about the tens of thousands of troops we have in Europe. And if we undercut our own ally, if we give Russia reason to believe we will not have their back, that we will use Ukraine as a play thing or worse to get them to help us cheat in an election, that will only embolden Putin to do more.

You said it as often as I have—the only thing he respects is strength. You think that looks like strength to Vladimir Putin? I think that looks like something that Vladimir Putin is only too accustomed to, and that is the kind of corruption that he finds and perpetuates in his own regime and pushes all around the world.

My colleague VAL DEMINGS made reference to a conversation which I think is one of the other key vignettes in this whole sad saga, and that is a conversation that Ambassador Volker had with Andriy Yermak, one of the top aides to President Zelensky.

This is a conversation in which Ambassador Volker is doing exactly what he is supposed to be doing, which is he is telling Yermak: You know, you guys shouldn't really do this investigation of your former President Poroshenko because it would be for a political reason. You really shouldn't engage in political investigations. And as Representative DEMINGS said: What is the response of the Ukrainians? Oh, you mean like the one you want us to do of the Bidens and the Clintons. Threw it right back in his face. Ukraine is not oblivious to that hypocrisy.

Mr. Sekulow says: What are we here for? You know, part of our strength is not only our support for our allies, it is not only our military might, it is what we stand for.

We used to stand for the rule of law. We used to champion the rule of law around the world. Part of the rule of law is, of course, that no one is above the law.

But to be out in Ukraine or anywhere else in the world championing the rule of law and saying don't engage in political prosecutions and having them throw it right back in our face: Oh, you mean like the one you want us to do—that is why we are here. That is why we are here. That is why we are here.

I yield back.

Mr. MCCONNELL. Mr. Chief Justice.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. MCCONNELL. Mr. Chief Justice, I send a motion to the desk to table the amendment, and I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 17]

YEAS—53

Alexander	Fischer	Perdue
Barrasso	Gardner	Portman
Blackburn	Graham	Risch
Blunt	Grassley	Roberts
Boozman	Hawley	Romney
Braun	Hoeven	Rounds
Burr	Hyde-Smith	Rubio
Capito	Inhofe	Sasse
Cassidy	Johnson	Scott (FL)
Collins	Kennedy	Scott (SC)
Cornyn	Lankford	Shelby
Cotton	Lee	Sullivan
Cramer	Loeffler	Thune
Crapo	McConnell	Tillis
Cruz	McSally	Toomey
Daines	Moran	Wicker
Enzi	Murkowski	Young
Ernst	Paul	

NAYS—47

Baldwin	Hassan	Rosen
Bennet	Heinrich	Sanders
Blumenthal	Hirono	Schatz
Booker	Jones	Schumer
Brown	Kaine	Shaheen
Cantwell	King	Sinema
Cardin	Klobuchar	Smith
Carper	Leahy	Stabenow
Casey	Manchin	Tester
Coons	Markey	Udall
Cortez Masto	Menendez	Van Hollen
Duckworth	Merkley	Warner
Durbin	Murphy	Warren
Feinstein	Murray	Whitehouse
Gillibrand	Peters	Wyden
Harris	Reed	

The CHIEF JUSTICE. On this vote, the yeas are 53, the nays are 47. The motion to table is agreed to; the amendment is tabled.

The CHIEF JUSTICE. The Democratic leader is recognized.

AMENDMENT NO. 1287

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to issue a subpoena to John Michael ''Mick'' Mulvaney, and I ask that it be read.

The CHIEF JUSTICE. The clerk will report.

The legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1287.

(Purpose: To subpoena John Michael ''Mick'' Mulvaney)

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

SEC. _____. Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena for the taking of testimony of John Michael ''Mick'' Mulvaney, and the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the Senate in serving the subpoena authorized to be issued by this section.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent for a 30-minute recess before the parties are recognized to debate the Schumer amendment.

Following the debate time, I will once again move to table the amendment because those witnesses and evidence, as I repeatedly said, are addressed in the underlying resolution.

RECESS

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent that the Senate stand in recess until 8 p.m.

There being no objection, at 7:31 p.m., the Senate, sitting as a Court of Impeachment, recessed until 8:13 p.m. and reassembled when called to order by the Presiding Officer, the CHIEF JUSTICE.

The CHIEF JUSTICE. Mr. SCHIFF, are you in favor of the motion or opposed?

Mr. Manager SCHIFF. In favor, Your Honor.

The CHIEF JUSTICE. Mr. Cipollone?

Mr. Counsel CIPOLLONE. We are opposed.

The CHIEF JUSTICE. Mr. SCHIFF, the managers will go first and are able to reserve time for rebuttal.

Mr. Manager JEFFRIES. Mr. Chief Justice, distinguished Members of the Senate, counsel for the President, my name is HAKEEM JEFFRIES, and I have the honor of representing the 8th Congressional District of New York, in Brooklyn and Queens. It is one of the most diverse districts in the Nation. In fact, I have been told that I have the 9th most African-American district in the country and the 16th most Jewish.

Here on the Hill, some folks have said: Hakeem, is that complicated?

But as my friend Leon Goldenberg says back at home: Hakeem, you have the best of both worlds.

You see, in America, our diversity is a strength; it is not a weakness. And one of the things that binds us together—all of us—as Americans, regardless of race, regardless of religion, regardless of region, regardless of sexual orientation, and regardless of gender is that we believe in the rule of law and the importance of a fair trial.

The House managers strongly support this amendment to subpoena witness testimony, including with respect to Mick Mulvaney.

Who has ever heard of a trial with no witnesses? But that is exactly what some are contemplating here today. This amendment would address that fundamental flaw. It would ensure that the trial includes testimony from a key witness: the President's Acting Chief of Staff and head of the Office of Management and Budget, Mick Mulvaney, and it would ensure that the Senate can consider his testimony immediately.

Let's discuss why the need to hear from Mick Mulvaney is so critical.

First, Leader MCCONNELL's resolution undercuts more than 200 years of Senate impeachment trial practice. It departs from every impeachment trial conducted to date. It goes against the Senate's own longstanding impeachment rules, which contemplate the possibility of new witness testimony. In fact, it departs from any criminal or civil trial procedure in America. Why should this President be held to a different standard?

Second, the proposed amendment for witness testimony is necessary in light of the President's determined effort to bury the evidence and cover up his corrupt abuse of power.

The House tried to get Mr. Mulvaney's testimony. We subpoenaed him. Mr. Mulvaney, together with other key witnesses—National Security Advisor John Bolton, senior White House aide Robert Blair, Office of Management and Budget official Michael Duffey, and National Security Council lawyer John Eisenberg—were called to testify before the House as part of this impeachment inquiry, but President Trump was determined to hide from the American people what they had to say. The President directed the entire executive branch and all of his top aides and advisers to defy all requests for their testimony. That cannot be allowed to stand.

Third, Mr. Mulvaney is a highly relevant witness to the events at issue in this trial. Mr. Mulvaney was at the center of every stage of the President's substantial pressure campaign against Ukraine. Based on the extensive evidence the House did obtain, it is clear that Mulvaney was crucial in planning the scheme, executing its implementation, and carrying out the coverup.

Emails and witness testimony show that Mr. Mulvaney was in the loop on the President's decision to explicitly condition a White House meeting on Ukraine's announcement of investigations beneficial to the President's reelection prospects.

He was closely involved in implementing the President's hold on the security assistance and subsequently admitted that the funds were being withheld to put pressure on Ukraine to conduct one of the phony political investigations that the President wanted—phony political investigations.

A trial would not be complete without the testimony of Mick Mulvaney. Make no mistake. The evidentiary record that we have built is powerful and can clearly establish the President's guilt on both of the Articles of Impeachment, but it is hardly complete. The record comes to you without the testimony of Mr. Mulvaney and other important witnesses.

That brings me to one final preliminary observation. The American people agree that there cannot be a fair trial without hearing from witnesses who have relevant information to provide.

The Constitution, our democracy, the Senate, the President and, most importantly, the American people deserve a fair trial. A fair trial requires witnesses in order to provide the truth, the whole truth, and nothing but the truth. That is why this amendment should be adopted.

Before we discuss Mr. Mulvaney's knowledge of the President's geopolitical shakedown, it is important to note that an impeachment trial without witnesses would be a stunning departure from this institution's past practice.

This distinguished body has conducted 15 impeachment trials. All have included witnesses. Sometimes those trials included just a handful of witnesses, as indicated on the screen. At other times, they included dozens. In one case, there were over 100 different witnesses.

As the slide shows, the average number of witnesses to appear at a Senate impeachment trial is 33, and in at least 3 of those instances, including the impeachment of Bill Clinton, witnesses appeared before the Senate who had not previously appeared before the House. That is because the Senate, this great institution, has always taken its responsibility to administer a fair trial seriously. The Senate has always taken its duty to obtain evidence, including witness testimony, seriously. The Senate has always taken its obligation to evaluate the President's conduct based on a full body of available information seriously. This is the only way to ensure fundamental fairness for everyone involved.

Respectfully, it is important to honor that unbroken precedent today so that Mr. Mulvaney's testimony, without fear or favor as to what he might say, can inform this distinguished body of Americans.

This amendment is also important to counter the President's determination to bury the evidence of high crimes and misdemeanors.

As we have explained in detail today, despite considerable efforts by the House to obtain relevant documents and testimony, President Trump has directed the entire executive branch to execute a coverup. He has ordered the entire administration to ignore the powers of Congress's separate and coequal branch of government to investigate his offenses in a manner that is unprecedented in American history.

There were 71 requests by the House for relevant evidence. In response, the White House produced zero documents in this impeachment inquiry—71 requests, 0 documents.

President Trump is personally responsible for depriving the Senate of information important to consider in this trial. This point cannot be overstated. When faced with a congressional impeachment inquiry, a process expressly set forth by the Framers of the Constitution in article I, the President refused to comply in any respect, and he ordered his senior aides to fall in line.

As shown on the slide, as a result of President Trump's obstruction, 12 key witnesses, including Mr. Mulvaney, refused to appear for testimony in the House's impeachment inquiry. No one has heard what they have to say. These witnesses include central figures in the abuse of power charged in article I. What is the President hiding?

Equally troublesome, President Trump and his administration did not make any legitimate attempts to reach a reasonable accommodation with the House or compromise regarding any document requests or witness subpoenas. Why? Because President Donald John Trump wasn't interested in cooperating. He was plotting a coverup.

It is important to take a step back and think about what President Trump is doing. Complete and total Presidential obstruction is unprecedented in American history. Even President Nixon, whose Articles of Impeachment included obstruction of Congress, did not block key White House aides from testifying in front of Congress during the Senate Watergate hearings. In fact, he publicly urged White House aides to testify.

Remember all of those witnesses who came in front of this body? Take a look at the screen. John Dean, the former White House Counsel, testified for multiple days pursuant to a subpoena. H.R. Haldeman, President Nixon's former Chief of Staff, was subpoenaed and testified. Alexander Butterfield, the White House official who revealed the existence of the tapes, testified publicly before the Senate, and so did several others. President Trump's complete and total obstruction makes Richard Nixon look like a choirboy.

Two other Presidents have been tried before the Senate. How did they conduct themselves?

William Jefferson Clinton and Andrew Johnson did not block any witnesses from participating in the Senate trial. President Trump, by contrast, refuses to permit relevant witnesses from testifying to this very day.

Many of President Clinton's White House aides testified in front of Congress, even before the commencement of formal impeachment profession. During various investigations in the mid-1990s, the House and the Senate heard from more than two dozen White House aides, including the White House Counsel, the former Chief of Staff, and multiple senior advisers to President Clinton.

President Clinton himself gave testimony on camera and under oath. He also allowed his most senior advisers, including multiple Chiefs of Staff and White House Counsels, to testify in the investigation that led to his impeachment.

As you can see in the chart, their testimony was packaged and delivered to the Senate. There were no missing witnesses who had defied subpoenas. No aides who had personal knowledge of his misconduct were directed to stay silent by President Clinton.

