

An Open Letter from Legal Scholars on Trump Impeachment Inquiry

For only the fourth time in American history, there is a serious inquiry concerning the impeachment of the President of the United States. We write as law professors because impeachment is a legal proceeding provided for by the Constitution of the United States. We write because the core principle of the rule of law is that no one, not even the President, is above the law and impeachment is the ultimate check provided for by the Constitution. We are writing not to express an opinion as to whether President Donald Trump should be impeached or removed, but to clarify the legal standards and procedures that should be followed.

Impeachment by the United States House of Representatives followed by a conviction in the United States Senate is one of only two methods under the Constitution for removing a President. (The 25th Amendment provides for the removal of the president due to incapacity, and while some have called for that as well, this letter does not address it.) Article II, §4, of the Constitution provides for impeachment for “Treason, Bribery, or other high Crimes and Misdemeanors.” There is no definitive answer to what constitutes a “high crime or misdemeanor.” There is no Supreme Court case addressing it. But the history of the phrase and the experience of prior impeachments make clear that “high crimes and misdemeanors” include a serious abuse of power while in office whether or not a crime has occurred. In other words, a criminal act is often sufficient to be an impeachable offense, but it is not necessary.

We urge that the President and those in the Executive Branch cooperate with an impeachment inquiry. Prior Presidents facing such inquiries – Andrew Johnson, Richard Nixon, and Bill Clinton – cooperated with the House of Representatives and its committees. We urge the House to act expeditiously, while providing the President and those in the Executive Branch a full and fair opportunity to be heard. This, however, does not include the right of the President, or the public, to know the identity of the whistleblower. Federal law explicitly provides for secrecy of whistleblowers precisely so they will come forward and report wrong-doing.

We strongly disagree with White House Counsel Pat Cipollone’s statements in an October 8, 2019 letter that the impeachment inquiry is “contrary to the Constitution ... and all past bipartisan precedent” and violates “fundamental fairness and constitutionally mandated due process.” Quite the contrary, the Constitution does not mandate the process for impeachment and there is no constitutional requirement that the House of Representatives authorize an impeachment inquiry before one begins. Cipollone wrongly condemns the impeachment inquiry as the House “seeking to overturn the result of the 2016 election.” This fails to recognize the seriousness of the charges against President Trump for abusing executive power for personal political gain and violating federal election law.

If there is an impeachment by the House of Representatives, we believe that the Senate is constitutionally obligated to hold a trial to be presided over by the Chief Justice of the United

States. Unlike past trials following impeachments, we urge that this trial be conducted in public, not behind closed doors.

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