

PATTERNS OF DECEPTION: Obstruction, Corruption & Abuse of Power

*The Nonpartisan Case for Removing
President Donald J. Trump from Office*



Acknowledgments

Karen Hobert Flynn and Paul Seamus Ryan co-authored this report.

The authors thank the 1.2 million Common Cause supporters whose small-dollar donations fund more than 70% of our annual budget for our nonpartisan work strengthening the people's voice in our democracy.

Thank you to the Common Cause National Governing Board for its leadership and support.

We also thank Susannah Goodman, Aaron Scherb, Jay Riestenberg and William Steiner for assistance with the content; Melissa Brown Levine for copy editing, Kerstin Vogdes Diehn for design, and Scott Blaine Swenson for strategic communications support.

This report is complete as of November 20, 2019.

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FOREWORD

Karen Hobert Flynn
Common Cause President

In these highly polarized and partisan times, it is easy to lose sight of the fact that the people are the ultimate source of governmental power and through our vote, we transfer that power to elected representatives who govern until the next election.

The Framers understood power's corrupting influence when concentrated in too few hands and the threat that poses to the rule of law and the promise of self-governance. Our Constitution allows for an impeachment inquiry, impeachment, trial, conviction, and removal of public officials, including the President. Impeachment is, and should be, very rare, and only taken up under extraordinary circumstances.

Common Cause issues this report and our call for the House of Representatives to impeach President Donald J. Trump, and for the Senate to convict and remove him from office, as a principled, nonpartisan, and solemn duty as advocates for democracy. It doesn't matter to us which party Donald Trump represents, or who holds majorities in the House or Senate.

Mr. Trump's violation of the power entrusted to him and his conduct in public office brings us to this historic moment. The evidence is clear that his actions, and those of his campaign and White House staff, undermined and threatened the integrity of our elections and have been an assault on the high ethical standards we expect from elected officials. While impeachment is a political decision for many people in both parties, for others and for Common Cause, it's about principles, not politics, a clear sense of right and wrong, and the future of the people's voice in our democracy.

As a nonpartisan, 1.2 million member advocacy organization that promotes laws to strengthen all peoples' voices in our democracy, it is the rule of law and the delicate balance of power between the legislative, executive, and judicial branches that allow the people to assert our voices and hold power accountable.

In these moments when the rule of law is tested, Americans have a responsibility and a duty to put our country and our Constitution over personal profit or partisan political gain. For most Americans that simply means we must pay attention to the facts, making sure the information we are getting is accurate and factual.

Our democracy is fragile because it is an audacious experiment in humans' ability to self-govern given the complex nature of human relations. For 244 years, and counting, when difficult times divided us, heroes arose to lead us back together so that ultimately, we the people prevail.

When others rushed to judgment calling for impeachment as soon as President Trump was sworn in, we urged caution. As partisans on both sides tried to use the Mueller investigation to make a case to the public before it was completed, we demanded the special counsel be

allowed to finish his report and present the facts. Only after seeing that damning evidence did we call for an impeachment inquiry, and we did so at a moment when that position was not popular with the leadership of either political party. With even more evidence now clearly available for the public to see after two weeks of compelling public hearings and months of investigations and depositions, there is more than enough evidence to convict and remove President Trump from office.

The report outlines nine articles of impeachment, each of which serves as grounds on which the president should be removed from office. Ultimately, the House will decide the articles, and either impeach or not. If the House impeaches, it is up to the Senate to conduct a fair and open trial and acquit or convict. Only with a conviction can the president be removed from office. It is not easy, and it should not be, but the evidence is clear and compelling. The harder task, in this instance, will fall to those who turn their backs on the rule of law to cynically protect themselves and their political party, not democracy, under a misguided notion that people aren't paying attention or will forget by the next election.

We won't. We won't let anyone else forget either. The future of democracy and our ability to self-govern is literally at stake here. President Trump's authoritarian tendencies and the way he has ignored democratic norms, values and laws, attacked institutions like the courts and the press have done enormous damage to our country.

The principles upon which Common Cause was founded and that have shaped us for 50 years have, at their core, a fundamental respect for the voice of all people. John Gardner founded Common Cause in 1970 as a Republican who had served in the cabinet of President Lyndon Johnson, a Democrat. It was a time of civil unrest at home, a Cold War and nuclear arms race with the former-Soviet Union, and a very hot, very unpopular war in Viet Nam. But as tumultuous as the politics and civil unrest were in those moments, Gardner saw the potential to harness the power of the people to organize and demand reforms to make government and politics more accessible to all people.

No one should take democracy for granted, but as the House and Senate work their way through the impeachment process, the significance of this historic moment is especially important for those who sought and accepted the public's trust. They have taken an oath and now have a duty and obligation to protect and defend our Constitution, the rule of law, and the most basic notion of right versus wrong.

TABLE OF CONTENTS

FOREWORD	1
INTRODUCTION	5
PART I: NINE ARTICLES OF IMPEACHMENT AND THE FACTS THAT JUSTIFY THEM	9
A. Articles of Impeachment Related to the Ukraine Scandal.....	11
1. Abuse of Power (Ukraine)	19
2. Bribery (Ukraine).....	20
3. Obstruction of Justice (Ukraine and Broader Impeachment Inquiry).....	22
4. Campaign Finance Violations (Ukraine).....	26
B. Articles of Impeachment on Other Matters	27
5. Obstruction of Justice (Russia investigation).....	27
6. Abuse of Power (Russia Investigation)	34
7. Foreign and Domestic Emoluments.....	35
8. Abuse of Power (Failure to Adequately Safeguard U.S. Elections From Foreign Interference).....	38
9. Campaign Finance Violations (“Hush” Payments)	42
PART II: SUMMARY OF SENATE IMPEACHMENT TRIAL PROCESS.....	45
A. Senate Rules for Impeachment Trials	46
B. Additional Procedures Used in Clinton Impeachment Trial	48
C. Standard of Proof in Senate Impeachment Trial.....	49
D. Requirements and Expectations for a Senate Impeachment Trial of President Trump.....	50
CONCLUSION	51
ENDNOTES	53

INTRODUCTION

There are few options to hold a president accountable when he or she is abusing presidential power other than elections and impeachment. The Founding Fathers wisely understood that there may be times between elections when it is necessary to hold the president accountable by providing the Congress the power to impeach and remove the president from office.

When Alexander Hamilton served as treasury secretary, he warned of the kind of leader who could threaten our fledgling republic.

When a man unprincipled in private life desperate in his fortune, bold in his temper, possessed of considerable talents, having the advantage of military habits—despotic in his ordinary demeanour—known to have scoffed in private at the principles of liberty—when such a man is seen to mount the hobby horse of popularity—to join in the cry of danger to liberty—to take every opportunity of embarrassing the general government & bringing it under suspicion—to flatter and fall in with all the non sense of the zealots of the day—it may justly be suspected that his object is to throw things into confusion that he may “ride the storm and direct the whirlwind.”¹

Hamilton also argued in *The Federalist Papers* No. 65 that impeachment is a tool to hold the president accountable and that the focus of an impeachment would not be limited to violation of law but rather abuse or violation of some public trust.

A well-constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.²

Hamilton’s worries about the kind of leader who could threaten our democracy is a strikingly accurate forecast of our alarming present reality. Unfortunately, President Donald J. Trump’s abuses of power, obstruction of justice and other high crimes and misdemeanors are exactly what our Founding Fathers had in mind when they gave Congress the power to impeach.

