

Trump's Stonewalling of Impeachment Inquiry Is an Impeachable Offense

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As three committees of the House of Representatives proceeded with the impeachment inquiry of Donald Trump, the president [tweeted](#), "I am coming to the conclusion that what is taking place is not an impeachment, it is a COUP." Encyclopedia Britannica [defines](#) coup d'état as "the sudden, violent overthrow of an existing government by a small group."

On the contrary, Congress is fulfilling its constitutional responsibility to investigate allegations that could constitute impeachable offenses — that is, high crimes and misdemeanors. Indeed, during its early history in England, impeachment was [called](#) "the most powerful weapon in the political armoury, short of civil war."

Impeachment is mentioned six times in Articles I, II and III of the Constitution. The "sole Power of Impeachment" resides in the House of Representatives. Impeachment is like an indictment. It requires a simple majority of voting House members. The case then moves to the Senate for trial. It takes two-thirds of the senators to convict the president and remove him from office.

In 1974, the House Judiciary Committee staff [report](#) for the Nixon impeachment inquiry noted:

"The Revolution had been fought against the tyranny of a king and his council, and the framers sought to build in safeguards against executive abuse and usurpations of power."

The grounds for impeachment are not limited to criminal offenses.

"Unlike a criminal case," the 1974 Judiciary Committee report says, "the cause for the removal of a President may be based on his entire course of conduct in office. In particular situations, it may be a course of conduct more than individual acts that has a tendency to subvert constitutional government."

Alexander Hamilton characterized impeachable offenses as political, writing in *Federalist* No. 65 that they "proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself."

There is abundant evidence of abuse of power and obstruction of justice by Trump. Both are impeachable offenses.

Evidence of Abuse of Power

Inspector General of the Intelligence Community Michael Atkinson determined in August that a whistleblower complaint against Trump raised an “urgent concern” and “appears credible.”

The whistleblower [wrote](#):

In the course of my official duties, I have received information from multiple U.S. Government officials that the President of the United States is using the power of his office to solicit interference from a foreign country in the 2020 U.S. election. This interference includes, among other things, pressuring a foreign country to investigate one of the President’s main domestic political rivals. The President’s personal lawyer, Mr. Rudolph Giuliani, is a central figure in this effort. Attorney General Barr appears to be involved as well.

Ukrainian President Volodymyr Zelensky had been trying to secure a meeting with Trump. The whistleblower’s complaint says “multiple U.S. officials told me that the Ukrainian leadership was led to believe that a meeting or phone call between the President and President Zelensky would depend on whether Zelensky showed willingness to ‘play ball’ on the issues” Giuliani was raising.

Trump attacked the whistleblower’s credibility, tweeting that “its 2ND HAND description of the call is a fraud!” However, the complaint is corroborated by the summary of the July 25, 2019, phone call between Trump and Zelensky.

About a week before that call, Trump had ordered his acting chief of staff, Mick Mulvaney, to delay nearly \$400 million in congressionally approved military aid to Ukraine, without explanation.

During the call, Zelensky indicated he wanted to buy Javelin anti-tank missiles from the U.S. Trump then replied, “I would like you to do us a favor *though* because our country has been through a lot and Ukraine knows a lot about it.” After asking Zelensky to look into CrowdStrike (a cybersecurity firm that investigated the 2016 hack of the Democratic National Committee), Trump asked Zelensky to investigate alleged improprieties by presidential candidate Joe Biden and his son in Ukraine. Trump has accused then-Vice President Biden of urging the removal of a corrupt prosecutor to hinder an investigation of a Ukrainian gas company for which Hunter Biden was serving on the board. Biden has been cleared of any wrongdoing by Ukrainian authorities.

The call summary quotes Trump telling Zelensky,

“Whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution so if you can look into it... It sounds horrible to me.”

The ellipses indicate that some text was omitted from the summary.

Additional evidence of Trump pressuring Zelensky to investigate the Bidens and 2016 election in exchange for military assistance to Ukraine and a Zelensky visit to Washington has emerged.

On October 3, during his interview with House investigators, Kurt Volker, former State Department envoy to Ukraine, produced a cache of text messages that document a quid pro quo exchange. In a text sent on the morning of the July 25 call between Trump and Zelensky, Volker [texted](#) Zelensky's aide:

"heard from White House — assuming President Z convinces trump he will investigate / 'get to the bottom of what happened' in 2016, we will nail down date for visit to Washington."

On August 9, U.S. Ambassador to the European Union Gordon Sondland [texted](#) Volker:

"I think potus [President of the United States] really wants the deliverable."

Sondland mentioned that Zelensky may hold a news conference and announce his intent to investigate.

