



Impeachment campaign FAQs

[www.impeachdonaldtrumpnow.org](http://www.impeachdonaldtrumpnow.org)

November 29, 2017

## I. 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.

## II. 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 Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”<sup>1</sup> The phrase “high Crimes and Misdemeanors” is a term of art that the Framers understood from English history.<sup>2</sup> Unlike “petit” crimes, “high” crimes refer to crimes committed against the state by public officials.<sup>3</sup> And the use of “other” implies that high crimes and misdemeanors bear some similarity to the enumerated violations of “treason” and “bribery.”<sup>4</sup> Like 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.<sup>5</sup>

Furthermore, “high crimes and misdemeanors” can include conduct that is not criminal.<sup>6</sup> Justice Joseph Story summarized impeachable offenses as offenses “committed by public men in violation of their public trust and duties.”<sup>7</sup> Importantly, the purpose of impeachment is not to *punish*, but to *protect*. The point is to remove a lawless president to prevent him from further harming the country.<sup>8</sup> As Justice Joseph Story explained in 1833, “It is not so much designed to punish an offender, as to *secure the state* against gross official misdemeanors. It touches neither his person, nor his property; but simply divests him of his political capacity.”<sup>9</sup>

---

<sup>1</sup> U.S. Const. art. II, § 4.

<sup>2</sup> 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).

<sup>3</sup> McDowell, *supra*, 67 *Geo. Wash. L. Rev.* at 638.

<sup>4</sup> See Laurence H. Tribe, *American Constitutional Law* 170 (3d ed. 1999).

<sup>5</sup> See Laurence H. Tribe, *Defining “High Crimes and Misdemeanors”: Basic Principles*, 67 *Geo. Wash. L. Rev.* 712, 718 (1999).

<sup>6</sup> 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), <https://fas.org/sgp/crs/misc/R44260.pdf>.

<sup>7</sup> Joseph Story, *Commentaries on the Constitution* § 746, at 547 (5th ed. 1891).

<sup>8</sup> See Greg Weiner, *Impeachment’s Political Heart*, *N.Y. Times*, May 18, 2017, <https://nyti.ms/2rwnH5j>.

<sup>9</sup> Story, *Commentaries on the Constitution* § 801 (emphasis added), available at [http://press-pubs.uchicago.edu/founders/documents/a1\\_2\\_5s18.html](http://press-pubs.uchicago.edu/founders/documents/a1_2_5s18.html).

The “sole power of impeachment” lies with the House of Representatives.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

The Senate requires a two-thirds majority to convict.<sup>13</sup> Conviction results in immediate removal from office.<sup>14</sup>

### III. What are the grounds for opening an impeachment investigation?

The grounds for an impeachment investigation of the president fall into two broad categories: abuse of power, and corruption. As set forth in more detail below, the grounds for opening an impeachment investigation today are:

1. Obstruction of justice
2. Violations of the Foreign Emoluments Clause and Domestic Emoluments Clause of the United States Constitution
3. Conspiring with others to:
  - a. commit crimes against the United States involving the solicitation and intended receipt by the Donald J. Trump campaign of things of value from a foreign government and other foreign nationals; and
  - b. conceal those violations
4. Advocating illegal violence, giving aid and comfort to white supremacists and neo-Nazis, and undermining constitutional protections of equal protection under the law
5. Abusing the pardon power
6. Recklessly threatening nuclear war against foreign nations, undermining and subverting the essential diplomatic functions and authority of federal agencies, including the United States Department of State, and engaging in other conduct that grossly and wantonly endangers the peace and security of the United States, its people and people of other nations, by heightening the risk of hostilities involving weapons of mass destruction, with reckless disregard for the risk of death and grievous bodily harm
7. Directing or endeavoring to direct law enforcement, including the Department of Justice and the Federal Bureau of Investigation, to investigate and prosecute political adversaries and others, for improper purposes not justified by any lawful function of his office, thereby eroding the rule of law, undermining the independence of law enforcement from politics, and compromising the constitutional right to due process of law

---

<sup>10</sup> U.S. Const. art. I, § 2, cl. 5.

<sup>11</sup> 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).

<sup>12</sup> U.S. Const. art. I, § 3, cl. 6-7.

<sup>13</sup> *Id.*

<sup>14</sup> U.S. Const. art. II, § 4.

Discussion of each item follows.

A. **Obstruction of justice**

1. Facts

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 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,<sup>15</sup> and from news reports in mainstream outlets. The key points are summarized here; for a more detailed recitation, see a recent report issued by the Brookings Institution.<sup>16</sup> If accurate, they indicate the following course of conduct:

a) *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.<sup>17</sup> 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."<sup>18</sup>

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,

---

<sup>15</sup> 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>.

