

The Case for an Impeachment Inquiry of President Trump



Acknowledgments

This report is made possible by the 1.2 million supporters of Common Cause who believe in setting higher ethical standards for public servants and who hold power accountable to the people, regardless of political party.

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INTRODUCTION

Impeachment of the president is an extraordinary measure that the people put in place to remove a lawfully-elected president for his dangerous actions. The Constitution entrusts this power with Congress, as representatives of the people, to protect them from the president's abuses of his immense power. In the 243 years since the Republic's founding, Congress has impeached two sitting presidents with neither president being convicted by the Senate and removed from office. Impeachment is not a measure to be taken lightly.

During his 2016 election campaign and continuing through his years in office, Donald Trump has undermined our democratic norms, laws and institutions. In January 2017, the United States Director of National Intelligence definitively concluded that Russian President Vladimir Putin ordered a Russian influence campaign to interfere in the 2016 presidential election.¹ President Trump has refused to adequately acknowledge this hostile foreign power's attack on our democracy. Even worse, President Trump has hindered government action to secure our elections from interference in 2020 and beyond.

This year the Mueller report revealed substantial new evidence that Trump's campaign team actively encouraged, aided and abetted this Russian interference in the 2016 election to help Trump get elected. The Mueller report also suggests that President Trump has obstructed justice, perhaps in as many as ten instances, in order to prevent Special Counsel Mueller and the American people from learning the full extent of the Trump campaign's involvement in Russia's 2016 campaign interference.

As Congress has conducted investigations into Russian election interference and the Trump campaign's involvement, as well as Trump's obstruction of justice and other potential malfeasance (e.g., violations of the Constitution's emoluments clauses, tax fraud, ethics violations), the Trump administration has engaged in unprecedented stonewalling—refusing to comply with congressional subpoenas for documents and witness testimony through abusive invocation of executive privilege.

Further, court documents unsealed July 18, 2019, indicate that the Department of Justice (DOJ) possesses strong evidence that Trump coordinated with his former attorney Michael Cohen in the commission of multiple felony violations of federal campaign finance laws through “hush payments” to Stormy Daniels and Karen McDougal on his way to winning the 2016 presidential general election—felonies for which Cohen is presently serving a three-year prison term. Yet the DOJ has ended the investigation with no explanation.

Common Cause believes it is well past time to hold President Trump accountable for his behavior and push Congress to do its constitutional duty to protect our country from the president's abuses of power, obstruction of justice, campaign finance violations and his failure to ensure faithful execution of our laws—actions that may well constitute high crimes and misdemeanors.

To this end, Common Cause, on behalf of its 1.2 million members and supporters, calls for an inquiry of impeachment in the House of Representatives to fully investigate these myriad issues and to determine if President Trump should be impeached and removed from office. To be clear, Common Cause is **not** calling for the impeachment of President Trump. We believe an inquiry of impeachment is necessary at this time and reserve judgment on the question of whether President Trump has committed impeachable offenses.

While the House of Representatives has launched many committee investigations to provide oversight of the Trump Administration, these investigations have proven inadequate in the face of the Trump

Administration's obstruction and abuse of power. To be clear, we are grateful to the House leadership for taking their investigative duties seriously, but we believe that the House would be in a stronger legal position to overcome the Trump Administration's obstruction and abuse of power if the House were conducting an impeachment inquiry than it has been in recent months through exercise of its general oversight efforts.

Constitutional experts overwhelmingly agree that Congress' power to conduct investigations and force compliance with subpoenas is at its pinnacle when the subpoena is related to impeachment proceedings, because the Constitution explicitly vests the power to impeach with the House of Representatives. By contrast, Congress' general oversight authority is only an implied power in the Constitution so federal courts are not as likely to enforce these subpoenas as those that carry the force of an impeachment proceeding behind them.

This report details the bases for Common Cause's call for an impeachment inquiry. "Part I" of this report summarizes the impeachment process. "Part II" summarizes the facts staff believe justify passage of an "inquiry of impeachment" resolution with respect to President Trump. "Part III" explains the reasons an "inquiry of impeachment" is necessary at this moment.

PART I: SUMMARY OF IMPEACHMENT PROCESS

A. Constitutional Provisions

Article I of the U.S. Constitution provides: “The House of Representatives ... shall have the sole Power of Impeachment.”² Article I further provides:

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.³

Finally, Article II of the Constitution makes clear that the president’s power to grant reprieves and pardons does not extend to “Cases of Impeachment,”⁴ and that the president “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”⁵ Impeachment, while bearing crucial resemblance to traditional adjudications, is broadly accepted to be a political decision. Alexander Hamilton explained in *Federalist* paper No. 65 that the nature of impeachment trials is to “be denominated POLITICAL, as they relate chiefly to injuries done immediately to society itself.”⁶ Moreover, the Supreme Court has long held that controversies regarding Congress’ impeachment processes are a “non-justiciable political question” because judicial review of impeachment would “expose the political life of the country to months, or perhaps years, of chaos.”⁷ Congress is the final arbiter in determining whether the president should be removed from office, in which the courts do not have any power to overturn.

B. Grounds for Impeachment

The Constitution provides three express grounds for which a president, vice president or federal officer can be impeached and removed from office: (1) treason; (2) bribery and (3) high crimes and misdemeanors.⁸ The crime of “treason” is expressly defined in the Constitution; “bribery,” though not constitutionally-defined, has a clear meaning in common law and is universally codified in federal and state criminal statutes.⁹ However, the Constitution does not define what constitutes “high crimes and misdemeanors” and there is no federal statute codifying the provision. Therefore, what qualifies as grounds under this provision is open for interpretation.

Historically, “high crimes and misdemeanors” has been understood to cover a broad range of serious offenses, not just mere criminality. Constitutional scholars have long understood “high crimes and misdemeanors” to mean “major offenses against our very system of government,” or serious abuses of governmental power.¹⁰

The framers also contemplated a broad interpretation of “high crimes and misdemeanors.” They adopted this phrase from English impeachment practices in Parliament, which had been in use for more than 400 years at the time of the Constitutional Convention.¹¹ Alexander Hamilton wrote that the provision covered “offenses which proceed from the misconduct of public men, or ... from the abuse or violation of some public trust.”¹² James Madison, a statesman known for his pivotal role in drafting

the Constitution, declared during the Constitutional Convention that the clause was “indispensable” because a president might “pervert his administration into a scheme of speculation or oppression. He might betray his trust to foreign powers.”¹³

Several federal judges have been impeached for offenses that did not rise to the level of criminal conduct. For example, Judge John Pickering was removed from office in 1803 for serious trial errors in violation of his duty as a judge and for appearing intoxicated and using profane language on the bench.¹⁴ A year later, Associate Supreme Court Justice Samuel Chase was impeached and convicted for permitting his partisan views to influence his decisions.¹⁵ In 1825, Judge James Peck was impeached by the House for imprisoning and ordering a lawyer’s disbarment because the lawyer publicly criticized his decisions.¹⁶ In 2009, Judge Samuel B. Kent was impeached by the House for sexual misconduct with court employees and making false statements relating to his conduct.¹⁷

Thus, the Constitution clearly does not require the president to commit a crime to be impeached and contemplates the need to remove the president for gross abuses of power and misconduct that threaten democracy and the rule of law itself.

C. House and Senate Impeachment Procedures

The House of Representatives and Senate have by precedent and rules established procedures for conducting the impeachment process. A very brief summary (6 pages) of these procedures can be found in the Congressional Research Service report *An Overview of the Impeachment Process* (2005);¹⁸ a more detailed summary (32 pages) can be found in the Congressional Research Service report *Impeachment: An Overview of Constitutional Provisions, Procedure, and Practice* (2010).¹⁹

In short, House impeachment proceedings involve investigation, followed by a committee vote and then a full House vote on formal charges/accusations of treason, bribery, or other high crimes and misdemeanors, set forth in “articles of impeachment”—analogous to an indictment in a criminal court proceeding. The Senate then conducts a trial as a “Court of Impeachment.” In such a trial, the House serves as the prosecutor, the Senate serves as the jury and, if the president is being impeached, the chief justice of the Supreme Court presides over the trial.

