

Impeachment Trial Brief and Response

The US House of Representatives and the President have submitted trial briefs to the US Senate. The House brief, 100-plus pages in length, outlines efforts by US President Donald Trump's personal attorney and others, including withholding aid and meetings, to convince Ukrainian leaders to announce an investigation into a Democratic candidate before the 2020 election. "President Trump's solicitation of foreign interference in our elections to secure his own political success is precisely why the Framers of our Constitution provided Congress with the power to impeach a corrupt President and remove him from office," the House brief argues. It adds, "his conduct is all the more alarming because it endangered U.S. national security, jeopardized our alliances, and undermined our efforts to promote the rule of law globally." Complicating the investigation by House committees was a White House block, not entirely successful, on witnesses or documents. The six-page response defends the president and insists no crime was committed and describes the impeachment proceedings as "a dangerous attack on the American people themselves and their fundamental right to vote." The Senate trial will ultimately determine acceptable conduct for a president and the delicate balance of powers described in the Constitution. Update: The 170-page trial memorandum from the president, including appendices, was released January 20. - YaleGlobal

US Senate trial: The House targets Trump for seeking foreign help to influence the 2020 election; Trump insists the charges are an attack on voters



Read the impeachment trial memorandum of the US House of Representatives.

Read the response from President Trump, provided by NPR.

Read the trial memorandum of the president, provided by CNN.

Schedule for Briefs

Jan 18 House trial brief; president's response to charges **Jan 20** Noon House response; president's trial brief **Jan 21** Noon House rebuttal; trial

US House of Representatives Impeachment Trial Memorandum

"If the President could both avoid accountability under the criminal laws and preclude an effective impeachment investigation, he would truly be above the law. But that is what President Trump has attempted to do, and why President Trump's conduct is the Framers' worst nightmare."

"“The Constitution entrusts Congress with the exclusive power to impeach the President and to convict and remove him from office.”"

Use of Official Power to Pressure Ukraine to Aid Reelection

"President Trump illegally ordered the Office of Management and Budget to withhold \$391 million in the taxpayer-funded military and other security assistance to Ukraine. (110)President Trump ultimately released the military

assistance, but only after the press publicly reported the hold, after the President learned that a whistleblower within the Intelligence Community had filed a complaint about his misconduct, and after the House publicly announced an investigation of the President's scheme."

"To this day, President Trump maintains leverage over President Zelensky. A White House meeting has still not taken place, (128) and President Trump continues publicly to urge Ukraine to conduct these investigations."

"President Trump abused the power of the Presidency by pressuring a foreign government to interfere in an American election on his behalf. (88) He solicited this foreign interference to advance his reelection prospects at the expense of America's national security and the security of Ukraine, a vulnerable American ally at war with Russia, an American adversary. (89)"

"President Trump sought to pressure President Zelensky publicly to announce an investigation into a conspiracy theory that Ukraine had colluded with the Democratic National Committee to interfere in the 2016 U.S. Presidential election in order to help the campaign of Hillary Clinton against then-candidate Donald Trump.¹⁰¹ This theory was not only pure fiction but malign Russian propaganda.¹⁰² In the words of one of President Trump's own top National Security Council officials, President Trump's theory of Ukrainian election interference is 'a fictional narrative that is being perpetrated and propagated by the Russian security services themselves' to deflect from Russia's culpability and to drive a wedge between the United States and Ukraine. (17)"

Obstruction

"By categorically obstructing the House's impeachment inquiry, President Trump claimed the House's sole impeachment power for himself and sought to shield his misconduct from Congress and the American people....

"In response to President Trump's directives, OMB, the Department of State, Department of Energy, and Department of Defense refused to produce any documents to the House, even though witness testimony has revealed that additional highly relevant records exist. (205) To date, the House Committees have not received a single document or record from these departments and agencies pursuant to subpoenas, which remain in effect. President Trump personally demanded that his top aides refuse to testify in response to subpoenas,

and nine Administration officials followed his directive and continue to defy subpoenas for testimony.”

Interference

“Overwhelming evidence demonstrates that the announcement of investigations on which President Trump conditioned the official acts had no legitimate policy rationale, and instead were corruptly intended to assist his 2020 reelection campaign.

