



Impeachment campaign FAQs

www.impeachdonaldtrumpnow.org

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What are you asking Congress to do?

We are calling upon Congress to pass a resolution calling for the House Committee on the Judiciary to investigate whether sufficient grounds exist for the impeachment of Donald John Trump, President of the United States.

Why demand an impeachment investigation now?

The nation is now witnessing a massive corruption of the presidency, far worse than Watergate. Given the opportunity of ten full weeks between the election and the inauguration to divest his business interests, Mr. Trump chose instead to announce, just nine days before inauguration, a wholly inadequate plan to step away from operations, but not ownership or income streams, of the Trump Organization.¹ Instead, he has chosen to profit from the presidency at public expense, in violation of the United States Constitution.

Furthermore, since taking office, President Trump has engaged in impeachable obstruction of justice. On the date of his firing, FBI Director Comey was leading one or more investigations that might have incriminated President Trump and/or close associates. Regardless of the ultimate outcome of those criminal investigations, President Trump interfered with them, including (but not limited to) by firing Director Comey.

The violations, the corruption, and the threat to our republic are here now.

How does impeachment work?

The U.S. Constitution provides that “[t]he President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and

¹ See Susanne Craig & Eric Lipton, *Trump’s Plans on Businesses May Fall Short*, N.Y. Times, Jan. 11, 2017, <http://nyti.ms/2jWKdjR>; Clare Foran, *Why Trump’s Conflict-of-Interest Plan Won’t Prevent Conflicts of Interest*, The Atlantic, Jan. 11, 2017, <http://theatltn.tc/2jWTSXM>.

Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”²

The House of Representatives has the power to launch impeachment charges.³ Typically, a resolution calling for an investigation is referred to the House Committee on Rules, which in turn may refer it to the Judiciary Committee for investigation.⁴ In such an investigation, the Judiciary Committee has the power to subpoena witnesses and documents. The Judiciary Committee may then report articles of impeachment for a full House vote. The House votes on these articles by simple majority.

If the House votes to impeach, then the Senate conducts the impeachment trial. When the President is tried, the Chief Justice of the Supreme Court presides.⁵ The Senate requires a two-thirds majority to convict.⁶ Conviction results in immediate removal from office.⁷

What are the grounds for opening an impeachment investigation?

The grounds for an impeachment investigation of the president fall into two categories: violations of the Constitution’s **anti-corruption, or emoluments clauses**, and **obstruction of justice**.

1. The Constitution’s emoluments prohibitions

President Trump’s personal and business holdings in the United States and abroad present unprecedented conflicts of interest. Indeed, President Trump has *admitted* he has conflicts of interest in some cases. For example, the Trump Organization has licensing deals with two Trump Towers in Istanbul, and has received up to \$10 million from developers since 2014.⁸ President Trump admitted recently that “I have a little conflict of interest, because I have a major, major building in Istanbul.”⁹

² U.S. Const. art. II, § 4.

³ U.S. Const. art. I, § 2, cl. 5.

⁴ Lewis Deschler, *Precedents of the U.S. House of Representatives*, ch. 14 § 5.11; T.J. Halstead, Congressional Research Service, *An Overview of the Impeachment Process* 2-3 (Apr. 20, 2005).

⁵ U.S. Const. art. I, § 3, cl. 6-7.

⁶ *Id.*

⁷ U.S. Const. art. II, § 4.

⁸ Drew Harwell & Anu Narayanswamy, *A scramble to assess the dangers of President-elect Donald Trump’s global business empire*, Wash. Post, Nov. 20, 2016, <http://wpo.st/KCmP2>.

⁹ Michael Keller et al., *Tracking Trump’s Web of Conflicts*, Bloomberg, Dec. 13, 2016, <http://bloom.bg/2jamDUu>.

Many of these business arrangements violate the U.S. Constitution's Foreign Emoluments Clause, which provides: "[N]o Person holding any Office of Profit or Trust under [the United States], shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State."¹⁰ The purpose of this provision is to prevent foreign influence or corruption. "Emoluments" from foreign governments include "any conferral of a benefit or advantage, whether through money, objects, titles, offices, or economically valuable waivers or relaxations of otherwise applicable requirements," even including "ordinary, fair market value transactions that result in any economic profit or benefit to the federal officeholder."¹¹

Many of the Trump Organization's extensive business dealings with foreign governments, businesses owned by foreign governments, and other foreign leaders violate this ban. A recent legal analysis by Prof. Laurence Tribe of Harvard Law School, Ambassador (ret.) Norman Eisen (former chief ethics counsel to President Barack Obama), and Professor Richard Painter (former chief ethics counsel to President George W. Bush) concluded that Mr. Trump would be violating the foreign emoluments ban from the *moment he took office*, due to "a steady stream of monetary and other benefits from foreign powers and their agents" deriving from his existing business arrangements.¹² As a result, since he did not divest his business operations before inauguration, he has been violating the Foreign Emoluments Clause since the moment he took office.¹³

Examples of existing business arrangements that constitute violations of the Foreign Emoluments Clause include:

- The state-controlled Industrial and Commercial Bank of China is one of the building's largest tenants; it leases the 20th floor, and its lease will expire in October 2019.¹⁴

¹⁰ U.S. Const., art. I, § 9, cl. 8. This ban is located within a clause addressing both titles of nobility and foreign payments, and is variously called the Titles of Nobility Clause, the Foreign Corruption Clause, or the Foreign Emoluments Clause.