We have an entirely different situation in this case. Here we are seeking witnesses the President has blocked from testifying before the House. Apparently, President Trump thinks he can do what no other President before him has attempted to do in such a brazen fashion: float above the law and hide the truth from the American people. That cannot be allowed to stand.

Let me now address some bedrock principles about the Congress's authority to conduct investigations. Our broad powers of inquiry are at their strongest during an impeachment proceeding, when the House and Senate exercise responsibilities expressly set forth in article I of the Constitution.

Nearly 140 years ago, the Supreme Court recognized that, when the House

or Senate is determining a question of impeachment, there is no reason to doubt the right to compel the attendance of witnesses, and their answer to proper questions, in the same manner and by the use of the same means that courts of justice can in like cases. Our Nation's Founders and greatest legal minds recognized these principles early on. Supreme Court Justice Joseph Story explained that the President should not have the power of preventing a thorough investigation of his conduct or of securing himself against the disgrace of a public conviction by impeachment, if he should deserve it.

President Trump cannot function as judge, jury, and executioner of our democracy. It wasn't just the courts that confirmed this for us. It was some of our Nation's leading public servants. Representative John Quincy Adams, speaking on the floor of the House, after he had served as President, once explained: ''What mockery would it be for the Constitution of the United States to say that the House should have the power of impeachment, extending even to the President of the United States himself, and yet to say that the House had not the power to obtain the evidence and proofs on which their impeachment was based.''

As Hamilton, Story, Adams, and others have recognized, the President cannot insulate himself from Congress's investigations of his wrongdoing. If the President could decide what evidence gets to be presented in his own trial, that would fundamentally nullify the constitutional power of impeachment.

This amendment is important because President Trump simply cannot be allowed to hide the truth. No other President has done it; the Supreme Court does not allow it; and the President is not above the law.

Witnesses matter. Documents matter. Evidence matters. The truth matters.

Let me now turn to the third justification for this amendment. Mr. Mulvaney's testimony is critical to considering the case for removal. It is imperative that we hear from the President's closest aide, a man intimately involved at key stages of this extraordinary abuse of power. President Trump knows this. Why else would he be trying so hard to prevent Mick Mulvaney from testifying before you?

There are at least four reasons why Mr. Mulvaney's testimony is critical. To begin with, as Acting White House Chief of Staff and head of the Office of Management and Budget, Mick Mulvaney has firsthand knowledge about President Trump's efforts to shake down Ukraine and pressure its new President into announcing phony investigations.

Mr. Mulvaney was in the loop at each critical stage of President Trump's scheme. He was in the loop in the planning of the scheme; he was in the loop in its implementation; and he was in the loop when the scheme fell apart. He even admitted publicly that the aid was withheld in order to pressure Ukraine into announcing an investigation designed to elevate the President's political standing.

Mr. Mulvaney, perhaps more than any other administration witness, excepting the President, has firsthand insight into the decision to withhold $391 million in military and security aid to a vulnerable Ukraine without justification. Indeed, our investigation revealed that President Trump personally ordered Mr. Mulvaney to execute the freeze in July of 2019. Mr. Mulvaney holds the senior-most staff position at the White House. He is a member of President Trump's Cabinet, and he is responsible for President Trump's team at 1600 Pennsylvania Avenue. He remains the Director of the Office of Management and Budget, which implemented the hold on the security assistance, in violation of the law, as the Government Accountability Office recently concluded.

In short, respectfully, the Senate's responsibility to conduct a complete and fair trial demands that Mr. Mulvaney testify.

Second, Mr. Mulvaney's testimony is critical because of his knowledge of the planning of President Trump's abuse of power. Ambassador Gordon Sondland, the U.S. Ambassador to the European Union, testified that there was a quid pro quo. Ambassador Sondland is not a so-called Never Trumper. Mr. Sondland gave $1 million to President Trump's inauguration.

He testified that everybody was in the loop and that it was no secret what was going on. In fact, as early as May of 2019, Ambassador Sondland made clear that he was coordinating on Ukraine matters with Mr. Mulvaney.

Here is what David Holmes, an official at the U.S. Embassy in Ukraine, had to say on that matter:

(Text of Videotape presentation:)

Mr. HOLMES. While Ambassador Sondland's mandate as the accredited Ambassador to the European Union did not cover individual member states, let alone nonmember countries like Ukraine, he made clear that he had direct and frequent access to President Trump and Chief of Staff Mick Mulvaney and portrayed himself as the conduit to the President and Mr. Mulvaney for this group.

Mr. Manager JEFFRIES. After the U.S. delegation returned from the inauguration of the new Ukrainian President in April, they were able to secure an Oval Office meeting with President Trump to brief him on their trip, in part because of Ambassador Sondland's connections to Mick Mulvaney.

Then, during a June 18, 2019, meeting, Ambassador Sondland informed National Security Council Senior Director Dr. Fiona Hill that he was in charge of Ukraine and that he had been briefing senior White House officials, including Mr. Mulvaney, about his efforts to undertake, as Dr. Hill put it, a domestic political errand in Ukraine.

Here is Dr. Hill explaining this herself.

(Text of Videotape presentation:)

Dr. HILL. So I was upset with him that he wasn't fully telling us about all of the meetings that he was having. And he said to me, But I'm briefing the President, I'm briefing Chief of Staff Mulvaney, I'm briefing Secretary Pompeo, and I talked to Ambassador Bolton. Who else do I have to deal with? And the point is, we have a robust interagency process that deals with Ukraine. It includes Mr. Holmes. It includes Ambassador Taylor as the charge in Ukraine. It includes a whole load of other people. But it struck me when yesterday, when you put up on the screen Ambassador Sondland's emails and who was on these emails, and he said, These are the people who need to know, that he was absolutely right. Because he was being involved in a domestic political errand, and we were being involved in national security foreign policy, and those two things had just diverged.

Mr. Manager JEFFRIES. And there is more—much more. A month later, President Trump's National Security Advisor at the time, John Bolton, told Dr. Fiona Hill to tell the National Security Council's lawyers that he was not part of whatever drug deal Sondland and Mulvaney were cooking up. He made that statement after Ambassador Sondland specifically said that he had a deal with Mr. Mulvaney to schedule a White House visit for President Zelensky if Ukraine announced the two phony investigations involving the Bidens and 2016 election interference—investigations that were sought by President Donald John Trump.

Here is Dr. Hill's testimony about Sondland describing this drug deal he had with Mulvaney.

(Text of Videotape presentation:)

Dr. HILL. And so when I came in, Gordon Sondland was basically saying, well, look, we have a deal here that there will be a meeting. I have a deal here with Chief of Staff Mulvaney that there will be a meeting if the Ukrainians open up or announce these investigations into 2016 and Burisma. And I cut it off immediately there. Because by this point, having heard Mr. Giuliani over and over again on the television and all of the issues that he was asserting, by this point it was clear that Burisma was code for the Bidens, because Giuliani was laying it out there. I could see why Colonel Vindman was alarmed, and he said, this is inappropriate, we're the National Security Council, we can't be involved in this.

Mr. Manager JEFFRIES. The referenced agreement between Ambassador Sondland and Mick Mulvaney was so upsetting that Dr. Hill reported it to National Security Council legal advisers. Here is the testimony of Dr. Hill explaining these particular concerns.

(Text of Videotape presentation:)

Dr. HILL. Yes, but he was—he was making a very strong point that he wanted to know exactly what was being said. And when I came back and related it to him, he had some very specific instructions for me. And I'm presuming that that's the question that you're asking.

Mr. GOLDMAN. What was that specific instruction?

Dr. HILL. The specific instruction was that I had to go to the lawyers, to John Eisenberg, our senior counsel for the National Security Council, to basically say,

you tell Eisenberg, Ambassador Bolton told me that I am not part of this whatever drug deal that Mulvaney and Sondland are cooking up.

Mr. GOLDMAN. What did you understand him to mean by the drug deal that Mulvaney and Sondland were cooking up?

Dr. HILL. I took it to mean investigations for a meeting.

Mr. GOLDMAN. Did you go speak to the lawyers?

Dr. HILL. I certainly did.

Mr. Manager JEFFRIES. Sondland's testimony not only corroborates Dr. Hill's account. He actually says that Mick Mulvaney, the subject of this amendment, who should appear before the Senate if we are going to have a free and fair trial—Sondland says Mick Mulvaney knew all about it.

(Text of Videotape presentation:)

The CHAIRMAN. What I want to ask you about is, he makes reference in that drug deal to a drug deal cooked up by you and Mulvaney. It's the reference to Mulvaney that I want to ask you about. You've testified that Mulvaney was aware of this quid pro quo, of this condition that the Ukrainians had to meet, that is, announcing these public investigations to get the White House meeting. Is that right?

Mr. SONDLAND. Yeah. A lot of people were aware of it. And—

The CHAIRMAN. Including Mr. Mulvaney?

Mr. SONDLAND. Correct.

Mr. Manager JEFFRIES. The documents also highlight the extensive involvement of Mick Mulvaney in this geopolitical shakedown scheme. Email messages summarized by Ambassador Sondland during his sworn testimony show that he informed Mr. Mulvaney, as well as Secretary Pompeo and Secretary Perry, of his efforts to persuade President Zelensky to announce the investigations desired by President Trump.

For example, as shown on the screen, on July 19, Ambassador Sondland emailed several top administration officials, including Mr. Mulvaney, stating that he had talked to President Zelensky to help prepare him for a phone call with President Trump, and he reported that President Zelensky planned to assure President Trump that he intends to run a fully transparent investigation and will turn over every stone.

Ambassador Sondland made clear in his testimony that he was referring to the Burisma/Biden and 2016 election interference investigations that were explicitly mentioned by President Trump on the July 25 phone call.

Mr. Mulvaney wrote in a response: I asked NSC to set it up.

What exactly did Mr. Mulvaney know about the Ukrainian commitment to turn over every stone? And when did he know it?

These are many of the questions that require answers, under oath, from Mr. Mulvaney. Mr. Mulvaney is also a central figure with respect to how President Trump implemented his pressure campaign.

According to public reports and witness testimony, Mr. Mulvaney was deeply involved with implementing the scheme, including the unlawful White House freeze on $391 million in aid to Ukraine.

This isn't just other people fingering Mr. Mulvaney. Mr. Mulvaney has himself admitted that he was involved.

(Text of Videotape presentation:)

Mr. MULVANEY. Again, I was involved with the process by which the money was held up temporarily, okay?

Mr. Manager JEFFRIES. The public reports confirm Mr. Mulvaney's own account that he has information that goes to the heart of this inquiry, specifically related to why the President ordered the hold on aid to Ukraine and kept it in place, despite deep-seated concerns among Trump administration officials.

This New York Times article on the screen summarizes an email conversation between Mr. Mulvaney and Robert Blair, a senior administration adviser, on June 27, when Mr. Mulvaney asked: ''Did we ever find out about the money for Ukraine and whether we can hold it back?''

What prompted that email? According to public reports, Mr. Mulvaney was on Air Force One—Air Force One—with President Trump when he sent it. What other conversations did Mr. Mulvaney have with the President and White House officials about this unlawful freeze? The American people deserve to know.

There is other significant evidence concerning Mr. Mulvaney's role in implementing the scheme. According to multiple witnesses, the direction to freeze the security assistance to Ukraine was delivered by Mick Mulvaney himself.

Office of Management and Budget official Mark Sandy testified about a July 12 email from Mr. Will Blair stating that President Trump ''is directing a hold on military support funding for Ukraine.''

Was Mr. Blair acting at Mr. Mulvaney's express direction? The Members of this distinguished body deserve to know.

On July 18, the hold was announced to the agencies in the administration overseeing Ukraine policy matters. Those present were blindsided by the announcement that the security aid appropriated by this Congress on a bipartisan basis to Ukraine, which is still at war with Russian-backed separatists in the east, were alarmed that that aid had inexplicably been put on hold.

Meanwhile, officials at the Defense Department and within the Office of Management and Budget became increasingly concerned that the hold also violated the law. Their concerns turned out to be accurate.