“First, although there was no basis for the two conspiracy theories that President Trump advanced (131), public announcements that these theories were being investigated would be of immense political value to him – and him alone. The public announcement of an investigation of former Vice President Biden would yield enormous political benefits for President Trump, who viewed the former Vice President as a serious political rival in the 2020 U.S. Presidential election.... President Trump would have grounds to claim – falsely – that he was elected President in 2016 not because he was the beneficiary of Russian election interference but in spite of Ukrainian election interference aimed at helping his opponent....

“Second, agents and associates of President Trump who helped carry out his agenda in Ukraine confirmed that his efforts to pressure President Zelensky into announcing the desired investigations were intended for his personal political benefit rather than for a legitimate policy purpose....

“Third, the involvement of President Trump’s personal attorney, Mr. Giuliani – who has professional obligations to the President but not the Nation – underscores that President Trump sought the investigations for personal and political reasons rather than legitimate foreign policy reasons....

“Fourth, President Trump’s pursuit of the sham investigations marked a dramatic deviation from longstanding bipartisan American foreign policy goals in Ukraine....

“Fifth, American and Ukrainian officials alike saw President Trump’s scheme for what it was: improper and political....

Finally, there is no credible alternative explanation for President Trump’s

conduct.”

National Security Threat

“... his conduct is all the more alarming because it endangered U.S. national security, jeopardized our alliances, and undermined our efforts to promote the rule of law globally....”

“By refusing to hold this meeting, President Trump denied Ukraine a showing of strength that could deter further Russian aggression and help Ukraine negotiate a favorable end to its war with Russia.¹⁷⁹ The withheld meeting also undercuts President Zelensky’s domestic standing, diminishing his ability to advance his ambitious anti-corruption reforms. (180)

“Equally troubling is that President Trump’s scheme sent a clear message to our allies that the United States may capriciously withhold critical assistance for our President’s personal benefit, causing our allies to constantly “question the extent to which they can count on us.” (181)

Excuses

“President Trump’s refusal to provide information is not a principled assertion of executive privilege, but rather is a transparent attempt to cover-up wrongdoing and amass power that the Constitution does not give him, including the power to decide whether and when Congress can hold him accountable....

The White House cannot justify a blanket refusal to respond to Congressional subpoenas based on an executive or other privilege it never in fact invoked. Regardless, executive privilege is inapplicable here, both because it may not be used to conceal wrongdoing – particularly in an impeachment inquiry – and because the President and his agents have already diminished any confidentiality interests by speaking at length about these events in every forum except Congress.”

Why Not Let the Courts Decide?

“President Trump is telling one story to Congress while spinning a different tale in the courts. He is saying to Congress that the Committees should have sued the Executive Branch in court to enforce their subpoenas. But he has argued to that court that Congressional Committees cannot sue the Executive Branch to enforce

their subpoenas. (228) President Trump cannot tell Congress that it must pursue him in court, while simultaneously telling the courts that they are powerless to enforce Congressional subpoenas.”

Failure to Pressure Ukraine and a Warning

“Although his sweeping cover-up effort ultimately failed – seventeen public officials courageously upheld their duty testified, and provided documentary evidence of the President’s wrongdoing (35) – his obstruction will do long-lasting and potentially irreparable damage to our constitutional system of divided powers if it goes unchecked.

“...If it does not, future Presidents will feel empowered to resist any investigation into their own wrongdoing, effectively nullifying Congress’s power to exercise the Constitution’s most important safeguard against Presidential misconduct. That outcome would not only embolden this President to continue seeking foreign interference in our elections but would telegraph to future Presidents that they are free to engage in serious misconduct without accountability or repercussions.”

” History will judge each Senator’s willingness to rise above partisan differences, view the facts honestly, and defend the Constitution.”

“...Failure to remove President Trump would signal that a President’s personal interests may take precedence over those of the Nation, alarming our allies and emboldening our adversaries.

“An acquittal would also provide license to President Trump and his successors to use taxpayer dollars for personal political ends. Foreign aid is not the only vulnerable source of funding; Presidents could also hold hostage federal funds earmarked for States – such as money for natural disasters, highways, and healthcare – unless and until State officials perform personal political favors. Any Congressional appropriation would be an opportunity for a President to solicit a favor for his personal political purposes – or for others to seek to curry favor with him. Such an outcome would be entirely incompatible with our constitutional system of self-government.