<sup>16</sup> See Barry H. Berke, Noah Bookbinder, and Norman L. Eisen, *Presidential Obstruction of Justice: The Case of Donald J. Trump* (Oct. 10, 2017), <http://brook.gs/2jadWLB>.

<sup>17</sup> Matt Apuzzo & Emmarie Huettman, *Sally Yates Tells Senators She Warned Trump About Michael Flynn*, May 8, 2017, <http://nyti.ms/2s0CoB7>.

<sup>18</sup> 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).

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 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."*<sup>19</sup>

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.

b) *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.*" . . .

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*

---

<sup>19</sup> Comey, *Statement for the Record*, *supra* (emphases added).

*important not to infect the investigative team with the President's request, which we did not intend to abide.*<sup>20</sup>

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.

*c) 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.<sup>21</sup> 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.<sup>22</sup>

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.*

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.

*d) 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.<sup>23</sup> 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

---

<sup>20</sup> Comey, *Statement for the Record, supra* (emphases added).

<sup>21</sup> Comey, *Statement for the Record, supra*.

<sup>22</sup> 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>.

<sup>23</sup> 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>.

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.<sup>24</sup>

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.<sup>25</sup> 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?"<sup>26</sup>

If these news reports are accurate,<sup>27</sup> 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.<sup>28</sup> Here, President Trump called the intelligence officials himself.

e) *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."<sup>29</sup>

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.

---

<sup>24</sup> 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>.

<sup>25</sup> *Id.*

<sup>26</sup> Entous & Nakashima, *supra* note 23.

<sup>27</sup> 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>.

<sup>28</sup> *The Smoking Gun Tape*, Watergate.info, <http://watergate.info/1972/06/23/the-smoking-gun-tape.html>.

<sup>29</sup> Comey, *Statement for the Record*, *supra*.

f) *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 investigation involving Hillary Clinton. Deputy Attorney General Rosenstein later told Congress in a prepared statement:<sup>30</sup>

*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.

g) *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:<sup>31</sup>

*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.*

<sup>30</sup> 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>.

<sup>31</sup> *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>.

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."<sup>32</sup> 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 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.

*h) 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:<sup>33</sup>

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

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.

---

<sup>32</sup> 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>.

<sup>33</sup> <https://twitter.com/realDonaldTrump/status/863007411132649473>



## 2. Legal analysis

Obstruction of justice is undoubtedly an impeachable offense; it was the first article of impeachment against President Nixon,<sup>34</sup> and in 1998 the House of Representatives approved an article of impeachment against President Clinton for obstruction of justice.<sup>35</sup>

As elaborated upon in a recent report from the Brookings Institution, some of this conduct may also violate federal criminal statutes such as 18 U.S.C. §§ 1503, 1505, and 1512.<sup>36</sup> But the *high crime or misdemeanor* of obstruction of justice is separate from, and broader than, the *federal criminal offense* of obstructing justice. For example, leading constitutional scholar Professor Laurence Tribe has noted that Congress could take a broader view of the *intent* necessary for obstruction for impeachment purposes than would be appropriate in a criminal proceeding in that, while the federal obstruction statutes typically require that the defendant intended to interfere with a specific proceeding, Congress could properly take a broader view of obstruction for impeachment purposes.<sup>37</sup>

Indeed, as noted earlier, scholars and Congress broadly agree that impeachable offenses need not even be crimes.<sup>38</sup>

### B. Violating the Constitution's emoluments prohibitions

#### 1. Facts

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.<sup>39</sup> President Trump admitted recently that "I have a little conflict of interest, because I have a major, major building in Istanbul."<sup>40</sup>

Many of the Trump Organization's extensive business dealings include receipt of payments or other benefits from foreign governments, businesses owned by foreign governments, and other foreign leaders. Examples include:

---

<sup>34</sup> *The articles of impeachment against Nixon*, <http://watergate.info/impeachment/articles-of-impeachment>.

<sup>35</sup> *Approved articles of impeachment*, Wash. Post, Dec. 20, 1998, <http://wapo.st/2s0muqe>.

<sup>36</sup> See Barry H. Berke, Noah Bookbinder, and Norman L. Eisen, *Presidential Obstruction of Justice: The Case of Donald J. Trump* (Oct. 10, 2017), <http://brook.gs/2jadWLB>.

<sup>37</sup> Laurence H. Tribe, *Why Impeachment Must Remain A Priority*, Take Care Blog (May 23, 2017), <http://takecareblog.com/blog/why-impeachment-must-remain-a-priority>.