Public reports have indicated that the White House is in possession of early August emails, exchanges between Acting Chief of Staff Mick Mulvaney and White House budget officials seeking to provide an explanation for the funds—an explanation, I should note, that they were trying to provide after the President had already ordered the hold.

Mr. Mulvaney presumably has answers to these questions. We don't know what those answers are, but he should provide them to this Senate and to the American people.

Finally, on October 17, 2019, at a press briefing at the White House, Mr. Mulvaney left no doubt that President Trump withheld the essential military aid as leverage to try to extract phony political investigations as part of his effort to solicit foreign interference in the 2020 election.

This was an extraordinary press conference. Mr. Mulvaney made clear that the President was, in fact, pressuring Ukraine to investigate the conspiracy theory that Ukraine, rather than Russia, had interfered in the 2016 election—a conspiracy theory promoted by none other than the great purveyor of democracy, Vladimir Putin himself.

When White House reporters attempted to clarify this acknowledgement of a quid pro quo related to security assistance, Mr. Mulvaney replied, ''We do that all the time with foreign policy. I have news for everybody: get over it.''

Let's listen to a portion of that stunning exchange.

(Text of Videotape presentation:)

Answer. Did he also mention to me in the past that the corruption related to the DNC server, absolutely. No question about that. But that's it. And that's why we held up the money. Now there was a report—

Question. So the demand for an investigation into the Democrats was part of the reason that he wanted to withhold funding to Ukraine.

Answer. The look back to what happened in 2016—

Question. The investigation into Democrats—

Answer.—certainly was part of the thing he was worried about in corruption with that nation. That is absolutely appropriate.

Question. But to be clear, what you just described is a quid pro quo. It is: Funding will not flow unless the investigation into the Democratic server happens as well.

Answer. We do that all the time with foreign policy. We were holding money at the same time for—what was it? The Northern Triangle countries. We were holding up aid at the Northern Tribal countries so that they would change their policies on immigration. By the way—and this speaks to an important point—I'm sorry? This speaks to an important point, because I heard this yesterday and I can never remember the gentleman who testified. Was it McKinney, the guy—was that his name? I don't know him. He testified yesterday. And if you go—and if you believe the news reports—okay? Because we've not seen any transcripts of this. The only transcript I've seen was Sondland's testimony this morning. If you read the news reports and you believe them—what did McKinney say yesterday? Well, McKinney said yesterday that he was really upset with the political influence in foreign policy. That was one of the reasons he was so upset about this. And I have news for everybody: Get over it. There's going to be political influence in foreign policy.

Mr. Manager JEFFRIES. In this extraordinary press conference, Mr. Mulvaney spoke with authority and conviction about why President Trump withheld the aid. He did not mince his words. But then following the press

conference, he tried to walk back his statements, as if he had not said them, or had not meant them. We need to hear from Mick Mulvaney directly so he can clarify his true intentions.

Having gone through the need for the evidence, let's briefly address the President's arguments that he can block this testimony. That argument is not only wrong, it fundamentally undermines our system of checks and balances.

Step back for a moment and consider the extraordinary position that President Trump is trying to manufacture for himself.

The Department of Justice has already said that the President cannot be indicted or prosecuted in office. As we sit here today, the President has actually filed a brief in the Supreme Court saying he cannot be criminally investigated while in the White House.

The Senate and the House are the only check that is left when the President abuses his power, tries to cheat in the next election, undermines our national security, breaks the law in doing so, and then tries to cover it up. This is America. No one is above the law.

But if the President is allowed to determine whether he is even investigated by Congress, if he is allowed to decide whether he should comply with lawful subpoenas in connection with an impeachment inquiry or trial, then he is the ultimate arbiter of whether he did anything wrong. That cannot stand.

If he can't be indicted, and he can't be impeached, and he can't be removed, then he can't be held accountable. That is inconsistent with the U.S. Constitution.

You will no doubt hear that the reason the President blocked all of these witnesses, including Mr. Mulvaney, from testifying is because of some lofty concern for the Office of the Presidency and the preservation of executive privilege.

Let's get real. How can blocking witnesses from telling the truth about the President's misconduct help preserve the Office of the Presidency? This type of blanket obstruction undermines the credibility of the Office of the Presidency and deals the Constitution a potentially mortal death blow.

To be clear, executive privilege does not provide a legally justifiable basis for his complete and total blockage of evidence. In fact, as you heard earlier today, President Trump never even invoked executive privilege—not once. And without ever asserting this privilege, how can you consider his argument in a serious fashion?

Instead, speaking through Mr. Cipollone, the distinguished White House Counsel, in a letter dated October 8, 2019, President Trump simply decided that he did not want to participate in the investigation into his own wrongdoing.

It was a categorical decision not to cooperate, without consideration of specific facts or legal arguments. In fact, even the words President Trump used through his White House Counsel were made up.

In the letter, Mr. Cipollone referred to so-called ''executive branch confidentiality interests.'' But that is not a recognized jurisprudential shield, not a proper assertion of executive privilege. To the extent that there are privilege issues to consider, those can be resolved during their testimony, as they have been for decades.

And finally, the President claimed that Mr. Mulvaney could not be compelled to testify because of so-called absolute immunity. But every court to address this legal fiction has rejected it.

As the Supreme Court emphatically stated, in unanimous fashion, in its decision on the Nixon tapes, confidentiality interests of the President must yield to an impeachment inquiry when there is a legitimate need for the information, as there is here today.

There can be no doubt that Mr. Mulvaney, as the President's Chief of Staff and head of the Office of Management and Budget, is uniquely situated to provide this distinguished body with relevant and important information about the charges in the Articles of Impeachment.

The President's obstruction has no basis in law and should yield to this body's coequal authority to investigate impeachable and corrupt conduct.

One final point bears mentioning. If the President wanted to make witnesses available, even while preserving the limited protections of executive privilege, he can do so. In fact, President Trump expressed his desire for witnesses to testify in the Senate just last month.

Let's go to the videotape.

(Text of Videotape presentation:)

President TRUMP. So, when it's fair, and it will be fair in the Senate, I would love to have Mike Pompeo, I'd love to have Mick, I'd love to have Rick Perry and many other people testify.

Mr. Manager JEFFRIES. If President Trump had nothing to hide, as he and his advisers repeatedly claim, they should all simply testify in the Senate trial. What is President Donald John Trump hiding from the American people?

The Constitution requires a fair trial. Our democracy needs a fair trial.

The American people deserve a fair trial. A fair trial means witnesses. A fair trial means documents. A fair trial means a consideration of all of the available evidence. A fair trial means testimony from Mick Mulvaney.

Mr. Chief Justice, the House managers reserve the balance of our time.

The CHIEF JUSTICE. Mr. Cipollone.

Mr. Counsel CIPOLLONE. Thank you.

Mr. Mike Purpura from the White House Counsel's Office, Deputy Counsel to the President, will give the argument.

Mr. Counsel PURPURA. Mr. Chief Justice, Members of the Senate, good evening. My name is Michael Purpura. I serve as Deputy Counsel to the President.

We strongly oppose the amendments and support the resolution. There is simply no need to alter the process on witnesses and documents from that of the Clinton trial, which was supported by this body 100 to 0.

At its core, this case is very simple, and the key facts are undisputed.

First, you have seen the transcripts which the President released—transparent and unprecedented. There was no quid pro quo for anything. Security assistance funds aren't even mentioned on the call.

Second, President Zelensky and the highest ranking officials in the Ukrainian Government repeatedly have said there was no quid pro quo and there was no pressure.

Third, the Ukrainians were not even aware of the pause in the aid at the time of the call and weren't aware of it—they did not become aware of it until more than a month later.

Fourth, the only witnesses in the House record who actually spoke to the President about the aid—Ambassador Sondland and Senator RON JOHNSON—say the President was unequivocal in saying there was no quid pro quo.

Fifth, and this one is pretty obvious, the aid flowed and President Trump and President Zelensky met without any investigations started or announced.

Finally—and I ask that you not lose sight of the big picture here—by providing legal aid to Ukraine, President Trump has proven himself to be a better friend and ally to Ukraine than his predecessor.

The time for the House managers to bring their case is now. They had their chance to develop their evidence before they sent the Articles of Impeachment to this Chamber. This Chamber's role is not to do the House's job for it.

I yield the balance of my time to Mr. Cipollone.

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice.

Just a couple of observations. First of all, as Mr. Purpura said, what we are talking about is when this question is addressed. Under the resolution, that will be next week. This resolution was accepted 100 to 0. Some of you were here then and thought it was great. If we keep going like this, it will be next week. For those of you keeping score at home, they haven't even started yet.

We are here today. We came hoping to have a trial. They spent the entire day telling you and the American people that they can't prove their case. I could have told you that in 5 minutes and saved us all a lot of time.

They came here talking about the GAO. It is an organization that works for Congress. Do you know who disagrees with the GAO? Don't take it from me; they do. They sent you Articles of Impeachment that make no claim of any violation of any law.

By the way, you can search high and low in the Articles of Impeachment,

and you know what it doesn't say? It doesn't say ''quid pro quo'' because there wasn't any. Only in Washington would someone say that it is wrong when you don't spend taxpayer dollars fast enough even if you spend them on time.

Let's talk about the Judiciary Committee for a second. They spent 2 days in the Judiciary Committee—2 days. The Judiciary Committee is supposed to be in charge of impeachments. The delivery time for the articles they have produced was 33 days. I think this might be the first impeachment in history where the delivery time was longer than the investigation in the Judiciary Committee.

They come here and falsely accuse people—by the way, they falsely accused you. You are on trial now. They falsely accused people of phony political investigations. Really. Since the House Democrats took over, that is all we have had from them. They have used their office and all the money that the taxpayers send to Washington to pay them to conduct phony political investigations against the President, against his family, against anyone who knew him. They started impeaching him the minute he was elected. They weaponized the House of Representatives to investigate incessantly their political opponent. And they come here and make false allegations of phony political investigations. I think the doctors call that projection. It is time for it to end. It is time for someone—for the Senate to hold them accountable.

Think about what they are asking. I said it; they didn't deny it. They are trying to remove President Trump's name from the ballot, and they can't prove their case. They have told you that all day long. Think about what they are asking some of you Senators to do. Some of you are running for President. They are asking you to use your office to remove your political opponent from the ballot. That is wrong. That is not in the interest of our country. And to be honest with you, it is not really a show of confidence.

I suppose we will have this debate again next week if we ever get there. It is getting late. I would ask you, respectfully, if we could simply start—maybe tomorrow we can start, and they can make their argument, and they can, I guess, make a case that they once called ''overwhelming.'' We will see.

But this resolution is right, it is fair, and it makes sense. You have a right to hear what they have to say before you have to decide these critical issues. That is all this is about. Is it now or is it a week from now? Seriously, can we please start?

Thank you.

The CHIEF JUSTICE. Mr. Cipollone, is your side complete?

Mr. Counsel CIPOLLONE. Yes, we are, Mr. Chief Justice.

The CHIEF JUSTICE. Thank you.

The House managers have 14 minutes remaining.

Mr. Manager JEFFRIES. Counsel to the President indicated that we have not charged President Trump with a crime. We have charged him with crimes against the U.S. Constitution—high crimes and misdemeanors and abuse of power. It strikes at the very heart of what the Framers of the Constitution were concerned about—betrayal of one's oath of office for personal gain and the corruption of our democracy. High crimes and misdemeanors are what this trial is all about.

Counsel for the President again has declined to address the substantive merits of the amendment that has been offered and tried to suggest that House Democrats have only been focused on trying to oust President Trump. Nothing could be further from the truth.

In the last year, we passed 400 bills and sent them to this Chamber, and 275 of those bills are bipartisan in nature, addressing issues like lowering healthcare costs and prescription drug prices, trying to deal with the gun violence epidemic. We have worked with President Trump on criminal justice reform. I personally worked with him, along with all of you, on the First Step Act. We worked with him on the U.S.-Mexico-Canada trade agreement. We worked with him to fund the government. We don't hate this President, but we love the Constitution. We love America. We love our democracy. That is why we are here today.