Article II of the U.S. Constitution provides that the president “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”³ Article I of the Constitution provides that “the House of Representatives ... shall have the sole Power of Impeachment”⁴ and further provides:

The Senate shall have the sole Power to try all Impeachments. ... 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.⁵

Impeachment of the president is an extraordinary measure that the people put in place to remove a president for his dangerous actions. On July 24, 2019, for the first time in the organization's near-50-year history, Common Cause called for an impeachment investigation of a president.⁶ In its report, *The Case for an Impeachment Inquiry of President Trump*,⁷ Common Cause called on the U.S. House of Representatives to begin an impeachment investigation in response to White House stonewalling of attempts to investigate potential criminal conduct or wrongdoing by President Trump. On August 8, House Judiciary Committee Chairman Jerrold Nadler said publicly for the first time that his committee was conducting an impeachment inquiry into President Trump.⁸ And on September 24, House Speaker Nancy Pelosi announced that the House was opening a formal impeachment inquiry into President Trump.⁹

The House's impeachment inquiry has made clear that, during his 2016 election campaign and continuing through his first three years in office, President Trump has committed numerous impeachable offenses that have undermined democratic elections and governance—the protection of which is at the core of Common Cause's mission.

President Trump has abused the power of his office by withholding an almost \$400 million military aid package to Ukraine to pressure Ukraine's government into announcing and launching an investigation of Trump's 2020 election opponent Joe Biden—a scheme that constitutes the solicitation of a bribe by President Trump from Ukraine's President Volodymyr Zelensky.¹⁰ President Trump's solicitation of election assistance from Ukraine's president violated the federal campaign finance law prohibition on soliciting a political “contribution” from a foreign national. President Trump obstructed Congress's impeachment inquiry and, consequently, obstructed justice, to cover up this abuse of power. Trump's abuse of power, solicitation of a bribe, obstruction of justice and campaign finance law violation with respect to Ukraine are all impeachable offenses.

However, President Trump's impeachable conduct is not limited to the Ukraine scandal. President Trump violated federal campaign finance laws through a “hush” payment scheme during his 2016 presidential election campaign. President Trump has abused his power not only by failing to adequately safeguard our elections from foreign interference but also by actively soliciting foreign assistance to his electoral campaigns—a pattern of practice that dates back to the 2016 election when he urged Russia to hack Hillary Clinton's emails and continues in his 2020 campaign, requesting electoral assistance from Ukraine and China. President Trump refused to divest his ownership of the Trump Organization and, consequently, has accepted foreign and domestic emoluments in violation of the Constitution. In addition, President Trump has continually obstructed efforts by Congress and the Department of Justice (DOJ) to investigate his impeachable conduct.

With great solemnity, Common Cause urges Congress to hold President Trump accountable for his abuses of power, bribery, obstruction of justice, receipt of emoluments, failure to safeguard our elections from foreign interference and campaign finance violations—actions that constitute high crimes and misdemeanors.

To this end, Common Cause, on behalf of its 1.2 million members and supporters, calls on the House of Representatives to impeach President Trump and for the Senate to convict him, remove him from office and disqualify him from holding office in the future.

This report details the bases for Common Cause’s call for the impeachment of President Trump. Part I proposes nine articles of impeachment and the facts that justify them, and Part II outlines the appropriate process and procedures that should govern a Senate impeachment trial.

PART I: NINE ARTICLES OF IMPEACHMENT AND THE FACTS THAT JUSTIFY THEM

The Constitution provides for the president's removal from office upon impeachment for and conviction of "Treason, Bribery, or other high Crimes and Misdemeanors."¹¹ While the crime of "treason" is expressly defined in the Constitution¹² and "bribery" has a clear meaning in common law and is codified in federal criminal statutes,¹³ neither the Constitution nor federal statutes define what constitutes "high crimes and misdemeanors."

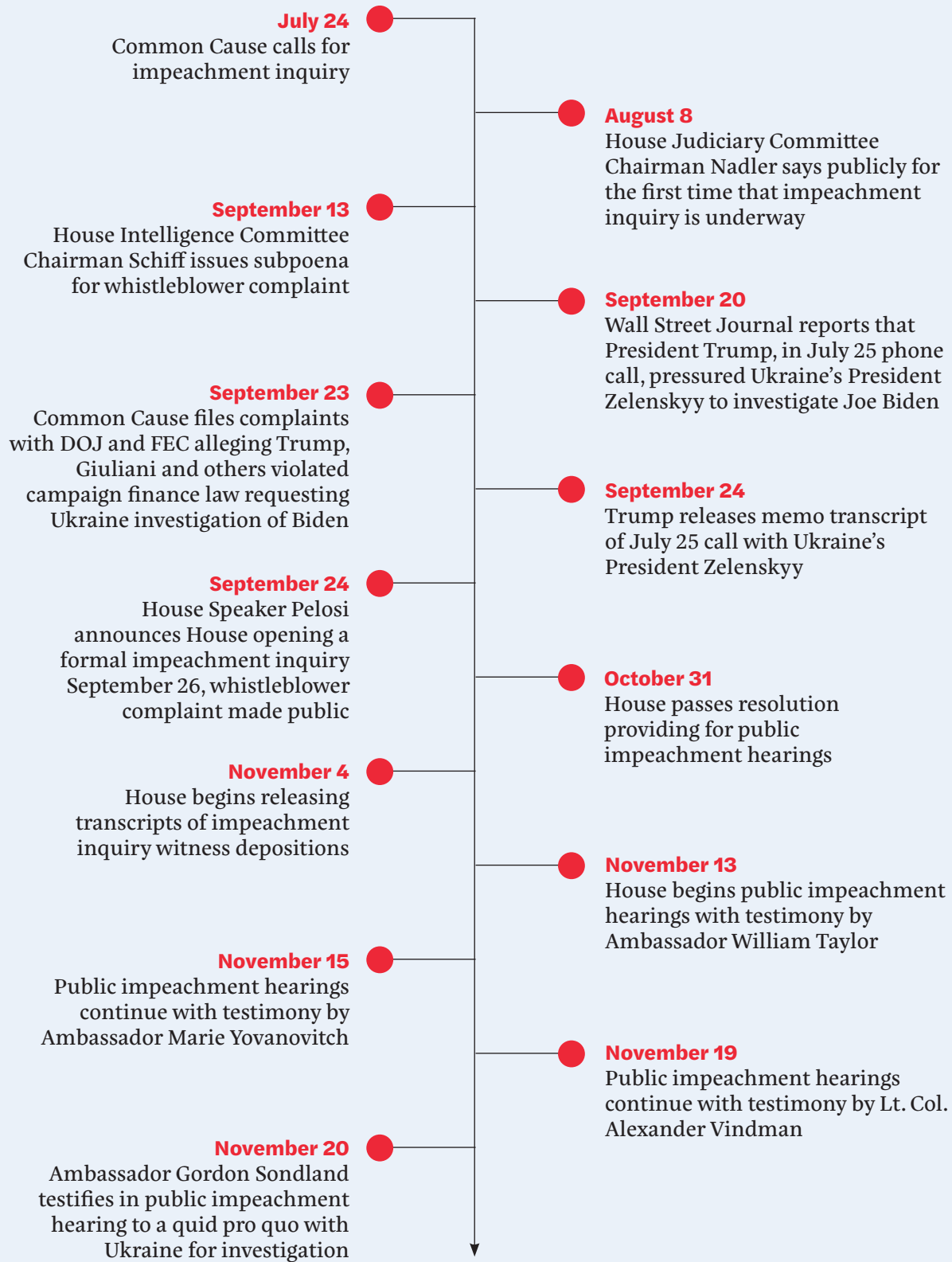
Historically, "high crimes and misdemeanors" have been understood to cover a broad range of "major offenses against our very system of government" or serious abuses of governmental power.¹⁴ Our Constitution's framers adopted the phrase "high crimes and misdemeanors" from English impeachment practices in Parliament, which had been in use for more than 400 years at the time of the Constitutional Convention.¹⁵ 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."¹⁶ 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."¹⁷

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.¹⁸ A year later, Associate Supreme Court Justice Samuel Chase was impeached and convicted for permitting his partisan views to influence his decisions.¹⁹ In 1825, Judge James Peck was impeached by the House for imprisoning a lawyer and ordering his disbarment because the lawyer publicly criticized his decisions.²⁰ 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.²¹

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. Moreover, the Supreme Court has long held that controversies regarding Congress's 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."²² 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.

