



# LAW OF U.S. IMPEACHMENT

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The Nixon-era 1974 Staff Report explains the same independent, affirmative, presidential duties:

- (1) to faithfully execute his office.
- (2) to preserve, protect and defend the Constitution.

For duties (1) and (2): Here are words of Presidential Oath, Art. 2, Sec. 1 of the Constitution: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will, to the best of my Ability, preserve, protect and defend the Constitution of the United States."

(3) to faithfully execute the laws. For duty (3) here is wording of the Constitutional "Take Care" Clause," of Art. 2 Sec. 3 of the Constitution; "... he shall take Care that the laws be faithfully executed..."

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Myers v U.S: The First Congressional Debates (which include Madison's legislative victories) are appropriately given "greatest weight."**

This work is dedicated to Sissy Farenthold, a continuing champion for justice and the first woman nominated and voted for in Convention for Vice-President of the United States.

## **U.S. Impeachment is a Constitutional process to remove high officers causing harm.**

The phrase "high Crime and Misdemeanors" involves a high officer causing grave harm to our people, society, country or democratic processes. It is a Congressional (not civil or criminal) trial process. Per Supreme Court ruling by Supreme Court Chief Justice Rehnquist (affirming the words of the Constitution), the House has the sole power to prosecute an impeachment case, and the Senate has the sole power to try the case as judge and jury. CG 19 n.64-65.

The Framers of the Constitution adapted an ancient British phrase they knew well: "high Crimes and Misdemeanors," to describe a changed process requiring neither "crime" nor "misdemeanor" as we know it. Constitutionally, no criminal or civil punishment can result from impeachment; it is the opposite of a "death penalty." Double jeopardy does not apply to impeachment. Impeachment carries the purpose of protecting us, and not to criminally or civilly punish. Impeachment conviction results in automatic removal from office, no fine, and no jailing. The only penalty is loss of office -- and if a separate vote decides, a bar against future federal office-holding. Gov. Edmund Randolph, of the Virginia delegation to the Constitutional Convention, spoke to the need of impeachment's process: "Should no regular punishment be provided, it will be irregularly inflicted by tumults and insurrection." CG 3.

The first impeachment in US history, labeled a "State Trial" since Constitution Framers were still alive, removed from office a federal high officer whose incapacity was causing great harm, and would clearly do so, unchecked, in the future. CG 36-38. The most recent impeachment conviction in US history, in the 21st century, removed a federal high officer whose well-documented, corrupt actions preceded his oath of office and continued while he held and abused his higher position, while attempting to cover-up. CG 82-84. These two impeached and convicted federal judges are among the 8 impeachment convictions to date in US history.

Impeachment is increasing in use. From 1986 to now, we've experienced 6 of the 19 impeachments in US history and 4 of the 8 impeachment convictions in US history. As we live history -- an impeachment action is pending at the time of this 2019 writing -- we can learn much from recent House activity and can also consider Chief Justice Rehnquist's praise for the bi-partisan Watergate work and the earlier judicial and presidential impeachments he lauded as important cases which "surely contributed as much to the maintenance of our tri-partite federal system of government as any case decided by any court." CG 32; 38-42; 45-48. We have records of two 21<sup>st</sup> century very well-handled, modern, impeachment activity, CG 77-84, and ongoing work of a third, potential impeachment as of this writing, Dec. 12, 2019.

The House may plead broadly, using multiple and strategic catch-all/omnibus articles, after factual recitations.

## **No state of mind is required.**

Incapacity is impeachable. Incapacity was a presidential problem most feared by key Constitution Framer James Madison. Harmful "negligence," "fit of passion," and "oppression" (CG 28-30) are some of many examples of impeachable misconduct according to Framers at the Constitutional Convention, who continued to explain impeachment in Ratifying Conventions, in the First Congress and throughout their storied lives. CG at 12-17. The first impeachment conviction in history – Pickering in 1804 (CG at 36-38) -- while Framers were very much alive -- was of a concededly "insane" judge, incapable of forming intent to do any wrong.