¹¹ Norman L. Eisen, Richard Painter, & Laurence H. Tribe, Brookings Governance Studies, *The Emoluments Clause: Its Text, Meaning, and Application to Donald J. Trump*, <http://brook.gs/2i1i3Ht> (Dec. 16, 2016), at 2.

¹² *Id.*

¹³ See Norman L. Eisen & Richard W. Painter, *Trump Could Be in Violation of the Constitution His First Day in Office*, The Atlantic, Dec. 7, 2016, <http://theatlantic.com/2i0ApY4>; see also Richard W. Painter et al., *Emoluments: Trump's Coming Ethics Trouble*, The Atlantic, Jan. 18, 2017, <http://theatlantic.com/2jwtnNr>.

¹⁴ Michael Keller et al., *Tracking Trump's Web of Conflicts*, Bloomberg, Dec. 13, 2016, <http://bloom.bg/2jamDUu>; Steve Cuozzo, *China Bank for Trump*, N.Y. Post, Sept. 16, 2008, <http://nyp.st/2kGuHKg>.

- A different state-owned Chinese bank, the Bank of China, holds part of a \$950 million loan on 1290 Sixth Avenue in Manhattan, in which the Trump Organization holds a 30 percent ownership stake.¹⁵
- Foreign diplomats have already begun shifting their D.C. hotel and event reservations to Trump International Hotel, to curry favor or at least avoid insulting the president.¹⁶ Indeed, the Embassy of Kuwait was reportedly *pressured* by the Trump Organization to change an existing reservation and reschedule the event at the Trump International.¹⁷ Payments by foreign diplomats for lodging, meeting space, or food at the hotel are foreign emoluments.
- Trump’s business partner in Trump Tower Century City (Manila, Philippines) is Century Properties. (Trump is not the developer; he has a brand licensing contract.) The head of Century Properties is Jose Antonio, who was just named special envoy to the United States by the president of the Philippines.¹⁸ Payments from a company owned by a foreign government official are foreign emoluments.

Similarly, the Constitution’s Domestic Emoluments Clause provides: “The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and *he shall not receive within that Period any other Emolument from the United States, or any of them.*”¹⁹ This provision, which is not waivable by Congress, is designed to prevent corruption, as Alexander Hamilton explained:

Neither the Union, nor any of its members, will be at liberty to give, *nor will he be at liberty to receive, any other emolument than that which may have been determined by the first act.* He can, of course, have no pecuniary inducement to renounce or desert the independence intended for him by the Constitution.²⁰

¹⁵ Keller et al., *supra*, <http://bloom.bg/2jamDUu>.

¹⁶ Jonathan O’Connell & Mary Jordan, *For foreign diplomats, Trump hotel is place to be*, Wash. Post, Nov. 18, 2016, <http://wpo.st/VemN2>. The motivation is obvious: “Why wouldn’t I stay at his hotel blocks from the White House, so I can tell the new president, “I love your new hotel!” Isn’t it rude to come to his city and say, “I am staying at your competitor?”” said one Asian diplomat.” *Id.*

¹⁷ See Judd Legum & Kira Lerner, *Under political pressure, Kuwait cancels major event at Four Seasons, switches to Trump’s D.C. hotel*, Think Progress, Dec. 19, 2016, <http://thkpr.gs/1f204315d513>.

¹⁸ See Richard C. Paddock et al., *Potential Conflicts Around the Globe for Trump, the Businessman President*, N.Y. Times, Nov. 26, 2016, <http://nyti.ms/2jwr1L1>.

¹⁹ U.S. Const., art. II, § 1, cl. 7 (emphasis added).

²⁰ The Federalist No. 73 (Alexander Hamilton) (Clinton Rossiter ed., 1961 (emphasis added)).

President Trump has chosen to continue owning businesses that receive government subsidies and tax breaks in violation of this provision. For example, since 1980, Mr. Trump and his businesses have “reaped at least \$885 million in tax breaks, grants and other subsidies for luxury apartments, hotels and office buildings in New York.”²¹ As President, he personally benefits from federal and state subsidies and tax breaks in violation of the Domestic Emoluments Clause.