“President Trump has betrayed the American people and the ideals on which the Nation was founded. Unless he is removed from office, he will continue to

endanger our national security, jeopardize the integrity of our elections, and undermine our core constitutional principles.”



President Trump’s Response

“The Articles of Impeachment are unconstitutionally invalid on their face. They fail to allege any crime or violation of law whatsoever.... The Articles themselves – and the rigged process that brought them here – are a transparently political act by House Democrats.”

First Article - Abuse of Power

“The President’s actions on the July 25 telephone call with President Volodymyr Zelensky of Ukraine... and in all surrounding and related events, were constitutional, perfectly legal, completely appropriate, and taken in furtherance of our national interest...”

“Despite the House Democrats having run an entirely illegitimate and one-sided process, several simple facts were established that prove the President did nothing wrong:

“First, the transcripts of both the April 21 call and the July 25 call make absolutely clear that the President did nothing wrong.

“Second, President Zelenskyy and other Ukrainian officials have repeatedly

confirmed that we call was “good” and “normal,” that there was no quid pro quo, and that no one pressured them on anything.

“Third, the two individuals who have stated for the record [Ambassador to the European Union Gordon Sondland and Senator Ron Johnson] that they spoke to the President on the subject actually exonerate him...

“Fourth, the bilateral presidential meeting took place...and the security assistant was sent....

Second Article - Obstruction

... the notion that President Trump obstructed Congress is absurd. President Trump acted with extraordinary and unprecedented transparency

Seizing Power

The Articles of Impeachment violate the Constitution. They are defective in their entirety.... In the first Article, the House attempts to seize the President’s power under Article II of the Constitution to determine foreign policy. In the second Article, the House attempts to control and penalize the assertion of the Executive Branch’s constitutional privileges, while simultaneously seeking to destroy the Framers’ system of checks and balances....

“In the end, this entire process is nothing more than a dangerous attack on the American people themselves and their fundamental right to vote.”

Trial Memorandum of the President

“The Articles of Impeachment now before the Senate are an affront to the Constitution and to our democratic institutions. The Articles themselves—and the rigged process that brought them here—are a brazenly political act by House Democrats that must be rejected. They debase the grave power of impeachment and disdain the solemn responsibility that power entails.”

“By limiting impeachment to cases of “Treason, Bribery, or other high Crimes and Misdemeanors,”¹ the Framers restricted impeachment to specific offenses against “already known and established law.” (2) That was a deliberate choice designed to constrain the impeachment power.... House Democrats’ concocted theory that the President can be impeached for taking permissible actions if he

does them for what they believe to be the wrong reasons would also expand the impeachment power beyond constitutional bounds. It would allow a hostile House to attack almost any presidential action by challenging a President's subjective motives."

Flawed Process

"The process that resulted in these Articles of Impeachment was flawed from the start. Since the Founding of the Republic, the House has never launched an impeachment inquiry against a President without a vote of the full House authorizing it....

"The proceedings began with secret hearings in a basement bunker before three committees under the direction of Chairman Schiff of the House Permanent Select Committee on Intelligence (HPSCI). The President was denied any right to participate at all. He was denied the right to have counsel present, to cross-examine witnesses, to call witnesses, and to see and present evidence....

"House Democrats' impeachment crusade started the day the President took office....

"The Senate may not rely on a corrupted factual record derived from constitutionally deficient proceedings to support a conviction of the President of the United States. Nor is it the Senate's role to attempt to remedy the House's errors by providing a "do-over" to develop the record anew in the Senate."

No Obstruction

"President Trump Properly Asserted Executive Branch Prerogatives. The President directed three of his most senior advisers not to comply with subpoenas seeking their testimony because they are immune from compelled testimony before Congress....

"Defending the Separation of Powers Is Not an Impeachable Offense. In a government of laws, asserting legal defenses cannot be treated as obstruction; it is a fundamental right."

