

Chapter One

ARTICLES OF IMPEACHMENT

On December 18, 2019, the House of Representatives voted for Articles of Impeachment against President Donald J. Trump. This was only the third time in American history that a sitting President had been impeached—meaning that a charge had been made that the President should be removed by congressional vote. In 1868, President Andrew Johnson was impeached, tried, and acquitted. In 1974, President Nixon resigned from office before he could be impeached and tried. In 1998, President Bill Clinton was impeached and, in 1999, he was tried and acquitted. In 2019, the House of Representatives issued and approved two Articles of Impeachment against President Donald Trump. He was tried and acquitted in 2020. The fourth presidential impeachment in American history occurred the next year in 2021 when President Trump was impeached for inciting an insurrection against the Nation’s Capitol during Congress’s January 6, 2021 election certification proceedings. Part One of this book focuses on the First Trump Impeachment and introduces basic forms of constitutional argument. Part Two of this book focuses on the Second Trump Impeachment.

I. IMPEACHMENT BASICS

From the outset, it is important to recognize that the Constitution’s rules are stacked against presidential removal. Once the House approves Articles of Impeachment, a President is forever “impeached.” The Senate then tries the President and, if it returns a verdict of guilty on the conduct alleged by the House, the President will be removed from office. [U.S. Const. art. II, § 4](#). However, acquittal is the most likely outcome in any impeachment because the Constitution requires a super-majority of Senators (2/3 of the body, or 67 Senators) to agree to the President’s removal. [U.S. Const. art. I, § 3, cl. 6](#). The Founders never wanted this to be an easy process. Moreover, impeachment takes two Houses: both the Senate and the House. A simple majority of the much larger House’s 435 Members is required to approve impeachment charges. This means that the House is more likely to vote for Articles of Impeachment than the Senate is to convict. The Constitution provides no super-majority rule for approving Articles of Impeachment by the House—in fact, the Constitution says nothing about how many votes are necessary. [U.S. Const. art. I, § 2, cl. 5](#). As has been the general practice, the House

parliamentary government, when a party wins it takes over *both* the executive and legislative branches. Our parties are weakened by the separation of powers, which allows for parties to simultaneously win some branches but not others. As the famous political scientist David Mayhew once explained, “Divided we Govern,”⁸ meaning that the House and Senate may belong to different parties just as the Presidency and Congress may be in different parties. That would not happen in a parliamentary system. For more on political parties and the separation of powers, see Chapter 2.

IV. THE ROLE OF THE HOUSE IN IMPEACHMENT

The House of Representatives begins the impeachment process. It often begins by conducting an investigation and then drafting Articles of Impeachment, although there is no rule that there be any kind of formal investigation. In 2019, the House voted for two Articles of Impeachment against President Trump. (See Appendix A). The First Article charged him with seeking foreign interference in an election and withholding funds from Ukraine for his personal electoral benefit, thus violating his oath of office to faithfully execute the law. The Second Article charged him with “obstruction of Congress,” meaning that he willfully failed to disclose facts to congressional investigators concerning the withholding of aid and his personal electoral benefit.

The facts giving rise to these Articles were summarized by the Chairman of the House Judiciary Committee, Rep. Nadler (D-NY) in what is known as a committee “mark-up”—when the House considers the precise language of the Articles to be voted on by the entire House of Representatives. (Mark-up means what it says: Members take the draft and make (mark-up) changes.) Four law professors, for example, testified about the propriety of the Articles.⁹ The Articles’ factual basis was established by a report emerging from October 2019 hearings conducted by the House Intelligence Committee, Foreign Affairs Committee, and Oversight Committees.¹⁰ This report built upon a much earlier set of hearings involving claims that President

⁸ David R Mayhew, *Divided We Govern: Party Control, Lawmaking, and Investigations, 1946–1990* (1991).

⁹ Adam Liptak, *Key Excerpts from Legal Scholars’ Arguments on Impeachment* (Dec. 4, 2019) <https://www.nytimes.com/2019/12/04/us/politics/karlan-feldman-turley-gerhardt.html>.

¹⁰ See House Permanent Select Committee on Intelligence, *The Trump-Ukraine Impeachment Inquiry Report Pursuant to H. Res. 660, 116th Cong.* (2019) (in consultation with the House Committee on Oversight and Reform and the House Committee on Foreign Affairs).