Furthermore, as noted above, “emoluments” are not limited to monetary payments; they also include economically valuable favorable regulatory actions. President Trump’s control over the vast modern powers of the executive branch means that regulatory action affecting his businesses favorably constitutes an “Emolument from the United States.” For example, President Trump’s ongoing lease of Washington, D.C.’s Old Post Office, in which the Trump International Hotel is located, violates an explicit clause in the General Services Administration lease contract providing: “No . . . elected official of the Government of the United States . . . shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom”²² In late November, members of Congress wrote the GSA requesting information about the “imminent breach-of-lease and conflict of interest issues created by President-elect Donald Trump’s lease with the U.S. Government for the Trump International Hotel building in Washington, D.C.”²³ The GSA responded in mid-December that it could not make a determination “until the full circumstances surrounding the president-elect’s business arrangements have been finalized and he has assumed office.”²⁴ His business arrangements have been announced (not including any divestment of the hotel) and he has assumed office, but the GSA is not pursuing any legal action to enforce the provision. That favorable regulatory treatment provides President Trump a significant financial benefit from the federal government above and beyond his federal salary.

2. Obstruction of justice

Obstruction of justice can be established from the course of conduct below. Even if any one item standing alone is not conclusive, together they form a clear pattern. Furthermore, the House’s impeachment investigation will not require advanced

²¹ Charles V. Bagli, *A Trump Empire Built on Inside Connections and \$885 Million in Tax Breaks*, N.Y. Times, Sept. 17, 2016, <http://nyti.ms/2cXa60i>.

²² Steven L. Schooner & Daniel I. Gordon, *GSA’s Trump Hotel Lease Debacle*, Gov’t Executive, Nov. 28, 2016, <http://bit.ly/2k4VNcG>.

²³ Letter from Hon. Elijah E. Cummings et al. (Nov. 30, 2016), available at <http://bit.ly/2k56NqN>.

²⁴ Allan Smith, *Federal agency responds to letter from Democratic lawmakers claiming it said Trump must fully divest himself of his DC hotel*, Business Insider, Dec. 14, 2016, <http://read.bi/2k4WYZM>.

investigative techniques, such as forensic science or signals intelligence. Much of the evidence comes from President Trump's own mouth on camera or his Twitter feed. The House Judiciary Committee can investigate the rest through documents and examination of witnesses (including, if he desires, President Trump himself).

The publicly available facts stem from President Trump's own statements (on camera and on Twitter), from testimony given in Congress,²⁵ and from news reports in mainstream outlets. If accurate, they indicate the following course of conduct:

IMPROPER DEMAND FOR LOYALTY

On January 26, 2017, President Trump learned that the FBI was investigating General Flynn. That day, then-Acting Attorney General Sally Yates warned White House Counsel Don McGahn about dishonest statements made by Lieutenant General (and then National Security Advisor) Michael Flynn.²⁶ As the White House later stated, “[i]mmediately after the Department of Justice notified the White House Counsel of the situation, the White House Counsel briefed the president and a small group of senior advisors.”²⁷

The very next day, January 27, President Trump invited FBI Director Comey to a private one-on-one dinner at the White House. At this dinner, according to Comey's written Statement for the Record to the Senate Intelligence Committee:

The President began by asking me whether I wanted to stay on as FBI Director, which I found strange because he had already told me twice in earlier conversations that he hoped I would stay, and I had assured him that I intended to. He said that lots of people wanted my job and, given the abuse I had taken during the previous year, he would understand if I wanted to walk away. *My instincts told me that the one-on-one setting, and the pretense that this was our first discussion about my position, meant the dinner was, at*

²⁵ Former Acting Attorney General Sally Yates testified to a Senate Judiciary Committee subcommittee hearing on May 8, 2017. Director of National Intelligence Dan Coats and National Security Agency Director Admiral Michael Rogers testified to the Senate Intelligence Committee on June 7, 2017. Former Federal Bureau of Investigation Director James Comey testified to that committee on June 8, 2017. Comey's testimony included a prepared written statement submitted on June 7. James B. Comey, *Statement for the Record*, June 8, 2017, <https://www.intelligence.senate.gov/sites/default/files/documents/os-jcomey-060817.pdf>.

²⁶ Matt Apuzzo & Emmarie Huetteman, *Sally Yates Tells Senators She Warned Trump About Michael Flynn*, May 8, 2017, <http://nyti.ms/2s0CoB7>.

²⁷ Office of the Press Secretary, The White House, *Press Briefing by Press Secretary Sean Spicer*, <https://www.whitehouse.gov/the-press-office/2017/02/14/press-briefing-press-secretary-sean-spicer-2142017-12> (Feb. 14, 2017).

least in part, an effort to have me ask for my job and create some sort of patronage relationship. That concerned me greatly, given the FBI's traditionally independent status in the executive branch.

