

Written Statement of  
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The Constitutional Foundations for President Impeachment,”  
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It is an honor and a privilege to join the other distinguished witnesses to discuss a matter of grave concern to our Constitution and our country. Because this House, the people's House, has "the sole power of Impeachment," there is no better forum to discuss the constitutional standard for impeachment and whether that standard has been met in the case of the current president of the United States. As I explain in the balance of this written statement, the record compiled thus far shows that the president has committed several impeachable offenses, including bribery, abuse of power in soliciting a personal favor from a foreign leader to benefit his political campaign, obstructing Congress, and obstructing justice.

Our hearing today should serve as a reminder of one of the fundamental principles that drove the founders of our Constitution to break from England and to draft their own Constitution, the principle that in this country no one is king. We have followed that principle since before the founding of the Constitution, and it is recognized around the world as a fixed, inspiring American ideal. In his third Annual Message to Congress in 1903, President Theodore Roosevelt aptly described this principle when he declared, "No man is above the law and no man is below, nor do we ask any man's permission when we require him to obey it. Obedience to the law is demanded as a right; not asked for as a favor."

Three features of our Constitution secure the fundamental principle that no one, not even the president, is above the law. First, in the British system, the public had no choice over the monarch who ruled them. In our Constitution, the framers allowed elections to serve as one means for ensuring presidential accountability for misconduct. Second, in the British system, the king could do no wrong, and no other parts of the government could check his

misconduct. In our Constitution, the framers developed the concept of separation of powers, which consists of checks and balances designed to prevent any branch, including the presidency, from becoming tyrannical. Third, in the British system, everyone but the king was impeachable. Our framers' generation pledged their "lives and fortunes" to rebel against a monarch whom they saw as corrupt, tyrannical, and claimed entitlement to do no wrong. In our Declaration of Independence, the framers set forth a series of impeachable offenses that the King had committed against the American colonists. When the framers later convened in Philadelphia to draft our Constitution, they were united around a simple, indisputable principle that was a major safeguard for the public, "We the people," against tyranny of any kind. A people, who had overthrown a king, were not going to turn around, just after securing their independence from corrupt monarchical tyranny, and create an office that, like the king, was above the law and could do no wrong. The framers created a chief executive to bring energy to the administration of federal laws but to be accountable to Congress for "treason, bribery, or other high crimes and misdemeanors."

The framers' concern about the need to protect against a corrupt president was evident throughout the constitutional convention. "Shall any man be above Justice?" Virginia delegate George Mason asked, "Above all shall that man be above it, who can commit the most extensive injustice?" Further, he queried, "Shall the man who has practised corruption & by that means procured his appointment in the first instance, be suffered to escape punishment?" George Mason further worried that if the President "has the power of granting pardons before indictment or conviction, may he not stop inquiry and prevent detection?" James Madison responded that, "There is one security in this case to which gentlemen may not have averted: If

the President be connected, in any suspicious manner, with any person, and there be grounds to believe he will shelter him, the House of Representatives can impeach him; they can remove him if found guilty; they can suspend him when suspected, and the power will devolve on the Vice-President. Should he be suspected also, he may likewise be suspended and be impeached and removed.” James Iredell from North Carolina, whom President Washington later appointed to the Supreme Court, assured his fellow delegates, the president “is of a very different nature from a monarch. He is to be [p]ersonally responsible for any abuse of the great trust placed in him.” Gouverneur Morris agreed that the president “may be bribed by a greater interest to betray his trust, and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay, without being able to guard against it by displacing him.” He emphasized that, “This Magistrate is not the King but the prime minister. The people are the King.” James Wilson, another one of President Washington’s first appointments to the Supreme Court, agreed that, “far from being above the laws, he is amenable to the laws in his private character as a citizen, and in his public character by impeachment.” Madison, who would become known as the Father of our Constitution, argued for the inclusion of impeachment in our Constitution, because a president might “pervert his administration into a scheme of speculation or oppression” or “betray his trust **to foreign leaders.**” William Davie, a North Carolina delegate, warned that “**If he be not impeachable whilst in office, he will spare no effort or means whatever to get himself re-elected**” (emphasis added). These aren’t the words of people planning to create an unaccountable chief executive, nor of constitutional designers who thought to leave the remedy for abuse of office simply to elections. Their concerns and observations closely mirror the current questions before this House.