## **The key element is harm.**

The focus historically has been on "significance of effect." The much praised Nixon-era bipartisan 1974 U.S. Congress Impeachment Inquiry Staff, Comm. on the Judiciary, House of Representatives, "Constitutional Grounds for Presidential Impeachment," (hereinafter 1974 Staff Report) analyzed ancient history, the Framers' and other scholars' words, and all U.S. impeachment cases as part of bi-partisan efforts in the impeachment inquiry involving Pres. Nixon, which resulted in the President's resignation before formal House vote. They analyzed several impeachment categories, concluding that: "The crucial factor is not the intrinsic quality of behavior but the significance of its effect upon our constitutional system or the functioning of government." 1974 Staff Report at 18-21, 26; CG 21-29.

The December 2019 identically titled document issued by the Majority Staff Report uses the phrase "grave harm" on this crucial factor. "Constitutional Grounds for Presidential Impeachment," Report by the Majority Staff of the House Committee on the Judiciary, 116<sup>th</sup> Cong. Dec. 2019; (hereinafter 2019 Majority House Staff Report) focuses on harm as follows:

"In sum, history teaches that high Crimes and Misdemeanors referred mainly to acts committed by public officials, using their power or privileges, that inflicted grave harm on our political order." 2019 Majority Staff Report at 5.

Cong. Adam Schiff, an experienced prosecutor, explained, "I think we should focus on those issues that provide the greatest threat to the country." And the president is engaged in a course of conduct that threatens the integrity of the next election, threatens our national security." <https://apnews.com/f4ed63e09b3cb2aa2119246194118470>

The 2019 Majority Staff Report (issued December 8, 2019) "Foreword" by Mr. Nadler says the 1974 Staff Report and prior Reports from the time of the Clinton impeachment are "useful points of reference," but questions whether older Reports reflect "best available learning," adding they do not address certain issues related to the Trump Inquiry. The subsequently proposed Trump Articles of Impeachment – proposed by Mr. Nadler, debated in the Judiciary Committee and not yet debated or voted upon by the House) followed the traditional, historical approach of the 1974 Staff Report, upon which the Nixon and Clinton Articles were also based.

## **Modern presidential impeachments allege breach of three, key presidential duties.**

On December 10, 2019, House Judiciary Committee Chairman Nadler submitted a 9 page "Resolution Impeaching Donald J. Trump, President of the United States, for high crimes and misdemeanors." The first paragraph of the First Article (Art. 1 Abuse of Power) is a traditionally worded Article of Impeachment embracing the legal position of the 1974 Staff Report on the Framers' intent and history; the Trump Articles use the same Nixon and Clinton impeachment language adopting the 1974 Staff Report concept of 3 basic duties under both the Presidential Oath and the "Take Care" Clauses,": "In his conduct of the office of President of the United States-- and in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability , preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed-- Donald J. Trump has abused the powers of the Presidency ..." Trump Articles at 2.

The Nixon-era 1974 Staff Report explains the same, independent, affirmative, presidential duties:

**(1) to faithfully execute his office.**

**(2) to preserve, protect and defend the Constitution.**

For duties (1) and (2): Here are words of Presidential Oath, Art. 2, Sec. 1 of the Constitution: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will, to the best of my Ability, preserve, protect and defend the Constitution of the United States."

**(3) to faithfully execute the laws.** For duty (3) here is wording of the Constitutional "Take Care" Clause," of Art. 2 Sec. 3 of the Constitution; "... he shall take Care that the laws be faithfully executed..."

### **Failures to "Execute the Office" are as impeachable as failure to "Execute the Laws" and "Preserve, Protect, and Defend..."**

The 2019 Majority Staff Report provides major examples of impeachable Presidential power abuse: allowing appointees to perpetrate high crimes and misdemeanors; neglecting to superintend their conduct; and abuse of removal power. The Report cites James Madison's consistent explanations that abuse of Presidential power e.g. if he "neglects to superintend," is impeachable, in a footnote reminding that Madison also embraced strong presidential powers.