A two-thirds majority vote of the Senate is required for conviction. Conviction results in removal from office.

1. House Procedures

Impeachment proceedings have been initiated in a number of ways, including by:

- A member declaring a charge of impeachment on his/her own initiative;
- A member presenting a list of charges made under oath;
- A member introducing a resolution;
- A non-member such as the Judicial Conference of the United States suggesting that the House consider impeachment of a judge;
- An independent counsel (under the now-expired independent counsel statute) advising the House of grounds for impeachment;
- A message from the president;
- A charge from a state legislature or grand jury; and
- Petition.²⁰

Historically, initiation of impeachment proceedings by resolution has been the typical approach, with such resolutions taking one of two general forms: (1) a resolution simply impeaching a specified office holder or (2) a resolution requesting an investigation into whether grounds exist for impeachment of a specified office holder—called an “inquiry of impeachment.”²¹ A resolution impeaching a person is usually referred directly to the House Committee on the Judiciary. A resolution for an “inquiry of impeachment” into the president is usually referred first to the House Committee on Rules, and then to the House Judiciary Committee.²²

The impeachment proceedings against President Nixon began with both types of resolutions, whereas the impeachment proceedings against President Clinton began with an “inquiry of impeachment” resolution.²³ Traditionally, a full House vote started formal impeachment inquiry, as was the case with the impeachment hearings of Clinton and Nixon.²⁴ However, in 1989, impeachment proceedings against a federal judge already convicted of perjury began at the committee level.²⁵ It remains untested in court whether a committee vote is sufficient to start an impeachment inquiry, which could provide additional grounds for President Trump’s lawyers to resist potential subpoenas.²⁶

Regardless of which type of resolution begins impeachment proceedings, the next step within the House is typically another resolution explicitly authorizing and funding an investigation into whether sufficient grounds for impeachment exist. The House Committee on the Judiciary has typically conducted such investigations, but such investigations occasionally have been referred to another standing committee or to a special or select committee created for the purpose of the investigation.²⁷ A select committee would feature a smaller number of legislators fully focused on the investigation and maintain fully funded staff with investigation expertise. A select committee would also work to make sure that its investigation would not interfere with other important committee work. Select committees have been used in House impeachment proceedings since our nation’s founding, starting with the impeachment hearings of Senator William Blount in 1789.²⁸

Unlike a formal resolution of impeachment, an “inquiry of impeachment” is an investigation, conducted typically by the House Judiciary Committee or occasionally by another committee, that determines whether there is sufficient evidence to hold a vote on the floor of the House on an office holder’s impeachment. An impeachment inquiry is a quasi-judicial proceeding that typically would involve issuing subpoenas, calling witnesses, collecting relevant documents and debating whether an office holder’s conduct is an impeachable offense.²⁹ Following an investigation, if by majority vote the House Committee on the Judiciary decides that sufficient grounds for impeachment exist, a resolution of impeachment setting forth specific allegations of misconduct in one or more articles of impeachment is reported to the full House.

The full House may then vote on the committee’s resolution as a whole, or may vote on each article of impeachment separately. Importantly, the committee’s recommendations on specific articles of impeachment as reported in the resolution are not binding on the House; the House may vote to impeach even if the committee did not recommend impeachment, and the House may do so on any or all of the articles of impeachment contained in the resolution reported to the House.³⁰ A House vote to impeach requires a simple majority of those present and voting, so long as quorum requirements are satisfied. Upon a majority vote by the House to impeach, the matter is presented to the Senate.

In the Clinton impeachment proceedings, for example, the Judiciary Committee passed a resolution containing four separate articles of impeachment approved by a majority vote of the Committee (two perjury counts, one obstruction of justice count, and one abuse of office count). The House, however, passed only two of the four articles of impeachment (one perjury count, one obstruction of justice count).³¹

2. Senate Procedures

In the Senate, impeachment proceedings are conducted under the “Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials.”³² The Senate issues a summons to the respondent, informing him/her of the date on which an answer and appearance should be made. If the respondent chooses not to answer or appear, proceedings are conducted as though the respondent entered a “not guilty” plea. The Senate traditionally has allowed several rounds of written briefing between the House as prosecutor and the respondent.³³

The Senate then sets a date for trial. In the trial, House managers³⁴ and counsel for the respondent make opening arguments, then introduce evidence and put on witnesses, who are subject to examination and cross-examination. No standard rules of evidence exist in an impeachment trial. The presiding officer—the Chief Justice of the Supreme Court, when the President is being tried—has the authority to rule on evidentiary questions, or may put such questions to a vote of the Senate. The House managers and counsel for the respondent then make closing arguments.³⁵

Following the closing arguments, the Senate meets in closed session to deliberate, then returns to open session to vote on the articles of impeachment. Conviction on an article of impeachment requires a two-thirds vote by senators present. Conviction on one or more articles of impeachment results in automatic removal from office—with no further votes required.³⁶

PART II: FACTS THAT JUSTIFY AN “INQUIRY OF IMPEACHMENT” RESOLUTION

A. Emoluments

Common Cause believes an inquiry of impeachment is justified because President Trump potentially has engaged in multiple, serious violations of the Foreign and Domestic Emoluments Clauses of the Constitution.

The Constitution includes two closely-related anti-corruption clauses that prevent the president and other office holders from receiving “emoluments”—essentially, a gift or payment while in office. A provision of Article I of the U.S. Constitution, known as the Foreign Emoluments Clause, reads:

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.³⁷

While the Domestic Emoluments Clause reads:

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.³⁸

The Foreign Emoluments Clause prohibits the president and other federal government officials from receiving gifts or payments from foreign governments *unless Congress consents* to such receipt of foreign gifts or payments. In contrast, the Domestic Emoluments Clause provides that the president’s “compensation” cannot be increased or decreased during his term nor can the president receive any additional emoluments beyond his constitutionally required salary. Alexander Hamilton wrote that domestic emolument clause’s purpose was to ensure the president “[has] no pecuniary inducement to renounce or desert the independence intended for him by the Constitution.”³⁹ Hence these clauses are expressly designed to ensure that the president remains loyal to the will of the people and cannot be bought.

Common Cause believes there is substantial evidence that President Trump repeatedly has violated the Constitution’s ban on foreign emoluments.

The Trump Organization LLC is a collection of more than 500 business entities that engages in global real estate development, sales and marketing, property management, golf course development, entertainment and product licensing, brand development, restaurants and event planning businesses.⁴⁰ Despite President Trump’s promises to relinquish control over the Trump Organization, his adult children continue to operate the organization in his stead.⁴¹ His continued ownership of the organization raises the serious possibility that he is violating the Foreign Emoluments Clause.

Among myriad examples, the Trump Organization owns and controls the Trump International Hotel on Pennsylvania Avenue in Washington, a few blocks from the White House. Since the election, the Trump International Hotel has specifically marketed itself to foreign diplomats and received payments for its services from foreign embassies, including hosting an event for the Kuwait Embassy for which the

hotel was paid \$40,000 to \$60,000.⁴² The Trump Organization also owns Trump Tower, a mixed-used skyscraper located at 725 Fifth Avenue in New York City, and rented commercial space to at least two entities owned by foreign states during his administration: (1) the Industrial and Commercial Bank of China, which is owned by the Chinese government⁴³; and (2) the Abu Dhabi Tourism & Cultural Authority, which is owned by the government of the United Arab Emirates.⁴⁴ Before recently reducing their office space within the tower, the Industrial & Commercial Bank of China Ltd. was among Trump Tower's principal tenants and once paid \$95.48 per square foot for its space, more than any other major office tenant in the tower.⁴⁵

Other potential foreign emolument violations include acceptance of Chinese trademark rights⁴⁶, real estate projects in the United Arab Emirates⁴⁷ and Indonesia⁴⁸, and payment of royalties from the international distribution of "The Apprentice" and its spinoffs.⁴⁹ President Trump has not sought or received consent from Congress to receive payment for any projects with ties to foreign government.