One such question, which has been raised in nearly every impeachment proceeding, has is what are the legitimate grounds for impeachment, conviction, and removal. The Constitution defines treason (Article III, section 3), and the term “bribery,” which could be understood simply as a president’s taking or offering “an undue reward to influence” on his exercise, or non-exercise, of his power. As for “other high crimes and misdemeanors,” these terms derive from the British, who understood the class of cases to refer to “political crimes,” which included “great” offenses against the United States, “attempts to subvert the Constitution,” when the President “deviates from his duty” or “dare[s] to abuse the power invested in him by the people,” breaches of the public trust, and serious injuries to the Republic.

In his influential essay in *The Federalist Papers*, Alexander Hamilton declared that impeachable offenses are “those offences which proceed from the misconduct of public men, or, in other words, the abuse or violation of some public trust” and “relate chiefly to injuries done immediately to the society itself.” In his influential lectures on the Constitution, given shortly after ratification, Justice James Wilson said impeachable offenses were “*political crimes and misdemeanors.*” In his equally influential *Commentaries on the Constitution*, Justice Joseph Story explained that impeachable “offenses” are “offenses, which are committed by public men in violation of their public trust and duties” and “partakes of a political character, as it respects injuries to the society in its political character.”

Several themes emerge from the framers’ discussions of the scope of impeachable offenses and impeachment practice. We know that not all impeachable offenses are violations of criminal statutes, and we know that not all felonies are impeachable offenses. We know

further that what matters in determining whether particular misconduct constitutes a “high crime and misdemeanor” is ultimately the context and gravity of the misconduct in question.

When we apply our constitutional law to the facts found in the Mueller Report and other public sources, I cannot help but conclude that this president has attacked each of the Constitution’s safeguards against establishing a monarchy in this country. Both the context and gravity of the president’s misconduct are clear: The “favor” he requested from Ukraine’s president was to receive – in exchange for his release of the funds Ukraine desperately needed -- Ukraine’s announcement of a criminal investigation of a political rival. The investigation was not the important action for the president; *the announcement was* because it could then be used in this country to manipulate the public into casting aside the president’s political rival because of concerns about his corruption.

The gravity of the president’s misconduct is apparent when we compare it to the misconduct of the one president who resigned from office to avoid certain impeachment, conviction, and removal. After more than two years of investigations in the House and Senate and by a special prosecutor, the House Judiciary Committee approved three articles of impeachment against Richard Nixon, who resigned a few days later. The first article charged President Nixon with obstruction of justice by “personally” and “through subordinates” impeding the lawful investigations into the burglary of the Democratic headquarters, covering up and concealing those responsible, and covering up and concealing “other unlawful covert activities.” The Mueller Report found *at least* five instances of the president’s obstruction of the Justice Department’s criminal investigation into Russian interference in the 2016 election and possible collusion between the President’s campaign and Russia: (1) the president’s

ordering his then-White House Counsel, Don McGahn, to fire the special counsel, Mr. Mueller, in order to thwart the investigation he had been charged by the Deputy Attorney General to undertake; (2) ordering Mr. McGahn to create a false written record denying the president had ordered him to remove Mr. Mueller; (3) meeting with his former campaign manager, Corey Lewandowski, to direct him to deliver a message, which the president dictated, to then-Attorney General Sessions to curtail the Russia investigation; (4) tampering with and dangling pardons as incentives for Paul Manafort and Michael Flynn; and (5) intimidating Michael Cohen, the president's former private legal counsel, to keep from testifying against him. Taken either individually or collectively, these instances are strong evidence of criminal obstruction of justice.

The second article of impeachment approved against Richard Nixon charged him with abuse of power for ordering the heads of the FBI, IRS, and CIA to harass his political enemies. In the present circumstance, the President has engaged in a pattern of abusing the trust placed in him by the American people by soliciting foreign countries – including China, Russia, and Ukraine – to investigate his political opponents and interfere on his behalf in elections in which he is a candidate.