On September 9, U.S. Charges D'affaires in Ukraine William B. "Bill" Taylor [texted](#) Sondland,

"As I said on the phone, I think it's crazy to withhold security assistance for help with a political campaign."

Taylor complained that the decision to withhold congressionally approved military assistance to Ukraine had already led to a "nightmare scenario."

"Impeachable misconduct entails a president's serious abuse of power and a serious abuse of public trust," University of North Carolina Law professor Michael Gerhardt [told](#) the Los Angeles Times. "President Trump's call did both of those things. It was an abuse of power because he used his position to benefit himself and not the country. It was a breach of trust because Americans trust their president not to engage in self-dealing, either through steering businesses to line their own pockets or through conspiring with or coordinating with foreign powers to intervene in American elections."

Abuse of power was one of the articles of impeachment filed against Nixon, for, among other things, conspiring to cover up his role in the Watergate break-in at the Democratic National Committee headquarters.

Evidence of Obstruction of Justice

In [testimony](#) before the House Intelligence Committee, Acting Director of National Intelligence (DNI) Joseph Maguire admitted that Inspector General Atkinson reached a "sound conclusion" that the whistleblower was credible and acted in good faith.

"I believe the whistleblower did the right thing and followed the law every step of the way," Maguire told the committee.

But instead of forwarding the complaint to Congress as required by the Whistleblower Protection Act when the Inspector General finds the complaint raises an "urgent concern,"

Maguire went to the White House and the Department of Justice's Office of Legal Counsel (OLC). Overseen by Attorney General William Barr, himself implicated in the scandal, the OLC determined that the whistleblower's complaint did not raise an "urgent concern" and advised Maguire that he had no duty to send the complaint to Congress. Although the White House was considering invoking executive privilege, in the face of public outrage, Trump decided to release the complaint.

The whistleblower also [alleged](#) a cover-up of the transcript of the July 25 call:

White House officials told me that they were "directed" by White House lawyers to remove the electronic transcript from the computer system in which such transcripts are typically stored for coordination, finalization, and distribution to Cabinet-level officials. Instead, the transcript was loaded into a separate electronic system that is otherwise used to store and handle classified information of an especially sensitive nature. One White House official described this act as an abuse of this electronic system because the call did not contain anything remotely sensitive from a national security perspective.

Moreover, the White House and Giuliani are resisting the House Intelligence, Foreign Affairs, and Oversight and Reform committees' subpoenas for witnesses and documents pursuant to the impeachment inquiry. Such stonewalling could also provide evidence of obstruction of justice, as Rep. Adam Schiff, Chairman of the Permanent Select Committee on Intelligence, Rep. Eliot Engel, Chairman of the Committee on Foreign Affairs, and Rep. Elijah Cummings, Chairman of the Committee on Oversight and Reform, [wrote in a statement](#):

Secretary [of State Mike] Pompeo was reportedly on the call when the President pressed Ukraine to smear his political opponent. If true, Secretary Pompeo is now a fact witness in the House impeachment inquiry. He should immediately cease intimidating Department witnesses in order to protect himself and the President.

Any effort to intimidate witnesses or prevent them from talking with Congress—including State Department employees—is illegal and will constitute evidence of obstruction of the impeachment inquiry. In response, Congress may infer from this obstruction that any withheld documents and testimony would reveal information that corroborates the whistleblower complaint.

On September 30, Trump quoted evangelical pastor Robert Jeffress, who invoked the possibility of civil war if Trump is removed from office.

"If the Democrats are successful in removing the President from office (which they will never be), it will cause a Civil War like fracture in this Nation from which our Country will never heal," Trump [tweeted](#).

....If the Democrats are successful in removing the President from office (which they will never be), it will cause a Civil War like fracture in this Nation from which our Country will never heal." Pastor Robert Jeffress, [@FoxNews](#)

— Donald J. Trump (@realDonaldTrump) [September 30, 2019](#)

As Harvard Law professor John Coates [told](#) *Newsweek*, that tweet could provide “an independent basis” for impeachment. Threatening civil war if Congress proceeds with the constitutional process of impeachment and removal from office is quintessential obstruction of justice.

Obstruction of justice was one of the articles of impeachment filed against both Richard Nixon and Bill Clinton. Nixon resigned before being impeached. Clinton was impeached by the House for lying under oath to cover up his affair with White House intern Monica Lewinsky, but was acquitted in the Senate.

Trump Lashes Out

Trump was [surprised](#) at the firestorm surrounding the Ukraine call. “It’s a joke,” he said. “Impeachment for that?” Trump couldn’t understand why impeachment was now being pursued. “I thought we won,” he said of the Mueller report’s findings. “I thought it was dead, it was dead.”

