bomb components, repair and return of weapons, weapons training equipment, practice bombs, TTU–595 Test Set and spares, fin assemblies, rocket motors, training aids/devices/spare parts, aircraft spare parts, support equipment, clothing and textiles, publications and technical documentation, travel expenses, medical services, construction, aircraft ferry support, technical and logistical support services, major modifications/class IV support, personnel training and training equipment, U.S. Government and contractor program support, and other related elements of logistics and program support. The estimated value is $325.8 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the defense capabilities and capacity of a major non-NATO ally, which is an important force for political stability and economic progress in North Africa. This potential sale will provide additional opportunities for bilateral engagements and further strengthen the bilateral relationship between the United States and Tunisia.

The proposed sale will improve Tunisia's ability to meet current and future threats by increasing their capability and capacity to counter-terrorism and other violent extremist organization threats. The AT–6 platform will bolster their capability to respond to and engage threats in multiple areas across the country. Additionally, the procurement of the AT–6 aircraft strengthens interoperability between Tunisia, regional allies, and the United States. Tunisia will have no difficulty absorbing this aircraft into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Textron Aviation Defense LLC, Wichita, Kansas. There are no known offset agreements proposed with this potential sale. However, the purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will require the assignment of two (2) U.S. contractor logistics representatives to Tunisia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

TRANSMITTAL NO. 19–71

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) Sensitivity of Technology:

1. The AT–6 Wolverine is a Beechcraft light attack, armed reconnaissance and irregular warfare and counterinsurgency mission aircraft. With a single engine PT6A–68D Pratt & Whitney engine and Lockheed Martin A–1OC mission computer and plug- and-play weapons management system with Seek Eagle certification, the AT–6 Wolverine can fire laser-guided rockets and deliver general purpose and inertially-aided munitions.

2. GBU–12 is a 5001b Mk–82 General Purpose (GP) bomb body fitted with the MXU–650 AFG, and MAU–209C/B or MAU–168L/B Computer Control Group (CCG) to guide to its laser designated target. The GBU–12 is a maneuverable, free-fall Laser Guided Bomb (LGB) that guides to a spot of laser energy reflected off of the target. Laser designation for the LGB can be provided by a variety of laser target markers or designators.

3. GBU–58 is a 2501b Mk–81 GP bomb body fitted with the MXU–1006 AFG, and MAU–209C/B or MAU–168L/B CCG to guide to its laser designated target. The GBU–58 is a maneuverable, free-fall LGB that guides to a spot of laser energy reflected from the target. Laser designation for the LGB can be provided by a variety of laser target markers or designators.

4. Mk–82 General Purpose (GP) bomb is a 500 pound, free-fall, unguided, low-drag weapon usually equipped with the mechanical M904 (nose) and M905 (tail) fuzes or the radar-proximity FMU–113 air-burst fuze. The Mk–82 is designed for soft, fragment sensitive targets and is not intended for hard targets or penetrations. The explosive filling is usually tritonal, though other compositions have sometimes been used.

5. BDU–50 (Mk–82 Inert) GP bomb is a 500 pound, free-fall, unguided, low-drag training weapon. There are no explosive elements with this bomb; it does not have a fuze and will not detonate when it hits the ground. It is used from flight training to give the pilot the insight into aircraft handling characteristics with the additional weight on the wing.

6. The Joint Programmable Fuze (JPF) FMU–152 is a multi-delay, multi-arm and proximity sensor compatible with general purpose blast, frag and hardened-target penetrator weapons. The JPF settings are cockpit selectable in flight when used with JDAM weapons.

7. Advanced Precision Kill Weapon System (APKWS) II All-Up-Round (AUR) is an air-to-ground weapon that consists of an APKWS II Guidance Section (GS), legacy 2.75 inch MK66 Mod 4 rocket motor, and legacy MK152 and MK435/436 warhead/fuze. APKWS II uses a semi-active laser seeker. The GS is installed between the rocket motor and warhead to create a guided rocket. The APKWS II may be procured as an independent component to be mated to appropriate 2.75-inch warheads/fuzes and rocket motors purchased separately, or may be purchased as an AUR.

8. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures, which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

9. A determination has been made that the recipient country can provide substantially the same degree of protection for the technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

10. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Tunisia.

IMPEACHMENT

Mr. REED. Mr. President, I ask unanimous consent to have my opinion memorandum in the impeachment trial of President Donald John Trump printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OPINION MEMORANDUM OF UNITED STATES SENATOR JOHN F. REED IN THE IMPEACHMENT TRIAL OF PRESIDENT DONALD JOHN TRUMP

I. FINDINGS

Based on the evidence in the record, the arguments of the House Impeachment Managers, and the arguments of the President's Counsel, I conclude as follows: The President has violated his constitutional oath to ''take care that the laws be faithfully executed'' and placed his personal and political interests above the interests of the United States. The House Impeachment Managers have proven that the President's abuse of power and congressional obstruction amount to the constitutional standard of ''high Crimes and Misdemeanors'' for which the sole remedy is conviction and removal from office.

II. STATEMENT OF THE FACTS

On December 18, 2019, the United States House of Representatives passed H. Res. 755,[1] ''Impeaching Donald John Trump, President of the United States, for high crimes and misdemeanors.'' H. Res. 755 contains two Articles of Impeachment. The first Article declares that the President abused his power by soliciting foreign interference to help his bid for reelection in the 2020 United States presidential election and conditioning United States government acts of significant value on the foreign power's cooperation. The second Article declares that the President obstructed Congress by directing the categorical, indiscriminate defiance of subpoenas for witness testimony and documents deemed vital to the House Impeachment inquiry.

Pursuant to Article I, Section 3 of the United States Constitution, the United States Senate convened as a Court of Impeachment on January 16, 2020, and each Senator took an oath to ''do impartial justice according to the Constitution and laws.''[2] Alexander Hamilton spoke about the Senate's role in an Impeachment trial in Federalist Paper No. 65, when he wrote, ''What other body would be likely to feel *confidence enough in its own situation*, to preserve unawed and uninfluenced the necessary impartiality between an *individual* accused and the *representatives of the people, his accusers*?''[3]

The obligation of the Senate is to accord the President, as the accused, the right to conduct his defense fairly, while respecting the House's exclusive constitutional prerogative to bring Articles of Impeachment. At the core of the Senate's task is the fundamental understanding that our system of laws recognizes the rights of defendants and the responsibilities of the prosecution to prove its case. Such a basic tenet of our law and our experience as a free people does not evaporate in the rarified atmosphere of a Court of Impeachment, simply because the accused is the President and the accuser is the House of Representatives.

III. THE CONSTITUTIONAL GROUNDS FOR IMPEACHMENT

''The Senate shall have the sole Power to try all Impeachments.''[4] With these few words, the Framers of the Constitution entrusted the Senate with the most awesome power within a democratic society: whether to remove an impeached President from office.

A. High Crimes and Misdemeanors

The Constitution states, ''The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.''[5]

''Treason'' and ''Bribery'' are foundational impeachable offenses. No more heinous example of an offense against the constitutional order exists than betrayal of the nation to an enemy or betrayal of duty for personal enrichment. A President commits treason when he levies war against the United States or gives comfort or aid to its enemies.[6] As the House Judiciary Committee explains, a President engages in impeachable bribery when he ''offers, solicits, or accepts something of personal value to influence his own official actions.''[7]

In interpreting ''high Crimes and Misdemeanors,'' we must not only look to the

Federalist Papers and the records of the Constitutional Convention, but also to the contemporary and foundational writings on Impeachment available to the Framers.

Sir William Blackstone, whose influential Commentaries on the Laws of England were published from 1765–1770, discussed a classification of crimes he termed ''public wrongs, or crimes and misdemeanors'' that he defined as breaches of the public duty that an individual owed to their entire community.[8] Blackstone viewed treason, murder, and robbery as ''public wrongs'' not only because they cause injury to individuals but also because they ''strike at the very being of society.''[9]

Richard Wooddeson, a legal scholar who began giving lectures on English law in 1777, defined impeachable offenses as misdeeds that fail to clearly fall under the jurisdiction of ordinary tribunals. These wrongs were ''abuse[s] of high offices of trust'' that damaged the commonwealth.[10]

Much the same as Blackstone and Wooddeson, Alexander Hamilton included the dual components of abuse of public trust and national harm in his definition of impeachable crimes and misdemeanors. In Federalist Paper No. 65, Hamilton defined an impeachable offense as ''those offenses which proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.''[11]

B. The Constitutional Debates

Adding impressive support to these consistent views of the meaning of the constitutional term, ''high Crimes and Misdemeanors,'' is the history of the deliberations at the Constitutional Convention.

The convention delegates considered limiting Impeachment to treason and bribery. However, they concluded that these enumerated offenses alone could not anticipate every manner of profound misconduct that a future President might engage in.[12] George Mason, a delegate from Virginia, declared that ''high crimes and misdemeanors'' would be an apt way to further capture ''great and dangerous offences'' or ''[a]ttempts to subvert the Constitution.''[13]

This wording would also set the necessarily high threshold for Impeachment that would be proportional to the severe punishment of removing an elected official and disqualification from holding future public office.

Further insight is provided by James Iredell, a delegate to the North Carolina Convention that ratified the Constitution, who later served as a Justice of the United States Supreme Court. During the Convention debates, Iredell stated:

The power of impeachment is given by this Constitution, to bring great offenders to punishment . . . This power is lodged in those who represent the great body of the people, because the occasion for its exercise will arise from acts of great injury to the community, and the objects of it may be such as cannot be easily reached by an ordinary tribunal.[14]

Iredell's understanding sustains the view that an impeachable offense must cause ''great injury to the community.'' Private wrongdoing, without a significant, adverse effect upon the nation, cannot constitute an impeachable offense. James Wilson, a delegate to the Federal Constitutional Convention and, like Iredell, later a Supreme Court Justice, wrote that Impeachments are ''proceedings of a political nature . . . confined to political characters, to political crimes and misdemeanors, and to political punishments.''[15]

Later commentators expressed similar views. In 1833, Justice Joseph Story quoted favorably from the scholarship of William Rawle, who concluded that the ''legitimate causes of impeachment . . . can have reference only to public character, and official duty . . . In general, those offenses, which may be committed equally by a private person, as a public officer, are not the subject of impeachment.''[16]

This line of reasoning is buttressed by the careful and thoughtful work of the House of Representatives during the Watergate proceedings. The Democratic staff of the House Judiciary Committee concluded that, ''Because impeachment of a President is a grave step for the nation, it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office.''[17]

The deliberations at the Constitutional Convention also demonstrate a conscious movement to narrow the terminology as a means of raising the threshold for the Impeachment process to require an offense against the State.

Early in the debate on the issue of presidential Impeachment in July of 1787, it was suggested that Impeachment and removal could be founded on a showing of ''malpractice,'' ''neglect of duty,'' or ''corruption.''[18] By September of 1787, the issue of presidential Impeachment had been referred to the Committee of Eleven, which was created to resolve the most contentious issues. The Committee of Eleven considered whether the grounds for Impeachment should be ''treason or bribery.''[19] This was significantly more restricted than the amorphous standard of ''malpractice,'' too restricted, in fact, for some delegates. George Mason objected and suggested that ''maladministration'' be added to ''treason and bribery.''[20] This suggestion was opposed by Madison as being ''equivalent to a tenure during pleasure of the Senate.''[21] Mason responded by further refining his suggestion and offered the term ''other high crimes and misdemeanors against the State.''[22] The Mason language was a clear reference to the English legal history of Impeachment. Mason's proposal explicitly narrowed these offenses to those ''against the State.'' The Convention itself further clarified the standard by replacing ''State'' with the ''United States.''[23]

At the conclusion of the substantive deliberations on the constitutional standard of Impeachment, it was obvious that only serious offenses against the governmental system would justify Impeachment and subsequent removal from office. However, the final stylistic touches to the Constitution were applied by the Committee of Style. This Committee had no authority to alter the meaning of the carefully debated language, but could only impose a stylistic consistency through, among other things, the elimination of redundancy. In its zeal to streamline the text, the words ''against the United States'' were eliminated as unnecessary to the meaning of the passage.[24]

The weight of both authoritative commentary and the history of the Constitutional Convention combines to provide convincing proof that the Impeachment process was reserved for serious breaches of the constitutional order that threaten the country in a direct and immediate manner.

C. An Impeachable Offense is Not Limited to Criminal Liability or A Defined Offense

In the case before us, the President's Counsel wholly reject a longstanding understanding of Impeachment, by arguing that abuse of power is not an impeachable offense and by positing that ''the Framers restricted impeachment to specific offenses against 'already known and established law.' ''[25]

This assertion is clearly wrong. Article I, Section 3 of the United States Constitution provides that ''Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.''[26] As Delegate James Wilson wrote, ''impeachments, and offenses and offenders impeachable ''[do not come] within the sphere of ordinary jurisprudence. They are founded on different principles, are governed by different maxims, and are directed to different objects: for this reason, the trial and punishment of an offense on an impeachment, is no bar to a trial and punishment of the same offence at common law.''[27] The independence of the Impeachment process from the prosecution of crimes underscores the function of Impeachment as a means to remove a President from office, not only because of criminal behavior, but because the President poses a threat to the constitutional order. Criminal behavior is not irrelevant to an Impeachment, but it only becomes decisive if that behavior imperils the balance of powers established in the Constitution.

The assertion that an impeachable offense must be predicated on a criminal act goes against the well-established consensus of the legal community. For example, the argument by President's Counsel is undercut by the President's current Attorney General, William Barr. Mr. Barr wrote in a 2018 memo to the Department of Justice (DOJ) when he was still in private practice, that the President ''is answerable for any abuses of discretion and is ultimately subject to the judgment of Congress through the impeachment process [which] means that the president is *not* the judge in his own cause.''[28] As Mr. Barr makes clear, Impeachment does not need to be based on a crime.

Furthermore, the assertion that an impeachable offense must involve the violation of an ''already known or established'' law, even if not criminal, is not supported by the constitutional record. In advocating for the inclusion of Impeachment at the Constitutional Convention, James Madison made the case that the country must be protected against any number of abuses that a President could engage in and which might cause permanent damage to the country. Madison wrote that:

[It was] indispensable that some provision should be made for defending the Community [against] the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service, was not a sufficient security . . . He might pervert his administration into a scheme of peculation or oppression. He might betray his trust to foreign powers.[29]

Confining Impeachment to criminal or even codified offenses goes against the mainstream consensus on the meaning of ''high Crimes and Misdemeanors'' and would fail to capture the universe of harms to the constitutional order in which a President could engage.

D. Impeachment as a Remedy for Corrupting Foreign Influence

The Founders were also gravely concerned about the dangers of foreign influence corrupting our elections and interfering with the rule of law.[30] The United States was then a fledging union that had just gained independence from Britain, with help from the French during the American Revolution. As

such, the Founders rightly feared that foreign governments might try to exploit American politics in order to further their own interests. During the Constitutional Convention, Elbridge Gerry, a delegate from Massachusetts, warned that ''[f]oreign powers will intermeddle in our affairs, and spare no expence to influence them.'' [31]

The Founders were also acutely aware of the potential for public officials to betray their office to a foreign power, if the temptation were strong enough. Hamilton conceded in Federalist Paper No. 22 that ''[o]ne of the weak sides of republics, among their numerous advantages, is that they afford too easy an inlet to foreign corruption.'' [32] In Hamilton's view, when ordinary men are elevated by their fellow citizens to high office, they ''may find compensations for betraying their trust, which to any but minds animated and guided by superior virtue, may appear to exceed the proportion of interest they have in the common stock, and to over-balance the obligations of duty. Hence it is that history furnishes us with so many mortifying examples of the prevalency of foreign corruption in republican governments.'' [33]

E. Conclusion

Authoritative commentary on, together with the structure of, the Constitution makes it clear that the term, ''other high Crimes and Misdemeanors,'' encompasses conduct that involves the President in the impermissible exercise of the powers of his office to upset the constitutional order. Moreover, since the essence of Impeachment is removal from office, rather than punishment for offenses, there is a strong inference that the improper conduct must represent a continuing threat to the American people and the Constitution. It must be an episode that either cannot be dealt with in the Courts or that raises generalized concerns about the continued service of the President, as is the case presented here.

IV. STANDARD OF PROOF

In an Impeachment trial, each Senator has the obligation to establish the burden of proof he or she deems proper.[34] The Founding Fathers believed maximum discretion was critical for Senators confronting the gravest of constitutional choices.[35] Differentiating Impeachment from criminal trials, Alexander Hamilton argued, in Federalist Paper No. 65, that Impeachments ''can never be tied down by such strict rules . . . as in common cases serve to limit the discretion of courts in favor of personal security.'' [36] In this regard, Hamilton further distinguished Impeachment proceedings from a criminal trial by stressing that an impeached official would be subject to the established rules of criminal prosecution after Impeachment.[37]

During the Clinton Impeachment trial, I believed, as I do now, that the House Impeachment Managers bear the burden of proving their case.[38] In that trial, the House Impeachment Managers asserted that the Senators should reach a conclusion utilizing a beyond a reasonable doubt standard before voting to convict the President. The House Impeachment Managers, explicitly stated, ''none of us, would argue . . . that the President should be removed from office unless you conclude he committed the crimes that he is alleged to have committed.'' [39] I chose that standard of proof during that trial.[40] As I stated then, ''[h]ad the charges of th[at] case involved threats to our constitutional order not readily characterized by criminal charges, I would have been forced to further parse an exact standard. However, for all practical purposes, the Managers have themselves established the burden of proof in [the Clinton Impeachment] case.'' [41]

As the charges in this case against President Trump cut to the core of our constitutional order, I believe that I am now required to offer further analysis on which standard of proof to apply.

While the House Impeachment Managers in the current trial did not provide a single standard of proof required for conviction and removal, it was clear that the bar they set was quite high, which is appropriate. However, what exact constitutional standard should be used remains debatable. Practical concerns related to utilizing the Impeachment power should be considered when determining the standard of proof required. Too low of a standard may lead to removal, even if significant doubts exist. A ''. . . high 'criminal' standard of proof could mean, in practice, that a man could remain president whom every member of the Senate believed to be guilty of corruption, just because his guilt was not shown 'beyond a reasonable doubt.' '' [42]

When uncertain about the standard of proof to apply, it is worth reviewing the writings of eminent scholars. In doing so, I have found a closer approximation to what the standard should be in many Impeachment trials as compared to those used in general legal practice: '' '[o]verwhelming preponderance of the evidence' . . .'' [43] Yet, I believe that the severity of removing a President of the United States warrants an even higher bar. As such, a definition slightly modified, but modeled on that proposed standard, is more applicable: overwhelmingly clear and convincing evidence.

This standard more closely comports with historical analysis of the Founders' desire to separate criminal law and Impeachment, and the arguments made by scholars, while reflecting the serious constitutional harms alleged in the Articles of Impeachment before the Senate. Further, after review of substantive differences between the Articles of Impeachment that allege President Trump's dire and ongoing threat to our constitutional order and the Articles of Impeachment levied against President Clinton—which could be more readily applied by analogy to criminal law—a different standard is clearly warranted. In a future case, if Articles of Impeachment contain a set of facts or allegations not contemplated in either the Clinton Impeachment trial or in this case, I will likely have to revisit this analysis.

The Articles, embodied in H. Res. 755, accuse the President of abuse of power and obstruction of Congress. After reading the materials and hearing the arguments presented at trial, I conclude that the evidence presented at trial was more than compelling. Indeed, it was overwhelmingly clear and convincing. Having concluded that the charges of abuse of power and obstruction of Congress rise to the level of ''high Crimes and Misdemeanors,'' an analysis of the specific charges is necessary.

V. ARTICLE I: ABUSE OF POWER

Article I of House Resolution 755 provides that, in the conduct of his office, the President abused his presidential powers, in violation of his constitutional duty to take care that the laws be faithfully executed, through a scheme, or course of conduct, to solicit interference of a foreign government, Ukraine, in the 2020 U.S. presidential election for personal political gain. The scheme included President Trump soliciting the Government of Ukraine to publicly announce investigations that would influence the 2020 U.S. presidential election to his advantage and the disadvantage of a potential political opponent in that election. Article I provides further that President Trump, for corrupt purposes, used the powers of the Office in a manner that injured the vital national interests of the United States by harming the integrity of the democratic process and compromising U.S. national security. As I will further explain, the conduct described in Article I amounts to an abuse of power and shows that President Trump remains an ongoing threat to the national interest if allowed to remain in office.

A. Abuse of Power Is an Impeachable Offense

A cardinal American principle that emerged during the drafting of the Constitution is that no one is above the law. As discussed in the previous section, this principle was a chief subject of debate at the Constitutional Convention. The Framers understood that power corrupts and they would need to build guardrails to protect the public good from a would-be authoritarian. The Framers were reacting to the overreach of King George III.

Yet, the President's Counsel argue that Impeachment is not an appropriate remedy for abuse of power, arguing that the Framers were not concerned about violations of the public trust. The President's Counsel instead argue that the Framers were primarily concerned about an Executive that would be beholden to a heavy-handed legislature. Indeed, during the debates at the Constitutional Convention, this fear was raised by opponents of Impeachment. Rufus King, a delegate from Massachusetts, said ''[impeachment by Congress] would be destructive of his independence and of the principles of the Constitution. He relied on the vigor of the Executive as a great security for the public liberties.'' [44] Clearly, King's arguments did not carry the day.

In drafting the Constitution, the Framers had carefully calibrated the powers between Congress and the Executive. Ultimately, they decided that they could not leave the nation without any recourse against a President who would be in a unique and potent position to engage in any number of abusive acts. Without a mechanism to keep an out-of-control President in check, there was little binding him to the law. Hamilton underscored the importance of the Impeachment process for holding the President liable by drawing a contrast with the British monarchy, for whom ''there is no constitutional tribunal to which he is amenable.'' [45]

George Mason, a delegate from Virginia, underscores abuse of power as one of the key reasons for the need for presidential Impeachment, asking ''Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice?'' [46] Edmund Randolph, another delegate from Virginia, concurred, noting that ''[t]he Executive will have great opportunitys of abusing his power[,]'' and in such instances ''[g]uilt wherever found ought to be punished.'' [47]

The Framers debate on these matters was prescient, as public officials have, in fact, been found to have committed impeachable offenses including abuse of power. Most well-known, President Nixon resigned after the House Judiciary Committee (hereinafter known as ''Judiciary Committee'') found he had abused his powers on multiple occasions.[48] Three district judges were also impeached during the 20th century for abusing their power. In impeaching these judges, the House used ''abuse of power'' to describe misconduct ranging from the unlawful use of contempt of court, to the ordering of a jury to find a defendant guilty, to the improper appointing of an associate to an official position.[49]

In stark contrast to the positions of the Framers, the President's Counsel argue that a President who does something to benefit himself in a reelection, if he thinks it is in the nation's interest, has not committed an impeachable offense. This is not a credible argument because under this view, the President would have free reign to solicit foreign

interference, unlawfully withhold security assistance, use his powers to target his political opponents and engage in a whole host of corrupt conduct that might help him get reelected. This rings all too familiar of President Nixon when he said ''Well, when the *president does* it that means *that it is not illegal*.'' [50]

A.1. Definition of Abuse of Power

Black's Law Dictionary defines ''abuse of power'' as including ''The misuse or improper exercise of one's authority; esp., the exercise of a statutorily or otherwise duly conferred authority in a way that is tortious, unlawful or outside its proper scope.'' [51]

In its Impeachment inquiry of President Richard Nixon, the Judiciary Committee found the President repeatedly abused his power while in office.[52] Among its findings, the Judiciary Committee determined that President Nixon unlawfully directed or authorized federal agencies, including the Internal Revenue Service and the Federal Bureau of Investigation, to investigate and surveil American citizens, and used the resulting information for his own political purposes.[53] The Judiciary Committee further found that Nixon then interfered with investigations into these and other actions to conceal his misconduct, and stressed that Nixon's actions in all of these instances ''served no valid national policy objective.'' [54]

The Judiciary Committee concluded that the ''conduct of Richard M. Nixon has constituted a repeated and continuing abuse of the powers of the presidency in disregard of the fundamental principle of the rule of law in our system of government. This abuse of the powers of the President was carried out by Richard M. Nixon, acting personally and through his subordinates, for his own political advantage, not for any legitimate governmental purpose and without due consideration for the national good.'' [55]

In the current Impeachment of President Trump, the Judiciary Committee has defined abuse of power as occurring ''when a President exercises the powers of his office to obtain an improper personal benefit while injuring and ignoring the national interest.'' [56]

From these sources, I have concluded that an abuse of power by a sitting President has the following three elements:

1) The use of official governmental power;

2) For personal or some other corrupt purpose;

3) Without due consideration for the national interest.

President Trump's conduct in soliciting foreign interference in the 2020 presidential election meets each of these elements of the charge of abuse of power. Moreover, the defenses put forth by the President's Counsel are substantively deficient when viewed in the context of the corrupt scheme conducted by President Trump through his personal attorney, Rudy Giuliani, starting in late 2018.

B. The Corrupt Scheme

President Trump engaged in a corrupt scheme to solicit foreign interference in the 2020 presidential election to tarnish his political rivals and bolster public perceptions of the legitimacy of his 2016 electoral victory. The corrupt scheme served to benefit the President in a personal, political manner, and was contrary to the national interest. President Trump repeatedly misused the powers of the presidency to increase pressure on Ukraine to further the corrupt scheme, including withholding a White House meeting and U.S. military assistance that the Ukrainians desperately need to counter Russia. This scheme continued even after a whistleblower exposed the President's efforts and even following the launch of the Impeachment inquiry by the House.

The scheme directed by the President comprised two separate efforts—both aimed to damage his political rivals and benefit his reelection prospects. The first effort was to get the Ukrainian government to announce an investigation into baseless accusations propagated by a Russian disinformation campaign,[57] that Ukraine interfered in the 2016 election to benefit President Trump's political rival, Hillary Clinton (hereinafter referred to as the ''2016 campaign theory''). The 2016 campaign theory comprised numerous unfounded allegations including that Ukraine colluded with the Democrats to influence the 2016 election and that the cybersecurity company Crowdstrike, falsely alleged to be owned by a Ukrainian oligarch, investigated the hack of the Democratic National Committee (DNC) computer infrastructure, and covered up evidence of Ukrainian culpability in the cyber-attack by hiding the servers from the FBI inside Ukraine.[58]

President Trump's fixation on the 2016 campaign theory appears to have been intended to change public perceptions of President Trump's connection to Russia, in the wake of the Intelligence Community assessment that Russia interfered in the 2016 election to support then candidate Trump,[59] and the Special Counsel's mandate including to review ''any links or coordination between the Russian government and individuals associated with the Trump campaign.'' [60] The Special Counsel noted ''several [of President Trump's] advisors recalled that the President . . . viewed stories about his Russian connections, the Russian investigations and the Intelligence Community assessment of Russian interference as a threat to the legitimacy of his electoral victory.'' [61] Further, in the spring of 2019, the Special Counsel affirmed the assessments of the Intelligence Community and concluded that while there was no direct conspiracy or coordination between the Kremlin and the Trump campaign, ''. . . the Russian government perceived it would benefit from a Trump presidency and worked to secure that outcome, and that the campaign expected it would benefit electorally from information stolen and released through Russian efforts . . .'' [62] In directing this effort of the scheme, the President was attempting to rewrite history by having a foreign power make statements to validate his allegations that it was Ukraine colluding with the Democrats rather than Russia interfering to benefit then candidate Trump and exonerate himself of any wrongdoing or ties to Russia.

In addition, the 2016 campaign theory sought to implicate the President's political rival in 2016, former Secretary of State Hillary Clinton. As Deputy Assistant Secretary George Kent testified, the President ''wanted nothing less than President [Zelensky] to go to [a] microphone and say investigations, Biden, and Clinton.'' He confirmed that ''shorthand'' for Clinton ''was 2016.'' [63]

The scheme also comprised a second effort to get the Ukrainian government to announce an investigation into unfounded corruption allegations against former Vice President Joe Biden and his son Hunter Biden (hereinafter referred to as ''Biden/Burisma theory''). The allegations associated with this theory surround Vice President Biden's successful pressuring of Ukrainian President Poroshenko to remove Ukrainian Prosecutor General Victor Shokin in 2016, who purportedly was investigating a Ukrainian energy company, Burisma, on whose board Hunter Biden served.[64] Vice President Biden is a potential presidential challenger to President Trump in the 2020 Presidential election and was viewed as a frontrunner during the spring and summer of 2019 when President Trump directed such efforts to further the scheme. The President needed to undercut Vice President Biden as a candidate to enhance his chances of reelection.[65]

Successfully pressuring the Ukrainian government to announce investigations into the 2016 campaign and Biden/Burisma theories was likely to garner the President several political benefits including help with his reelection efforts. As the House Impeachment Managers state in their trial memo:

Although these theories were groundless, President Trump sought a public announcement by Ukraine of investigations into them [2016/the Bidens] in order to help his 2020 reelection campaign. An announcement of a Ukrainian investigation into one of his key political rivals would be enormously valuable to President Trump in his efforts to win reelection in 2020—just as the FBI's investigation into Hillary Clinton's emails had helped him in 2016. And an investigation suggesting that President Trump did not benefit from Russian interference in the 2016 election would give him a basis to assert—falsely—that he was the victim, rather than the beneficiary, of foreign meddling in the last election. Ukraine's announcement of that investigation would bolster the perceived legitimacy of his Presidency and, therefore, his political standing going into the 2020 race.[66]

President Trump needed to obfuscate what was known and proven about Russian involvement on his behalf in the 2016 election to bolster the credibility of claims of Ukrainian Government involvement in the 2016 election and corruption allegations against Vice President Biden ahead of the 2020 election. By soliciting investigations into the 2016 campaign and Biden/Burisma theories, he sought to accomplish both of those goals.

Throughout this scheme, which began in late 2018, President Trump employed Mr. Giuliani as his principal agent,[67] and enlisted several U.S. government officials to assist with efforts to compel Ukrainian officials to launch investigations into these baseless theories.

Mr. Giuliani involved associates in this scheme, including Lev Parnas and Igor Fruman, both of whom have been indicted in the Southern District of New York for conspiracy to violate election laws.[68] Mr. Parnas and Mr. Fruman leveraged their Ukrainian connections to facilitate contacts between Mr. Giuliani and then Ukrainian Prosecutor General Yuriy Lutsenko and his predecessor Victor Shokin to advance the scheme. Both Mr. Lutsenko[69] and Mr. Shokin[70] were removed from their positions under a cloud of corruption.