No Evidence on Article I

"....In an unprecedented display of transparency, the President released the

transcript of his July 25 call with President Volodymyr Zelenskyy, and it shows that the President did nothing wrong.... President Zelenskyy, his Foreign Minister, and other Ukrainian officials have repeatedly said there was no quid pro quo and no pressure placed on them by anyone.... The military aid flowed on September 11, 2019, and a presidential meeting was first scheduled for September 1 and then took place on September 25, 2019, all without the Ukrainian government having done anything about investigations.... The undisputed reality is that U.S. support for Ukraine against Russia has increased under President Trump. President Trump provided Ukraine Javelin anti-tank missiles to use against Russia after President Obama refused to provide that assistance.”

No Obstruction

“The President directed three of his most senior advisers not to comply with subpoenas seeking their testimony because they are immune from compelled testimony before Congress.”

Ukraine and 2016 Election Interference

“House Democrats’ assertion that asking historical questions about the last election somehow equates to securing “improper interference” in the next election is nonsensical. Asking about the past cannot be twisted into interference in a future election. Even if facts uncovered about conduct in the last election were to have some impact on the next election, uncovering historical facts is not improper interference. Nor can House Democrats self-servingly equate asking any questions about Ukraine with advocating that Ukraine, instead of Russia, interfered in 2016. (55) Actors in more than one country can interfere in an election at the same time, in different ways and for different purposes.”

Precedent

“House Democrats’ standard would open virtually every presidential decision to partisan attack based on questioning a President’s motives.”

Personal Political Gain

“House Democrats’ theory raises particular dangers because it makes “personal political benefit” one of the “forbidden reasons” for taking government action.

(224) Under that standard, a President could potentially be impeached and removed from office for taking any action with his political interests in view. In a representative democracy, however, elected officials almost always consider the effect that their conduct might have on the next election. And there is nothing wrong with that.”

America First

“Millions of Americans voted for President Trump precisely because he promised to disrupt the foreign policy status quo. He promised a new, “America First” foreign policy that many in the Washington establishment derided. And the President has delivered, bringing fresh and successful approaches to foreign policy in a host of areas, including relations with NATO, China, Israel, and North Korea. In particular, with respect to Ukraine and elsewhere, his foreign policy has focused on ensuring that America does not shoulder a disproportionate burden for various international missions, that other countries do their fair share, and that taxpayer dollars are not squandered....”

Foreign Entanglements

“When the Framers spoke about foreign “entanglements” they had a particular danger in mind. That was the danger of the young country becoming ensnared in alliances that would draw it into conflicts between European powers. When President Washington asserted that “history and experience prove that foreign influence is one of the most baneful foes of republican government,” he was not warning about Chief Executives meriting removal from office. (235) He was advocating for neutrality in American foreign policy, and in particular, with respect to Europe. (236)...

“The Framers were also concerned about the distinct problem of foreign attempts to interfere in the governance of the United States.²⁴⁰ But on that score, they identified particular concerns based on historical examples and addressed them specifically. They were concerned about officials being bought off by foreign powers....

“[Democrats] essentially argue that because the Framers showed concern about the Nation being betrayed in these specific provisions, any accusations that relate to foreign influence must equally amount to impeachable conduct. That simply does not follow.

Difference over Legal Opinion

“House Democrats’ reckless “obstruction” theory is further flawed because it asks the Senate to remove a duly elected President from office based on differences of legal opinion in which the President acted on the advice of OLC.”

Politics

“Democrats have been fixated on impeachment and Russia for the past three years for two reasons. First, they have never accepted the results of the 2016 election and have been consumed by an insatiable need to justify their continued belief that President Trump could not “really” have won....

“The second reason for Democrats’ fixations is that they desperately need an illegitimate boost for their candidate in the 2020 election, whoever that may be. Put simply, Democrats have no response to the President’s record of achievement in restoring growth and prosperity to the American economy, rebuilding America’s military, and confronting America’s adversaries abroad. They have no policies and no ideas to compete against that.”

Pauses on Aid

“Placing a temporary pause on aid is not unusual. Indeed, the President has often paused, re-evaluated, and even canceled foreign aid programs.”

Acquittal

“The Senate should reject the Articles of Impeachment and acquit the President immediately.”

Source: <https://yaleglobal.yale.edu/content/impeachment-trial-brief-and-response>

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