The question was asked by Mr. Sekulow as he opened before this distinguished body: Why? Why are we here?

Let me see if I can just posit an answer to that question. We are here, sir, because President Trump pressured a foreign government to target an American citizen for political and personal gain. We are here, sir, because President Trump solicited foreign interference in the 2020 election and corrupted our democracy. We are here, sir, because President Trump withheld $391 million in military aid from a vulnerable Ukraine without justification in a manner that has been deemed unlawful. We are here, sir, because President Donald Trump elevated his personal political interests and subordinated the national security interests of the United States of America. We are here, sir, because President Trump corruptly abused his power, and then he tried to cover it up. And we are here, sir, to follow the facts, apply the law, be guided by the Constitution, and present the truth to the American people. That is why we are here, Mr. Sekulow. And if you don't know, now you know.

I yield to my distinguished colleague, Chairman SCHIFF.

Mr. Manager SCHIFF. I thank the gentleman for yielding and just want to provide a couple of quick fact checks to my colleagues at the other table.

First, Mr. Purpura said that security assistance funds were not mentioned at all in the July 25 call between President Trump and President Zelensky. Let's think back to what was discussed in that call. You might remember from that call that President Zelensky thanks President Trump for the Javelin anti-tank weapons and says they are ready to order some more.

And what is President Trump's immediate response?

I have a favor to ask, though.

What was it about the President of Ukraine's bringing up military assistance that triggered the President to go immediately to the favor that he wanted? I think that it is telling that it takes place in that part of the conversation.

So, yes, security assistance, military assistance did come up in that call. It came up immediately preceding the ask. What kind of message do you think that sends to Ukraine? They are not stupid. The people watching this aren't stupid.

Now, Mr. Purpura said: Well, they never found out about it—or they didn't find out about the freeze of the aid until a month later. Mr. Purpura needs to be a little more careful with his facts. Let me tell you about some of the testimony you are going to hear, and you will only hear it because it took place in the House. These were other witnesses from whom you wouldn't be able to hear it.

You had Catherine Croft, a witness from the State Department, a career official at the State Department, who talked about how quickly, actually, after the freeze went into place that the Ukrainians found out about it, and she started getting contacts from the Ukrainian Embassy here in Washington. She said she was really impressed with her diplomatic tradecraft. What does that mean? It means she was really impressed with how quickly the Ukrainians found out about something that the administration was trying to hide from the American people.

Ukraine found out about it. In fact, Laura Cooper, a career official at the Defense Department, said that her office started getting inquiries from Ukraine about the issues with the aid on July 25—the very day of the call. So much for Ukraine's not finding out about this until a month later.

I thought this was very telling, too: The New York Times disclosed that by July 30—so within a week of the call between President Trump and President Zelensky—Ukraine's Foreign Ministry received a diplomatic cable from its Embassy, indicating that Trump had frozen the military aid. Within a week, that cable is reported to have gone from the Ukrainian Embassy to the Ukrainian Foreign Ministry.

Former Ukrainian Deputy Foreign Minister Olena Zerkal said:

> We had this information. It was definitely mentioned that there were some issues.

She went on to say that the cable was simultaneously provided to President Zelensky's office, but Andrii Derkach, whom you will hear more about later—a top aide to President

Zelensky—reportedly directed her to keep silent and not discuss the hold with reporters or Congress.

Now, we heard testimony about why the Ukrainians wanted to keep it secret that they knew about the hold. You can imagine why Zelensky didn't want his own people to know that the President of the United States was holding back aid from him. What does that look like for a new President of Ukraine who is trying to make the case that he is going to be able to defend his own country because he has such a great relationship with the great patron, the United States? He didn't want the Ukrainians to know about it. But do you know? Even more than that, he didn't want the Russians to know about it for the reasons we talked about earlier. So, yes, the Ukrainians kept it close to the vest.

Mr. Purpura also went on to say: Well, the Ukrainians say they don't feel any pressure.

That is what they say now. Of course, we know that it is not true.

We have had testimony that they didn't want to be used as a political pawn in U.S. domestic politics. They resisted it. You will hear more testimony about that, about the efforts to push back on this public statement—how they tried to water it down and how they tried to leave out the specifics of how Giuliani, at the President's behest, forced them: You know, no, this isn't going to be credible if you don't add in Burisma and if you don't add in 2016.

You will hear about the pressure. They felt it. So why isn't President Zelensky now saying he was pressured? Well, can you imagine the impact of that? Can you imagine the impact if President Zelensky were to acknowledge today: Hell, yes, we felt pressured. You would, too. We are at war with Russia for crying out loud. Yes, we felt pressured. We needed those hundreds of millions in military aid. Do you think I am going to say that now? I still can't get in the White House door. They let Lavrov in, the Russian Foreign Minister. They let him in, but I can't even get in the White House door. Do you think I am going to go out now and admit to this scheme?

I mean, anyone who has watched this President in the last 3 years knows how vindictive he can be. Do you think it would be smart for the President of Ukraine to contradict the President of the United States so directly on an issue he is being impeached for? That would be the worst form of malpractice for the new President of Ukraine. We shouldn't be surprised he would deny it. We should be surprised if he were to admit it.

Let me just end with a couple of observations about Mr. Cipollone's comments.

He says: This is no big deal. We are not talking about when we are going to have witnesses—or if we are going to have witnesses. We are just talking about when. We are just talking about when, as if, well, later, they are going to say: Oh, yes, well, we are happy to have the witnesses now. It is just a question of when.

OK. As my colleague said, let's be real. There will be no ''when.'' Do you think they are going to have an epiphany a few days from now and say: OK, we are ready for witnesses? No. No, their goal is to get you to say no now, to get you to have the trial, and then argue to ''make it go away.'' Let's dismiss the whole thing.

That is the plan. A vote to delay is a vote to deny. Let's make no mistake about that. They are not going to have an epiphany a few days from now and suddenly say: OK, the American people do deserve the answers. Their whole goal is that you will never get to that point. You will never get to that point. When they say when, they mean never.

I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. MCCONNELL. Mr. Chief Justice, I make a motion to table the amendment, and I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 18]

YEAS—53

Alexander	Fischer	Perdue
Barrasso	Gardner	Portman
Blackburn	Graham	Risch
Blunt	Grassley	Roberts
Boozman	Hawley	Romney
Braun	Hoeven	Rounds
Burr	Hyde-Smith	Rubio
Capito	Inhofe	Sasse
Cassidy	Johnson	Scott (FL)
Collins	Kennedy	Scott (SC)
Cornyn	Lankford	Shelby
Cotton	Lee	Sullivan
Cramer	Loeffler	Thune
Crapo	McConnell	Tillis
Cruz	McSally	Toomey
Daines	Moran	Wicker
Enzi	Murkowski	Young
Ernst	Paul	

NAYS—47

Baldwin	Hassan	Rosen
Bennet	Heinrich	Sanders
Blumenthal	Hirono	Schatz
Booker	Jones	Schumer
Brown	Kaine	Shaheen
Cantwell	King	Sinema
Cardin	Klobuchar	Smith
Carper	Leahy	Stabenow
Casey	Manchin	Tester
Coons	Markey	Udall
Cortez Masto	Menendez	Van Hollen
Duckworth	Merkley	Warner
Durbin	Murphy	Warren
Feinstein	Murray	Whitehouse
Gillibrand	Peters	Wyden
Harris	Reed	

The motion to table is agreed to; the amendment is tabled.

The CHIEF JUSTICE. The majority leader is recognized.

UNANIMOUS CONSENT REQUEST

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent to ask the Democratic leader, as there are certain similarities to all of these amendments, whether he might be willing to enter into a unanimous consent agreement to stack these votes.

The CHIEF JUSTICE. Without objection, it is so ordered.

The inquiry is permitted.

Mr. SCHUMER. Thank you, Mr. Chief Justice.

The bottom line is very simple.

As has been clear to every Senator and the country, we believe witnesses and documents are extremely important and that a compelling case has been made for them. We will have votes on all of those.

Also, the leader, without consulting us, made a number of significant changes that significantly deviated from the 1999 Clinton resolution. We want to change those, so there will be a good number of votes. We are willing to do some of those votes tomorrow. There is no reason we have to do them all tonight and inconvenience the Senate and the Chief Justice, but we will not back off on getting votes on all of these amendments, which we regard as extremely significant and important to the country.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. MCCONNELL. Mr. Chief Justice, as I have said repeatedly, all of these amendments under the resolution could be dealt with at the appropriate time.

I suggest the absence of a quorum.

The CHIEF JUSTICE. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent that the order for the quorum call be rescinded.

The CHIEF JUSTICE. Without objection, it is so ordered.

Mr. SCHUMER. Mr. Chief Justice.

The CHIEF JUSTICE. The Democratic leader is recognized.

AMENDMENT NO. 1288

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to subpoena certain documents and records from the Department of Defense, and I ask that it be read.

The CHIEF JUSTICE. The clerk will read the document.

The senior assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1288.

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

SEC. _____. Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials—

(1) the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena to the Secretary of Defense commanding him to produce, for the time period from January 1, 2019, to the present, all documents, communications, and other records within the possession, custody, or control of the Department of Defense, referring or relating to—

(A) the actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military

assistance, or security assistance of any kind to Ukraine, including but not limited to the Ukraine Security Assistance Initiative (USAI) and Foreign Military Financing (FMF), including but not limited to—

(i) communications among or between officials at the Department of Defense, White House, Office of Management and Budget, Department of State, or Office of the Vice President;

(ii) documents, communications, notes, or other records created, sent, or received by Secretary Mark Esper, Deputy Secretary David Norquist, Undersecretary of Defense Elaine McCusker, and Deputy Assistant Secretary of Defense Laura Cooper, or Mr. Eric Chewning;

(iii) draft or final letters from Deputy Secretary David Norquist to the Office of Management and Budget; and

(iv) unredacted copies of all documents released in response to the September 25, 2019, Freedom of Information Act request by the Center for Public Integrity (tracking number 19-F-1934);

(B) the Ukrainian government's knowledge prior to August 28, 2019, of any actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or security assistance to Ukraine, including but not limited to all meetings, calls, or other engagements with Ukrainian officials regarding potential or actual suspensions, holds, or delays in United States assistance to Ukraine, including but not limited to—

(i) communications received from the Department of State concerning the Ukrainian Embassy's inquiries about United States foreign assistance, military assistance, and security assistance to Ukraine; and

(ii) communications received directly from the Ukrainian Embassy about United States foreign assistance, military assistance, and security assistance to Ukraine;

(C) communications, opinions, advice, counsel, approvals, or concurrences provided by the Department of Defense, Office of Management and Budget, or the White House, on the legality of any suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, and security assistance to Ukraine;

(D) planned or actual meetings with President Trump related to United States foreign assistance, military assistance, or security assistance to Ukraine, including but not limited to any talking points and notes for Secretary Mark Esper's planned or actual meetings with President Trump on August 16, August 19, or August 30, 2019;

(E) the decision announced on or about September 11, 2019, to release appropriated foreign assistance, military assistance, and security assistance to Ukraine, including but not limited to any notes, memoranda, documentation or correspondence related to the decision; and

(F) all meetings and calls between President Trump and the President of Ukraine, including but not limited to documents, communications, and other records related to the scheduling of, preparation for, and follow-up from the President's April 21 and July 25, 2019 telephone calls, as well as the President's September 25, 2019 meeting with the President of Ukraine in New York; and

(2) the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the Senate in serving the subpoena authorized to be issued by this section.

The CHIEF JUSTICE. The amendment is arguable by the parties for 2 hours.

Mr. Manager SCHIFF, are you a proponent or opponent?

Mr. Manager SCHIFF. We are a proponent.

The CHIEF JUSTICE. Mr. Cipollone?

Mr. Counsel CIPOLLONE. Mr. Chief Justice, we are an opponent.