The corrupt Ukrainian Prosecutors General Lutsenko and Shokin were among Mr. Giuliani's sources for the unfounded allegations in support of the 2016 campaign and Biden/Burisma theories. During a January 2019 call via Skype,[71] Mr. Shokin asserted he had overseen the investigation into Burisma.[72] Mr. Shokin alleged that Vice President Biden forced his resignation to stop further investigation into Burisma and cover up wrongdoing.[73] He made additional allegations including that he had wanted to come to the United States to share information regarding corruption at the Embassy, and that U.S. Ambassador to Ukraine Marie Yovanovitch denied him a U.S. visa because she was close to Vice President Biden.[74] Mr. Shokin later provided an affidavit espousing allegations against Vice President Biden, which explicitly stated that his sworn statement was made at the behest of a pro-Putin Ukrainian oligarch.[75]

Also, in January 2019, Mr. Giuliani met in New York with Yuriy Lutsenko, who was then the Ukrainian Prosecutor General. During these initial conversations with Mr.

Giuliani, Mr. Lutsenko made multiple allegations that Ukrainian government officials interfered in the 2016 election to help Democratic candidate Hillary Clinton. He also made allegations about corrupt practices at Burisma and raised the possibility that there could have been improper payments to Hunter Biden. In addition, Mr. Lutsenko made false allegations against U.S. Ambassador to Ukraine Marie Yovanovitch.''[76]

Using these unfounded allegations, Mr. Giuliani launched a disinformation campaign on traditional and social media. In the spring of 2019, Mr. Giuliani and his associates worked with columnist John Solomon, who wrote a series of articles in *The Hill*, amplifying the false allegations of Mr. Lutsenko and Mr. Shokin.[77] Through these columns and a related interview, Mr. Lutsenko announced he was opening investigations into aspects of both the 2016 campaign and Biden/Burisma theories.[78] The President,[79] his son Donald Trump Jr.,[80] and Mr. Giuliani[81] amplified the false allegations by retweeting the articles. President Trump[82] and Mr. Giuliani[83] also repeated the false allegations contained in *The Hill* articles during press interviews.

In furtherance of the corrupt scheme, President Trump directed the removal of Ambassador Yovanovitch. As laid out in the Statement of Material Facts by the House Impeachment Managers, ''the removal of Ambassador Yovanovitch was the culmination of a months-long smear campaign waged by the President's personal lawyer, Rudy Giuliani, and other allies of the President. The President also helped amplify the smear campaign.''[84] Ambassador Yovanovitch testified she was told her removal from post was not for cause.[85] Mr. Giuliani later admitted he ''believed that [he] needed Ambassador Yovanovitch out of the way'' because ''[s]he was going to make the investigations difficult for everybody.''[86] Documents obtained by the House Permanent Select Committee on Intelligence further confirm that the Ambassador's firing was part of the effort to further the corrupt scheme. A text message from Ukrainian Prosecutor General Lutsenko warned Giuliani associate Lev Parnas that if they didn't fire Ambassador Yovanovitch, ''you are bringing into question all my allegations including about ''B.''[87] Mr. Parnas confirmed in a press interview that the ''B'' referred to Hunter Biden.[88]

As previously discussed, both the 2016 campaign and Biden/Burisma theories are unfounded. The 2016 campaign theory is an active Russian disinformation campaign.[89] On December 9, 2019, FBI Director Christopher Wray stated, ''We have no information that indicates that Ukraine interfered with the 2016 presidential election.''[90]

Further, the President's own national security officials have rejected the claim that the Ukrainian government systematically interfered in the 2016 election, including refuting the theory that Ukraine was behind the hack of the DNC servers.[91] Trump Homeland Security adviser Tom Bossert stressed, ''[t]he DNC server and that conspiracy theory has got to go, they have to stop with that, it cannot continue to be repeated . . . in our discourse.''[92]

With regards to the Biden/Burisma theory, no proof of any wrongdoing has been made to support this claim.[93] No evidence has been presented showing Vice President Biden specifically discussed Burisma with then President Poroshenko in relation to the removal of the corrupt Prosecutor General. Furthermore, U.S. diplomats, such as Former Special Envoy to Ukraine Ambassador Kurt Volker defended Vice President Biden's actions. In his closed interview with the House Committees, Volker stated, ''There is clear evidence that Vice President Biden did indeed weigh in with the President of Ukraine to have Shokin fired but the motivations for that are entirely different from those contained in that allegation.''[94] Vice President Biden, acting as the point person for Ukraine policy in the Obama Administration, was representing the interests of the United States and the international community,[95] promoting increased transparency, corruption reform, and the rule of law.[96] Vice President Biden's public statements from the time reflect such efforts, focusing on combatting corruption and institutional reform rather than specific companies, such as Burisma.[97]

The President's Counsel made misleading assertions that U.S. Government officials warned the Vice President of the appearance of wrongdoing in an attempt to convince him to take corrective action. One person they cited was Amos Hochstein, a diplomat who served in the Obama Administration.[98] Mr. Hochstein did raise the matter with the Vice President but did not recommend that Hunter Biden resign from the board of Burisma.[99]

By mid-May 2019, Mr. Lutsenko publicly recanted previous allegations he made to Mr. Giuliani, including admitting that he had no evidence of wrongdoing by Vice President Biden or Hunter Biden.[100] Ambassador Volker explained Mr. Lutsenko's motivations for making these baseless accusations, ''My opinion of Prosecutor General Lutsenko was that he was acting in a self-serving manner, frankly making things up, in order to appear important to the United States, because he wanted to save his job.''[101]

At no point during the trial did the President's Counsel dispute the facts surrounding the scheme. The record is clear that the President directed the corrupt scheme to solicit investigations into the 2016 campaign and Biden/Burisma theories for his personal political gain.

C. President Trump's Misuse of his Office to Advance the Corrupt Scheme

President Trump used the powers of his office to advance the corrupt scheme through multiple efforts, violating the public trust and placing his own personal political interests above the interests of the nation. In doing so, the President abused the power of his office.

C.1. President Trump Solicited Ukrainian President Zelensky to Open Investigations into the 2016 Campaign and Biden/Burisma Theories

President Trump abused the powers of his office in order to advance the corrupt scheme by attempting to leverage the Ukrainian desire for an Oval Office meeting and U.S. security assistance as a quid pro quo for Ukrainian investigations into his political opponents that would benefit his reelection in 2020. Starting in May 2019, President Trump directed a sustained campaign to solicit newly-elected Ukrainian President Zelensky to undertake investigations into the 2016 campaign and Biden/Burisma theories.

C.1.a. President Trump conditioned an Oval Office meeting on investigations into the 2016 campaign and Biden/Burisma theories

President Trump's misuse of his official powers, with regard to this matter, began shortly after Volodymyr Zelensky won the Ukrainian presidential election on April 21, 2019. In early May, Mr. Giuliani announced that he planned to travel to Ukraine to meet with President-elect Zelensky ''to urge him to pursue inquiries'' into ''the origin of the Special Counsel's investigation into Russia's interference in the 2016 election'' and Hunter Biden's ''involvement'' in Burisma.[102] Mr. Giuliani admitted that he was not conducting ''foreign policy'' but rather ''meddling in an investigation,''[103] and that President Trump was aware of his activities.[104]

In trying to arrange a meeting with President Zelensky, Mr. Giuliani was acting in a private capacity, not as a public official or to advance official U.S. policy. On May 10, 2019, Mr. Giuliani wrote to then President-Elect Zelensky, to request a meeting in his capacity as ''personal counsel to President Trump and with his knowledge and consent.''[105] Mr. Giuliani made clear in the letter he was representing Donald Trump as a private citizen, not as President of the United States. While the letter did not state the purpose of the requested meeting, Mr. Giuliani stated publicly on the same day that he intended to tell President Zelensky to pursue investigations into the 2016 campaign and Biden/Burisma theories.[106] Then on May 11th, Mr. Giuliani abruptly cancelled his trip to Ukraine, declaring that President-Elect Zelensky had surrounded himself with ''enemies of the President'' (referring to President Trump).[107]

President Trump intertwined Mr. Giuliani's private mission and the activities of public officials when he directed U.S. officials to aid his personal attorney in advancing this scheme. At a May 23rd meeting in the Oval Office, President Trump was briefed by Ambassador Paul Volker, Ambassador Gordon Sondland, and Secretary of Energy Rick Perry, who would subsequently describe themselves as the ''Three Amigos,'' (hereinafter referred to as the ''Three Amigos'') on their recent trip to attend the inauguration of President Zelensky.[108] Witness testimony indicates that despite their positive assessments about President Zelensky, President Trump was unconvinced, and replied that the Ukrainians tried to ''take me down'' in 2016, referring to the debunked 2016 campaign theory.[109] The President resisted the recommendation of the Three Amigos to invite President Zelensky to the White House, and instead repeatedly directed these three officials to ''talk to Rudy.''[110] Ambassador Sondland testified that he understood this to refer to Mr. Giuliani and that ''if we did not talk to Rudy, nothing would move forward on Ukraine.''[111] Ambassador Sondland further explained that they chose to follow the President's direction to communicate with Mr. Giuliani, not because they liked it, but because ''it was the only constructive path open to us.''[112]

The Three Amigos frequently operated outside regular diplomatic channels between the United States and Ukraine, but their activities were not a secret to the President's national security officials. Ambassador Bill Taylor, Charge d'affaires at the U.S. Embassy in Kyiv, described in his testimony how, while he operated in the regular channel of U.S. policymaking regarding Ukraine, beginning on May 23rd there emerged ''an irregular, informal channel,'' consisting of Special Envoy Volker, Ambassador Sondland, Secretary Perry, and Mr. Giuliani.[113] As Ambassador Sondland testified, ''everyone was in the loop,''[114] further clarifying that President Trump, Secretary Pompeo, Mr. Giuliani, and Acting Chief of Staff Mick Mulvaney were kept informed of the activities undertaken by the Three Amigos. Fiona Hill, National Security Council Director for European and Russian Affairs, concluded that Ambassador Sondland was correct that he was keeping the relevant officials informed of his activities because he was ''involved in a domestic political errand'' while she and other government officials were conducting U.S. national security foreign policy, and ''those two things had just diverged.''[115]

The purpose of these two channels diverged as well: while the career diplomats were engaged in promoting U.S. national security

interests in supporting Ukraine in its fight against Russian aggression, the irregular channel was engaged in pursuing a quid pro quo to secure Ukrainian investigations into the 2016 campaign and the Biden/Burisma theories for the benefit of the President's 2020 reelection. At the direction of the President, as conveyed through Mr. Giuliani and Acting White House Chief of Staff Mick Mulvaney, the Three Amigos pursued a quid pro quo—the offer of a politically valuable Oval Office meeting with President Trump in exchange for President Zelensky announcing the desired investigations. Ambassador Sondland testified ''Mr. Giuliani's requests were a quid pro quo for arranging a White House visit for President Zelensky.'' [116]

The evidence shows that by early July, the message was conveyed to Ukrainian officials that investigations were a prerequisite for their desired White House meeting. Ambassador Volker testified that when the Oval Office meeting was not scheduled by late June, he ''came to believe that the President's long-held negative view toward Ukraine was causing hesitation in actually scheduling the meeting.'' [117] At a bilateral meeting in Toronto in early July, Ambassador Volker testified that he told alerted President Zelensky that he couldn't get a date scheduled for the White House meeting. Ambassador Volker relayed to President Zelensky, ''I think we have a problem here, and that problem being the negative feed of information from Mr. Giuliani.'' [118] Ambassador Volker further testified that during the Toronto meeting, he specifically mentioned investigations into ''2016'' election and ''Burisma'' with President Zelensky.[119] Soon after this warning, President Zelensky's close aide Andriy Yermak asked to be connected with Mr. Giuliani.[120]

The President's conditions for securing a White House meeting were communicated an additional time, during a July 10, 2019, bilateral meeting led by then National Security Adviser John Bolton and then Ukrainian National Security Adviser Oleksandr Danylyuk. During the meeting, the Ukrainian delegation raised their desire to have a White House meeting.[121] NSC official Hill testified that Ambassador Sondland, who was in attendance at the meeting, responded to the Ukrainian request by stating, ''We have an agreement that there will be a meeting, if specific investigations are put under way.'' [122] NSC official Lt. Col. Vindman testified that during that afternoon's meetings with the Ukrainian delegation, Ambassador Sondland ''emphasized the importance of Ukraine delivering the investigations into 2016 elections, the Bidens and Burisma.'' [123] Later, Ambassador Sondland told Dr. Hill that there was agreement with Mr. Mulvaney that there would be a White House meeting with President Zelensky ''in return for investigations.'' [124] According to Dr. Hill, Ambassador Bolton was so alarmed that he told her to inform the lawyers about what happened in the meeting, adding that he was not be part of ''whatever drug deal that Mulvaney and Sondland are cooking up.'' [125]

C.1.b. President Trump withheld military assistance

President Trump also used the powers of his office to order, through the Office of Management and Budget (OMB), the withholding of congressionally appropriated security assistance to Ukraine. The evidence shows that the President fixated on a June 19, 2019 article in the *Washington Examiner* announcing the release of Ukraine security assistance as an additional leverage point to further the corrupt scheme.[126] By no later than July 12, 2019,[127] President Trump ordered a hold on $391 million in security assistance for Ukraine, consisting of $250 million in Department of Defense Ukraine Security Assistance Initiative (USAI) funding and $141 million in State Department Foreign Military Financing (FMF). At an interagency meeting on July 18, 2019, a week before the Trump-Zelensky phone call, OMB officials instructed relevant U.S. government departments and agencies to withhold obligation of the Ukraine security assistance at the direction of the President.[128] According to multiple witnesses, OMB did not provide a reason for the President's hold on the Ukraine aid.[129] OMB maintained this hold on Ukraine security assistance through September 11th, when OMB lifted the hold, again without providing a rationale for the change of course.[130]

The President's Counsel claim that the President's hold on security assistance was because of a policy difference, but that claim is not supported by the evidence. The manner in which the White House placed the hold on security assistance for Ukraine differed significantly from the process in which holds of assistance to other countries based on policy considerations had previously occurred. As the House Impeachment Managers stated, ''What the President did is not the same as routine withholding of foreign aid to ensure that it aligns with the President's policy priorities or to adjust with geopolitical developments.'' [131] The President began asking about the hold based on the announcement of the release of funds, after the Department of Defense had certified that the Ukrainian government made progress on corruption reform, showing that the hold was not placed due to policy considerations. Further, no geopolitical circumstances had changed in that timeframe to warrant the placing of a hold on security assistance funds to Ukraine.

In addition, despite substantial evidence that U.S. government officials were deeply concerned about conflicts with the Impoundment Control Act (ICA), there was no notification of the delay to Congress as required by this law, belying the idea that the President harbored legitimate concerns about policy.[132] Congress has an established bipartisan record of robust support for Ukraine. Since 2014, the United States has provided more than $3.5 billion in foreign assistance to Ukraine: $1.96 billion in military and other security assistance and $1.6 billion in political aid to Ukraine, all illustrating a policy that support to Ukraine furthers U.S. national security interests.[133] Interagency conversations while the hold was in place reflected concerns that withholding the funds would in fact violate the ICA,[134] yet there were no plans to notify Congress or rescind the funds as required by under the ICA. Further, when OMB official Mike Duffey directed Acting DOD Comptroller Elaine McCusker to formally hold the assistance for Ukraine, he added, ''Given the sensitive nature of the request, I appreciate your keeping that information closely held to those who need to know to execute the direction.'' [135] The secrecy maintained by Administration officials regarding the hold on this security assistance differs significantly from past practice and supports the inference that they were aware that the hold was contrary to U.S. policy and that they had no legitimate policy justification for a change in U.S. policy.

In withholding the security assistance for Ukraine, the President violated his duty to faithfully execute the laws. Congress enacted the ICA in 1974 as one of many responses to the abuses of President Nixon in order to require the President to obligate funds appropriated by Congress, unless Congress otherwise authorizes the withholding.[136] The ICA provides the President with narrowly circumscribed authority to withhold, or ''impound,'' appropriated funds only in limited, specified circumstances, and included a requirement to inform Congress. At no point did the Trump Administration either assert that it was impounding the Ukraine security assistance or inform Congress of any deferral or rescission of funds. In reviewing the OMB's withholding of funds appropriated to the Department of Defense for Ukraine security assistance, the Government Accountability Office concluded that OMB violated the ICA.[137]

C.1.c. *President Trump conditioned a White House meeting and Ukrainian security assistance on investigations*

The House Impeachment Managers' record demonstrates overwhelmingly that President Trump conditioned both a White House meeting and nearly $400 million in U.S. security assistance for Ukraine on a commitment by President Zelensky to conduct investigations for the personal political benefit of Donald Trump. The President's scheme to secure corrupt investigations to benefit his reelection efforts converged with his official duties during a July 25, 2019, phone call with President Zelensky. The President's actions during that phone call, understood in the context of the broader corrupt scheme, are compelling evidence that the President solicited foreign interference in U.S. elections.

The President's own words during the July 25th call, as summarized in a memorandum of telephone conversation released by the White House, demonstrate the President's demand for a quid pro quo.[138] Far from showing the ''perfect call'' that President Trump claims,[139] the memorandum of the telephone conversation makes clear that the President solicited politically-motivated investigations from President Zelensky in exchange for a White House meeting and U.S. military aid. When the Ukrainian President indicated he would be seeking additional U.S. military arms that Ukraine desperately needed for its conflict with Russia, President Trump responded by requesting that President Zelensky do him ''a favor though.'' [140] The memorandum of the telephone conversation makes clear that the favor President Trump sought as a condition for future military aid was the two investigations into the 2016 campaign and the Biden/Burisma theories. President Trump went on to espouse many of the allegations associated with the debunked 2016 campaign theory, including ''Crowdstrike,'' and ''one of your wealthy people,'' falsely insinuating that a Ukrainian oligarch owned the cybersecurity firm that investigated the DNC hack.[141] He then alleged that Ukraine has the server and added, ''. . . They say a lot of it started in Ukraine. Whatever you can do, it's very important that you do it. . .'' [142] Later in the phone call, President Trump mentioned ''the other thing'' he wanted investigated, declaring that there was ''a lot of talk about'' Vice President ''Biden's son,'' and that Vice President ''Biden stopped the prosecution.'' [143] President Trump told President Zelensky, ''A lot of people want to find out about that, so whatever you can do with the Attorney General would be great.'' [144] In addition, it must be noted President Trump specifically urged President Zelensky to call Mr. Giuliani, as well as Attorney General Barr,[145] regarding investigations into the 2016 campaign and Biden/Burisma theories.[146] Given all of the steps taken by Mr. Giuliani leading up to the call, including his letter to President Zelensky and public statements urging President Zelensky to undertake investigations into the 2016 campaign and Biden/Burisma theories, it is clear that President Trump was signaling that he wanted these investigations.

The President's Counsel disputed the notion that there was a quid pro quo by claiming that President Zelensky was not aware

of an arrangement and he felt no pressure during the July 25th phone call. However, evidence shows that the President's surrogates prepped President Zelensky ahead of the call to say that he would conduct investigations into the 2016 campaign and Biden/Burisma theories in order to get a White House meeting. Ambassadors Volker and Sondland had multiple exchanges with President Zelensky and his aide Mr. Yermak ahead of the call. Ambassador Volker, after having breakfast with Mr. Giuliani, told Ambassador Taylor and Ambassador Sondland via text, ''Most important is for Zelensky to say that he will help with investigation.'' [147] That same day, Ambassador Sondland directed President Zelensky to tell President Trump, he would ''run a fully transparent investigation and turn over every stone,'' [148] which he indicated in testimony referred to the ''Burisma and the 2016'' investigations.[149] The morning of the July 25th call, Ambassador Sondland spoke to President Trump and then alerted Ambassador Volker to contact him.[150] Approximately a half hour later, Ambassador Volker texted Zelensky aide Mr. Yermak, ''Heard from White House—assuming President Z[elensky] convinces Trump he will investigate/ 'get to the bottom of what happened' in 2016, we will nail down a date for a visit in Washington.'' [151]

The memorandum of the telephone conversation shows that President Zelensky understood the messages that he was told to convey during the call and followed those instructions. During the call, President Zelensky said to President Trump, ''I also wanted to thank you for your invitation to visit the United States, specifically Washington D.C. On the other hand, I also want to ensure you that we will be very serious about the case and will work on the investigation.'' [152] Lt. Col. Vindman testified that aspects of the call, including President Zelensky bringing up Burisma, suggested that he was ''prepped'' for this call.[153] President Zelensky knew what ''favor'' President Trump was asking for as a condition for receiving the White House meeting.

C.1.d. *The actions of Administration officials following the July 25th phone call demonstrate that the President conditioned U.S. military aid to Ukraine and the White House meeting on President Zelensky announcing the investigations into the 2016 campaign and Biden/Burisma theories*

The President's Counsel allege that there is no evidence that the President conditioned U.S. military aid for Ukraine or the White House meeting on a commitment by President Zelensky to announce investigations into the 2016 campaign and Biden/Burisma theories. The President's Counsel assert that any claims that President Trump made any such linkage, particularly relating to the military assistance, are unsupported and based on second or third-hand sources and speculation. They claim that no one with first-hand knowledge of the President's thinking came forward and testified that he conditioned the delivery of these official acts for Ukraine on the investigations. These claims are both disingenuous and wrong.[154]

Furthermore, the actions of Administration officials after the July 25th phone call make clear President Trump's request was a quid pro quo. Approximately 90 minutes after the call, OMB official Mike Duffey directed Acting DoD Comptroller McCusker to formally hold the Department of Defense security assistance for Ukraine.[155]

In addition, conversations on July 26, 2019, detail that President Trump appeared solely focused on whether efforts to pressure President Zelensky to initiate the investigations had been successful. On July 26th, the day after the phone call between Presidents Trump and Zelensky, Ambassador Sondland called President Trump from Kyiv. According to testimony from David Holmes, Counselor for Political Affairs at the U.S. Embassy who overheard the phone call, President Trump asked Ambassador Sondland, ''So he's going to do the investigation?'' referring to the 2016 campaign and Burisma/Biden theories.[156] Holmes also testified that he asked Ambassador Sondland that same day if President Trump cared about Ukraine. Sondland responded that President ''Trump only cared about 'big stuff' that benefits the President, like the 'Biden investigation' that Mr. Giuliani was pushing.'' [157]

Most telling, President Trump's Acting Chief of Staff Mick Mulvaney publicly admitted at a press conference on October 17th that withholding the security assistance for Ukraine provided leverage to convince Ukraine to investigate the source of the hack of the DNC servers in 2016, an aspect of the 2016 campaign theory.[158] Mr. Mulvaney confirmed that President Trump ''[a]bsolutely'' raised ''corruption related to the DNC server'' and added that was part of ''why we held up the money.'' [159] When a reporter pointed out that he had just described a quid pro quo, Mr. Mulvaney stated, ''We do that all the time with foreign policy'' and told everyone to ''Get over it. There's going to be political influence in foreign policy.'' [160]

Despite the assertions of the President's counsel, evidence indicates that the Zelensky Administration knew that there was a problem with the security assistance well before the hold was reported publicly on August 28, 2019.[161] The same afternoon of the July 25th phone call, Department of Defense officials learned that diplomats at the Ukrainian Embassy in Washington had made multiple overtures to the Pentagon and the State Department ''asking about security assistance.'' [162] Separately, during that same time frame, two different officials at the Ukrainian Embassy contacted Ambassador Volker's special assistant, Catherine Croft, to ask her in confidence about the hold.[163] In early August 2019, the Ukrainians reportedly made further inquiries about the security assistance funds.[164] The message sent back was that the holdup was not bureaucratic in nature, and that to address it they were advised to reach out to Mick Mulvaney.[165] NSC official Lt. Col. Vindman testified that by mid-August 2019, he had also received inquiries about the hold on the security assistance from an official at the Ukrainian Embassy.[166]

Evidence and reporting regarding the President's interactions with then National Security Adviser John Bolton further confirms that the President held security assistance in order to further the corrupt scheme. On August 16, 2019, Ambassador Bolton reportedly made a personal appeal to President Trump to release the security assistance for Ukraine and was ''rebuffed.'' [167] NSC official Tim Morrison affirmed this account in his testimony. Mr. Morrison testified that Ambassador Bolton said President Trump, ''wasn't ready'' to release the aid.[168] According to news reports that emerged during the Impeachment trial, an account from Ambassador Bolton's forthcoming book reportedly makes this link even more explicit.

Ambassador Bolton stated during the August meeting, President Trump ''appeared focused on the theories Mr. Giuliani had shared with him, replying to Mr. Bolton's question that he preferred sending no assistance to Ukraine until officials turned over all materials they had about the Russia investigation that related to Mr. Biden and supporters of Mrs. Clinton in Ukraine.'' [169]

The record also shows that after the July 25th Trump-Zelensky phone call, President Trump directed a campaign to increase the pressure in furtherance of the scheme. Starting in early August, Ambassadors Volker and Sondland, in coordination with Mr. Giuliani, attempted to get President Zelensky to publicly announce investigations into the 2016 campaign and Biden/Burisma theories.[170] Ambassadors Volker and Sondland worked in conjunction with President Zelensky's aide Mr. Yermak to generate an acceptable statement.[171] After the initial Ukrainian draft of the statement contained only a general commitment from President Zelensky to fight corruption, Ambassadors Volker and Sondland consulted Mr. Giuliani who responded that if the statement ''doesn't say Burisma and 2016, it's not credible.'' [172] Ambassador Volker then revised President Zelensky's draft statement to include specific references to ''Burisma'' and ''the 2016 U.S. elections.'' [173] No statement was ever released by President Zelensky, and Ambassador Volker testified that it was because the Ukrainians realized that making such a statement was tantamount to a quid pro quo.[174]

Furthermore, witness testimony shows that as the hold on the security assistance continued through the late summer, U.S. government officials realized the connection between the hold and the President's desire for Ukrainian announcements of investigations into President Trump's political rivals. By early September, Ambassador Taylor said his ''clear understanding'' was that President Trump would withhold security assistance until President Zelensky ''committed to pursue the investigations.'' [175] Ambassador Taylor further testified that his contemporaneous notes reflect that President Trump wanted President Zelensky ''in a box by making [a] public statement about ordering such investigations.'' [176] Ambassador Sondland explained to Ambassador Taylor that ''everything'' (the Oval Office meeting and security assistance) ''was dependent on the Ukrainian government announcing the political investigations.'' [177] Ambassador Taylor responded to Ambassador Sondland that he thought it was ''crazy to withhold security assistance for help with a political campaign.'' [178] Foreign Service Officer David Holmes testified that his ''clear impression'' around the same time was that ''the security assistance hold was likely intended by the President either to express dissatisfaction with the Ukrainians who had not yet agreed to the Burisma/Biden investigations, or as an effort to increase the pressure on them to do so.'' [179]

Once the hold on the security assistance was reported in the press in late August 2019, the conditions for releasing the assistance were soon overtly communicated to President Zelensky. President Trump's surrogates informed President Zelensky and his aides that the security assistance was held up as a result of President Zelensky's unwillingness to announce the investigations into President Trump's political rivals. These directions came from the President.[180] Ambassador Sondland testified that he had passed a message directly to President Zelensky's aide Mr. Yermak on September 1, 2019, that, ''I believed that the resumption of U.S. aid would not likely occur until Ukraine took some kind of action on the public statement that we had been discussing for weeks.'' [181] Affirming this account, Ambassador Taylor testified that Ambassador Sondland told him he had warned President Zelensky and Mr. Yermak that, ''although this was not a quid pro quo, if President Zelensky did not clear things up in public, we would be at a stalemate.'' [182] President Zelensky apparently understood the message because arrangements were made for the Ukrainian President to go on CNN to announce the investigations.[183]

The President's Counsel argue that there could not have been a quid pro quo because

the Ukrainians ultimately got the funding without making the commitment to conduct the investigations. Essentially, they argue ''no harm, no foul.'' However, the President's solicitation of the politically-motivated investigations in exchange for official acts is in and of itself an abuse of his office and the public trust. Further, President Trump released the hold on the security assistance only after a whistleblower's complaint had been provided to Congress and three House committees had initiated an investigation into the hold. On August 12, 2019, a whistleblower filed a complaint with the Intelligence Community's Inspector General, which stated multiple U.S. government officials had told him or her information indicating that the ''President of the United States is using the power of his office to solicit interference from a foreign country in the 2020 U.S. election.'' [184] The complaint cited the July 25th call between Presidents Trump and Zelensky, the placing of the call on a codeword server, and other circumstances surrounding the call including the role of Mr. Giuliani.[185] The President was reportedly briefed by White House Counsel on the existence of a whistleblower complaint in late August.[186] On September 9, 2019, the whistleblower complaint was referred to Congress.[187] On the same day, the House Permanent Select Committee on Intelligence, the House Committee on Oversight and Government Reform, and the House Committee on Foreign Affairs opened an inquiry into the circumstances surrounding the hold.[188] The President subsequently lifted the hold on September 11, 2019.[189]

Moreover, the corrupt scheme did not end even after the House Committees began the Impeachment Inquiry. Mr. Giuliani, at the direction of the President, has continued to travel to Ukraine to generate compromising material on President Trump's political opponents,[190] raising the possibility of future attempts by President Trump to pressure foreign leaders to interfere in the 2020 election.

Consistent with the first element delineated for abuse of power, the evidence clearly shows that President Trump misused his office to advance a corrupt scheme.

The fact that President Trump's actions involve the misuse of the office of the presidency distinguishes the current proceedings from the circumstances in the 1999 Clinton Impeachment trial. Based on the historical record, the constitutional standard I applied in the Clinton proceedings was that ''private wrongdoing, without a significant adverse effect upon the nation, cannot constitute an impeachable offense.'' [191] On that basis, I concluded that ''Citizens may well lack confidence in the ability of President Clinton to be honest about his personal life, this is not however a threat to our government.'' [192] The circumstances regarding President Trump can be distinguished both on the grounds that his actions involved the misuse of his public office, not private wrongdoing, and because the nature of President Trump's abuse of power is an ongoing threat to our systems of government and our constitutional order.

D. The President's Solicitation of Investigations by Ukraine into the 2016 Campaign and Biden/Burisma Theories Was for his Personal or Other Corrupt Purpose

The second element of the offense of abuse of power, as previously delineated, is the use of official governmental power for personal or some other corrupt purpose. The President's Counsel have argued that the President had legitimate policy reasons for withholding the Ukraine security assistance or the White House meeting. Specifically, the President's Counsel asserted that President Trump had longstanding concerns about corruption and burden-sharing by European allies in support of Ukraine. Upon careful review of the record, these assertions simply do not square with the facts. While there is some basis for the assertion that President Trump cared about these issues, they were not the basis for the withholding of Ukraine security assistance.