<sup>38</sup> See, e.g., Jared P. Cole & Todd Garvey, Congressional Research Serv., *Impeachment and Removal* 8-9 (Oct. 29, 2015), <https://fas.org/sgp/crs/misc/R44260.pdf>; House Judiciary Committee, *Constitutional Grounds for Presidential Impeachment* 21-25 (93d Cong., Feb. 1974),

[https://lofgren.house.gov/uploadedfiles/constitutional\\_grounds\\_for\\_presidential\\_impeachment\\_-\\_house\\_judiciary\\_comm\\_staff\\_report\\_february\\_1974.pdf](https://lofgren.house.gov/uploadedfiles/constitutional_grounds_for_presidential_impeachment_-_house_judiciary_comm_staff_report_february_1974.pdf); Gene Healy, *The Overcriminalization of Impeachment*, <https://www.cato.org/blog/overcriminalization-impeachment>, Aug. 7, 2017.

<sup>39</sup> 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>.

<sup>40</sup> Michael Keller et al., *Tracking Trump's Web of Conflicts*, Bloomberg, Dec. 13, 2016, <http://bloom.bg/2jamDUu>.

- 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.<sup>41</sup>
- 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.<sup>42</sup>
- 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.<sup>43</sup> 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.<sup>44</sup> In late October 2017, Mexico's former ambassador to the United States reported that he had learned from a former U.S. diplomat that the U.S. State Department's official protocol now emphasizes to world leaders that they should use Trump's D.C. hotel for official visits.<sup>45</sup>
- 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.<sup>46</sup>
- On September 18, 2017, the Trump National Golf Club in northern Virginia hosted the "Turkish Airlines World Golf Cup," sponsored by the state-owned Turkish Airlines.<sup>47</sup>

President Trump has also chosen to continue owning businesses that receive federal and state government subsidies and tax breaks. 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."<sup>48</sup> He has also found ways to profit personally from official government travel. For example, when he visits a Trump golf club, as he has on approximately 25% of the days since

---

<sup>41</sup> Michael Keller et al., *Tracking Trump's Web of Conflicts*, Bloomberg, Dec. 13, 2016, <http://bloom.bg/2jamDUu>; Steve Cuzzo, *China Bank for Trump*, N.Y. Post, Sept. 16, 2008, <http://nyp.st/2kGuHKg>.

<sup>42</sup> Keller et al., *supra*, <http://bloom.bg/2jamDUu>.

<sup>43</sup> 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.*

<sup>44</sup> 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>.

<sup>45</sup> See Ian Millhiser, *Former Mexican ambassador says State Department is telling world leaders to stay at Trump hotels*, Think Progress, Nov. 1, 2017, <https://thinkprogress.org/former-mexican-ambassador-trump-hotels-6fc52c7ce8f5/>; [https://twitter.com/Arturo\\_Sarukhan/status/925429733692727296](https://twitter.com/Arturo_Sarukhan/status/925429733692727296).

<sup>46</sup> 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>.

<sup>47</sup> Alex Howard, *Turkish Airlines event at Trump Golf Course tees off emolumental problems*, Sunlight Foundation, Sept. 24, 2017, <https://sunlightfoundation.com/2017/09/24/turkish-airlines-golf-event-at-trump-golf-course-tees-off-emolumental-problems/>; <http://golf.turkishairlines.com/turkish-airlines-world-golf-cup/venues/washington-dc/> (last visited Nov. 8, 2017).

<sup>48</sup> 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>.

his inauguration,<sup>49</sup> he is accompanied by a protective detail of the U.S. Secret Service. The Secret Service, in turn, uses taxpayer funds to rent golf carts to accompany him; as of October 5, 2017, the Secret Service had spent approximately \$137,000 on golf cart rentals at Trump golf courses.<sup>50</sup>

Finally, President Trump's control over the vast modern powers of the executive branch means that favorable federal regulatory action benefiting his businesses also counts as a government benefit.

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 . . ." <sup>51</sup> In late November 2016, 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." <sup>52</sup> 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." <sup>53</sup> After he assumed office, the GSA announced that it had concluded that this clause somehow did not apply. <sup>54</sup>

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. Legal analysis

The U.S. Constitution's Foreign Emoluments Clause 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." <sup>55</sup> 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

---

<sup>49</sup> See Trump Golf Count, *President Trump's Golf Outings*, <http://trumpgolfcount.com/displayoutings> (last visited Nov. 8, 2017).

<sup>50</sup> Julia Fair, *Secret Service spent \$137K on golf carts to protect Trump at New Jersey, Florida clubs*, USA Today, Oct. 5, 2017, <https://usat.ly/2yLvorf>.

<sup>51</sup> Steven L. Schooner & Daniel I. Gordon, *GSA's Trump Hotel Lease Debacle*, Gov't Executive, Nov. 28, 2016, <http://bit.ly/2k4VNcG>.

<sup>52</sup> Letter from Hon. Elijah E. Cummings et al. (Nov. 30, 2016), available at <http://bit.ly/2k56NqN>.

<sup>53</sup> 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>.