"Madison adhered to this understanding after the Constitution was ratified. In 1789, he explained to his colleagues in the House that the President would be subject to impeachment for abuse of the removal power—which is held by the President alone—if he suffers [his

appointees] to perpetrate with impunity High crimes or misdemeanors against the United States, or neglects to superintend their conduct, so as to check their excesses.' 1 *Annals of Congress* 387 (1789)." 2019 Majority Staff Report at 45, n. 246.

Future president **James Madison** won this key debate in the First Congress referenced by the Majority Staff Report in note 246, arguing that impeachment was the check for presidential abuse of the power of removal power. The 1974 Staff Report cites Madison at even greater length than does the 2019 Majority Staff Report, explaining key Congressional debate on power of the president to remove subordinate executive officers as "absolutely necessary;" as "it will make him in a peculiar manner responsible for [the] conduct" of executive officers. It would, Madison said, "subject [the President] to impeachment himself, if he suffers them to perpetrate with impunity high crimes or misdemeanors, or neglects to superintend their conduct, so as to check their excesses." 1974 Staff Report at 15, citing 1 *Annals of Cong.* 372-73 (1789). See Appendix A for the 1926 Supreme Court decision cementing the "greatest weight" given these First Congressional debates.

Madison's view was endorsed by **Cong. Abraham Baldwin**, who devoted his life to public service. He served as a Chaplain in the Revolutionary War. He, too, was a Constitution signor who served in the first Congress ... and in every succeeding Congress until he died 22 years later, serving in the U.S. Senate. With Madison, Baldwin served on the Committee which wrote the Bill of Rights.

The 1974 Staff Report cites Baldwin's support for Madison's position:

If, said Baldwin, the President, "in a fit of passion" removed "all the good officers of the Government" and the Senate unable to choose qualified successors, the consequences would be that the President "would be obliged to do the duties himself; or, if he did not, we would impeach him, and turn him out of office, as he had done others." 1974 Staff Report 15.

**Cong. John Vining**, of Delaware, noted in this debate involving the formation of what would become the Department of State: "The President, What are his duties? To see the law faithfully executed; If he does not do this effectively, he is responsible. To Whom? To the people. Have they the means of calling him to account, and punishing him for neglect? They have secured it in the Constitution, by impeachment, to be presented by their immediate representatives; if they fail here, they have another check when the time of election comes round." 1 *Annals of Cong.* 572 (1789); 1974 Staff Report, n.75, at 15

The 2019 Majority House Staff Report provides further historical evidence of general impeachment grounds understood in the colonies, citing Prof. Frank Bowman's superb work, including "neglect of duty" among seven impeachable grounds used through the centuries in the House of Commons. Here's the list:

"From 1376 to 1787, the House of Commons impeached officials on seven general grounds: (1) abuse of power; (2) betrayal of the nation's security and foreign policy; (3) corruption; (4) armed rebellion [a.k.a. treason]; (5) bribery; (6) neglect of duty; and (7) violating Parliament's constitutional prerogatives.<sup>57</sup> To the Framers and their contemporaries learned in the law, the phrase "high Crimes and Misdemeanors" would have called to mind these offenses against the body politic.

"The same understanding prevailed on this side of the Atlantic." 2019 Majority House Staff Report at 12.

The 2019 Majority Staff Report made clear a desire to "state the strongest possible case for impeachment and removal." 2019 Majority Staff Report at 11. The prosecution may undertake to prove more than required, certainly; proving intent and motive can generate cumulative evidence of enduring, harmful behaviors, demonstrating potential for repeated misconduct. In Art. 2(3), President Clinton was alleged to have "corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him." The proposed Nixon Impeachment Articles were packed with allegations of intentional misconduct.

The proposed Trump Impeachment Articles allege "a scheme or course of conduct for corrupt purposes in pursuit of personal political benefits" (Article 1 at 2-3), complaining of detailed acts of misconduct.