The following nine articles of impeachment, and facts supporting them, constitute grounds upon which President Trump should be impeached and removed from office.

2019 Impeachment Timeline



**Complete as of
November 20, 2019**

A. Articles of Impeachment Related to the Ukraine Scandal

In late September 2019, the public became aware of efforts by President Trump spanning many months, directly and through agents, including Rudy Giuliani and U.S. government officials, to pressure the Ukraine government to investigate Trump 2020 electoral opponent Joe Biden. These events give rise to several grounds for impeachment and warrant in-depth examination.

On September 13, 2019, Congressman Adam Schiff, chairman of the House Permanent Select Committee on Intelligence, issued a subpoena to the acting director of national intelligence (DNI) Joseph Maguire to compel the production of a whistleblower complaint that the intelligence community inspector general had determined to be credible and a matter of “urgent concern.”²³ The acting DNI had been required by statute to submit the complaint to the congressional intelligence committees more than 10 days earlier but had refused to do so.²⁴

On September 17, Intelligence Community Inspector General Michael K. Atkinson sent a letter to Congressmen Schiff and Devin Nunes, chair and ranking member of the House Intelligence Committee, respectively, stating his disagreement with the Trump administration’s decision to withhold the whistleblower complaint from the Intelligence Committee, which Atkinson deemed both credible and of “urgent concern.”²⁵

On September 20, the *Wall Street Journal* reported that “President Trump in a July [25] phone call repeatedly pressured the president of Ukraine to investigate Joe Biden’s son ... urging Volodymyr Zelensky about eight times to work with Rudy Giuliani on a probe that could hamper Mr. Trump’s potential 2020 opponent.”²⁶ The article continued:

“He told him that he should work with [Mr. Giuliani] on Biden, and that people in Washington wanted to know” if his lawyer’s assertions that Mr. Biden acted improperly as vice president were true, one of the people said. Mr. Giuliani has suggested Mr. Biden’s pressure on Ukraine to fight corruption had to do with an investigation of a gas company for which his son was a director. A Ukrainian official this year said he had no evidence of wrongdoing by Mr. Biden or his son Hunter Biden.²⁷

On September 23, Common Cause filed complaints with the DOJ and the Federal Election Commission (FEC) alleging that President Trump, Giuliani and their associates Lev Parnas, Igor Fruman and Victoria Toensing had violated the federal law prohibition on soliciting a political contribution (i.e., anything of value to influence a U.S. election) from a foreign national²⁸ through a months-long campaign to pressure Ukraine’s government to investigate 2020 presidential election candidate Joe Biden and his son—withholding a nearly \$400 million military aid package as leverage.²⁹ Common Cause’s complaints detailed the *New York Times*³⁰ and *BuzzFeed News*³¹ accounts of a back-channel campaign to pressure the Ukraine government to investigate Biden, orchestrated by Trump’s personal lawyer Giuliani and going back at least to January 2019. More recent reporting indicates that President Trump “slipped out of a large reception room ... to have a private meeting” with Giuliani, Parnas and Fruman at the December 2018 White House Hanukkah party.³² Following the party, Parnas told “confidants” that in the private meeting, President Trump “talked about tasking him and Fruman with what

Parnas described as ‘a secret mission’ to pressure the Ukrainian government to investigate Joe Biden and his son Hunter.”³³ Attendance by Parnas and Fruman at the party was memorialized by a photo of the two alongside President Trump, Vice President Pence and Giuliani.³⁴

On September 24, President Trump authorized the White House to release a memorandum of the president’s July 25 phone conversation with President Zelenskyy of Ukraine, which notes on its first page that it “is not a verbatim transcript” of the discussion and that the document merely “records the notes and recollections” of executive branch staff “assigned to listen and memorialize the conversation in written form[.]”³⁵

According to the memo, early in the conversation, President Trump tells President Zelenskyy that the United States does “a lot for Ukraine” and that the “United States has been very very good to Ukraine.”³⁶ President Zelenskyy responds that President Trump is “absolutely right” and continues, “I would also like to thank you for your great support in the area of defense. We are ready to continue to cooperate for the next steps specifically we are almost ready to buy more Javelins from the United States for defense purposes.”³⁷ President Trump responded:

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. I would like you to find out what happened with this whole situation with Ukraine, they say CrowdStrike ... I guess you have one of your wealthy people ... The server, they say Ukraine has it. There are a lot of things that went on, the whole situation. I think you’re surrounding yourself with some of the same people. I would like to have the Attorney General call you or your people and I would like you to get to the bottom of it. As you saw yesterday, that whole nonsense ended with a very poor performance by a man named Robert Mueller, an incompetent performance, but they say a lot of it started with Ukraine. Whatever you can do, it’s very important that you do it if that’s possible.

In this crucial exchange, President Zelenskyy requested military aid—i.e., the purchase of Javelin missiles from the United States—and President Trump responded by asking for a “favor”: an investigation by Ukraine’s government into who hacked the Democratic National Committee’s (DNC) computer server during the 2016 U.S. presidential election. Trump was referring to “a long-discredited conspiracy theory that tries to cast doubt on Russia’s role” in the DNC hack.³⁸

President Trump then stated his intention to ask Giuliani, along with Attorney General William Barr, to call President Zelenskyy.³⁹ Trump continued, “The other thing, There’s a lot of talk about Biden’s son, that Biden stopped the prosecution and a lot of people want to find out about that so whatever you can do with the Attorney General would be great.”⁴⁰ In this exchange, President Trump urged President Zelenskyy to investigate Joe Biden, implying that Biden, while serving as vice president, played an improper role in the termination of an investigation into Burisma Group, a Ukrainian energy company where Biden’s son had once served on the board of directors. Burisma had been investigated for suspected financial improprieties years before Biden’s son joined its board of directors. No evidence of wrongdoing by Biden or his

son surfaced during the investigation or in the years since it was closed.⁴¹

At least two more times during the July 25 conversation, President Trump mentioned his intention to have Giuliani and Attorney General Barr call President Zelenskyy; President Zelenskyy replied with assurances that he would pursue the investigations that President Trump had requested.⁴²

On September 24, House Speaker Pelosi announced that the House was opening a formal impeachment inquiry into President Trump, characterizing President Trump's refusal to turn over the Ukraine call whistleblower complaint and admission that he asked the president of Ukraine to take actions that would benefit him politically as a "betrayal of his oath of office and betrayal of our national security and betrayal of the integrity of our elections."⁴³

