility of these witnesses yourself. Maybe—just maybe—you will let them be deposed, but you don’t want to hear them yourself. You don’t want to see these witnesses put up their hand and take an oath.

I don’t know what the rules of these depositions are going to be. Maybe the public isn’t going to ever get to see what happens in those depositions. We released all the deposition transcripts from our depositions—the secret 100-person depositions—but we have no idea what rules they will adopt for these depositions. Maybe the public will see them; maybe they won’t. Maybe you will get to see them; I assume you will get to see them. But at the end of the day, this is also a vote you have to cast that says: No, I don’t want to hear them for myself. No, I don’t want to evaluate their credibility for myself.

This is, after all, only a vote, only a case, only a trial about the impeachment of the President of the United States. If you have a bank robbery trial or you have a trial where somebody is stealing a piece of mail, you could get live witnesses. But to impeach the President of the United States, they are saying: No, we don’t need to see their credibility.

Is that really where we are tonight? Is that what the American people expect of a fair trial? I don’t think it is.

I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

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

The senior assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1293.

On page 2, beginning on line 10, strike “Wednesday, January 23, 2020” and insert “9:00 a.m. on Thursday, January 23, 2020”.

On page 2, line 15, strike “Wednesday, January 22, 2020” and insert “Thursday, January 23, 2020”.

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

Mr. Manager SCHIFF, are you a proponent of this amendment?

Mr. Manager SCHIFF. I am a proponent of this amendment.

The CHIEF JUSTICE. Mr. Cipolle, are you a proponent or an opponent of this amendment?

Mr. Counsel CIPOLO.LONE. Mr. Chief Justice, I am an opponent.

The CHIEF JUSTICE. Okay.

Mr. SCHIFF, you may proceed and reserve time for rebuttal if you wish.

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

This amendment is quite simple. Under the McConnell resolution, the parties file motions tomorrow at 9 a.m.—written motions, that is—and the responding party has to file their reply 2 hours later. That really doesn’t give anybody enough time to respond to a written motion.

When the President’s team filed, for example, their trial brief, it was over 100 pages. We at least had 24 hours to file our reply, and that is all we would ask for in the Clinton trial—again, if we are interested in the Clinton case—they had 41 hours to respond to written motions. We are not asking for 41 hours, but we are asking for enough time to write a decent response to a motion.

That is essentially it, and I would hope that we could agree at least on this.

I reserve the balance of my time.

The CHIEF JUSTICE. Mr. Sekulow, Mr. Counsel SEKULOW. Thank you, Mr. Chief Justice and Member of the Senate.

So it seems like tomorrow is a day off according to your procedure; is that correct, Mr. SCHIFF?

Mr. Manager SCHIFF. I forgot the time.

Mr. Counsel SEKULOW. Today is tomorrow, and tomorrow is today. The answer is that we are ready to proceed. We will respond to any motions. We would ask the Chamber to reject this amendment.

The CHIEF JUSTICE. Mr. SCHIFF, there are 59 minutes remaining.

Mr. Manager SCHIFF. I yield back our time.

The CHIEF JUSTICE. The majority leader is recognized.
The CHIEF JUSTICE. Mr. Cipollone, are you a proponent or an opponent of the motion?
Mr. Counsel CIPOLLINE. Mr. Chief Justice, I am an opponent.

The CHIEF JUSTICE. Mr. Schiff, you may proceed and reserve time for rebuttal.

Mr. Manager SCHIFF. Senators, this amendment would provide that the Presiding Officer shall rule to authorize the subpoena of any witness or any document that a Senator or a party moves to subpoena if the Presiding Officer determines that that witness is likely to have probative evidence relevant to either Article of Impeachment.

It is quite simple. It would allow the Chief Justice and it would allow Senators, the House managers, and the President’s counsel to make use of the experience of the Chief Justice of the Supreme Court to decide the questions of the relevance of witnesses. Either party can call the witnesses if we can’t come to an agreement on witnesses ourselves, we will pick a neutral arbiter, that being the Chief Justice of the Supreme Court. If the Chief Justice finds that a witness would be probative, that witness would be allowed to testify. If the Chief Justice finds the testimony would be immaterial, that witness would not be allowed to testify.

Now, it still maintains the Senate’s tradition that if you don’t agree with the Chief Justice, you can overrule him. If you have the votes, you can overrule the Chief Justice and say you disagree with what the Chief Justice has decided.

But it would give this decision to a neutral party. That right is extended to both parties, who will be done in line with the schedule that the major party has set out. It is not the schedule we want. We still don’t think it makes any sense to have the trial and then decide our witnesses. But if we are going to have to do it that way, and it looks like we are, at least let’s have a neutral arbiter decide—much as he may loathe the task—whether a witness is relevant or a witness is not.

We would hope that if there is nothing else we can agree on tonight, that we could agree to allow the Chief Justice to give us the benefit of his experience in deciding which witnesses are relevant to this inquiry and which witnesses are not relevant.

With that, I reserve the balance of my time.

The CHIEF JUSTICE. Mr. Sekulow, Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, and with no disrespect to the Chief Justice, this is not an appellate court. This is the U.S. Senate. There is not an arbitration clause in the U.S. Constitution. The Senate shall have the sole power to try all impeachments. We oppose the amendment.

We yield our time.

The CHIEF JUSTICE. Mr. Schiff, you have 57 minutes remaining.

Mr. Manager SCHIFF. Well, this is a note to conclude on because don’t let it be said we haven’t made progress today.

The President’s counsel has just acknowledged for the first time that this is an appellate court and we have established that. This is the trial, not the appeal, and the appeal ought to have witnesses and the trial should be based on the cold record from the court below, but there is no court below, because the appeal was, in fact, the case that has just admitted, you are not the appellate court.

But I think what we have also seen here tonight is, their only one don’t want you to hear these witnesses, they don’t want to hear them live. They don’t want even really to hear them deceased. They don’t want a neutral Justice to weigh in because if the neutral Justice weighs in and says: You know, pretty hard to argue that John Bolton is not relevant here, pretty hard to argue that Mick Mulvaney is not relevant here—I just watched this video tape where he said he discussed this with the President. They are contesting it. Pretty relevant.

What about Hunter Biden? Hunter Biden is probably the real reason they don’t want the Chief Justice to rule on the materiality of a witness, right? What can Hunter Biden tell us about why the President withheld hundreds of millions of dollars from Ukraine? I can tell you what he can tell us. Hunter Biden know about why the President wouldn’t meet with President Zelensky? He can’t tell us anything about that. What can he tell us about these Defense Department documents or OMB documents? What can I tell us about the violation of the law, withholding this money? Of course he can’t tell us anything about that because his testimony is immaterial and irrelevant. The only purpose in calling him is to succeed at what they failed to do earlier in this whole scheme, and that is to smear Joe Biden by going after his son.

We trust the Chief Justice of the Supreme Court to make that decision that he is not a material witness. This isn’t like fantasy football here. We are not making trades—or we shouldn’t be. We will trade you one completely irrelevant, immaterial witness who allows us to smear the President’s opponent in exchange for ones who are really relevant whom you should hear. Is that a fair trial?

If you can’t trust the Chief Justice, appointed by a Republican President, to make a fair decision about materiality, I think it betrays the weakness of our case.

Look, I will be honest. There has been some apprehension on our side about this idea, but we have confidence that the Chief Justice would make a fair and impartial justice, and it is something that my colleagues representing the President don’t. They don’t. They don’t want a fair judicial
ruling about this. They don’t want one that you could overturn because they don’t want a fair trial.

And so we end where we started—with one party wanting a fair trial and one party that doesn’t; one party that doesn’t fear a fair trial and one party that is terrified of a fair trial.

I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. MCCONNELL. Mr. Chief Justice, I make a motion to table the amendment, and I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

The CHIEF JUSTICE. Are there any other Senators in the Chamber desiring to vote?

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

(Rollcall Vote No. 25 Leg.)