Article 1 "Abuse of Power," focuses on a President, "Using the powers of his high office," to solicit interference of seeking a foreign government to benefit his reelection, harm his opponent's prospects, and influence the 2020 election to the President's advantage. The Trump Articles allege "corrupt purposes," corrupt solicitation, "corrupt motives," that the "actions were consistent with President Trump's previous invitations of foreign interference in United States elections" and that he "betrayed the Nation by abusing his high office to enlist a foreign power in corrupting democratic elections." Trump Articles at 2-5

Proposed Trump Article 2, "Obstruction of Congress," proposes to charge the President with: "(1) Directing the White House to defy a lawful subpoena by withholding the production of documents sought therein by the Committees; (2) Directing other Executive Branch agencies and offices to defy lawful subpoenas and withhold the production of documents and records from the Committees in response to which... [named agencies and offices] refused to produce a single document or record. (3) Directing current and former Executive Branch officials not to cooperate with the Committees in response to which nine Administration officials defied subpoenas for testimony..." The proposed Trump Article 2 re-states the continuing course of conduct allegation: "These actions were consistent with President Trump's previous efforts to undermine United States Government investigations into foreign interference in United States elections." Trump Articles at 6-8.



Just as importantly as corrupt intent causing ongoing harm, an incapacitated person can cause ongoing, escalating harm.

### **Incapacity and corruption are impeachable; Madison predicted each as potentially fatal to the republic.**

James Madison worried most about incapacity or corruption. The 2019 Majority Staff Report focuses on oppression at one point, citing a most important Framers, debater, writer, Congressman, Secretary of State and President: James Madison. "Madison, too, stated that impeachment is necessary because the President 'might pervert his administration into a scheme of ... oppression.'" 2019 Majority Staff Report at 17.

Madison covered a longer list of examples of impeachment grounds, including incapacity, negligence, or perfidy, betrayal of trust to foreign powers, or a scheme of speculation or oppression. Madison stated "loss of capacity or corruption was more within the compass of probable events and either of them might be fatal to the Republic." CG 92 n.22.

The 2019 Majority Staff Report begins its analysis with corruption concerns. In its opening paragraph, the Majority Staff Report emphasizes the dangers of presidential corruption. While they emphasize the Oath (and not the "Take Care" Clause requirement that the president shall take care that laws be faithfully executed), the Report speaks to the the President's Constitutional obligation to faithfully execute the laws, and includes betrayal of trust, as well.

"Our President holds the ultimate public trust. He is vested with powers so great that they frightened the Framers of our Constitution; in exchange, he swears an oath to faithfully execute the laws that hold those powers in check. This oath is no formality. The Framers foresaw that a faithless President could destroy their experiment in democracy. As George Mason warned at the Constitutional Convention, held in Philadelphia in 1787, "if we do not provide against corruption, our government will soon be at an end." Mason evoked a well-known historical truth: when corrupt motives take root, they drive an endless thirst for power and contempt for checks and balances. It is then only the smallest of steps toward acts of oppression and assaults on free and fair elections. A President faithful only to himself—who will sell out democracy and national security for his own personal advantage—is a danger to every American. Indeed, he threatens America itself." 2019 Majority Staff Report 1.

The First Congressional Debates (including Madison's successful legislative defense of Congress' significant impeachment power as the check on the massive Presidential removal powers which Madison also successfully defended) are legislative actions appropriately given "greatest weight," per a fascinating case cited in App. A. Congressmen Madison and his colleague Abraham Baldwin's successfully defense of Presidential power to remove Executive

appointments provided Supreme Court Chief Justice William Howard Taft rich material to rule that constitutional decisions of the First Congress “have always been regarded as they should be regarded, as of the greatest weight in the interpretation of that fundamental instrument.” *Myers v US*, 272 US 52, 174-75 (1926); 1974 Staff Report 15.