On September 25, the whistleblower complaint was finally turned over to Congress and confirmed at that time to relate to President Trump's July 25 phone call with Ukraine's president.⁴⁴ On the following morning, the House Intelligence Committee released a declassified version of the whistleblower complaint to the public.⁴⁵ The whistleblower complaint begins as follows:

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.⁴⁶

The whistleblower wrote that "[o]ver the past four months, more than half a dozen U.S. officials" had informed the whistleblower "of the various facts related to this effort."⁴⁷ The whistleblower alleged that President Trump, in a July 25 phone call, "sought to pressure the Ukrainian leader to take actions to help the President's 2020 reelection bid[.]" including initiating or continuing an investigation into Joe Biden, investigating whether allegations of Russian interference in the 2016 U.S. presidential election originated in Ukraine and speaking "with two people the President names explicitly as his personal envoys on these matters, Mr. Giuliani and Attorney General Barr[.]"⁴⁸

The whistleblower further alleged that "[i]n the days following the phone call, [the whistleblower] learned from multiple U.S. officials that senior White House officials had intervened to 'lock down' all records of the phone call, especially the official word-for-word transcript of the call[.]"⁴⁹ White House officials reportedly told the whistleblower that they had been "directed" by White House lawyers to remove the electronic transcript from the computer system in which such transcripts are typically stored and to instead load the transcript into a separated electronic system that is "otherwise used to store and handle classified information of an especially sensitive nature."⁵⁰ "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."⁵¹

The whistleblower complaint went on to describe a July 26 meeting between U.S. Special Representative for Ukraine Negotiations Kurt Volker, U.S. Ambassador to the European Union Gordon Sondland and Ukraine’s President Zelenskyy in which Volker and Ambassador Sondland “provided advice to the Ukrainian leadership about how to ‘navigate’ the demands that the President had made of Mr. Zelenskyy.”⁵² The whistleblower complaint also described a meeting in Madrid on or about August 2 between Giuliani and one of President Zelenskyy’s advisers, Andriy Yermak—a “‘direct follow-up’ to the President’s call with Mr. Zelenskyy about the ‘cases’ they had discussed.”⁵³

Finally, the whistleblower referenced numerous news articles dating back to March 2019 regarding former Ukraine prosecutor general Yuriy Lutsenko and his early 2019 meetings with Giuliani, former ambassador to Ukraine Marie Yovanovitch and others.⁵⁴

In the weeks following the September publication of the Ukraine whistleblower complaint, as part of the official impeachment inquiry, committees of the House of Representatives deposed and obtained documentary evidence from more than a dozen witnesses to these events. Witnesses and documents have overwhelmingly corroborated and added troubling detail to the actions of President Trump described in the whistleblower complaint.

“Secretary Perry, Ambassador Volker and I worked with Mr. Rudy Giuliani on Ukraine matters at the express direction of the President of the United States. ... [W]e followed the President’s orders.”
—*Ambassador Gordon Sondland*

For example, Ambassador William B. Taylor described an “irregular, informal channel of U.S. policymaking with respect to Ukraine,” including “then-Special Envoy Kurt Volker, Ambassador Sondland, Secretary of Energy Rick Perry, and as I subsequently learned, Mr. Giuliani.”⁵⁵ Ambassador Taylor testified that President Trump

instructed Perry, Volker and Sondland to “work with Rudy Giuliani” on Ukraine matters.⁵⁶ Ambassador Taylor further acknowledged under oath his understanding that, in a July 10 meeting with Ukrainian officials at the White House, Ambassador Sondland had connected investigations into Biden and the 2016 elections with an Oval Office meeting for President Zelenskyy and that Ambassador John Bolton abruptly ended the meeting, advising those in attendance that “they should have nothing to do with domestic politics.”⁵⁷ Ambassador Taylor testified that it had become “clear to the Ukrainians that, in order to get this meeting [at the White House] that they wanted, they would have to commit to pursuing” investigations into Biden and the 2016 elections and that doing so “would have involved Ukraine in the 2020 election campaign,” and Ukrainian officials “did not want to do that.”⁵⁸

A White House visit was not the only thing conditioned on President Zelenskyy’s willingness to investigate Joe Biden. Ambassador Taylor testified that on July 18, 2019, he “sat in astonishment” when he learned from an Office of Management and Budget (OMB) official that a hold had been put on the Ukraine military aid package by directive “from the President to the Chief of Staff to OMB.”⁵⁹ Following Ambassador Taylor learning of the hold on the military aid package, he testified that there were a series of National Security Council–led interagency

meetings, “starting at the staff level and quickly reaching the level of Cabinet secretaries. At every meeting, the unanimous conclusion was that the security assistance should be resumed, the hold lifted.”⁶⁰ Ambassador Taylor testified that he learned from Timothy Morrison, senior director for Russia and Europe at the White House and National Security Council, that Ambassador Sondland told Yermak, President Zelenskyy’s adviser, that “the security assistance money would not come until President Zelenskyy committed to pursue the Burisma investigation.”⁶¹ This was the first time Ambassador Taylor “had heard that the security assistance—not just the White House meeting—was conditioned on the investigations.”⁶² Ambassador Taylor then called Ambassador Sondland and, during that call, “Ambassador Sondland told [Ambassador Taylor] that President Trump had told him that he wants President Zelensky to state publicly that Ukraine will investigate Burisma and alleged Ukrainian interference in the 2016 U.S. election”; that “everything was dependent on such an announcement, including security assistance”; and that “President Trump wanted President Zelensky in a box by making public statement [sic] about ordering such investigations.”⁶³

Morrison corroborated, in sworn testimony, Ambassador Taylor’s statement that Morrison told him that Ambassador Sondland told Yermak, President Zelenskyy’s adviser, that release of the military aid package was conditioned on President Zelenskyy committing to pursue the Burisma investigation, with one substantive correction. Morrison testified, “I can confirm that the substance of his statement, as it relates to conversations he and I had, is accurate” but that Sondland had told Yermak that “it could be sufficient if the new Ukrainian prosecutor general—not President Zelensky—would commit to pursue the Burisma investigation.”⁶⁴

Prior to Ambassador Taylor’s testimony, corroborated by Morrison, that President Trump had conditioned both the release of the Ukraine military aid package and a White House visit on the Ukraine government’s commitment to announcing and opening an investigation into Joe Biden, Ambassador Sondland refused to acknowledge when testifying under oath that President Trump had demanded a *quid pro quo from Ukraine—namely, military aid and a White House visit in exchange for an investigation into Joe Biden*.⁶⁵ However, following Ambassador Taylor’s and Morrison’s sworn testimony, Ambassador Sondland filed a supplemental declaration with the House Intelligence Committee acknowledging that he did indeed tell President Zelenskyy’s adviser Yermak that “resumption of U.S. aid would likely not occur until Ukraine provided the public anti-corruption statement we had been discussing for many weeks.”⁶⁶

Ambassador Sondland was even more forthcoming, with shocking detail, in his public testimony before the House Intelligence Committee, stating:

Secretary Perry, Ambassador Volker and I worked with Mr. Rudy Giuliani on Ukraine matters at the express direction of the President of the United States. We did not want to work with Mr. Giuliani. Simply put, we played the hand we were dealt. We all understood that if we refused to work with Mr. Giuliani, we would lose an important opportunity to cement relations between the United States and Ukraine. So we followed the President’s orders.⁶⁷

Ambassador Sondland explained that all relevant executive branch leadership knew about

Giuliani's Ukraine work on behalf of President Trump: "The suggestion that we were engaged in some irregular or rogue diplomacy is absolutely false. ... [T]he leadership of State, NSC, and the White House were all informed about the Ukraine efforts from May 23, 2019, until the security aid was released on September 11, 2019."⁶⁸

Ambassador Sondland clearly understood Giuliani to be "expressing the desires" of President Trump in requesting a *quid pro quo* from Ukraine.