Trump had interfered in the 2016 presidential election against his opponent Hillary Clinton by seeking help from Russia to smear her. The new charges claimed that President Trump was again interfering in the 2020 presidential election by seeking to gain dirt on one of the most prominent candidates for the Democratic 2020 presidential nomination, former Vice President Joseph R. Biden, Jr.

In the Judiciary Committee, Rep. Lee (D-TX) explained the charges succinctly:

First, President Trump violated his oath of office by placing his personal and political interests above the national interests by scheming to get Ukraine to investigate a potential election opponent. Second, President Trump betrayed the national interest by withholding vital, congressionally appropriated security to a beleaguered and besieged ally facing armed aggression from Russia, America's implacable foe. Third, the essential purpose of the scheme concocted by President Trump was to enlist a foreign country to help him fix the 2020 presidential election in his favor, the very type of interference our Framers most feared. And then he blocked witnesses and documents obstructing Congress. Hearings, H.R. Doc. Serial No. 116-69, vol. 1, at 11 (2019).¹¹

The Chairman of the committee Rep. Nadler (D-NY) described how the committee was to proceed to determine the charges:

Today, we begin consideration of two Articles of Impeachment against President Donald J. Trump. The first article charges that the President used the powers of his public office to demand that a foreign government attack his political rivals. The second article charges that the President obstructed the congressional investigation into his conduct. Other Presidents have resisted congressional oversight, but President Trump's stonewall was complete, absolute, and without precedent in American history. Taken together, the two articles charge President Trump with placing his private political interest above our national security, above our free and fair elections, and above our ability to hold public officials accountable. Hearings, H.R. Doc. Serial No. 116-69, vol. 1, at 2 (2019).

¹¹ The full citation is to Hearings before the House Committee on the Judiciary, Markup of H. Res. 755, Articles of Impeachment against Donald J. Trump, Serial No. 116-69, 116th Congress, 1st Sess. (Dec. 11-13, 2019).

This committee now owes it to the American people to give these articles close attention and to describe their factual basis, meaning, and importance. I believe that three questions should frame our debate: First, does the evidence show clearly that the President committed these acts? Second, do they rise to the level of impeachable high crimes and misdemeanors? Third, what are the consequences for our national security, for the integrity of our elections, and for our country if we fail to act? Id.

The President's supporters did not challenge the fact that President Trump had made a call to Ukrainian President Zelensky on July 25, 2019, or that President Trump requested that the Ukrainians announce an investigation into his political rival, Joseph R. Biden Jr. Nor did they challenge the timing of the call. One day before the Ukrainian call, the Special Counsel Robert Mueller testified to Congress for seven hours about allegations that the President had interfered in the 2016 elections. In his report, Mueller refused to come to any conclusions about whether the President had committed a crime at least in part because Justice Department guidelines prevent the indictment of a sitting President.¹² The President claimed that he had been "exonerated" by the report when it was released and again when Mueller testified.¹³ The House Articles did not mention the Mueller investigation specifically, focusing instead on the July 25 call (see Appendix A to this Chapter), referencing a pattern of prior misconduct. The White House released the Zelensky call transcript (see Appendix B) after a whistleblower complaint was filed with the House Intelligence Committee.¹⁴

The President's supporters challenged whether the evidence was legally sufficient to impeach. They complained about the speed of the investigation and the process in the House. They questioned facts concerning the timing of money sent to Ukraine, whether the money

¹² Special Counsels are authorized by Department of Justice regulations to investigate sensitive matters. See 2 Robert S. Mueller, III, Report on The Investigation into Russian Interference in the 2016 Election 2 (2019) ("* * * while this report does not conclude that the President committed a crime, it also does not exonerate him"); see *id.* at 2 ("[T]his Office accepted OLC's legal conclusion for the purpose of exercising prosecutorial jurisdiction").

¹³ CNBC, *Trump Responds to Mueller findings: "No Collusion, No Obstruction, Complete and Total EXONERATION. KEEP AMERICA GREAT"* <https://www.cnbc.com/2019/03/24/trump-responds-to-mueller-findings-no-collusion-no-obstruction-complete-and-total-exoneration-keep-america-great.html> (caps in original).

¹⁴ The anonymous whistleblower filed a complaint on Sept. 9, 2019. The White House released a transcript of the President's call with Ukraine on Sept. 25, 2019. Peter Baker, *Trump Pressed Ukraine's President to investigate Democrats as 'a Favor,'* N.Y. Times (Sept. 25, 2019).

was actually withheld, and whether the Ukrainian President felt pressured to start an investigation into former Vice President Biden. Some suggested that President Trump's call was justified because it aimed to uncover corruption, although media outlets deemed allegations of corruption by then-candidate Biden baseless.¹⁵

Most insistently, supporters questioned whether the Articles of Impeachment were legally sufficient under the Constitution—whether the House had alleged a “high crime” or “misdemeanor,” as the Constitution requires.