### **Modern presidential impeachments clearly allege Agency Liability and Direct Responsibility Claims.**

The 1974 and 2019 Staff Report’s reliance on James Madison is appropriate. The words of the Framers focus on Presidential Impeachment responsibility for his Executive Branch officers. (See also CG at 29, n114.) The Clinton impeachment (heavily relying on the template of the Judiciary Committee’s Proposed Nixon Impeachment Articles, on which the full House never voted as he resigned, charged President Nixon with “acting personally and through his subordinates and agents,” (Nixon Art. 2)) charged that President Clinton “engaged personally, and through his subordinates and agents.” (Clinton Art. 2). Mr. Nadler’s proposed Dec. 10, 2019 charges states the President was “... acting both directly and through his agents within and outside the United States government...” (Proposed Trump Art. 1). The 2019 Staff Report references the Nixon impeachment basis example of misuse of the IRS, FBI, Secret Service, CIA and campaign funds for personal political presidential advantage and not for national policy objectives, to injure opponents and aid friends.

The Nixon, Clinton and Trump articles also plead direct responsibility of the President as Head of the Executive Branch for violating his Oath of Office to (1) preserve, protect and defend the Constitution; and to (2) faithfully execute his office and for violating his Constitutionally imposed duty to (3) faithfully execute the laws via the Constitutional “Take Care” Clause,” of Art. 2 Sec. 3 of the Constitution; “... he shall take Care that the laws be faithfully executed,...”

Here’s a broader overview from key Framers, including Presidential impeachment liability (vicariously) for Presidential agents as well as liability (directly) for negligence in selection or inattention involving his direct responsibility under his oath to faithfully execute his high office:

**James Wilson.** A signer of both Declaration and Constitution, a Supreme Court Justice, and long-time Professor teaching and writing on Constitutional issues, James Wilson is also known for his work at the Pennsylvania Ratifying convention explaining the advantage of a single Chief executive and the importance of impeachment of the President: CG14; 1974 Staff Report 15. Wilson reassured the Pennsylvania State Ratifying Convention, serving as delegate and as key force in obtaining ratification, that the President is liable “by impeachment;” “... he cannot act improperly, and hide either his negligence or inattention; he cannot roll upon any other person the weight of his criminality; no appointment can take place without his nomination; and he is responsible for every nomination he makes ... far from being

above the laws, he is amenable to them in his private character as a citizen, and in his public character by **impeachment.**” Emphasis in original, 2 Elliot 480, CG 13-14, n. 47.

**James Madison and Abraham Baldwin** emphasized Congress’ need for use of impeachment power to remove a president to check excesses or neglecting to superintend/check excesses; the President is **responsible for his branch’s officers**, CG29, n114. A presidential **“Fit of Passion”** could suffice, if the results were sufficiently dire. See Appendix A regarding key debate in the First Congress over broad scope of President’s removal powers, checked for abuse by impeachment. CG29. Item 5. Madison and Baldwin won this lengthy debate, over Elbridge Gerry and others, concerning the great scope of Presidential power in removal; the remedy for presidential abuse of such power, they explained, was impeachment.

**James Madison:** Madison served in many capacities, including President, Secretary of State, and as a key debater in Constitutional matters at the Conventions and as Congressman. He was the last surviving signor of the US Constitution. Madison explained numerous grounds at the Constitutional Convention on impeachment, and noted that **Presidential loss of capacity or corruption was “more within the compass of probable events, and either of them might be fatal to the Republic.”** CG92, n22.

### **The Proposed Trump Impeachment Articles focus on a hallmark of U.S. impeachability -- a classic impeachment ground identified as exceeding constitutional bounds of the Office in derogation of another branch’s power.**

The 1974 Staff Report viewed exceeding constitutional bounds of the powers of the office in derogation of the powers of another branch as historical impeachment grounds. CG at 28, n.102.

The December 10, 2019 Trump Impeachment Art. 2 focuses on Obstruction of Congress, and encroachment on the Constitutional “sole power” of Congress to investigate in impeachment.