<sup>54</sup> Letter from Kevin Terry, GSA, Mar. 23, 2017, [https://www.gsa.gov/cdnstatic/Contracting\\_Officer\\_Letter\\_March\\_23\\_2017\\_Redacted\\_Version.pdf](https://www.gsa.gov/cdnstatic/Contracting_Officer_Letter_March_23_2017_Redacted_Version.pdf).

<sup>55</sup> 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.

including “ordinary, fair market value transactions that result in any economic profit or benefit to the federal officeholder.”<sup>56</sup>

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.<sup>57</sup> 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.<sup>58</sup>

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.*”<sup>59</sup> 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.<sup>60</sup>

A recent white paper by the Constitutional Accountability Center further discusses how the president’s business arrangements violate the Domestic Emoluments Clause.<sup>61</sup>

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.”<sup>62</sup> 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

---

<sup>56</sup> 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.

<sup>57</sup> *Id.*

<sup>58</sup> 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://theatl.in.tc/2i0ApY4>; see also Richard W. Painter et al., *Emoluments: Trump’s Coming Ethics Trouble*, The Atlantic, Jan. 18, 2017, <http://theatl.in.tc/2jwvNr>.

<sup>59</sup> U.S. Const., art. II, § 1, cl. 7 (emphasis added).

<sup>60</sup> The Federalist No. 73 (Alexander Hamilton) (Clinton Rossiter ed., 1961 (emphasis added)).

<sup>61</sup> See Brianne J. Gorod, Brian R. Frazelle, and Samuel Houshower, Constitutional Accountability Ctr., *The Domestic Emoluments Clause: Its Text, Meaning, and Application to Donald J. Trump*, [https://www.theconstitution.org/sites/default/files/briefs/20170726 White Paper Domestic Emoluments Clause.pdf](https://www.theconstitution.org/sites/default/files/briefs/20170726%20White%20Paper%20Domestic%20Emoluments%20Clause.pdf) (July 2017).

<sup>62</sup> Jonathan Elliot, 2 *The Debates, Resolutions, and Other Proceedings in Convention on the Adoption of the Federal Constitution* 343 (1828).

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.<sup>63</sup>

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,”<sup>64</sup> 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.”<sup>65</sup>

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.”<sup>66</sup> 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.”<sup>67</sup> These have been described under the heading of “Using the Office for an Improper Purpose or Personal Gain.”<sup>68</sup>

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.”<sup>69</sup> 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.

---

<sup>63</sup> *Id.* at 358-59 (emphasis added).

<sup>64</sup> The Federalist No. 65 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

<sup>65</sup> *Id.* at 289.

<sup>66</sup> Deschler, *supra*, ch. 14 App.

<sup>67</sup> *Id.*

<sup>68</sup> William Brown, *House Practice: A Guide to the Rules, Precedents and Procedures of the House* (2011), ch. 27, § 4, at 598.

<sup>69</sup> U.S. Const. art. II, § 1, cl. 8.

## C. Conspiracy to commit and conceal crimes involving campaign's solicitation and receipt of things of value from a foreign government and other foreign nationals

### 1. Facts

On June 3, 2016, Donald Trump Jr., Trump's eldest son, exchanged a series of emails setting up a meeting to receive "incriminating information" about his father's general election opponent, which was described as coming from the Russian government, as "part of Russia and its government's support for Mr. Trump." On June 9, 2016 Donald Trump Jr., Paul Manafort, Trump's then-campaign manager, and Jared Kushner, Trump's son-in-law and senior advisor, met with several Russian citizens linked to the government, with the intention of acquiring the information offered in the June 3 emails.

On July 8, 2017, the day this meeting was publicly revealed, Donald Trump Jr. released a public statement, which was later shown to be misleading, about the circumstances and purpose of the meeting. It has been reported that, on July 8, 2017, President Trump personally dictated his son's misleading statement about the meeting.<sup>70</sup>

### 2. Legal analysis

The Federal Election Campaign Act (FECA) prohibits the solicitation, acceptance, or receipt of "a contribution or donation of money or other thing of value . . . in connection with a Federal, State, or local election" from a foreign national (foreign government, foreign business, or foreign citizen not a lawful permanent resident of the United States).<sup>71</sup> While most violations of FECA do not give rise to criminal charges, these allegations are particularly serious. Furthermore, apart from any violations of criminal law, the fact that the president's campaign was conspiring with what it understood to be representatives of a foreign government to influence the election is precisely the type of foreign intrigue that the Founders feared.

To be sure, current publicly available evidence does not indicate whether the president himself was personally aware of this particular meeting. However, an impeachment investigation is warranted by the circumstances. First, before the meeting, then-candidate Trump's foreign policy adviser, George Papadopoulos, informed Trump and other campaign advisors at a March 31, 2016 campaign meeting that he could help arrange a meeting between then-candidate Trump and the Russian President.<sup>72</sup> Second, the July meeting in Trump Tower was, by all accounts, attended by campaign officials at the very highest. As precedent, the second article of impeachment against President Richard Nixon, the House Judiciary Committee established that a pattern of activity by subordinates may be attributed to the president for purposes of impeachment.<sup>73</sup>

---

<sup>70</sup> Ashley Parker et al., *Trump dictated son's misleading statement on meeting with Russian lawyer*, Wash. Post, July 31, 2017, <http://wapo.st/2vh7dmA>.