One of the most senior Members of the House Judiciary Committee, Rep. Sensenbrenner (R-WI), spoke directly to the nature of the Articles. Much of the full speech appears below. We will go on to look at parts of it in greater depth. I have deliberately chosen an *opponent* of the Impeachment Articles to focus readers on the form of the arguments.

Mr. Chairman, I agree with everybody that tonight is a very solemn night. This is the third time in the last 40 years, 45 years that this committee has sat to [consider] * * Articles of Impeachment against the President of the United States. * * * Hearings, H.R. Doc. No. 116-69, vol. 1, at 9 (2019).*

*Now, let's look at these two articles. Unlike the Nixon and Clinton impeachment, there is no crime that is alleged to have been committed by the President of the United States. There are policy differences, but I would submit that given the definition of treason, bribery, and other high crimes and misdemeanors, that does not mean that policy differences should be enough to remove a President from office. There is no allegation of bribery in these articles. There is no allegation of extortion. They have defined for themselves what a high crime and misdemeanor will be. This bar is so low that what is happening is that a future President can be impeached for any disagreement when the presidency and the House of Representatives are controlled by different parties. * * * Id. at 10.*

The Framers didn't want that. We had an independent presidency. The President was independently elected. He did not serve at the sufferance of Congress. He served for a fixed

¹⁵ See H.R. Doc. Serial No. 116-69, vol. 1 (2019) (statements defending President Trump); Nicholas Fandos, *Republican Inquiry Finds No Evidence of Wrongdoing by Biden*, N.Y. Times (Sept. 23, 2020). See, e.g., Camille Caldera, *Fact-Check: Biden leveraged \$1B in aid to Ukraine to oust corrupt prosecutor, not to help his son*, USA Today (Oct. 21, 2020).

*term, and it was only if he really obstructed the functions of government or was treasonous, he could be impeached. * * * So, yes, the Constitution is at stake. The Framers of our Constitution's enlightened decisions are at stake. We are not to go on the road to becoming a parliamentary democracy, like England and Canada are. We need an independent President who does not have to suffer to anything a congressional majority might throw at him. * * * And I would appeal to my chairman, the majority members of this committee to listen to what Madison and Hamilton had to say during the ratification of the Constitution, and during the debates at the convention. Put aside your partisan politics * * * because the future of our country and the viability of our Constitution, as the Framers decided it, are at stake. Id.*

V. ANALYZING THE ARGUMENTS

Legal analysis is just that—it focuses in on the *way* that people argue and the kind of evidence that they invoke. To suggest a musical analogy, we are not looking at the particular notes used, but the general form, the key in which they are played. In this section, we will focus on the form of arguments in Rep. Sensenbrenner's (R-WI) statement. Note again that the point is not whether you agree or disagree with the statements, but what kind of evidence or argument is deployed. We will begin by focusing on particular pieces of the argument and try to put them into 4 buckets:

A. Constitutional Text

Textual argument is as basic as it is ancient in traditional legal argument. Lawyers make arguments typically by starting with the text. You know you are making a textual argument if you are quoting the text of the Constitution. Rep. Sensenbrenner (R-WI) is quoting the Constitution's text when he argues that the definition of *treason, bribery, and other high crimes and misdemeanors*, [U.S. Const. art. II, § 3](#), does not cover what the President had done. Rep. Sensenbrenner's words:

*Unlike the Nixon and Clinton impeachment, there is no crime that is alleged to have been committed by the President of the United States. There are policy differences, but I would submit that given the definition of **treason, bribery, and other high crimes and misdemeanors**, that does not mean that policy differences should be enough to remove a President from office. There is no allegation of bribery in*

these articles. There is no allegation of extortion. They have defined for themselves what a high crime and misdemeanor will be. H.R. Doc. No. 116-69, vol. 1, at 10 (2019).

The argument here is a **textual** argument because it depends upon the words of the Constitution, which defines an impeachable offense as one of treason, bribery, and other high crimes and misdemeanors. [U.S. Const. art. II, § 3](#).