**“In the history of the Republic, no President has ever ordered the complete defiance of an impeachment inquiry or sought to obstruct and impede so comprehensively the ability of the House of Representatives to investigate high Crimes and Misdemeanors”. This abuse of office served to cover up the President’s own repeated misconduct and to seize and control the power of impeachment and thus to nullify a vital constitutional safeguard vested solely in the House of Representatives.”**

The proposed Art. 2 against President Trump charges **“Obstruction of Congress;” the President “has directed the unprecedented, categorical, and indiscriminate defiance of subpoenas issued by the House of Representatives pursuant to its Power of Impeachment,”** noting specifically the nature of the impeachment inquiry focused on President Trump’s **“corrupt solicitation”** of a foreign government to interfere in the 2020 United States Presidential election.

The House specifies this is an impeachment inquiry in the sole power of Congress: "As part of this impeachment inquiry, the Committees undertaking the investigation served subpoenas seeking documents and testimony deemed vital to the inquiry from various Executive Branch agencies and offices, and current and former officials."

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

Avoiding the more typical allegations based on loss of confidence or undermining integrity of office, the Trump Impeachment focuses on specifies damage to national security and processes, focusing on such institutions as our elections, pleading the President "compromised the national security of the United States and undermined the integrity of the United States democratic process."

**Can a single act be impeachable? Yes, per Madison, giving an example of great injury to our system of government. However, modern impeachment strives to plead ongoing, significant harms, via patterns.**

James Madison gave the example of pardon abuse, when asked about potential Presidential self-pardon as an act which would justify impeachment. (CG 27). The 2019 House Majority Staff Report discusses successive pardon abuse encroaching the Constitutional Judicial role, noting abuse of presidential pardon to obstruct justice, "sheltering" persons, and the example of Richard Nixon in his pardon-dangling, meddling with investigations and immunity decisions, and conveying secret information to suspects.

Madison in answer to the query of self-pardon explained at the Virginia Ratifying Convention: "[I]f 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..." (CG 27 n97). This scenario of a single, impeachable act speaks to the seriousness of the harm to our democratic process; a President's exercise of a tyrant's right to judge his own case would destroy a basic tenet of our system of government and rule of law.

The first impeachment conviction in US history -- of an incapacitated Judge -- teaches the Framers' purpose to protect the country is paramount. A person with diminished capacity can cause ongoing harms just as -- or more -- destructive as the intended chaos, coverup and other harms from a person with corrupt intent. As noted earlier, Madison isolated presidential incapacity and corruption as each condition was potentially fatal to the republic. Madison recognized incapacity won't solve itself.

**Modern impeachment strives to prove harmful schemes, courses of conduct, plans, persistence, or patterns consistent with prior harmful efforts which tend to establish significance of the harm.**

Historically, in cases involving alleged witness interference or failure to honor subpoenas, the House has plead the words “preventing” and “impeding” Justice or Congress with “obstruction;” with very common pleas of reducing confidence in integrity and impartiality (in Presidential and non-Presidential impeachments). Both Clinton impeachment Articles charged that the the President had “undermined the integrity of his office,” and “has brought disrepute on the Presidency.” The Trump Articles do not charge a generalized concept of loss of confidence, but rather specify the President compromised national security and “undermined integrity of the United States democratic process.” The Trump prosecution adopts a more laser-like approach e.g., Presidential violation of the “sole power” of the House to impeach,

The impeachment Articles proposed against President Nixon charged he had “personally through his subordinates and agents, in a course of conduct or plan designed to delay, impede, and obstruct the investigation of such unlawful entry; to cover-up conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.”

President Nixon, in willfully disobeying subpoenas by the House, was charged with “substituting his judgment as to what materials were necessary for the [impeachment] inquiry, interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, thereby assuming to himself functions and judgments as necessary to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives.”

The House charged that President Clinton prevented, obstructed, and impeded administration of justice; and in a related concept, used judicial impeachment convictions to charge “Betrayal of Trust” and reducing confidence in integrity and impartiality, concluding that dishonesty in the Presidency can be just as devastating as in the judiciary CG n283.

The proposed Nixon impeachment Articles charged: “In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice, and to the manifest injury of the people of the United States.”