President Trump's potential domestic emoluments violations include receipt of \$22,000 from the State of Maine for a former Maine governor's stay at the Trump International Hotel⁵⁰, the District of Columbia awarding special tax concessions to the Trump Organization,⁵¹ and Mississippi giving a \$6 million dollar tax break to a Trump-branded hotel project in the state,⁵² among many others.⁵³

Violation of the Foreign and Domestic Emoluments Clauses has never been the basis of impeachment proceedings against a president. However, as explained in Part I, an impeachable offense is whatever the House of Representatives says is an impeachable offense. Common Cause believes violations of the Foreign Emoluments Clause could reasonably be considered a high crime and evidence suggests that the House would be on solid ground in doing so.⁵⁴

Several lawsuits have been filed against President Trump alleging violations of the Emoluments clauses, but federal courts have dismissed two of the cases for lack of standing.⁵⁵ While the courts' refusal to act to prevent these potential violations is disappointing, it reinforces the need for Congress to act by conducting an impeachment inquiry into Donald Trump's potential acceptance of emoluments.

Common Cause believes the available information regarding President Trump's business dealings with foreign and state governments justifies an "inquiry of impeachment" resolution to begin an impeachment investigation.

B. Obstruction of Justice

Common Cause also believes, based on the actions detailed in the Mueller Report, that the president likely engaged in obstruction of justice—a clear "high crime"—that justifies passage of an impeachment inquiry resolution. President Trump also appears to have engaged in several serious abuses of power that would justify an impeachment inquiry.

The federal crime of obstruction of justice applies to "[w]hoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law" in a proceeding or investigation by a government department or agency or the Congress of the United States,⁵⁶ with "corruptly" meaning "acting *with an improper purpose*, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information."⁵⁷

To be convicted in federal court, those elements, including the *purpose* of the action, must be proved beyond a reasonable doubt. And in a federal trial, the Federal Rules of Evidence govern what evidence

may be considered, with many documents excluded from evidence by the “hearsay” rule. To impeach a president, however, a less stringent standard applies. An impeachable offense, as then-Rep. Gerald Ford famously asserted, is “whatever a majority of the House of Representatives considers it to be at a given moment in history.” And any evidence the presiding officer and/or Senate decide to allow may be considered in an impeachment trial.

This is not to say we cannot take lessons from previous Congresses. Obstruction of justice was among the articles of impeachment drafted against Presidents Nixon and Clinton. In Nixon’s case, White House tapes revealed the president giving instructions to pressure the acting FBI director into halting the Watergate investigation. Based partially on that information, the House Judiciary Committee in 1974 included “interfering or endeavoring to interfere with the conduct of investigations by the Department of Justice of the United States, the Federal Bureau of Investigation, the office of Watergate Special Prosecution Force, and Congressional Committees” as one of its three articles of impeachment. It did not apply the standards from the criminal statute; it chose its own.⁵⁸

Federal criminal statutes do not govern the impeachment process. Impeachment is a political question. More importantly, any decision to support an “inquiry of impeachment” resolution—to merely start an impeachment investigation—need not be contingent on the availability of sufficient evidence to convict a person of obstruction of justice, whether under criminal statutes or the much lower bar of an impeachable offense, because the purpose of an impeachment investigation is to uncover evidence.

Special Counsel Robert Mueller’s report on Russian interference during the 2016 election details 10 separate instances where President Donald Trump potentially committed obstruction of justice.⁵⁹ The special counsel declined to prosecute the president on these potential charges but did not exonerate him, citing Department of Justice policy to not indict a sitting president.⁶⁰ The special counsel’s office expressly chose not to directly accuse the president of any crimes because “fairness concerns counseled against potentially reaching that judgment when no charges can be brought.”⁶¹ Common Cause believes that an “inquiry of impeachment” is necessary because the special counsel’s report contains evidence that the president has committed serious federal crimes.

The Mueller Report identifies 10 episodes that could potentially warrant federal obstruction of justice charges.⁶² They are quoted directly from the report below.

1. Conduct involving former FBI Director James Comey and former national security advisor Michael Flynn

“In mid-January 2017, incoming National Security Advisor Michael Flynn falsely denied to the Vice President, other administration officials, and FBI agents that he had talked to Russian Ambassador Sergey Kislyak about Russia’s response to U.S. sanctions on Russia for its election interference. On January 27, the day after the President was told that Flynn had lied to the Vice President and had made similar statements to the FBI, the President invited FBI Director Comey to a private dinner at the White House and told Comey that he needed loyalty. On February 14, the day after the President requested Flynn’s resignation, the President told an outside advisor, ‘Now that we fired Flynn, the Russia thing is over.’ The advisor disagreed and said the investigations would continue.

Later that afternoon, the President cleared the Oval Office to have a one-on-one meeting with Comey. Referring to the FBI’s investigation of Flynn, the President said, ‘I hope you can see your way clear to letting this go, to letting Flynn go. He is a good guy. I hope you can let this go.’ Shortly after requesting Flynn’s resignation and speaking

privately to Comey, the President sought to have Deputy National Security Advisor K.T. McFarland draft an internal letter stating that the President had not directed Flynn to discuss sanctions with Kislyak. McFarland declined because she did not know whether that was true, and a White House Counsel's Office attorney thought that the request would look like a quid pro quo for an ambassadorship she had been offered.⁶³

2. The President's Reaction to the Continuing Russia Investigation

"In February 2017, Attorney General Jeff Sessions began to assess whether he had to recuse himself from campaign-related investigations because of his role in the Trump Campaign. In early March, the President told White House Counsel Donald McGahn to stop Sessions from recusing. And after Sessions announced his recusal on March 2, the President expressed anger at the decision and told advisors that he should have an Attorney General who would protect him. That weekend, the President took Sessions aside at an event and urged him to 'unrecuse.' Later in March, Comey publicly disclosed at a congressional hearing that the FBI was investigating 'the Russian government's efforts to interfere in the 2016 presidential election,' including any links or coordination between the Russian government and the Trump Campaign. In the following days, the President reached out to the Director of National Intelligence and the leaders of the Central Intelligence Agency (CIA) and the National Security Agency (NSA) to ask them what they could do to publicly dispel the suggestion that the President had any connection to the Russian election-interference effort. The President also twice called Comey directly, notwithstanding guidance from McGahn to avoid direct contacts with the Department of Justice. Comey had previously assured the President that the FBI was not investigating him personally, and the President asked Comey to 'lift the cloud' of the Russia investigation by saying that publicly."⁶⁴

3. President Trump's termination of FBI Director James Comey

"On May 3, 2017, Comey testified in a congressional hearing, but declined to answer questions about whether the President was personally under investigation. Within days, the President decided to terminate Comey. The President insisted that the termination letter, which was written for public release, state that Comey had informed the President that he was not under investigation. The day of the firing, the White House maintained that Comey's termination resulted from independent recommendations from the Attorney General and Deputy Attorney General that Comey should be discharged for mishandling the Hillary Clinton email investigation. But the President had decided to fire Comey before hearing from the Department of Justice. The day after firing Comey, the President told Russian officials that he had 'faced great pressure because of Russia,' which had been 'taken off' by Comey's firing. The next day, the President acknowledged in a television interview that he was going to fire Comey regardless of the Department of Justice's recommendation and that when he 'decided to just do it,' he was thinking that 'this thing with Trump and Russia is a made-up story.' In response to a question about whether he was angry with Comey about the Russia investigation, the President said, 'As far as I'm concerned, I want that thing to be absolutely done properly,' adding that firing Comey 'might even lengthen out the investigation.'"⁶⁵

4. The Appointment of Special Counsel Robert Mueller and President Trump's Efforts to Remove Him

“On May 17, 2017, the Acting Attorney General for the Russia investigation appointed a Special Counsel to conduct the investigation and related matters. The President reacted to news that a Special Counsel had been appointed by telling advisors that it was ‘the end of his presidency’ and demanding that Sessions resign. Sessions submitted his resignation, but the President ultimately did not accept it. The President told aides that the Special Counsel had conflicts of interest and suggested that the Special Counsel therefore could not serve. The President’s advisors told him the asserted conflicts were meritless and had already been considered by the Department of Justice.