YEAS—53

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

NAYS—47

Baldwin  Baldwin  Hassan  Hassan  Rosen  Rosen
Bennet  Bennet  Heinrich  Heinrich  Sanders  Sanders
Blumenthal  Blumenthal  Hirono  Hirono  Schatz  Schatz
Booker  Booker  Jones  Jones  Schumer  Schumer
Brown  Brown  Kaine  Kaine  Shaheen  Shaheen
Cantwell  Cantwell  King  King  Sinema  Sinema
Cardin  Cardin  Klobuchar  Klobuchar  Smith  Smith
Carper  Carper  Leahy  Leahy  Stabenow  Stabenow
Casey  Casey  Manchin  Manchin  Tester  Tester
Coons  Coons  Marked  Marked  Udall  Udall
Cortez Masto  Cortez Masto  Manendez  Manendez  Van Hollen  Van Hollen
Duckworth  Duckworth  Murphy  Murphy  Warner  Warner
Feinstein  Feinstein  Murray  Murray  Whitehouse  Whitehouse
Gillibrand  Gillibrand  Peters  Peters  Whitehouse  Whitehouse
Harriss  Harriss  Reed  Reed  Wyden  Wyden
Ernst  Ernst  Paul  Paul  Young  Young

The CHIEF JUSTICE. The yeas are 53, and the nays are 47.

The resolution (S. Res. 483) was agreed to.

(The resolution is printed in today’s RECORD under “Submitted Resolutions.”)

MORNING BUSINESS

CELEBRATION OF LIFE DAY

Mr. GRASSLEY. Mr. President, January 22 is celebration of life day, and I wanted to take that opportunity to recognize women facing unplanned pregnancies or parenting young children. Women with unplanned pregnancies sometimes lack access to advice and support. They deserve the backing of their community and access to information, resources, and quality care. In Iowa, programs like Ruth Har bor in Des Moines provide a safe place for young women, giving them counseling, education support, life-skills training, parenting training, adoption assistance, and access to health care at no cost. Programs like these are critical.

47TH ANNUAL MARCH FOR LIFE

Mr. GRASSLEY. Mr. President, Friday marks the 47th annual March for Life. This year’s theme is “Life Empowers: Pro-Life is Pro-Woman.” This theme recognizes that 2020 is the centennial anniversary of the 19th amendment. The earliest feminists regarded abortion as a terrible consequence of our society’s failure to embrace wom en’s intrinsic value. These women instinctively embraced the sanctity of innocent human life, even though they could not have foreseen the advances in technology that have made it possible for newborn babies to survive at earlier and earlier stages of fetal development. Two examples of such miracle babies are Micah Pickering of Iowa, born prematurely at 22 weeks gestation, who is now 7 years old, and Jaden Wesley Morrow, born at 22 weeks gestation, who died a few weeks after his birth in Des Moines last year. We today celebrate the lives of these miracle babies, remember all the others who were lost to abortion, and focus on how women are empowered by upholding the dignity of life.

IMPEACHMENT

Mrs. BLACKBURN. Mr. President, today the Senate begins in earnest our efforts to determine if our colleagues in the House of Representatives have compiled sufficient evidence to justify removing a sitting President from office. This is no small task, and it will be made more difficult by the swirl of commentary that has engulfed the impeachment inquiry since well before it was officially initiated.

Much has been said of our debate over the inclusion of additional witness testimony into the prosecution’s case against President Donald John Trump—so much, in fact, that many of my colleagues are inclined to allow that testimony in the name of bipartisan compromise. How misguided of them. Such a move would open the floodgates to a parade of politically-motivated testimony, a protracted legal battle, and ultimately unjustified impeachment proceedings in the U.S. Senate.

The Democratic Members of the House of Representatives spent a great deal of their time and energy holding hearings, interviewing witnesses, and putting together what they have insisted is their best, ironclad case against President Trump. I encourage my colleagues to resist allowing an additional, cathartic airing of grievances and instead accept that it is now the Senate’s turn to listen to the facts as they are presented, deliberate, and cast a final vote.

TRIBUTE TO DR. JAMES NARAMORE

Mr. ENZI. Mr. President, I rise today to acknowledge the retirement of my friend, Dr. Jim Naramore. Dr. Naramore is retiring after 40 years of service practicing family medicine in Gillette, WY. He has been an outstanding doctor to many patients in Gillette, including myself, and will be
remembered for his excellence in medical care and helping out in the community. I know Dr. Naramore not only as a leader in my hometown of Gillette but also as my personal doctor. About 25 years ago, I was feeling well and went to see Dr. Naramore. He ran some tests and soon discovered that I had a torn heart valve. By that night, I was in open heart surgery to repair my heart valve, and it has served me well since then. I credit Dr. Naramore with saving my life.

Dr. Naramore has spent his entire career helping people and giving back to the community. Born and raised in Gillette, WY, Dr. Naramore received his bachelor’s degree from John Brown University, his medical degree from the University of Utah, and completed a family practice residency at the University of Nebraska affiliated hospital. Dr. Naramore returned to Gillette to work in the emergency room at the Campbell County Memorial Hospital.

In 1980, Dr. Naramore began his practice and became a full-time member of the medical staff of Campbell County Memorial Hospital. In 1981, he moved to private practice at Family Health in Gillette. His family health clinic has provided excellent care to residents of Gillette for years and has attracted much needed providers and specialists to the area.

Dr. Naramore has served in countless leadership positions both in Gillette and around Wyoming. He has received many awards for his hard work and outstanding achievements, most recently receiving the 2019 Outstanding Healthcare Award. Dr. Naramore is a committed man of faith. He is actively involved in his church, serving as an elder, youth group leader, and Sunday school teacher.

The University of Wyoming has a slogan saying that the world needs more cowboys. Well, I would also say that Wyoming needs more doctors, especially doctors like Dr. Naramore. If his past is any indication of his future, I think it is clear that he will be closing out my life and moving on to something new.

CONGRESSIONAL RECORD — SENATE

January 21, 2020

Ms. BALDWIN. Mr. President, I rise today to honor a distinguished citizen of Wisconsin, Ronald Alan McCrea, who passed away in Madison on Dec. 14. His legacy lives on in the pride and honor that Native peoples in the Madison area have for the Native peoples he championed and forever honored to call him my friend.

REMEMBERING RONALD “RON” McCREA

Ms. BALDWIN. Mr. President, I rise today to honor a distinguished citizen of Wisconsin, Ronald Alan McCrea, who passed away in Madison on Dec. 14. His legacy lives on in the pride and honor that Native peoples in the Madison area have for the Native peoples he championed and forever honored to call him my friend.

REMEMBERING RONALD “RON” McCREA

Ms. BALDWIN. Mr. President, I rise today to honor a distinguished citizen of Wisconsin, Ronald Alan McCrea, who passed away in Madison on Dec. 14. His legacy lives on in the pride and honor that Native peoples in the Madison area have for the Native peoples he championed and forever honored to call him my friend.
During his journalism career, Ron McCrea became the chronicler of some unique LGBT history in the Madison area. One of his earliest efforts included stories on the hidden 1962 Gay Purge at the UW-Madison. He also contributed many unique items to the LGBT Collection of the UW-Madison Archives.

Ron loved a good story and entertained many of his friends with his delightful skill in presenting a tale. He had a deep love of music and was known for singing with Madison choral groups and tripping the ivories at the piano bar at Going My Way.

Ron is survived by his wife of 26 years, Elaine DeSmidt, and his stepson, Benjamin DeSmidt. Elaine, described as his partner, passion and love, was also involved in public life as an elected member of the Dane County Board of Supervisors.

Ron McCrea was an accomplished storyteller, a humorous character, and a courageous pioneer. He leaves behind a legacy of humble but bold encouragement of the gay community. I am proud to honor his unflinching advocacy, personal kindness, and steadfast leadership.