The Clinton Charge summaries were nearly identical to Nixon’s in conclusion, with variance only between “In doing this...” (Art. 1 re untruthfulness, including perjury) and “In all of this...” (Art. 2 including preventing, obstruction and impeding justice, eg efforts to conceal subpoenaed evidence) William Jefferson Clinton has undermined the integrity of his office, has brought disrepute upon the presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice to the manifest injury of the people of the United States.

The interior of the Trump charges takes pains to charge ongoing harm:

Trump Article 1 claims harms including compromise, ignoring and injuring of national security, undermining of the U.S. democratic process, and betraying the nation to enlist a foreign power in corrupting Democratic elections at pages 3-5. The first Trump Article pleads ongoing threats at p. 4:

“(3) Faced with the public revelation of his actions, President Trump ultimately released the military and security assistance to the Government of Ukraine, but has persisted in openly and corruptly urging and soliciting Ukraine to undertake investigations for his personal political benefit.

“These actions were consistent with President Trump’s previous invitations of foreign interference in United States elections.”

Article 2 specifies Obstruction of Congress (whereas the Nixon proposed Impeachment charge combined Obstruction of Congress and Justice) and subverting the Constitution, encroaching on the “sole” powers of the House to impeach, and then again takes pains to demonstrate ongoing harms and patterns of harmful behaviors

Trump Article 2 p.7: “These actions [directing non-cooperation and defying subpoenas] were consistent with President Trump’s previous efforts to undermine United States Government investigations into foreign interference in United States elections.”

Trump Article 2 p.8: “In the history of the Republic, no President has ever ordered the complete defiance of an impeachment inquiry or sought to obstruct and impede so comprehensively the ability of the House of Representatives to investigate high Crimes and Misdemeanors”. This abuse of office served to cover up the President’s own repeated misconduct and to seize and control the power of impeachment and thus to nullify a vital constitutional safeguard vested solely in the House of Representatives.”

The proposed Trump Impeachment Articles thus demonstrate ongoing acts and scope of harm, as did the Founders in the Declaration of Independence, as did the 1974 Staff Report noting the importance of proof of “the substantial effect” of the behavior upon our constitutional system or the functioning of government. (CG 28-29 n.103)

The 2019 Majority Staff Report at 29n. 155 cites modern scholarship and the Nixon impeachment debates on the importance of a pattern of repeated misconduct: noting “one scholar remarks that it is the ‘repetition, pattern, [and] coherence’ of official misconduct that ‘tend to establish the requisite degree of seriousness warranting the removal of a president from office.’ ” with this citation:

“John Labovitz, *Presidential Impeachment* 129-130 (1978); see also, e.g., McGinnis, *Impeachment*, at 659 ([I]t has been well understood that the official’s course of conduct as a whole should be the subject of judgment.); *Debate On Articles Of Impeachment: Hearing before the H. Comm. On the Judiciary, 93rd Cong. (1974)* (hereinafter *Debate on Nixon Articles of Impeachment (1974)*) (addressing the issue repeatedly from July 24, 1974 to July 30, 1974).”

2019 Majority Staff Report at 29 n.155.

The larger Labovitz quote teaches the importance of course of conduct, in terms of how to prove the case: what evidence of factors would **“tend to establish” proof** of cumulative effect?

“The concept of an impeachable offense guts an impeachment case of the very factors — repetition, pattern, coherence — that tend to establish the requisite degree of seriousness warranting the removal of a president from office. . . .

“The most pertinent precedent in this nation’s history for framing a case for the removal of a chief executive may well be the earliest — the Declaration of Independence. In expressing reasons for throwing off the government of George III, the Continental Congress did not claim that there had been a single offense justifying revolution. Instead, it pointed to a course of conduct; it `pursu[ed] invariably the same Object’ and evinced a common design; it `all [had] in direct object the establishment of absolute Tyranny over these States.’ It was this pattern of wrongdoing taken together, not each specification considered alone, that showed the unfitness of George III to be the ruler of the American people. . . . [T]he unfitness of a president to continue in office is to be judged in much the same way: with reference to totality of his conduct and the common patterns that emerge, not in terms of whether this or that act of wrongdoing, viewed in isolation, is an impeachable offense,”

Doyle, Charles, “*Impeachment Grounds: A Collection of Selected Materials*,” Congressional Research Service (updated), 1998, citing LABOVITZ, *PRESIDENTIAL IMPEACHMENT*, 129-31 (1978).