Evidence shows that President Trump's solicitation alarmed Administration officials who listened in to the July 25th call, and their concerns did not stem from policy differences. NSC official Lt. Col. Vindman testified that he was ''concerned'' about the call and ''did not think it was proper to demand that a foreign government investigate a U.S. citizen.'' [193] Vice Presidential aide Jennifer Williams, who also listened to the July 25th call, testified she found it, ''unusual because, in contrast to other Presidential calls I had observed, it involved discussion of what appeared to be a domestic political matter.'' [194] Ms. Williams was informed of the security assistance hold on July 3rd and stated that the call ''shed some light on possible other motivations behind a security assistance hold.'' [195] Lt. Col. Vindman and NSC official Tim Morrison were sufficiently concerned that they separately reported the contents of the call to NSC lawyers, Mr. Eisenberg and Mr. Ellis.[196] The President's lawyers, in turn, took steps to restrict access to the rough transcript of the call by placing it on a highly-restricted classified server.[197]

Furthermore, the President's Counsel's claim that security assistance for Ukraine was withheld over concerns about corruption is unfounded. On May 23, 2019, the Department of Defense certified to Congress that Ukraine had made progress on defense reform and anti-corruption measures. Congress required this certification under the National Defense Authorization Act in order to allow USAI funding to be provided beyond the first 50 percent of amounts authorized and appropriated for Ukraine military aid.[198] Furthermore, support for providing security assistance to Ukraine was unanimous among relevant agencies of the United States government. Deputy Assistant Secretary of Defense Laura Cooper testified that there was a consensus within the interagency that corruption was not a legitimate reason for the hold.[199] Ambassador Taylor affirmed Ms. Cooper's recollection that no agencies raised policy-related concerns as reason for the hold on security assistance testifying, ''At every meeting, the unanimous conclusion was that the security assistance should be reassumed, the hold lifted. At one point the Defense Department was asked to perform an analysis of the effectiveness of the assistance. Within a day, the Defense Department came back with the determination that the assistance was effective and should be resumed.'' [200]

Nor does the evidence support the claim that President Trump, himself, had concerns about institutional corruption that would lead him to withhold military assistance for Ukraine. There is no evidence that President Trump in his interactions with his Ukrainian counterpart, raised concerns about corruption. Indeed, corruption was not raised by President Trump during the two calls he had with President Zelensky,[201] despite that issue being included in his talking points prepared by NSC staff for both calls.[202] Further evidence that President Trump was not interested in institutional corruption in Ukraine came from Mr. Morrison, who listened to the July 25th call, and testified that President Trump did not make a ''full-throated endorsement of the Ukraine reform agenda that I was hoping to hear.'' [203]

Further, communications by U.S. diplomats to President Zelensky or other Ukrainian officials do not indicate that President Trump held Ukrainian security assistance due to concern about corruption in Ukraine. As discussed earlier, Ambassador Volker and Ambassador Sondland had multiple contacts with President Zelensky and his close aide Mr. Yermak ahead of the July 25th call. No evidence shows that President Zelensky was advised to outline steps he was taking to address corruption on the call.[204] Similarly, previously discussed diplomatic efforts in August focused on securing a public commitment by President Zelensky to investigate the 2016 campaign and Biden/Burisma theories specifically, and a commitment to pursue corruption generally was deemed insufficient to meet President Trump's request.[205]

The evidence also does not indicate that President Trump used official auspices to undertake a corruption investigation in furtherance of official U.S. government policy. If the President was interested in pursuing a particular corruption investigation with the Government of Ukraine, he could have done so through established diplomatic channels. The President could have directed his Attorney General to make an official request of Ukraine to initiate investigations into corruption under the existing Mutual Legal Assistance Treaty (MLAT) with Ukraine.[206] In this instance, President Trump did not take such action. Rather, in the July 25th call, President Trump asked President Zelensky to work with both his personal attorney, Mr. Giuliani, and Attorney General Barr to pursue investigations into his political rivals.[207] Further, supporting the idea that the President did not ask for any official investigations, the DOJ has denied knowledge of any such investigations, declaring that ''the President has not asked the Attorney General to contact Ukraine—on this [the July 25th call] or any other matter.'' [208] Additionally, Mr. Yermak asked Ambassador Volker to make any official request for investigations through formal channels,[209] but there is no evidence that the DOJ or officials at the US Embassy Kyiv followed up on that suggestion.[210] That the President did not go through regular inter-governmental channels supports the conclusion that his interest in Ukrainian investigations was for his personal political benefit and not legitimate policy considerations.

In addition, there is no evidence to support the claim that President Trump withheld Ukrainian military assistance out of concerns about European burden sharing. While President Trump may be skeptical about European contributions to mutual defense, European nations contribute significantly more foreign aid overall to Ukraine than the United States. The EU is the single largest contributor of foreign assistance to Ukraine, having provided €15 billion since 2014 versus $1.96 billion in security assistance that the United States has provided over that same time period.[211]

The rationale that the President withheld security assistance because he was concerned with Europe paying more to support Ukraine was not raised until well after the hold was placed on U.S. security assistance for Ukraine. Witness testimony indicates that the President began making inquiries about the aid on June 19, 2019,[212] and that all security assistance for Ukraine had been put on hold by July 12, 2019.[213] OMB official Mark Sandy testified that when the hold was ordered no explicit reason was provided.[214] Mr. Sandy further testified that it wasn't until September, after the hold became public, that a concern was expressed about European burden sharing.[215]

Nor is there evidence that the Trump Administration made any efforts publicly or privately to get additional contributions

from Europe while the aid was on hold. Mr. Sandy testified that he was not aware of any other countries committing to provide more financial assistance to Ukraine prior to the lifting of the hold on September 11th.[216]

Moreover, as the GAO decision makes clear, the President does not have the authority to withhold funding that Congress has appropriated for a specific purpose. The GAO determined ''the law does not permit the President to substitute his own policy priorities for those that Congress has enacted into law. OMB withheld funds for a policy reason, which is not permitted under the Impoundment Control Act (ICA). The withholding was not a programmatic delay. Therefore, we conclude that OMB violated the ICA.''[217]

The OMB continued to implement the President's hold on the Ukraine security assistance despite repeated warnings starting in early August from Department of Defense (DOD) officials that further delays risked violating the ICA.[218] The OMB-directed hold on the apportionment of funds continued even after DOD warned that it could no longer guarantee that the Department would be able to obligate the funds before the end of the fiscal year, a clear violation of the ICA.[219] Ultimately, DOD failed to execute $35 million of the $250 million obligated for USAI before the end of the fiscal year.[220]

The President's Counsel have failed to produce credible evidence to support the contention that the President withheld security assistance and an Oval Office meeting from Ukraine for legitimate policy reasons. Instead, an adverse inference can be drawn that the President had no legitimate policy basis for his actions. Further, the House Impeachment Managers have established that the President acted for his own personal benefit, specifically to advance the ongoing corrupt scheme to solicit foreign interference in the 2020 presidential election.

E. The President's Solicitation of Investigations into the 2016 Campaign and Biden/Burisma Theories was Without Due Consideration of U.S. National Interests

The final element of the offense of abuse of power, as previously delineated, is that the use of official power, for personal or some other corrupt purpose, is made without due consideration for the national interest. The evidence presented at the Senate trial makes clear that in using the powers of his office to withhold valuable U.S. security assistance and an Oval Office visit for the newly-elected Ukrainian President to advance a corrupt scheme to solicit foreign interference for his personal benefit, President Trump harmed the national interest of the United States. President Trump's efforts to leverage two official acts to advance a scheme to solicit foreign interference in the 2020 election is contrary to the national interests of the United States in a number of ways.

First and foremost, President Trump's misuse of the powers of his office threatened the heart of the constitutional order itself, potentially undermining our democratic process. By pressuring Ukraine to engage in election interference through the promotion of two unfounded theories, President Trump's conduct posed an urgent danger to the integrity of our constitutional system. If the history of the 2016 election can be rewritten at the President's direction to cast doubt on Russia's interference, it invites Russia and other adversaries to interfere again in the future knowing that there will be no consequences. Similarly, it risks distorting the integrity of our electoral process if the President can leverage the power of the presidency to pressure foreign countries to commit their government resources to dig up ''dirt'' on his political opponents in order to benefit his reelection.

Second, President Trump's corrupt scheme threatened U.S. national security objectives by advancing a Russian disinformation narrative that it was Ukraine, and not Russia, that interfered in the 2016 presidential campaign. The Intelligence Community unanimously assessed that ''Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the U.S. presidential election.''[221] That assessment of the Intelligence Community was affirmed by the bipartisan Senate Select Committee on Intelligence,[222] and the Special Counsel's investigation.[223]

The perpetuation and promotion of a Russian disinformation operation undermines U.S. efforts to protect our electoral institutions from Russian interference and to build the resilience of the American people against foreign interference. Former NSC official Dr. Fiona Hill underscored the importance of countering this Russian information warfare campaign when she testified before the House Intelligence Committee on November 21, 2019. She assessed:

The impacts of the successful 2016 Russian campaign remains evident today. Our nation is being torn apart. Truth is questioned. Our highly professional expert career Foreign Service is being undermined. U.S. support for Ukraine which continues to face armed Russian aggression is being politicized. The Russian Government's goal is to weaken our country, to diminish America's global role, and to neutralize a perceived U.S. threat to Russian interests. President Putin and the Russian security services aim to counter U.S. foreign policy objectives in Europe including in Ukraine, where Moscow wishes to reassert political and economic dominance.[224]

Third, the President's withholding of nearly $400 million in U.S. security assistance to Ukraine undermined U.S. national security objectives in the strategic competition with Russia, a central pillar of the Administration's own National Defense Strategy. NSC official Tim Morrison stressed that ''Ukraine is on the front lines of a strategic competition between the West and Vladimir Putin's revanchist Russia.''[225] He added, ''The United States aids Ukraine and her people so they can fight Russia over there, and we don't have to fight Russia here.''[226] Ambassador Taylor also testified on the importance of supporting Ukraine for U.S. national security interests. He stressed, ''One of our national security goals is to resolve conflicts in Europe'' and our aid to Ukraine is ''in support of a broader strategic approach to Europe . . .,'' and is ''to support Ukraine when it negotiates with the Russians.''[227]

Ambassador Taylor and other witnesses were particularly alarmed by the withholding of the security assistance because of its potential impact on Ukraine at a critical time in its conflict with Russia. As Ambassador Taylor testified, ''It's one thing to try to leverage a meeting in the White House. It's another thing, I thought, to leverage security assistance to a country at war, dependent on both the security assistance and the demonstration of support. It was much more alarming.''[228] Ambassador Taylor further underscored the harm from withholding vital aid for Ukraine: ''Security assistance was so important for Ukraine as well as our national interests, to withhold that assistance for no good reason other than help with a political campaign made no sense. It was counterproductive to all of what we had been trying to do. It was illogical. It could not be explained. It was crazy.''[229]

President Trump's actions also threatened to undermine one of Ukraine's greatest assets in its conflict with Russia, the bipartisan nature of support for Ukraine in the U.S. Congress. Ambassador Taylor advised President Zelensky's close aide Yermak, of the ''high strategic value of a bipartisan support for Ukraine and the importance of not getting involved in other country's elections.''[230] Ambassador Volker also emphasized the importance of the bipartisan support in Congress for U.S. policy toward Ukraine.[231]

Finally, the President's efforts to secure investigations into the 2016 campaign and Biden/Burisma theories undermined U.S. policy promoting the rule of law and fighting corruption, which included discouraging partner governments from launching politically-motivated investigations into domestic rivals. Deputy Assistant Secretary George Kent, former Deputy Chief of Mission in Ukraine, testified to the official U.S. policies in place in countries like Ukraine and Georgia, stating that ''having the President of the United States effectively ask for a political investigation of his opponent would run directly contrary'' to these efforts.[232] As Chairman Schiff restated on December 18, 2019:

On September 14 in Ukraine, when Ambassador Volker sat down with Andriy Yermak, the top adviser to Zelensky, and he did what he should do. He supported the rule of law, and he said: You, Andriy Yermak, should not investigate the last President, President Poroshenko, for political reasons. You should not engage in political investigations. And do you know what Yermak said: ''Oh, you mean like what you want us to do with the Bidens and the Clintons?[233]

Based on the above analysis, I find that there is overwhelmingly clear and convincing evidence that elements of abuse of power have been met and that President Trump is guilty on the first Article of Impeachment.

VI. ARTICLE II: OBSTRUCTION OF CONGRESS

Article II of House Resolution 755 provides that, in the conduct of his office, the President directed the unprecedented and categorical indiscriminate defiance of subpoenas issued pursuant to the House's ''sole Power of Impeachment.''[234] Article I provides further provides that President Trump's ordering the White House and other Executive Branch agencies and Executive Branch officials to defy House subpoenas sought ''to seize and control the power of impeachment . . . a vital constitutional safeguard vested solely in the House of Representatives.''[235] I will first explain how historical and case precedent proves that obstruction of Congress is an impeachable offense. Next, I will explain how, through his indiscriminate order, President Trump sought to vitiate and in fact, did undermine, the lawful authority of Congress. Finally, I will explain how each of the arguments that the President's Counsel put forward during the Impeachment Trial to justify the President's obstruction do not amount to a lawful cause or excuse.

A. Obstruction of Congress Is An Impeachable Offense

When any one branch of government seeks to obstruct an essential function of another branch, it threatens a central feature of our republic: the separation of powers.[236] In the case where a President seeks to derogate the authority of another branch, it can also undermine the President's constitutional obligation to ''take Care that the Laws be faithfully executed.''[237]

President Trump continues to thwart Congress' oversight and investigative powers, which are essential constitutional functions of the Legislative Branch. In *McGrain* v. *Daugherty*, the Supreme Court firmly established that such inquiry power is ''an essential and appropriate auxiliary to the legislative function'' and included the ability to seek and enforce demands for information.[238]

The need to comply with subpoena-backed requests for information, including in an Impeachment, has been explicitly stated. In *Kilbourn* v. *Thompson*, the Supreme Court held that, ''Where the question of such impeachment is before either [the House or Senate] acting in its appropriate sphere on that subject [of impeachment], we see no reason to doubt the right to compel the attendance of witnesses, and their answer to proper questions, in the same manner and by the use of the same means that courts of justice can in like cases.'' [239]

Part of Congress' broad oversight authority is the power to hold sitting presidents accountable for grave misconduct and abuses of public trust through Impeachment. Indeed, Article I, Section 2, Clause 5 of the U.S. Constitution gives the House of Representatives ''the sole Power of Impeachment.'' [240] However, an Impeachment inquiry can only be discharged through the cooperation of the governmental branch being investigated; only this branch can provide documents and witness testimony related to its own conduct. By refusing to provide any information, President Trump is trying to stop Congress from gathering relevant information and render the Impeachment process toothless.[241] As John Quincy Adams noted, it would make a ''mockery'' of the Constitution's Impeachment power for Congress to have the power to impeach but ''not the power to obtain the evidence and proofs on which their impeachment was based.'' [242]

The Judiciary Committee also confirmed that subverting the constitutionally vested powers of the Legislative Branch can be an impeachable offense, when it previously approved Articles of Impeachment charging President Richard Nixon with the failure to comply with duly authorized congressional subpoenas. The Judiciary Committee explained that:

In refusing to produce these papers and things, Richard M. Nixon, substituting his judgment as to what materials were necessary for the inquiry, interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, thereby assuming to himself functions and judgments necessary to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives.[243]

Based on the above historical and case precedent, I conclude that obstruction of Congress can be an impeachable offense. I also conclude that a sitting President commits obstruction of Congress by:

1) Contravening the lawful authority of the Legislative Branch;

2) By imposing the powers of the presidency;

3) Without lawful cause or excuse.

B. The House of Representatives Exercised Its Lawful Authority in the Impeachment Inquiry

As explained in Section V, Subsection A of this Memorandum, Congress has broad power to conduct oversight and issue demands for information, and is vested with the sole power to conduct Impeachment.

In this case, the House of Representatives was using both its lawful investigative and Impeachment authorities, when it issued lawful subpoenas leading up to and after the adoption of House Resolution 660 on October 31, 2019, which formalized the ongoing investigations into whether sufficient grounds existed for the House of Representatives to impeach President Donald John Trump.[244]

On September 9, 2019, the House Committees on Intelligence, Foreign Affairs, and Oversight and Reform (hereinafter ''Investigating Committees'') first announced that they would be starting an investigation into reports that President Trump and his associates might have been seeking assistance from the Ukrainian government in his bid for reelection.[245] As part of this inquiry, the Investigating Committees requested that the White House provide documents related to the President's July 25th call with the Ukrainian President.[246]

Speaker Nancy Pelosi subsequently announced on September 24, 2019 that the House would be commencing ''an official Impeachment inquiry.'' [247] The Investigating Committees then subpoenaed documents and witness testimony from the White House,[248] the Department of State,[249] the Department of Defense,[250] the Office of Management and Budget,[251] the Department of Energy,[252] and Rudy Giuliani.[253]

Once H.Res. 660 was approved by the House on October 31st, the subpoenas issued as part of the ongoing investigations leading up to the adoption of H.Res. 660 remained in full force.[254] In addition, the House Intelligence Committee issued new subpoenas for witness testimony to officials at the National Security Council,[255] White House,[256] Office of Management and Budget,[257] and the Office of the Vice President.[258]

As such, I conclude that there is overwhelmingly clear and convincing evidence that the House used its lawful authority in conducting its Impeachment inquiry.

C. President Trump Used the Powers of the Presidency to Subvert the Powers of Congress

President Trump used the vast powers of his office to prevent the House of Representatives from exercising its oversight authority and sole power of Impeachment. The President did so by ordering the entire Executive Branch not to cooperate with the House Impeachment inquiry. White House Counsel Pat Cipollone sent a letter to Speaker Pelosi and the Investigating Committees on October 8, 2019, declaring that ''President Trump cannot permit his Administration to participate in this partisan inquiry under these circumstances.'' [259] It is notable that, even before sending the October 8th letter, President Trump had made his intentions clear to obstruct any and all oversight by Congress, proclaiming, ''We're fighting all the subpoenas.'' [260] President Trump further asserted, ''As the President of the United States, I have an absolute right, perhaps even a duty, to investigate, or have investigated, CORRUPTION, and that would include asking, or suggesting, other Countries help us out!'' [261]

The President's sweeping directive on October 8th had the foreseeable effect of obstructing, and in fact, did materially thwart, the House Impeachment inquiry. Following President Trump's categorical order, the Department of State,[262] the Office of Management and Budget,[263] the Department of Energy,[264] and the Department of Defense [265] failed to produce a single document in response to requests or demands for records in their possession. To date, the only documents the Executive Branch has released are summaries of President Trump's phone calls with President Zelensky on April 21, 2019 [266] and July 25, 2019.[267] Even these documents are not complete. The President claimed the July 25th call is, ''an exact word for word transcript of the conversation.'' [268] However, witness testimony from the House Impeachment inquiry shows that there were key omissions. NSC official Lt. Col. Vindman, who listened to the calls, testified that edits that he provided to the draft July 25th document based on his notes were not included in the transcript that was released. Lt. Col. Vindman's edits included a reference to Burisma and President Trump telling President Zelensky that there are recordings of Vice President Biden.[269]

Additionally, as a result of the October 8th directive, multiple Trump Administration officials have defied congressional subpoenas and refused to testify in the Impeachment proceedings.[270] Overwhelming evidence of the President's abuse of power has come to light, despite the President's obstructionist efforts, largely because key Administration officials risked their jobs and careers to comply with subpoenas and requests issued by the House. Even in those cases, agency leadership worked to ensure that these officials would only be able to give limited testimony. In particular, the Department of State,[271] the Department of Defense,[272] and the Department of Energy [273] prevented Executive Branch employees who did participate as witnesses from accessing documents that they identified as directly relevant to the Impeachment inquiry—including their phone records, emails, notes, and memoranda. As a result, these witnesses were denied the opportunity to have documents that could have helped them give more specific testimony, and some had to rely on their own notes and recollections.[274]

President Trump personally sought, through intimidation or influence, to impede the testimony of officials that cooperated with the House Impeachment inquiry. He specifically sought to interfere with the testimonies of Ambassador Gordon Sondland,[275] Ambassador William Taylor,[276] Ambassador Marie Yovanovitch,[277] Lt. Col. Alexander Vindman,[278] and Jennifer Williams.[279]

There is indeed overwhelmingly clear and convincing evidence that President Trump used the powers of his office to prevent the House from exercising its constitutionally granted authority to conduct oversight related to the Impeachment inquiry.

D. President Trump Obstructed the Impeachment Inquiry Without Lawful Cause or Excuse

Whether President Trump obstructed Congress turns on whether there is evidence that he had legal cause or excuse for his total non-cooperation with the Impeachment inquiry. I will address how each of the arguments that the President's Counsel have made in attempting to justify the President's stonewalling do not provide sufficient legal excuse for his conduct.

D.1. Validity of Congressional Subpoenas

The President's Counsel argue that subpoenas related to the Impeachment proceeding are invalid, if they were issued before the House voted to approve H.Res. 660 formalizing the Impeachment inquiry on October 31, 2019. In the President's trial brief, Counsel states that ''It was entirely proper for Administration officials to decline to comply with subpoenas issued pursuant to a purported 'impeachment inquiry' before the House of Representatives had authorized any such inquiry. No House committee can issue subpoenas pursuant to the House's Impeachment power without authorization from the House itself.'' [280] Relying on the argument that subpoenas issued prior to the passage of H.Res. 660 were invalid, the White House, Department of State, and the Department of Defense instructed current and former employees not to testify before the Investigating Committees in the Impeachment proceedings.[281]

The President's Counsel's argument broadly fails because it goes against well-established case law recognizing Congress' power to conduct investigations [282] and issues subpoenas,[283] even when it is not engaged in an Impeachment. Furthermore, the standing rules of the House authorize a committee or subcommittee, with certain limitations, to issue subpoenas ''[f]or the purpose of carrying out any of its functions and duties.'' [284]

Therefore, the relevant question on the validity of the House subpoenas does not turn

on whether they were issued before or after H.Res. 660, as the President's Counsel argue. Rather, it should center on whether they were issued as part of a lawful congressional investigation.[285] In this case, the subpoenas at issue involved the legitimate purpose of investigating whether President Trump and his associates sought assistance from the Ukrainian government to influence the 2020 election. As a result, there is convincing evidence that the House Permanent Select Committee on Intelligence, the House Foreign Affairs Committee, and the House Committee on Oversight and Reform had valid investigative and subpoena authority, even before the passage of H.Res. 660.

Even if the argument made by the President's Counsel was legitimate, the Trump Administration failed to abide by its rule. Following the President's Counsel's own logic, the President would have to recognize the validity of and comply with subpoenas issued after the Impeachment inquiry was formalized on October 31, 2019. Yet, the President did not permit officials from OMB and the National Security Council to testify even though they were subpoenaed *after* H.Res. 660 passed the House.[286]

D.2. Assertions of Privilege

To the extent that the President has legitimate executive privilege claims, he failed to properly assert them or to go through the proper accommodation process to keep information confidential.

D.2.a. Presidential privilege is not absolute

The President's Counsel have stood by the October 8th letter from Mr. Cipollone to Speaker Pelosi declaring that the President and his Administration would not participate in the Impeachment inquiry.[287] President Trump himself has articulated his expansive view of his powers saying, ''Honestly, we have all the material . . . They don't have the material.'' [288]

However, in *United States* v. *Nixon*, the Supreme Court flatly rejected this kind of unlimited assertion of executive power. The Court held that ''neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances.'' [289] Instead, the Court found that, in an interbranch dispute, when a claim of presidential privilege is based merely on the grounds of a generalized interest in confidentiality, ''the generalized assertion of privilege must yield to the demonstrated, specific need for evidence.'' [290]

A related D.C. Circuit Court case, *Senate Select Committee on Presidential Campaign Activities* v. *Nixon*, affirmed that presidential privilege is not absolute and could be overcome by a ''strong showing of need by another institution of government.'' [291] The Court in this case articulated the following test in making its decision: Congress in using its investigative powers may override presidential privilege when it makes the requisite showing of need that ''the subpoenaed evidence is demonstrably critical to the responsible fulfillment of the Committee's function,'' such as a legitimate oversight or legislative purpose.[292]

In this case, Mr. Cipollone's October 8th letter makes clear the President intended to exercise privileges over the *whole* of the Executive Branch, regardless of whether an agency was involved in foreign policy or national security policy.[293] In contrast, the Investigating Committees overwhelmingly demonstrated a particularized interest in obtaining information to ascertain whether the President used the powers of his office to solicit foreign interference on his behalf in the 2020 election. In addition, it would be hard to think of a setting where congressional need for information is greater than during an Impeachment, which is the Constitution's most potent way to hold the President accountable for his misconduct.[294]

The President's Counsel further assert that senior advisors to the President do not have to comply with congressional subpoenas because they have ''absolute immunity.'' This doctrine of absolute immunity has also been rejected by the D.C. District Court in *House Judiciary Committee* v. *Miers* [295] and *House Judiciary Committee* v. *McGahn*.[296]

D.2.b. Accommodation of legislative branch

Moreover, even if President Trump did have a legitimate need to keep information confidential, each branch of government is required to accommodate the legitimate needs of the others to maintain the separation of powers. If President Trump had a valid need to keep confidential some of the information that the House requested, the agencies and offices involved could have entered into good-faith negotiations with the House to resolve their conflicting needs. The Courts have suggested that the Framers intended dynamic compromise as the most effective way to solve disputes between the branches and that view has been affirmed by the longstanding historical practice of the branches.[297] In *United States* v. *AT&T*, the D.C. Circuit Court held that ''Under this view, the coordinate branches do not exist in an exclusively adversary relationship to one another when a conflict in authority arises. Rather, each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation.'' [298]

It is this accommodation process that is the norm, not a wholesale refusal by one branch to another. ''Cooperation dominates most congressional requests for information, with the executive turning over the requested information as a matter of routine.'' [299] A complete breakdown in these procedures is a rarity as ''information access disputes are typically worked out through one of several intermediate options'' such as the Executive Branch agency providing redacted documents or requiring Congress to keep the requested information confidential.[300] A memorandum written by the Office of Legal Counsel (OLC) during the administration of President George H. W. Bush explains that ''[I]f further negotiation is unavailing, it is necessary to consider asking the President to assert executive privilege.'' [301] Traditionally, Executive Branch agency branch officials then present their case for the assertion of executive privilege to the President and the agency asks Congress to hold its request in abeyance, pending the President's decision.[302]

The President's Counsel claim that the Executive Branch was willing to enter into an accommodation process with the House.[303] However, whereas the presumption in an inter-branch dispute is cooperation, the White House's default position has been total refusal of the House's requests for information. To this day, the Trump Administration has not turned over a single responsive document or worked to make a single witness available for questioning by Congress. The Administration has not sought an intermediate option to make information available to Congress. Nor has the Executive Branch ever formally invoked executive privilege or asked Congress to hold its requests in abeyance pending the President's decision to assert executive privilege.

D.2.c. Obstruction in Senate trial

President Trump's obstruction of Congress and his failure to resolve disputes with the Legislative Branch in good faith continued into the Senate trial, as his Administration continued to withhold the information that was subpoenaed during the House inquiry. The President's Counsel even went so far as to instruct the Senate that it could not consider the evidence the House did obtain saying that ''The Senate may not rely on a corrupted factual record derived from constitutionally deficient proceedings to support a conviction of the President of the United States.'' [304]

In addition, as the Senate Impeachment proceedings were underway, new and material evidence of President Trump's misconduct continued to come out. Lev Parnas, the associate of Rudy Giuliani, asserted that President Trump was fully aware of efforts to dig up ''dirt'' on his political rival, as were Vice President Mike Pence, Attorney General William Barr, and former Energy Secretary Rick Perry.[305] According to news reports, it also has come to light that President Trump directed John Bolton, his then-national security adviser, to help with his pressure campaign against the Ukrainian government.[306] Both Bolton and Parnas made it clear during the Impeachment trial that they were willing to testify before the Senate.[307] Yet, President Trump sought to discredit both witnesses [308] and even threatened to assert executive privilege to prevent John Bolton from coming to testify and cooperating in the Impeachment trial.[309]

D.3. *Purported Defectiveness of Impeachment Inquiry*

The President's Counsel argue that the subpoenas issued by the House are invalid not only because of when they were issued. They argue that the Impeachment inquiry itself is defective and unauthorized and therefore any compliance is unnecessary.

The President's Counsel argue that ''the House has never undertaken the solemn responsibility of a presidential impeachment inquiry without first authorizing a particular committee to begin the inquiry'' and ''[t]hat has also been the House's nearly unbroken practice for every judicial impeachment for two hundred years.'' [310]

As explained in Section V, Subsection D.1 of this Memorandum, Congress' power to conduct investigations and issue subpoenas, even when not as part of an Impeachment, has been repeatedly and firmly settled by the Courts. Therefore, even if one accepts that the Impeachment investigation was invalid unless authorized by the House, it does nothing to diminish the power of the committees at hand to engage in an oversight investigation. Nor does it diminish the duty to comply with subpoenas that were issued under this oversight authority.

The President's Counsel is contradicted by the cases of President Johnson and Nixon, where a committee of jurisdiction started taking steps toward Impeachment before the full House took any action. In the Johnson Impeachment, the Judiciary Committee considered Articles of Impeachment before reporting them out for a vote by the House.[311] In the case of President Nixon, the Judiciary Committee employed a Special Counsel to assist in the inquiry, before the House explicitly authorized the Committee's investigation to determine whether the House should impeach.[312]

What's more, the President's Counsel's position appears to be that the House must authorize an Impeachment before it has gathered enough evidence to warrant one, and also that a congressional investigation which begins to produce evidence of grounds for Impeachment loses its investigative authority until the House votes to formalize the Impeachment inquiry. These arguments defy both logic and past precedent.

Here, I am also persuaded by the House Impeachment Managers' argument that the Constitution grants the ''sole Power of Impeachment'' to the House of Representatives. In addition, the Constitution says that, ''[t]he Senate shall have the sole Power to try all Impeachments.'' [313] Nowhere does the Constitution empower the President to unilaterally decide that an Impeachment is illegitimate. I conclude that investigations leading up to H.Res. 660 and the formal inquiry that continued afterward were duly authorized.

D.4. *Further Litigation*

The President's Counsel argue that its categorical and comprehensive defiance cannot be deemed to be obstruction of Congress because the House has not sought judicial review of the subpoenas issued as part of the Impeachment inquiry.

