

# Court ruling could throw impeachment timeline into disarray



Charles Kupperman. (Photo: Embassy of Poland)

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WASHINGTON — Even as House Democrats on Thursday ratified an impeachment resolution against President Trump, a federal judge has potentially slowed the brisk pace of the inquiry by declining to rule on whether a key witness needed to testify before the House of Representatives.

Instead, he gave all relevant parties several more weeks to prepare their arguments. That raised the prospect that public hearings on the president's conduct could drag on into the Christmas holiday season, a scenario many in the Democratic leadership had once hoped to avoid.

House Speaker Nancy Pelosi has sought to make impeachment a quick, tightly controlled affair. On Friday, she told Bloomberg News that she expects public hearings to begin this month, though she added that there is still no fixed timetable and that the case against the president "has to be ironclad."

The decision in question came in the chambers of Richard Leon, a judge in D.C. federal district court, in a case known as Kupperman v. House of Representatives. That case will now be decided, at the earliest, after Dec. 10 when the judge has scheduled oral arguments, potentially depriving Democrats of the opportunity to have key witnesses testify in public before the holiday season begins — and impeachment fatigue potentially sets in.

"People are nervous about not going public [with hearings] before Thanksgiving," said one member of Congress directly involved in the impeachment process, who asked not to be identified discussing sensitive deliberations.

The thinking, according to that legislator, is that Democrats need to maintain momentum by launching public hearings detailing their case for impeaching

Trump in the weeks running up to Thanksgiving. That would give American voters something to discuss — and presumably debate — over the Thanksgiving holiday, helping to build public support for impeachment.

Leon's lack of a ruling on Thursday afternoon will at least partially complicate such efforts.

The plaintiff, Charles Kupperman, was until recently a top official on the National Security Council in the Trump administration. He served as a deputy to John Bolton, the former national security adviser. After Bolton was fired by Trump, Kupperman briefly served as the acting national security adviser, and then left the administration.



Former national security adviser John Bolton. (Photo by Sergei Gapon/AFP via Getty Images)

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Kupperman is a potentially critical witness in the impeachment inquiry because he listened in on the July 25 call between Trump and new Ukrainian President Volodymyr Zelensky. During that call, Trump is alleged to have pressured Zelensky to investigate Hunter Biden, the son of former vice president and current presidential contender Joe Biden. Hunter Biden sat on the board of Burisma, a Ukrainian energy company that has allegedly engaged in corrupt practices.

Bolton is an even more important witness. A hard-core conservative hawk, Bolton — according to private testimony from others — was alarmed about the demands being put on the Ukrainians by Gordon Sondland, U.S. ambassador to the European Union, and the president's personal lawyer Rudy Giuliani, at one point comparing their activities to "a drug deal." Bolton has been asked to testify behind closed doors next Thursday but is considered unlikely to show up given the lack of a ruling on Kupperman's case.

The House of Representatives subpoenaed Kupperman, but White House legal counsel Pat Cipollone instructed him not to testify before the impeachment panel, citing "constitutional immunity."

Kupperman's lawsuit in effect asks Judge Leon to decide which side is right — and whether Kupperman does need to testify. The original filing says that Kupperman lacks the constitutional authority to make that decision for himself. Unless a judge decides for him, the complaint reads, Kupperman will “effectively be forced to adjudicate the Constitutional dispute himself, and if he judges wrongly, he will inflict grave Constitutional injury on either the House or the President.”

President Trump is also named as a defendant, as are several House Democratic leaders, including Pelosi, House Intelligence Committee Chairman Adam Schiff, who is leading the impeachment inquiry, and several other committee chairs.

Kupperman and Bolton are represented by the same attorney, Charles Cooper, a battle-hardened veteran of Washington courtrooms. Bolton is not party to Kupperman's suit, but he is in a situation similar to that of his former deputy. That means that the ruling in *Kupperman v. House* would almost certainly have a direct bearing on whether Bolton testifies.

Cooper declined Yahoo News' requests for comment. His argument before Leon on Thursday afternoon was that Kupperman “had no dog in the merit fight,” as he put it.

It was up to those attorneys to argue over whether Kupperman could be compelled to testify, Cooper suggested. And it was up to Leon to ultimately tell Kupperman what to do.

Cooper added that Kupperman was “indifferent to the outcome” and only wanted to follow the Constitution.

For his part, House lawyer Todd Tatelman argued that Kupperman's claim was a “fundamental miscarriage of justice” and that the lawsuit was nothing more than an elaborate stall maneuver.

Tatelman did not come in for nearly as rough treatment as Elizabeth Shapiro, an attorney in the civil division of the Department of Justice. Informed by Leon that all parties had to submit their written briefs by Nov. 27, she pointed out that Thanksgiving was the following day.

That plea found little traction with Leon, who informed her that “vacations and other distractions” were “second place” to the business of adjudicating matters of

constitutional propriety.

“When it’s a matter of this consequence to this country, you roll your sleeves up and get the job done,” Leon said.

One Democratic attorney familiar with the impeachment process thought that Cooper’s arguments were disingenuous and that his desire to parse notions of immunity was little more than a means of delay. Moreover, he noted that Department of Justice lawyers, like Cooper, seemed suspiciously comfortable with letting the proceedings drag into December.

But as David Rivkin, a former White House counsel and Department of Justice official who served in the administrations of Ronald Reagan and George H.W. Bush, explained to Yahoo News, no timeline imposed by Leon could possibly accommodate the compressed schedule on which House Democrats appear to be operating.

“The House Democrat-driven impeachment schedule is so rushed that it inherently rules out any opportunities for a meaningful definitive judicial review of its subpoena requests,” said Rivkin, who laid out his case against impeachment in a widely shared Wall Street Journal opinion article co-authored with Elizabeth Price Foley. “This is consistent with the procedural posture of this impeachment.”

Rivkin branded the entire impeachment inquiry “a Kabuki theater exercise,” in which constitutional questions — such as the one about Kupperman’s immunity — were subservient to Democrats’ efforts to depict Trump and his allies as abusive of their powers, secretive and obstructionist.

Impeachment could, of course, proceed without Bolton or Kupperman. But the prospect of having Bolton, in particular, testify against the president who fired him is a tantalizing prospect for Democrats, even if it appears unlikely.

Paul Rosenzweig, a veteran of the Clinton impeachment and now a senior fellow at the R Street Institute, a Washington think tank, said that “Trump is getting his acquittals piecemeal through delay.”

He quoted the attorney Edward Bennett Williams, founder of Williams & Connolly, the prestigious Washington firm: “A continuance is a temporary acquittal.”

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