Mr. Giuliani's requests were a *quid pro quo* for arranging a White House visit for President Zelensky. Mr. Giuliani demanded that Ukraine make a public statement announcing investigations of the 2016 election/DNC server and Burisma. Mr. Giuliani was expressing the desires of the President of the United States, and we knew that these investigations were important to the President.⁶⁹

Ambassador Sondland "came to believe that the resumption of security aid would not occur until there was a public statement from Ukraine committing to the investigations of the 2016 election and Burisma, as Mr. Giuliani had demanded,"⁷⁰ reiterating:

Was there a "quid pro quo?" As I testified previously, with regard to the requested White House call and White House meeting, the answer is yes.

Mr. Giuliani conveyed to Secretary Perry, Ambassador Volker, and others that President Trump wanted a public statement from President Zelensky committing to investigations of Burisma and the 2016 election. Mr. Giuliani expressed those requests directly to the Ukrainians. Mr. Giuliani also expressed those requests directly to us. We all understood that these prerequisites for the White House call and White House meeting reflected President Trump's desires and requirements.⁷¹

State Department official David A. Holmes testified that during a July 26, 2019, lunch with Ambassador Sondland in Ukraine, Ambassador Sondland called President Trump to update him on his activities. Although Ambassador Sondland did not have the call on speakerphone, Holmes testified that he "could hear the President's voice through the earpiece of the phone" and that President Trump's "voice was very loud and recognizable, and Ambassador Sondland held the phone away from his ear for a period of time, presumably because of the loud volume."⁷² Holmes heard Ambassador Sondland tell Trump "that President Zelenskyy 'loves your ass,'" and Holmes then heard President Trump ask, "So, he's gonna do the investigation?"⁷³ Ambassador Sondland replied that "he's gonna do it" and that President Zelenskyy will do "anything you ask him to."⁷⁴ After the call, Holmes asked Ambassador Sondland "for his candid impression" of President Trump's views on Ukraine and, in particular, "if it was true that the President did not 'give a s—t about Ukraine.'"⁷⁵ Holmes testified that Ambassador Sondland agreed that President Trump did not "give a s—t about Ukraine" and that President Trump only cares about "'big stuff' that benefits the President, like the 'Biden investigation' that Mr. Giuliani was pushing."⁷⁶

Many more impeachment inquiry witnesses substantiated and detailed President Trump's prioritization of his own personal political interests over our nation's national security inter-

ests. For example, U.S. Special Representative for Ukraine Negotiations Volker testified under oath that allegations of impropriety by Joe Biden, with respect to the Ukraine government investigation of Burisma Group and his son Hunter Biden, were “simply not credible.”⁷⁷ Volker referred to President Trump’s July 25 phone call request that President Zelenskyy investigate Joe Biden as “quite a surprise,” “extremely unfortunate” and “explosive.”⁷⁸ Volker acknowledged that, at Giuliani’s urging, he asked a Ukraine government official to include in a public statement by President Zelenskyy mention of “two key items”—namely, reference to investigations of “Burisma and 2016 elections.”⁷⁹ But this statement by President Zelenskyy “died,” and Volker “agreed with the Ukrainians that they shouldn’t do it.”⁸⁰

Lt. Col. Alexander S. Vindman, director for European Affairs, National Security Council, attended the July 10, 2019, White House meeting with Ukrainian officials and testified that the “meeting proceeded well until the Ukrainians broached the subject of a meeting between the two Presidents. ... [W]hen Ambassador Sondland started to speak about Ukraine delivering specific investigations in order to

secure the meeting with the President, Ambassador Bolton cut the meeting short.”⁸¹ Lieutenant Colonel Vindman listened to the July 25 phone call between Presidents Trump and Zelenskyy from the White House Situation Room and characterized President Trump’s

“Mr. Giuliani was expressing the desires of the President of the United States, and we knew that these investigations were important to the President.”
—*Ambassador Gordon Sondland*

request that Ukraine investigate Joe Biden as a “demand,” explaining, “[T]he power disparity between the President of the United States and the President of Ukraine is vast, and, you know, in the President asking for something, it became ... a demand[.]”⁸² Finally, Lieutenant Colonel Vindman explained why President Trump’s demand that Ukraine conduct investigations relating to U.S. domestic politics was not in U.S. national security interests. “[I]f Ukrainians took a partisan position, they would significantly undermine the possibility of future bipartisan support. ... [W]e’re basically trying to continue the relationship and advance the U.S. national security interests. And losing bipartisan support would have a significant cost.”⁸³

Former ambassador to Ukraine Marie Yovanovitch, who was recalled from Ukraine by President Trump in May 2019, described Giuliani’s efforts in Ukraine dating back to November or December 2018, in tandem with Parnas and Fruman.⁸⁴ Yovanovitch testified that Ukrainian Minister of the Interior Arsen Avakov expressed concerns that it was “very dangerous” for Ukraine to be dragged into U.S. partisan politics.⁸⁵ Yovanovitch raised concerns over Giuliani’s activities with senior State Department officials, specifically that no one tried to stop Giuliani’s efforts.⁸⁶ In April 2019, Yovanovitch returned to the United States from Ukraine and was advised by senior State Department officials that, despite the fact that she had “done nothing wrong,” Secretary of State Mike Pompeo was “no longer able” to protect her from President Trump, who removed her from her post soon thereafter.⁸⁷

Ambassador P. Michael McKinley, former senior adviser to Secretary of State Pompeo, testified that he resigned from his position out of concern for the “engagement of our [State Depart-

ment] missions to procure negative political information for domestic purposes.”⁸⁸ McKinley, “in 37 years in the Foreign Service ... had never seen” efforts to use the State Department to dig up dirt on a political opponent.⁸⁹

On October 8, 2019, in the midst of the House of Representatives’ impeachment investigation, President Trump’s attorney Pat A. Cipollone sent a letter to House Speaker Pelosi, Foreign Affairs Committee Chairman Eliot Engel, Intelligence Committee Chairman Schiff and House Oversight Committee Chairman Elijah Cummings stating that “President Trump and his Administration cannot participate in your partisan and unconstitutional” impeachment inquiry.⁹⁰

Consistent with President Trump’s policy of stonewalling the House impeachment inquiry, numerous executive branch officials have refused to comply with Congressional subpoenas, including Secretary of State Pompeo,⁹¹ Deputy National Security Adviser Charles Kupperman,⁹² Acting White House Chief of Staff Mick Mulvaney,⁹³ Acting Director of the OMB Russ Vought,⁹⁴ Special Assistant to the President Wells Griffith,⁹⁵ Associate Director for National Security at the OMB Michael Duffey⁹⁶ and others.