ADDITIONAL STATEMENTS

TRIBUTE TO JEFF AULBEC, NEIL COSPITO, AND MICHAEL JACOBSON

Mrs. SHAHEEN, Mr. President, I rise today to salute the work of three New Hampshire-based air traffic controllers—Jeff Aulbech, Neil Cospito, and Michael Jacobson—who calmly and quickly resolved a complex situation in the snowy skies of New England in 2018.

The three men were awarded the prestigious Archie League Medal of Safety Award from the National Air Traffic Controllers Association, NATCA, last year, and I ask all Americans to join me in marveling at the poise they all showed on that November afternoon.

Jeff, Neil, and Michael work at the Boston Air Traffic Control Center, a regional air route traffic control center in Nashua, NH, that covers tens of thousands of miles of airspace above New England, New York, and northeastern Pennsylvania.

On Tuesday, November 20, 2018, Neil was working an F-16 aircraft from the 158th Fighter Wing of the Vermont National Guard. For weather conditions were preventing the pilot from landing the aircraft at its home base in Burlington, VT. Neil scoured the region for a suitable location outside of the swirling weather system, and he quickly found one in Syracuse, NY. He cleared the aircraft to travel southwest to its new destination and asked the pilot to estimate his time en-route and his remaining fuel.

When the pilot relayed that he had 15 minutes of fuel for a 15-minute trip, Neil knew that the F-16 had become an emergency aircraft.

As the aircraft left Neil’s controlled airspace, fellow air traffic controllers Jeff Aulbech and Mike Jacobson continued working the emergency situation. Jeff and Mike promptly evaluated the situation. They decided the best course was to divert a flight of KC-135 tankers from a nearby, unrelated mission and to conduct a mid-air refueling. Jeff then instructed the pilots that the F-16 was at “Bingo Fuel” — a term used by military pilots when they reach a critical and emergency fuel state. When he secured agreement from both crews, Jeff executed precise time intercept vectors to join the two aircraft and begin refueling. As Jeff worked with the aircraft in the sky, Mike worked the radar and communicated with the airport in Syracuse to confirm suitable landing conditions.

A short time later, the F-16 safely touched the ground in Syracuse.

Quick thinking and error-free execution from Neil Cospito, Jeff Aulbech, and Mike Jacobson saved the F-16 and its pilot from a number of dangerous alternatives, and they played a pivotal role in maneuvering this flawless refueling with a number of other planes sharing the skies. As many of us travel across the country throughout the year, we should take a moment to reflect on the significance of air traffic controllers like Neil, Jeff, and Mike and thank them for working every minute of every day each year to keep our skies safe.

On behalf of the people of New Hampshire, I ask my colleagues and all Americans to thanking Neil, Jeff, and Mike for their service and wishing them all the best as they continue their good work.

MESSAGE FROM THE HOUSE RECEIVED DURING ADJOURNMENT

ENROLLED BILL SIGNED

Under the authority of the order of the Senate of January 3, 2019, as modified by the order of January 16, 2020, the Secretary of the Senate, on January 21, 2020, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker had signed the following enrolled bill:

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

Under the authority of the order of the Senate of January 3, 2019, as modified by the order of January 16, 2020, the Secretary of the Senate, on January 21, 2020, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker had passed the following joint resolution, in which he requests the concurrence of the Senate:

H.J. Res. 76. Joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submittted by the Secretary of Education relating to “Borrower Defense Institutional Accountability”.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–3778. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Suspension of Community Eligibility” (44 CFR, Parts 27–28, Amendment No. FEMA–2019–0003) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Banking, Housing, and Urban Affairs.

EC–3779. A communication from the Senior Legal Advisor for Regulatory Affairs, Financial Stability Oversight Council, transmitting, pursuant to law, the report of a rule entitled “Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies” (RIN4099–Z400) received in the Office of the President of the Senate on January 15, 2020; to the Committee on Banking, Housing, and Urban Affairs.

EC–3780. A communication from the Acting General Counsel, Department of Transportation, transmitting, pursuant to law, a report relative to a vacancy for the position of Administrator, Federal Transit Administration, Department of Transportation, to the Committee on Banking, Housing, and Urban Affairs.

EC–3781. A communication from the Secretary, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled “Adjustments to Civil Monetary Penalty Amounts” (Rel. Nos. 33–10740; 34–87905; 1A–5428; 1C–33740) received in the Office of the President of the Senate on January 15, 2020; to the Committee on Banking, Housing, and Urban Affairs.

EC–3782. A communication from the Director, Office of Management and Budget, transmitting, pursuant to law, the report of a rule entitled “Standard Instrument Approach Procedures; Miscellaneous Amendments (49); Amendment No. 38657” (RIN2120–AA6) (Docket No. 31289) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Commerce, Science, and Transportation.
EC–3782. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives; Airbus SAS Airplanes (RIN 2120-AA64) (Docket No. FAA–2019–0326) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Commerce, Science, and Transportation.

EC–3783. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives; Airbus SAS Airplanes (RIN 2120-AA64) (Docket No. FAA–2019–0326) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Commerce, Science, and Transportation.

EC–3784. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Airworthiness Directives; Airbus SAS Airplanes (RIN 2120-AA64) (Docket No. FAA–2019–0326) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Commerce, Science, and Transportation.

EC–3785. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled “Amendment of Class D and Class E Airspace: Eagle County, CO” (RIN 2120–AA66) (Docket No. FAA–2019–0637) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Commerce, Science, and Transportation.

EC–3786. A communication from the Attorney–Advisor, Office of General Counsel, Department of Transportation, transmitting, pursuant to law, a report relative to a vacancy in the position of Assistant Secretary for Transportation Policy, Department of Transportation, received in the Office of the President of the Senate on January 15, 2020; to the Committee on Commerce, Science, and Transportation.

EC–3787. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Approval and Conditional Approval of California Air Plan Revision; Imperial County Air Pollution Control District; Requirement for Control Technology (RACT)” (FRL No. 10004–30–Region 9) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Environment and Public Works.

EC–3788. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Amendment of Class D and Class E Airspace: Eagle County, CO” (RIN 2120–AA66) (Docket No. FAA–2019–0637) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Commerce, Science, and Transportation.

EC–3789. A communication from the Acting Assistant Secretary for Legislation, Department of Health and Human Services, transmitting, pursuant to law, a report entitled “Computation of Annual Liability Insurance (Including Self–Insurance), No–Fault Insurance, and Worker’s Compensation Settlement Recovery Threshold”; to the Committee on Finance.

EC–3790. A communication from the General Counsel, Government Accountability Office, transmitting, pursuant to law, a report entitled “Office of Management and Budget - Withholding of Ukraine Security Assistance”; to the Committee on Foreign Relations.

EC–3791. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Approval and Conditional Approval of California Air Plan Revision; Imperial County Air Pollution Control District; Requirement for Control Technology (RACT)” (FRL No. 10004–30–Region 9) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Commerce, Science, and Transportation.

EC–3792. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Extension of Time–Limited Tolerances for Emergency Exemptions (Multiple Chemicals, Various Commodities)” (FRL No. 10002–88–OCSP) received in the Office of the President of the Senate on January 16, 2020; to the Committee on Environment and Public Works; and Agriculture, Nutrition, and Forestry.

EC–3793. A communication from the Acting Assistant Secretary for Legislation, Department of Health and Human Services, transmitting, pursuant to law, a report entitled “Computation of Annual Liability Insurance (Including Self–Insurance), No–Fault Insurance, and Worker’s Compensation Settlement Recovery Threshold”; to the Committee on Finance.

EC–3794. A communication from the General Counsel, Government Accountability Office, transmitting, pursuant to law, a report entitled “Office of Management and Budget - Withholding of Ukraine Security Assistance”; to the Committee on Foreign Relations.