On June 14, 2017, the media reported that the Special Counsel’s Office was investigating whether the President had obstructed justice. Press reports called this ‘a major turning point’ in the investigation: while Comey had told the President he was not under investigation, following Comey’s firing, the President now was under investigation. The President reacted to this news with a series of tweets criticizing the Department of Justice and the Special Counsel’s investigation. On June 17, 2017, the President called McGahn at home and directed him to call the Acting Attorney General and say that the Special Counsel had conflicts of interest and must be removed. McGahn did not carry out the direction, however, deciding that he would resign rather than trigger what he regarded as a potential Saturday Night Massacre.”⁶⁶

5. President Trump’s efforts to curtail the Special Counsel’s investigation.

“Two days after directing McGahn to have the Special Counsel removed, the President made another attempt to affect the course of the Russia investigation. On June 19, 2017, the President met one-on-one in the Oval Office with his former campaign manager Corey Lewandowski, a trusted advisor outside the government, and dictated a message for Lewandowski to deliver to Sessions. The message said that Sessions should publicly announce that, notwithstanding his recusal from the Russia investigation, the investigation was ‘very unfair’ to the President, the President had done nothing wrong, and Sessions planned to meet with the Special Counsel and ‘let [him] move forward with investigating election meddling for future elections.’ Lewandowski said he understood what the President wanted Sessions to do.

One month later, in another private meeting with Lewandowski on July 19, 2017, the President asked about the status of his message for Sessions to limit the Special Counsel investigation to future election interference. Lewandowski told the President that the message would be delivered soon. Hours after that meeting, the President publicly criticized Sessions in an interview with the New York Times, and then issued a series of tweets making it clear that Sessions’ job was in jeopardy. Lewandowski did not want to deliver the President’s message personally, so he asked senior White House official Rick Dearborn to deliver it to Sessions. Dearborn was uncomfortable with the task and did not follow through.”⁶⁷

6. President Trump's Efforts to Prevent Public Disclosure of Evidence.

“In the summer of 2017, the President learned that media outlets were asking questions about the June 9, 2016 meeting at Trump Tower between senior campaign officials, including Donald Trump Jr., and a Russian lawyer who was said to be offering damaging information about Hillary Clinton as ‘part of Russia and its government’s support for Mr. Trump.’ On several occasions, the President directed aides not to publicly disclose the emails setting up the June 9 meeting, suggesting that the emails would not leak and that the number of lawyers with access to them should be limited. Before the emails became public, the President edited a press statement for Trump Jr. by deleting a line that acknowledged that the meeting was with ‘an individual who [Trump Jr.] was told might have information helpful to the campaign’ and instead said only that the meeting was about adoptions of Russian children. When the press asked questions about the President’s involvement in Trump Jr.’s statement, the President’s personal lawyer repeatedly denied the President had played any role.”⁶⁸

7. President Trump's Further Efforts to have Attorney General Jeff Sessions Take Control of the Investigation

“In early summer 2017, the President called Sessions at home and again asked him to reverse his recusal from the Russia investigation. Sessions did not reverse his recusal. In October 2017, the President met privately with Sessions in the Oval Office and asked him to ‘take [a] look’ at investigating Clinton. In December 2017, shortly after Flynn pleaded guilty pursuant to a cooperation agreement, the President met with Sessions in the Oval Office and suggested, according to notes taken by a senior advisor, that if Sessions unrecused and took back supervision of the Russia investigation, he would be a ‘hero.’ The President told Sessions, ‘I’m not going to do anything or direct you to do anything. I just want to be treated fairly.’ In response, Sessions volunteered that he had never seen anything ‘improper’ on the campaign and told the President there was a ‘whole new leadership team’ in place. He did not unrecuse.”⁶⁹

8. President Trump's Efforts to have White House Counsel Donald McGahn deny that the President had ordered him to have Special Counsel Mueller removed.

“In early 2018, the press reported that the President had directed McGahn to have the Special Counsel removed in June 2017 and that McGahn had threatened to resign rather than carry out the order. The President reacted to the news stories by directing White House officials to tell McGahn to dispute the story and create a record stating he had not been ordered to have the Special Counsel removed. McGahn told those officials that the media reports were accurate in stating that the President had directed McGahn to have the Special Counsel removed. The President then met with McGahn in the Oval Office and again pressured him to deny the reports. In the same meeting, the President also asked McGahn why he had told the Special Counsel about the President’s effort to remove the Special Counsel and why McGahn took notes of his conversations with the President. McGahn refused to back away from what he remembered happening and perceived the President to be testing his mettle.”⁷⁰

9. President Trump's Conduct Towards Michael Flynn, Paul Manafort and [Redacted].

“After Flynn withdrew from a joint defense agreement with the President and began cooperating with the government, the President’s personal counsel left a message for Flynn’s attorneys reminding them of the President’s warm feelings towards Flynn, which he said ‘still remains,’ and asking for a ‘heads up’ if Flynn knew ‘information that implicates the President.’ When Flynn’s counsel reiterated that Flynn could no longer share information pursuant to a joint defense agreement, the President’s personal counsel said he would make sure that the President knew that Flynn’s actions reflected ‘hostility’ towards the President. During Manafort’s prosecution and when the jury in his criminal trial was deliberating, the President praised Manafort in public, said that Manafort was being treated unfairly, and declined to rule out a pardon. After Manafort was convicted, the President called Manafort ‘a brave man’ for refusing to ‘break’ and said that ‘flipping’ ‘almost ought to be outlawed.’”⁷¹

10. President Trump's Conduct Towards former Trump Organization executive Michael Cohen

“The President’s conduct towards Michael Cohen, a former Trump Organization executive, changed from praise for Cohen when he falsely minimized the President’s involvement in the Trump Tower Moscow project, to castigation of Cohen when he became a cooperating witness. From September 2015 to June 2016, Cohen had pursued the Trump Tower Moscow project on behalf of the Trump Organization and had briefed candidate Trump on the project numerous times, including discussing whether Trump should travel to Russia to advance the deal. In 2017, Cohen provided false testimony to Congress about the project, including stating that he had only briefed Trump on the project three times and never discussed travel to Russia with him, in an effort to adhere to a ‘party line’ that Cohen said was developed to minimize the President’s connections to Russia. While preparing for his congressional testimony, Cohen had extensive discussions with the President’s personal counsel, who, according to Cohen, said that Cohen should ‘stay on message’ and not contradict the President. After the FBI searched Cohen’s home and office in April 2018, the President publicly asserted that Cohen would not ‘flip,’ contacted him directly to tell him to ‘stay strong,’ and privately passed messages of support to him. Cohen also discussed pardons with the President’s personal counsel and believed that if he stayed on message he would be taken care of. But after Cohen began cooperating with the government in the summer of 2018, the President publicly criticized him, called him a ‘rat,’ and suggested that his family members had committed crimes.”⁷²

Despite these 10 highlighted instances, the Mueller Report does not definitively declare whether the President obstructed justice. However, the report states that “if [the Special Counsel’s Office] had the confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state.”⁷³ They did not. Instead, Special Counsel Mueller clearly asserts that his office did not exonerate the president of obstruction.⁷⁴ The logical inferences of these statements are that President Trump would have been charged with obstruction of justice but for DOJ’s policy against indicting a sitting president.

President Trump also has publicly and privately dangled the possibility of pardons to several Trump campaign officials involved in the Trump-Russia investigation, including former campaign manager Paul Manafort, former national security advisor Michael Flynn, and former Trump personal lawyer Michael Cohen.⁷⁵ While these dangled pardons may constitute criminal obstruction of justice, they are undoubtedly abuses of power; they offered rewards in exchange for his underlings' silence during an investigation into the President's potential wrongdoing.