On October 17, Acting White House Chief of Staff Mulvaney made a remarkable admission in a press conference, seemingly admitting a *quid pro quo* demand on Ukraine when he stated, “Did [Trump] also mention to me in [the past] the corruption related to the DNC server? Absolutely. No question about that. But that’s it. And that’s why we held up the money.”⁹⁷ Mulvaney admitted that the Trump administration had held up the Ukraine military aid package while seeking an investigation by the Ukraine government of the so-called CrowdStrike conspiracy theory regarding the hacking of the DNC server during the 2016 election. And in response to a reporter’s question regarding political influence over foreign policy, Mulvaney responded, “I have news for everybody: Get over it. There’s going to be political influence in foreign policy.”⁹⁸ Later, in a written statement, Mulvaney attempted to walk back his press conference remarks, writing, “Let me be clear, there was absolutely no quid pro quo between Ukrainian military aid and any investigation into the 2016 election. The president never told me to withhold any money until the Ukrainians did anything related to the server.”⁹⁹

Notwithstanding the demand by President Trump and his subordinates that the Ukraine government announce and initiate an investigation of Joe Biden before a nearly \$400 million military aid package would be released and the withholding of that aid package throughout the summer, the aid was eventually released to Ukraine in early September. State Department lawyers had concluded that the White House OMB had no legal authority to block the Ukraine aid package—a legal opinion reportedly conveyed in a classified legal memorandum to Secretary of State Pompeo.¹⁰⁰ The State Department had “quietly authorized releasing \$141 million of the money several days” before President Trump claims to have lifted his freeze on the aid on September 11.¹⁰¹

The release of the Ukraine military aid came only after the Central Intelligence Agency (CIA) general counsel,¹⁰² the acting DNI¹⁰³ and the inspector general of the U.S. Intelligence Community¹⁰⁴ had all made criminal referrals to the Justice Department based on the whistleblower complaint.¹⁰⁵

1. Abuse of Power (Ukraine)

“Abuse of power,” while not defined in the Constitution or criminal statutes, is undoubtedly an impeachable high crime and misdemeanor. 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.”¹⁰⁶ Harvard Law School professor and constitutional law scholar Noah Feldman has 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.”¹⁰⁷

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.¹⁰⁸

Impeachment Article II 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.¹⁰⁹
- Directing the Federal Bureau of Investigation (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 using 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.¹¹⁰

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.”¹¹¹

Common Cause believes that President Trump’s withholding of nearly \$400 million in military aid to Ukraine’s government to leverage an investigation by Ukraine’s government into Trump’s 2020 electoral opponent Joe Biden—directly as well as through subordinates in the executive branch and through Giuliani and other civilians—was an abuse of the power of the presidency. President Trump’s actions might fairly be described as bribery and/or extortion schemes, attempting to secure Ukraine government assistance for his 2020 reelection campaign in exchange for nearly \$400 million of U.S. taxpayer money and a visit to the White

House. In short, President Trump abused the powers of the presidency for personal political gain. On this ground, President Trump should be impeached and removed from office.

Article I—Abuse of Power (Ukraine)

Using the powers and influence of the office of president of the United States, Donald J. Trump, in violation of his constitutional oath faithfully to execute the office of president of the United States and, to the best of his ability, preserve, protect and defend the Constitution of the United States, and in disregard of his constitutional duty to take care that the laws be faithfully executed, has engaged in conduct that resulted in misuse and abuse of his high office, including his power as commander in chief over military matters and foreign affairs, for personal political purposes in that, as president, Donald J. Trump endeavored to misuse the Department of State, Department of Justice, Office of Management and Budget and other executive branch agencies and employees to cause to be withheld from Ukraine’s government a nearly \$400 million military aid package, duly appropriated by Congress with broad bipartisan support, as leverage to force Ukraine’s government to announce and conduct an investigation into a Donald J. Trump political rival to assist the president’s own 2020 reelection campaign.

In doing this, Donald J. Trump has threatened the national security of the United States, has undermined the integrity of his office, has brought disrepute on the presidency, has betrayed his trust as president and has acted in a manner subversive of the rule of law and justice to the manifest injury of the people of the United States.

Wherefore, Donald J. Trump, by such conduct, warrants impeachment and trial, removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States.

2. Bribery (Ukraine)

Article II of the U.S. Constitution provides that the president “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”¹¹² “Bribery,” though not defined in the Constitution, has a clear meaning in common law and is universally codified in federal and state criminal statutes. The federal bribery statute states:

Whoever being a public official ... directly or indirectly, corruptly demands [or] seeks ... anything of value personally or for any other person or entity, in return for: (A) being influenced in the performance of any official act ... 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 fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.¹¹³

President Trump, in his July 25 phone conversation with President Zelenskyy of Ukraine, responded to Zelenskyy’s declaration that Ukraine was “ready to buy more Javelins [i.e., missiles]

from the United States” by asking Zelenskyy for “a favor”—a Ukraine government investigation into the DNC server hack during the 2016 U.S. presidential election and, as explained by Trump later in the call, an investigation into Joe Biden.¹¹⁴

President Trump asked President Zelenskyy for something of personal political value to Trump (i.e., an investigation of his 2020 electoral opponent Joe Biden) in exchange for an official act (i.e., release of military aid to Ukraine). And President Trump’s solicitation of a bribe from President Zelenskyy was not limited to the July 25 telephone exchange. President Trump, through agents, including Giuliani and others, engaged in a months-long scheme to extract a bribe from President Zelenskyy and the Ukraine government.

“Was there a ‘quid pro quo?’ As I testified previously, with regard to the requested White House call and White House meeting, the answer is yes.”
—*Ambassador Gordon Sondland*

Arguments that President Trump eventually released the Ukraine military aid without assurances of an investigation into Joe Biden and, therefore, did nothing wrong are without merit. Under the federal criminal code, a bribe need not be exchanged in order for the law to be violated. It is illegal for a public official to “demand” or “seek” a bribe.¹¹⁵ President Trump only released the aid to Ukraine after a whistleblower sounded the alarm of potential crimes committed by President Trump by filing a formal legal complaint—and only after the CIA general counsel,¹¹⁶ the acting DNI¹¹⁷ and the inspector general of the U.S. Intelligence Community¹¹⁸ had all made criminal referrals to the Justice Department based on the whistleblower complaint.¹¹⁹

Also, as explained earlier in this report, the Constitution clearly does not require all of the elements of a criminal statute to be met in order for a public official to be impeached. The Constitution, which explicitly provides for removal from office upon impeachment and conviction for bribery, was drafted and ratified before the U.S. criminal code was written. As constitutional law experts have explained, our nation’s “Founders had a broader conception of bribery than what’s in the criminal code. Their understanding was derived from English law, under which bribery was understood as an officeholder’s abuse of the power of an office to obtain a private benefit rather than for the public interest.”¹²⁰ Indeed, there was no U.S. federal bribery statute until 1853.¹²¹ And in 1912 impeachment proceedings against Judge Robert Wodrow Archbald, the House Judiciary Committee issued a report recommending 13 articles of impeachment against Judge Archbald, including bribery, and explained that “[i]t is well-established by the authorities that impeachment ... [is] not limited to statutable crimes and misdemeanors or to offenses indictable under the common law and triable in the courts of ordinary jurisdiction.”¹²²

President Trump’s request of Ukraine government investigations into the 2016 presidential election and into his 2020 electoral opponent Joe Biden in exchange for Trump’s release of a nearly \$400 million military aid package was solicitation of a bribe under the Constitution, common law and federal criminal statute—for which he should be impeached and removed from office.

Article II—Bribery (Ukraine)

In his conduct while president of the United States, Donald J. Trump, in violation of his constitutional oath faithfully to execute the office of president of the United States and, to the best of his ability, preserve, protect and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has personally and through his subordinates and agents solicited a bribe by requesting from Ukraine’s president and other government officials a Ukraine government investigation into the 2016 United States election and into his 2020 electoral opponent Joe Biden in exchange for an official act, the release of a nearly \$400 million military aid package to Ukraine.