The CHIEF JUSTICE. Mr. SCHIFF, the House managers can proceed first and reserve their time for rebuttal.

Mr. Manager CROW. Mr. Chief Justice, the House managers will be reserving the balance of our time to respond to the argument of the counsel for the President.

Mr. Chief Justice, Senators, counsel for the President, and the American people, I would like to begin by getting something off of my chest, something that has been bothering me for a little while.

Counsel for the President and some other folks in this room have been talking a lot about how late it is getting, how long this debate is taking. It is almost 10 p.m. in Washington, DC. They say: Let's get the show on the road. Let's get moving.

The whole time, the only thing I can think about is how late it is in other places because right now, it is the middle of the night in Europe, where we have over 60,000 U.S. troops. There are helicopter pilots flying training missions, tankers maneuvering across fields, infantrymen walking with 100-pound packs, and, yes, Ukrainian soldiers getting ready to wake up in their trenches facing off against Russian tanks rights now. I don't think any of those folks want to hear us talk about how tired we are or how late it is. We have time to have this debate.

That is why the House managers strongly support this amendment to subpoena key documents from the Department of Defense, because just like the subpoena for OMB, these documents from DOD speak directly to one of President Trump's abuses—his withholding of critical military aid from our partner Ukraine to further his personal political campaign.

In fact, $250 million of taxpayer-funded military aid for Ukraine was managed by the Department of Defense as part of the Ukraine Security Assistance Initiative. These funds, approved by 87 Senators in this very room, would purchase additional training, equipment, and advising to strengthen the capacity of Ukraine's Armed Forces.

The equipment approved for Ukraine included sniper rifles, rocket-propelled grenade launchers, counter-artillery radar, night vision goggles, and medical supplies. This equipment was to be purchased almost exclusively from American businesses. This equipment, along with the training and advising provided by DOD, was intended to protect our national security by helping our friend Ukraine fight against Vladimir Putin's Russia.

Earlier, counsel for the President tried to make the argument: Well, it made it there. The aid eventually made it there. The delay doesn't really matter.

You heard me talk about why the delay does matter, but what counsel for the President didn't say is that all of their aid has not made it there. Congress had to pass another law so that $35.2 million of that aid wouldn't expire and lapse. We did, but to this day, $18.5 million of that money remains outstanding and hasn't made its way to the battlefield.

It was DOD that repeatedly advised the White House and OMB of the importance of security assistance not only to Ukraine but also U.S. national security. It was DOD in August of 2019 that warned OMB that the freeze was unlawful and that the funds could be lost as a result. It was DOD that scrambled, after the hold was lifted without explanation on September 11, to spend the funds before they expired at the end of the month.

Without a doubt, DOD has key documents that the President has refused to turn over to Congress—key documents that go to the heart of the ways in which the President abused his power. It is time to subpoena those documents.

DOD documents would provide insight into critical aspects of this hold. They would show the decisionmaking process and motivations behind President Trump's freeze. They would reveal the concerns expressed by DOD and OMB officials that the hold was violating the law. They would reveal our defense officials' grave concerns about the impact of the freeze on Ukraine and U.S. national security. They would show that senior Defense Department officials repeatedly attempted to convince President Trump to release the aid. In short, they would further establish the President's scheme to use our national defense funds to benefit his personal political campaign.

We are not speculating about the existence of these documents, and we are not guessing about what they might show because during the course of the investigation in the House, witnesses who testified before the committees identified multiple documents directly relevant to the impeachment inquiry that DOD continues to withhold. We know these documents exist, and we know that the only reason we do not have them is because the President himself directed the Pentagon not to produce them because he knows what they would show.

To demonstrate the significance of the DOD documents and the value they would provide in this trial, I would like to walk you through some of what we know exists but that the Trump administration continues to refuse to turn over. Again, based on what is known from the testimony and the few documents that have been obtained from public reporting and lawsuits, it is clear that the President is trying to hide this evidence because he is afraid of what it would show the American people.

We know that DOD has documents that reveal that as early as June, the President was considering withholding military aid for Ukraine. As I mentioned earlier, the President began

questioning military aid to Ukraine in June of last year. The President's questions came days after DOD issued a press release on June 18 announcing it would provide its $250 million portion of the aid to Ukraine.

According to public reporting, Deputy Under Secretary of Defense Elaine McCusker, who manages the DOD's budget, learned about the President's questions. We know this email exists because in response to a Freedom of Information Act lawsuit, the Trump administration was forced to release a redacted email. But DOD provided none of those documents to the House.

Deputy Assistant Secretary of Defense Laura Cooper and her team were tasked by the Secretary of Defense with responding to the President's questions about Ukraine assistance. Ms. Cooper testified that she put those answers in an email and described those emails during her deposition. She testified that DOD advised that the security assistance was crucial for both Ukraine and U.S. national security and had strong bipartisan support in Congress. But DOD provided none of those documents to the House.

With this proposed amendment, the Senate has an opportunity to obtain and review the full record that can further demonstrate how and why the President was holding the aid.

Laura Cooper also testified about the interagency meetings that occurred in late 2019—the meetings at which DOD was shocked to learn that President Trump had placed a mysterious hold on the security assistance. We know what happened at several of those meetings because Ms. Cooper participated in them, in some cases with other senior Defense Department officials. However, we don't have Laura Cooper's notes from those meetings. We don't have the emails she sent to senior DOD officials reporting the stunning news about the President's hold. We don't have the emails that show the response from the Secretary of Defense and other senior defense officials because DOD has refused to provide them.

Separately, Laura Cooper testified about when the Ukraine first learned of the President's secret hold on the military assistance. The same day as the President's July 25 call with President Zelensky, DOD officials received two emails from the State Department indicating that officials from the Ukrainian Embassy and congressional staff had become aware of the hold and were starting to ask questions.

Ms. Cooper testified that she was informed that ''the Ukrainian embassy and House Foreign Affairs Committee are asking about the military aid'' and that ''The Hill'' knows about the FMS situation to an extent, and so does the Ukrainian Embassy. All of this shows that people were starting to get very worried.

Again, this amendment for a subpoena to DOD would compel the production of these important documents, but, again, there is more. DOD documents would also reveal key facts about what happened on July 25 after OMB directed DOD to ''hold off'' on any additional DOD obligations for the assistance to Ukraine. How did DOD officials react to OMB's directive to keep this order quiet? Did DOD officials raise immediate concerns about the legality of the hold—concerns that they would eventually vocally articulate to OMB in August? Did DOD officials hear from the American businesses that were on tap to provide the equipment for Ukraine? Was DOD informed that the President's hold would undermine American jobs? Answers to those questions may be found in DOD emails—emails that we can all see if you issue the subpoena.

Earlier, I mentioned that by late July, officials in our government had raised significant concerns about the impact and the legality of President's Trump's hold on the military aid. We know this from witness testimony, public reporting, and documents produced in the Freedom of Information Act lawsuits. For example, at an interagency meeting on July 31, Laura Cooper, one of the officials at DOD, announced that because there were two legally available options to continue the hold and they did not have direction to pursue either of those legal options, DOD would have to start spending the funds on August 6. Cooper explained that if they did not start spending the funds, they would risk violating the Impoundment Control Act. It was a fateful warning because that is exactly what happened.

Throughout August, Pentagon officials grew increasingly concerned as the hold dragged on. According to public reporting, DOD wrote to OMB on August 9 to say that it could no longer claim the delay would have no effect on the Defense Department's ability to spend the funds. We only know this through recent reporting about the contents of the email.

President Trump certainly hasn't made this information public. In response to a Freedom of Information Act request, the Trump administration released this August 9 email from Elaine McCusker, the Pentagon's chief budget officer. As you can see from the slide in front of you, it is almost entirely blacked out.

According to public reporting, the email said:

> As we discussed, as of 12 AUG, we don't think we can agree that the pause ''will not preclude timely execution.'' We hope it won't and will do all we can to execute once the policy decision is made, but can no longer make that declarative statement.

Let me interpret what is actually being said here. What is actually being said is: We are in trouble. We can't spend the money in the time that we have left, and we are not going to cover your tracks anymore and say that we can. The extensive redactions in the Freedom of Information Act productions highlight the administration's efforts to conceal the President's wrongdoing. They also underscore why the Senate must subpoena DOD documents to ensure that all of the relevant facts come to light, and, yes, there is more.

Based on the concerns expressed by McCusker and others at DOD, OMB eventually dropped from the documents the statement that the hold would not preclude timely execution of the funds. But OMB also circulated talking points claiming: ''No action has been taken by OMB that would preclude the obligation of these funds before the end of the fiscal year.''

Let me just explain what is going on here. Everybody is getting worried. Everybody knows that something bad is about to happen. Nobody has a good explanation, and nobody wants to be left holding the bag. So they are sending the emails, and they are sending the memos to say: I told you so, and I am not going to be held responsible.

DOD's McCusker took issue with OMB's talking point. She did so in writing. Ms. McCusker emailed Mr. Duffey to tell him that OMB's talking points were ''just not accurate'' and that DOD had been consistently conveying that point for weeks. Again, we know this from a press report—not from documents produced to Congress by the Trump administration.

Now, President Trump did release some documents in response to a lawsuit under the Freedom of Information Act, but here is what Ms. McCusker's email looked like when it was released by the Trump administration.

Her concern that OMB's talking point was ''just not accurate'' was, again, entirely blacked out. What else is being hidden from the American people? The Senate should issue the subpoena.

DOD documents would also shed light on OMB's actions as the President's scheme unraveled. On September 9, Ms. McCusker informed Duffey that DOD could fall short of spending $120 million or more because of the hold. Duffey responded by suggesting that it would be DOD's fault if they ended up violating the Impoundment Control Act.

McCusker responded: ''You can't be serious. I am speechless.''

It will come as no surprise, then, that the administration entirely redacted this email, too, when it produced the documents in connection with the Freedom of Information Act lawsuit. Thanks to public reporting, though, we do know its contents, but what else is being hidden from the American people? What other reactions did this exchange set off within DOD? And were those concerns brought back to the White House?

The Department of Defense's documents would shed light on these questions. The American people deserve answers.

Make no mistake, the record before the House fully supports the conclusion that President Trump froze vital military aid to pressure Ukraine into helping the President's political campaign. The DOD documents would provide further evidence of this scheme. They

would expose the full extent of the truth to Congress and the American people and would firmly rebut any notion that President Trump was acting based on concerns about corruption or other countries' contributions, and the President knows it. If there was any doubt, recent events prove that DOD has documents that are directly relevant to this trial.

As I spoke about earlier, before I was a Member of Congress, I was a soldier in Iraq and Afghanistan. I do know what it feels like to not have the equipment that you need. The men and women who work at the Department of Defense and administer this vital aid understand that reality too. That is why they repeatedly made the case to President Trump that military assistance to Ukraine is important and that it would not only help Ukraine but also bolster our deterrence against further Russian aggression in Europe. Every time we have these discussions, that might seem abstract to people around the country. I do think about those 60,000 U.S. troops we have in Europe, many of whom, by the way, are stationed there with their families, their spouses, their children, and how they are training and working every day to hold the line and fight for freedom and liberty in Europe. And if the war in Ukraine spills over outside of Ukraine, it is those men and women who will have to get into their tanks and their helicopters and do their job.

The United States Senate cannot let this information remain hidden. It goes directly to one of President Trump's abuses of power—again, withholding aid that 87 people in this room already voted for. The President, the Senate, and the American people deserve a fair trial. Let's see the documents and let's see them now and let the facts speak for themselves.

I would like to end by reading a short transcript, something that I was thinking about earlier this evening. This is a transcript from Ambassador Taylor's testimony. I just want to take a minute to read it to you. He was talking about a trip that he made to visit our friends in Ukraine.

> We had a meeting with the defense minister. It was the first meeting of the day. We went over there. They invited us to a ceremony that they have in front of their ministry every day. Every day they have this ceremony, and it is about a half-an-hour ceremony where soldiers are in formation, the defense minister, and families of soldiers who have been killed are all there. The selection of which soldiers who have been killed are honored is on the date of it.