...

A few moments later, *the President said, "I need loyalty, I expect loyalty."*

...

Near the end of our dinner, the President returned to the subject of my job, saying he was very glad I wanted to stay, adding that he had heard great things about me from Jim Mattis, Jeff Sessions, and many others. *He then said, "I need loyalty."*²⁸

This was an apparent attempt to gain influence over and/or intimidate the official in charge of a pending investigation. It can also be viewed as a form of bribery: offering to allow Director Comey to keep his job, if he would be "loyal" to the president.

IMPROPER REQUEST TO ABANDON INVESTIGATION

On February 14, 2017, President Trump, after an Oval Office meeting with Vice President Pence, Attorney General Sessions, Director Comey, the Deputy Director of the CIA, the Director of the National Counter-Terrorism Center, the Secretary of Homeland Security, and Jared Kushner, the President asked everyone but Director Comey to clear the room.

According to Comey's Statement for the Record to the Senate Intelligence Committee, Attorney General Sessions hesitated before leaving. As Comey testified on June 8, 2017: "My sense was the attorney general knew he shouldn't be leaving, which is why he was lingering."

Once the President was alone with FBI Director Comey, the President asked Comey to abandon the investigation into General Flynn, who had been forced to resign just one day earlier. According to Comey's Statement for the Record to the Senate Intelligence Committee:

When the door by the grandfather clock closed, and we were alone, the President began by saying, "I want to talk about Mike Flynn." . . . [After discussing other topics, the] President then returned to the topic of Mike Flynn, saying, "He is a good guy and has been through a lot." He repeated that Flynn hadn't done anything wrong on his calls with the Russians, but had misled the Vice President. He then said, "*I hope you can see your way clear to letting this go, to letting Flynn go. He is a good guy. I hope you can let this go.*" . . .

²⁸ Comey, *Statement for the Record, supra* (emphases added).

I immediately prepared an unclassified memo of the conversation about Flynn and discussed the matter with FBI senior leadership. *I had understood the President to be requesting that we drop any investigation of Flynn in connection with false statements about his conversations with the Russian ambassador in December.* I did not understand the President to be talking about the broader investigation into Russia or possible links to his campaign. I could be wrong, but I took him to be focusing on what had just happened with Flynn’s departure and the controversy around his account of his phone calls. Regardless, *it was very concerning, given the FBI’s role as an independent investigative agency. The FBI leadership team agreed with me that it was important not to infect the investigative team with the President’s request, which we did not intend to abide.*²⁹

In his testimony to the Senate Intelligence Committee on June 8, Director Comey testified that, when the president expressed a “hope” that Comey would “let this go,” he took it as a direction: “I took it as a direction. He’s the president of the United States, with me alone, saying, ‘I hope this.’ I took it as this is what he wants me to do.”

President Trump’s request to “let this go” was an attempt to interfere with the ongoing FBI investigation into General Flynn.

IMPROPER PRESSURE TO MAKE PUBLIC STATEMENTS REGARDING INVESTIGATION

On March 30, 2017, according to Comey’s testimony to the Senate Intelligence Committee, President Trump called Director Comey and asked him when federal authorities were going to state publicly that Mr. Trump was not personally under investigation.³⁰ This was not a new request; on February 15, White House Chief of Staff Reince Priebus reportedly called Director Comey and asked Director Comey to help counter news reports that Mr. Trump’s associates had been in contact with Russian intelligence officials during the campaign.³¹

Comey did not agree to the President’s request. According to his Statement for the Record to the Senate Intelligence Committee:

I did not tell the President that the FBI and the Department of Justice had been reluctant to make public statements that we did not have an open case on President Trump for a number of reasons, *most importantly because it would create a duty to correct, should that change.*

²⁹ Comey, *Statement for the Record*, *supra* (emphases added).

³⁰ Comey, *Statement for the Record*, *supra*.

³¹ Michael S. Schmidt, *Comey, Unsettled by Trump, Is Said to Have Wanted Him Kept at a Distance*, N.Y. Times, May 18, 2017, <http://nyti.ms/2s0oZZS>.

The President's call, and his Chief of Staff's call (which, as with the Nixon impeachment investigation, may be attributed to the president) was an attempt to prevent, or interfere with, an FBI investigation into Mr. Trump and his associates.