EC–3795. A communication from the General Counsel, Government Accountability Office, transmitting, pursuant to law, a report entitled “Office of Management and Budget - Withholding of Ukraine Security Assistance”; to the Committee on Foreign Relations.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. MARKEY (for himself, Ms. BALDWIN, Ms. SMITH, Mr. CARDIN, Mr. WYDEN, Mrs. GILLIBRAND, Ms. HIRONO, Ms. Klobuchar, Mr. LEVIN, Mr. PORTMAN, Mr. RYAN, Ms. HAWLEY, and Mr. COTTON) the following bill was introduced: S. 1247

By Mr. MARKEY (for himself, Ms. BALDWIN, Ms. SMITH, Mr. CARDIN, Mr. WYDEN, Mrs. GILLIBRAND, Ms. HIRONO, Ms. KLOBUCHAR, Ms. HAYAKAWA, Mr. LANKIN, Mr. ABNEY, Ms. VANDERHammen, Ms. KLOBUCHAR, and Mr. MURPHY) the following bill was introduced: S. 1248

By Mr. MARKEY (for himself, Ms. BALDWIN, Ms. SMITH, Mr. CARDIN, Mr. WYDEN, Mrs. GILLIBRAND, Ms. HIRONO, Ms. KLOBUCHAR, Mr. LEVIN, Mr. PORTMAN, Mr. RYAN, Ms. HAWLEY, and Mr. COTTON) the following bill was introduced: S. 1249

By Mr. MARKEY (for himself, Ms. BALDWIN, Ms. SMITH, Mr. CARDIN, Mr. WYDEN, Mrs. GILLIBRAND, Ms. HIRONO, Ms. KLOBUCHAR, Ms. HAYAKAWA, Mr. LANKIN, Mr. ABNEY, Ms. VANDERHammen, Ms. KLOBUCHAR, and Mr. MURPHY) the following bill was introduced: S. 1250

By Mr. MARKEY (for himself, Ms. BALDWIN, Ms. SMITH, Mr. CARDIN, Mr. WYDEN, Mrs. GILLIBRAND, Ms. HIRONO, Ms. KLOBUCHAR, Mr. LEVIN, Mr. PORTMAN, Mr. RYAN, Ms. HAWLEY, and Mr. COTTON) the following bill was introduced: S. 1251

By Mr. MARKEY (for himself, Mr. WHITE, Mr. SMITH, Mr. DURbin, Ms. HAYAKAWA, Mr. LANKIN, Mr. ABNEY, Ms. VANDERHammen, and Mr. MURPHY) the following bill was introduced: S. 1252

By Mr. MARKEY (for himself, Mr. WHITE, Mr. SMITH, Mr. DURbin, Ms. HAYAKAWA, Mr. LANKIN, Mr. ABNEY, Ms. VANDERHammen, and Mr. MURPHY) the following bill was introduced: S. 1253
By Mr. SANDERS:
S. 3219. A bill to ensure full labor protections for graduate student workers, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. PORTMAN:
S. 3220. A bill to amend title XIX of the Social Security Act to clarify that the provision of home and community-based services is not prohibited in an acute care hospital, and for other purposes; to the Committee on Finance.

By Mr. BOOKER:
S. 3221. A bill to place a moratorium on large concentrated animal feeding operations, to strengthen the Packers and Stockyards Act, 1921, to require country of origin labeling on beef, pork, and dairy products, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mrs. SHAHEEN (for herself, Ms. HASSAN, and Mr. MACHINCH):
S. 3222. A bill to establish a grant program relating to the prevention of student and student athlete opioid misuse; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. SHAHEEN (for herself, Ms. MUKOWSKY, Mr. DURBIN, Mr. ROMNEY, Ms. BALDWIN, and Ms. COLLINS):
S. 3223. A bill to apply user fees with respect to products deemed subject to the requirements of chapter IX of the Federal Food, Drug, and Cosmetic Act; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CASSIDY (for himself and Mr. TESTER):
S. 3224. A bill to require the Secretary of Veterans Affairs to allow for the use of commercial institutional review boards for research, and for other purposes; to the Committee on Veterans Affairs.

By Mr. ERNST:
S. 3225. A bill to reduce Federal spending and the deficit by terminating taxpayer funded services for collaboration with non-Federal partners, and for other purposes; to the Committee on Finance.

By Mr. KENNEDY:
S. 3226. A bill to amend title I, United States Code, to prohibit certain abortion procedures, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BOOKER (for himself, Mr. MENENDEZ, and Ms. HARRIS):
S. Res. 479. A resolution designating January 23, 2020, as “Maternal Health Awareness Day”; to the Committee on the Judiciary.

By Ms. KLUSCHUKAR (for herself, Mr. GRASSLEY, Mrs. FEINSTEIN, Ms. HIRONO, Ms. HARRIS, Mr. ERNST, Mrs. BLACKBURN, Mr. TILLIS, and Mr. GRAPO):
S. Res. 480. A resolution raising awareness and encouraging the prevention of stalking by designating January 2020 as “National Stalking Awareness Month”; to the Committee on the Judiciary.

By Ms. ROSEN (for herself, Mr. LANKFORD, Mr. MENENDEZ, Mr. CRAMER, and Mr. CARDIN):
S. Res. 481. A resolution commemorating the 75th anniversary of the liberation of the Auschwitz-Birkenau concentration camp in Nazi-occupied Poland; to the Committee on Foreign Relations.

By Mr. TOOMEY (for himself, Mr. ROUSH, and Mr. RUHLEIN):
S. Res. 482. A resolution supporting the contributions of Catholic schools; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MCCONNELL:
S. Res. 483. A resolution to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; considered and agreed to.

ADDITIONAL COSPONSORS

S. 378
At the request of Mr. COTTON, the name of the Senator from Iowa (Mr. SULLIVAN) was added as a cosponsor of S. 378, a bill to amend title II of the Social Security Act to eliminate the five-month waiting period for disability insurance benefits under such title for individuals with amyotrophic lateral sclerosis.

S. 396
At the request of Mr. MERKLEY, the name of the Senator from Alaska (Mr. SULLIVAN) was added as a cosponsor of S. 396, a bill to designate the same individual serving as the Chief Nurse Officer of the Public Health Service as the National Nurse for Public Health.

S. 792
At the request of Ms. BALDWIN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 792, a bill to require enforcement against misbranded milk alternatives.

S. 1510
At the request of Mr. YOUNG, the name of the Senator from Kentucky (Mr. PAUL) was added as a cosponsor of S. 1510, a bill to amend the Internal Revenue Code of 1986 to modify the definition of full-time employee for purposes of the employer mandate in the Patient Protection and Affordable Care Act.

S. 1737
At the request of Mr. MURPHY, the name of the Senator from Minnesota (Ms. SMITH) was added as a cosponsor of S. 1737, a bill to strengthen parity in mental health and substance use disorder benefits.

S. 1750
At the request of Ms. HARRIS, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 1750, a bill to establish the Clean School Bus Grant Program, and for other purposes.

S. 1843
At the request of Mr. PETERS, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 1843, a bill to amend the Securities Exchange Act of 1934 to require the disclosure of the total number of domestic and foreign employees of certain public companies, and for other purposes.

S. 1906
At the request of Mr. MARKEY, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 1906, a bill to amend title XVI of the Social Security Act to provide for transparency of Medicare secondary payer reporting information, and for other purposes.

S. 1967
At the request of Mr. WYDEN, the name of the Senator from Alabama (Mr. JONES) was added as a cosponsor of S. 1967, a bill to promote innovative approaches to outdoor recreation on Federal land and to increase opportunities for collaboration with non-Federal partners, and for other purposes.

S. 1989
At the request of Mr. SCOTT of South Carolina, the name of the Senator from Mississippi (Mr. WICKER) was added as a cosponsor of S. 1989, a bill to amend title XVIII of the Social Security Act to provide for transparency of Medicare secondary payer reporting information, and for other purposes.

S. 2001
At the request of Ms. STABENOW, the names of the Senator from Wyoming (Mr. ENZI), the Senator from Oklahoma (Mr. LANKFORD), the Senator from Florida (Mr. RUBIO) and the Senator from Massachusetts (Mr. WARRIN) were added as cosponsors of S. 2001, a bill to award a Congressional Gold Medal to Willie O’Ree, in recognition of his extraordinary contributions and commitment to hockey, inclusion, and recreational opportunity.