In all of this, Donald J. Trump has undermined the integrity of his office, has brought disrepute on the presidency, has betrayed his trust as President and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

Wherefore, Donald J. Trump, by such conduct, warrants impeachment and trial, removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States.

3. Obstruction of Justice (Ukraine and Broader Impeachment Inquiry)

Common Cause believes impeachment of President Trump is justified because President Trump has obstructed Congress’s impeachment inquiry into the Ukraine scandal and other issues—obstruction of justice, which is clearly an impeachable “high crime.”

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,¹²³ 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.”¹²⁴

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.

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 endeavor-

ing 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.¹²⁵

Immediately following the July 25 phone call between President Trump and Ukraine’s President Zelenskyy, “senior White House officials had intervened to ‘lock down’ all records of the phone call, especially the official word-for-word transcript of the call[.]”¹²⁶ White House officials were reportedly “directed” by White House lawyers to remove the electronic transcript from the computer system in which such transcripts are typically stored and to instead load the transcript into a separated electronic system that is “otherwise used to store and handle classified information of an especially sensitive nature.”¹²⁷ “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.”¹²⁸

Among the various findings of obstruction of justice in an article of impeachment of President Nixon approved by the House Judiciary Committee in 1974 was the fact that Nixon had made or caused to be made “false or misleading public statements for the purpose of deceiving the people of the United States into believing that a thorough and complete investigation had been conducted with respect to allegations of misconduct” by Nixon’s executive branch and campaign committee staff “and that there was no involvement of such personnel in such misconduct.”¹²⁹

Like President Nixon, President Trump has repeatedly, for months, made and caused to be made false and misleading public statements for the purpose of deceiving the people of the United States into believing that neither the president nor any members of his executive branch personnel have been involved in misconduct regarding the demand of a Ukraine government investigation of Joe Biden. According to CNN, “*President Donald Trump can’t stop talking about his ‘perfect’ call with Ukrainian President Volodymyr Zelensky and disparaging the whistleblower whose complaint sparked the House impeachment inquiry.*”¹³⁰

President Trump has also repeatedly intimidated impeachment inquiry witnesses. For example, in the midst of former ambassador to Ukraine Yovanovitch’s November 15 testimony before the House Intelligence Committee, President Trump tweeted, “Everywhere Marie Yovanovitch went turned bad. She started off in Somalia, how did that go? Then fast forward to Ukraine, where the new Ukrainian President spoke unfavorably about her in my second phone call with him. It is a U.S. President’s absolute right to appoint ambassadors.”¹³¹ Moments after President Trump’s tweet, House Intelligence Committee Chairman Schiff read the president’s tweet to Yovanovitch and asked, “Now the President in real time is attacking you,” Schiff said. “What effect do you think that has on other witnesses’ willingness to come forward and expose wrongdoing?” Yovanovitch replied, “It’s very intimidating.”¹³²

In early October, in the midst of the House of Representatives’ impeachment investigation, President Trump formalized such false and misleading statements by having his attorney send a letter to House Speaker Pelosi, Foreign Affairs Committee Chairman Engel, Intelli-

gence Committee Chairman Schiff and House Oversight Committee Chairman Cummings that stated, “President Trump and his Administration cannot participate in your partisan and unconstitutional” impeachment inquiry.¹³³ President Trump, through his attorney, claimed in the letter to House impeachment inquiry leadership that the July 25 “call was completely appropriate and that there is no basis for your inquiry.”¹³⁴

President Trump’s policy of stonewalling the House impeachment inquiry was evident in the refusal by numerous executive branch officials to comply with duly issued congressional subpoenas, including Secretary of State Pompeo,¹³⁵ Deputy National Security Adviser Kupperman,¹³⁶ Acting White House Chief of Staff Mulvaney,¹³⁷ Acting Director of the OMB Vought,¹³⁸ Special Assistant to the President Griffith,¹³⁹ Associate Director for National Security at the OMB Duffey¹⁴⁰ and others.

In anticipation of a Senate impeachment trial in which every senator would serve as a juror charged with the constitutional duty to determine whether President Trump should be removed from office, President Trump began “rewarding senators who have his back on impeachment—and sending a message to those who don’t to get on board.”¹⁴¹ According to one news account:

Trump is tapping his vast fundraising network for a handful of loyal senators facing tough reelection bids in 2020. Each of them has signed onto a Republican-backed resolution condemning the inquiry as “unprecedented and undemocratic.”

Conspicuously absent from the group is Maine Sen. Susan Collins, a politically vulnerable Republican who’s refused to support the resolution and avoided taking a stance on impeachment. With his new push, Trump is exerting leverage over a group he badly needs in his corner with an impeachment trial likely coming soon to the Senate — but that also needs him.¹⁴²

President Trump has been emailing his massive donor list, soliciting contributions for senators who have supported the anti-impeachment resolution; he has also been headlining fundraising events for their campaigns and for super political action committees (super PACs) supporting them.¹⁴³ In a standard legal proceeding, such actions would be deemed illegal jury tampering and/or bribery.

Through all of these actions, Common Cause believes President Trump is corruptly impeding and endeavoring to influence, obstruct or impede the House of Representatives’ impeachment inquiry and a future Senate impeachment trial, and on these grounds, he should be impeached and removed from office.

Article III—Obstruction of Justice (Ukraine and Broader Impeachment Inquiry)

In his conduct while president of the United States, Donald J. Trump, in violation of his constitutional oath faithfully to execute the office of president of the United States and, to the best of his ability, preserve, protect and defend the Constitution of the United States, and in violation of his constitutional duty to

take care that the laws be faithfully executed, has prevented, obstructed and impeded Congress in its administration of justice and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up and conceal the existence of evidence and testimony related to legislative branch oversight proceedings, including the impeachment inquiry.

The means used to implement this course of conduct or scheme included one or more of the following acts by Donald J. Trump:

- 1. Interfering or endeavoring to interfere with the conduct of investigations by congressional committees;*
- 2. Intimidating witnesses in investigations by congressional committees;*
- 3. Withholding, without lawful cause or excuse, relevant and material evidence and information requested by congressional committees in duly constituted congressional oversight and impeachment inquiry proceedings;*
- 4. Directing, without lawful cause or excuse, current and former executive branch subordinates not to comply with legislative branch requests and subpoenas for witness testimony and documents in duly constituted congressional oversight and impeachment inquiry proceedings;*
- 5. Soliciting political contributions for United States senators for the purpose of obtaining the acquittal votes of such senators in an expected impeachment trial; and*
- 6. Making or causing to be made false or misleading public statements for the purpose of deceiving the people of the United States into believing that a thorough and complete investigation with respect to allegations of misconduct on the part of the president and personnel of the executive branch regarding withholding of military aid to Ukraine was unwarranted and that there was no involvement of the president or such personnel in misconduct.*

In all of this, Donald J. Trump has undermined the integrity of his office, has brought disrepute on the presidency, has betrayed his trust as president and has acted in a manner subversive of the rule of law and justice to the manifest injury of the people of the United States.

Wherefore, Donald J. Trump, by such conduct, warrants impeachment and trial, removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States.