So whatever today's date is, you know if we were there today, on the 22nd of October, the families of those soldiers who were killed on any 22nd of October in the previous 5 years would be there.

Ambassador Taylor was talking about our friends. At least 13,000 of them have given their lives in the last 5 years in the fight for liberty in Europe. This, ladies and gentleman, is a national disgrace, and only the people in this room can fix it. It is time to issue the subpoenas.

Mr. Chief Justice, the House managers reserve the balance of our time for an opportunity to respond to the President's argument.

The CHIEF JUSTICE. Mr. Cipollone?

Mr. Counsel CIPOLLONE. Mr. Chief Justice, Mr. Philbin will address the argument.

The CHIEF JUSTICE. Mr. Philbin.

Mr. Counsel PHILBIN. Mr. Chief Justice, Members of the Senate, I will be brief. This may seem like some deja vu all over again because we have been arguing about the same issues, really, over and over and over for a long time. I think something that Americans don't really understand about Washington is how could the House Democrats think that it is the best use of time for this body to spend an entire day deciding simply the issue of when this body should decide about whether or not there should be witnesses and documents subpoenaed? That is the issue before the body now. It is not the question, finally, of whether there should be witnesses or documents.

As the majority leader has made clear multiple times, the underlying resolution simply allows that issue to be addressed a week from now. The only question at issue now—and the House managers keep saying: How can you have a trial without witnesses? How can you have a trial without documents? That is not even the issue. The only issue now is whether you have to decide that issue to subpoena documents or witnesses now or decide it in a week after you hear the presentations. Why are they so eager to have you buy a pig in a poke? Why is it necessary to make that decision without having more information?

In the Clinton trial, this body agreed 100 to 0 that it made more sense to have more information and then decide how to proceed and that it was rational to have more information to hear the presentations and then decide what more was necessary. Why is it so important that you have to make that decision now without that information? That doesn't make any sense.

The rational thing to do is to hear what sort of case they present and, importantly, to hear the President's defense because the President had no opportunity in the House to present any defense.

We have heard a lot about the rule of law and about precedent. What was unprecedented was the process that was used in the House, a process that began with an impeachment inquiry that started without any vote by the House.

This is the point I made earlier. The Constitution assigns the sole power of impeachment to the House, not to any single Member of the House. So the press conference that Speaker PELOSI held on September 24 did not validly initiate an impeachment inquiry, nor did it validly give power to committees to issue subpoenas.

We are talking now about the DOD documents. What efforts did they make in their proceeding to get these documents? They issued one invalid subpoena totally unauthorized under the Constitution. It was unprecedented because it was issued in an impeachment inquiry reportedly without any vote from the House. It had never happened before in our history in a Presidential impeachment. It was unlawful. It was unauthorized. That is why no documents were produced, and they made no other efforts to pursue that.

We have heard a lot about the rule of law. The rule of law applies to House Democrats, as well, and they didn't abide by it. It was unprecedented to have a process in which the President had no opportunity to present his defense, no opportunity to present witnesses, no opportunity to be represented by counsel, and no opportunity to present evidence whatsoever in three rounds of hearings.

They will mention: Oh, in the Judiciary Committee, they were willing to give the President rights. But in the Judiciary Committee, after one hearing, the Speaker announced the conclusion that articles were going to be drafted and the committee had already decided it would hear no fact witnesses. There were no rights for the President.

So it makes sense, what is rational—what 100 Senators 21 years ago thought was rational was to hear the case that can be presented on the record established so far and then decide if something else needs to be done. Let the President make his case. We are ready to get this started. The House managers should be as well.

Mr. Counsel CIPOLLONE. Mr. Chief Justice, we yield the balance of our time.

The CHIEF JUSTICE. The House managers have 38 minutes remaining.

Mr. Manager CROW. Mr. Chief Justice, I will be brief.

Counsel for the President continues to say a lot of things that just really rubs me the wrong way. When he says: You know, we are talking and saying the same argument over and over and over again, well, I am ready to keep going because this is an important debate, and we need to have it now.

He also said something about what the American people don't understand about Washington. Well, I haven't been here very long, but I can tell you that I don't think the American people care very much about whether or not people in Washington are sitting around debating all the time and thinking about what you are concerned about right now. What they are concerned about is whether or not their government is working for them and whether or not there is corruption in their government. That is what they understand, and that is what this debate is about.

Counsel for the President said: Why now? Why the information now?

The better question is: Why not now? This trial has started. Let's have the facts and information now.

Ladies and gentlemen, the time is right. There is no reason why we

shouldn't issue those subpoenas, get the facts, get the testimony, have the debate, and let the American people see what is really going on.

Mr. Chief Justice, I yield the balance of my time to Mr. SCHIFF.

The CHIEF JUSTICE. Thank you.

Mr. Manager SCHIFF. Senators, I will be brief, but I do want to respond to a couple of points my colleagues have made.

First is the argument that you heard before—and I have no doubt you will hear again—that the subpoenas issued by the House are invalid. Well, that is really wonderful. I imagine when you issue subpoenas, they will declare yours invalid as well.

What is the basis of the claim that they are invalid? It is because they weren't issued the way the President wants.

Part of the argument is that you have to issue the subpoenas the way we say, and that can only be done after there is a resolution that we approve of adopted by the full House. First, they complained there was no resolution, no formal resolution of the impeachment inquiry, and then when we passed the formal resolution, they complained about that. They complained when we didn't have one, and they complained when we did have one.

They made that argument already in court, and they lost. In the McGahn case, they similarly argued that this subpoena for Mr. McGahn is invalid. Do you know what the judge said? The judge essentially said: That is nonsense.

The President doesn't get to decide how the House conducts an impeachment proceeding. The President doesn't get to decide whether a subpoena at issue is valid or invalid. No, the House gets to decide because the House is given the sole power of impeachment, not the President of the United States.

Counsel says: Why are we going through all of these documents? Aren't all of these motions the same? The fact is, we are not talking about the same documents here. They would like nothing better than for you to know nothing about the documents we seek. They don't want you to know what Defense Department documents they are withholding. Of course, they don't want you to hear that. They don't want you to know what State Department documents are there because if it is just abstract, if it is just your argument for documents, well, they can say: Well, that is really not that important, right? It is just some generic thing.

But when you learn, as you have learned today and tonight, what those documents are, when you have seen the efforts to conceal those Freedom of Information Act emails that my colleague Mr. CROW just referred to, and when you see what was released to the public, and it is all redacted, and we find out what is under those redactions, wow, surprise. It is incriminating information they have redacted out. That is not supposed to be the basis for redaction under the Freedom of Information Act. That is what we call a coverup.

They don't want you to see that today. They don't want you to see the before and the after, the redacted and the nonredacted. They don't want you to hear from these witnesses about the detailed personal notes they took. Ambassador Taylor took detailed personal notes.

They want to try to contest what Ambassador Sondland said about his conversations with the President because Sondland, after he talked with the President, talked directly with Ambassador Taylor and talked directly with Mr. Morrison and explained his conversation to the President. Guess what. Mr. Morrison and Ambassador Taylor took detailed notes. If there is a dispute about what the President told Mr. Sondland, wouldn't you like to see the notes? They don't want you to know the notes exist.

They don't want to have this debate. They would rather just argue: No, it is just about the documents. It is just about when. We want the Senators to have their 16 hours of questions before they can see any of this stuff. And do you know what? Then we are going to move to dismiss the case. As I said earlier, the ''when'' means never.

Finally, the Clinton precedent. President Clinton turned over 90,000 pages of documents before the trial. I agree. Let's follow the Clinton precedent. It is not going to take 90,000 documents. The documents are already collected.

You heard the testimony on the screen of Ambassador Taylor saying: Oh, they are going to turn them over shortly. But we are still waiting. They are still sitting there at the State Department.

We even played a video for you of Secretary Esper on one of the Sunday shows saying, we are going to comply with these subpoenas.

That was one week. Then somebody got to him and all of a sudden he was singing a different tune.

They don't want you to know what these documents hold. And, yes, we are showing you what these witnesses can tell you. We are showing you what Mulvaney can tell you. And, yes, we are making it hard for you. We are making it hard for you to say no. We are making it hard for you to say: I don't want to hear from these people. I don't want to see these documents.

We are making it hard. It is not our job to make it easy for you. It is our job to make it hard to deprive the American people of a fair trial, and that is why we are taking the time to do it.

I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. MCCONNELL. Mr. Chief Justice, I make a motion to table the amendment, and I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

The CHIEF JUSTICE. Are there any Senators in the Chamber who wish to change his or her vote?

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 19]

YEAS—53

Alexander	Fischer	Perdue
Barrasso	Gardner	Portman
Blackburn	Graham	Risch
Blunt	Grassley	Roberts
Boozman	Hawley	Romney
Braun	Hoeven	Rounds
Burr	Hyde-Smith	Rubio
Capito	Inhofe	Sasse
Cassidy	Johnson	Scott (FL)
Collins	Kennedy	Scott (SC)
Cornyn	Lankford	Shelby
Cotton	Lee	Sullivan
Cramer	Loeffler	Thune
Crapo	McConnell	Tillis
Cruz	McSally	Toomey
Daines	Moran	Wicker
Enzi	Murkowski	Young
Ernst	Paul	

NAYS—47

Baldwin	Hassan	Rosen
Bennet	Heinrich	Sanders
Blumenthal	Hirono	Schatz
Booker	Jones	Schumer
Brown	Kaine	Shaheen
Cantwell	King	Sinema
Cardin	Klobuchar	Smith
Carper	Leahy	Stabenow
Casey	Manchin	Tester
Coons	Markey	Udall
Cortez Masto	Menendez	Van Hollen
Duckworth	Merkley	Warner
Durbin	Murphy	Warren
Feinstein	Murray	Whitehouse
Gillibrand	Peters	Wyden
Harris	Reed	

The motion to table is agreed to; the amendment is tabled.

Mr. SCHUMER. Mr. Chief Justice.

The CHIEF JUSTICE. The Democratic leader is recognized.

AMENDMENT NO. 1289

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to issue subpoenas to Robert B. Blair and Michael P. Duffey, and I ask that it be read.

The CHIEF JUSTICE. The clerk will report the amendment.

The senior assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1289.

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

SEC. _____. Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials—

(1) the Chief Justice of the United States, through the Secretary of the Senate, shall—

(A) issue a subpoena for the taking of testimony of Robert B. Blair; and

(B) issue a subpoena for the taking of testimony of Michael P. Duffey; and

(2) the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the Senate in serving the subpoena authorized to be issued by this section.

The CHIEF JUSTICE. The amendment is arguable by the parties for 2 hours, equally divided.

Mr. Manager SCHIFF, are you a proponent or opponent?

Mr. Manager SCHIFF. Mr. Chief Justice, we are a proponent.

The CHIEF JUSTICE. Mr. Cipollone?

Mr. Counsel CIPOLLONE. Mr. Chief Justice, we are an opponent.

The CHIEF JUSTICE. Mr. SCHIFF and the House managers will proceed and reserve time for rebuttal.

Ms. Manager GARCIA of Texas. Mr. Chief Justice, Senators, counsel for the President, my name is SYLVIA GARCIA, and I am a Congresswoman from Texas in the Houston region.

I have been sitting for some time, as well as you, and it brought to mind the many years I spent as a judge, just as all of you today are judges in this hearing.

It is important that I say a few words before I start our argument for this amendment because, in the scheme of things, it is really not that very complicated. The American people, everyday Americans, know what a trial looks like, whether they have seen it on ''Perry Mason'' or ''Law & Order,'' or maybe they have been in court themselves. They know what a trial is. It is about making sure that people have an opportunity to be heard—both sides. It is about witnesses. It is about documents. It is about getting a fair shot.

That is all we are asking for today, is to make sure we give the American people the trial they expect, to make sure the American people know that this President needs to be held accountable, because if it were they who were accused or alleged to have done something, they would want the same thing.