The third article approved against President Nixon charged that he had failed to comply with four legislative subpoenas. In the present circumstance, the President has refused to comply with and directed at least ten others in his administration not to comply with lawful congressional subpoenas, including Secretary of State Mike Pompeo, Energy Secretary Rick Perry, and Acting Chief of Staff and head of the Office of Management and Budget Mick Mulvaney. As Sen. Lindsey Graham (R-S.C.), now chair of the Senate Judiciary Committee, [said](#)

when he was a member of the House on the verge of impeaching President Bill Clinton, “The day Richard Nixon failed to answer that subpoena is the day he was subject to impeachment because he took the power from Congress over the impeachment process away from Congress, and he became the judge and jury.” That is a perfectly good articulation of why obstruction of Congress is impeachable. Senator Graham dismisses the relevance of that statement now, but its relevance speaks for itself.

The president’s defiance of Congress is all the more troubling due to the rationale he claims for his obstruction: His arguments and those of his subordinates, including his White House Counsel Pat Cipollone in his October 8<sup>th</sup> letter to the Speaker and three committee chairs, boil down to the assertion that he is above the law. The president himself has declared the Constitution gives him “the right to do whatever I want as president.” Moreover, in his October 8<sup>th</sup> letter, Mr. Cipollone dismissed House impeachment proceedings as “constitutionally illegitimate,” with the overall aim of asserting that the president of the United States has the power to shut down an impeachment inquiry. He laid out the president’s grievances: The administration will not go along with what Mr. Cipollone described as a purely “partisan” inquiry; his letter decried “unfounded” allegations made by the whistleblower in his September 26, 2019 complaint and the unfairness of the impeachment inquiry; he said Democrats “seek to overturn the results of the 2016 election”; and he asserted that the July 25 phone call between Trump and Ukraine’s President Volodymyr Zelensky — at the heart of the inquiry — “was completely appropriate.” Mr. Cipollone condemned the House for operating “contrary to the Constitution of the United States — and all past bipartisan precedent.” I am not familiar with any such precedent, and I disagree with the characterizations of the



proceedings, since the Constitution expressly says, and the Supreme Court has unanimously affirmed, that the House has “the sole power of impeachment” and that, like the Senate, has the power “to determine the rules for its proceedings.”

In addition to the president’s declaration that he can do no wrong and the assertions in Mr. Cipollone’s October 8<sup>th</sup> letter, reportedly signed and drafted at the direction of the president, the president and his subordinates have argued further that the president is entitled to absolute immunity from any criminal procedures, *even an investigation*, for any criminal wrongdoing, including shooting someone on Fifth Avenue; the president is entitled to order everyone within the executive branch not to cooperate with and to refuse compliance with lawful directives of this Congress; the president is entitled to keep any information produced anywhere within the executive branch confidential from Congress even when acting at the zenith of its impeachment powers and even if it relates to the commission of a crime or abuse of power; and the president is entitled to shut this impeachment inquiry down – and any other means for holding him accountable – except for the one process, the next election, that he plainly tried to rig in his favor. The power to impeach includes the power to investigate, but, if the president can stymie this House’s impeachment inquiry, he can eliminate the impeachment power as a means for holding him and future presidents accountable for serious misconduct. If left unchecked, the president will likely continue his pattern of soliciting foreign interference on his behalf in the next election.

The president’s serious misconduct, including bribery, soliciting a personal favor from a foreign leader in exchange for his exercise of power, and obstructing justice and Congress are worse than the misconduct of any prior president, including what previous presidents who

faced impeachment have done or been accused of doing. Other presidents have done just the opposite in recognizing the legitimacy of congressional investigative and impeachment authorities. Even President Nixon agreed to share information with Congress, ordered his subordinates to comply with subpoenas to testify and produce documents (with some limited exceptions), and to send his lawyers to ask questions in the House's impeachment hearings. The fact that we can easily transpose the articles of impeachment against Nixon onto the actions of this president speaks volumes – and that does not even include the most serious national security concerns and election interference concerns at the heart of this president's misconduct.

No misconduct is more antithetical to our democracy, and nothing injures the American people more than a president who uses his power to weaken their authority under the Constitution as well as the authority of the Constitution itself. No member of this House should ever want his or her legacy to be having left unchecked a president's assaults on our Constitution. If Congress fails to impeach here, then the impeachment process has lost all meaning, and, along with that, our Constitution's carefully crafted safeguards against the establishment of a king on American soil. No one, not even the president, is beyond the reach of our Constitution and our laws.