Thus, Common Cause believes that the House should begin an "inquiry of impeachment" because evidence in the Mueller Report suggests that the President obstructed justice on 10 separate occasions.

C. Abuses of Power

Common Cause further believes that several other actions of President Trump may constitute "abuse of power." Compared to "obstruction of justice," which is a crime under federal statutes, "abuse of power" is a much more nebulous concept. One encyclopedia of American law defines "abuse of power" as "improper use of authority by someone who has that authority because he or she holds a public office."⁷⁶

Harvard Law School professor and constitutional law scholar Noah Feldman recently explained: "Abuse of power is anything the president does that he can only do by virtue of being president that threatens the basic freedoms and capacities of other people."⁷⁷ Professor Feldman then cites a specific example of abuse of power: a president using intelligence agencies or the FBI to investigate people for political reasons.⁷⁸ Professor Feldman also argues that "abuse of power" includes unfounded accusations by President Trump that an individual (e.g., Susan Rice, Hillary Clinton) has committed a crime, noting that the same accusations made by candidate Trump would not have constituted an abuse of power because, as a candidate, he had no formal political power to abuse. Feldman dismisses the assertion that President Trump's First Amendment rights protect him from impeachment for "abuse of power" based solely on things President Trump has said, emphasizing that the First Amendment prohibits Congress from passing a law punishing people for speaking, but the First Amendment does not prohibit Congress from impeaching the president for things that he has said.⁷⁹ Impeachment is a political process that can lead to removal from office, not to incarceration.

One of the three articles of impeachment of President Nixon passed by the House Judiciary Committee was for abuse of power; it alleged that:

Using the powers of the office of President ... Richard M. Nixon ... has repeatedly engaged in conduct violating the constitutional rights of citizens, impairing the due and proper administration of justice and the conduct of lawful inquiries, or contravening the laws governing agencies of the executive branch and the purposed of these agencies.⁸⁰

Impeachment Article Two against President Nixon went on to list five separate abuses of power:

- Obtaining confidential taxpayer information from the IRS and causing tax audits and investigations in a discriminatory manner.⁸¹
- Directing the FBI, Secret Service and other executive personnel to conduct surveillance or other investigations for purposes unrelated to national security or law enforcement.
- Maintaining a secret investigative unit within the office of the President, financed by campaign contributions and utilizing CIA resources in violation of the constitutional rights of citizens.

- Failing to act when he knew or should have known that his subordinates were obstructing justice and engaging in other unlawful activities.
- Interfering with the FBI, Office of Watergate Special Prosecution Force, CIA and other executive branch agencies.⁸²

One of the four articles of impeachment against President Clinton passed out of the House Judiciary Committee was likewise for abuse of power, alleging that he “engaged in conduct that resulted in misuse and abuse of his high office” by making “perjurious, false and misleading statements to Congress.”⁸³

Just as the House Judiciary Committee concluded that President Nixon had committed the impeachable offense of “abuse of power” by interfering with investigations by the FBI and other executive branch agencies, and by failing to act when he knew his subordinates were obstructing justice, so too does President Trump’s interference in the FBI’s Russia investigation, specifically, the President’s attempt to have Mr. Comey end the investigation into Lt. Gen. Flynn and subsequent firing of Mr. Comey, justify an “inquiry of impeachment” resolution to begin an impeachment investigation.

The following are additional examples of possible abuse of power by President Trump that warrant investigation as part of an impeachment inquiry.

1. Failure to Take Adequate Steps to Protect U.S. Elections Against Further Foreign Interference

Common Cause believes that the president’s failure to adequately acknowledge Russian interference in our elections and his efforts to hinder action to secure our elections from future interference is a potential abuse of power that justifies Congress to begin an “inquiry of impeachment.”

Article II of the Constitution twice imposes an affirmative duty upon the president to “faithfully execute” the laws. The “Take Care” Clause commands the president to “take Care that laws be faithfully executed.”⁸⁴ The Constitution also requires the president to take an oath or affirmation to “faithfully execute the Office of President of the United States.”⁸⁵

Constitutional scholars have identified three “core meanings” of the “Take Care” clause and its echoing oath.⁸⁶ First, these clauses stress how important it was to the framers that the president stay within the authorizations of the law and not act *ultra vires*—or outside the office’s legal authority.⁸⁷ Second, the president is constitutionally prohibited from profiting from the office.⁸⁸ Finally, the clauses impose a fiduciary duty for the president to act in good faith and take affirmative steps to diligently pursue what is in the nation’s best interest.⁸⁹

Common Cause believes Trump has violated the “Take Care” clause and his oath to faithfully execute the laws of the United States because he has shown a sustained pattern of hostility toward acknowledging Russian interference in the 2016 elections and taking adequate steps to prepare states and counties for interference to come.

At its core, election security is a non-partisan national security issue. Indeed, in January 2017 our election infrastructure was designated as “critical infrastructure,” along with the power grid and nuclear facilities, by the Department of Homeland Security. The Department of Homeland Security recognized that “election infrastructure is of such vital importance to the American way of life that its incapacitation or destruction would have a devastating effect on the country.”⁹⁰

Today, U.S. intelligence officials warn that Russia, China and Iran already are trying to manipulate American public opinion before the 2020 elections and may attempt to interfere with our electoral

infrastructure.⁹¹ Despite his unsupported claims that “nobody has been tougher on Russia than me,” President Trump’s hostility to addressing Russian interference has hindered efforts within his administration to protect our nation.⁹²

In January 2017, the Office of the Director of National Intelligence released a report that definitively concluded that Russian President Vladimir Putin ordered the Russia influence campaign, first to sow chaos and lack of confidence in our democratic process and then ultimately to help elect Donald Trump.⁹³

President Trump repeatedly has questioned, downplayed or outright rejected the widely-accepted conclusions of the American intelligence community that the Russian government was behind the attacks on the 2016 election—both before and after his election.⁹⁴ Trump also has been hesitant to publicly renounce Russian interference in our elections and occasionally has appeared to accept Putin’s denials of his government’s involvement as fact.⁹⁵ During a June 2019 meeting at the G20 summit, he even facetiously “reprimanded” Putin, telling him “Don’t meddle in the election, please” after a reporter asked if he would ask Russia to not meddle in the 2020 election.⁹⁶ They both laughed.

Moreover, the president’s hostility to these issues seemingly has thwarted efforts to address election security within his administration. The “critical infrastructure” designation for US election infrastructure allows the Department of Homeland Security to prioritize requests for security support by local and state governments.⁹⁷ However, in the months before her ouster, as former Homeland Security Director Kirstjen Nielsen planned to organize a White House meeting of cabinet secretaries to coordinate a strategy to protect the 2018 elections, White House chief of staff Mick Mulvaney told her that it “wasn’t a great subject and should be kept below [Trump’s] level.”⁹⁸ Despite this, Nielsen forged ahead, twice convening strategy meetings on election security with top Justice Department, FBI, and intelligence agency officials. Meanwhile, White House staff privately asserted that Trump views public discussion of Russian interference as questioning his election’s legitimacy.⁹⁹

Beyond refusing to rebuke Russians for their interference, President Trump has telegraphed that he would welcome it. He recently created a firestorm when he stated that he would consider once again accepting information on his political opponents from a foreign government.¹⁰⁰ This shocking admission echoed his infamous calls during a July 2016 press conference for Russia to find Hillary Clinton’s missing emails.¹⁰¹

Law enforcement veterans found that Trump’s deeply troubling statement undermined leadership at the FBI, again putting him at odds with the director of that critical agency concerning foreign interference in our elections.¹⁰² The statements undoubtedly encouraged rival foreign nations to interfere in our elections as they implied that the president of the United States would likely deny and obfuscate the extent of foreign interference if it benefited him politically. Moreover, Trump’s comment (later somewhat retracted¹⁰³) that he would consider accepting information from a foreign government suggests that he was outright inviting illegal foreign attacks so long as they benefit his electoral chances. These statements represent a betrayal of his oath to “faithfully execute” and “take care” of the laws because they invite law breaking and the corruption of our democracy for the president’s benefit.