This argument is unconvincing given that the involvement of the Courts in information access disputes between the Legislative and Executive Branches has been rare, at least with respect to conflicts over House subpoenas. As the Congressional Research Service explains:

The traditional preference for political rather than judicial solutions seems supported by the fact that neither Congress nor the President appears to have turned to the courts to resolve an investigative dispute until the 1970s . . . The courts themselves have also generally sought to avoid adjudicating investigative disputes between the executive and legislative branches, instead encouraging settlement of their differences through a political resolution. Consistent with that approach, lower federal courts have suggested that judicial intervention in investigative disputes ''should be delayed until all possibilities for settlement have been exhausted.'' . . . [In addition] some evidence suggests that both the House and the courts have viewed judicial involvement in an impeachment inquiry as inappropriate or in excess of the judiciary's power.[314]

Moreover, the argument of the President's Counsel is ineffective in the context of the dilatory tactics the Trump Administration has been using in other pending cases where the House also has subpoenaed documents. In particular, the Administration has used arguments which, if taken together, seem to assert the President cannot be held accountable by either the Judicial or Legislative Branch. These stall tactics were highlighted in a case currently pending in the D.C. Circuit Court, *Committee on the Judiciary* v. *McGahn*. In this case, the House Judiciary Committee is trying to enforce a subpoena against former White House Counsel, Don McGahn. The D.C. District Court ruled against the DOJ, which claimed that McGahn had absolute immunity from congressional subpoenas for his testimony. In its decision, the Judge compares the DOJ's inconsistent arguments in the *McGahn* case with a series of cases regarding congressional subpoenas for the President's tax returns. The Judge points out that the:

DOJ stood silent with respect to the jurisdictional question, as President Trump (in his personal capacity) has invoked the authority of the federal courts, on more than one occasion, seeking resolution of a dispute over the enforceability of a legislative subpoena concerning his tax returns. A lawsuit that asserts that a legislative subpoena should be quashed as unlawful is merely the flip side of a lawsuit that argues that a legislative subpoena should be enforced. And it is either DOJ's position that the federal courts have jurisdiction to review such subpoena-enforcement claims or that they do not. By arguing vigorously here that the federal courts have no subject-matter jurisdiction to entertain the Judiciary Committee's subpoena-enforcement action, yet taking no position on the jurisdictional basis for the President's maintenance of lawsuits to prevent Congress from accessing his personal records by legislative subpoena, DOJ implicitly suggests that (much like absolute testimonial immunity) the subject-matter jurisdiction of the federal courts is properly invoked only at the pleasure of the President.[315]

The Judge in the *McGahn* case also noted that the DOJ made conflicting arguments in the House's lawsuit seeking grand jury evidence that contributed to former Special Counsel Robert Mueller's report. The Judge goes on to write:

During oral argument, when one of the panelists asked DOJ about the district court's subject-matter jurisdiction to entertain the House's legal action, DOJ Counsel remarked that, while the Executive branch was ''not advancing that argument[,]'' it believed that DOJ ''certainly has both standing and jurisdiction'' to seek review of the district court's injunction . . . But if DOJ's position is that the federal courts have the authority to entertain a legal claim concerning the House's contested request for allegedly privileged grand jury materials, how can it be heard to argue, nearly simultaneously, that the instant Court has no jurisdiction to entertain a legal claim concerning the enforceability of a House committee's subpoena compelling the testimony of senior-level presidential aides?[316]

Further litigation is also problematic because, unlike Presidents Nixon and Clinton who were in their second terms, President Trump's misconduct is immediately preceding and, in anticipation of, the upcoming presidential election. The crux of President Trump's scheme was to corruptly use the vast powers of his presidency to invite foreign interference into the 2020 election in order to benefit himself politically. Allowing President Trump to delay this Impeachment through litigation would enable him to keep relevant documents and witnesses from coming out until after the 2020 election. It could also embolden him to engage in additional unfettered misconduct aimed at increasing his chances of getting reelected.

This threat to the integrity of our elections is exactly the kind of misconduct that the Framers were worried about. In George Mason's view, a risk of election fraud ''furnished a peculiar reason in favor of impeachments[.]'' [317] Another exchange between two delegates, William Richardson Davie and James Wilson, highlights the importance of safeguarding against a corrupt president that would cheat to get reelected. Davie stated, '' '[i]f he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself reelected.' [Davie] considered this as an essential security for the good behaviour of the Executive.'' [318] Wilson concurred with Davie ''in the necessity of making the Executive impeachable while in office.'' [319]

D.5. Due Process

The President's Counsel assert that the Impeachment inquiry is defective because of a lack of due process protections for President Trump. Specifically, in Mr. Cipollone's October 8th letter, he asserts that the President was entitled to due process rights during the House's Impeachment inquiry, which he was not afforded, including ''the right to see all evidence, to present evidence, to call witnesses, to have Counsel present at all hearings, to cross-examine all witnesses, to make objections . . . and to respond to evidence and testimony.'' [320]

Procedural due process—meaning the legal procedures to be used in a proceeding—is rooted in basic constitutional principles of fundamental fairness. Determining due process of the law ''require[s] . . . that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions and not infrequently are designated as 'law of the land.' '' [321]

In evaluating whether President Trump was afforded protections that are consistent with the ''fundamental principles of liberty and justice,'' the analysis should center on whether he was given rights customarily given to presidents in previous Impeachments.

During the Clinton Impeachment inquiry, the President's Counsel was invited to attend all Judiciary Committee executive sessions and open hearings, was allowed to cross-examine witnesses, object to pieces of evidence, suggest that the Committee review additional evidence, and respond to evidence used by the Committee.[322] During the Nixon Impeachment inquiry, the President's Counsel was not invited to participate in the Judiciary Committee's proceedings until months after the inquiry's authorizing resolution was passed.[323] Once invited, Nixon's counsel was allowed to attend the initial presentation of evidence and respond to it in later proceedings, attend later hearings with witnesses, submit requests to call witnesses, cross-examine witnesses that were called, and object to pieces of evidence.[324]

The House's Impeachment inquiry into President Trump afforded the President rights that were consistent with these precedents from prior presidential Impeachments. The President's Counsel was given the opportunity to participate in the House Judiciary Committee's proceedings during the impeachment inquiry. This included the right to attend every Judiciary Committee hearing; request additional witnesses during these hearings; present evidence orally or in writing; have the President's Counsel cross-examine witnesses; and raise objections during Judiciary Committee hearings.[325] In a November 29th letter to the President, House Judiciary Committee Chairman Nadler inquired which of these privileges the President's Counsel wished to exercise.[326] In his December 6th response, Mr. Cipollone chose not to exercise any of these rights and claimed the Impeachment inquiry violated due process rights.[327]

After reviewing this comparison, I conclude President Trump has been afforded as least as much due process protection as Presidents Nixon and Clinton, and therefore standards of fundamental fairness requisite for due process have been met in the current Impeachment proceeding.

Based on the above analysis, I find that there is overwhelmingly clear and convincing evidence that President Trump obstructed the House Impeachment inquiry without lawful cause or excuse and that President Trump is guilty on the second Article of Impeachment.

VII. LACK OF EVIDENTIARY RECORD

A. Senate's Role in Lack of Witnesses and Documents

As I have explained, the House of Representatives, as part of its Impeachment inquiry, subpoenaed documents and witnesses from multiple Executive Branch agencies. To date, the Administration has produced zero responsive documents. In fact, the Administration has engaged in a coordinated and systematic effort to deny relevant evidence and testimony to the House of Representatives in defiance of lawful Congressional subpoenas.[328]

Fortunately, patriotic and law-abiding federal employees and former officials complied

with lawful subpoenas and appeared at depositions or public hearings. As described previously, testimony provided by witnesses is probative of the President's guilt on both Articles of Impeachment.

Once the Articles of Impeachment were received by the Senate, the Senate had the opportunity to utilize its own oversight and Impeachment authority pursuant to Article I of the Constitution to gather relevant documents and testimony. However, in this Impeachment trial, unlike previous ones conducted by the Senate, whether of Presidents or other officials, no witnesses were allowed.[329]

My Republican colleagues voted against holding a fair trial. For example, Leader McConnell initially sought to have a set of rules governing this Impeachment trial that would not have included a provision to automatically adopt the House's evidence.[330] He also sought to have twenty-four hours of opening arguments over two days to speed up the trial.[331] My Republican colleagues relented on these points, allowing the House Impeachment Managers and the President's Counsel to each have twenty-four hours of argument over three days.[332] The Republican-authored resolution ultimately did not guarantee witnesses, only providing for a vote on whether witnesses could be heard at the end of arguments and the question period.[333] From the get-go, my Republican colleagues were reluctant to have evidence and arguments put in front of the American people for judgment.

My Democratic colleagues offered eleven amendments in an effort to ensure a fair trial.[334] The amendments, if adopted, would have permitted Senators and the American people to see relevant evidence and hear from witnesses. These amendments were defeated—almost entirely along party lines.[335]

After the question and answer portion of the Impeachment trial, the Senate voted on amendments offered by my Democratic colleagues that would have provided for witnesses and documents.[336] These amendments were again defeated, largely along partisan lines.[337] It is crucial to note, that this second series of votes was taken *after* reports that Ambassador Bolton's draft manuscript contained evidence relevant and central to the allegations in the Articles of Impeachment. Through the end of the trial, the vast majority of my Republican colleagues did not want to hear from Ambassador Bolton, other relevant witnesses, or see documents that would likely reveal evidence damaging to the President.

Further, Leader McConnell compared his approach in this trial to that of the Impeachment Trial of President Clinton, when Senators voted on whether to hear witnesses at the end of arguments.[338] Leader McConnell's assertion is disingenuous considering that the Clinton Impeachment trial occurred after a lengthy and comprehensive investigation led by the then independent Counsel, Kenneth Starr, which included tens of thousands of pages of evidence and recorded testimony. During the Clinton Impeachment trial, witnesses had also previously testified in grand jury proceedings.[339] There were no surprises as to what witnesses would say. President Trump's Impeachment Trial represents a stark departure from what occurred during the Clinton Impeachment Trial and indeed, sets a damaging and devastating precedent.

VIII. CONCLUSION: REMOVAL OF PRESIDENT TRUMP IS THE SOLE APPROPRIATE REMEDY

Conviction and removal of a President from office is a high standard, and one that should only be arrived at when there are no other remedies available. As I laid out during the 1999 Impeachment trial of President Clinton, ''the independence of the Impeachment process from the prosecution of crimes underscores the function of Impeachment as a means to remove a President from office, not because of criminal behavior, but because the President poses a threat to the Constitutional order.''[340] Furthermore, during the Clinton Impeachment proceedings, I concluded that the President's improper conduct must represent a continuing threat to the American people.[341] In the current case, I have concluded that allowing President Trump to remain in office would pose such a continuing threat to our electoral system and the Constitution.

A. Subversion of the Constitutional Order and an Unaccountable President

The President's Counsel have argued that even if President Trump abused the power of his office to withhold U.S. military assistance to an ally, in order to pressure that country to conduct investigations for his personal and political benefit, doing so would not be an impeachable offense. According to the President's Counsel, ''If a President does something which he believes will help him get elected—in the public interest—that cannot be the kind of quid pro quo that results in impeachment.''[342] It is on this basis that the President's Counsel further argue that, even if the President did in fact condition security assistance for Ukraine on politically-motivated investigations, it would not be an impeachable offense.[343] That argument violates the fundamental principle of our constitutional system that no one is above the law.

Furthermore, President Trump has shown that he will block any congressional check on his misuse of office by ignoring subpoenas as he pleases, without asserting a lawful cause. At the same time, Trump Administration lawyers have been arguing in various court cases that the Judiciary has no role in enforcing the very subpoenas from Congress that the Administration is resisting.

President Trump's defiance of both Congress and the Courts on subpoenas threatens to nullify the constitutional authority of both the House and Senate, not merely to check the personal excesses of any given president, but also to oversee the entire Executive Branch. It validates and encourages the President's strategy of large-scale obstruction of congressional inquiries. It emboldens the President to defy investigations into his misconduct and strengthens the President's determination to resist additional congressional oversight.

The result of permitting the Executive Branch to wholly disregard Congressional requests for information is not only to neuter the Impeachment power, but more profoundly, impact Congress as a fundamental check on executive mismanagement, abuse, corruption, and overreach embodied in the power of congressional oversight.

B. Ongoing Harm to the Constitutional Order

An additional basis for seeking the removal of a President from office is that his conduct poses continuing harm to the constitutional order. President Trump's solicitation of foreign election interference, based on the perpetuation and amplification of baseless and unfounded theories that harm his political opponents, serves to damage the fundamental institutions of our democracy.

President Trump's behavior was not a one-time indiscretion, but rather part of a pattern of behavior to invite foreign influence into our elections which thereby undermines the constitutional order and harms the integrity of our democracy. In 2016, then-candidate Trump called on Russia to hack the emails of his political rival, Secretary Clinton.[344] He also promoted hacked emails from Secretary Clinton's campaign that were stolen by Russian Military Intelligence units, in order to benefit himself politically in the 2016 election.[345] In June 2019, President Trump publicly announced that he would take information on his political rival from a foreign government.[346] Moreover, he pressured Ukraine to announce investigations into his political opponents to benefit his 2020 campaign. Indeed, even after the House began its Impeachment inquiry and he was confronted by allegations of soliciting foreign interference, President Trump doubled down by asking China also to investigate the Bidens.[347] In addition, as stated earlier, his personal attorney, Mr. Giuliani as recently as December 2019, was working to gather disinformation on political opponents.[348]

The President has in no way taken responsibility for these actions or shown that he understands the consequences of his behavior and its harm to the Constitution. After the Impeachment trial in 1999, President Clinton apologized to the nation and acted contrite. In contrast, President Trump has not, in any way, admitted wrongdoing and clings to the fiction that his call with President Zelensky was ''perfect.''[349] This lack of remorse, combined with his past and present actions, leaves open the possibility that President Trump will repeat such offenses in the future.

C. Elections Cannot be the Sole Remedy

It has been argued that Impeachment and removal of the President is not the appropriate remedy when the country is roughly ten months away from an election. The President's Counsel argue that any judgment regarding the President's actions should be left to the American people when they go to the polls in November 2020. However, by soliciting foreign interference in the coming election, President Trump's actions threaten the viability of our elections and the very foundation of our constitutional order to serve as a check on the President's conduct.

The Founders were acutely aware of the dangers of foreign election interference. As Alexander Hamilton said in Federalist Paper Number 68, ''[t]he desire [of] foreign powers to gain an improper ascendant in our Counsels'' was one of ''the most deadly adversaries of republican government.''[350] The Founders knew this risk was inevitable in an election setting. In a letter to John Adams, Thomas Jefferson wrote ''You are apprehensive of foreign Interference, Intrigue, Influence. So am I—But, as often as Elections happen, the danger of foreign Influence recurs.''[351]

I reject the notion, put forward by the President's Counsel, that a President who believes his reelection is in the best interest of the country cannot be impeached for abusing his power to tilt the next election in his favor. The Impeachment clause cannot be read to provide a carte blanche for the President to engage in illegal acts[352] that directly undermine the operation of our free and fair electoral system. The remedy for a President attempting to corrupt the next election cannot be allowing the President to corrupt that election. Even a well-intentioned autocrat is still an autocrat and not a President subject to the Constitution. If accepted as true, these views would pave the way for the type of autocratic government that the Founders feared and fought to leave behind.

For elections to express the will of the electorate, they must be free and fair. Elections must be legitimate, and the public must have confidence in them. Even the perception that our elections are tainted would lead voters to question whether their vote matters. That is why one of our jobs as lawmakers is to ensure the integrity of the electoral process. We work to ensure that every vote cast is fairly and accurately counted.

We work to ensure that external forces, foreign or otherwise, cannot sway or pre-determine the outcome of the election. The United States government should not be playing a role in advancing the goals of foreign powers that seek to use our institutions to further their own interests.

Acquitting President Trump would undermine the integrity of our elections and clear the way for Russia or other countries to repeat in 2020, and beyond, the kind of election interference that the Intelligence Community unanimously assessed occurred in the 2016 election. Through acquittal, the Senate will give its blessing for President Trump to use any means at his disposal to sway the next election in his favor, with no consequences. President Trump has already demonstrated unequivocally that he has no compunction about violating the law, obstructing congressional oversight, and putting our nation and allies at risk. The difference now will be that President Trump will know that the Senate will give him cover for his future abuses of office. The ongoing threat to the constitutional order must be remedied, and therefore removal of the President is the only logical finding in this case.

ENDNOTES

1. H.R. Res. 755, 116th Cong. (2019).
2. U.S. Const. art. I, §3, cl. 6; 166 Cong. Rec. 10, S268 (daily ed. Jan. 16, 2020).
3. The Federalist No. 65, at 441 (Alexander Hamilton) (Jacob E. Cooke ed., 1961) (emphasis in original).
4. U.S. Const. art. I, §3, cl. 6.
5. U.S. Const. art. II, §4.
6. U.S. Const. art III, §3, cl. 1.
7. Staff of H. Comm. on the Judiciary, 116th Cong., Rep. on Constitutional Grounds for Presidential Impeachment 14 (Comm. Print 2019).
8. 2 Sir William Blackstone, Commentaries on the Laws of England 2152 (William Carey Jones ed., 1976).
9. *Id*. at 2153.
10. Charles Doyle, Cong. Research Serv., 98–882, Impeachment Grounds: A Collection of Selected Materials 4 (1998).
11. The Federalist No. 65, *supra* note 3, at 439 (emphasis in original).
12. 2 The Records of the Federal Convention of 1787 550 (Max Farrand ed., 1911).
13. *Id*.
14. 4 The Debates in the Several State Conventions on the Adoption of the Federal Constitution 113 (Jonathon Elliot ed., 2nd ed. 1861).
15. Michael J. Gerhardt, The Federal Impeachment Process: A Constitutional and Historical Analysis 21 (3rd ed. The University of Chicago Press 2019) (1996).
16. 2 Joseph Story, Commentaries on the Constitutions 799 at 269–70 quoting William Rawle, A View of the Constitution of the United States at 213 (2d ed. 1829).
17. Staff of H. Comm. on the Judiciary, 93rd Cong., Rep. on Constitutional Grounds for Presidential Impeachment 27 (Comm. Print 1974).
18. 2 The Records of the Federal Convention of 1787, *supra* note 12, at 64–65.
19. *Id*. at 550
20. *Id*.
21. *Id*.
22. *Id*.
23. *Id*. at 551.
24. *Id*. at 600.
25. Trial Memorandum of President Donald J. Trump, In Proceedings Before the United States Senate 1 (Jan. 20, 2020).
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27. 1 The Collected Works of James Wilson 736 (Kermit L. Hall and Mark David Hall eds., 2007).
28. Memorandum from William Barr, Attorney General, Department of Justice, to Rod Rosenstein, Deputy Attorney General, Department of Justice, and Steve Engel, Assistant Attorney General, Department of Justice 12 (June 8, 2018) (on file with the New York Times) (emphasis in original).
29. 2 The Records of the Federal Convention of 1787, *supra* note 12, at 65–66.
30. The Federalist No. 68, at 458–459 (Alexander Hamilton) (Jacob E. Cooke ed., 1961); 1 The Records of the Federal Convention of 1787 319 (Max Farrand, ed., 1911); 2 The Records of the Federal Convention of 1787, *supra* note 12, at 271–272.
31. 2 The Records of the Federal Convention of 1787, *supra* note 12, at 268.
32. The Federalist No. 22, at 142 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).
33. *Id*.
34. Charles L. Black, Jr. & Philip Bobbit, Impeachment: A Handbook, New Edition 17 (2018).
35. The Federalist No. 65, *supra* note 3, at 441; Laurence Tribe & Joshua Matz, To End a Presidency: The Power of Impeachment 127 (2018).
36. The Federalist No. 65, *supra* note 3, at 441.
37. *Id*. at 442.
38. Opinion Memorandum of United States Senator John F. Reed, Trial of President William Jefferson Clinton 1 (Feb. 14, 1999).
39. 145 Cong. Rec. 6, S260 (daily ed. Jan. 15, 1999) (statement of Mr. Manager McCollum).
40. Opinion Memorandum of U.S. Senator John F. Reed, *supra* note 38, at 6.
41. *Id*.
42. Black & Bobbitt, *supra* note 34.
43. *Id*. (Black's analysis is cited by several other scholars as persuasive; *See e.g*., Laurence Tribe and Joshua Matz, To End a Presidency: The Power of Impeachment 137 (2018).
44. 2 The Records of the Federal Convention of 1787, *supra* note 12, at 67.
45. The Federalist No. 69, at 463 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).
46. 2 The Records of the Federal Convention of 1787, *supra* note 12, at 65.
47. *Id*. at 67.
48. H.R. Rep. No. 93–1305, at 139 (1974).
49. S. Doc. No. 58–133, at 5 (1905); S. Doc. No. 69–101, at 1 (1926); S. Doc. No. 72–215, at 2 (1933). These judges were district judges Charles Swayne of Florida, George English of Illinois, and Harold Louderback of California.
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51. Black's Law Dictionary 13 (11th ed. 2019).
52. H.R. Rep. No. 93–1305, at 139 (1974).
53. *Id*. at 3, 139–40.
54. *Id*. at 4, 139, 140.
55. *Id*. at 180.
56. H.R. Rep. No. 116–346, at 5 (2019).
57. *Impeachment Inquiry: Fiona Hill and David Holmes Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 40 (2019) (statement of Dr. Fiona Hill). (On November 21, 2019, NSC senior adviser Fiona Hill described the theory of Ukrainian interference in the 2016 election as ''a fictional narrative that is being perpetrated and propagated by the Russian security services themselves.'')
58. Scott Shane, *How a Fringe Theory About Ukraine Took Root in the White House*, N.Y. Times, Oct. 3, 2019, https://www.nytimes.com/2019/10/03/us/politics/trump-ukraine-conspiracy.html.
59. Office of the Director of National Intelligence, National Intelligence Council, Assessing Russian Activities in Recent US Elections ii (2017). (The Intelligence Community unanimously concluded on January 6, 2017, that Russia interfered in the 2016 election to ''undermine public faith in the US democratic process, denigrate Secretary Clinton and her electability and potential Presidency.'' The Intelligence Community further assessed that ''Putin and the Russian Government developed a clear preference for President-elect Trump.'')
60. 1 Robert S. Mueller, III, Report On The Investigation Into Russian Interference In The 2016 Presidential Election 1–2 (Mar., 2019). (The Special Counsel's investigation into Russian interference in the 2016 concluded that ''. . . the Russian government perceived it would benefit from a Trump presidency and worked to secure that outcome, and that the campaign expected it would benefit electorally from information stolen and released through Russian efforts . . .'')
61. 2 Robert S. Mueller, III, Report On The Investigation Into Russian Interference In The 2016 Presidential Election 23 (Mar., 2019).
62. 1 Mueller, *supra* note 60, at 1.
63. *Interview of: George Kent Before the H. Perm. Select Comm. On Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 268 and 275 (2019).
64. *Interview of: Kurt Volker Before the H. Perm. Select Comm. On Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 37 (2019). (As part of Biden's role as the lead on Ukraine policy for the Obama Administration, he called for institutional reform in the justice sector, including the firing of then Prosecutor General Victor Shokin. The Obama administration had urged his resignation because he was not actively investigating serious cases of corruption, and threatened to withhold $1 billion in loan guarantees. The call for Shokin to resign was the unanimous position of the United States and the West. Multiple witnesses testified that Vice President Biden was acting in accordance with bipartisan US policy towards Ukraine. For example, Ambassador Volker stated: ''When Vice President Biden made those representations . . . he was representing U.S. policy at the time.''); *Impeachment Inquiry: Ambassador Kurt Volker and Timothy Morrison Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 20 (2019) (statement of Amb. Volker). (Ambassador Volker testified at his public hearing, ''it's not credible to me that former Vice President Biden would have been influenced in any way by financial or personal motives in carrying out his duties as Vice President.''); Daryna Krasnolutska, Kateryna Choursina and Stephanie Baker, *Ukraine Prosecutor Says No Evidence of Wrongdoing by Bidens*, Bloomberg, May 16, 2019, https://www.bloomberg.com/news/articles/2019-05-16/ukraine-prosecutor-says-no-evidence-of-wrongdoing-by-bidens. (Allegations of wrong doing by Hunter Biden have also been found to be without merit including by then Prosecutor General Lutsenko who stated in mid-May 2019, that he had found no evidence of wrongdoing by Hunter Biden, recanting his previous allegations.)
65. *See e.g*. Arlette Saenz, *Joe Biden Announces He is Running for President in 2020*, CNN, Apr. 25, 2019, https://www.cnn.com/2019/04/25/politics/joe-biden-2020-president/index.html. (Vice President Biden declared his candidacy for president on April 25, 2019, following months of speculation about whether he would run and being cast by the press as a formidable rival to President Trump.)
66. Trial Memorandum of the United States House of Representatives, In the Impeachment Trial of President Donald J. Trump 3 (Jan. 18, 2020).

67. Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquires that Could Help Trump*, N.Y. Times, May 9, 2019, https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html. (According to Mr. Giuliani, the President was fully witting of the Mr. Giuliani's activities to further the scheme. Mr. Giuliani told the *New York Times* that the President, ''basically knows what I'm doing, sure, as his lawyer,'' and, ''[m]y only client is the president of the United States. He's the one I have an obligation to report to, tell him what happened.'')

68. *See generally* Karen Freifeld & Aram Roston, *Exclusive: Trump Lawyer Giuliani was Paid $500,000 to Consult on Indicted Associate's Firm*, Reuters, Oct. 14, 2019, https://www.reuters.com/article/us-usa-trump-whistleblower-giuliani-excl/exclusive-trump-lawyer-giuliani-was-paid-500000-to-consult-on-indicted-associates-firm-idUSKBN1WU07Z; Rosalind S. Helderman, Josh Dawsey, Paul Sonne and Tom Hamburger, *How Two Soviet-Born Emigres Made it into Elite Trump Circles—and the Center of the Impeachment Storm*, Washington Post, Oct. 12, 2019, https://www.washingtonpost.com/politics/how-two-soviet-born-emigres-made-it-into-elite-trump-circles-and-the-center-of-the-impeachment-storm/2019/10/12/9a3c03be-ec53-11e9-85c0-85a098e47b37_story.html; Kenneth P. Vogel, Ben Protess and Sarah Maslin Nir, *Behind the Deal that put Giuliani Together with a Dirt-Hunting Partner*, N.Y. Times, Nov. 6, 2019, https://www.nytimes.com/2019/11/06/us/politics/ukraine-giuliani-charles-gucciardo.html; United States of America v. Lev Parnas, Igor Fruman, David Correia, And Andrey Kukushkin, Defendants. No. 19 CRIM 725 (S.D.N.Y filed October 9, 2019). (In the spring of 2018, Soviet born businessmen Lev Parnas and Igor Fruman had multiple contacts with President Trump and his associates. Mr. Parnas and Mr. Fruman donated $325,000 to the pro-Trump Super Pac America First Action through an LLC. Through those contacts, they forged a relationship with Trump personal attorney Rudy Giuliani. In August, 2018, Mr. Parnas and Mr. Fruman hired Giuliani for $500,000 to provide legal advice for their company ''Fraud Guarantee.'' Press reports indicate that Fraud Guarantee appears to have no customers. On October 10, 2019 a federal indictment from the Southern District of New York charged Mr. Parnas and Mr. Fruman with funneling illegal campaign contributions from foreign donors to U.S. government officials and political action committees.)

69. *See* Kim Hjelmgaard, *Ukraine Opens Case Against Former Prosecutor Yuriy Lutsenko*, USA Today, Oct. 1, 2019, https://www.usatoday.com/story/news/world/2019/10/01/ukraine-opens-case-against-ex-prosecutor-yuriy-lutsenko/3828779002/. (Mr. Lutsenko was fired in late August 2019 by newly-elected President Zelensky. In October 2019, Ukraine's State Bureau of investigations (SBI) opened criminal proceedings against Mr. Lutsenko over possible abuse of power charges, stemming from illegal gambling operations.)

70. *See* Christopher Miller, *Why was Ukraine''s Top Prosecutor Fired? The Issue at the Heart of the Dispute Gripping Washington*, Radio Free Europe, Sep. 24, 2019, https://www.rferl.org/a/why-was-ukraine-top-prosecutor-fired-viktor-shokin/30181445.html. (Mr. Shokin had served as the Prosecutor General during the Poroshenko administration from February 2015–March 2016. In the fall of 2015, the Obama Administration grew concerned that Mr. Shokin, despite promises to increase anti-corruption investigations, had not followed through, including on promises to investigate corruption allegations against the Ukrainian energy company Burisma. In March 2016, Vice President Biden called for Mr. Shokin to be fired and told Ukrainian authorities that the United States would withhold $1 billion in loan guarantees if he was not relieved of his position. The U.S. position that Mr. Shokin should be removed and replaced with a prosecutor general that was dedicated to institutional reforms was coordinated with European allies and partners and held popular support inside Ukraine. On March 29, 2016, the Ukrainian Rada (parliament) voted overwhelmingly in approval of President Poroshenko's decision to fire Mr. Shokin); *Interview of: George Kent, supra* note 63, at 45. (Regarding Mr. Shokin, Deputy Assistant Secretary Kent, a leading authority on rule of law and anti-corruption efforts, assessed in his deposition, ''There was a broad-based consensus that he [Shokin] was a typical Ukraine prosecutor who lived a lifestyle far in excess of his government salary, who never prosecuted anybody known for having committed a crime, and having covered up crimes that were known to have been committed.'')

71. *Interview of: George Kent, supra* note 63, at 47. (The Skype call between Mr. Shokin and Mr. Giuliani occurred after Mr. Shokin was denied a visa to travel to the United States, based on his record of corrupt dealings. Deputy Assistant Secretary George Kent testified that the State Department objected to the visa because Mr. Shokin was ''very well and very unfavorably known to us. And we felt, under no circumstances, should a visa be issued to someone who knowingly subverted and wasted U.S. taxpayer money.'' Mr. Kent further testified that White House aide Robert Blair called to follow up on why Shokin was denied a visa.); *Deposition of: Marie ''Masha'' Yovanovitch, Before the H. Perm. Select Comm. On Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 264–265 (2019). (Ambassador Yovanovitch stated at her closed-door interview, ''The embassy had received a visa application for a tourist visa from Mr. Shokin, the previous prosecutor general. And he said that he was coming to visit his children, who live in the United States . . . The consular folks . . . got the application, recognized the name, and believed he was ineligible for a visa, based on his . . . corrupt activities . . . so I alerted Washington to this, that this had happened. And the next thing we knew, Mayor Giuliani was calling the White House as well as the Assistant Secretary of Consular Affairs, saying that I was blocking the visa for Mr. Shokin, and that Mr. Shokin was coming to meet him to provide information about corruption at the embassy, including my corruption.'')