S. 2012
At the request of Ms. ROSEN, the name of the Senator from Illinois (Ms. DUCKWORTH) was added as a cosponsor of S. 2012, a bill to enhance the rights of domestic workers, and for other purposes.

S. 2112
At the request of Mr. CARLSON, the name of the Senator from Maryland (Mr. BLUMENTHAL) was added as a cosponsor of S. 2112, a bill to provide and coordinate the provision of suicide prevention services for veterans at risk of suicide and veteran families through the award of grants to such entities, and for other purposes.

S. 2179
At the request of Mr. ROBERTS, the name of the Senator from Georgia (Mrs. LOEFFLER) was added as a cosponsor of S. 2179, a bill to authorize the Secretary of Agriculture to provide for the defense of United States agriculture and food through the National Bio and Agro-Defense Facility, and for other purposes.

S. 2199
At the request of Mr. MARKEY, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of
of S. 2699, a bill to reauthorize the Federal Ocean Acidification Research and Monitoring Act of 2009, and for other purposes.

S. 2705

At the request of Mrs. Murray, the names of the Senator from Illinois (Ms. Duckworth), the Senator from California (Mrs. Feinstein), the Senator from Hawaii (Ms. Hirono), the Senator from New Jersey (Mr. Menendez) and the Senator from Maryland (Mr. Van Hollen) were added as cosponsors of S. 2705, a bill to amend title 10, United States Code, to modify the requirements relating to the use of construction authority in the event of a declaration of war or national emergency, and for other purposes.

S. 2950

At the request of Mr. Sullivan, the names of the Senator from North Carolina (Mr. Tillis), the Senator from Nevada (Ms. Rosen), the Senator from Indiana (Mr. Young), the Senator from South Dakota (Mr. Rounds), the Senator from Arkansas (Mr. Boozman) and the Senator from Tennessee (Ms. Black) were added as cosponsors of S. 2950, a bill to amend title 38, United States Code, to concede exposure to airborne hazards and toxins from burn pits under certain circumstances, and for other purposes.

S. 2973

At the request of Mr. Scott of South Carolina, the name of the Senator from Oklahoma (Mr. Lankford) was added as a cosponsor of S. 2973, a bill to amend the Fair Labor Standards Act of 1938 to harmonize the definition of employee with the common law.

S. 3086

At the request of Mr. Sullivan, the name of the Senator from North Dakota (Mr. Cramer) was added as a cosponsor of S. 3086, a bill to state the need for strategic placement of military assets in the Arctic, and for other purposes.

S. 3167

At the request of Mr. Booker, the name of the Senator from California (Ms. Harris) was added as a cosponsor of S. 3167, a bill to prohibit discrimination based on an individual’s texture or style of hair.

S.J. Res. 4

At the request of Mr. Kaine, the name of the Senator from Oregon (Mr. Merkley) was added as a cosponsor of S.J. Res. 4, a joint resolution requiring the advice and consent of the Senate or an Act of Congress to suspend, terminate, or withdraw the United States from the North Atlantic Treaty and authorizing related litigation, and for other purposes.

S.J. Res. 63

At the request of Mr. Kaine, the name of the Senator from Rhode Island (Mr. Risch) was added as a cosponsor of S.J. Res. 63, a joint resolution to direct the removal of United States Armed Forces from hostilities against the Islamic Republic of Iran that have not been authorized by Congress.

S.J. Res. 68

At the request of Mr. Kaine, the name of the Senator from Minnesota (Ms. Klobuchar) was added as a cosponsor of S.J. Res. 68, a joint resolution to direct the removal of United States Armed Forces in Afghanistan against the Islamic Republic of Iran that have not been authorized by Congress.

S. Res. 469

At the request of Mr. Graham, the name of the Senator from Texas (Mr. Cornyn) was added as a cosponsor of S. Res. 469, a resolution supporting the people of Iran as they engage in legitimate protests, and condemning the Iranian regime for its murderous response.

S. Res. 477

At the request of Mrs. Murray, the names of the Senator from Michigan (Ms. Stabenow) and the Senator from Michigan (Mr. Peters) were added as cosponsors of S. Res. 477, a resolution designating the week of February 3 through 7, 2020, as “National School Counseling Week.”

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 479—DESIGNATING JANUARY 23, 2020, AS “MATERNAL HEALTH AWARENESS DAY”

Mr. Booker (for himself, Mr. Menendez, and Ms. Harris) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. Res. 479

Whereas, every year in the United States, approximately 70 women die as a result of complications related to pregnancy and childbirth;

Whereas the pregnancy-related mortality ratio, defined as the number of pregnancy-related deaths per 100,000 live births, more than doubled between 1987 and 2016;

Whereas the United States is the only developed country whose maternal mortality rate has increased over the last several decades;

Whereas, of all pregnancy-related deaths between 2011 and 2015—

(1) nearly 31 percent occurred during pregnancy;

(2) about 36 percent occurred during childbirth or the week after childbirth; and

(3) 33 percent occurred between 1 week and 1 year postpartum;

Whereas more than 60 percent of maternal deaths in the United States are preventable; Whereas, in 2014 alone, 50,000 women suffered from a “near miss” or severe maternal morbidity, which includes potentially life-threatening complications that arise from labor and childbirth;

Whereas 28 percent of women who gave birth in a hospital in the United States reported experiencing 1 or more types of mistreatment, such as—

(1) loss of autonomy;

(2) being shouted at, scolded, or threatened; and

(3) being ignored or refused or receiving no response to requests for help;

Whereas significant disparities in maternal health exist, including that—

(1) Black women are more than 3 times as likely to die from a pregnancy-related cause as White women;

(2) American Indian and Alaska Native women are more than twice as likely to die from a pregnancy-related cause as are White women;

(3) Black, American Indian, and Alaska Native women with at least some college education are more likely to die from a pregnancy-related cause than are women of all racial and ethnic backgrounds with less than a high school diploma;

(4) Black, American Indian, and Alaska Native women are about twice as likely to suffer maternal morbidity as are White women;

(5) women who live in rural areas have a greater likelihood of severe maternal morbidity in the Alliance compared to women who live in urban areas;

(6) nearly 1/5 of rural counties do not have a hospital with obstetric services;

(7) women with more Black and Hispanic residents and lower median incomes are less likely to have access to hospital obstetric services;

(8) more than 50 percent of women who live in a rural area must travel more than 30 minutes to access hospital obstetric services, compared to 7 percent of women who live in urban areas; and

(9) American Indian and Alaska Native women living in rural communities are twice as likely as their White counterparts to report receiving late or no prenatal care;

Whereas more than 40 States have designated committees to review maternal deaths;

Whereas State and local maternal mortality review committees are positioned to comprehensively assess maternal deaths and identify opportunities for prevention;

Whereas more than 25 States are participating in the Alliance to Innovate on Maternal Health, which promotes consistent and safe maternity care to reduce maternal morbidity and mortality; Whereas community-based maternal health care models, including midwifery birthplace services, doula support services, community and perinatal health worker services, and group prenatal care, in collaboration with culturally competent physician care, show great promise in improving maternal health outcomes and reducing disparities in maternal health outcomes;

Whereas many organizations have implemented initiatives to educate patients and providers about—

(A) raising public awareness about maternal health and mortality and identifying opportunities for prevention;

(B) the prevention of pregnancy-related deaths; and

(C) the importance of listening to and empowering all women to report pregnancy-related medical issues; and

Whereas several States, communities, and organizations recognize January 23 as “Maternal Health Awareness Day”, to raise awareness about maternal health and promote maternal safety; Now, therefore, be it

Resolved, That the Senate—

(1) designates January 23, 2020, as “Maternal Health Awareness Day”;

(2) supports the goals and ideals of Maternal Health Awareness Day, including—

(a) raising public awareness about maternal health, maternal morbidity, and disparities in maternal health outcomes; and
(B) encouraging the Federal Government, States, territories, Tribes, local communities, public health organizations, physicians, health care providers, and others to take action to reduce adverse maternal health outcomes and improve maternal safety;

(3) promotes initiatives—

(A) to address and eliminate disparities in maternal health outcomes; and

(B) to ensure respectful and equitable maternity care practices;

(4) honors the mothers who have passed away as a result of pregnancy-related causes; and

(5) supports and recognizes the need for further investments in efforts to improve maternal health, eliminate disparities in maternal health outcomes, and promote respectful and equitable maternity care practices.