ATTEMPT TO MISUSE INTELLIGENCE OFFICIALS TO INTERFERE WITH INVESTIGATION

In March 2017, President Trump reportedly asked two top intelligence officials to publicly deny the existence of any evidence against Trump in the matter under FBI investigation.³² According to news reports, the following sequence unfolded:

On March 22, shortly after Director Comey's March 20 testimony to the House Intelligence Committee that the FBI was investigating "the nature of any links between individuals associated with the Trump campaign and the Russian government and whether there was any coordination between the campaign and Russia's efforts," Director of National Intelligence Dan Coats and CIA Director Mike Pompeo reportedly attended a briefing at the White House along with other government officials. At the end of the briefing, President Trump reportedly asked everyone to clear the room except for Director of National Intelligence Coats and CIA Director Pompeo. He then complained to them about the FBI's Russia investigation.³³

Then on March 22 or 23, Trump personally called Director of National Intelligence Dan Coats and asked him to publicly deny any evidence of collusion between the Trump campaign and Russian officials.³⁴ Director Coats reportedly deemed the request inappropriate, and refused the request. Shortly afterwards, President Trump made a similar request to Admiral Rogers, the NSA director, who similarly refused. (Trump's conversation with Admiral Rogers was documented in a contemporaneous internal memo written by a senior NSA official.)

At about the same time, "senior White House officials sounded out top intelligence officials about the possibility of intervening directly with Comey to encourage the FBI to drop its probe of Michael Flynn." The line of questioning was reportedly paraphrased by one official as "Can we ask him to shut down the investigation? Are you able to assist in this matter?"³⁵

³² Adam Entous & Ellen Nakashima, *Trump asked intelligence chiefs to push back against FBI collusion probe after Comey revealed its existence*, Wash. Post, May 22, 2017, <http://wapo.st/2ruKr9n>.

³³ Adam Entous, *Top intelligence official told associates Trump asked him if he could intervene with Comey on FBI Russia probe*, Wash. Post, June 6, 2017, <http://wapo.st/2se4JnX>.

³⁴ *Id.*

³⁵ Entous & Nakashima, *supra* note 32.

If these news reports are accurate,³⁶ this was an attempt to misuse federal officials to interfere with another agency’s investigation. It is even more direct than President Nixon’s “smoking gun,” in which he asked his chief of staff to ask the Central Intelligence Agency to help derail an FBI investigation.³⁷ Here, President Trump called the intelligence officials himself.

IMPROPER ATTEMPT TO ENFORCE “LOYALTY” COMMITMENT

On April 11, according to Comey’s testimony to the Senate Intelligence Committee, the President called Comey and asked him what he had done to convey publicly that the President was not personally under investigation. Comey recommended that he convey the request to Department of Justice leadership. According to Comey:

[Trump] said he would do that and added, “*Because I have been very loyal to you, very loyal; we had that thing you know.*” I did not reply or ask him what he meant by “that thing.”³⁸

In trying to box Director Comey into making a public statement with references to being “loyal to you” because of “that thing,” President Trump was trying to enforce the improper loyalty commitment that he demanded (and may have thought he received) from Comey on January 27.

MISUSE OF FEDERAL OFFICIALS TO PROVIDE FALSE PRETEXT

By his own later admission, on or before May 8, 2017, President Trump decided to fire Director Comey because of the investigation in question. (See below.) However, he first enlisted Deputy Attorney General Rod Rosenstein and Attorney General Jeff Sessions to create pretextual memos offering an unrelated basis to fire the FBI Director—that he had improperly disclosed information about a separate

³⁶ In testimony to the Senate Intelligence Committee, Director Coats and Admiral Rogers gave carefully worded answers that they had never been “pressured” or “directed” to do anything illegal or inappropriate, but refused to answer direct questions about whether they had been “asked” to do such things. See *Foreign Intelligence Surveillance Act*, Hearing before the Senate Select Committee on Intelligence, June 7, 2017, C-SPAN, <http://c-spanvideo.org/xaa6d/>; *Key moments from intel chiefs’ testimony on Trump and Russia*, Politico, June 7, 2017, <http://politi.co/2rLQMen>.

³⁷ *The Smoking Gun Tape*, Watergate.info, <http://watergate.info/1972/06/23/the-smoking-gun-tape.html>.

³⁸ Comey, *Statement for the Record*, *supra*.

investigation involving Hillary Clinton. Deputy Attorney General Rosenstein later told Congress in a prepared statement:³⁹

On May 8, I learned that President Trump intended to remove Director Comey and sought my advice and input. . . . I wrote a brief memorandum to the Attorney General summarizing my longstanding concerns about Director Comey's public statements concerning the Secretary Clinton email investigation. I chose the issues to include in my memorandum.

In sum, President Trump *first* decided to fire Comey, *then* (at the president's request) Deputy Attorney General Rosenstein prepared a memorandum *consisting of issues that Rosenstein chose* as a rationale for the firing, which therefore was not the basis that President Trump used to arrive at his initial decision.

President Trump's use of federal employees to create a false pretext is independent evidence of obstruction of justice because it was intended to mislead future investigators and thereby impede or obstruct the administration of justice.