So, for me, it is about making sure we get a fair trial, which is why I am here representing the House managers to strongly support this amendment to subpoena Robert Blair and Michael Duffey. Blair and Duffey are the two officials who carried out President Trump's order to freeze vital military aid to Ukraine. Their testimony would shed light on central facts the House uncovered in our impeachment inquiry. Their testimony will further affirm that President Trump had no legitimate policy reason for the order.

Blair works in the White House as a senior adviser to the Acting Chief of Staff, Mick Mulvaney. Duffey is a political appointee. He works in the Office of Management and Budget. There, he serves as the Associate Director for National Security Programs. Both were subpoenaed by the House investigative committees. Both were ordered not to appear, so both failed to appear for the scheduled depositions despite repeated outreach and despite their legal subpoenas to comply.

Blair and Duffey are not household names. Many Americans have never heard of them. But they operated the machinery of the executive branch. They implemented President Trump's instruction to freeze military aid to Ukraine. They communicated about the freeze with each other, with Mulvaney, with OMB's Acting Director, Russell Vought, and with numerous officials of the State Department and the Department of Defense. They stood at the center of this tangled web.

Some of their communications are known to us from the testimony of other witnesses before House committees. Other communications have been revealed through public reporting and the Freedom of Information Act releases. But these communications only partly penetrate the secrecy in which President Trump sought to cloak his instruction to freeze military aid to a vulnerable strategic partner. As plentiful evidence confirms, officials throughout the government were stumped—literally stumped—about why the freeze was happening. They were thwarted when they tried to get explanations from Blair and Duffey. Consistent with President Trump's effort to hide all evidence, Blair and Duffey have defied the House's subpoenas at the President's direction.

To explain why this amendment should be passed, I would like to walk you through some key events in which Blair and Duffey participated.

To start, Blair and Duffey were directly involved in the initial stages of President Trump's freeze of the military aid.

On June 18, the Department of Defense issued a statement that it would be providing its $250 million portion of the assistance to Ukraine and that Ukraine had met all the required preconditions for receiving the money. The very next day, on June 19, Blair, in his role as assistant to the President, called Vought, the Acting Director of OMB. The call was to talk about the military aid to Ukraine. According to public reports, Blair told Vought: ''We need to hold it up.''

That same day, Duffey, who reports to Vought, emailed Deputy Under Secretary of Defense Elaine McCusker about the military aid. Although the administration refused to produce that email to the House—and all other documents—a copy of that email was recently produced in response to a Freedom of Information Act lawsuit. In the email, Duffey informed DOD that ''the President has asked about this funding release.''

Duffey copied Mark Sandy, a career official who reports to him and who testified before the House about this email. Sandy testified that McCusker provided the requested information to him, which he shared with Duffey.

These communications raised many questions about Blair and Duffey, and they are in the best position to provide answers. For example, who or what prompted Blair to tell Vought that OMB needed to freeze the aid? Who? What reason was Blair given? Who instructed Duffey to reach out to the Department of Defense? Who told him the President had questions, and what were those questions? Did Duffey and Blair have communications about the military aid to Ukraine with the President? with Acting Chief of Staff Mick Mulvaney? between themselves? What about the funding release and the President's so-called questions? Blair and Duffey could provide the answers. They could explain what directions they received, when they were provided, and who provided them. The American people deserve to know these facts.

The next significant event in our timeline happened at the end of June. On June 27, Blair got an email from his boss, Mulvaney. Mulvaney was on Air Force One with President Trump. According to public reports, Mulvaney asked Blair: ''Did we ever find out about the money for Ukraine and whether we can hold it back?'' Blair responded it would be possible, but he said they should ''expect Congress to become unhinged.''

When did Mulvaney and Blair first discuss the President's freeze on military aid? Was there further discussion about the issue in this email? Did Mulvaney explain why it was so important to freeze the money, even if it would cause Congress ''becoming unhinged''? Did they discuss why Congress would have such a strong reaction and whether it would be justified? Did Blair raise any objections to this seemingly unexplained decision to freeze the funds? The Senate could obtain these answers by hearing from these witnesses directly.

Now let's move on to the implementation of the freeze. Despite Blair's warning about how Congress would react, President Trump ordered a freeze on military aid to Ukraine in July. Blair and Duffey were directly involved in executing the President's order. To be clear, decisions remain shrouded in secrecy, but key actions have been revealed.

On July 3, the State Department told various officials that OMB was blocking it from spending its $141 million portion of the aid. More specifically, OMB directed the State Department not to send a notification to Congress about spending the aid. Without that notification, the aid was effectively frozen.

Who from OMB ordered the State Department not to send its congressional notification? Did they give a reason? We just don't know. Remember, at President Trump's instruction, OMB and the State Department refused to produce a single document to the House, but the direction almost certainly came from Duffey or one of his subordinates, acting on behalf of President Trump.

We also know that on July 12, Blair sent an email to Duffey. Duffey's subordinate, Mark Sandy, saw the email and described it in his testimony before the House. As Sandy testified, it was Blair who conveyed that ''the President is directing a hold on military support funding for Ukraine.'' And that email only addressed Ukraine.

Blair's email raises several questions. What other discussions took place about the President's decision to freeze

the aid? Did the President or Mulvaney give Blair a reason for the freeze? Did Blair know that the President was holding the aid to pressure Ukraine to announce investigations of his political rival?

We also know that 2 days before Blair sent his email to Duffey, Ambassador Sondland told Ukrainian officials that he had a deal with Mulvaney. The deal consisted of a White House visit for President Zelensky on Ukraine conducting the political investigations that President Trump sought. That is what prompted Ambassador Bolton to say he was ''not part of whatever drug deal Sondland and Mulvaney are cooking up.''

Blair is Mulvaney's senior adviser. Did Blair know about the Sondland/Mulvaney deal? Did he know that they were leveraging an official White House visit for the President to get Ukraine to investigate his political rival? The White House was unable to provide any reason for the hold.

Throughout this period, officials across the executive branch started asking questions—questions about the freeze on the military aid. Around July 17 or 18, Duffey emailed Blair. He asked about the reason for the freeze, but he got no explanation. Instead, Blair insisted: We need to let the hold take place and they could revisit the issue with the President later.

In the House, we heard testimony from multiple officials, including Ambassador Taylor, who was until very recently our top diplomat in Ukraine, our numero uno. We also heard from several other officials from the Department of Defense, the NSC staff, and OMB, but no one—no one—heard any credible evidence, any credible explanation for the freeze at the time. No one. Nada. Senators, think about it. Not even our top U.S. diplomat to Ukraine had any idea as to why the President had ordered the funds frozen. That is shocking. That should worry every single one of us here.

Here are some of those witnesses. They are up on the slide. Again, no one tells why—why this decision was made so secretly and without any explanation. Why was the President compromising the safety of his strategic ally in the region? Why was he harming our national security interests in the process?

On July 26, Duffey attended a meeting of high-level executive branch officials. Duffey made clear that the freeze on military aid was based on President Trump's express direction.

But, apparently, he could not clearly explain whether it was a freeze beyond a vague reference to concerns about corruption.

Witnesses who testified before the House all provided the same consistent recounting of what happened. As you can see from the statements on the slide, officials were not provided a clear explanation for such a dramatic step.

As we have already discussed earlier and will explain in more depth during the trial, these facts contradict the White House's recent claims of why President Trump froze the Ukraine aid. Those facts clearly show efforts by this President and those around him to fabricate explanations after the President's illegal scheme came to light.

In fact, the White House Counsel's own review of the freeze reportedly found that Mulvaney and OMB attempted to create an after-the-fact justification for the President's decision. That is a polite way of saying Mulvaney's team led an effort to cover up the President's conduct and to manufacture misleading pretextual explanations to hide the corruption.

Senators, there is still more. Blair and Duffey were also involved in the events surrounding President's July 25 phone call with President Zelensky. On July 19, Blair, along with other officials, received an email from Ambassador Sondland. The email described a conversation he had just had with President Zelensky. Ambassador Sondland stated that Zelensky was ''prepared to receive POTUS' call,'' and ''will assure him that he intends to run a fully transparent investigation'' and will ''turn over every stone.''

As reflected in this email and confirmed by his testimony, Ambassador Sondland had helped President Zelensky prepare for his July 25 phone call with President Trump, telling him it was necessary to assure President Trump that he would conduct the investigations. Ambassador Sondland then reported back to Blair and others that President Zelensky was prepared to do just that.

Blair knew the plan. As Ambassador Sondland put it, he was in the loop on the scheme.

Why was Blair part of this group? What was his involvement in setting up the call? What did he understand Sondland's message to mean? What did he know about the investigations sought by the President? Did he have any conversations with the President or Mulvaney about the President's request for the investigations? We need Blair's testimony to answer these questions.

And then, 6 days later, Blair was in the Situation Room, listening in—listening in—on President Trump's July 25 call with President Zelensky. He heard President Zelensky raise the issue of U.S. aid to Ukraine. He heard President Trump respond but asked him for ''a favor, though''—namely, investigations of the 2016 election and of Vice President Biden.

The House heard the testimony of three of the other officials who listened into the President's July 25 call—directly listened in. Lieutenant Colonel Vindman, Tim Morrison, and Jennifer Williams—each of them expressed concerns about the call. Lieutenant Colonel Vindman and Tim Morrison immediately reported the call to NSC lawyers. Jennifer Williams said the call ''struck her as unusual and inappropriate,'' and further, ''more political in nature.''

Senators, the American people deserve to hear if Blair shared the concerns of the other officials who listened to the President's call. What was his reaction to the call? Did he take notes? Was he at all concerned like the other officials? Did he know exactly what was happening and why? Did the evidence we have suggest he did know? But the Senate should have the opportunity to ask him directly.

Just 90 minutes after that July 25 call, Blair's contact at OMB, Michael Duffey, sent officials of the Department of Defense an email to make sure that DOD continued to freeze the military aid that Ukraine so desperately needed. This email, like all others, was not produced to the House. However, it was produced pursuant to court order in a Freedom of Information Act lawsuit.

As the email reflects, Duffey told the DOD officials that based on the guidance he had received, they should ''hold off any additional DOD obligations of these funds.''

Duffey added that the request was sensitive and that they should keep this information closely held. This email, too, raises questions that Duffey should answer. What exactly was the guidance Duffey received? Who gave it to him? Was it connected to President Trump's phone call? And why was it so sensitive that he directed DOD to keep it closely held? The Senate should demand the answers to these questions.

The Senate should also hear from Duffey as to why he abruptly removed a career OMB official who questioned the freeze on military aid to Ukraine and whether he did so at the direction of the White House or President Trump. Throughout July, Mark Sandy, the OMB career official who handled military aid to Ukraine, repeatedly tried to get Duffey to provide an explanation for the freeze. He was unsuccessful.

Sandy and other officials from OMB and the Pentagon also raised questions about the freeze violating the Empowerment Control Act, the Federal law that limits the President's ability to withhold funds that have been allocated by Congress.

In fact, two career OMB officials ultimately resigned, in part, based on concerns about the handling of the Ukraine military aid freeze. These concerns were not unfounded.

Just last week, the nonpartisan Government Accountability Office issued a detailed legal opinion finding that OMB had violated Federal law by executing the President's order to freeze military aid to Ukraine. Remarkably, on July 29, after Sandy had expressed his concerns about the legality of the freeze, Duffey removed Sandy from responsibility for Ukraine military aid. Instead, Duffey took over responsibility for withholding the aid himself. He was a political appointee. He had no relevant experience. He had no demonstration of interest in such matters. His last job had been as a State-level Republican Party official.

He is the one who took over responsibility for withholding the aid? He gave no credible explanation for his decision. He only said that he wanted to become ''more involved in daily operations.''

Sandy, who has decades of experience, testified that nothing like this had ever happened in his career. His boss, a political appointee, just happened to have a sudden interest in being more hands-on and was now laser-focused exclusively on Ukraine.

The Senate should ask Duffey why he took over the handling of the Ukraine military aid. Was he directed to? Why was Sandy removed from his responsibility over Ukraine aid? Was it because he expressed concerns about the legality of the freeze?