72. Notes from Interview with Mr. Shokin, Rudolph Giuliani (Jan. 23, 2019) (on file with the State Department).

73. *Id.*

74. *Id.*

75. *See* Stephanie Baker & Irina Reznik, *To Win Giuliani's Help, Oligarch's Allies Pursued Biden Dirt*, Bloomberg, Oct. 18, 2019, https://www.bloomberg.com/news/articles/2019-10-18/to-win-giuliani-s-help-oligarch-s-allies-pursued-biden-dirt. (In early September 2019, Shokin swore in an affidavit that Vice President Biden pressured the Poroshenko administration to fire him to protect Hunter Biden. He further testified that he was forced out because he was leading ''a wide ranging corruption probe'' of Burisma and that he was ''forced to leave office, under direct and intense pressure from Joe Biden and the U.S. Administration.'' At the beginning of the affidavit, Shokin wrote that he was making the statement at the request of lawyers acting for pro-Putin Ukrainian oligarch Dmitry Firtash, who has a history of acting as a Russian agent and in July 2019, retained the pro-Trump legal team Victoria Toensing and Joe DiGenova, who have been working in coordination with Giuliani to further the corrupt scheme. As part of his legal representation, Mr. Firtash retained Giuliani associate Lev Parnas to be his translator. Furthermore, court filings indicate that Mr. Firtash wired Mr. Parnas's wife a million dollars through an intermediary. It must be further noted that Mr. Giuliani referenced that Ms. Toensing would accompany him to the meeting he requested with then President- elect Zelensky in mid-May. While the letter did not state the purpose of the requested meeting, Mr. Giuliani stated publicly that he intended to tell President Zelensky to pursue the investigation.); *See also* Letter from Rudolph Giuliani to Volodymyr Zelensky, President-Elect, Ukraine (May 10, 2019) (on file with H. Perm. Select Comm. On Intelligence); Christian Berthelsen, *Giuliani Ally Got $1 Million from Ukrainian Oligarch's Lawyer*, Bloomberg, Dec. 17, 2019, https://www.bloomberg.com/news/articles/2019-12-17/firtash-lawyer-was-source-of-1-million-to-parnas-giuliani-ally.

76. Andy Heil & Christopher Miller, *U.S. Rejects Ukraine Top Prosecutor's 'Don't Prosecute' Accusation*, Radio Free Europe, Mar. 21, 2019, https://www.rferl.org/a/us-rejects-top-ukrainian-prosecutors-dont-prosecute-accusation/29834853.html. (On March 21, a State Department spokesperson responded: ''The allegations by the Ukrainian prosecutor-general are not true and intended to tarnish the reputation of Ambassador Yovanovitch.'')

77. Staff of H. Perm. Select Comm. on Intelligence, 116th Cong., Rep. on The Trump-Ukraine Impeachment Inquiry 44 (Comm. Print 2019). (The House Committees who led the impeachment investigation, ''uncovered evidence of close ties and frequent contacts between Mr. Solomon and Mr. Parnas, who was assisting Mr. Giuliani in connection with his representation of the President.''); Adam Entous, *The Ukrainian Prosecutor Behind Trump's Impeachment*, The New Yorker, Dec. 16, 2019, https://www.newyorker.com/magazine/2019/12/23/the-ukrainian-prosecutor-behind-trumps-impeachment. (In December 2019, Giuliani affirmed coordination with *Hill* columnist John Solomon: ''I said, 'John [Solomon], let's make this as prominent as possible . . . I'll go on TV. You go on TV. You do columns.' '')

78. *See* John Solomon, *As Russia Collusion Fades, Ukrainian Plot to Help Clinton Emerges*, The Hill, Mar. 20, 2019, https://thehill.com/opinion/campaign/435029-as-russia-collusion-fades-ukrainian-plot-to-help-clinton-emerges; John Solomon, *US Embassy Pressed Ukraine to Drop Probe of George Soros Group During the 2016 election*, The Hill, Mar. 26, 2019, https://thehill.com/opinion/campaign/435906-us-embassy-pressed-ukraine-to-drop-probe-of-george-soros-group-during-2016; John Solomon, *Joe Biden''s 2020 Ukrainian Nightmare: A Closed Probe is Revived*, The Hill, Apr. 1, 2019, https://thehill.com/opinion/white-house/436816-joe-bidens-2020-ukrainian-nightmare-a-closed-probe-is-revived; John Solomon, *Ukrainian to U.S. Prosecutors: Why Don't You Want Our Evidence on Democrats?*, The Hill, Apr. 7, 2019, https://thehill.com/opinion/white-house/437719-ukrainian-to-us-prosecutors-why-dont-you-want-our-evidence-on-democrats; (John Solomon wrote the above columns based on the disinformation that Mr. Giuliani gathered from Mr. Shokin, Mr. Lutsenko and others.)

79. *See* Donald J. Trump (@realDonaldTrump), Twitter (Mar. 20, 2019, 10:40 PM), https://twitter.com/realdonaldtrump/status/1108559080204001280. (For instance, President Trump promoted a link to Solomon's column from March 20, 2019).

80. *See* Donald Trump, Jr. (@DonaldJTrumpJr), Twitter (Apr. 2, 2019,

7:52 AM), https://twitter.com/donaldjtrumpjr/status/1113046659456528385. (Donald Trump Jr. retweeted Solomon's April 1 column on April 2, 2019.)

81. *See* Rudy Giuliani (@RudyGiuliani), Twitter (Mar. 22, 2019, 11:38 AM), https://twitter.com/RudyGiuliani/status/1109117167176466432. (On March 22, Mr. Giuliani tweeted an allegation from the article: ''Hillary, Kerry, and Biden people colluding with Ukrainian operatives to make money and affect 2016 election.'')

82. Interview by Sean Hannity with Donald Trump, President, United States (Apr. 25, 2019). (Mr. Hannity asked the President if the people of the United States needed to see the evidence Ukraine has with regards to Ukraine colluding with Hillary Clinton's campaign. President Trump responded, ''. . . I think we do.'' He went on to claim that that, ''People have been saying . . . the concept of Ukraine, they have been talking about it actually for a long time . . .'')

83. Interview by Howard Kurtz with Rudolph Giuliani (Apr. 7, 2019). (For instance, on April 7, 2019, Mr. Giuliani stated on *Fox News*, ''I got information about three or four months ago that a lot of the explanations for how this whole phony investigation started will be in the Ukraine, that there were a group of people in the Ukraine that were working to help Hillary Clinton and were colluding really . . . And then all of a sudden, they revealed the story about Burisma and Biden's son . . . [Vice President Biden] bragged about pressuring Ukraine's president to firing [sic] a top prosecutor who was being criticized on a whole bunch of areas but was conducting an investigation of this gas company which Hunter Biden served as a director . . .'')

84. Trial Memorandum of the United States House of Representatives, *supra* note 66, at SMF 4.

85. *Deposition of: Marie ''Masha'' Yovanovitch, Before the H. Perm. Select Comm. On Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 131 (2019). (Ambassador Yovanovitch testified that Deputy Secretary of State John Sullivan informed her that ''the President had lost confidence, and I would need to depart my post . . . And he said, you've done nothing wrong. And he said that he had to speak to ambassadors who had been recalled for cause before and this was not that.'')

86. Adam Entous, *The Ukrainian Prosecutor Behind Trump's Impeachment*, The New Yorker, Dec. 16, 2019, https://www.newyorker.com/magazine/2019/12/23/the-ukrainian-prosecutor-behind-trumps-impeachment.

87. Text Message from Yuriy Lutsenko, Prosecutor General, Ukraine, to Lev Parnas (Mar. 22, 2019) (on file with H. Perm. Select Comm. on Intelligence).

88. Interview by Rachel Maddow with Lev Parnas (Jan. 16, 2020).

89. *Impeachment Inquiry: Fiona Hill and David Holmes*, *supra* note 57, at 40; Vladimir Putin, President, Russia, Remarks in Joint News Conference with Hungarian Prime Minister Viktor Orban (Feb. 2, 2017). (Russian President Vladimir Putin publicly accused Ukraine of interfering to support Secretary Clinton in 2016. On February 2, 2017 Putin stated: ''As we all know, during the presidential campaign in the United States, the Ukrainian government adopted a-unilateral position in favor of one candidate. More than that, certain oligarchs, certainly with the approval of the political leadership, funded . . . this female candidate.'')

90. Luke Barr & Alexander Mallin, *FBI Director Pushes Back on Debunked Conspiracy Theory About 2016 Election Interference*, ABC News, Dec. 9, 2019, https://abcnews.go.com/Politics/fbi-director-pushes-back-debunked-conspiracy-theory-2016/story?id=67609244.

91. Chris Grancescani, *President Trump's Former National Security Advisor 'Deeply Disturbed' by Ukraine Scandal: 'Whole World is Watching'*, ABC News, Sept. 29, 2019, https://abcnews.go.com/Politics/president-trumps-national-security-advisor-deeply-disturbed-ukraine/story?id=65925477. (Mr. Tom Bossert, President Trump's former Homeland Security Adviser stated in a Press interview that the Crowdstrike allegations are, ''completely debunked.'' Mr. Bossert further stated, ''The United States government reached its conclusion on attributing to Russia the DNC hack in 2016 before it even communicated it to the FBI, before it ever knocked on the door at the DNC. So a server inside the DNC was not relevant to our determination to the attribution. It was made up front and beforehand.'')

92. Allan Smith, *'Enough': Trump's Ex-Homeland Security Adviser 'Disturbed,' 'Frustrated' by Ukraine Allegations, Says President Must Let 2016 Go*, NBC News, Sept. 29, 2019, https://www.nbcnews.com/politics/donald-trump/enough-trump-s-former-homeland-security-adviser-disturbed-ukraine-allegations-n1060051.

93. *See* 166 Cong. Rec. 17, S596–98 (daily ed. Jan. 27, 2020) (Statement of Ms. Counsel Bondi); *See generally* Adam Entous, *Will Hunter Biden Jeopardize his Father's Campaign?*, New Yorker, Jul. 1, 2019, https://www.newyorker.com/magazine/2019/07/08/will-hunter-biden-jeopardize-his-fathers-campaign; Michael Kranish & David L. Stern, *As Vice President, Biden Said Ukraine Should Increase Gas Production. Then His Son Got a Job at a Ukrainian Gas Company.*, Washington Post, Jul. 22, 2019, https://www.washingtonpost.com/politics/as-vice-president-biden-said-ukraine-should-increase-gas-production-then-his-son-got-a-job-with-a-ukrainian-gas-company/2019/07/21/f599f42c-86dd-11e9-98c1-e945ae5db8fb_story.html; Lucien Bruggeman, *Biden Sought to Avoid a Conflict of Interest Before the 2008 Campaign: Court Records*, ABC News, Oct. 8, 2019, https://abcnews.go.com/Politics/joe-bidens-effort-dodge-sons-conflict-interest-backfired/story?id=66371399; Glen Kessler, *GOP Tries to Connect Dots on Biden and Ukraine, but Comes Up Short*, Washington Post, Dec. 4, 2019, https://www.washingtonpost.com/politics/2019/12/04/gop-tries-connect-dots-biden-ukraine-comes-up-short/. (The President's Counsel made assertions of the appearance of conflict of interest, but did not produce evidence that Hunter Biden broke the laws of the United States or Ukraine or that Vice President Biden acted corruptly in calling for the removal of then Prosecutor General Victor Shokin. Multiple media outlets have also undertaken investigations into the allegations regarding Vice President Biden and Hunter Biden, and produced no evidence of wrongdoing.)

94. *Interview of: Kurt Volker Before the H. Perm. Select Comm. On Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 36–37 (2019).

95. Alan Cullison, *Bidens in Ukraine: An Explainer*, Wall Street Journal, Sept. 22, 2019, https://www.wsj.com/articles/bidens-anticorruption-effort-in-ukraine-overlapped-with-sons-work-in-country-11569189782. (For example, Ukraine expert Anders Aslund from the Atlantic Council recalls, ''Everyone in the Western community wanted Shokin sacked. The whole G–7, the IMF, the EBRD, everybody was united that Shokin must go, and the spokesman for this effort was Joe Biden.'')

96. Geoffrey Pyatt, then-U.S. Ambassador to Ukraine, Remarks at the Odesa Financial Forum in Odesa, Ukraine (Sept. 24, 2015). (In the fall of 2015, the Obama Administration grew concerned that Shokin, despite promises to increase anti-corruption investigations, had not followed through with enacting forms. For example, on September 24, 2015, then US Ambassador to Ukraine Geoffrey Pyatt stated publicly that Shokin's office ''not only did not support investigations into corruption, but rather undermined prosecutors working on legitimate corruption cases.'' Ambassador Pyatt specifically brought up Burisma as an example of an investigation that had languished under Shokin's tenure as Prosecutor General.)

97. *See* Joe Biden, then-Vice President, United States, Remarks to the Ukrainian Rada in Kyiv, Ukraine (Dec. 9, 2015). (On December 9, 2015, Vice President Biden stated in front of the Ukrainian Parliament (Rada): ''. . . you cannot name me a single democracy in the world where the cancer of corruption is prevalent. You cannot name me one. They are thoroughly inconsistent. And it's not enough to set up a new anti-corruption bureau and establish a special prosecutor fighting corruption. The Office of the General Prosecutor desperately needs reform. The judiciary should be overhauled. The energy sector needs to be competitive, ruled by market principles—not sweetheart deals.'')

98. 166 Cong. Rec. 20, S727 (daily ed. Jan. 30, 2020) (statement of Mr. Counsel Philbin).

99. Entous, *supra* note 86.

100. *See* UNIAN, *Ukrainian Prosecutor General Lutsenko Admits U.S. Ambassador Didn't Give Him a Do Not Prosecute List*, Apr. 18, 2019, https://www.unian.info/politics/10520715-ukraine-prosecutor-general-lutsenko-admits-u-s-ambassador-didn-t-give-him-a-do-not-prosecute-list.html; Daryna Krasnolutska, Kateryna Choursina and Stephanie Baker, *Ukraine Prosecutor Says No Evidence of Wrongdoing by Bidens*, Bloomberg, May 16, 2019, https://www.bloomberg.com/news/articles/2019-05-16/ukraine-prosecutor-says-no-evidence-of-wrongdoing-by-bidens; Michael Birnbaum, David L. Stern and Natalie Gryvnyak, *Former Ukraine Prosecutor Says Hunter Biden 'Did Not Violate Anything'*, Washington Post, Sept. 26, 2019, https://www.washingtonpost.com/world/europe/former-ukraine-prosecutor-says-hunter-biden-did-not-violate-anything/2019/09/26/48801f66-e068-11e9-be7f-4cc85017c36f_story.html; Andrew E. Kramer, Andrew Higgins and Michael Schwirtz, *The Ukrainian Ex-Prosecutor Behind the Impeachment Furor*, N.Y. Times, Oct. 5, 2019, https://www.nytimes.com/2019/10/05/world/europe/ukraine-prosecutor-trump.html. (On April 21, 2019, Mr. Lutsenko admitted that the claim he made about U.S. ambassador Yovanovitch was false. In May 2019, Mr. Lutsenko said there was no evidence of wronging by Vice President Biden or his son. In September 2019, Mr. Lutsenko said that Hunter Biden did not violate Ukrainian laws. In October 2019, Mr. Lutsenko told the New York Times, ''I understood very well what would interest them . . . I have 23 years in politics. I knew. I am a political animal.'')

101. *Interview of: Kurt Volker*, *supra* note 94, at 354.

102. Vogel, *supra* note, 67.

103. *Id.*

104. *Id.* (Mr. Giuliani said, ''He basically knows what I am doing, sure, as his lawyer.'')

105. Letter from Rudolph Giuliani to Arsen Avakov, Minister of Internal Affairs, Ukraine (May 10, 2019) (on file with H. Perm. Select Comm. on Intelligence). (The letter was provided to the House Permanent Select Committee on Intelligence and was made public on January 14, 2020. In the letter, Mr. Giuliani wrote, ''I will be accompanied by my colleague Victoria Toensing, a distinguished American attorney who is very familiar with this matter.''); Jo Becker, Walt

Bogdanich, Maggie Haberman, and Ben Protess, *Why Giuliani Singled out 2 Ukrainian Oligarchs to Help Look for Dirt*, N.Y. Times, Nov. 25, 2019, https://www.nytimes.com/2019/11/25/us/giuliani-ukraine-oligarchs.html; (As noted prior, Victoria Toensing, along with her Partner Joe DiGenova, were retained by pro-Putin Ukrainian oligarch Dmitry Firtash in July 2019. Facing extradition related to a bribery charge in Chicago in 2014, Mr. Firtash was convinced by Mr. Giuliani and his associates to get new legal representation to better ingratiate himself with the leadership at the Department of Justice under the Trump Administration. Mr. Firtash told the New York Times that Mr. Parnas and Mr. Fruman told him: ''We may help you, we are offering you good lawyers in D.C. who might represent you and deliver this message to the U.S. DOJ.'' Mr. Firtash said that his contract to Ms. Toensing and Mr. DiGenova was $300,000 per month. Mr. Parnas's lawyer told the New York Times, ''Per Mr. Giuliani's instructions, Mr. Parnas told Mr. Firtash that Ms. Toensing and Mr. DiGenova were interested in collecting information on the Bidens.'')

106. *See* Eliana Johnson, Darren Samuelsohn, Andrew Restuccia, and Daniel Lippman, *Trump: Discussing a Biden Probe with Barr Would Be 'Appropriate'*, Politico, May 10, 2019, https://www.politico.com/story/2019/05/10/trump-biden-ukraine-barr-1317601.

107. Charles Creitz, *Giuliani Cancels Ukraine Trip, Says He'd Be ''Walking into a Group of People that are Enemies of the US,''*, Fox News, May 11, 2019, https://www.foxnews.com/politics/giuliani-i-am-not-going-to-ukraine-because-id-be-walking-into-a-group-of-people-that-are-enemies-of-the-us.

108. *Interview of: Kurt Volker*, *supra* note 94, at 305; *Impeachment Inquiry: Ambassador Gordon Sondland Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 8, 21 (2019) (statement of Amb. Sondland).

109. *Interview of: Kurt Volker*, *supra* note 94, at 31. *Interview of: Ambassador Gordon Sondland Before the H. Perm. Select Comm. On Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 90 (2019).

110. *Interview of: Ambassador Gordon Sondland Before the H. Perm. Select Comm. On Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 91–92 (2019).

111. *Id*. at 71.

112. *Id*. at 22.

113. *Deposition of: William B. Taylor Before the H. Perm. Select Comm. On Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 23 (2019) (statement of Amb. Taylor).

114. *Impeachment Inquiry: Ambassador Gordon Sondland Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 27 (2019) (statement of Amb. Sondland).

115. *Impeachment Inquiry: Fiona Hill and David Holmes*, *supra* note 57, at 92.

116. *Impeachment Inquiry: Ambassador Gordon Sondland*, *supra* note 114, at 18.

117. *Impeachment Inquiry: Ambassador Kurt Volker and Timothy Morrison Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 18 (2019) (statement of Mr. Morrison).

118. *Id*. at 41.

119. *Id*. at 94.

120. *Id*. at 19.

121. *Impeachment Inquiry: Fiona Hill and David Holmes*, *supra* note 57, at 65–66.

122. *Id*. at 66.

123. *Impeachment Inquiry: Ms. Jennifer Williams and Lieutenant Colonel Alexander Vindman Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 19 (2019).

124. *Impeachment Inquiry: Fiona Hill and David Holmes*, *supra* note 57, at 66.

125. *Id*. at 67.

126. *See* Releases Under FOIA, Just Security (Dec. 20, 2019) (on file at https://assets.documentcloud.org/documents/6590667/CPI-v-DoD-Dec-20-2019-Release.pdf). (Released emails show that the OMB official Mike Duffey sent Acting Comptroller Elaine McCusker a copy of the Washington Examiner article on June 19, 2019 and said the President ''has asked about this funding release.''); Eric Lipton, Maggie Haberman and Mark Mazzetti, *Behind the Ukraine Aid Freeze: 84 Days of Conflict and Confusion*, N.Y. Times, Dec. 29, 2019, https://www.nytimes.com/2019/12/29/us/politics/trump-ukraine-military-aid.html?wpisrc=nl_powerup&wpmm=1. (The New York Times reported that OMB Officials learned President Trump had ''a problem with the aid'' on June 19, 2019. The report further indicates: ''Typical of the Trump White House, the inquiry was not born of a rigorous policy process. Aides speculated that someone had shown Mr. Trump a news article about the Ukraine assistance and he demanded to know more . . . [Acting OMB Director Russell] Vought and his team took to Google, and came upon a piece in the conservative Washington Examiner saying that the Pentagon would pay for weapons and other military equipment for Ukraine, bringing American security aid to the country to $1.5 billion since 2014.'')

127. *Deposition of: Mark Sandy Before the H. Perm. Select Comm. On Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 39 (2019). (OMB official Mark Sandy testified that he received an email on July 12, 2019, forwarded from White House aide Robert Blair, which stated that the President had directed a hold on Ukraine security assistance.); *Deposition of: Jennifer Williams Before the H. Perm. Select Comm. On Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 55 (2019). (Vice Presidential aide, Jennifer Williams testified that she learned of a hold on State Department security assistance funds (FMF) on July 3, 2019.)

128. *Impeachment Inquiry: Fiona Hill and David Holmes*, *supra* note 57, at 26. (Multiple witnesses testified to this announcement occurring at the July 18 interagency meeting on Ukraine, including Political Counselor to US Embassy in Ukraine, David Holmes.).

129. *Impeachment Inquiry: Ambassador William B. Taylor and Mr. George Kent Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 35 (2019). (For instance, Ambassador Taylor testified the directive had come from the President to the Chief of Staff to OMB, ''but could not say why.'')

130. *Impeachment Inquiry: Ms. Jennifer Williams and Lieutenant Colonel Alexander Vindman*, *supra* note 123, at 14–15. (For instance, Vice Presidential aide Williams testified that from when she first learned about the hold on July 3, 2019, until it was lifted on September 11, 2019, she never came to understand why President Trump ordered the hold.); *Deposition of: Lieutenant Colonel Alexander S. Vindman Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 306 (2019). (Similarly, NSC official Lt. Col Vindman testified, none of the ''facts on the ground'' changed before the President lifted the hold.)

131. 166 Cong. Rec. 19, S688 (daily ed. Jan. 29, 2020) (statement of Mr. Manager Crow).

132. *Deposition of: Mark Sandy Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 51 (2019). (For instance, OMB official Mark Sandy testified that he conferred with other officials such as Acting Deputy Assistant Secretary (Comptroller) Elaine McCusker, ''[t]he nature of the communication was that—how could we institute a temporary hold consistent with the Impoundment Control Act.''); *Deposition of: Laura Katherine Cooper Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 47 (2019). (Deputy Assistant Secretary of Defense Laura Cooper testified that at an interagency meeting soon after learning that the hold was implemented for Ukraine security assistance the ''deputies began to raise concerns about how this [the hold] could be done a legal fashion . . .'')

133. Corey Welt, Cong. Research Serv., R45008, Ukraine: Background Conflict with Russia and U.S. Policy 30 (2019).

134. *Deposition of: Laura Katherine Cooper Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 47 (2019). (Deputy Assistant Secretary of Defense Cooper further explained that the conversation, ''reflected a sense that there was not an understanding of how this [the hold] could legally play out,'' and that ''there was not an available [legal] mechanism to simply not spend money'' authorized, appropriated and notified to Congress for Ukraine.)

135. *See* Just Security FOIA Releases, *supra* note 126.

136. *See* S. Rep. No. 93–688, at 75 (1987). (The legislative history indicates that the purpose of the ICA was to ensure that ''the practice of reserving funds does not become a vehicle for furthering Administration policies and priorities at the expense of those decided by Congress.'')

137. U.S. Govt. Accountability Office, Legal Decision Regarding Office of Management and Budget—*Withholding of Ukraine Security Assistance*, File B–3311564, 1 (Jan. 16, 2020).

138. Memorandum from The White House of President Trump's Telephone Conversation with President Zelenskyy of Ukraine (July 25, 2019).

139. Donald J. Trump (@realDonaldTrump), Twitter (Jan. 16, 2020, 3:39 PM), https://twitter.com/realDonaldTrump/status/1217909231946477575?s=20 (President Trump has repeatedly claimed that his call with President Zelensky on July 25 was perfect. For example, on January 16, 2020 President Trump tweeted, ''I JUST GOT IMPEACHED FOR MAKING A PERFECT PHONE CALL!'')

140. Memorandum from The White House of President Trump's Telephone Conversation with President Zelenskyy of Ukraine 3 (July 25, 2019).

141. *Id*.

142. *Id*.

143. *Id*. at 4.

144. *Id*. at 4, 5. (The President referenced Attorney General Barr several times during his phone call with President Zelensky.)

145. *See* Katie Benner, *Justice Dept.'s Dismissal of Ukraine Call Raises New Questions About Barr*, N.Y. Times, Sept. 25, 2019, https://www.nytimes.com/2019/09/25/us/politics/william-barr-trump-ukraine.html. (As noted in the article, after the memorandum of telephone conversation from July 25th became public, the Justice Department spokesperson stated, ''Mr. Trump has not asked Mr. Barr to contact Ukraine for any reason, Mr. Barr has not communicated with Ukraine on any topic and Mr. Barr has not spoken with Mr. Giuliani about the president's phone call ''or anything related to Ukraine.'')

146. *See* Mark Mazzetti & Katie Benner, *Trump Pressed Australian Leader to Help Barr Investigate Mueller Inquiry's Origins*, N.Y. Times, Sept. 30, 2019, https://www.nytimes.com/2019/09/30/us/politics/trump-australia-barr-mueller.html. Kim Sengupta, *''It's Like Nothing We Have Come Across Before'': UK Intelligence Officials Shaken By Trump Administration's Requests For*

Help With Counter-Impeachment Inquiry, The Independent, Nov. 1, 2019, https://www.independent.co.uk/news/world/americas/us-politics/trump-impeachment-inquiry-latest-russia-mueller-ukraine-zelensky-a9181641.html. Katie Benner & Adam Goldman, *Justice Dept. is Said to Open Criminal Inquiry Into Its Own Russia Investigation*, N.Y. Times, Oct. 24, 2019, https://www.nytimes.com/2019/10/24/us/politics/john-durham-criminal-investigation.html. (Despite denials that the Attorney General had no knowledge of the topics discussed on the call, the Attorney General opened a Department of Justice investigation in April 2019, into the origins of the counterintelligence investigation against the Trump campaign in 2016. Aspects of this investigation involved contacting foreign leaders and asking that their governments investigate aspects of their involvement in that investigation. For example, at the Attorney General's request, the President asked the governments of Australia and the United Kingdom to assist with the investigation including looking at the role that their intelligence and law enforcement agencies played. The New York Times further reported that Attorney General Barr ''is closely managing the investigation even traveling to Italy to seek help from foreign officials there . . . Mr. Barr has also contacted government officials in Britain and Australia about their roles in the early stages of the Russia investigation.).); Interview by Rachel Maddow *supra* note 88. (Additionally, Giuliani associate Lev Parnas stated publicly that Attorney General Barr, ''had to know everything'' and was ''basically on the team.'')

147. Text Message from Kurt Volker, U.S. Ambassador to NATO and Special Envoy to Ukraine, to Gordon Sondland, U.S. Ambassador to EU, and William B. Taylor, Charge d'affaires at the U.S. Embassy in Kyiv (July 19, 2019) (on file with H. Perm. Select Comm. on Intelligence).

148. *Impeachment Inquiry: Ambassador Gordon Sondland*, *supra* note 114, at 27.

149. *Id.* at 94–95.

150. *Id.* at 52–55.; Text Message from Gordon Sondland, U.S. Ambassador to EU, to Kurt Volker, U.S. Ambassador to NATO and Special Envoy to Ukraine (July 25, 2019) (on file with H. Perm. Select Comm. on Intelligence).

151. Text Message from Kurt Volker, U.S. Ambassador to NATO and Special Envoy to Ukraine, to Gordon Sondland, U.S. Ambassador to EU, and William B. Taylor, Charge d'affaires at the U.S. Embassy in Kyiv (July 19, 2019) (on file with H. Perm. Select Comm. on Intelligence); Text Message from Gordon Sondland, U.S. Ambassador to EU, to Kurt Volker, U.S. Ambassador to NATO and Special Envoy to Ukraine (July 25, 2019) (on file with H. Perm. Select Comm. on Intelligence). (Text messages between Ambassadors Sondland and Volker affirm that the message that Ambassador Volker passed to Mr. Yermak was passed by Ambassador Volker in coordination with Ambassador Sondland. On July 25, just prior to the phone call between Presidents Trump and Zelensky, Ambassador Sondland texted to Ambassador Volker: ''call me.'' Ambassador Volker replied, ''Had a great lunch w[ith] Yermak and then passed your message to him . . . think everything is in place.'')

152. Memorandum from The White House of President Trump's Telephone Conversation with President Zelensky of Ukraine 5 (July 25, 2019).

153. *Impeachment Inquiry: Ms. Jennifer Williams and Lieutenant Colonel Alexander Vindman*, *supra* note 123, at 31.

154. 166 Cong. Rec. 19, S647 (daily ed. Jan. 29, 2020) (statement of Mr. Counsel Philbin). (For example, the President's counsel falsely claimed that the House Impeachment Managers didn't try to obtain first hand witnesses while they were making their case in the House. The President's Counsel argued, ''They didn't even subpoena John Bolton. They didn't even try to get his testimony. To insist now that this body will become the investigative body—that this body will have to do all of the discovery—then, this institution will be effectively paralyzed for months on end because it will have to sit as a Court of Impeachment while now discovery will be done. It would be Ambassador Bolton, and if there are going to be witnesses, in order for there to be, as they said, a fair trial, fair adjudication, then, the President would have to have his opportunity to call his witnesses, and there would be depositions. This would drag on for months. Then that will be the new precedent.'' As the House Impeachment Managers argued, these assertions do not actually represent the facts, ''We asked John Bolton to testify in the House, and he refused. We asked his deputy, Dr. Kupperman, to testify, and he refused. Fortunately, we asked their deputy, Dr. Fiona Hill, to testify, and she did. We asked her deputy, Colonel Vindman, to testify, and he did. We did seek the testimony of John Bolton as well as Dr. Kupperman, and they refused. When we subpoenaed Dr. Kupperman, he sued us. He took us to court. When we raised a subpoena with John Bolton's counsel, the same counsel for Dr. Kupperman, the answer was, '. . . you serve us with a subpoena, and we will sue you, too.'' We knew, based on the McGahn litigation, it would take months, if not years, to force John Bolton to come and testify.'')

155. Just Security FOIA Releases, *supra* note 126, at 40.

156. *Impeachment Inquiry: Fiona Hill and David Holmes* supra note 57, at 29.

157. *Id.* at 29–30.

158. Mick Mulvaney, Acting Chief of Staff, The White House, at Press Briefing by Acting Chief of Staff Mick Mulvaney (Oct. 17, 2019).

159. *Id.*

160. *Id.*

161. Caitlin Emma & Connor O'Brien, *Trump Holds Up Ukraine Military Aid Meant to Confront Russia*, Politico, Aug. 28, 2019, https://www.politico.com/story/2019/08/28/trump-ukraine-military-aid-russia-1689531.

162. *Impeachment Inquiry: Ms. Laura Cooper and Mr. David Hale Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 14 (2019) (statement of Ms. Cooper).

163. *Deposition of: Catherine Croft Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 86–87, 101 (2019). (Croft, a career foreign service officer, further testified that she was surprised at the effectiveness of their ''diplomatic tradecraft,'' noting that they ''found out very early on'' that the United States was withholding critical security assistance to Ukraine.)

164. Andrew E. Kramer & Kenneth P. Vogel, *Ukraine Knew of Aid Freeze by Early August, Undermining Trump Defense*, N.Y. Times, Oct. 23, 2019, https://www.nytimes.com/2019/10/23/us/politics/ukraine-aid-freeze-impeachment.html.