<sup>71</sup> 52 U.S.C. § 30121.

<sup>72</sup> *United States v. Papadopoulos*, No. 17-CR-00182-RDM, ECF No. 19 (D.D.C. Oct. 5, 2017) (Statement of the Offense), ¶ 9.

<sup>73</sup> See Articles of Impeachment, <http://watergate.info/impeachment/articles-of-impeachment>; see also Charles L. Black, Jr., *Impeachment: A Handbook* (1974), available at <https://lawfareblog.com/impeachable-offense>; Jane Chong, *To Impeach a President: Applying the Authoritative Guide from Charles Black*, Lawfare (July 20, 2017), <https://www.lawfareblog.com/impeach-president-applying-authoritative-guide-charles-black>.

The president is more closely tied to the effort to conceal the meeting, and potential illegal (e.g., under FECA) activity that may have occurred, through a misleading public statement. This could also constitute obstruction of justice.

**D. Advocating illegal violence, giving aid and comfort to white supremacists and neo-Nazis, and undermining constitutional protections of equal protection under the law**

1. Facts

On July 28, 2017, in a speech to police officers, the president openly encouraged police to be “rough” with arrested persons.<sup>74</sup> The president stated:

And when you see these towns and when you see these thugs being thrown into the back of a paddy wagon — you just see them thrown in, rough — I said, please don’t be too nice. (Laughter.) Like when you guys put somebody in the car and you’re protecting their head, you know, the way you put their hand over? Like, don’t hit their head and they’ve just killed somebody — don’t hit their head. I said, you can take the hand away, okay?

This speech was widely understood, including by police chiefs nationwide, as endorsing police brutality, i.e., encouraging police to cause bodily harm to arrested persons and violate their constitutional rights. Furthermore, coming from the president, it also implies that the Department of Justice will de-prioritize enforcement of such police misconduct.

On August 12, 2017, the president gave a statement after the white supremacist rallies and terrorist attack in Charlottesville, Virginia, in which he criticized violence “on many sides,” thus equating violent white supremacists with counter-protesters. On August 15, he gave an additional statement in which he insisted that there were “very fine people” amongst the marching white supremacists. On August 22, the president gave a speech in which he bemoaned the firing of a CNN commentator (Jeffrey Lord) for tweeting the Nazi salute “sieg heil.” This pattern of statements has been widely understood, particularly by the white supremacists and neo-Nazis themselves, as an expression of implicit support.

On August 17, the president tweeted: “Study what General Pershing of the United States did to terrorists when caught. There was no more Radical Islamic Terror for 35 years!”<sup>75</sup> The president was almost certainly repeating an Internet urban legend that he had recited during the presidential campaign:

They were having terrorism problems, just like we do. And he caught 50 terrorists who did tremendous damage and killed many people. And he took the 50 terrorists, and he took 50 men and he dipped 50 bullets in pigs’ blood — you heard that, right? He took 50 bullets, and he dipped them in pigs’ blood. And he had his men load his rifles, and he lined up the 50 people, and they shot 49 of those people. And the 50th person, he said: You go back to your people, and

---

<sup>74</sup> Philip Bump, *Trump’s speech encouraging police to be “rough,” annotated*, Wash. Post, July 28, 2017, <http://wapo.st/2tKWxsK>.

<sup>75</sup> <https://twitter.com/realDonaldTrump/status/898254409511129088>.

you tell them what happened. And for 25 years, there wasn't a problem. Okay? Twenty-five years, there wasn't a problem.<sup>76</sup>

While there is no evidence that General Pershing did anything like this anecdote, if done today it would likely constitute a war crime. An imperative to "study" this incident issued by the president, who is defined by the Constitution as "Commander in Chief of the Army and Navy of the United States," cannot be dismissed as merely a suggestion that the history faculty at the military academies should add it to a course syllabus.

Furthermore, the anti-Muslim bigotry evident in the president's suggestion, when combined with the president's campaign promise for a "total and complete shutdown" of Muslims entering the country and his administration's various immigration orders that have been held by multiple federal courts to discriminate against Muslims on the basis of religion, foments religious hatred and undermines the constitutional guarantee of equal protection of the laws.

The pardon of Joseph Arpaio, discussed below in Section III.E, also falls into this category.