Trump’s hostility to these issues has led the Pentagon to keep him in the dark about its critical efforts to secure our 2018 midterm elections.¹⁰⁴ Pentagon officials have been reluctant to inform President Trump about their efforts to thwart future cyber attacks on our election systems by Russia because “he might countermand it or discuss it with foreign officials.”¹⁰⁵ Thus, the president’s own administration does not believe that he can be trusted to faithfully protect our election systems from Russian interference.

President Trump also initially opposed legislation sanctioning Russia in retaliation for 2016 election interference. However, Congress forced his hand when it approved a sanctions bill with a veto proof majority in August 2017.¹⁰⁶ In January 2018, Trump's State Department announced that it would not impose congressionally-mandated sanctions because the threat itself was enough of a "deterrent."¹⁰⁷
¹⁰⁸ A few months later, in March 2018, the Trump Administration slightly reversed that position and imposed limited sanctions in response to Russian election interference. Critics like House Intelligence Committee chairman Adam Schiff called the move a "grievous disappointment ... far short of what is needed to respond to that attack on our democracy."¹⁰⁹

President Trump's refusal to fully implement sanctions against Russia for its election interference also is likely a violation of his oath to "faithfully execute" the laws because he is ignoring a lawful congressional mandate to deter future election interference. While Trump asserts that the sanctions unconstitutionally infringe upon his lawful executive powers,¹¹⁰ his previous denials of Russian involvement in the election instead imply that he is refusing to take broad action because he believes it would reflect poorly upon his election's legitimacy. Moreover, his troubling inaction heavily suggests he is violating his oath because he is more concerned with the perception of his presidency than the best interests of the nation.

President Trump's stated motivations illuminate why he has been hesitant to address Russian interference in our elections. The Constitution imposes an affirmative duty on the president to protect our democracy. President Trump violates the Take Care Clause if he simply chooses to ignore the problem.

Congress must not ignore Trump's troubling actions to deny Russian interference in our elections and to undermine his national security staff in their efforts to investigate Russian interference and to protect our elections from future Russian interference. These actions warrant an "inquiry of impeachment" to determine whether President Trump has violated his affirmative duty to protect the Constitution by failing to take adequate steps to protect our elections from foreign interference.

2. Abuse of Executive Privilege

President Trump's invocation of executive privilege to stonewall legitimate congressional hearings and investigations is another likely abuse of power that justifies an "inquiry of impeachment."¹¹¹

Executive privilege is the right of presidents to occasionally withhold information, on behalf of themselves or their subordinates in the executive branch, to further the public interest. The text of the Constitution does not directly mention executive privilege, but the Supreme Court has long recognized legitimate uses of executive privilege, citing the "valid need for protection of communication between high Government officials and those who advise and assist them in the performance of their manifold duties."¹¹² In *United States v. Nixon*, the Court unanimously held that executive privilege is not absolute and does not allow the president to defy a subpoena based on a "generalized interest in confidentiality."¹¹³ Most presidents have used executive privilege sparingly, as its over-use can often be seen as suspect.¹¹⁴

In recent months, President Trump increasingly has invoked executive privilege to shield himself from congressional investigations, a serious abuse of power.

For example, President Trump invoked executive privilege to withhold from Congress the un-redacted version of the Mueller Report,¹¹⁵ notwithstanding the fact that Trump did not assert executive privilege with respect to witnesses and materials during the Mueller investigation itself. President Trump also invoked it and ordered former White House counsel Donald McGahn not to comply with a

congressional subpoena to turn over documents.¹¹⁶ The president also asserted the privilege to block Congress from obtaining documents about the census citizenship question.¹¹⁷ Finally, during former White House communications director Hope Hicks closed-door congressional testimony concerning her time at the White House, Justice Department lawyers objected 155 times to questions, declaring Hicks “absolutely immune” to this questioning.¹¹⁸

In each case, executive privilege was asserted to block investigations into the president or his administration’s alleged wrongdoing. The White House has repeatedly argued that Congress’s demands for documents involving Trump’s finances, his tax returns, and the underlying Mueller Report documents are illegitimate because these congressional subpoenas do not further “a legitimate legislative purpose.”¹¹⁹ However, DOJ also conceded that if Congress were to begin impeachment proceedings the circumstances would be different and the president could no longer evade congressional subpoenas based on executive privilege.¹²⁰ Congress should take DOJ’s suggestion and begin an impeachment inquiry to investigate the president’s abuse of executive privilege.

3. Trump’s Attacks on the Free Press

Trump’s repeated attacks on press freedom are also an abuse of power that justifies the House opening an “inquiry of impeachment.”¹²¹ A strong democracy requires a free and independent press because good journalism holds the government accountable and allows people to stay informed about their government’s actions. However, President Trump has repeatedly attacked the free press as “fake news” or the “enemy of the people.”¹²²

For example, in June 2019, President Trump tweeted that the *New York Times* article about American cyber incursions into the Russian electrical grid was a “virtual act of treason” despite White House aides assuring reporters that the article raised no national security issues.¹²³ During a June 2019 meeting with Vladimir Putin at the G20 summit, Trump also “joked” that they should get rid of journalists, stating “Get rid of them. Fake news is a great term, isn’t it? You don’t have this problem in Russia but we do.”¹²⁴

In addition to his extreme rhetorical attacks on the press, Trump has abused his power in several instances by taking or threatening to take action to silence the press.¹²⁵

For example, on November 7, 2018, CNN reporter Jim Acosta was forcibly ejected from a presidential press conference by White House aides after Acosta had a contentious exchange with the president. Trump told Acosta “I tell you what, CNN should be ashamed of itself having you working for them. You are a rude, terrible person. You shouldn’t be working for CNN.”¹²⁶ The White House later revoked Acosta’s press pass and shared a digitally doctored video that falsely implied that Acosta had assaulted a White House aide during his ejection.¹²⁷ In another instance, the White House barred four American journalists from covering the president’s dinner with North Korean dictator Kim Jong-un after the journalists asked questions during an earlier appearance.¹²⁸

In another alarming incident, President Trump asked former chief economic adviser Gary Cohn to pressure the Justice Department to block a proposed \$85 billion merger between CNN’s parent company Time Warner and AT&T.¹²⁹ “I’ve been telling Cohn to get this lawsuit filed and nothing’s happened!” President Trump reportedly told Cohn and White House chief of staff John Kelly: “I’ve mentioned it 50 times. And nothing’s happened. I want to make sure it’s filed. I want that deal blocked!” This incident raises serious concerns that Trump abused his power to interfere with the merger as punishment for critical CNN coverage of him that he has repeatedly blasted as “fake news.”

In yet another egregious example, President Trump in June 2019 directly threatened a Time Magazine reporter with prison time for taking a photo of a letter from North Korean leader Kim Jong Un.¹³⁰ After the reporter snapped a photo of the letter during a sit down interview with Time, the president lashed out against him, stating “Well, you can go to prison, instead, because if you use, if you use the photograph you took of the letter that I gave you....”¹³¹ Direct threats to a journalist’s freedom like this are destabilizing to our democracy because they serve to silence journalists from reporting important stories that are against the president’s interests.

While mere criticism of the press does not justify impeachment, the president’s sustained hostility to the First Amendment, his threats to the free press and potential retaliation against political enemies raises serious implications that the president is abusing his power. Common Cause believes that an impeachment inquiry may uncover other abuses and is necessary to ensure that the press is protected from the president’s dangerous attacks on their freedom.

D. Campaign Finance Violations

1. “Collusion” with Russia

Common Cause believes that Special Counsel Robert Mueller failed to apply the correct legal standard in his determination that the Trump Campaign did not illegally collude with the Russian government to interfere with the 2016 election.