165. *Id.*

166. *Deposition of: Lieutenant Colonel Alexander S. Vindman Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 314 (2019).

167. Eric Lipton, Maggie Haberman and Mark Mazzetti, *Behind the Ukraine Aid Freeze: 84 Days of Conflict and Confusion*, N.Y. Times, Dec. 29, 2019, https://www.nytimes.com/2019/12/29/us/politics/trump-ukraine-military-aid.html?wpisrc=nl_powerup&wpmm=1.

168. *Deposition of: Tim Morrison Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 268 (2019).

169. Maggie Haberman & Michael S. Schmidt, *Trump Tied Ukraine Aid to Inquiries He Sought, Bolton Book Says*, N.Y. Times, Jan. 26, 2020, https://www.nytimes.com/2020/01/26/us/politics/trump-bolton-book-ukraine.html.

170. Text Messages from Gordon Sondland, U.S. Ambassador to EU, to Kurt Volker, U.S. Ambassador to NATO and Special Envoy to Ukraine (Aug. 9, 2019) (on file with H. Perm. Select Comm. on Intelligence). (The effort began with a text message from Ambassador Sondland to Ambassador Volker stating, ''I think POTUS really wants the deliverable.); *See Interview of: Kurt Volker*, *supra* note 94, at 71–72.

171. *Interview of: Kurt Volker*, *supra* note 94, at 71.

172. *Interview of: Kurt Volker*, *supra* note 94, at 113.

173. Text Messages from Kurt Volker, U.S. Ambassador to NATO and Special Envoy to Ukraine, to Gordon Sondland, U.S. Ambassador to EU, and Andriy Yermak, Aide to Ukrainian President Zelensky (Aug. 13, 2019) (on file with H. Perm. Select Comm. on Intelligence); *Interview of: Kurt Volker*, *supra* note 94, at 71, 73.

174. *Interview of: Kurt Volker*, *supra* note 94, at 188–189; *See generally* Text Message from Gordon Sondland, U.S. Ambassador to EU, to Kurt Volker, U.S. Ambassador to NATO and Special Envoy to Ukraine (Aug. 9, 2019) (on file with H. Perm. Select Comm. on Intelligence); Text Messages from Kurt Volker, U.S. Ambassador to NATO and Special Envoy to Ukraine, to Andriy Yermak, Aide to Ukrainian President Zelensky (Aug. 10–12, 2019) (on file with H. Perm. Select Comm. on Intelligence); (Ambassador Volker testified in his closed interview regarding the process on the draft statement: ''Rudy discussed, Rudy Giuliani and Gordon [Sondland] and I, what it is they are looking for. And I shared that with Andriy [Yermak]. And then Andriy came back to me and said: We don't think it's a good idea. So that was obviously before Andriy came back and said: We don't want to do that.'' Ambassador Volker further elaborated: ''So the Ukrainians were saying that just coming out of the blue and making a statement didn't make any sense to them. If they're invited to come to the White House on a specific date for President Zelensky's visit, then it would make sense for President Zelensky to come out and say something, and it would be a much broader statement about a reboot of U.S.-Ukraine relations, not just on we're investigating these things [2016/Burisma].'')

175. *Deposition of: William B. Taylor*, *supra* note 113, at 190.

176. *Id.* at 36.

177. *Id.*

178. *Id.* at 39–40.

179. *Deposition of: David A. Holmes Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 28 (2019).

180. *Deposition of: William B. Taylor*, *supra* note 113, at 39. (For instance, Ambassador Taylor testified that he spoke to Sondland by phone and that Sondland, ''said he had talked to President Trump . . . Trump was adamant that President Zelensky himself had to clear things up and do it in public.''); *Impeachment Inquiry: Ambassador Gordon Sondland*, *supra* note 114, at 109. (Ambassador Sondland did not dispute Taylor's characterization of these accounts.)

181. *Impeachment Inquiry: Ambassador Gordon Sondland*, *supra* note 114, at 19.

182. *Impeachment Inquiry: Ambassador William B. Taylor and Mr. George Kent*, *supra* note 129, at 44.
183. *Id.* at 44, 46.
184. Letter from Whistleblower to Adam Schiff, Chairman, H. Perm. Select Comm. on Intelligence, and Richard Burr, Chairman, S. Select Comm. on Intelligence (August 12, 2019).
185. *Id.*
186. Michael S. Schmidt, Julian E. Barnes, and Maggie Haberman, *Trump Knew of Whistleblower Complaint When He Released Aid to Ukraine*, N.Y. Times, Nov. 26, 2019, https://www.nytimes.com/2019/11/26/us/politics/trump-whistle-blower-complaint-ukraine.html.
187. Letter from Michael K. Atkinson, Inspector General, the Intelligence Community, to Adam Schiff, Chairman, House Perm. Select Comm. on Intelligence, and Devin Nunes, Ranking Member, House Perm. Select Comm. on Intelligence (Sep. 9, 2019).
188. Press Release, H. Perm. Select Comm. on Intelligence, Three House Committees Launch Wide-Ranging Investigation into Trump-Giuliani Ukraine Scheme (Sept. 9, 2019). (On September 9, 2019, the House Foreign Affairs Committee, in conjunction with the House Permanent Select Committee on Intelligence, and House Committee on Oversight and Government Reform launched ''a wide-ranging investigation into reported efforts by President Trump, the President's personal lawyer Rudy Giuliani, and possibly others to pressure the government of Ukraine to assist the President's reelection campaign.'')
189. *See* Just Security Releases, *supra* note 126, at 1.
190. Kenneth P. Vogel & Benjamin Novak, *Giuliani, Facing Scrutiny, Travels to Europe to Interview Ukrainians*, N.Y Times, Dec. 4, 2019, https://www.nytimes.com/2019/12/04/us/politics/giuliani-europe-impeachment.html. (For instance, Mr. Giuliani met with Mr. Shokin in Ukraine as part of a trip to generate additional information on the Bidens and 2016 election collusion. According to the *New York Times*, Giuliani's trip was intended ''to help prepare more episodes of a documentary series for a conservative television outlet promoting his pro-Trump, anti-impeachment narrative.'')
191. Opinion Memorandum of United States Senator John F. Reed, *supra* note 38, at 3.
192. *Id.* at 9
193. *Deposition of: Lieutenant Colonel Alexander S. Vindman*, *supra* note 166, at 18.
194. *Impeachment Inquiry: Ms. Jennifer Williams and Lieutenant Colonel Alexander Vindman*, *supra* note 123, at 15.
195. *Deposition of: Jennifer Williams Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 149 (2019).
196. *Deposition of: Lieutenant Colonel Alexander S. Vindman*, *supra* note 166, at 97; *Deposition of: Tim Morrison*, *supra* note 168, at 16.
197. Letter from Whistleblower, *supra* note 184, at 3.
198. Letter from John C. Rood, Under Secretary of Defense, U.S. Department of Defense, to Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs (May 23, 2019).
199. *Deposition of: Laura Katherine Cooper*, *supra* note 134, at 49. (Ms. Cooper testified that the officials present at the July 26 meeting did not consider corruption to be a legitimate reason for the hold because they unanimously agreed that Ukraine was making sufficient progress on anti-corruption reforms, as certified by the Defense Department on May 23, 2019.)
200. *Deposition of: William B. Taylor*, *supra* note 113, at 28.
201. Memorandum from The White House of President Trump's Telephone Conversation with President-Elect Zelenskyy of Ukraine (Apr. 21, 2019); Memorandum from The White House of President Trump's Telephone Conversation with President Zelenskyy of Ukraine (July 25, 2019).
202. *Impeachment Inquiry: Ms. Jennifer Williams and Lieutenant Colonel Alexander Vindman*, *supra* note 123, at 24–25. (Lt. Col. Vindman testified that recommended talking points for the April 21 call included rooting out corruption.); See Memorandum from The White House of President Trump's Telephone Conversation with President-Elect Zelenskyy of Ukraine (Apr. 21, 2019). (The memorandum of telephone call from April 21 shows the issue was not raised.); *Impeachment Inquiry: Ms. Jennifer Williams and Lieutenant Colonel Alexander Vindman*, *supra* note 123, at 31. (Lt. Col Vindman further testified that he prepared the President's talking points for his July 25th phone call with President Zelensky and the topics for that call included, ''cooperation on supporting a reform agenda, anticorruption efforts, and helping President Zelensky implement his plans to end Russia's war against Ukraine.''); Memorandum from The White House of President Trump's Telephone Conversation with President Zelenskyy of Ukraine (July 25, 2019). (The memorandum of telephone call from July 25, 2019, indicates that the President did not raise these issues.); *Impeachment Inquiry: Kurt Volker and Timothy Morrison*, *supra* note 117, at 34. (NSC official Morrison testified that references to Crowdstrike, the DNC server, and 2016 election, and to Vice President Biden and his son, were not included in the President's talking points as written by the NSC.)
203. *Deposition of: Tim Morrison*, *supra* note 168, at 41.
204. *See* further discussion of this topic on pages 22–23.
205. *See* further discussion of this topic on page 23.
206. *Impeachment Inquiry: Ambassador Marie ''Masha'' Yovanovitch Before the H. Perm. Select Comm. on Intelligence*, 116th Cong. 115 (2019). (For instance, during her testimony, Ambassador Yovanovitch was asked whether it was appropriate to investigate corruption including a potentially corrupt company such as Burisma. Ambassador Yovanovitch responded: ''I think it's appropriate if it's part of our national strategy. What I would say is that we have a process for doing that. It's called the Mutual Legal Assistance Treaty. We have one with Ukraine, and generally it goes from our Department of Justice to the Ministry of Justice in the country of interest.''); *Interview of: George Kent*, *supra* note 63, at 158. (Deputy Assistant Secretary Kent, a career diplomat and recognized expert on anti-corruption measures stated in his deposition: ''. . . if there's any criminal nexus for any activity involving the U.S., that U.S. law enforcement by all means should pursue that case, and if there's an international connection, that we have mechanisms to ask either through Department of Justice MLAT in writing or through the presence of individuals representing the FBI, our legal attaches, to engage foreign governments directly based on our concerns that there had been some criminal act violating U.S. law.'')
207. Memorandum from The White House of President Trump's Telephone Conversation with President Zelensky of Ukraine (July 25, 2019).
208. Caitlin Oprysko, *Trump pressed Ukraine's president to work with Barr for dirt on Biden*, Politico, Sep. 25, 2019, https://www.politico.com/story/2019/09/25/white-house-releases-transcript-of-trumps-call-with-ukraines-president-1510767.
209. *Interview of: Kurt Volker*, *supra* note 94, at 191. (Ambassador Volker testified that ''Andriy [Yermak, President Zelensky's close aide] asked whether any request had ever been made by the U.S. to investigate election interference in 2016.'' Ambassador Volker confirmed in his testimony that Yermak's inquiry equated to ''a request from the Department of Justice.'')
210. *Interview of: Kurt Volker*, *supra* note 94, at 199. (Ambassador Volker testified that to his knowledge there was not an official United States Department of Justice request.).
211. European Union External Action, EU-Ukraine Relations—Factsheet (Jan. 28, 2020), https://eeas.europa.eu/headquarters/headquarters-homepage_en/4081/%20EU-Ukraine%20relations%20-%20factsheet; Iain King, Not Contributing Enough? A Summary of European Military and Development Assistance to Ukraine Since 2014 (Ctr. for Strategic & Int'l Studies, Sept. 26, 2019), https://www.csis.org/analysis/not-contributing-enough-summary-european-military-and-development-assistance-ukraine-2014.
212. *See* further discussion of this topic at page 21.
213. *Id.*
214. *Deposition of: Mark Sandy Before the H. Perm. Select Comm. on Intelligence, Joint with the Comm. on Oversight and Reform and the Comm. on Foreign Affairs*, 116th Cong. 143 (2019). (Mr. Sandy testified that OMB Official Mike Duffey, ''simply said, we need to let the hold take place . . . and then revisit this issue with the President.'')
215. *Id.* at 179. (Mr. Sandy responded ''that's correct'' to the question: ''at some point in early September, Mr. Blair stopped by your office and told you that the reason for the hold was out of concern that the United States gives more aid to Ukraine than other countries? Or, rather, that other countries should give more as well.'')
216. *Id.* at 180.
217. U.S. Govt. Accountability Office, *supra* note 137.
218. Kate Brannen, *Exclusive: Unredacted Ukraine Documents Reveal Extent of Pentagon's Level Concerns*, Just Security, Jan. 2, 2020, https://www.justsecurity.org/67863/exclusive-unredacted-ukraine-documents-reveal-extent-of-pentagons-legal-concerns/.
219. *Deposition of: Laura Katherine Cooper*, *supra* note 134, at 79–81.
220. *Id.* at 80–81.
221. Office of the Director of National Intelligence, National Intelligence Council, *supra* note 63.
222. Staff of the S. Select Comm. on Intelligence, 115th Cong., Rep. on The Intelligence Community Assessment: Assessing Russian Activities and Intentions in Recent U.S. Elections 2 (Comm. Print 2018). (On July 3, 2018, the Senate Select Committee on Intelligence announced that they had concluded an in-depth review of the Intelligence Committee's January 6, 2017, assessment and concluded that the assessment ''is a sound intelligence product.'')
223. 1 Mueller, *supra* note 60, at 1. (Special Counsel Mueller concluded ''the Russian government interfered . . . in sweeping and systematic fashion.'')
224. *Impeachment Inquiry: Fiona Hill and David Holmes*, *supra* note 57 (statement of Dr. Fiona Hill).
225. *Impeachment Inquiry: Ambassador Kurt Volker and Timothy Morrison*, *supra* note 117, at 11.
226. *Id.*
227. *Impeachment Inquiry: Ambassador William B. Taylor and Mr. George Kent*, *supra* note 129, at 169–170.
228. *Id.* at 57.
229. *Id.* at 54.
230. *Id.* at 45.

231. *Interview of: Kurt Volker*, *supra* note 94, at 15.
232. *Interview of: George Kent*, *supra* note 63, at 114.
233. 165 Cong. Rec. 205, H12193 (daily ed. Dec. 18, 2019) (statement of Rep. Adam Schiff).
234. H.R. Res. 755, 116th Cong. Art. II (2019).
235. *Id*.
236. *See generally* The Federalist Paper No. 47 (James Madison) (Jacob E. Cooke ed., 1961); The Federalist Paper No. 48 (James Madison) (Jacob E. Cooke ed., 1961); The Federalist Paper No. 49 (James Madison) (Jacob E. Cooke ed., 1961); The Federalist Paper No. 50 (James Madison) (Jacob E. Cooke ed., 1961); The Federalist Paper No. 51 (James Madison) (Jacob E. Cooke ed., 1961). (Federalist Papers No. 47 through No. 51 explain how the Executive, Legislative, and Judicial Branches were to be wholly separated from each other, yet accountable to each other through a system of checks and balances.); *See also* Nixon v. Administrator of General Services, 433 U.S. 425, 426 (1977). (In *Nixon v. GSA*, the Supreme Court articulated the test for a violation of the separation of powers as occurring when the action of one branch ''prevents [another branch] from accomplishing its constitutionally assigned functions.'')
237. U.S. Const. art. II, §3.
238. McGrain v. Daugherty, 273 U.S. 135, 174–175 (1927). (''A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—with enforcing process—was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed, was treated as inhering in it. Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised.'')
239. Kilbourn v. Thompson, 103 U.S. 168, 190 (1880).
240. U.S. Const. art. I, §2, cl. 5.
241. Frank O. Bowman III, High Crimes & Misdemeanors: A History of Impeachment for the Age of Trump 199–200 (2019). (''The subpoena power in impeachment cases arises directly from an explicit constitutional directive that the House conduct an adjudicative proceeding akin to a grand jury, the success of which is necessarily dependent on the availability of relevant evidence. Without the power to compel compliance with subpoenas and the concomitant right to impeach a president for refusal to comply, the impeachment power would be nullified.'')
242. Cong. Globe, 27th Cong., 2d Sess. 580 (1842) (statement of Rep. John Quincy Adams).
243. H.R. Rep. 93–1305, at 4 (1974).
244. H.R. Res. 660, 116th Cong. (2019).
245. Press Release, H. Perm. Select Comm. on Intelligence, Three House Committees Launch Wide-Ranging Investigation into Trump-Giuliani Ukraine Scheme (Sept. 9, 2019).
246. Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs, et al., to Pat Cipollone, Counsel to the President, The White House, (Sep. 9, 2019).
247. Nancy Pelosi, Speaker, U.S. House of Representatives, Impeachment Inquiry Announcement (Sep. 24, 2019).
248. Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform, et al., to John Michael Mulvaney, Acting Chief of Staff to the President, The White House (Oct. 4, 2019).
249. Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs, et al., to Michael R. Pompeo, Secretary, U.S. Department of State (Sept. 27, 2019); Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs, et al., to T. Ulrich Brechbuhl, Counselor, U.S. Department of State (Oct. 25, 2019).
250. Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Mark T. Esper, Secretary, U.S. Department of Defense (Oct. 7, 2019).
251. Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Russell T. Vought, Acting Director, U.S. Office of Management and Budget (Oct. 7, 2019); Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs, et al., to Russell T. Vought, Acting Director, U.S. Office of Management and Budget (Oct. 25, 2019); Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs, et al., to Michael Duffey, Associate Director for National Security Programs, U.S. Office of Management and Budget (Oct. 25, 2019).
252. Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs, et al., to James Richard ''Rick'' Perry, Secretary, U.S. Department of Energy (Oct. 10, 2019).
253. Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Rudolph ''Rudy'' W. L. Giuliani, Giuliani Partners LLC (Sept. 30, 2019).
254. H.R. Rep. No. 116–266, at 3 (2019).
255. Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Paul W. Butler, Esq., Counsel to Michael Ellis, Senior Associate Counsel to the President, The White House, and Deputy Legal Advisor, National Security Council (Nov. 3, 2019); Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Karen Williams, Esq., Counsel to Preston Wells Griffith, Senior Director for International Energy and Environment, National Security Council (Nov. 4, 2019).
256. Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Whitney C. Ellerman, Counsel to Robert B. Blair, Assistant to the President and Senior Advisor to the Chief of Staff, The White House (Nov. 3, 2019); H. Perm. Select Comm. on Intelligence, Subpoena to John Michael Mulvaney, Acting Chief of Staff, The White House (Nov. 7, 2019).
257. Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs, et al., to Brian McCormack, Associate Director for Natural Resources, Energy and Science, U.S. Office of Management and Budget (Nov. 1, 2019).
258. Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Justin Shur, Esq., Counsel to Jennifer Williams, Special Advisor for Europe and Russia, Office of the Vice President (Nov. 4, 2019); H. Perm. Select Comm. on Intelligence, Subpoena to Jennifer Williams, Special Advisor for Europe and Russia, Office of the Vice President (Nov. 19, 2019).
259. Letter from Pat A. Cipollone, Counsel to the President, The White House, to Nancy Pelosi, Speaker, U.S. House of Representatives, et al. 7 (Oct. 8, 2019).
260. Jordyn Phelps, '*We're Fighting All the Subpoenas': Trump on Battle with House Democrats*, ABC News, Apr. 24, 2019, https://abcnews.go.com/Politics/fighting-subpoenas-trump-battle-democrats/story?id=62600497.
261. Donald J. Trump (@realDonaldTrump), Twitter (Oct. 3. 2019, 9:04 PM), https://twitter.com/realDonaldTrump/status/1179925259417468928?s=20.
262. Staff of H. Perm. Select Comm. on Intelligence, 116th Cong., Rep. on The Trump-Ukraine Impeachment Inquiry 220–224 (Comm. Print 2019).
263. *Id*. at 219–220.
264. *Id*. at 226–227.
265. *Id*. at 224–226.
266. Memorandum from The White House of President Trump's Telephone Conversation with President-Elect Zelenskyy of Ukraine (Apr. 21, 2019).
267. Memorandum from The White House of President Trump's Telephone Conversation with President Zelenskyy of Ukraine (July 25, 2019).
268. Donald Trump, President, United States of America, Remarks by President Trump and President Niinist of the Republic of Finland in Joint Press Conference (Oct., 2, 2019). (On October 2, 2019, President Trump stated, ''All because they didn't know that I had a transcript done by very, very talented people—word for word, comma for comma. Done by people that do it for a living. We had an exact transcript.'')
269. *Deposition of: Lieutenant Colonel Alexander S. Vindman*, *supra* note 166, at 53–55.
270. H.R. Rep. No. 116–346, at 134–135 (2019). (The following Trump Administration officials defied congressional subpoenas directing them to testify in the impeachment inquiry: John Michael Mulvaney, Acting Chief of Staff to the President, The White House; Robert B. Blair, Assistant to the President and Senior Advisor to the Chief of Staff, The White House; John A. Eisenberg, Deputy Counsel to the President for National Security Affairs, the White House and Legal Advisor, National Security Council; Michael Ellis, Senior Associate Counsel to the President, The White House, and Deputy Legal Advisor, National Security Council; Preston Wells Griffith, Senior Director for International Energy and Environment, National Security Council; Russell T. Vought, Acting Director, Office of Management and Budget; Michael Duffey, Associate Director for National Security Programs, Office of Management and Budget; Brian McCormack, Associate Director for Natural Resources, Energy and Science, Office of Management and Budget, and former Chief of Staff to Secretary, U.S. Department of Energy; and T. Ulrich Brechbuhl, Counselor, Department of State).
271. Staff of H. Perm. Select Comm. on Intelligence, 116th Cong., Rep. on The Trump-Ukraine Impeachment Inquiry 222–224 (Comm. Print 2019).
272. *Id*. at 225.
273. *Id*. at 226–227.
274. *Id*. at 25, 108–109, 134–135, 137–138.
275. Donald J. Trump (@realDonaldTrump), Twitter (Oct. 8, 2019, 9:23 AM), https://twitter.com/realDonaldTrump/status/1181560772255719424. (Ten days before Ambassador Sondland's deposition before the House Permanent Select Committee on Intelligence, the President issued two tweets, indicating that Ambassador Sondland should not cooperate because he had done nothing wrong: ''I would love to send Ambassador Sondland, a really good man and great American, to testify, but unfortunately he would be testifying before a totally compromised kangaroo court, where Republican's rights have been taken away, and true facts are not allowed out for the public. . . . to see. Importantly, Ambassador Sondland's tweet, which few report, stated, I believe you are incorrect about President Trump's intentions. The President has been crystal clear: no quid pro quo's of any kind.' That says it ALL!'')
276. Donald J. Trump (@realDonaldTrump), Twitter (Oct. 23, 2019, 2:58 PM), https://twitter.com/realdonaldtrump/status/

1187080923961012228?lang=en. (The day after Ambassador Taylor's October 22, 2019, deposition before the House Permanent Select Committee on Intelligence, President Trump suggested that Ambassador Taylor's testimony was politically motivated: ''Never Trumper Republican John Bellinger, represents Never Trumper Diplomat Bill Taylor (who I don't know), in testimony before Congress! Do Nothing Democrats allow Republicans Zero Representation, Zero due process, and Zero Transparency. . . .'')

277. Donald J. Trump (@realDonaldTrump), Twitter (Nov. 15, 2019, 10:01 AM), https://twitter.com/realDonaldTrump/status/1195356211937468417. (The morning of her hearing on November 15, 2019, President Trump issued a series of disparaging, accusatory tweets saying: ''Everywhere Marie Yovanovitch went turned bad. She started off in Somalia, how did that go? Then fast forward to Ukraine, where the new Ukrainian President spoke unfavorably about her in my second phone call with him. It is a U.S. President's absolute right to appoint ambassadors. . . . They call it ''serving at the pleasure of the President.'' The U.S. now has a very strong and powerful foreign policy, much different than proceeding administrations. It is called, quite simply, America First! With all of that, however, I have done FAR more for Ukraine than O.'')

278. The White House (@WhiteHouse), Twitter (Nov. 19, 2019, 12:49 PM), https://twitter.com/whitehouse/status/1196848072929796096?lang=en. (During the hearing of Lt. Col Vindman on November 19, 2019, the official White House twitter account tweeted the following message, suggesting that Lt. Col. Vindman was not a reliable witness: ''Tim Morrison, Alexander Vindman's former boss, testified in his deposition that he had concerns about Vindman's judgment.'')

279. Donald J. Trump (@realDonaldTrump), Twitter (Nov. 17, 2019, 2:57 PM), https://twitter.com/realdonaldtrump/status/1196155347117002752?lang=en. (On Sunday, November 17, 2019, two days before Ms. Williams scheduled hearing before the House Permanent Select Committee on Intelligence on November 19, the President attempted to influence her testimony by tweeting: ''Tell Jennifer Williams, whoever that is, to read BOTH transcripts of the presidential calls, & see the just released ststement (sic) from Ukraine. Then she should meet with the other Never Trumpers, who I don't know & mostly never even heard of, & work out a better presidential attack!'')

280. Trial Memorandum of President Donald J. Trump, *supra* note 25, at 37.

281. Staff of H. Perm. Select Comm. on Intelligence, 116th Cong., Rep. on The Trump-Ukraine Impeachment Inquiry 235–236, 239–241, 243–250 (Comm. Print 2019). (From the Department of State, that included Marie Yovanovitch, Gordon Sondland, George Kent, William Taylor, and T. Ulrich Brechbuhl. From the Department of Defense, that included Laura Cooper. In addition, the White House directed Charles Kupperman not to cooperate.).

282. *See* Watkins v. United States, 354 U.S. 178, 187 (1957). (Even in exercising its ordinary oversight powers, the Supreme Court held in *Watkins v. United States* that ''[t]he power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste.'')

283. McGrain v. Daugherty, 273 U.S. 135, 175 (1927). (The Supreme Court in *McGrain v. Daugherty* elaborated on Congress' occasional need to compel information, writing that ''A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed.''); *See also* Watkins v. United States, 354 U.S. 178, 187–95 (1957); *See also* Eastland v. U.S. Servicemen's Fund, 421 U.S. 491, 504–05 (1975).

284. H.R. Doc. No. 115-77, at 586–588 (2019).

285. Watkins v. United States, 354 U.S. 178, 179 (1957). (The Supreme Court held in *Watkins* that ''In authorizing an investigation by a committee, it is essential that the Senate or House should spell out the committee's jurisdiction and purpose with sufficient particularity to insure that compulsory process is used only in furtherance of a legislative purpose.'' As such, the Court also held that ''a congressional investigation into individual affairs is invalid if unrelated to any legislative purpose, because it is beyond the powers conferred upon Congress by the Constitution.'')

286. Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Paul W. Butler, Esq., Counsel to Michael Ellis, Senior Associate Counsel to the President, The White House, and Deputy Legal Advisor, National Security Council (Nov. 3, 2019); Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Karen Williams, Esq., Counsel to Preston Wells Griffith, Senior Director for International Energy and Environment, National Security Council (Nov. 4, 2019); Letter from Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, et al., to Whitney C. Ellerman, Counsel to Robert B. Blair, Assistant to the President and Senior Advisor to the Chief of Staff, The White House (Nov. 3, 2019); H. Perm. Select Comm. on Intelligence, Subpoena to John Michael Mulvaney, Acting Chief of Staff, The White House (Nov. 7, 2019); Letter from Eliot L. Engel to Brian McCormack, *supra* note 257; Letter from Eliot L. Engel, Chairman, H. Comm. on Foreign Affairs, et al., to John A. Eisenberg, Deputy Counsel to the President for National Security Affairs, the White House and Legal Advisor, National Security Council (Nov. 1, 2019); H.R. Rep. No. 116–346, at 134–135 (2019).

287. Letter from Pat A. Cipollone to Nancy Pelosi, *supra* note 259, at 2.

288. Donald Trump, President, United States of America, Remarks by President Trump in Press Conference, Davos, Switzerland (Jan. 22, 2020).

289. United States v. Nixon, 418 U.S. 683, 706 (1974).

290. *Id.* at 706, 713. (Dicta from *United States v. Nixon* further suggests that a claim of confidentiality of presidential communications would be stronger if a need to protect military, diplomatic, or sensitive national security secrets is claimed.)

291. Senate Select Comm. on Presidential Campaign Activities v. Nixon, 498 F.2d 725, 730 (D.C. Cir. 1974).

292. *Id.* at 731.

293. Letter from Pat A. Cipollone to Nancy Pelosi, *supra* note 259, at 2.

294. *See* The Federalist No. 66, at 446 (Alexander Hamilton) (Jacob E. Cooke ed., 1961). (The Framers created impeachment as an ''essential check in the hands of [Congress] upon the encroachments of the executive'' and to ensure that the President could not be above the law.)

295. Comm. on the Judiciary, U.S. House of Representatives v. Miers, 558 F. Supp. 2d 53, 102–103 (2008). (''Congress's power of inquiry is as broad as its power to legislate and lies at the very heart of Congress's constitutional role. Indeed, the former is necessary to the proper exercise of the latter: according to the Supreme Court, the ability to compel testimony is ''*necessary to the effective functioning of courts and legislatures* . . . Thus, Congress's use of (and need for vindication of) its subpoena power in this case is no less legitimate or important than was the grand jury's in *United States v. Nixon*. Both involve core functions of a co-equal branch of the federal government, and for the reasons identified in *Nixon*, the President may only be entitled to a presumptive, rather than an absolute, privilege here. And it is certainly the case that if the President is entitled only to a presumptive privilege, his close advisors cannot hold the superior card of absolute immunity.'')

296. Comm. on Judiciary, U.S. House of Representatives v. McGahn, ___F. Supp. 3d ___, No. 19–cv–2379 (KBJ), 2019 WL 6312011 (D.D.C. Nov. 25, 2019) (Ketanji Brown Jackson, J.) (Rejecting the Department of Justice's argument that presidential advisors like Don McGahn enjoy absolute immunity from compelled congressional testimony.)

297. William French Smith, *Assertion of Executive Privilege in Response to a Congressional Subpoena in* Opinions of the Legal Counsel, Department of Justice 31 (October 13, 1981) (''The accommodation required is not simply an exchange of concessions or a test of political strength. It is an obligation of each branch to make a principled effort to acknowledge, and if possible to meet, the legitimate needs of the other branch.'')

298. United States v. AT&T Co., 567 F.2d 121, 127 (D.C. Cir. 1977).

299. *See e.g.* Neal Devins, *Congressional-Executive Information Access Disputes: A Modest Proposal—Do Nothing*, 48 Admin. L. Rev. 109, 116 (1996).

300. *See id.* at 122, 125. (''Types of intermediate options [when there are executive privilege claims] include the executive providing the requested information in timed stages, the executive releasing expurgated or redacted versions of the information, the executive preparing summaries of the information, Congress promising to maintain confidentiality regarding the information, and Congress inspecting the material while it remains in executive custody.'')

301. William P. Barr, *Congressional Requests for Confidential Executive Branch Information* in Opinions of the Legal Counsel, Department of Justice 153, 162 (June 19, 1989).