Notice that the form of the argument is separate from the legal truth or virtue of the argument. As we will see in the next Chapter, hundreds of law professors and many Members contended that no crime was needed to impeach a President—that the text of the Constitution reads “other high crimes and misdemeanors,” which simply refers to conduct with grave consequences for the public trust.¹⁶ We will hear a lot more about this argument in the next Chapter.

B. Textual Drafters and Ratifiers

In novel constitutional cases, modern lawyers want to know what the drafters meant by the words they used. Impeachments are, by definition, novel. Typically, when we have doubts about an expression, we want to know what its author meant. And, in normal conversation, we simply ask the speaker. Imagine that a general was to order a corporal to “attack.” In the fog of war, the corporal did not hear whether there was any further instruction to “attack now” or “attack at dawn.” The corporal will ask, what did the general “mean” by attack? But in this case, the Constitution’s authors are long dead. We can, however, consult the writings that they left behind to provide more information. Courts do this increasingly frequently, and have always done this in cases of novel constitutional questions.

Rep. Sensenbrenner (R-WI), like many Democratic and Republican Members, invoked the Framers of our Constitution to try to resolve the question of whether the Constitution’s words, its text, required the naming of a crime in the Articles of Impeachment. You will know a “Framer’s” argument when you see reference to the Framers or the Founders or other men who lived in 1787. Rep. Sensenbrenner explained why he believed that the Framers did not want Presidents impeached for policy disputes—disputes between

¹⁶ Matt Zapotosky, *More than 500 law professors say Trump committed ‘impeachable conduct’*, Wash. Post (Dec. 6, 2019), https://www.washingtonpost.com/national-security/more-than-500-law-professors-say-trump-committed-impeachable-conduct/2019/12/06/35259c16-183a-11ea-a659-7d69641c6ff7_story.html.

Congress and the President about the wisdom of a particular course of action, as opposed to a violation of a criminal law.

The Framers didn't want that. We had an independent presidency. The President was independently elected. He did not serve at the sufferance of Congress. He served for a fixed term, and it was only if he really obstructed the functions of government or was treasonous, he could be impeached. H.R. Doc. No. 116-69, vol. 1, at 10 (2019).

*And I would appeal to my chairman, the majority members of this committee to listen to what Madison and Hamilton had to say during the ratification of the Constitution, and during the debates at the convention. Put aside your partisan politics * * * * because the future of our country and the viability of our Constitution, as the Framers decided it, are at stake.* *Id.*

The distinctive part of this paragraph is its invocation of the “Framers,” men like Madison and Hamilton who helped draft the Constitution. One could call this historical argument, but that would be vague because there are lots of kinds of history that might be invoked (history of the times, history of social classes, history of legal thought, or past presidential impeachments). Law professors sometimes call references to the Founders “originalist” argument. There is a raft of writing on that term, which means a lot of different things to different people. We will see more on that question in the next Chapter. For students, I will call this a “Founders” argument. When you see the term “Founders,” that is a sign of an argument based either on the Constitution’s drafters or ratifiers. It also applies when you see the names of Framers, such as James Madison or Alexander Hamilton (yes, that Hamilton).

C. Past Precedent

As a general rule, both people and institutions prefer consistency. Assessing one’s actions against the past is a way of checking bias. I may not like the look of an apple at the store, but if I know I have bought the same kind of apple before and it was delicious, I will be tempted to overlook superficial differences. Courts are heavily invested in precedent. Congress, like the courts, uses its own prior precedents to judge its actions. This is, in fact, the first part of Rep. Sensenbrenner’s (R-WI) comments: *This is the third time in the last 40 years, 45 years that this committee has sat to the Articles of Impeachment against the President of the United States. What we*

are debating here, in my opinion, is the weakest case in history. H.R. Doc. No. 116-69, vol. 1, at 10 (2019).

Note that Rep. Sensenbrenner (R-WI) is talking about **past precedent**: the past practice of the Congress in prior impeachments of other Presidents. He is saying that Congress has impeached a President in only a few cases in 40–45 years. And he is comparing that precedent to the current case, urging that the case is weak as compared to prior impeachments. Again, you do not have to decide at this point whether you think the case is weak or strong. As we will see later, President Clinton was impeached because he lied about an extra-marital affair; President Trump would be impeached in 2021 for inciting a riot inside the U.S. Capitol. The important point to see is that constitutional lawyers look to a particular type of evidence: prior **precedent**. Precedent, whether in Court or Congress, requires comparing current circumstances to past ones of a similar type.