³⁹ Kevin Johnson, *Here's what Deputy AG Rod Rosenstein told Congress about James Comey's firing*, USA Today, May 19, 2017, <https://usat.ly/2rzPXns>.

TERMINATION OF FBI DIRECTOR TO INTERFERE WITH AN ONGOING INVESTIGATION

On May 9, 2017, President Trump fired Director Comey. While he initially claimed this was for reasons cited in the pretextual memos, he later (May 11) explained the real reason to NBC interviewer Lester Holt:⁴⁰

I-- I was going to fire Comey. Uh I-- there's no good time to do it by the way. . . . [Deputy Attorney General Rosenstein] made a recommendation but regardless of recommendation I was going to fire Comey knowing, there was no good time to do it. And in fact when I decided to just do it, I said to myself, I said you know, this Russia thing with Trump and Russia is a made up story, it's an excuse by the Democrats for having lost an election that they should have won.

The most direct interpretation of the president's on-camera statement is that he admitted to firing FBI Director Comey because he was unhappy with the course of an investigation ("this Russia thing with Trump and Russia.") At minimum, it demonstrates his belief that firing Comey could negatively affect the investigation.

On May 10 (the day after the firing but one day before he explained the real reason to Lester Holt), he revealed his motive for the firing to the Russian ambassador and foreign minister in the Oval Office, in the presence of several American officials. According to meeting notes that the White House does not dispute, the president stated: "I just fired the head of the F.B.I. He was crazy, a real nut job. I faced great pressure because of Russia. That's taken off. I'm not under investigation."⁴¹ This confirms that his reason for firing Director Comey was because he "faced great pressure" from the FBI's investigation, but with Comey fired, he believed, "[t]hat's taken off."

As Comey testified to the Senate Intelligence Committee on June 8, 2017: "I was fired in some way to change, or the endeavor was to change, the way the Russia investigation was being conducted. And that is a very big deal."

President Trump's decision to fire Director Comey because of his belief that "this Russia thing with Trump and Russia is a made up story" and that firing Comey

⁴⁰ Watch Lester Holt's Extended Interview With President Trump, NBC News, May 11, 2017, <http://nbcnews.to/2s0iLJq>; Partial transcript: NBC News interview with Donald Trump, CNN, May 11, 2017, <http://cnn.it/2pDDa2S>.

⁴¹ Matt Apuzzo et al., *Trump Told Russians That Firing 'Nut Job' Comey Eased Pressure From Investigation*, N.Y. Times, May 19, 2017, <http://nyti.ms/2sY5b6n>.

would “take[] off” the “great pressure” he faced “because of Russia” constituted interfering or endeavoring to interfere with the conduct of an investigation by the Federal Bureau of Investigation by firing its director.

INTIMIDATION OF WITNESS BY INSINUATING THAT HE HAD RECORDED CONVERSATIONS

On May 12, 2017, after widespread negative reaction to the Comey firing among the public, media, and members of Congress, President Trump tweeted:

James Comey better hope that there are no "tapes" of our conversations before he starts leaking to the press!

<https://twitter.com/realDonaldTrump/status/863007411132649473>

This tweet was intended to deter former FBI Director Comey (now no longer a law enforcement officer, but a witness in a potential obstruction case) from speaking out. It acted to threaten and intimidate FBI Director Comey against sharing unfavorable information about the president.

In short, President Trump engaged in a sustained course of attempts to interfere with ongoing FBI investigations. He first asked FBI Director Comey to abandon his investigations; when Comey would not, he tried to enlist other government officials to get Comey to abandon the investigations; when that did not work either, Trump enlisted federal officials to develop a pretextual rationale and fired him. And even after the firing, attempted to intimidate him over Twitter. The evidence is compelling, does not require sophisticated investigative techniques, and in several instances, comes from the president’s own mouth on video, on Twitter, or in the presence of reputable witnesses.

Why is this conduct impeachable?

The standard for impeachment in the Constitution is “high Crimes and Misdemeanors,” a term of art that the Framers understood from English history.⁴² Unlike “petit” crimes, “high” crimes refer to crimes committed against the state by public officials.⁴³ And the use of “other” implies that high crimes and misdemeanors bear some similarity to the enumerated violations of “treason” and “bribery.”⁴⁴ Like

⁴² Charles Doyle, Congressional Research Service, *Impeachment Grounds: A Collection of Selected Materials*, 1, 26 (Oct. 29, 1998); Gary L. McDowell, “*High Crimes and Misdemeanors*”: *Recovering the Intentions of the Founders*, 67 *Geo. Wash. L. Rev.* 626, 638 (1999).

⁴³ McDowell, *supra*, 67 *Geo. Wash. L. Rev.* at 638.