The Mueller Report definitively establishes that the Russian government interfered in the 2016 presidential election in “sweeping and systematic fashion.”¹³² The report did not establish whether President Trump or members of his campaign “colluded” with the Russian government in its interference with the election¹³³ but neither did it clearly exonerate the president or his campaign. “A statement that the investigation did not establish particular facts does not mean there was no evidence of those facts,”¹³⁴ the report asserted. In fact, the special counsel’s Office found “numerous links between the Russian government and the Trump Campaign.”¹³⁵

“Collusion” is a nebulous concept that does not constitute a specific statutory offense, a theory of liability, nor a term of art in federal criminal law.¹³⁶ In determining whether the Trump campaign’s links with Russia qualified as collusion, the special counsel narrowly relied on federal conspiracy statutes and whether the Trump campaign “coordinated” with the Russian government.¹³⁷ Mueller wrote that “coordination” does not have a settled definition in federal criminal law and proceeded to make up his own definition. He narrowly defined “coordination” as an “express or tacit agreement” to qualify as collusion.¹³⁸

However, federal campaign finance law does have a well-settled definition of coordination and Special Counsel Mueller’s made-up definition is in conflict with the established campaign finance law standard.

The Federal Election Campaign Act prohibits political candidates from accepting campaign contributions or donations from foreign nationals.¹³⁹ Under the federal “coordination” statute, expenditures that are “made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents” are “coordinated” expenditures and treated as contributions to the candidates with whom they are coordinated.¹⁴⁰ Federal regulations defining “coordination” also mirror the language in the “coordination” statute.¹⁴¹ Moreover, in 2002, Congress passed the Bipartisan Campaign Reform Act, which expressly prohibited the Federal Election Commission from defining “coordination” as requiring “an agreement or formal collaboration” to establish that an expenditure had been coordinated with a foreign national.¹⁴²

It is unknown why Special Counsel Mueller chose to define “coordination” so narrowly in his report, requiring an agreement not required under campaign finance law. It is impossible to know whether he would have found that President Trump or his agents colluded with the Russian government if he applied the well-established campaign finance law standard for “coordination.” Mueller’s misapplication of the law further justifies Congress opening an “inquiry of impeachment” to determine whether President Trump or his agents “coordinated” with the Russian government in violation of federal campaign finance laws.

2. Karen McDougal and Stormy Daniels “Hush” Payments

Common Cause believes that President Trump likely committed several campaign finance violations during the 2016 election cycle that justify an impeachment inquiry.

On August 21, 2018, President Trump’s personal lawyer Michael Cohen pleaded guilty to eight federal criminal charges, including two campaign finance crimes.¹⁴³ Cohen told a federal district court judge during his plea hearing that President Trump directed Cohen to arrange payments to two women during the campaign to keep them from publicly speaking about affairs they had with the president.¹⁴⁴ Cohen’s testimony under oath directly implicates the president in several federal campaign crimes.

First, in August 2016, Cohen arranged for American Media Inc., parent company to the pro-Trump *National Enquirer*, to pay \$150,000 to Karen McDougal, a former *Playboy* model, after she threatened to sell her story of an alleged extramarital affair with President Trump to multiple national media outlets.¹⁴⁵ Cohen promised AMI that it would be reimbursed for its expenditure if it paid McDougal for her story.¹⁴⁶ AMI and McDougal entered into an agreement to pay for her “limited life rights” to her story of her alleged affair with then-candidate Trump.¹⁴⁷ According to court documents, the agreement’s purpose was “to suppress [Karen McDougal’s] story to prevent the story from influencing the election.”¹⁴⁸ AMI’s payment to McDougal therefore constituted an expenditure under campaign finance law and, because it was coordinated with the Trump campaign, constituted an illegal in-kind corporate contribution to the Trump campaign.

Second, in October 2016, Cohen paid adult film actress Stephanie Clifford (a.k.a. “Stormy Daniels”) \$130,000 as part of an agreement not to publicly discuss an alleged affair between her and Mr. Trump; before the agreement, Clifford was threatening to tell her story to national media outlets. After the election, the Trump Organization reimbursed Cohen for his payment to Clifford.¹⁴⁹

In both instances, Cohen testified that Trump directed him to arrange payments on Trump’s behalf in order to avoid damage to Trump’s electoral chances.¹⁵⁰ Moreover, court-released DOJ documents show phone record evidence of multiple contacts between Michael Cohen, Donald Trump and Trump press secretary Hope Hicks during Cohen’s hush payment negotiations with Clifford, evidence substantiating Cohen’s testimony that he committed campaign finance crimes in coordination with and at the direction of Trump.¹⁵¹

In light of these available facts, Common Cause believes that immediately before the 2016 general election, then-candidate Trump received an illegal \$150,000 in-kind contribution from American Media, Inc. and an illegal \$130,000 in-kind contribution from Michael Cohen—crimes for which Michael Cohen is serving a three year prison sentence.¹⁵² President Trump also failed to disclose his campaign’s receipt of these in-kind contributions in violation of campaign finance disclosure laws.¹⁵³

3. Trump Tower Meeting

Common Cause believes that Donald J. Trump's presidential campaign likely solicited an illegal contribution from a foreign national during its June 2016 meeting with a "Kremlin-connected" lawyer at Trump Tower.

On June 3, 2016, Robert Goldstone, a British publicist and long-time Trump acquaintance, emailed Donald Trump Jr. on behalf of Emil Agalarov, the son of a Russian real estate developer with ties to the Russian government.¹⁵⁴ Goldstone's email relayed to Trump Jr. that the "Crown prosecutor of Russia ... offered to provide the Trump Campaign with some official documents and information that would incriminate Hillary and her dealings with Russia."¹⁵⁵ Shortly after, Trump Jr. responded "Thank Rob I appreciate that. I am on the road at the moment but perhaps I just speak to Emin first. Seems we have some time and if it's what you say I love it especially later in the summer."¹⁵⁶

On June 9, 2016, senior Trump Campaign representatives, including Campaign Manager Paul Manafort, Senior Advisor Jared Kushner and Donald Trump, Jr., met with Natalia Veselnitskaya, a Russian lawyer who previously worked for the Russian government.¹⁵⁷ During the meeting, she claimed that funds derived from illegal activities in Russia were provided to Hillary Clinton and the Democrats. Trump Jr. requested evidence to support these claims, but Veselnitskaya did not provide such information.¹⁵⁸

Common Cause believes that President Trump's campaign and Donald Trump Jr. knowingly solicited an illegal foreign contribution from Natalia Veselnitskaya in violation of the Federal Election Campaign Act.¹⁵⁹ Federal law prohibits a foreign national from directly or indirectly making "a contribution¹⁶⁰ or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State or local election."¹⁶¹ Federal law also prohibits candidates from soliciting contributions from foreign nationals.¹⁶² Trump Jr. solicited and met with a foreign national for the purpose of receiving potentially damaging information on Hillary Clinton ("a contribution") for the purpose of benefiting his father's presidential campaign.

Common Cause recommends Congress begin an "inquiry of impeachment" to further investigate whether the president committed serious campaign finance violations on his way to winning the 2016 presidential election.

PART III: WHY AN IMPEACHMENT INQUIRY, RATHER THAN CONTINUED CONGRESSIONAL OVERSIGHT, IS NECESSARY

House Speaker Nancy Pelosi has repeatedly argued that an impeachment inquiry is not necessary because the numerous House committees currently investigating Donald Trump and his administration are enough to hold Trump accountable.¹⁶³ It is important to note that Committees of the Democratic-controlled House have taken their oversight duties seriously and there are currently investigations by 14 separate House committees into President Trump and his administration's affairs.¹⁶⁴ However, these investigations have faced unprecedented stonewalling by the Trump Administration as it has resisted congressional subpoenas for documents and abused executive privilege to silence or minimize important witnesses.¹⁶⁵

For several important reasons, Common Cause disagrees with assessments that general oversight is a sufficient replacement for an “inquiry of impeachment.”