D. Future Precedent and Constitutional Structure

Members, like judges, are eager to determine how their legal rules will play out in future cases. In general, people look to the consequences of their actions to determine their rationality and morality. So, too, Members of Congress argue about the consequences of their actions. Often, this requires a good deal of speculation. Notice that this kind of speculation is not about the particular case—whether the President will win or lose. The speculation is about what will happen if the Members adopt a particular rule in future impeachments.

*They have defined for themselves what a high crime and misdemeanor will be. This bar is so low that what is happening is that a future President can be impeached for any disagreement when the presidency and the House of Representatives are controlled by different parties. * * * **
H.R. Doc. No. 116-69, vol. 1, at 10 (2019).

Notice that Rep. Sensenbrenner (D-WI) is not quoting the **text** of the Constitution, nor the **Founders**, nor is he speaking to **precedent** (historical impeachments). He is talking about the future legal consequences of adopting a particular rule for impeachment. He is *not talking about the consequences of impeachment in the actual case*—whether President Trump will be removed. He is talking about the “rule consequences” in the future: what happens in future impeachment cases. For shorthand, we will call this kind of argument one about “**future precedent**.”

This type of argument is a frequent feature of legal argument. When you appear before a court, the judge wants to know not only about the past, but also about the future. If she adopts Rule X, what will happen in similar future cases? Here, the question is how the standard for impeachment (should it require a crime?) will play out in the case of a future impeachment of a future President. Lawyers often call this “pragmatic” argument, but that term is vague. Many things are practical, but that does not mean that they involve future precedent for Congress. Philosophical pragmatism¹⁷ is an important concept, telling us that arguments are stronger together than apart, but it too is different from **future precedent** as I have described it here.

Arguments about the future can extend very far. Rep. Sensenbrenner (R-WI) is not only making claims about what will happen in the next impeachment, he is also making even larger claims about what will happen to the very structure of the Constitution. His claim is that, if the power of impeachment goes too far, the President will not be an “independent” agent, but will simply serve at the whim of the Congress. He is imagining something of a “parade of horrors,” that Presidents will be impeached for all sorts of policy disagreements about health care or taxes or pension policies.

This is a consequentialist argument: it speculates about future consequences. It focuses on future impeachment cases, including the future structural relationship between the President and the Congress. Constitutionalists sometimes call this “**structural**” argument because it refers to the relationship between institutions. One way in which you know you are making a structural argument is if you are talking about institutional relationships between the Congress and the President. We will see structural argument later, in greater depth, in Chapter 3, along with argument based on “**shared constitutional norms**.”

Note, for now, that Rep. Sensenbrenner (R-WI) did not stop at the Constitution’s **text**. Nor did he stop at **Founders’** statements. He used a series of arguments, including past **precedent** to make his point. As we will see, this invocation of different kinds of evidence is common to legal argument. Although some call this “pluralism,” the better view is that the arguments are intended to present a coherent cable of claims that are more forceful together than apart.

¹⁷ Philosophical pragmatism arises in the early twentieth century and is associated with the proposition that truth could only be assessed by reference to experience. William N. Eskridge Jr. & Philip P. Frickey, *Statutory Interpretation as Practical Reasoning*, 42 *Stan. L. Rev.* 321, 351 (1990).

PROBLEM 1-1: ARTICLES OF IMPEACHMENT

On December 18, 2019, the full House of Representatives passed its first Resolution of Impeachment against President Trump. That Resolution is repeated in full below. Read it slowly and carefully. As you read, see if you can annotate the Articles to identify the **textual** arguments (Appendix A to this book includes the Constitution's **text**). For students, I have italicized the textual arguments. Are there any arguments about **future precedents**? All judgments about the future are speculations at the time they are made. In this case, however, we know that President Trump was impeached again in 2021 for interfering in the 2020 election.

APPENDIX A**CONGRESS OF THE UNITED STATES OF AMERICA,
IN THE HOUSE OF REPRESENTATIVES****December 18, 2019.****RESOLUTION**

Resolved, That Donald John Trump, President of the United States, is impeached for high crimes and misdemeanors and that the following articles of impeachment be exhibited to the United States Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and of the people of the United States of America, against Donald John Trump, President of the United States of America, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

ARTICLE I: ABUSE OF POWER

The Constitution provides that the House of Representatives “*shall have the sole Power of Impeachment*” and that the President “*shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors*”.