### **Some impeachments seek disqualification from future office-holding.**

As with certain prior impeachments, including the prayer against Pres. Clinton, the Trump allegations propose disqualification from future federal office-holding, once again focusing on harm and risk of harm: “he will remain a threat to the Constitution if allowed to remain in office, and has acted in a manner grossly incompatible with self-governance and the rule of law.”

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

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

**May the House "Serially" Impeach?** Yes.

Examples. The Dec. 2019 Majority Report includes detailed analysis of both "Treason" and "Bribery." A formal charge undertaking to prove Presidential "Treason" or "Bribery" would certainly undertake new obligations.

While the 2019 Report covers thwarting Congress as impeachable, it notes that the Clinton Impeachment also involved obstruction of justice charges, albeit without official acts. "There was virtually no disagreement in those proceedings over whether obstructing justice can be impeachable; scholars, lawyers, and legislators on all sides of the dispute recognized that it can be." 2019 House Majority Staff Report at 20, n. 104.

**May the House delay presentment?** Yes.

**SENATE:**

1. Defense Motions for rulings: eg special exceptions, evidence limits, MSJ;
2. Tactical, fact-specific expansion of defenses;
3. Political machinations attempting to form a majority to affect procedures, eg ballot secrecy.



## Appendix A

### **Myers v U.S: The First Congressional Debates and Madison's legislative victories are appropriately given "greatest weight."**

Congressmen Madison and Baldwin's successfully defense of Presidential power to remove Executive appointments provided S. Ct. Chief Justice William Howard Taft the material to rule that constitutional decisions of the First Congress "have always been regarded as they should be regarded, as of the greatest weight in the interpretation of that fundamental instrument." Myers v US, 272 US 52, 174-75 (1926); 1974 Staff Report 15.

Taft, after service as President, achieved his dream to serve as Chief Justice of the Supreme Court. He labored for a year on a decision involving an issue key to President Andrew Johnson's impeachment and to Congressman Madison: to what extent could Congress require Senate consent before Presidential exercise of Constitutional removal powers? Myers enshrines the Framers' Congressional debates, and provides an odd convergence of Presidents John Adams, James Madison, Andrew Johnson and William Howard Taft. See Rehnquist, Grand Inquests, 262-68; CG n219. Here's the basics.

Chief Justice Taft ruled the President's constitutional power of removal could not be infringed by an 1872 Act with the same requirement as in the "Tenure of Office Act," which Pres. Andrew Johnson violated. Taft held that, in order to "Take Care that the laws be faithfully executed," a President must be able to remove subordinate officials who – in the President's view — aren't properly performing their job. Taft's decision in Myers relies heavily -- and at great length – upon that now-famous, First Congress debate to create the Office of Secretary of State to head a Department of Foreign Affairs. Future President Madison introduced the Bill, and his arguments on presidential power to remove -- with protection from Presidential abuse via impeachment -- carried the day. The Madison bill passed the House. The Senate vote on the key issue striking the Madison-authored "removable by the president" provision tied 10-10. (At that time, the Senate deliberated in secret, with no written report). Vice President John Adams broke the tie, granting presidential removal power.

Rehnquist explained that Chief Justice Taft emphasized the "very full" debate in the First Congress (Grand Inquests 265-68) because so many members of that First Congress had been delegates to the Constitutional Convention. Both Taft's opinion and the 1974 Staff Report make clear that Elbridge Gerry, who unsuccessfully opposed Madison's bill in that First Congress, refused to sign the Constitution. Interestingly, Congressman Gerry disagreed, as well, with Madison's explanations on impeachment power; Gerry ended on the losing side of that same debate. 1974 Staff Report at15, n74.

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