These questions are those that Duffey would be able to answer.

Now we move on to warnings from DOD. Around this period, in late July and early August, Duffey also ignored warnings from DOD about the legality of the freeze. The Senate should hear from him and judge what he has to say. Throughout July and August, Duffey executed President Trump's freeze of the military aid through a series of funding documents from OMB.

In carefully worded footnotes, OMB tried to claim that this ''was a brief pause and it would not affect DOD's ability to spend the money on time.''

As we now know from public reporting, as a freeze continued, DOD officials grew more and more alarmed. They knew the freeze would impact DOD's ability to spend the funds before the end of the fiscal year. DOD officials, including Deputy Under Secretary McCusker, voiced these concerns to Duffey on multiple occasions.

First, in an email on August 9, McCusker told Duffey DOD could no longer support OMB's claim that the freeze would not preclude timely execution of the aid for Ukraine. Her email read:

> As we discussed, as of 12 August, I don't think we can agree that the pause will not preclude timely execution. We hope it won't, and we will do all we can to execute once the policy decision is made but can no longer make that declarative statement.

Then, again, on August 12, McCusker warned Duffey in an email: The footnotes needed to include a caveat that ''execution risk increases continued delays.''

The House never received these documents from OMB or DOD. We know what they contain because of public reporting, despite persistent efforts by the Trump administration to keep them from Congress and the public.

The Pentagon's alarm should have raised concerns for Duffey. Did he share DOD's concerns with anyone else? Did he agree with those concerns or take any actions in response? Did he take direction from Blair, the White House, or President Trump? These are questions that Duffey should answer.

Despite his actions executing the President's freeze, Duffey internally expressed reservations about it. In August, he signed off on a memorandum to Acting Director Vought that recommended releasing the aid. That memo stated that the military aid was consistent with the United States' national security strategy in the region, that it served to counter Russian aggression, and that the aid was rooted in bipartisan support in Congress. This is contrary to Duffey's actions leading up to the memo. What changed? What caused Duffey to disagree with the President's direction to continue to withhold the aid? Duffey should be called to explain why he recommended that the President release the aid, what other steps he took to advocate for the release. Does he know why Vought and the White House apparently disregarded the recommendation?

Based on public reporting, we know, after the press reported the freeze in late August, OMB circulated talking points falsely claiming ''no action has been taken by OMB that would preclude the obligation of these funds before the end of the fiscal year.''

According to public reporting, McCusker responded with an email to Duffey to tell him that this was ''just not accurate'' and that DOD had been ''consistently conveying'' that for weeks. Due to the public release of these emails and recent reporting, we also know that Duffey emailed McCusker on August 30 and told her there was a ''clear direction from POTUS'' to continue the freeze.

McCusker continued to warn that the freeze was having real effects on DOD's ability to spend the military aid, and the impact would keep growing if the freeze continued. According to recent reports, around September 9, after the President's scheme had been exposed and the House had launched its investigations, Duffey responded to McCusker's warnings with a formal and lengthy email. He asserted it would be DOD's fault, not OMB's, if DOD was unable to spend funds in time. Deputy Under Secretary of Defense Elaine McCusker reportedly responded: ''I am speechless.''

We now know that DOD's concerns were well-founded. The President's freeze on the security aid was illegal. Duffey should be called to testify about why DOD's repeated warnings went unheeded. What prompted his email that attempted to shift blame to DOD about the fact that the President released the aid only after his scheme was exposed?

Senators, make no mistake. We have a detailed factual record showing the freeze was President Trump's decision and that he did it to pressure Ukraine to announce the political investigations he wanted.

But President Trump's decisions also set off a cascade of confusion and misdirection within the executive branch. As the President's political appointees carried out his orders, career officials tried to do their jobs—or, at the very least, not break the law. Blair and Duffey would help shed more light on how the President's orders were carried out. That is why committees of the House issued subpoenas for both of their testimony, but Blair and Duffey, as I said earlier, like many other Trump officials, refused to appear because the President ordered them not to appear. I might add, as a former judge, I have never seen anything like this before, where someone is ordered not to appear by one party and the witnesses just don't appear.

The Senate should not allow the President and his administration to continue to evade accountability based on these ever-shifting and ever-meritless excuses. We need to hold him accountable because no one is above the law.

(English translation of statement made in Spanish is as follows:)

No one is above the law.

Blair and Duffey have valuable testimony to offer. The Senate should call upon them to do their duty by issuing this subpoena.

Mr. Chief Justice, the House managers reserve the balance of our time for an opportunity to respond to the President's argument.

The CHIEF JUSTICE. Mr. Cipollone.

Mr. Counsel CIPOLLONE. Mr. Chief Justice, Pam Bondi, Special Advisor to the President, former attorney general of Florida.

The CHIEF JUSTICE. Ms. Bondi.

Ms. Counsel BONDI. Honorable Senators, just to fact-correct, please, a few things. Mr. Duffey didn't come from a State job. Mr. Duffey came from Deputy Chief of Staff at DOD before he went to OMB. There is a big difference there.

Manager Garcia said he failed to appear. Well, the House committee would not allow agency counsel to appear with Mr. Duffey or Mr. Blair. They would not let agency counsel appear with either of them.

Office of Legal Counsel determined, of course, that the exclusion of agency counsel from House proceedings is unconstitutional. It is a pretty basic right. So what did they do? They took no action on the subpoenas, but now they want you to take action on them.

What the House managers have been telling you all day is that the White House is trying to hide from American people what witnesses had to say. They have been saying we want to bury evidence; we want to hide evidence. That hypocrisy is astounding. They have been saying: Let's not forget why we are here.

Well, we are here tonight because they threw due process, fundamental fairness, and our Constitution out the window in the House proceedings. That is why we are here—because they started in the secret bunker hearings where the President and his counsel weren't even allowed to participate when they were trying to impeach him.

Intel and Judiciary Committee was a one-sided circus. Ranking Member

NUNES asked to call witnesses. He explained why in detail. It was denied by Manager SCHIFF. Ranking Member COLLINS asked to call witnesses, which was denied by Manager NADLER. And that is what they call fairness? That is not how our American justice system works, and it is certainly not how our impeachment process is designed by our Constitution.

The House took no action on the subpoenas issued to Mr. Duffey and Mr. Blair because they didn't want a court to tell them that they were trampling on their constitutional rights. Now they want this Chamber to do it for them.

Mr. Counsel CIPOLLONE. Mr. Chief Justice, we yield the remainder of our time.

The CHIEF JUSTICE. House managers have 24 minutes remaining.

Mr. Manager SCHIFF. Mr. Chief Justice, a couple of fact checks, once again.

First of all, the complaint is made that, well, the House wouldn't allow agency counsel. Why wouldn't the House allow agency counsel to be present in those secret depositions that you have been hearing so much about? As I mentioned earlier, those secret depositions allowed 100 Members of the House to participate. There are 100 Members of the Senate. We could have had that secret deposition right here on the Senate floor. During those depositions, Members of both parties were given equal time to ask questions of these witnesses.

By the way, where did Democrats get that rule of no agency counsel during these depositions? We got it from the Republicans. This was the Republican deposition rule, and we can cite you adamant explanations by Trey Gowdy and others about how these rules are so important that the depositions not be public, that agency counsel be excluded.

And why? Well, you get a good sense of it when you see the testimony of Deputy Assistant Secretary George Kent. Kent describes how he is at a meeting with some of the State Department lawyers and others, and they are talking about the document request from Congress and what are they going to do about these and what documents are responsive and what documents aren't responsive. The issue comes up in a letter the State Department sent to Congress saying: You are intimidating the witnesses. Secretary Kent testified: No, no, no. The Congress wasn't intimidating witnesses; it was the State Department that was intimidating witnesses to try to prevent them from testifying.

My colleagues at the other table say: Why aren't you allowing the Members from the State Department to sit next to those witnesses and hear what they have to say in the depositions? We have seen all too much witness intimidation in this investigation, to begin with, without having an agency minder sitting in on the deposition.

By the way, those agency minders don't get to sit in on grand jury interviews either. There is a very good investigative reason that has been used by Republicans and Democrats who have been adamant about the policy of excluding agency counsel.

It was also represented that the Intelligence Committee and the Judiciary Committee wouldn't allow the minority to call any witnesses. That is just not true. In fact, fully one-third of the witnesses who appeared in open hearing in our committee were minority-chosen witnesses. What they ended up having to say was pretty darn incriminating of the President, but, nonetheless, they chose them.

So about this idea that, well, we had no due process, the fact of the matter is, we followed the procedures in the Clinton and Nixon impeachments. They can continue to say we didn't, but we did. In some respects, we gave even greater due process opportunities here than there. The fact that the President would take no advantage of them doesn't change the fact that they had that opportunity.

Finally, the claim is made that we trampled on the constitutional rights by daring to subpoena these witnesses. How dare we subpoena administration officials—right?—because Congress never does that. How dare we do that. How dare we subpoena them. Well, the court heard that argument in the case of Don McGahn, and you should read the judge's opinion in finding that this claim of absolute immunity has no support, no substance; it would have resulted in a monarchy. It is essentially the judicial equivalent of: Don't let the door hit you in the backside on the way out, Counsel. There is no merit there.

Counsel can repeat that argument as often as they like, but there is no support in the courts for it. There should be no support for it in this body, not if you want any of your subpoenas in the future to mean anything at all.

I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. MCCONNELL. Mr. Chief Justice, I have a motion at the desk to table the amendment.

I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

The CHIEF JUSTICE. Are there any other Senators in the Chamber wishing to vote or change their vote?

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 20]

YEAS—53

Alexander	Boozman	Cassidy
Barrasso	Braun	Collins
Blackburn	Burr	Cornyn
Blunt	Capito	Cotton
Cramer	Johnson	Romney
Crapo	Kennedy	Rounds
Cruz	Lankford	Rubio
Daines	Lee	Sasse
Enzi	Loeffler	Scott (FL)
Ernst	McConnell	Scott (SC)
Fischer	McSally	Shelby
Gardner	Moran	Sullivan
Graham	Murkowski	Thune
Grassley	Paul	Tillis
Hawley	Perdue	Toomey
Hoeven	Portman	Wicker
Hyde-Smith	Risch	Young
Inhofe	Roberts	

NAYS—47

Baldwin	Hassan	Rosen
Bennet	Heinrich	Sanders
Blumenthal	Hirono	Schatz
Booker	Jones	Schumer
Brown	Kaine	Shaheen
Cantwell	King	Sinema
Cardin	Klobuchar	Smith
Carper	Leahy	Stabenow
Casey	Manchin	Tester
Coons	Markey	Udall
Cortez Masto	Menendez	Van Hollen
Duckworth	Merkley	Warner
Durbin	Murphy	Warren
Feinstein	Murray	Whitehouse
Gillibrand	Peters	Wyden
Harris	Reed	

The motion to table was agreed to; the amendment is tabled.

The CHIEF JUSTICE. The Democratic leader is recognized.

AMENDMENT NO. 1290

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to prevent the selective admission of evidence and provide for the appropriate handling of classified and confidential materials, and I ask that it be read. It is short.

The CHIEF JUSTICE. The clerk will read the amendment.

The legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1290.

On page 2, between lines 4 and 5, insert the following:

If, during the impeachment trial of Donald John Trump, any party seeks to admit evidence that has not been submitted as part of the record of the House of Representatives and that was subject to a duly authorized subpoena, that party shall also provide the opposing party all other documents responsive to that subpoena. For the purposes of this paragraph, the term ''duly authorized subpoena'' includes any subpoena issued pursuant to the impeachment inquiry of the House of Representatives.

The Senate shall take all necessary measures to ensure the proper handling of confidential and classified information in the record.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. MCCONNELL. Let's take a 5-minute break. I ask everybody to stay close to the Chamber. We will go with a hard 5 minutes.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 11:19 p.m., recessed until 11:39 p.m. and reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. Mr. SCHIFF, are you in favor or opposed?