In his conduct of the office of President of the United States—and in violation of his *constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed*—Donald J. Trump has abused the powers of the Presidency, in that:

Using the powers of his high office, President Trump solicited the interference of a foreign government, Ukraine, in the 2020 United

States Presidential election. He did so through a scheme or course of conduct that included soliciting the Government of Ukraine to publicly announce investigations that would benefit his reelection, harm the election prospects of a political opponent, and influence the 2020 United States Presidential election to his advantage. President Trump also sought to pressure the Government of Ukraine to take these steps by conditioning official United States Government acts of significant value to Ukraine on its public announcement of the investigations. President Trump engaged in this scheme or course of conduct for corrupt purposes in pursuit of personal political benefit. In so doing, President Trump used the powers of the Presidency in a manner that compromised the national security of the United States and undermined the integrity of the United States democratic process. He thus ignored and injured the interests of the Nation.

President Trump engaged in this scheme or course of conduct through the following means:

(1) President Trump—acting both directly and through his agents within and outside the United States Government—corruptly solicited the Government of Ukraine to publicly announce investigations into—

(A) a political opponent, former Vice President Joseph R. Biden, Jr.; and

(B) a discredited theory promoted by Russia alleging that Ukraine—rather than Russia—interfered in the 2016 United States Presidential election.

(2) With the same corrupt motives, President Trump—acting both directly and through his agents within and outside the United States Government—conditioned two official acts on the public announcement that he had requested—

(A) the release of \$391 million of United States taxpayer funds that Congress had appropriated on a bipartisan basis for the purpose of providing vital military and security assistance to Ukraine to oppose Russian aggression and which President Trump had ordered suspended; and

(B) a head of state meeting at the White House, which the President of Ukraine sought to demonstrate continued United States support for the Government of Ukraine in the face of Russian aggression.

(3) Faced with the public revelation of his actions, President Trump ultimately released the military and security assistance to the

Government of Ukraine, but has persisted in openly and corruptly urging and soliciting Ukraine to undertake investigations for his personal political benefit. These actions were consistent with President Trump's previous invitations of foreign interference in United States elections.

In all of this, President Trump abused the powers of the Presidency by ignoring and injuring national security and other vital national interests to obtain an improper personal political benefit. He has also betrayed the Nation by abusing his high office to enlist a foreign power in corrupting democratic elections.

Wherefore President Trump, by such conduct, has demonstrated that he will remain a threat to national security and the Constitution if allowed to remain in office, and has acted in a manner grossly incompatible with self-governance and the rule of law. President Trump thus warrants impeachment and trial, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

ARTICLE II: OBSTRUCTION OF CONGRESS

The Constitution provides that the House of Representatives “*shall have the sole Power of Impeachment*” and that the President “*shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.*” In his conduct of the office of President of the United States—and in violation of his *constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed*—Donald J. Trump has directed the unprecedented, categorical, and indiscriminate defiance of subpoenas issued by the House of Representatives pursuant to its “*sole Power of Impeachment.*” President Trump has abused the powers of the Presidency in a manner offensive to, and subversive of, the Constitution, in that:

The House of Representatives has engaged in an impeachment inquiry focused on President Trump's corrupt solicitation of the Government of Ukraine to interfere in the 2020 United States Presidential election. As part of this impeachment inquiry, the Committees undertaking the investigation served subpoenas seeking documents and testimony deemed vital to the inquiry from various Executive Branch agencies and offices, and current and former officials.

In response, without lawful cause or excuse, President Trump directed Executive Branch agencies, offices, and officials not to comply with those subpoenas. President Trump thus interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, and assumed to himself functions and judgments necessary to the exercise of the “*sole Power of Impeachment*” vested by the Constitution in the House of Representatives.

President Trump abused the powers of his high office through the following means:

- (1) Directing the White House to defy a lawful subpoena by withholding the production of documents sought therein by the Committees.
- (2) Directing other Executive Branch agencies and offices to defy lawful subpoenas and withhold the production of documents and records from the Committees—in response to which the Department of State, Office of Management and Budget, Department of Energy, and Department of Defense refused to produce a single document or record.
- (3) Directing current and former Executive Branch officials not to cooperate with the Committees—in response to which nine Administration officials defied subpoenas for testimony, namely John Michael “Mick” Mulvaney, Robert B. Blair, John A. Eisenberg, Michael Ellis, Preston Wells Griffith, Russell T. Vought, Michael Duffey, Brian McCormack, and T. Ulrich Brechbuhl.

These actions were consistent with President Trump’s previous efforts to undermine United States Government investigations into foreign interference in United States elections.