## 2. Legal analysis

The president has a constitutional obligation to protect the citizenry against "domestic Violence," to guarantee "equal protection of the laws," and to "take care that the laws be faithfully executed."<sup>77</sup> No previous president has ever tested these principles as severely as Donald Trump; consequently, there is no directly applicable precedent. But taken as a whole, this pattern and course of conduct constitutes an abuse of power and of public trust that justifies a congressional investigation and hearings on whether impeachment is warranted.

### E. Abusing the pardon power

#### 1. Facts

On Friday evening, August 25, President Trump issued a presidential pardon to Joe Arpaio, the former sheriff of Maricopa County, Arizona.

For over 20 years, Arpaio had run the Maricopa County Sheriff's Office with [shocking cruelty](#) and [lawlessness](#), particularly against Latinos. In 2011, the U.S. Department of Justice [found](#) that the Sheriff's Office engaged in systemic unconstitutional policing. Later in 2011, a federal judge in Arizona issued a preliminary injunction barring the Sheriff's Office from enforcing federal immigration law or from detaining persons they believed to be in the country without authorization but against whom they had no state charges. Arpaio refused to stop, even after a 2012 court decision [ruling](#) that the Sheriff's Office had violated the constitutional rights of Latinos by targeting them during raids and traffic stops, and in May 2016, the judge [ruled](#) he was in civil contempt of court for deliberately disobeying the order.

---

<sup>76</sup> Jenna Johnson & Jose A. DelReal, *Trump tells story about killing terrorists with bullets dipped in pigs' blood, though there's no proof of it*, Wash. Post, Feb. 20, 2016, <http://wapo.st/1OkWQMy>.

<sup>77</sup> U.S. Const., art. IV, § 4; amend. XIV, § 1; art. II, § 2.



The judge also referred the question to a second federal judge in Arizona for an investigation of *criminal* contempt. On July 31, 2017, after a five-day trial, the judge [determined](#) that Arpaio had “willfully violated the order by failing to do anything to ensure his subordinates’ compliance and by directing them to continue to detain persons for whom no criminal charges could be filed,” and found him guilty of criminal contempt of court. Sentencing was set for October.

President Trump had not been happy with this course of events. In the spring, Trump had [asked](#) Attorney General Sessions whether the Department of Justice might abandon the criminal contempt case; when rebuffed, Trump decided to let the case go to trial with the plan of pardoning Arpaio if he was convicted.

Two weeks after the verdict, Trump [told](#) Fox News that he was considering a pardon for Arpaio, and that Arpaio “doesn’t deserve to be treated this way” because he “has protected people from crimes and saved lives.” On August 22, just days after the horrifying white supremacist rally in Charlottesville, Virginia, Trump rhetorically [asked](#) a Phoenix campaign audience, “Was Sheriff Joe convicted for doing his job?”

On August 25, he issued a pardon. In a [two-paragraph statement](#), the White House said that “Throughout his time as Sheriff, Arpaio continued his life’s work of protecting the public from the scourges of crime and illegal immigration. Sheriff Joe Arpaio is now eighty-five years old, and after more than fifty years of admirable service to our Nation, he is worthy candidate for a Presidential pardon.” Trump also added in a [tweet](#), “He kept Arizona safe!”

## 2. Legal analysis

The Constitution grants the president “Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.”<sup>78</sup> However, the Founders were concerned that the pardon might be abused. In the Virginia debates over whether to ratify the Constitution, George Mason (who was opposed to the Constitution) criticized the pardon power, [arguing](#) in 1788: “Now, I conceive that the President ought not to have the power of pardoning, because he may frequently pardon crimes which were advised by himself. It may happen, at some future day, that he will establish a monarchy, and destroy the republic.”

James Madison (sometimes called the “Father of the Constitution”) replied: “There is one security in this case to which gentlemen may not have adverted: 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. . . . This is a great security.”

Later, in the 1925 case of *Ex parte Grossman*, Chief Justice (and former president) William Howard Taft opined that if a president abused the pardon power, that “would suggest a resort to impeachment.”<sup>79</sup>

---

<sup>78</sup> U.S. Const., art. II, § 2, cl. 1.

<sup>79</sup> *Ex parte Grossman*, 267 U.S. 87, 121 (1925).

The presidential pardon power is broad. However, there are lines that must not be crossed. The pardon of Arpaio [abuses](#) the pardon power as it “[sends a message to Latinos](#) that they do not deserve equal rights, and [affirms to the judiciary](#) that Trump has no respect for the rule of law.” As one law professor [noted](#) before the pardon issued:

An Arpaio pardon would express presidential contempt for the Constitution. Arpaio didn’t just violate a law passed by Congress. His actions defied the Constitution itself, the bedrock of the entire system of government. For Trump to say that this violation is excusable would threaten the very structure on which his right to pardon is based.

Fundamentally, pardoning Arpaio would also undermine the rule of law itself.