⁴⁴ See Laurence H. Tribe, *American Constitutional Law* 170 (3d ed. 1999).

treason, high crimes and misdemeanors may threaten our constitutional order; like bribery, they may abuse the trust of a public position by using such power for corrupt ends.⁴⁵ Furthermore, “high crimes and misdemeanors” can include conduct that is not criminal.⁴⁶ Justice Joseph Story summarized impeachable offenses as offenses “committed by public men in violation of their public trust and duties.”⁴⁷

The Constitution’s emoluments prohibitions

Violating the emoluments clauses is grounds for impeachment. At the Constitutional Convention in July 1787, during debate about impeachment, Gouverneur Morris of Pennsylvania (known as the “Penman of the Constitution”) observed that “no one would say that we ought to expose ourselves to the danger of seeing the first magistrate [the President] in foreign pay, without being able to guard against it by displacing him.”⁴⁸ Similarly, at the Virginia Ratifying Convention in June 1788, Edmund Jennings Randolph (Governor of Virginia, a delegate to the Constitutional Convention, and later the first Attorney General of the United States and second Secretary of State) responded to a concern about influence over the President by stating in clear terms:

There is another provision against the danger, mentioned by the honorable member, of the President receiving emoluments from foreign powers. *If discovered, he may be impeached.* By the 9th section of the 1st article, “no person, holding an office of profit or trust, shall accept of any present or emolument whatever, from any foreign power, without the consent of the representatives of the people;” and by the 1st section of the 2d article, his compensation is neither to be increased nor diminished during the time for which he shall have been elected; and he shall not, during that period, receive any emolument from the United States or any of them. I consider, therefore, that he is restrained from receiving any present or emolument whatever. It is impossible to guard better against corruption.⁴⁹

This is consistent with the views of other Framers, including Alexander Hamilton of New York, who described impeachable offenses as arising from “the misconduct of public men, or in other words from the abuse or violation of some public trust,”⁵⁰

⁴⁵ See Laurence H. Tribe, *Defining “High Crimes and Misdemeanors”*: Basic Principles, 67 Geo. Wash. L. Rev. 712, 718 (1999).

⁴⁶ See, e.g., The Federalist No. 65 (Alexander Hamilton) (Clinton Rossiter ed., 1961); see also Jared P. Cole & Todd Garvey, Congressional Research Service, *Impeachment and Removal* 1, 7–8 (Oct. 29, 2015).

⁴⁷ Joseph Story, *Commentaries on the Constitution* § 746, at 547 (5th ed. 1891).

⁴⁸ Jonathan Elliot, 2 *The Debates, Resolutions, and Other Proceedings in Convention on the Adoption of the Federal Constitution* 343 (1828).

⁴⁹ *Id.* at 358-59 (emphasis added).

⁵⁰ The Federalist No. 65 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

and future Supreme Court Justice James Iredell of North Carolina, who described impeachable conduct as including instances where the President “acted from some corrupt motive,” giving the example of a President receiving “a bribe . . . from a foreign power, and under the influence of that bribe . . . [getting Senate] consent to a pernicious treaty.”⁵¹

This is also consistent with congressional precedent. At least six impeachments have alleged “the use of office for personal gain or the appearance of financial impropriety while in office.”⁵² For example, in 1912, Judge Robert W. Archbald was charged with “using his office to secure business favors from litigants and potential litigants before his court”; three other federal judges were charged with “misusing their power to appoint and set the fees of bankruptcy receivers for personal profit.”⁵³ These have been described under the heading of “Using the Office for an Improper Purpose or Personal Gain.”⁵⁴

Unfortunately, President Trump has been unwilling to separate his presidential duty from his business interests. President Trump’s conduct has the effect of undermining the integrity of the presidency and disregarding his constitutional oath to “faithfully execute the office of the President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”⁵⁵ His ongoing receipt of income and other financial benefits through his businesses disregards his constitutional oath to “preserve . . . the Constitution of the United States,” undermines the integrity of the executive branch, and abuses the public trust.

Obstruction of justice

Obstruction of justice is undoubtedly an impeachable offense; it was the first article of impeachment against President Nixon,⁵⁶ and in 1998 the House of Representatives approved an article of impeachment against President Clinton for obstruction of justice.⁵⁷ The high crime or misdemeanor of obstruction of justice includes, but is not limited to, violations of federal criminal statutes such as 18 U.S.C. §§ 1503, 1505, and 1512.

⁵¹ *Id.* at 289.

⁵² Deschler, *supra*, ch. 14 App.

⁵³ *Id.*

⁵⁴ William Brown, *House Practice: A Guide to the Rules, Precedents and Procedures of the House* (2011), ch. 27, § 4, at 598.

⁵⁵ U.S. Const. art. II, § 1, cl. 8.

⁵⁶ *The articles of impeachment against Nixon*, <http://academic.brooklyn.cuny.edu/history/johnson/rnimparticles.htm>.