Through these actions, President Trump sought to arrogate to himself the right to determine the propriety, scope, and nature of an impeachment inquiry into his own conduct, as well as the unilateral prerogative to deny any and all information to the House of Representatives in the exercise of its “*sole Power of Impeachment*.” In the history of the Republic, no President has ever ordered the complete defiance of an impeachment inquiry or sought to obstruct and impede so comprehensively the ability of the House of Representatives to investigate “*high Crimes and Misdemeanors*.” This abuse of office served to cover up the President’s own repeated misconduct and to seize and control the power of impeachment—and thus to nullify a vital constitutional safeguard vested solely in the House of Representatives.

In all of this, President Trump has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice, and to the manifest injury of the people of the United States.

Wherefore, President Trump, by such conduct, has demonstrated that he will remain a threat to the Constitution if allowed to remain in office, and has acted in a manner grossly incompatible with self-governance and the rule of law. President Trump thus warrants impeachment and trial, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

APPENDIX B

MEMORANDUM OF TELEPHONE CONVERSATION

SUBJECT: Telephone Conversation with President Zelenskyy of Ukraine

PARTICIPANTS: President Zelenskyy of Ukraine
Notetakers: The White House
Situation Room

DATE, TIME AND PLACE: July 25, 2019, 9:03–9:33 a.m. EDT
Residence

The President: Congratulations on a great victory. We all watched from the United States and you did a terrific job. The way you came from behind, somebody who wasn't given much of a change, and you ended up winning easily. It's a fantastic achievement. Congratulations.

President Zelenskyy: You are absolutely right Mr. President. We did win big and we worked hard for this. We worked a lot but I would like to confess to you that I had an opportunity to learn from you. We used quite a few of your skills and knowledge and were able to use it as an example for our elections and yes it is true that these were unique elections. We were in a unique situation that we were able to achieve a unique success. I'm able to tell you the following; the first time, you called me to congratulate me when I won my presidential election, and the second time you are now calling me when my party won the parliamentary election. I think I should run more often so you can call me more often and we can talk over the phone more often.

The President: [laughter] That's a very good idea. I think your country is very happy about that.

President Zelenskyy: Well yes, to tell you the truth, we are trying to work hard because we wanted to drain the swamp here in our country. We brought in many many new people. Not the old politicians, not the typical politicians, because we want to have a new format and a new type of government. You are a great teacher for us and in that.

The President: Well it is very nice of you to say that. I will say that we do a lot for Ukraine. We spend a lot of effort and a lot of time. Much more than the European countries are doing and they should be helping you more than they are. Germany does almost nothing for you. All they do is talk and I think it's something that you should really ask them about. When I was speaking to Angela Merkel she talks Ukraine, but she doesn't do anything. A lot of the European countries are the same way so I think it's something you want to look at but the United States has been very very good to Ukraine. I wouldn't say that it's reciprocal necessarily because things are happening that are not good but the United States has been very very good to Ukraine.

President Zelenskyy: Yes you are absolutely right. Not only 100%, but actually 1000% and I can tell you the following; I did talk to Angela Merkel and I did meet with her. I also met and talked with Macron and I told them that they are not doing quite as much as they need to be doing on the issues with the sanctions. They are not enforcing the sanctions. They are not working as much as they should work for Ukraine. It turns out that even though logically, the European Union should be our biggest partner but technically the United States is a much bigger partner than the European Union and I'm very grateful to you for that because the United States is doing quite a lot for Ukraine. Much more than the European Union especially when we are talking about sanctions against the Russian Federation. I would also like to thank you for your great support in the area of defense. We are ready to continue to cooperate for the next steps specifically we are almost ready to buy more Javelins from the United States for defense purposes.

The President: I would like you to do us a favor though because our country has been through a lot and Ukraine knows a lot about it. I would like you to find out what happened with this whole situation with Ukraine, they say Crowdstrike* * * *I guess you have one of your wealthy people* * * *The server, they say Ukraine has it. There are a lot of things that went on, the whole situation. I think you're surrounding yourself with some of the same people. I would like to have the Attorney General call you or your people and I would like you to get to the bottom of it. As you saw yesterday, that whole

nonsense ended with a very poor performance by a man named Robert Mueller, an incompetent performance, but they say a lot of it started with Ukraine. Whatever you can do, it's very important that you do it if that's possible.