A. Courts are More Likely to Act During a Formal Impeachment Inquiry

First, Constitutional experts overwhelmingly agree that Congress' power to issue a subpoena is at its pinnacle when the subpoena is related to impeachment proceedings because the Constitution explicitly vests the power to impeach with the House of Representatives.¹⁶⁶ The Supreme Court has long suggested that the House can lawfully exercise its subpoena powers where the Constitution expressly grants it authority to do so, as in the case of impeachments.¹⁶⁷ Moreover, a 1974 House Judiciary Committee memo recognized that “the Supreme Court has contrasted the broad scope of the inquiry power of the House in impeaching proceedings with its more confined scope in legislative legislations.”¹⁶⁸

By contrast, Congress' general oversight authority is only an implied power in the Constitution so federal courts are not as likely to enforce these subpoenas as they would those that carry the force of an impeachment proceeding behind them. For example, Rule 6(e)(2)(B) of the Federal Rules of Civil Procedure prevents the disclosure of grand jury materials by certain persons including government personnel.¹⁶⁹ In April 2019, the DC Circuit Court held that federal courts do not have inherent authority to disclose grand jury materials pursuant to Rule 6(e).¹⁷⁰ However, there is an exception in this statute that allows a judge to authorize disclosure of grand jury materials “preliminarily to or in connection with a judicial proceeding.”¹⁷¹

General congressional oversight is not typically considered a judicial function, while an open impeachment hearing is more akin to a traditional “judicial proceeding,” with witnesses called and evidence presented.¹⁷² Courts would be far more likely to authorize the disclosure of grand jury material under an “inquiry of impeachment” due to their similarity to traditional court proceedings.

Trump's Department of Justice has also sweepingly argued in court that Congress cannot investigate the president because Congress can only use its subpoena power if it has a “legitimate legislative purpose,” which these House investigations do not have.¹⁷³ The Office of Legal Counsel also issued two opinion letters that argued that the present and former presidential advisors are “absolutely immune” from compelled congressional testimony.¹⁷⁴

Moreover, there is a troubling, historical precedent that might support the administration's broad assertion. In *Kilbourn v. Thompson*, the Supreme Court held that Congress could not compel a private citizen to testify about his private finances because Congress does not have “the general power

of making inquiry into the private affairs of the citizen.”¹⁷⁵ While the *Kilbourn* decision has been significantly limited by subsequent Supreme Court decisions, today’s conservative-led Supreme Court might be more amenable to this argument, which would seriously weaken congressional oversight of the executive branch outside the context of an impeachment inquiry.¹⁷⁶

Despite this possibility, the Supreme Court unanimously ruled in *United States v. Nixon* that neither the separation of powers or executive privilege could protect a president from complying with a subpoena in a judicial process.¹⁷⁷ It strains credulity to suggest that Congress could not use its subpoena powers to compel the Trump Administration to produce documents or testify in a judicial-like impeachment proceeding. To allow a rogue president to evade removal from office in this manner would dangerously neuter Congress’ express constitutional power to impeach. Even Trump’s DOJ conceded in court that “Congress could presumably use subpoenas to advance [their “non-legislative” impeachment powers].”¹⁷⁸ Thus, the courts are far more likely to act if Congress authorized an “an inquiry of impeachment” to investigate President Trump than otherwise.

B. An Impeachment Inquiry Could Investigate a Broader Range of President Trump’s Offenses

Second, an impeachment inquiry could also investigate a broader range of Trump’s potentially impeachable offenses than those already outlined in this report. These include his child separation policy and hostility towards immigrants¹⁷⁹, his racism and support of white supremacy¹⁸⁰, any administrative mismanagement and corruption¹⁸¹, potential use of the office for personal profit¹⁸², nepotism¹⁸³ and the 24 credible sexual misconduct allegations made by dozens of women against the president.¹⁸⁴ A comprehensive impeachment inquiry would come armed with the power of subpoenas and would allow the American people to get the full truth behind these charges and ensure that justice is served.

C. An Impeachment Inquiry Would Better Educate the Public About Trump’s Behavior

Finally, an “inquiry of impeachment” will better educate the public about the facts underlying the Mueller Report than will general committee oversight investigations and can help Americans understand the scope and impacts of President Trump’s conduct. According to a CNN poll, 75% of Americans have not read any of the 448 pages of the Mueller Report, with only a tiny 3% claiming to have read the whole thing, a data point that strongly suggests that the general public has no idea what is in the Mueller Report.¹⁸⁵ Many Members of Congress have acknowledged they have not read the full report.¹⁸⁶ Formal impeachment hearings would likely bring supercharged national attention with televised hearings, fact witness testimony and 24-hour news coverage to follow, giving the general public a better chance to learn about the underlying facts.

CONCLUSION

Our representative democracy, with its three branches of government and the checks and balances between them, is not intended to move quickly. That can be frustrating to modern sensibilities in a world consumed with immediate gratification. But when politicians take a process inclined toward careful deliberation, and apply ample efforts to obstruct, delay, or deny progress of any kind, what was mildly frustrating devolves into dysfunction, stalemate, and systemic failure.

For nearly 50 years Common Cause has organized ordinary Americans, helping them understand how to work effectively both inside and outside our institutions of government to increase transparency and accountability. We've shifted power from lobbyists to the people by enhancing the role of small campaign donors. We've injected the public into the ultimate insider political game—redistricting—through impartial commissions that draw fair maps and enable voters to choose their representatives, not the other way around. We've helped raise the ethical standards of public officials around the country and modernize our elections to encourage more people to vote.

For our democracy to work, the people must have faith that no one is above the law, not even the president. And there are moments when the people must break through all the political considerations to demand action. We are in such a moment right now. The people have the ultimate power in our democracy and need to step up now and demand an impeachment inquiry. The evidence of impeachable conduct is overwhelming and the risk of inaction and its ability to undermine people's faith in our democracy is far too great. People need to rise-up and demand action now.

Donald Trump is no ordinary president. He constantly lies to the American public and attacks institutions of the press. He seemingly conspired with his attorney Michael Cohen in committing campaign finance felonies during the 2016 campaign. He invited a hostile foreign power to interfere with our elections and has thwarted government efforts to prevent such interference in the future. He obstructed the Mueller investigation into Russian interference. He has abused executive privilege and other presidential powers to obstruct Congressional oversight efforts. He has retained ownership of a business empire that regularly engages in business with foreign and domestic governments in violation of the Constitution's emoluments clauses. This extraordinary and dangerous behavior requires an extraordinary response to ensure the continued safety of the American Republic.

Our founding fathers put the Impeachment clause in the Constitution for a reason. That reason was to hold a president who is abusing their power to account between elections. President Trump is abusing his power to block Congressional oversight of his administration.

Speaker Pelosi and House Democratic leadership have long warned that impeachment is too divisive with the public and that it could potentially backfire on the Democrats if they were to begin proceedings without bipartisan or, at least, broad public support.¹⁸⁷ Instead, Pelosi has categorized Trump's behavior as "self-impeaching" and that Trump should instead be removed by the public at the ballot box.¹⁸⁸

Beyond unpredictable political implications, an "inquiry of impeachment" is simply a necessity that Congress cannot ignore. A president who obstructs justice into an investigation into a foreign attack on our elections, who hesitates to act to protect them against further intrusion, who implicitly encourages further interference because it benefits him politically, can fairly be seen as a threat to future free and fair elections in this country.

Most importantly, members of Congress are bound by oath to support the Constitution,¹⁸⁹ which in this case requires protecting the public from the actions of an increasingly dangerous president. At this crucial moment in our history, Congress can no longer evade its constitutional duty. Common Cause demands that Congress honor that oath by bringing a resolution to hold an “inquiry of impeachment” into Donald Trump’s offenses immediately.

Endnotes

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- 6 The Federalist No. 65 (Alexander Hamilton).
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- 8 U.S. Const. art. II, § 4.
- 9 “Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.” U.S. Const., art. III, § 3, cl. 1. The federal bribery statute states “whoever being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for: (A) being influenced in the performance of any official act; (B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or (C) being induced to do or omit to do any act in violation of the official duty of such official or person ... shall be fined under this title or imprisoned for not more than two years, or both.” 18 U.S.C. § 201(b)(2).
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