302. *See* John E. Bies, *Primer on Executive Privilege and the Executive Branch Approach to Congressional Oversight*, Lawfare, June 16, 2017, https://www.lawfareblog.com/primer-executive-privilege-and-executive-branch-approach-congressional-oversight. (''If negotiations reach a standstill and these officials conclude that the circumstances warrant invocation of executive privilege, they prepare materials for the White House counsel to present the issue to the president for his or her decision. Traditionally, this presentation involves a memorandum from the head of the agency that received the congressional request explaining the information sought by Congress, why the information is privileged, and the efforts that the agency has made to date to accommodate the congressional request; a memorandum from the attorney general evaluating the legal basis for a privilege assertion over the requested information, including whether the qualified privilege might be overcome in the balancing of

interests and needs; and the White House counsel's recommendation to the president. Pending the president's decision, the agency is directed to ask Congress to hold the request in abeyance, and to explain that this is simply to protect the president's ability to assert the privilege and does not itself constitute a claim of privilege.'')

303. 166 Cong. Rec. 16, S575 (daily ed. Jan. 25, 2020) (Statement of Mr. Counsel Philbin).

304. Trial Memorandum of President Donald J. Trump, *supra* note 25, at 75.

305. Alison Durkee, *Lev Parnas: Trump ''Knew Exactly What Was Going On'' in Ukraine*, Vanity Fair, Jan. 6, 2020, https://www.vanityfair.com/news/2020/01/lev-parnas-maddow-ukraine-trump; Olivia Rubin & Soo Rin Kim, *Giuliani's Associate Lev Parnas Speaks Again: 'It Was All About 2020.'*, ABC News, Jan. 17, 2020, https://abcnews.go.com/Politics/giulianis-associate-lev-parnas-speaks-2020/story?id=68340258.

306. Maggie Haberman & Michael S. Schmidt, *Trump Told Bolton to Help His Ukraine Pressure Campaign, Book Says*, N.Y. Times, Jan. 31, 2020, https://www.nytimes.com/2020/01/31/us/politics/trump-bolton-ukraine.html.

307. Adam Edelman, *Lev Parnas, the Indicted Associate of Giuliani, Tries to Attend Trump Impeachment Trial*, NBC News, Jan. 29, 2020, https://www.nbcnews.com/politics/trump-impeachment-inquiry/lev-parnas-indicted-associate-giuliani-tries-attend-trump-impeachment-trial-n1125601; Nicholas Fandos & Michael S. Schmidt, *Bolton is Willing to Testify in Trump Impeachment Trial, Raising Pressure for Witnesses*, N.Y. Times, Jan. 6, 2020, https://www.nytimes.com/2020/01/06/us/politics/bolton-testify-impeachment-trial.html.

308. Fred Barbash, *Trump Denies Telling Bolton that Ukraine Aid was Tied to Investigations, as Explosive Book Claiming Otherwise Leaks*, Washington Post, Jan. 27, 2020, https://www.washingtonpost.com/nation/2020/01/27/trump-bolton-ukraine/; Justin Wise, *Trump Again Denies Knowing Lev Parnas: 'He's a Con Man,'*, The Hill, Jan. 22, 2020, https://thehill.com/homenews/administration/479317-trump-again-denies-knowing-lev-parnas-hes-a-conman.

309. Caitlin Oprysko, *Trump Suggests He'd Invoke Executive Privilege to Block Bolton Testimony*, Politico, Jan. 10, 2020, https://www.politico.com/news/2020/01/10/trump-john-bolton-testimony-097349.

310. Trial Memorandum of President Donald J. Trump, *supra* note 25, at 40.

311. Bowman, *supra* note 241, at 164–165.

312. H.R. Rep. No. 93–1305, at 6 (1974).

313. U.S. Const. art. I, §3, cl. 6.

314. Todd Garvey, Cong. Research Serv., R45983, Congressional Access to Information in an Impeachment Investigation 21 (2019).

315. Comm. on Judiciary, U.S. House of Representatives v. McGahn, ____ F. Supp. 3d ____, No. 19-cv-2379 (KBJ) 57-58, 2019 WL 6312011 (D.D.C. Nov. 25, 2019) (Ketanji Brown Jackson, J.)

316. *Id.* at 59.

317. 2 The Records of the Federal Convention of 1787, *supra* note 12, at 65.

318. *Id.* at 64.

319. *Id.*

320. Letter from Pat A. Cipollone to Nancy Pelosi, *supra* note 259, at 4.

321. Hebert v. State of La., 272 U.S. 312, 316–317 (1926).

322. H.R. Rep. No. 105–795, at 25–26 (1998).

323. H.R. Rep. No. 116–346, at 17–19 (2019).

324. Staff of H. Comm on the Judiciary, 93rd Cong., Impeachment Inquiry Procedures 1–2 (Comm. Print 1974).

325. H.R. Rep. No. 116–266, at 9–11 (2019).

326. Letter from Jerrold Nadler, Chairman, H. Comm. on the Judiciary, to Donald Trump, President, United States of America (Nov. 29, 2019).

327. Letter from Pat A. Cipollone, Counsel to the President, The White House, to Jerrold Nadler, Chairman, H. Comm. on the Judiciary (Dec. 6, 2019).

328. Trial Memorandum of the United States House of Representatives, *supra* note 66, at SMF 58.

329. 166 Cong. Rec. 12, S381–S382 (daily ed. Jan. 21, 2020) (statement of Mr. Manager Schiff).

330. Claudia Grisales & Kelsey Snell, *After Pressure, McConnell Makes Last-Minute Changes to Impeachment Trial Procedure*, NPR, Jan. 20, 2020, https://www.npr.org/2020/01/20/798007597/read-mcconnell-lays-out-plan-for-senate-impeachment-trial-procedure; *See* S. Res. 483, 116th Cong. (2019).

331. Claudia Grisales & Kelsey Snell, *After Pressure, McConnell Makes Last-Minute Changes to Impeachment Trial Procedure*, NPR, Jan. 20, 2020, https://www.npr.org/2020/01/20/798007597/read-mcconnell-lays-out-plan-for-senate-impeachment-trial-procedure.

332. S. Res. 483, 116th Cong. (2019).

333. *Id.*

334. *See* S. Amdt. 1284 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1285 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1286 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1287 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1288 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1289 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1290 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1291 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1292 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1293 to S. Res. 483, 116th Cong. (2020); S. Amdt. 1294 to S. Res. 483, 116th Cong. (2020). (These amendments included: subpoenas for relevant documents held by the White House related to meetings and calls between President Trump and the President of Ukraine; subpoenas compelling the Secretary of State, Acting Director of the Office of Management and Budget, and Secretary of Defense to produce documents and records related to the July 25 phone call between President Trump and the Ukrainian President and records related to the freezing of assistance to Ukraine; and subpoenas for the testimony of Acting Chief of Staff Mick Mulvaney and Ambassador John Bolton, both of whom have significant firsthand knowledge of the events that are the subject of this impeachment trial. Other amendments sought to ensure that there would be votes on motions to subpoena witnesses, provide additional time to respond to motions, and require the Chief Justice to rule on motions to subpoena witnesses and documents.)

335. 166 Cong. Rec. 12, S385–S431 (Jan. 21, 2020).

336. 166 Cong. Rec. 21, S766–S769 (daily ed. Jan. 31, 2020).

337. *Id.*

338. Nicholas Fandos, *McConnell Says He Will Proceed on Impeachment Trial Without Witness Deal*, N.Y. Times, Jan. 7, 2020, https://www.nytimes.com/2020/01/07/us/politics/impeachment-trial-witnesses.html.

339. H.R. Rep. 116–346, at 20, 24 (2019).

340. Opinion Memorandum of United States Senator John F. Reed, supra note 38, at 4.

341. *Id.*

342. 166 Cong. Rec. 19, S650–S651 (daily ed. Jan. 29, 2020) (statement of Mr. Counsel Dershowitz).

343. 166 Cong. Rec. 17, S614 (daily ed. Jan. 27, 2020) (statement of Mr. Counsel Dershowitz). (In response to the report in the New York Times on January 26, 2020, that the manuscript of a book by former National Security Adviser John Bolton contends that President Trump directly tied the freeze on security assistance for Ukraine to Ukraine agreeing to conduct investigations into the 2016 campaign and Biden/Burisma theories, defense counsel Alan Dershowitz argued that ''if a President-any President-were to have done what 'The Times' reported about the content of the Bolton manuscript, that would not constitute an impeachable offense. Let me repeat it. Nothing in the Bolton revelations, even if true, would rise to the level of an abuse of power or an impeachable offense . . . You cannot turn conduct that is not impeachable into impeachable conduct simply by using words like 'quid pro quo''' and 'personal benefit.'''')

344. Ashley Parker & David E. Sanger, *Donald Trump Calls on Russia to Find Hillary Clinton's Missing Emails*, N.Y. Times, July 27, 2016, https://www.nytimes.com/2016/07/28/us/politics/donald-trump-russia-clinton-emails.html.

345. 1 Mueller, *supra* note 60, at 5. (The Special Counsel's investigation concluded that, ''[t]he presidential campaign of Donald J. Trump . . . showed interest in WikiLeaks's releases of documents and welcomed their potential to damage candidate Clinton.'')

346. Interview by George Stephanopoulos with Donald Trump, President, United States of America, in Washington, D.C. (June 16, 2019).

347. Peter Baker & Eileen Sullivan, *Trump Publicly Urges China to Investigate the Bidens*, N.Y. Times, Oct. 3, 2019, https://www.nytimes.com/2019/10/03/us/politics/trump-china-bidens.html.

348. *See* discussion at page 21.

349. Donald J. Trump (@realDonaldTrump), Twitter (Jan. 16, 2020. 3:39 PM), https://twitter.com/realDonaldTrump/status/1217909231946477575?s=20. (President Trump has repeatedly claimed that his call with President Zelensky on July 25 was perfect. For example, on January 16, 2020 President Trump tweeted, ''I JUST GOT IMPEACHED FOR MAKING A PERFECT PHONE CALL!'')

350. The Federalist No. 68, at 459 (Alexander Hamiltoni) (Jacob E. Cooke ed., 1961).

351. Letter from John Adams to Thomas Jefferson (Dec. 6, 1787).

352. Ellen L Weintraub (@EllenLWeintraub), Twitter (June 13, 2019, 7:11 PM), https://twitter.com/EllenLWeintraub/status/1139309394968096768/photo/1. (In response to President Trump's statement to George Stephanopoulos that he would consider taking information from a foreign government on one of his political opponents, Ellen Weintraub, Chair, Federal Election Commissioner, wrote, ''Let me make something 100% clear to the American public and anyone running for public office: It is illegal for any person to solicit, accept, or receive anything of value from a foreign national in connection with a U.S. election. This is not a novel concept. Electoral intervention from foreign governments has been considered unacceptable since the beginning of our nation. Our Founding Fathers sounded the alarm about 'foreign interference, intrigue and influence.' They knew that when foreign governments seek to influence American politics, it is always to advance their own interests, not America's.'')

Mr. CASEY. Mr. President, I ask unanimous consent that the text of a more comprehensive version of my statement regarding the impeachment trial of President Donald John Trump be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT ON THE IMPEACHMENT OF PRESIDENT DONALD JOHN TRUMP

I. INTRODUCTION

Throughout this impeachment trial, I have often thought of an inscription above the front door of the Finance Building in Harrisburg, Pennsylvania from the 1930s: ''All public service is a trust, given in faith and accepted in honor.''

This inscription helped me frame my own understanding of the evidence offered during this trial because I believe that President Trump and every public official in America must earn that trust every day. That sacred trust is given to us ''in faith'' by virtue of our election. The question for the President—and every official—is: Will we accept that ''trust'' by our honorable conduct? The trust set forth in the inscription is an echo of Alexander Hamilton's words in Federalist No. 65, where he articulated the standard for impeachment as ''offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.'' [1]

Much time has been devoted to why and how we got here. Let us make no mistake about this—we are here because of the President's conduct. He solicited the interference of a foreign government in our next election and demanded that same government announce an investigation of his political opponent, as well as an investigation into a debunked conspiracy theory about the last presidential election.

President Trump has exhibited an unmistakable pattern of behavior that indicates a predisposition toward autocratic leadership and a willingness to embrace an agenda based on foreign propaganda, directly undermining the national interests of the United States.[2] The world watched President Trump stand next to Russian President Vladimir Putin in Helsinki, Finland in July 2018.[3] When President Trump was asked whether he believed President Putin or his intelligence agencies—all of which definitively concluded that Russia interfered in the 2016 election [4]—President Trump responded: ''My people came to me . . . [and] said they think it's Russia. I have President Putin. He just said it's not Russia. I will say this: I don't see any reason why it would be.'' [5]

After this press conference and despite his attempts to retract his comments, President Trump faced widespread and bipartisan condemnation. Republican members of Congress called his performance ''troubling,'' ''a step backwards,'' ''shameful, ''untenable,'' ''bizarre and flat-out wrong.'' [6] However, only Senator John McCain offered a forceful rebuke of President Trump:

Today's press conference in Helsinki was one of the most disgraceful performances by an American president in memory. The damage inflicted by President Trump's naiveté, egotism, false equivalence, and sympathy for autocrats is difficult to calculate.

No prior president has ever abased himself more abjectly before a tyrant. Not only did President Trump fail to speak the truth about an adversary; but speaking for America to the world, our president failed to defend all that makes us who we are—a republic of free people dedicated to the cause of liberty at home and abroad. American presidents must be the champions of that cause if it is to succeed. Americans are waiting and hoping for President Trump to embrace that sacred responsibility. One can only hope they are not waiting totally in vain.[7]

Over a year and a half later, the President's pattern of conduct has made it clear. Just as Senator McCain feared, Americans have waited in vain for President Trump to embrace—or even understand—his duties as a public servant. This President has not and never will be faithful to the ''sacred responsibility'' that he holds as President of the United States, nor will he ever truly honor the trust that the people placed in him.

Besides Senator McCain, Republican Senators failed to fully confront the President when he chose the word of a former KGB agent over the United States Intelligence Community. For this reason, it is unsurprising that our Nation has found itself imperiled yet again by another example of President Trump's shameful and dishonorable conduct. In response to Republican Senators who have expressed concern about the President's ''inappropriate'' conduct but have repeatedly refused to hold him accountable, I must ask: What will it take? What action will finally be so objectionable, so inappropriate to break from this President? He will not learn. He will not change. When confronted with a choice between the national interests and his personal political interests, President Trump will always choose the latter. The Senate's failure to hold him accountable in this impeachment trial would be a stain on American history.

After a thorough, careful review of all of the available evidence in this impeachment trial, I have determined that House Managers have not only met, but exceeded, their burden of proof in this case. President Trump violated his duty as a public servant by corruptly abusing his power to solicit foreign interference in the 2020 election and by repeatedly obstructing Congress's constitutionally-based investigation into his conduct. President Trump's clearly established pattern of conduct indicates he will continue to be a ''threat to national security and the Constitution if allowed to remain in office.'' [8] For these reasons, I will vote ''guilty'' on both Article I and Article II.

II. PROCEDURAL HISTORY

Before discussing the facts of this case, it is important to address the Senate trial itself. To ensure a full and fair trial for all parties, Senate Democrats repeatedly called for relevant witnesses and relevant documents to be subpoenaed during this trial in the Senate.[9] The testimonial and documentary evidence would supplement an already substantial record presented by the House Managers and ensure that this was a fair trial for all parties involved. Senate Republicans refused to allow any witnesses and documents.[10]

Seventy-five percent of Americans supported calling witnesses during his trial.[11] Unfortunately, President Trump has been calling the shots and dictating the Republican approach to this trial.[12] This is the third Presidential impeachment trial in our country's history, and it is the only one to be completed without calling a single witness.[13] In fact, every completed impeachment trial in history has included *new* witnesses that were not even originally interviewed in the House of Representatives.[14]

By blocking relevant witnesses and relevant documents, Senate Republicans have denied the American people the full and fair trial they deserve. It is clear that this proceeding was rigged from the start to protect President Trump rather than to hear all of the facts.

III. MATERIAL FACTS

Special Counsel Mueller & Russian Interference in the 2016 Presidential Election

To fully understand the facts established by the House Managers in this case, it is necessary to first understand the context in which President Trump engaged in this behavior. In May 2017, Special Counsel Robert Mueller was appointed to investigate '' 'the Russian government's efforts to interfere in the 2016 presidential election,' including any links or coordination between the Russian government and individuals associated with the Trump Campaign.'' [15] Special Counsel Mueller released his comprehensive report in April 2019, which established in meticulous detail that Russian President Vladimir Putin personally directed an ongoing and systemic Russian attack in the 2016 presidential election in the United States.[16]

Special Counsel Mueller's conclusions were also confirmed by the United States Intelligence Community [17] and the bipartisan Senate Select Committee on Intelligence.[18] The Mueller investigation did not find evidence that President Trump's 2016 campaign conspired or coordinated with the Russian government, but Special Counsel Mueller did confirm that ''the Russian government perceived it would benefit from a Trump presidency and worked to secure that outcome, and that the [Trump] Campaign expected it would benefit electorally from information stolen and released through Russian efforts.'' [19] For example, then-candidate Trump declared during a public rally in July 2016: ''Russia, if you're listening, I hope you're able to find the 30,000 emails that are missing'' from then-candidate Hillary Clinton's email server.[20] Russian hackers targeted Clinton's personal server within hours of Trump's request.[21] After the Mueller Report, in June 2019, President Trump was asked whether he would accept opposition research from a foreign government against his political opponent. President Trump responded ''I think I'd take it.'' [22]

Rather than embrace the Special Counsel's investigation and condemn Russian interference in the election, President Trump reportedly tried to undermine the investigation by calling it a ''witch hunt'' [23] and a ''hoax.'' [24] In fact, in Volume II of his report, Special Counsel Mueller detailed the President's numerous efforts to obstruct the Special Counsel's investigation into Russian interference and his attempts to remove the Special Counsel in order to end the investigation. The Special Counsel identified ten separate episodes of potential obstruction of justice including, but not limited to: (1) President Trump firing former FBI Director James Comey;[25] (2) President Trump attempting to fire Special Counsel Mueller;[26] and (3) President Trump requesting his White House Counsel lie and publically deny that President Trump tried to fire Special Counsel Mueller.[27]

Neither Special Counsel Mueller nor Attorney General William Barr charged President Trump with a crime for the actions detailed in Special Counsel Mueller's report,[28] in part because of a controversial Office of Legal Counsel opinion indicating that a sitting President cannot be indicted for a crime.[29] However, over a thousand former federal prosecutors, who served under Republican and Democratic administrations, issued a statement shortly after the release of the Special Counsel's report that stated, in part, as follows:

Each of us believes that the conduct of President Trump described in Special Counsel Robert Mueller's report would, in the case of any other person not covered by the Office of Legal Counsel policy against indicting a sitting President, result in multiple felony charges for obstruction of justice.[30]

After releasing his report in April, Special Counsel Mueller testified in front of the House Judiciary Committee and the House Intelligence Committee on July 24, 2019.[31] During his testimony, Special Counsel Mueller confirmed that Russia was still engaging in ongoing efforts to attack future elections and warned that the United States must ''use the full resources that we have to address this'' interference.[32] On July 25, one day after Special Counsel Mueller testified, President Trump spoke on the phone with the newly-elected President of Ukraine, President Volodymyr Zelensky.[33] Unknown at the time, this phone call would soon set off the comprehensive investigation leading to President Trump's impeachment and the current trial in the Senate.

Ukraine

On April 21, 2019, several months before Special Counsel Mueller's public testimony,

Volodymyr Zelensky was elected President of Ukraine and later that day, President Trump called him to congratulate him on his victory.[34] On that call, President Trump extended a future invitation to the White House and he also promised that he would send a ''very, very high level'' representative from the United States to attend President Zelensky's inauguration.[35]

Two days after President Trump's call with President Zelensky, on April 23, media reports confirmed that former Vice President Joe Biden would enter the 2020 presidential race.[36] Around this time, the President's personal attorney, Rudy Giuliani, was leading a smear campaign to tarnish and remove then-U.S. ambassador to Ukraine, Marie Yovanovitch, a respected diplomat known for advancing the United States' anti-corruption efforts abroad.[37] The smear campaign was also advanced by two ''corrupt former prosecutors''—Mr. Lutsenko and Mr. Shokin—in Ukraine.[38] It was widely confirmed that the corrupt Ukraine prosecutors were seeking ''revenge against'' Ambassador Yovanovitch for exposing their misconduct.[39] On the day after the media reported that former Vice President Biden was entering the presidential race, President Trump recalled Ambassador Yovanovitch from her position in Ukraine.[40]

Mr. Lutsenko and Mr. Giuliani both promoted two conspiracy theories that have been pursued by President Trump.[41] One of the conspiracy theories alleged that Ukraine hacked a Democratic National Committee (DNC) server in 2016 in order to frame Russia for election interference and help the Clinton Campaign.[42] The other theory alleged that former Vice President Biden coerced the Ukrainian government into firing Mr. Shokin to ''prevent an investigation into Burisma Holdings, a Ukrainian energy company for which Vice President Biden's son, Hunter, served as a board member.'' [43] Both theories have been criticized and debunked by officials in the Trump Administration.[44]

On May 3, 2019, shortly after President Zelensky's election, President Trump and President Putin spoke by telephone and discussed, in part, the so-called ''Russian Hoax,'' referring to Special Counsel Mueller's investigation.[45] During that conversation, President Putin reportedly spoke negatively about Ukraine, suggesting that it was corrupt and that President Zelensky was ''in the thrall of oligarchs.'' [46] A *Washington Post* article, published on December 19, 2019, reported that a senior White House official even indicated that President Trump suggested that ''he knew Ukraine was the real culprit [of 2016 election interference] because 'Putin told me.' '' [47]

On May 9, the *New York Times* reported that the President's personal attorney, Mr. Giuliani, would be traveling to Ukraine to pressure the government to open investigations into the conspiracy theories about Burisma and the 2016 election.[48] Mr. Giuliani specifically acknowledged ''[t]his isn't foreign policy'' but that the investigations ''will be very, very helpful to my client.'' [49]

Around May 13, President Trump ordered Vice President Pence not to attend President Zelensky's inauguration and sent a lower-ranking delegation, despite his promise to President Zelensky to send a ''very, very high level'' representative.[50] This delegation included Secretary of Energy Rick Perry, Ambassador to the European Union Gordon Sondland, Special Representative for Ukraine Negotiations Ambassador Kurt Volker and NSC Director for Ukraine Lieutenant Colonel Alexander Vindman.[51]

On May 23, despite positive reports from the delegation regarding President Zelensky's effort to combat corruption, President Trump said he ''didn't believe'' the delegation because that was not what Mr. Giuliani had told him.[52] The President also reiterated that Ukraine ''tried to take me down'' during the 2016 election, confirming that he still believed the conspiracy theory that Ukraine, not Russia, was actually responsible for 2016 election interference.[53] President Trump directed Ambassador Sondland, Secretary Perry and Ambassador Volker to ''talk to Rudy'' and coordinate engagement with the Ukraine government.[54]

Despite President Trump's misplaced concerns about Ukrainian conspiracy theories, in May 2019, the Department of Defense (DOD) and the State Department *certified* that Ukraine had ''taken substantial actions'' to decrease corruption.[55] This was important because it was a necessary requirement in order for DOD to release $250 million in Ukrainian military assistance that had been appropriated and authorized by Congress.[56] Congress had also appropriated and authorized another $141 million to be administered by the State Department for security assistance to Ukraine.[57]

However, by July 12, the President had ordered a block on all military and security assistance for Ukraine against overwhelming recommendations from across the Executive Branch and strong bipartisan support for the aid.[58] The hold continued throughout August in violation of the Impoundment Control Act of 1974.[59] The President did not initially give a reason for the hold, although by September, the President claimed that the hold was because he was concerned about corruption in Ukraine and burden-sharing for Ukrainian assistance among European allies.[60]

Throughout this time period, it also became clear that President Trump was withholding the White House meeting that he promised President Zelensky during their April 21 phone call.[61] Ambassador Taylor, Ambassador Yovanovitch's replacement in Ukraine, pushed for the White House meeting, but he learned that the meeting was conditioned explicitly on Ukraine publically announcing investigations into the 2016 election and Burisma.[62] Ambassador Sondland was unequivocal in his description during his testimony: ''Was there a quid pro quo? As I testified previously with regard to the requested White House call and the White House meeting, the answer is yes.'' [63]

After a July 10 meeting, Dr. Fiona Hill, former Senior Director of European and Russian Affairs at the National Security Council, informed then-National Security Advisor John Bolton that Ambassador Sondland reiterated the quid pro quo to Ukrainian officials during a meeting at the White House.[64] Dr. Hill testified that Mr. Bolton advised her to ''go and tell [the NSC Legal Advisor] that I am not part of whatever drug deal Sondland and Mulvaney are cooking up on this.'' [65] Over the next two weeks, Mr. Giuliani coordinated with Ambassadors Sondland and Volker to arrange a phone call between President Trump and President Zelensky for President Zelensky to inform President Trump that he would announce the investigations.[66]

On July 25, President Trump spoke on the phone with President Zelensky.[67] At one point, President Zelensky thanked President Trump for the ''great support'' in military assistance and indicated that Ukraine would be interested in purchasing more Javelin anti-tank missiles soon.[68] In response, immediately after the Javelin reference, President Trump stated as follows: ''I would like you to do us a favor though.'' [69] President Trump brought up the investigations that he sought into the Ukrainian election interference and Biden conspiracy theories.[70] After the call, Ambassador Sondland informed a State Department aide that President Trump ''did not give a [expletive] about Ukraine'' and he only cared only about ''big stuff,'' meaning '' 'the Biden investigation' that Mr. Giuliani was pushing.'' [71]

Around that time, the Ukrainian government also became aware that President Trump was withholding military aid.[72] On August 12, Ambassadors Volker and Sondland, with consultation from Mr. Giuliani, edited a draft statement for President Zelensky to publically release that included explicit references to ''Burisma and the 2016 U.S. elections.'' [73] On that same day, a whistleblower filed a complaint with the Intelligence Community Inspector General expressing concerns about President Trump's phone call with President Zelensky on July 25.[74]

Ukraine ultimately did not release the statement regarding investigations and no further action was taken regarding a White House meeting.[75] Furthermore, there were increasing concerns among national security officials regarding President Trump's hold on military aid, which many began to understand was meant to pressure Ukraine too.[76] Ambassador Sondland testified that President Trump's effort to condition release of the security assistance on Ukraine announcing investigations was as clear as ''two plus two equals four.'' [77]

On September 7, President Trump and Ambassador Sondland spoke on the telephone and Ambassador Sondland explained that President told him ''there was no quid pro quo, but President Zelensky must announce the opening of the investigations and he should want to do it.'' [78] Shortly after, on September 9, Ambassador Taylor texted Ambassadors Sondland and Volker and explicitly said, ''I think it's crazy to withhold security assistance for help with a political campaign.'' [79] On that same day, the Intelligence Community Inspector General notified Congress of the August 12 whistleblower complaint regarding President Trump's July 25 phone call with President Zelensky.[80]

Two days later, President Trump unexpectedly released his hold on Ukraine's security assistance.[81] Since President Trump lifted the hold, however, he has continued to press Ukraine, and even other foreign countries, to open investigations into his political rival.[82] For example, on October 3, President Trump stated as follows on the White House lawn:

Well I would think that if they [Ukraine] were honest about it, they'd start a major investigation into the Bidens. It's a very simple answer. They should investigate the Bidens. . . . Likewise, China should start an investigation into the Bidens because what happened in China is just about as bad as what happened with Ukraine. So, I would say that President Zelensky, if it were me, I would recommend that they start an investigation into the Bidens.[83]

To date, President Zelensky still has not met with President Trump at the White House.

Congressional Investigations

As noted above, Congress was notified on September 9 of the August 12 whistleblower complaint regarding President Trump's phone call with Ukraine.[84] Speaker Nancy Pelosi announced on September 24 that the House would move forward with an official impeachment inquiry.[85]

On September 9 and September 24, three House Committee sent letters to White House Counsel Pat Cipollone asking for six specific categories of documents related to the Ukraine investigation.[86] The White House did not respond, and as a result, the Committees issued a subpoena to Acting White House Chief of Staff, Mick Mulvaney.[87]

On October 8, Mr. Cipollone responded and indicated that ''President Trump cannot permit his Administration to participate in this

partisan inquiry under these circumstances.'' [88] The letter called the inquiry ''constitutionally invalid'' even though the Constitution grants the House the sole power of impeachment.[89] The letter made reference to ''long-established Executive Branch confidentiality interests and privileges,'' [90] although President Trump has never specifically asserted an executive privilege over a single piece of information related to the inquiry.

As a result of President Trump's blanket directive, every Executive Branch agency that received an impeachment inquiry request or subpoena has not complied with the request.[91] Specifically, the Executive Branch has not produced a single document or permitted a single witness to testify in response to a subpoena.[92] The only witnesses who did testify or submit documents did so in direct violation of the White House's directive.[93]

IV. ARTICLES OF IMPEACHMENT

As we know, Article I, Section 2, Clause 5 of the Constitution states that ''[t]he Senate shall have the sole Power to try all Impeachments.'' [94] As a Senator reviewing this case, I have based my assessment of the evidence on the following two questions:

(1) Did the president do what he is charged with in the Articles?; and

(2) If so, is that action an impeachable offense that warrants removal from office?

Abuse of Power

In the first Article of Impeachment, the House of Representatives charged President Trump with abusing his power as President by corruptly ''soliciting the Government of Ukraine to publicly announce investigations that would benefit his reelection, harm the election prospects of a political opponent, and influence the 2020 United States Presidential election to his advantage.'' [95] In this case, I have found that the House has presented substantial, persuasive evidence to prove the allegations in Article I.

First, there is no dispute that the White House directly withheld $391 million dollars in military aid from Ukraine.[96] The Office of Management and Budget (OMB) held the aid, at the direction of the President, despite the Department of Defense and the State Department certifying that Ukraine was taking necessary measures to reduce corruption.[97] Furthermore, all agencies—except OMB—strongly supported the release of the aid because it was in the national interest of the United States.[98]

Nor is there dispute that President Trump withheld a White House meeting with President Zelensky. On his April 21 phone call, President Trump explicitly invited President Zelensky to the White House in the future.[99] However, after former Vice President Joe Biden announced his candidacy for President just a few days later, President Zelensky—despite numerous efforts—still has not met with President Trump at the White House.

Second, the evidence establishes that President Trump conditioned the aid and the White House meeting on Ukraine announcing investigations into Burisma and the 2016 election. In the July 25 phone call, President Trump asked President Zelensky to ''do us a favor though'' and referenced the 2016 election and Burisma investigations immediately after President Zelensky brought up military assistance.[100]

Related to the White House meeting, Ambassador Sondland could not have been more clear when he testified that ''yes,'' there was a quid pro quid conditioning a White House meeting with Ukraine announcing investigations into the Bidens and Burisma.[101] He further testified that the conditioning of the White House meeting and military assistance on Ukraine publically announcing investigations was as clear as ''2+2=4.'' [102]

So, the question is: Why? Was President Trump acting corruptly to advance his own political interests, or was he, as his defense attorneys would have us believe, deeply concerned about ongoing ''corruption'' in Ukraine and ''burden-sharing?'' [103] The facts clearly established that President Trump was acting corruptly to further his own political interests.