The only way the legal system can operate is if law enforcement officials do what the courts tell them. Judges don’t carry guns or enforce their own orders. That’s the job of law enforcement. . . . When a sheriff ignores the courts, he becomes a law unto himself. The courts’ only available recourse is to sanction the sheriff. If the president blocks the courts from making the sheriff follow the law, then the president is breaking the basic structure of the legal order.<sup>80</sup>

In other words, the pardon has the [effect and purpose](#) of “devalu[ing] constitutional and statutory protections of a vulnerable minority” and “undercut[ting] the power of the judiciary to enforce the law against officials who believe they can violate it with impunity.” Government officials who are contemplating or engaged in abusive practices now know that the federal courts pose little threat to them—the president will pardon them if they get into legal trouble.

**F. Recklessly threatening nuclear war against foreign nations, undermining and subverting the essential diplomatic functions and authority of federal agencies, including the United States Department of State, and engaging in other conduct that grossly and wantonly endangers the peace and security of the United States, its people and people of other nations, by heightening the risk of hostilities involving weapons of mass destruction, with reckless disregard for the risk of death and grievous bodily harm**

1. Facts

Through a series of public statements (including on Twitter), and beginning particularly in the late summer of 2017, President has made increasingly reckless public threats against North Korea, including that “[b]eing nice to Rocket Man hasn’t worked,” that “[m]ilitary solutions” are “locked and loaded,” that he had instructed the Secretary of State he was “wasting his time” negotiating with North Korean leadership because “we’ll do what has to be done,” that the United States might “have no choice but to totally destroy” North Korea, that North Korea “will be met with fire and fury like the world has never seen,” that “only one thing will work,” and that North Korea or its leadership “won’t be around much longer.”

It is not clear whether President Trump understands the ramifications of his actions. After he reportedly told senior advisers that he wanted to increase the country’s nuclear weapons stockpile eightfold, the

---

<sup>80</sup> Noah Feldman, *Arpaio Pardon Would Show Contempt for Constitution*, Bloomberg, Aug. 26, 2017, <https://bloom.bg/2yXFIBH>.

Secretary of State was so alarmed by the president's lack of understanding of the risks of nuclear weapons that he reportedly referred to the president as a "moron."<sup>81</sup> In particular, the existing tension between and lack of accurate understanding of intentions of the leadership of the United States and North Korea means that threats of invasion or bombing could easily lead to a misunderstanding or miscalculation resulting in the use of nuclear weapons by either or both sides. Such a conflagration could quickly spread to South Korea, Japan, China, and/or Russia, the latter two of which also have, and might be drawn into an exchange of nuclear weapons. Worse yet, available public evidence suggests that Trump does not understand, and/or is unwilling or unable to understand, the risks of the use of nuclear weapons, or of how the North Korean leadership could interpret or misinterpret his verbal threats or movement of military forces as military attacks that lead them to respond with conventional or nuclear attacks on the United States or other nations.

## 2. Legal analysis

The exact boundaries of the president's unilateral war powers are a subject of long-standing debate, but those boundaries are not at issue here. Whatever the extent of the president's unilateral war powers, and recognizing his very broad powers of diplomacy, *reckless or wanton* conduct with the potential for millions of deaths abuses those powers.<sup>82</sup>

This is not a situation where a well-informed president, after carefully considering detailed factual information and the counsel of senior advisers, with full information and full decisional capacity, makes a calculated risk of strategic gamesmanship. Here, as impeachment hearings could help further develop, all available evidence indicates that the president's unilateral actions are so ill-informed and in disregard of the risks of deaths on a massive scale as to be reckless or wanton. The protective purposes of impeachment are well suited to address a chief executive who is liable to cause millions of deaths out of pique or failure to understand the consequences of his actions.

---

<sup>81</sup> Carol E. Lee et al., "Tillerson's Fury at Trump Required an Intervention from Pence," NBC News (Oct. 4, 2017), <https://goo.gl/jgHtkv>; MSNBC, "Ruhle: My sources say Tillerson called Trump a 'F-ing moron,'" (Oct. 4, 2017), <https://goo.gl/3ZEvNr>; Graham Lanktree, "Did Rex Tillerson Call Trump a Moron," Newsweek (Oct. 4, 2017), <https://goo.gl/xq6VT2>; Paul Waldman, "Tillerson won't say whether he thinks Trump is a 'moron.' But he's not quitting," Wash. Post (Oct. 4, 2017) <https://goo.gl/ffHZqb>; Eliza Rehlman, "Trump rages at NBC for report that said Tillerson called him a 'moron' after he wanted a dramatic increase in nuclear arsenal," BusinessInsider (Oct. 11, 2017), <https://goo.gl/95uD1r>.