SENATE RESOLUTION 480—RAISING AWARENESS AND ENCOURAGING THE PREVENTION OF STALKING BY DESIGNATING JANUARY 2020 AS “NATIONAL STALKING AWARENESS MONTH”

Ms. KLOBUCHAR (for herself, Mr. GRASSLEY, Mrs. FEINSTEIN, Ms. HIRONO, Ms. HARRIS, Ms. ERSN, Mrs. BLACKBURN, Mr. TILLIS, and Mr. CRAPO) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. Res. 480

Whereas approximately 1 in 6 women in the United States, at some point during their lifetimes, have experienced stalking victimization; where the women felt very fearful or believed that they or someone close to them would be harmed or killed; whereas, during a 1-year period, an estimated 7,500,000 individuals in the United States reported that they had been victims of stalking; whereas more than 80 percent of victims of stalking reported that they had been stalked by someone they knew; whereas nearly 70 percent of intimate partner stalking victims were threatened with physical harm by stalkers; whereas 11 percent of victims of stalking reported having been stalked for more than 5 years; whereas two-thirds of stalkers pursue their victims at least once a week; whereas many victims of stalking are forced to take drastic measures to protect themselves, including relocating, changing jobs, or obtaining protection orders; whereas the prevalence of anxiety, insomnia, social dysfunction, and severe depression is much higher among victims of stalking than the general population; whereas many victims of stalking do not report it to the police or contact a victim service provider, shelter, or hotline; whereas stalking is a crime under Federal law and the laws of all 50 States, the District of Columbia, and the territories of the United States; whereas stalking affects victims of every race, age, culture, gender, sexual orientation, physical and mental ability, and economic status; whereas national organizations, local victim service organizations, campuses, prosecutores, government, and police departments stand ready to assist victims of stalking and are working diligently to develop effective and innovative responses to stalking, including one-stalking is not a crime; whereas there is a need to improve the response of the criminal justice system to stalking through more aggressive investigation and prosecution; whereas there is a need for an increase in the availability of victim services across the United States; whereas the services include programs tailored to meet the needs of victims of stalking; whereas individuals 18 to 24 years old experience the stalking vice the highest rate, and a majority of stalking victims report their victimization first occurred before the age of 25; whereas up to 75 percent of women in college who experience behavior relating to stalking experience other forms of victimization, including sexual or physical victimization; whereas there is a need for an effective response to stalking on each campus; and whereas the Senate finds that “National Stalking Awareness Month” provides an opportunity to educate the people of the United States about stalking: Now, therefore, be it

Resolved, That the Senate—

(1) designates January 2020 as “National Stalking Awareness Month”;

(2) applauds the efforts of service providers for victims of stalking, police, prosecutors, national and community organizations, campuses, and private sector supporters to promote awareness of stalking;

(3) encourages policymakers, criminal justice officials, victim service and human service agencies, institutions of higher education, and nonprofit organizations to increase awareness of stalking and continue to support the availability of services for victims of stalking; and

(4) urges national and community organizations, businesses in the private sector, and the media to promote awareness of the crime of stalking through “National Stalking Awareness Month”.

SENATE RESOLUTION 481—COMMEMORATING THE 75TH ANNIVERSARY OF THE LIBERATION OF THE AUSCHWITZ EXTERMINATION CAMP IN NAZI-OCCUPIED POLAND

Ms. ROSEN (for herself, Mr. LANKFORD, Mr. MENENDEZ, Mr. CRAMER, and Mr. CARDIN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. Res. 481

Whereas, during World War II, the Nazi regime and its collaborators systematically murdered 6,000,000 Jews and millions of other individuals; whereas the Auschwitz concentration camp complex in Nazi-occupied Poland, which included a killing center at Birkenau, was the largest death camp complex established by the Nazi regime; whereas, on January 27, 1945, the Auschwitz extermination camp was liberated by Allied Forces during World War II, after almost 5 years of murder, rape, and torture at the camp; whereas nearly 1,300,000 innocent civilians were deported to Auschwitz from their homes across Eastern and Western Europe, particularly from Hungary, Poland, and France; whereas nearly 1,100,000 innocent civilians were murdered at the Auschwitz extermination camp between 1940 and 1945; whereas at least 960,000 of the nearly 1,100,000 murdered were Jewish; whereas the more than 100,000 other victims who perished at Auschwitz included non-Jewish Poles, Romani people, Soviet civilians and prisoners of war, Afro-Germans, Jehovah’s Witnesses, people with disabilities, gay men and women, and other ethnic minorities; whereas these innocent civilians were subjected to torture, forced labor, starvation, rape, medical experiments, and being separated from loved ones; whereas the names of many of these innocent civilians who perished have been lost forever; whereas the Auschwitz extermination camp symbolizes the extraordinary brutality of the Holocaust; whereas the United States Holocaust Memorial Museum teaches about and promotes remembrance of the Holocaust; whereas the people of the United States must never forget the terrible crimes against humanity committed at the Auschwitz extermination camp; whereas the people of the United States must use the decades of generations to promote understanding of the dangers of intolerance in order to prevent similar injustices, including acts of violent anti-Semitism, from happening again; whereas, in recent years, there has been an increase in the number and intensity of anti-Semitic incidents in the United States and around the world; whereas hate crime statistics collected by the Federal Bureau of Investigation demonstrate a marked rise in anti-Semitic incidents in the United States over the past several years, and the Special Envoy to Monitor and Combat Anti-Semitism of the Department of State recently stated that the Jewish people worldwide are facing the worst wave of anti-Semitism since the Holocaust; whereas, in 2018, the United States experienced the single deadliest attack against the Jewish community in the history of the United States with the murder of 11 individuals at the Tree of Life synagogue in Pittsburgh, Pennsylvania; whereas the attack in Pittsburgh was followed in 2019 by a vicious anti-Semitic attack in Poway, California, and later, by a series of violent attacks against the Orthodox Jewish community in the State of New York; and whereas, especially in a period of rising anti-Semitism, commemoration of the liberation of the Auschwitz extermination camp will instill in all people the understanding of the dangers of intolerance and the need to take action to reduce all forms of anti-Semitism, including acts of violent anti-Semitism, from happening again; whereas the Auschwitz extermination camp will instill in all people the understanding of the dangers of intolerance and the need to take action to reduce all forms of anti-Semitism, including acts of violent anti-Semitism, from happening again; whereas the Auschwitz extermination camp is part of the Holocaust, the 6,000,000 Jews and millions of other individuals; whereas the people of the United States a greater awareness of the Holocaust and knowledge of the horrors brought upon by the Nazi regime’s systematic murder of 6,000,000 Jews and millions of other innocent individuals: Now, therefore, be it

Resolved, That the Senate—

(1) commemorates January 27, 2020, as the 75th anniversary of the liberation of the Auschwitz extermination camp by Allied Forces during World War II; (2) calls on all people of the United States to remember the 1,100,000 innocent victims murdered at the Auschwitz extermination camp as part of the Holocaust, the 6,000,000 Jews killed throughout Europe, and all of the victims of the Nazi reign of terror; (3) honors the legacy of the survivors of the Holocaust and of the Auschwitz extermination camp; (4) calls on the people of the United States to continue to work toward tolerance, peace, and justice and to continue to work to end all genocide and persecution; and (5) recommits to combatting all forms of anti-Semitism.
SENATE RESOLUTION 482—SUPPORTING THE CONTRIBUTIONS OF CATHOLIC SCHOOLS

Mr. TOOMEY (for himself, Mr. RUBIO, and Mr. MANCHIN) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. Res. 482