First, while the President's defense lawyers have rightly argued that the President ''defines foreign policy,'' [104] the facts do not support that the President's actions related to Ukraine were based on ''legitimate concerns'' regarding corruption and burden-sharing.[105] Also, if the President was so concerned about corruption in Ukraine, why did he dismiss one of the Nation's best corruption-fighting diplomats, Ambassador Marie Yovanovitch? [106]

Second, the President was utilizing his personal attorney, Mr. Giuliani, to coordinate the announcement of investigations in Ukraine. Mr. Giuliani explicitly said that he was not engaged in foreign policy, but was acting on behalf of President Trump in his ''personal capacity.'' [107] The State Department also released a statement in August emphasizing that Mr. Giuliani is a private citizen acting in his personal capacity and ''does not speak on behalf of the U.S. government.'' [108] Accordingly, one cannot reasonably argue that the investigations pursued by Mr. Giuliani were related to ''legitimate'' foreign policy when they were coordinated by the President's personal attorney for the President's personal benefit.

Third, it was the prior practice of the Administration to release aid to Ukraine without delay or regard to alleged corruption and burden-sharing concerns. Both of these asserted concerns were an after-the-fact distraction from the truth. The Trump Administration disbursed—without question—approximately $511 million and $359 million to Ukraine in 2017 and 2018, respectively.[109] The only thing that changed in 2019 was that former Vice President Joe Biden announced that he was running for President.

Finally, the proposed investigations into Burisma and 2016 election interference were debunked conspiracy theories that would have only benefited one person—Donald Trump. Regarding Burisma, President Trump claimed that former Vice President Biden corruptly forced Ukraine to fire then-Prosecutor General Shokin to avoid further investigation into Burisma.[110] The truth is that Vice President Biden was actually pursuing Mr. Shokin's termination—with bipartisan and international support—because Mr. Shokin was a corrupt and ineffective prosecutor.[111] In fact, Mr. Shokin was not actively investigating Burisma and his removal would have made it *more likely*—not less—that Burisma would be investigated in the future.[112]

Furthermore, even if we were to accept that President Trump had legitimate interests regarding alleged corruption in Ukraine, he certainly should not have asked a foreign government to announce the investigation. Rather, he should have gone through official channels and asked the Department of Justice to look into the allegations.[113] Ambassador Sondland indicated that President Trump was only concerned about the *announcement* of investigations—he was not concerned with the actual completion of investigations.[114] President Trump was not actually interested in corruption in Ukraine, but was only concerned with harming a political opponent with the announcement of an investigation.

Regarding Ukrainian election interference, President Trump has suggested that Ukraine attempted to help the Hillary Clinton campaign in 2016 by framing Russia and hacking a Democratic National Committee server.[115] This theory is not supported by any evidence. The U.S. Intelligence Community, the Senate Select Committee on Intelligence and Special Counsel Robert Mueller all came to the conclusion that *Russia*, not Ukraine, interfered in the 2016 election.[116] Dr. Fiona Hill called this Ukraine theory a ''fictional narrative that is being perpetrated and propagated by the Russian security services'' to raise doubts about Russia's own culpability and to harm the relationship between the United States and Ukraine.[117] President Trump's former Homeland Security Advisor, Tom Bossert, also indicated that the Ukraine theory was ''not only a conspiracy theory, it is completely debunked.'' [118] Pursuing such a clearly debunked conspiracy theory only served to benefit President Trump, and Putin, by raising doubts regarding Russia's own election interference and its preference for President Trump's election in 2016.

Based on this evidence, it is clear that President Trump acted corruptly by conditioning the release of military aid and a White House meeting on Ukraine announcing investigations into his political opponent.

Obstruction of Congress

Under the second Article of Impeachment, the House charged that President Trump has obstructed Congress by directing the ''the unprecedented, categorical, and indiscriminate defiance of subpoenas issued by the House of Representatives pursuant to its 'sole Power of Impeachment.' '' [119] I have concluded that the House has presented substantial evidence to prove the allegations in this Article.

On October 8, 2019, during the House impeachment inquiry, the White House Counsel wrote that ''President Trump cannot permit his Administration to participate in this partisan inquiry under these circumstances.'' [120] As a result of President Trump's directives, the House did not receive a ''single document'' from the White House, the Vice President, OMB, the Department of State, DOD or the Department of Energy—despite 71 requests and demands.[121] Furthermore, the only witnesses who testified or produced documents did so in opposition to the President's directive.[122]

President Trump did not assert a single claim of ''executive privilege'' over any specific document or piece of testimony during this inquiry.[123] Rather, he issued a blanket directive that completely denied the constitutional oversight responsibilities of the House.[124] Based on this evidence, it is clear that President Trump has obstructed Congress.

V. IMPEACHABLE CONDUCT

Having established that the President did, in fact, engage in the conduct alleged in these Articles—I now turn to whether this conduct warrants removal from office.

During the Constitutional Convention of 1787, our Founders grappled significantly with how to elect the Executive, but they also debated how to hold the Executive accountable. While some delegates believed that the President should only be held accountable at the ballot box through elections, others voiced the logical concern that ''if [the President] be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected.'' [125] After much debate, the Convention voted that the Executive shall be ''removable on impeachments'' [126] and later confirmed the grounds for impeachment included ''Treason, bribery and other high crimes and misdemeanors.'' [127]

''High Crimes and Misdemeanors'' is left ambiguous in the Constitution. At the time of the drafting, the Founders' understanding

of ''high Crimes and Misdemeanors'' was informed by centuries of English legal precedent.[128] This understanding was reflected in Federalist No. 65, written by Alexander Hamilton, which explained that impeachment should stem from an ''abuse or violation of some public trust.''[129] Noted historian Ron Chernow explained that Hamilton's understanding of impeachment should ''count heavily because he was the foremost proponent of a robust presidency, yet he also harbored an abiding fear that a brazen demagogue could seize the office.''[130] Informed by this history, Congress has consistently interpreted ''high Crimes and Misdemeanors'' broadly to mean ''serious violations of the public trust.''[131]

The President's defense lawyers argued that impeachment requires a violation of a criminal statute to be constitutionally valid.[132] This argument is not supported by historical precedent, credible scholarship or our common sense about the sacred notion of the public trust.[133] When applying the accurate Hamiltonian standard for impeachment—an ''abuse or violation of some public trust''—it is clear that President Trump's conduct exceeds that standard. Any effort to corrupt an election must be met with a swift measure of accountability as provided for under the impeachment clause in the Constitution. There is no other remedy to constrain a President who has acted, time and again, to advance his personal interests over those of the Nation.

Furthermore, since his candidacy, President Trump has engaged in substantial and ongoing efforts to solicit foreign interference in our elections. As detailed in Special Counsel Mueller's report, the Trump campaign routinely welcomed Russian interference in the 2016 presidential election because they ''expected [the Campaign] would benefit electorally from information stolen and released through Russian efforts.''[134] As an illustration of just how brazen President Trump has become in his conduct, his July 25 phone call with President Zelensky occurred just one day after Special Counsel Mueller testified in Congress, where he warned of the ongoing threat of foreign interference in elections.[135] As the *Washington Post* reported on September 21 in a story written by three reporters who have covered the President for several years, the President's conduct on the Ukraine call revealed ''a president convinced of his own invincibility—apparently willing and even eager to wield the vast powers of the United States to taint a political foe and confident that no one could hold him back.''[136]

The President's blanket obstruction of Congress also substantially imperils our constitutional system of checks and balances. Not only has this President taken the unprecedented step of issuing an outright refusal to cooperate with Congressional oversight in this case, but President Trump has exhibited an ongoing hostility to oversight of his administration. As detailed in Special Counsel Mueller's report, President Trump engaged in ten distinct efforts to obstruct and curtail investigations into his conduct and Russia's interference in the 2016 election.[137] It is clear that this President has engaged in an ongoing pattern of behavior that threatens to diminish any meaningful future oversight of the Executive Branch.

Given the President's ongoing pattern of corrupt behavior, especially as it relates to the next election, I find him ''guilty'' under both Articles of Impeachment.

VI. CONCLUSION

Our Founders had the foresight to ensure that the power of the President was not unlimited and that Congress could—if necessary—hold the Executive accountable for abuses of power through the impeachment process. This Senate trial is not simply about *grave* presidential *abuse of power*, it is about our Democracy, the sanctity of our elections and the very values that the Founders agreed should guide our Nation.

The inscription—''[a]ll public service is a trust, given in faith and accepted in honor''—serves as a reminder to us all of the bedrock principles of our republic. We must hold those accountable who violate this sacred trust. President Trump *dishonored* that public trust given to him by abusing his power for personal, political gain. In order to prevent continuing interference in our upcoming election and blatant obstruction of Congress, the Senate should find him guilty under both Articles.

ENDNOTES

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18. 2 SELECT COMM. ON INTELLIGENCE, U.S. SENATE, 116TH CONG. REPORT ON RUSSIAN ACTIVE MEASURES CAMPAIGNS AND INTERFERENCE IN THE 2016 U.S. ELECTION: RUSSIA'S USE OF SOCIAL MEDIA 3–4 (Comm. Print 2019).

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39. *Id.*

40. *Id.* at 26–27.

41. *Id.* at 29.

42. *Id.* at 29–30.

43. *Id.*

44. *Id.* at 88–89. Related to the Ukraine election interference theory, President

Trump's former Homeland Security Advisor, Tom Bossert, publicly stated that it was ''not only a conspiracy theory, it is completely debunked.'' *Id*. at 89. Dr. Fiona Hill, former Senior Director of European and Russian Affairs at the National Security Council, called it a ''fictional narrative that is being perpetrated and propagated by the Russian security services.'' *Id*. at 88. She also indicated that former National Security Advisor H.R. McMaster ''spent a lot of time'' trying to convince President Trump that the theory was Russian propaganda. *Id*. at 89. Furthermore, FBI Director Christopher Wray confirmed that the FBI had ''no information that indicates that Ukraine interfered with the 2016 presidential election.'' Luke Barr & Alexander Mallin, *FBI Director Pushes Back On Debunked Conspiracy Theory About 2016 Election Interference*, ABC NEWS (Dec. 9, 2019), https://abcnews.go.com/Politics/fbi-director-pushes-back-debunked-conspiracy-theory-2016/story?id=67609244.

45. HPSCI REPORT, *supra* note 33, at 46.
46. *Id*. at 47.
47. Shane Harris et al., *Former White House Officials Say They Feared Putin Influenced the President's Views on Ukraine and 2016 Campaign*, WASH. POST (Dec. 19, 2019), https://www.washingtonpost.com/national-security/former-white-house-officials-say-they-feared-putin-influenced-the-presidents-views-on-ukraine-and-2016-campaign/2019/12/19/af0fdbf6-20e9-11ea-bed5-880264cc91a9_story.html.
48. Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries That Could Help Trump*, N.Y. TIMES (May 9, 2019), https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html.
49. *Id*. Mr. Giuliani also wrote a letter to President-elect Zelensky requesting a meeting as the attorney for President Trump in his capacity as a ''private citizen, not as President of the United States.'' H.R. COMM. ON THE JUDICIARY, IMPEACHMENT OF PRESIDENT DONALD JOHN TRUMP: THE EVIDENTIARY RECORD PURSUANT TO H. RES. 798, H.R. DOC. NO. 116–95, VOL. IV, at 7639 (2020) [hereinafter EVIDENTIARY RECORD].
50. HPSCI REPORT, *supra* note 33, at 39, 47.
51. *Id*. at 48.
52. *Id*. at 50.
53. *Id*. Despite reports that certain Ukrainian officials did prefer Hillary Clinton in the 2016 election, there is little comparison to the Russian interference personally directed by President Vladimir Putin to assist the Trump campaign: ''There's little evidence of such a top-down effort by Ukraine. Longtime observers suggest that the rampant corruption, factionalism and economic struggles plaguing the country—not to mention its ongoing strife with Russia—would render it unable to pull off an ambitious covert interference campaign in another country's election.'' Kenneth P. Vogel & David Stern, *Ukrainian Efforts to Sabotage Trump Backfire*, POLITICO (Jan. 11, 2017), https://www.politico.com/story/2017/01/ukraine-sabotage-trump-backfire-233446.
54. HPSCI REPORT, *supra* note 33, at 50.
55. *Id*. at 57.
56. *Id*.
57. *Id*. at 57–58.
58. *Id*. at 59.
59. U.S. GOV'T ACCOUNTABILITY OFF., B–331564, MATTER OF OFFICE OF MGMT. & BUDGET—WITHHOLDING OF UKRAINE SEC. ASSISTANCE (2020), https://www.gao.gov/assets/710/703909.pdf.
60. HPSCI REPORT, *supra* note 33, at 59–62. *See, e.g.*, EVIDENTIARY RECORD, vol. II, pt. 1, *supra* note 49, at 48–49 (testifying that burden-sharing was first provided as a rationale to him in September).
61. HPSCI REPORT, *supra* note 33, at 70–71.
62. *Id*. at 72.
63. *Id*. at 82.
64. *Id*. at 76–78.
65. *Id*. at 78.
66. *Id*. at 79–84.
67. *Id*. at 86.
68. *Id*. at 87.
69. *Id*. at 87–88.
70. *Id*. at 88–90.
71. *Id*. at 99.
72. *Id*. at 69–70.
73. *Id*. at 106–08.
74. *Id*. at 128.
75. *Id*. at 110–11, 131–33.
76. *Id*. at 111–25.
77. *Id*. at 16.
78. *Id*. at 120.
79. *Id*. at 122.
80. *Id*. at 128.
81. *Id*. at 129–30.
82. *Id*. at 131–35.
83. PBS NewsHour, *Trump Says China Should Investigate the Bidens*, YOUTUBE (Oct. 3, 2019), https://youtu.be/eJd1y0TPP18?t=99.
84. HPSCI REPORT, *supra* note 33, at 128.
85. *Id*. at 173.
86. *Id*. at 181.
87. *Id*.
88. Letter from Pat A. Cipollone, Counsel to the President, to Speaker Nancy Pelosi, House of Representatives, et al., 2 (Oct. 8, 2019), https://www.whitehouse.gov/wp-content/uploads/2019/10/PAC-Letter-10.08.2019.pdf.
89. *Id*.
90. *Id*. at 4.
91. HPSCI REPORT, *supra* note 33, at 180.
92. *Id*.
93. *Id*.
94. U.S. CONST. art. I, §2, cl. 5.
95. H.R. Res. 755, 116th Cong. art. I (2019).
96. *See supra* text accompanying notes 58–60.
97. HPSCI REPORT, *supra* note 33, at 57.
98. *Id*. at 60–62.
99. *Id*. at 39.
100. *Id*. at 87–90.
101. *Id*. at 82.
102. *Id*. at 16.
103. Trial Memorandum of President Donald J. Trump at 10, In Re Impeachment of President Donald J. Trump (Jan. 20, 2020).
104. *Id*. at 2.
105. *Id*. at 10.
106. *See supra* text accompanying notes 36–40.
107. EVIDENTIARY RECORD, vol. IV, *supra* note 49, at 7639.
108. Allan Smith, *Giuliani Says State Dept. Aided His Effort to Press Ukraine on Trump Opponents*, NBC NEWS (Aug. 22, 2019), https://www.nbcnews.com/politics/donald-trump/giuliani-says-state-dept-aided-his-effort-press-ukraine-trump-n1045171.
109. Statement of Material Facts: Attachment to the Trial Memorandum of the United States House of Representatives at 14, In Re Impeachment of President Donald J. Trump (Jan. 18, 2020) [hereinafter House Manager's Statement of Material Facts].
110. HPSCI REPORT, *supra* note 33, at 42–43.
111. *Id*.
112. *Id*. at 43.
113. *Id*. at 108–09.
114. House Manager's Statement of Material Facts, *supra* note 109, at 20.
115. HPSCI REPORT, *supra* note 33, at 88.
116. *Id*. at 29.
117. *Id*. at 88.
118. *Id*. at 89.
119. H.R. Res. 755, 116th Cong. art. II (2019) (quoting U.S. CONST. art. I, §2, cl. 5).
120. HPSCI REPORT, *supra* note 33, at 175
121. *Id*. at 180.
122. *Id*.
123. *Id*. at 179.
124. *Id*.
125. 2 MAX FARRAND, ED., THE RECORDS OF THE FEDERAL CONVENTION OF 1787, 64 (1911) (Madison).
126. *Id*. at 69 (Madison).
127. *Id*. at 550 (Madison). *See also* U.S. CONST. art. II, §4 (''The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.'').
128. *See* CHARLES L. BLACK, JR. & PHILIP BOBBITT, IMPEACHMENT: A HANDBOOK, NEW EDITION 43 (2018) (''The phrase 'high Crimes and Misdemeanors' comes to us out of English law and practice, starting (as far as we know) in 1386.'').
129. THE FEDERALIST NO. 65 (Alexander Hamilton).
130. Ron Chernow, *Hamilton Pushed For Impeachment Powers. Trump Is What He Had In Mind.*, WASH. POST (Oct. 18, 2019), https://www.washingtonpost.com/outlook/2019/10/18/hamilton-pushed-impeachment-powers-trump-is-what-he-had-mind/?arc404=true.
131. H.R. REPT. NO. 101–36, at 5 (1989).
132. 166 CONG. REC. S611 (daily ed. Jan. 27, 2020) (statement of Counsel Dershowitz explaining that ''[p]urely non-criminal conduct, including abuse of power and obstruction of Congress, are outside the range of impeachable offenses'').
133. *See e.g.*, S. MISC. DOC. NO. 40–42, at 8 (1868) (impeaching President Johnson for bringing ''the high office of the President of the United States into contempt, ridicule and disgrace''); H.R. REPT. NO. 93–1305, at 2 (1974) (recommending Articles of Impeachment against President Nixon because he ''prevented, obstructed, and impeded the administration of justice''); H.R. Res. 601, 105th Cong. art. IV (1998) (impeaching President Clinton for an ''abuse of high office'').
134. I MUELLER REPORT, *supra* note 15, at 5.
135. *See supra* text accompanying note 31–33.
136. Philip Rucker et al., *Trump's Ukraine Call Reveals a President Convinced of His Own Invincibility*, WASH. POST (Sept. 21, 2019), https://www.washingtonpost.com/politics/trumps-ukraine-call-reveals-a-president-convinced-of-his-own-invincibility/2019/09/21/1a56466c-dc6a-11e9-ac63-3016711543fe_story.html.
137. *See* II MUELLER REPORT, *supra* note 15, at 3–4 (summarizing the ten incidents).

Mr. CRAMER. Mr. President, I seek recognition today regarding the recent impeachment trial of President Donald Trump. This was a rare moment in our young Nation's history. We had little to guide us other than the Founding Fathers' collective wisdom and sparse precedent.

The process may seem daunting, and the debate over even the most basic mechanics of the trial could leave the future Members of this body susceptible to deception or misinformation. I therefore want to offer my thoughts for future Senators when this issue inevitably rises again.

The impeachment trial proceedings are unique. It is an inherently political process analogous to a legal trial. There is a prosecution, represented by the House managers, as well as a defense, representing the President. There is also a presiding judge, the Chief Justice of the Supreme Court.

As in a courtroom, the prosecution and defense take opposite sides of the judge as they make their arguments. The burden of proof is on the prosecutors, who must present their evidence, and it is the job of the defense to refute the arguments.

There is also a jury, the U.S. Senate. Like a courtroom jury, we sit in silence throughout the trial listening to the arguments of both sides and are asked to render a verdict at the conclusion. However, unlike a courtroom but as instructed by the Constitution, we are not jurors subject to peremptory challenge; we are elected officials instructed to offer impartial justice based on the evidence presented to us.

We are not expected to check our knowledge or our existing relationships at the door. If this were a true trial, all Senators would have to recuse themselves for the inherent bias connected to the election certificate they earned. As Alexander Hamilton wrote in Federalist Paper 65, ''In many cases, it [impeachment] will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence, and interest on one side or on the other.'' Rather, we are asked to follow our conscience, to hear the arguments of both sides with an open mind and deliver a verdict. We also differ from courtroom jurors in that we establish the rules for the proceedings. This is done through organizing resolutions we debate and pass.

Before considering the merits of this particular case, it is important to discuss the idea of impeachment itself in light of the present context. During President Trump's hearing, the President's legal team alluded to the idea that a President can do essentially whatever he or she wants, and it will not be considered an impeachable offense as long as that President's interests in doing so align with the interests of the United States.

''If a President does something which he believes will help him get elected in the public interest, that cannot be the kind of quid pro quo that results in impeachment,'' said Alan Dershowitz, a member of the President's legal team, during the trial.

I feel that particular statement is wrong. The Constitution grants no President absolute power. There is a threshold that can be reached. Thankfully, this was later clarified by Mr. Dershowitz in an opinion piece he wrote for The Hill entitled ''I never said the President could do anything to get re-elected.'' In it, he said:

> Any action by a politician motivated in part by a desire to be reelected was, by its nature, corrupt. Moving to my response, I listed three broad categories of relevant motives, which are pure national interest to help the military, pure corrupt motive to obtain a kickback, and mixed-motive to help the national interest in a way that can also help a reelection effort. I said the third motive was often the reality of politics, and helping your own reelection effort cannot by itself necessarily be deemed corrupt.

In the end, it is the duty of every Senator to determine whether the President acted in a purely self-interested manner without any regard for the national interest. Given the full context of his actions, it is clear President Trump did not act in a purely selfish, boundless manner.

While the question of whether a President can commit a crime and therefore be impeached is firmly settled, there arises another question this impeachment trial did not sufficiently answer but must be addressed in the future.

The Constitution says it is the job of the House of Representatives to impeach a President whose trial is held before the Senate. According to current Senate rules, our body must move forward with impeachment proceedings, but is that according to the Constitution?

Article I, section 3 of the Constitution states:

> The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

With this impeachment behind us, now is the time we as a body need to evaluate the constitutionality and wisdom of our rules requiring the Senate to move forward with any impeachment articles. We must reaffirm our right to dictate what is considered on the Senate floor and when it is considered, which is not without precedent.

Article II, section 2 of the Constitution says:

> He [the President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States.

In 2016, after the passing of Supreme Court Justice Antonin Scalia, President Barack Obama appointed a Supreme Court nominee to replace him. However, with the election of a new President just months away, the Senate declared it would not consider this particular nominee and would instead let the people decide whom they would like to nominate a Supreme Court Justice.

The Senate was well within its right to decide the timing and consideration, or lack thereof, of this constitutional obligation to consider judicial nominations, and the same should be true of impeachment trials.

This is a question in need of an answer for future impeachment proceedings because impeachment articles brought by the House completely derail Senate legislative activity. We are unable to consider legislation, nominations, or conduct any floor activity.

While I agree such an enormous responsibility should elicit our undivided attention, it seems illogical to automatically grant primacy to impeachment articles, especially those as flawed as the ones presented by House Democrats.

The House's impeachment process was entirely partisan. Since the moment he was sworn in, Democrats schemed to remove Donald Trump from office. By May of 2017, 26 Democratic Members of Congress had called for the impeachment of President Trump. Speaker PELOSI herself said impeachment was 2½ years in the making.

When House Democrats finally agreed on a reason to impeach the President, their vote to begin the process received no Republican votes, and multiple Democrats voted against it. It does not seem unreasonable to me that a vote to begin an impeachment inquiry which has only partisan support and bipartisan opposition—as this one did—is not what the Founders had in mind and is what they firmly rejected and cautioned us against.

''Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority,'' Founding Father James Madison wrote in Federalist Paper 10. ''However anxiously we may wish that these complaints had no foundation, the evidence, of known facts will not permit us to deny that they are in some degree true.''

When it came time for the House to vote on impeaching the President, the same ''overbearing majority'' outcome occurred. No minds were changed, but the country was further torn apart and the process strayed beyond the original intent of the Founding Fathers. The two Articles of Impeachment before this body were, in my view, without merit. They were an affront to this institution and to our Constitution, representing the very same partisan derangement that worried our Founding Fathers so much that they made the threshold for impeachment so high.

I think it would be universally agreeable that Impeachment Articles passed by a majority of one party and opposed by members of both parties at the very least fail the spirit of the Constitution. To this point, detractors could say the partisan nature of this impeachment proceeding is the fault of Republicans who blindly follow President Trump, rather than Democrats whose hatred for this President compels them to act more than the facts in front of them.

Such an argument quickly falls apart when you read the statements of Republicans who found the President's actions inappropriate but did not believe they rose to the level of impeachment. That argument further corrodes when you consider the content of the Impeachment Articles and the partisan and secretive process House Democrats followed in writing them.

Fundamentally, the Articles of Impeachment were incomplete. Democrats did not complete their own investigation before drafting and ultimately passing the articles, which is why Senate Democrats spent most of their time demanding witnesses and more documents. The House also did not provide

due process to the President, nor to the minority during the House investigation. In October of 2019, as the House began formally considering impeachment in earnest, Senator LINDSEY GRAHAM led several Senators in introducing S. Res. 378. It laid out specific issues we had with the House process in hopes it would remedy the situation before sending the articles to the Senate.

In it, we mentioned five rights President Trump was being denied, although the House had provided similar due process to Presidents Nixon and Clinton during their impeachments. The denied rights included allowing the President to be represented by counsel, permitting the President's counsel to be present at all hearings and depositions, permitting the President's counsel to present evidence and object to the admission of evidence, allowing the President's counsel to call and cross-examine witnesses; and giving the President's counsel access to and the ability to respond to the evidence offered by the Committee.

The impeachment process against President Trump had been nothing more than secretive hearings and selective leaks designed to sway public opinion and hurt the President politically. It was a hyper-partisan process completely void of due process, and that never changed until it reached the Senate. In our resolution, we also highlighted the fact that ''the main allegations against President Trump are based on assertions and testimony from witnesses whom he is unable to confront, as part of a process in which he is not able to offer witnesses in his defense or have a basic understanding of the allegations lodged against him.''

The issue of evidence, both its origin and the lack of compelling proof from the House managers, became the foundation of this impeachment. This investigation began because an anonymous national security official approached Democratic chairman ADAM SCHIFF with a secondhand claim that President Trump sought to withhold aid to a foreign country to force it to announce it would launch an investigation into one of the President's political rivals.

President Trump was quick to offer the transcript of the phone call where this allegedly occurred. He did, and it showed there was, in fact, no quid pro quo, and House Democrats in their investigation were never able to produce a firsthand witness to testify otherwise.

Future Senators should be sure to note the eagerness or reluctance of an accused President to share clarifying information. President Trump took unprecedented action to release the transcript of the conversation Democrats called into question—an action he was not legally required to take and most of his predecessors have never done. Contrast that with President Nixon, who fought until the end to hide his recorded conversations because he knew the contents were damning. Contrast President Trump's actions even further with the House Democrats who pursued a secretive, one-sided process to craft the narrative they wanted.

Despite several pieces of information demonstrating the President's innocence and none to the contrary, House Democrats continued this crusade. Their fixation on his removal was a conclusion in search of a justification.

They manufactured criminality from a simple phone conversation between world leaders, leaked by one of the many career bureaucrats who seem to have forgotten they work for the elected leaders in this country, not the other way around. Motives matter. In the future, Senators should be vigilant in figuring out an accuser's intention.

There is a common narrative that career bureaucrats are simply righteous, opinion-less civil servants. This impeachment and the actions leading up to it prove the exact opposite. By no means are all of them evil or ill-willed, but this proceeding showed they are far from unbiased, and they are capable of weaponizing the tools and access they are given.

Unsurprisingly, this led to two Impeachment Articles being sent to the Senate on a party-line vote that were without merit. They were an affront to this institution and to our Constitution, representing the very same partisan derangement that worried our Founding Fathers so much they made the threshold for impeachment this high.

The Founders created the Senate for moments just like this. When Impeachment Articles are sent to the Senate, it is not our job to fix the mistakes made by the House, and it is not our job to finish an investigation it admittedly did not complete. It is the Senate's solemn duty to set aside the heat of the moment, prevent short-term stress from leading to long-term decay, and deliver impartial justice.

As James Madison said at the Constitutional Convention, ''The Senate is to consist in its proceeding with more coolness, with more system, and with more wisdom, than the popular branch.'' That is why, even under the cloud of purely partisan politics of the House of Representatives, the Senate conducted a complete, comprehensive trial. The obvious result of which was the conclusion that the Democratic-led House of Representatives failed to meet the most basic standards of proof and dramatically lowered the bar for impeachment in the future to unacceptable levels.

With all of this established, we as a Congress and as a nation must unite around some commonsense changes, both to institutional rules and to our understanding of the impeachment process. Lowering the bar for impeachment undermines our shared democratic principles.

Impeachment must be a tool employed only when the evidence is overwhelming and well-founded. We must discourage future House actions like what we just witnessed from ever occurring again.

We must also find ways to take on a bureaucracy run rampant. President Trump was impeached because an unelected bureaucrat provided falsehoods to an overly receptive Democratic House chairman's office with a directive to remove President Trump. The opinion of Federal career staff is not sacrosanct. Without further action, these impeachment proceedings will be interpreted as empowering to them, rather than a reminder of who holds constitutional power.

Finally, as we seek to apply the lessons learned from this historic time, I was reminded of the words Chaplain Black offered to us during his daily opening prayer. ''We must pray for God's will to be done.'' There is a higher power than any of us, and our country would benefit from remembering that more often.

BAHRAIN

Mr. WYDEN. Mr. President, 9 years ago this month, citizens of Bahrain took up banners to demand a greater role in their society and political process.

Bahrain's ruling monarchy cracked down on the peaceful protestors; State police and security forces arrested hundreds and killed more than a dozen, according to press reports at the time. Bahrain's leaders promised accountability and reforms in response to international condemnation, but they would implement hardly any of them, and they rolled back some of the few they did implement.

Indeed, the situation in Bahrain has only grown worse. Americans for Democracy and Human Rights in Bahrain wrote last year that ''since 2017, the government has intensified the repression through the arrest, detention, and conviction of individuals who draw attention to the kingdom's human rights record or criticise the government.''

Last month, Human Rights Watch wrote, ''Bahrain's human rights record worsened in 2019, as the government carried out executions, convicted critics for peaceful expression, and threatened social media activists.''

It gives me no great pleasure to point out the monarchy's increasing repression. I have no personal animosity toward Bahrain, which remains an important U.S. ally.

But the U.S. Government has a duty—an obligation—to be honest with friends and allies and to hold them to a high standard. I regret to say that the Obama administration did not do nearly enough to hold Bahrain to that high standard, as I repeatedly came to this floor to discuss. The Trump administration has, for its part, been even more callously indifferent to the regime's abuses, despite Secretary of State Mike Pompeo speaking many times about the importance of human rights.