<sup>82</sup> By analogy, military commanders may be charged with "reckless endangerment" for engaging in conduct that is "reckless or wanton," "likely to produce death or grievous bodily harm to another person," and "of a nature to bring discredit upon the armed forces." See Manual for Courts-Martial, United States ¶ 100a, at IV-144 (2016 ed.), <http://bit.ly/2hpWku9>; see, e.g., *United States v. Herrmann*, 76 M.J. 304, 305 (C.A.A.F. 2017) (affirming conviction of reckless endangerment, bad-conduct discharge, and sentence of ten months' confinement for sergeant who failed to properly inspect parachutes), *reconsideration denied*, (C.A.A.F. July 13, 2017). While the president is of course not subject to the Uniform Code of Military Justice, the gravity of his reckless or wanton conduct likely to lead to nuclear war is far greater than that of one sergeant.

**G. Directing or endeavoring to direct law enforcement, including the Department of Justice and the Federal Bureau of Investigation, to investigate and prosecute political adversaries and others, for improper purposes not justified by any lawful function of his office, thereby eroding the rule of law, undermining the independence of law enforcement from politics, and compromising the constitutional right to due process of law**

1. Facts

On the Friday before Election Day 2017, the president issued a remarkable series of public statements, including on Twitter, pressuring the U.S. Department of Justice to investigate Hillary Clinton, the Democratic Party, and other political adversaries.<sup>83</sup>

Earlier, the president had called Army soldier Bowe Bergdahl a “dirty, rotten traitor” while court-martial charges were pending.<sup>84</sup>

2. Analysis

In 1940, Attorney General (later Supreme Court Justice) Robert Jackson [warned](#) that “the greatest danger of abuse of prosecuting power” was “picking the man”—or, in this case, woman—“ and then . . . putting investigators to work, to pin some offense on [her].” A chief executive who uses law enforcement to persecute political enemies is characteristic of a banana republic, not a constitutional republic. That is why Republican and Democratic presidents alike have respected the independence of law enforcement. In the case of military courts-martial, such as Bergdahl’s, this limit is formalized in the prohibition of “command influence.”<sup>85</sup>

Congress set a precedent with the second article of impeachment against President Richard Nixon, which cited, in its fifth specification, his use of federal investigative agencies against political opponents. Following this precedent, the president’s attempts to employ the criminal investigative powers of the federal government against political opponents ““for purposes unrelated to national security, the enforcement of laws, or any other lawful function of his office” are grounds for impeachment, even if they did not succeed in influencing law enforcement.<sup>86</sup>

**IV. 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.

---

<sup>83</sup> Philip Rucker, *Trump pressures Justice Department to investigate ‘Crooked Hillary’*, Wash. Post, Nov. 3, 2017, <http://wapo.st/2ztjNIH>.

<sup>84</sup> Alex Horton, *Trump’s ‘traitor’ rhetoric looms over Bowe Bergdahl’s sentencing*, Wash. Post, Oct. 23, 2017, <http://wapo.st/2yHJgo6>.

<sup>85</sup> 10 U.S.C. § 837(a); <https://www.justsecurity.org/39541/president-trump-bowe-bergdahl-unlawful-command-influence/>.

<sup>86</sup> <http://slate.me/2j6gXw5>.

The special prosecutor's investigation is more limited. First, his charge is limited to the Russia investigation and related issues regarding obstruction of justice. For example, it does not cover violations of the Constitution's Emoluments Clauses. Yet 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.<sup>87</sup>

Moreover, the special prosecutor's investigation will, by nature, be conducted in secret, except as particular indictments are unsealed. Furthermore, since, according to some opinions, a sitting president

---

<sup>87</sup> 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>.

cannot be indicted, it is possible that the special prosecutor's analysis of the president's misconduct may come in the form of a confidential recommendation to the Department of Justice, which could shelve it. By contrast, a congressional impeachment investigation 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 corruption and abuses of power 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 other charges is largely public, and largely undisputed.

Similar reasoning applies to pending litigation involving challenges to the president's violations of the emoluments clauses, and to the pardon of Mr. Arpaio. Given the protective purposes of impeachment, the fact that a judicial remedy may be available to halt or undo specific presidential actions does not obviate the need for Congress to take action to prevent further harm to the rule of law.

#### **V. 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 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
- Lawrence Lessig, Roy L. Furman Professor of Law and Leadership, Harvard Law School
- James Nelson, former Justice of the Montana Supreme Court
- Eva Paterson, President, Equal Justice Society
- Tamara Piety, Professor of Law, University of Tulsa College of Law
- David Post, Contributor, Volokh Conspiracy
- Catherine Ross, Professor of Law, George Washington University Law School
- Steven Shiffrin, Professor of Law, Cornell University Law School
- James Gustave Speth, Senior Fellow, Vermont Law School
- Jennifer Taub, Professor, Vermont Law School

- Zephyr Teachout, Professor, Fordham Law School

*This document will be updated from time to time.*