But it is not surprising that Trump, who cannot abide any criticism without launching a defensive tweetstorm, would strike out at members of Congress participating in the impeachment investigation. Indeed, Trump [accused](#) Intelligence Committee chair Adam Schiff of treason on Twitter. Although the crime of treason requires giving aid or comfort to the enemy during war time, Trump often accuses his political opponents of treason.

Reacting to the whistleblower’s complaint, Trump harkened back to the “old days” when spying led to execution.

“I want to know who’s the person who gave the whistle-blower the information? Because that’s close to a spy,” he [told](#) the U.S. Mission to the United Nations. “You know what we used to do in the old days when we were smart? Right? The spies and treason, we used to handle it a little differently than we do now.”

Playing to his right-wing, gun-loving, immigrant-hating, evangelical base, Trump also [tweeted](#) that the investigation of his alleged abuse of power is “intended to take away the Power of the People, their VOTE, their Freedoms, their Second Amendment, Religion, Military, Border Wall, and their God-given rights as a Citizen of The United States of America!”

Perhaps most disturbing is Trump’s threat to remain in office beyond the constitutionally limited two terms. He [told](#) a closed meeting of the U.S. Mission to the UN, “We’re looking good for another four years and then if we want to, another four and another four.”

Trump is taking a page from the playbook of Nixon, who famously [said](#), “When the president does it, that means it is not illegal.” But nobody – not even the president – is above the law.

What’s Next?

As the House committees continue to issue subpoenas for their impeachment investigation, we can expect stonewalling by the White House.

“When the House opens an impeachment inquiry, it wields [extraordinary constitutional powers](#) and serves as the ultimate check on a rogue president. It can therefore overcome virtually any executive branch privilege or immunity,” Harvard law professor Laurence Tribe [wrote](#) in *The Guardian*. “Otherwise, the president could commit high crimes and misdemeanors and defeat accountability by simply defying all efforts to discover his wrongdoing.”

After the three committees do their work, they will forward the results to the House Judiciary Committee, which will then take the lead. It can hold its own hearings, which were pivotal in the Nixon impeachment investigation. James Reston Jr. [wrote](#) in *The New York Times* about the “power of the televised [Watergate] hearings of the House Judiciary Committee” in 1974. “Far from being politically divisive, they proved a dignified and appropriate response to egregious presidential misconduct — enough to persuade seven out of the committee’s 17 Republicans to vote in favor of at least one of the articles of impeachment.”

The Judiciary Committee will determine the scope of the inquiry. In proposing articles of impeachment to the full House of Representatives, the committee could limit the investigation to Ukrainegate. Or it may include other matters, which seem to emerge on a daily basis.

On October 3, a defiant Trump publicly called on China to investigate Biden, telling reporters, “China should start an investigation into the Bidens, because what happened in China is just about as bad as what happened with Ukraine.” That exhortation came only moments after Trump mentioned forthcoming trade talks with China, saying, “if they don’t do what we want, we have tremendous power.” Trump and Barr “have now solicited assistance in discrediting the president’s political opponents from Ukraine, [Australia](#), [Italy](#) and, according to one report, [Britain](#),” *The New York Times* [reported](#).

There is [another whistleblower complaint](#) that [alleges](#) senior Treasury officials are secretly pressuring senior IRS officials about the audit of Trump’s tax returns. House investigators are also examining [allegations](#) that conservative groups and at least one foreign government have tried to secure favors from Trump by booking rooms at his hotel but not using them. These “ghost bookings” could violate the Emoluments Clause. And the Mueller report [detailed](#) obstruction of justice by Trump during the Russia investigation.

Once the House votes for impeachment, which is likely, the case will move to the Senate. Majority leader Mitch McConnell has stated he has no choice under the rules but to take up the matter. Chief Justice of the Supreme Court John Roberts will preside over the Senate trial. But the Senate may instead pass a motion to dismiss and avoid a trial entirely. During the Clinton impeachment proceeding, Democratic Sen. Robert Byrd’s motion to dismiss was defeated along party lines and a five-week trial ensued. Republicans have the votes in the Senate to dismiss the case. But they will have to answer to public opinion, which increasingly favors impeachment.

Questions that remain to be answered include: What will be the scope of the impeachment inquiry? Will Trump be impeached, and if so, what will happen in the Senate? How will impeachment affect the 2020 election? [Will Mike Pompeo, William Barr](#) and Vice President Mike Pence, who is now [being implicated](#) in the scandal, be impeached and/or prosecuted for their roles in Ukrainegate?

Stay tuned.

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