Whereas Catholic schools in the United States are internationally acclaimed for their academic excellence and provide students with more than just an exceptional scholastic education;

Whereas Catholic schools instill a broad, values-added education emphasizing the lifelong development of moral, intellectual, physical, and social values in young people in the United States;

Whereas Catholic schools serve the United States by providing a diverse student population, from all regions of the country and all socioeconomic backgrounds, a strong academic and moral foundation, and of that student population—

(1) 39 percent of students are from racial and ethnic minority backgrounds; and

(2) 19 percent of students are from non-Catholic families;

Whereas Catholic schools are an affordable option for parents, particularly in underserved urban areas;

Whereas Catholic schools produce students who are strongly dedicated to their faith, values, families, and communities by providing an intellectually stimulating environment rich in spiritual, character, and moral development;

Whereas Catholic schools are committed to community service, producing graduates who hold “helping others” as a core value;

Whereas, during the 2018–2019 academic year in the United States, almost 1,800,000 students were enrolled in Catholic schools and the student-teacher ratio for Catholic schools was 12 to 1;

Whereas the graduation rate of students from Catholic high schools is 99 percent, with 86 percent of graduates attending 4-year colleges;

Whereas, in the 2005 pastoral message entitled “Renewing Our Commitment to Catholic Elementary and Secondary Schools in the Third Millennium”, the United States Conference of Catholic Bishops stated, “Catholic schools are often the Church’s most effective contribution to those families who are poor and disadvantaged, especially in poor inner city neighborhoods and rural areas; such schools cultivate healthy interaction among the increasingly diverse populations of our society. In cities and rural areas, Catholic schools are often the only opportunity for economically disadvantaged young people to receive an education that speaks to the development of the whole person. . . . Our Catholic schools produce countless numbers of well-educated and moral citizens who are leaders in our civic and ecclesial communities.”;

Whereas the week of January 26, 2020, to February 1, 2020, has been designated as “National Catholic Schools Week” by the National Catholic Educational Association and the United States Conference of Catholic Bishops, and January 29, 2020, has been designated as “National Appreciation Day for Bishops, and January 29, 2020, has been designated as “National Appreciation Day for Bishops, and January 29, 2020, has been designated as “National Appreciation Day for Bishops, and January 29, 2020, has been designated as “National Appreciation Day for Bishops, and January 29, 2020, has been designated as “National Appreciation Day for Bishops, and January 29, 2020, has been designated as “National Appreciation Day for Bishops,

Whereas Catholic schools are opening across the United States; and

Whereas the theme for National Catholic Schools Week 2020 is “Catholic Schools: Learn, Serve. Lead. Succeed.”: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals of National Catholic Schools Week, an event—

(a) cosponsored by the National Catholic Educational Association and the United States Conference of Catholic Bishops; and

(b) established to recognize the vital contributions of the thousands of Catholic elementary and secondary schools in the United States;

(2) applauds the National Catholic Educational Association and the United States Conference of Catholic Bishops on the selection of a theme that all people can celebrate; and

(3) supports—

(A) the dedication of Catholic schools, students, parents, and teachers across the United States to academic excellence; and

(B) the key role that Catholic schools, students, parents, and teachers across the United States play in promoting and ensuring a brighter, stronger future for the United States.

SENATE RESOLUTION 483—TO PROVIDE FOR RELATED PROCEDURES CONCERNING THE ARTICLES OF IMPEACHMENT AGAINST DONALD JOHN TRUMP, PRESIDENT OF THE UNITED STATES

Mr. MCCONNELL submitted the following resolution; which was considered and agreed to:

S. Res. 483

Resolved, That the House of Representa-
vatives shall have until 9:00 a.m. on Wednes-
day, January 22, 2020, to file any motions permitted under the rules of impeachment with the exception of motions to subpoena witnesses or documents or any other evidentiary motions. Responses to any such motions shall be filed no later than 11:00 a.m. on Wednesday, January 22, 2020. All materials filed pursuant to this paragraph shall be filed with the Secretary and made available to all parties.

The President and the House of Representa-
vatives shall have until 9:00 a.m. on Wednes-
day, January 22, 2020, to file any motions permitted under the rules of impeachment with the exception of motions to subpoena witnesses or documents or any other evidentiary motions. Responses to any such motions shall be filed no later than 11:00 a.m. on Wednesday, January 22, 2020. All materials filed pursuant to this paragraph shall be filed with the Secretary and made available to all parties.

ARGUMENTS ON SUCH MOTIONS

Arguments on such motions shall begin at 1:00 p.m. on Wednesday, January 22, 2020, and each side may determine the number of persons to make its presentation, following which the Senate shall deliberate, if so ordered under the impeachment rules, and vote on any such motions.

Following the disposition of such motions, or if no motions are made, then the House of Representatives shall make its presentation in support of the articles of impeachment for a period of time not to exceed 24 hours, over up to 3 session days. Following the House of Representatives’ presentation, the President shall make his presentation for a period not to exceed 24 hours, over up to 3 session days.

Each side may determine the number of persons to make its presentation.

Upon the conclusion of the President’s presentation, Senators may question the parties for a period of time not to exceed 16 hours.

Upon the conclusion of questioning by the Senate, there shall be 4 hours of argument by the parties, equally divided, followed by deliberation by the Senate, if so ordered under the impeachment rules, on the question of whether it shall be in order to consider and debate under the impeachment rules any motion to subpoena witnesses or documents. The Senate, without any intervening action, motion, or amendment, shall then decide by the yeas and nays whether it shall be in order to consider and debate under the impeachment rules any motion to subpoena witnesses or documents.

Following the disposition of that question, other motions provided under the impeachment rules shall be in order.

The Senate agrees to allow either the House of Representatives or the President to subpoena witnesses, the witnesses shall first be deposed and the Senate shall decide after deposition which witnesses shall testify, pursuant to the impeachment rules. No testimony shall be admissible in the Senate unless the parties have had an opportunity to depose such witnesses.

At the conclusion of the deliberations by the Senate, the Senate shall vote on each article of impeachment.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1284. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States.

SA 1285. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1286. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1287. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1288. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1289. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1290. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1291. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1292. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1293. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, supra.

SA 1294. Mr. SCHUMER (for Mr. VAN HOLLEN) proposed an amendment to the resolution S. Res. 483, supra.

TEXT OF AMENDMENTS

SA 1284. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:

At the appropriate place in the resolving clause, insert the following:
Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials—

(A) all meetings or calls, including requests or offers, made before or after July 25, 2019, by or involving the White House that relate to the White House meeting for Ukraine's president, President Donald J. Trump, and Mr. Zelensky, and subsequently attended by Vice President Pence; and

(B) the actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or security assistance of any kind to Ukraine, including but not limited to the Ukraine Security Assistance Initiative (USAI) and Foreign Military Financing (FMF); and

(C) all meetings or calls, including requests or offers, made before or after July 25, 2019, by or involving the White House that relate to the White House meeting for Ukraine's president, President Donald J. Trump, and Mr. Zelensky, and subsequently attended by Vice President Pence; and

(D) any interactions or assessment within the White House regarding Ukraine matters following the September 9, 2019, request for documents from the House Permanent Select Committee on Intelligence, the House Committee on Oversight and Reform, and the House Committee on Foreign Affairs, including, but not limited to, documents and communications related to the hold on military and other security assistance to Ukraine, the scheduling of a White House meeting for the president of Ukraine, and any requests for investigations by Ukraine;

(E) the complaint submitted by a whistle-blower within the Intelligence Community on or around August 12, 2019, to the Inspector General of the Intelligence Community;

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

(i) current or former White House officials or employees;

(ii) Mr. John R. Bolton, President Trump, and the President of Ukraine; and

(iii) any meeting in Ambassador Bolton's office and a subsequent meeting in the Ward Room;