President Zelenskyy: Yes it is very important for me and everything that you just mentioned earlier. For me as a President, it is very important and we are open for any future cooperation. We are ready to open a new page on cooperation in relations between the United States and Ukraine. For that purpose, I just recalled our ambassador from United States and he will be replaced by a very competent and very experienced ambassador who will work hard on making sure that our two nations are getting closer. I would also like and hope to see him having your trust and your confidence and have personal relations with you so we can cooperate even more so. I will personally tell you that one of my assistants spoke with Mr. Giuliani just recently and we are hoping very much that Mr. Giuliani will be able to travel to Ukraine and we will meet once he comes to Ukraine. I just wanted to assure you once again that you have nobody but friends around us. I will make sure that I surround myself with the best and most experienced people. I also wanted to tell you that we are friends. We are great friends and you Mr. President have friends in our country so we can continue our strategic partnership. I also plan to surround myself with great people and in addition to that investigation, I guarantee as the President of Ukraine that all the investigations will be done openly and candidly. That I can assure you.

The President: Good because I heard you had a prosecutor who was very good and he was shut down and that's really unfair. A lot of people are talking about that, the way they shut your very good prosecutor down and you had some very bad people involved. Mr. Giuliani is a highly respected man. He was the mayor of New York City, a great mayor, and I would like him to call you. I will ask him to call you along with the Attorney General. Rudy very much knows what's happening and he is a very capable guy. If you could speak to him that would be great. The former ambassador from the United States, the woman, was bad news and the people she was dealing with in the Ukraine were bad news so I just want to let you know that. The other thing, there's a lot of talk about Biden's son, that Biden stopped the prosecution and a lot of people want to find out about that so whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution so if you can look into it* * *It sounds horrible to me.

President Zelenskyy: I wanted to tell you about the prosecutor. First of all I understand and I'm knowledgeable about the situation. Since we have won the absolute majority in our Parliament, the next prosecutor general will be 100% my person, my candidate, who will be approved, by the parliament and will start as a new prosecutor in September. He or she will look into the situation, specifically to the company that you mentioned in this issue. The issue of the investigation of the case is actually the issue of making sure to restore the honesty so we will take care of that and will work on the investigation of the case. On top of that, I would kindly ask you if you have any additional information that you can provide to us, it would be very helpful for the investigation to make sure that we administer justice in our country with regard to the Ambassador to the United States from Ukraine as far as I recall her name was Ivanovich. It was great that you were the first one who told me that she was a bad ambassador because I agree with you 100%. Her attitude towards me was far from the best as she admired the previous President and she was on his side. She would not accept me as a new President well enough.

The President: Well, she's going to go through some things. I will have Mr. Giuliani give you a call and I am also going to have Attorney General Barr call and we will get to the bottom of it. I'm sure you will figure it out. I heard the prosecutor was treated very badly and he was a very fair prosecutor so good luck with everything. Your economy is going to get better and better I predict. You have a lot of assets. It's a great country. I have many Ukrainian friends, they're incredible people.

President Zelenskyy: I would like to tell you that I also have quite a few Ukrainian friends that live in the United States. Actually last time I traveled to the United States, I stayed in New York near Central Park and I stayed at the Trump Tower. I will talk to them and I hope to see them again in the future. I also wanted to thank you for your invitation to visit the United States, specifically Washington DC. On the other hand, I also want to ensure you that we will be very serious about the case and will work on the investigation. As to the economy, there is much potential for our two countries and one of the issues that is very important for Ukraine is energy independence. I believe we can be very successful and cooperating on energy independence with United States. We are already working on cooperation. We are buying American oil but I am very hopeful for a future meeting. We will have more time and more opportunities to discuss these opportunities and get to know each other better. I would like to thank you very much for your support.

The President: Good. Well, thank you very much and I appreciate that. I will tell Rudy and Attorney General Barr to call. Thank you. Whenever you would like to come to the White House, feel free to call. Give us a date and we'll work that out. I look forward to seeing you.

President Zelenskyy: Thank you very much. I would be very happy to come and would be happy to meet with you personally and get to know you better. I am looking forward to our meeting and I also would like to invite you to visit Ukraine and come to the city of Kyiv which is a beautiful city. We have a beautiful country which would welcome you. On the other hand, I believe that on September 1 we will be in Poland and we can meet in Poland hopefully. After that, it might be a very good idea for you to travel to Ukraine. We can either take my plane and go to Ukraine or we can take your plane, which is probably much better than mine.

The President: Okay, we can work that out. I look forward to seeing you in Washington and maybe in Poland because I think we are going to be there at that time.

President Zelenskyy: Thank you very much Mr. President.

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

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