⁵⁷ *Approved articles of impeachment*, Wash. Post, Dec. 20, 1998, <http://wapo.st/2s0muqe>.

Should we wait for the special prosecutor to finish his investigation first?

No. Some suggest that Congress should wait until special prosecutor (technically, “special counsel”) Robert Mueller first completes his criminal probe. Mueller is a longtime federal prosecutor and former FBI Director, and his appointment was a positive step. But Mueller’s appointment is not a cure-all, and Congress must not use it as an excuse to shirk its duty to conduct an independent impeachment investigation.

The special prosecutor’s investigation is more limited. First, his charge is limited to the Russia investigation and related issues regarding obstruction of justice. It does not cover violations of the Constitution’s Foreign Emoluments Clause, which prohibits federal officials from accepting “any present [or] emolument . . . of any kind whatever from any King, Prince or foreign State,” or Domestic Emoluments Clause, which prohibits the President from receiving “any other Emolument” besides his salary from federal or state governments. Through his businesses, Trump has been violating these provisions since the day he took office.

The spectre of a President violating these clauses was specifically cited by the Founders as grounds for impeachment. The special prosecutor has no jurisdiction with respect to the violations of the Emoluments Clauses; that remains the responsibility of Congress.

Furthermore, Mueller must focus on violations of *federal criminal statutes*. That’s what federal prosecutors (special or not) do. But federal criminal statutes don’t include the full range of potential abuses that may constitute “high Crimes and Misdemeanors.” The President has unique powers and opportunities for abuse that he shares with literally no one else in the country, and it doesn’t make sense for Congress to pass specific statutes detailing a range of criminal violations that only one person could commit.

For example, there are several federal criminal statutes defining obstruction of justice, and the President may well have violated them by his efforts to interfere with the FBI’s investigation. But in providing for the removal of the president for “high Crimes and Misdemeanors,” the Founders were not concerned with whether the president violated any particular federal criminal statute. They were concerned with whether the president engaged in an abuse of power that undermines the rule of law. Threatening, attempting to influence, or firing the official overseeing an investigation into conduct relating to the president or his associates meets that test, whether or not it also violates any of the federal criminal statutes that the special prosecutor is empowered to enforce.

Another problem facing Mueller is that he must focus on criminal violations that he can *prove in federal court*. This involves procedural and evidentiary obstacles that do not apply to a congressional impeachment proceeding.

For example, the Federal Rules of Evidence contain detailed rules about when documents can, and cannot, be used to prove a point in court. Technically, a statement made in a document is “hearsay.” In court, hearsay is only admissible in certain specified circumstances defined by a web of complex rules. If the special prosecutor finds a bombshell document that doesn’t fit into one of the hearsay exceptions, he can’t use it in court. That means that, if that document is essential evidence, he can’t even bring the charge.

By contrast, when the House Judiciary Committee conducts an impeachment investigation, it can consider whatever evidence the committee finds appropriate, whether or not a federal judge would allow it to be presented to a jury.

Similarly, the federal criminal obstruction statutes require proving that the defendant had a particular state of mind when taking action to interfere with an investigation. As Professor Laurence Tribe of Harvard Law School notes, Congress is empowered to decide that the President’s actions merit impeachment regardless of his mental state.⁵⁸

Moreover, the special prosecutor’s investigation will, by nature, be conducted in secret. We will likely not know anything of it, except through leaks and rumors, until it finishes, which could take years. A congressional impeachment investigation, by contrast, will be conducted in the open, laying forth the evidence for the American public as it develops.

Finally, in an important sense, the impeachment investigation into the President’s violations of the emoluments clauses and of obstruction of justice does not *need* a special prosecutor. Evidence regarding the dealings between Mr. Trump, his campaign, and his administration with the Russian government, and whether any of it was unlawful, is still unfolding. The issues are factually complex. By contrast, the factual evidence supporting emoluments clause violations and obstruction of justice is largely public, and largely undisputed.

Who is leading the campaign?

The campaign is led by Free Speech For People, a national non-partisan non-profit organization that works to renew our democracy and our Constitution for the people, not big money and corporate interests, and by RootsAction, an online

⁵⁸ Laurence H. Tribe, *Why Impeachment Must Remain a Priority*, Take Care Blog, May 23, 2017, <https://takecareblog.com/blog/why-impeachment-must-remain-a-priority>.

initiative dedicated to galvanizing people who are committed to economic fairness, equal rights, civil liberties, environmental protection, and defunding endless wars.

We are assisted by a Legal Advisory Board presently consisting of the following expert advisors:

- Justice Fernande (Nan) R.V. Duffly, (former) Associate Justice, Supreme Judicial Court of the Commonwealth of Massachusetts
- Nancy Leong, Associate Professor, University of Denver
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This document will be updated from time to time.