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

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

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

(vii) the complaint submitted by a whistle-blower within the White House regarding Ukraine matters following the September 9, 2019, request for documents from the House Permanent Select Committee on Intelligence, the House Committee on Oversight and Reform, and the House Committee on Foreign Affairs, including, but not limited to, documents and communications related to the hold on military and other security assistance to Ukraine, the scheduling of a White House meeting for the president of Ukraine, and any requests for investigations by Ukraine;

(viii) the complaint submitted by a whistle-blower within the White House regarding Ukraine matters following the September 9, 2019, request for documents from the House Permanent Select Committee on Intelligence, the House Committee on Oversight and Reform, and the House Committee on Foreign Affairs, including, but not limited to, documents and communications related to the hold on military and other security assistance to Ukraine, the scheduling of a White House meeting for the president of Ukraine, and any requests for investigations by Ukraine;

(ix) the complaint submitted by a whistle-blower within the White House regarding Ukraine matters following the September 9, 2019, request for documents from the House Permanent Select Committee on Intelligence, the House Committee on Oversight and Reform, and the House Committee on Foreign Affairs, including, but not limited to, documents and communications related to the hold on military and other security assistance to Ukraine, the scheduling of a White House meeting for the president of Ukraine, and any requests for investigations by Ukraine;

(x) the complaint submitted by a whistle-blower within the White House regarding Ukraine matters following the September 9, 2019, request for documents from the House Permanent Select Committee on Intelligence, the House Committee on Oversight and Reform, and the House Committee on Foreign Affairs, including, but not limited to, documents and communications related to the hold on military and other security assistance to Ukraine, the scheduling of a White House meeting for the president of Ukraine, and any requests for investigations by Ukraine;

(xi) the complaint submitted by a whistle-blower within the White House regarding Ukraine matters following the September 9, 2019, request for documents from the House Permanent Select Committee on Intelligence, the House Committee on Oversight and Reform, and the House Committee on Foreign Affairs, including, but not limited to, documents and communications related to the hold on military and other security assistance to Ukraine, the scheduling of a White House meeting for the president of Ukraine, and any requests for investigations by Ukraine;

(xii) the complaint submitted by a whistle-blower within the White House regarding Ukraine matters following the September 9, 2019, request for documents from the House Permanent Select Committee on Intelligence, the House Committee on Oversight and Reform, and the House Committee on Foreign Affairs, including, but not limited to, documents and communications related to the hold on military and other security assistance to Ukraine, the scheduling of a White House meeting for the president of Ukraine, and any requests for investigations by Ukraine;

(xiii) the complaint submitted by a whistle-blower within the White House regarding Ukraine matters following the September 9, 2019, request for documents from the House Permanent Select Committee on Intelligence, the House Committee on Oversight and Reform, and the House Committee on Foreign Affairs, including, but not limited to, documents and communications related to the hold on military and other security assistance to Ukraine, the scheduling of a White House meeting for the president of Ukraine, and any requests for investigations by Ukraine;

(xiv) the complaint submitted by a whistle-blower within the White House regarding Ukraine matters following the September 9, 2019, request for documents from the House Permanent Select Committee on Intelligence, the House Committee on Oversight and Reform, and the House Committee on Foreign Affairs, including, but not limited to, documents and communications related to the hold on military and other security assistance to Ukraine, the scheduling of a White House meeting for the president of Ukraine, and any requests for investigations by Ukraine;

(xv) the complaint submitted by a whistle-blower within the White House regarding Ukraine matters following the September 9, 2019, request for documents from the House Permanent Select Committee on Intelligence, the House Committee on Oversight and Reform, and the House Committee on Foreign Affairs, including, but not limited to, documents and communications related to the hold on military and other security assistance to Ukraine, the scheduling of a White House meeting for the president of Ukraine, and any requests for investigations by Ukraine;
SA 1286. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:

The appropriate place in the resolving clause, insert the following: Sen.

Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena for the taking of testimony of John Michael "Mick" Mulvaney, and the Sergeant at Arms is authorized to utilize the services of the Sergeant at Arms or any other employee of the Senate in serving the subpoena authorized to be issued by this section.

SA 1288. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:

The appropriate place in the resolving clause, insert the following: Sen.

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

(1) the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena to the Secretary of Defense commanding him to produce, for the time period from January 1, 2019, to the present, all documents, communications, and other records created, sent, or received by the Department of Defense, including but not limited to —

(A) all draft and final versions of talking points related to the withholding or release of foreign assistance, military assistance, or security assistance to Ukraine, including communications with the Department of Defense related to concerns about the accuracy of the talking points; and

(B) communications among or between officials at the Department of Defense, including but not limited to —

(i) communications among the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Secretary of the Air Force, the Secretary of the Navy, and the Secretary of the Army;

(ii) communications with the Secretary of the Treasury, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Education, the Secretary of Veterans Affairs, and the Attorney General;

(iii) communications with the Office of Management and Budget and the Director of the Office of Management and Budget;

(iv) communications with the Office of the Director of National Intelligence and the Director of National Intelligence;

(v) communications with the Office of the Vice President and the Vice President;

(vi) communications with the Office of the President and the President; and

(vii) communications with the Office of the Director of National Intelligence and the Director of National Intelligence.

(F) all draft and final versions of talking points related to the withholding or release of foreign assistance, military assistance, or security assistance to Ukraine, including communications with the Department of Defense related to concerns about the accuracy of the talking points; and

(G) all meetings and calls between President Trump and the President of Ukraine, including documents, communications, and other records related to the scheduling of, preparation for, and follow-up from the President’s April 21 and July 25, 2019, telephone calls, as well as the President’s Sep- tember 1 meetings with the President of Ukraine in New York; and

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

Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena for the taking of testimony of John Michael "Mick" Mulvaney, and the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the Senate in serving the subpoena authorized to be issued by this section.

Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena for the taking of testimony of John Michael "Mick" Mulvaney, and the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the Senate in serving the subpoena authorized to be issued by this section.
SA 1290. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:
At the appropriate place in the resolving clause, insert the following:

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

(1) the Chief Justice of the United States, through the Secretary of the Senate, shall—
   (A) issue a subpoena for the taking of testimony of Robert B. Ward; and
   (B) issue a subpoena for the taking of testimony of Michael P. Duffey; and

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

SA 1291. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:
At the appropriate place in the resolving clause, insert the following:

Snc. Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena for the taking of testimony of John Robert Bolton, and the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the Senate in serving the subpoena authorized to be issued by this section.

SA 1292. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:
On page 3, line 6, strike “4 hours” and insert “2 hours”.
On page 3, line 10, strike “the question of” and all that follows through “rules” on line 12.
On page 3, line 14, insert “any such motion” after “decide”.
On page 3, line 15, strike “whether” and all that follows through “documents” on line 17.
On page 3, line 18, strike “that question” and insert “any such motion”.
On page 3, lines 25 and 24 strike “and the Senate shall decide after deposition which witnesses shall testify” and insert “and then shall testify in the Senate”.

SA 1293. Mr. SCHUMER proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:
On page 2, beginning on line 10, strike “11:00 a.m. on Wednesday, January 22, 2020” and insert “9:00 a.m. on Thursday, January 23, 2020”.
On page 2, line 15, strike “Wednesday, January 22, 2020” and insert “Thursday, January 23, 2020”.

SA 1294. Mr. SCHUMER (for Mr. VAN HOLLOW) proposed an amendment to the resolution S. Res. 483, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:
On page 3, line 20, insert “The Presiding Officer shall rule to authorize the subpoena of any witness or any document that a Senator or a party moves to subpoena if the Presiding Officer determines that the witness or document is likely to have probative evidence relevant to either article of impeachment before the Senate.” after “order.”.

The CHIEF JUSTICE. The majority leader is recognized.

ADJOURNMENT UNTIL 1 P.M. TODAY

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the trial adjourn until 1 p.m., Wednesday, January 22, and that this order also constitute the adjournment of the Senate.

There being no objection, the Senate, sitting as the Court of Impeachment, at 1:50 a.m., adjourned until Wednesday, January 22, 2020, at 1 p.m.