4. Campaign Finance Violations (Ukraine)

The *Wall Street Journal* broke the story on September 20, 2019, that “President Trump in a July [25] phone call repeatedly pressured the president of Ukraine to investigate Joe Biden’s son ... urging Volodymyr Zelensky about eight times to work with Giuliani on a probe that could hamper Mr. Trump’s potential 2020 opponent.”¹⁴⁴ Two days later, President Trump acknowledged that he had discussed Biden with Ukraine’s president.¹⁴⁵

Federal campaign finance law prohibits a foreign national from directly or indirectly making a “contribution or donation of money or other thing of value” in connection with a U.S.

election and prohibits a person from soliciting, accepting or receiving such a contribution or donation from a foreign national.¹⁴⁶ Federal law defines “contribution” to include “any gift ... of money or anything of value made by any person for the purpose of influencing any election for Federal office.”¹⁴⁷ And the FEC by regulation defines “solicit” to mean “to ask, re-

“[T]he power disparity between the President of the United States and the President of Ukraine is vast, and, you know, in the President asking for something, it became ... a demand[.]” — *Lt. Col. Alexander S. Vindman*

quest, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.”¹⁴⁸

That’s all federal campaign finance law requires. For purposes of campaign finance law, it does not matter whether Ukraine came through with the requested election-influencing investigation. It does not matter whether the communications involved a *quid pro quo*. The solicitation of a thing of value from the Ukraine president in connection with a U.S. election violates campaign finance law.

Based on earlier reporting in the *New York Times*¹⁴⁹ and *BuzzFeed News*,¹⁵⁰ Common Cause concluded that President Trump’s July 25 phone call with President Zelenskyy was only the tip of the proverbial iceberg of a months-long, back-channel campaign to pressure Ukraine’s government to investigate Joe Biden, orchestrated by President Trump and executed by his personal lawyer Giuliani.

On September 23, Common Cause filed complaints with the DOJ and the FEC, alleging that President Trump, Giuliani and their associates Parnas, Fruman and Toensing had violated the federal law prohibition on soliciting a political contribution from a foreign national.¹⁵¹

The allegations of campaign finance law violations made by Common Cause in its September 23 DOJ and FEC complaints have been further substantiated by witnesses and documents produced in the House impeachment inquiry. President Trump’s solicitation of a political contribution from Ukraine’s government—that is, an investigation of Trump’s 2020 election opponent Joe Biden—is a “high crime” for which he should be impeached and removed from office.

Article IV—Campaign Finance Violations (Ukraine)

In his conduct while president of the United States, Donald J. Trump, in violation of his constitutional oath faithfully to execute the office of president of the United States and, to the best of his ability, preserve, protect and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has personally and through his subordinates and agents violated U.S. campaign finance laws by soliciting from Ukraine’s president and other government officials contributions of things of value—specifically, a Ukraine government announcement and conduction of an investigation into a Trump political rival—for the purpose of assisting his 2020 reelection campaign.

In all of this, Donald J. Trump has undermined the integrity of his office, has brought disrepute on the presidency, has betrayed his trust as president and has acted in a manner subversive of the rule of law and justice to the manifest injury of the people of the United States.

Wherefore, Donald J. Trump, by such conduct, warrants impeachment and trial, removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States.

B. Articles of Impeachment on Other Matters

President Trump’s impeachable conduct extends far beyond the Ukraine scandal, dating back to his 2016 campaign to win the presidency and extending through his earliest years in office when he abused his executive powers and obstructed justice to thwart Special Counsel Mueller’s investigation of Russia’s interference in the 2016 election.

5. Obstruction of Justice (Russia Investigation)

As detailed earlier, Common Cause believes President Trump has obstructed Congress’s impeachment inquiry into the Ukraine scandal and other issues and on that ground alone should be impeached. Common Cause further believes that impeachment of President Trump is justified on the ground that he obstructed the DOJ’s investigation into Russia’s interference in the 2016 U.S. elections, as detailed in volume II of *The Mueller Report*.

Specifically, Special Counsel Mueller’s report on Russian interference during the 2016 election details 10 separate instances where President Trump seemingly obstructed justice.¹⁵² The special counsel declined to prosecute the president on these potential charges but did not exonerate him, citing DOJ policy to not indict a sitting president.¹⁵³ 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.”¹⁵⁴

The 10 actions by President Trump detailed in *The Mueller Report* that constitute impeachable obstruction of justice are as follows (quoted directly from *The Mueller Report*).

i. Conduct involving former FBI Director James Comey and former National Security Adviser 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.”¹⁵⁵

ii. President Trump’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 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.”¹⁵⁶

iii. President Trump's termination of FBI Director 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.’”¹⁵⁷

iv. The appointment of Special Counsel 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.”¹⁵⁸

v. 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.”¹⁵⁹

vi. 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.”¹⁶⁰

vii. 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.”¹⁶¹

viii. President Trump’s efforts to have White House Counsel 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.”¹⁶²

ix. President Trump’s conduct toward Flynn, Paul Manafort and others

“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 toward 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.’”¹⁶³

x. President Trump’s conduct toward 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 pur-

sued 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.”¹⁶⁴

“Did [Trump] also mention to me in [the past] the corruption related to the DNC server? Absolutely. No question about that. But that’s it. And that’s why we held up the money.” — *Acting White House Chief of Staff Mick Mulvaney*

With respect to these 10 highlighted instances, *The Mueller Report* states: “[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.”¹⁶⁵ They did not. Instead, Special Counsel Mueller clearly asserted that his office did not exonerate the president of obstruction.¹⁶⁶ 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.

In July 24 testimony before House Judiciary and Intelligence Committees, Special Counsel Muller offered no new revelations but did tell Judiciary Committee Chairman Nadler that the Special Counsel’s Office investigation findings indicate that the “president was not exculpated for the acts that he allegedly committed” and agreed with Nadler’s assertion that President Trump’s declarations that the investigation had found “no obstruction” were false.¹⁶⁷ And when asked by Rep. Val Demings whether it was “fair to say” that President Trump’s written responses to questions in the Mueller probe had been incomplete and not always truthful, Mueller responded, “Generally.”¹⁶⁸

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 Manafort, former National Security Adviser Flynn and former Trump personal lawyer Cohen.¹⁶⁹

Common Cause believes that President Trump corruptly impeded and endeavored to influence, obstruct or impede the DOJ investigation into Russia's interference in the 2016 presidential election and on these grounds should be impeached and removed from office.

Article V—Obstruction of Justice (Russia Investigation)

In his conduct while president of the United States, Donald J. Trump, in violation of his constitutional oath faithfully to execute the office of president of the United States and, to the best of his ability, preserve, protect and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed and impeded the administration of justice, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up and conceal the existence of evidence and testimony related to the Department of Justice investigation into Russia's interference in the 2016 presidential election.

The means used to implement this course of conduct or scheme included one or more of the following acts by Donald J. Trump detailed in volume II of Special Counsel Robert S. Mueller's Report on the Investigation into Russian Interference in the 2016 Presidential Election:

- 1. Asking FBI Director James Comey to end an FBI investigation of President Trump's first national security adviser, Michael Flynn;*
- 2. Asking White House Counsel Donald McGahn to talk then-Attorney General Sessions out of recusing himself from the Russia investigation and then personally requesting that Attorney General Sessions state publicly that President Trump was not under investigation in connection with Russia's interference in the 2016 election;*
- 3. Firing FBI Director Comey after Comey refused to tell Congress that President Trump was not under investigation in connection with Russia's interference in the 2016 election;*
- 4. Instructing White House Counsel McGahn to tell Deputy Attorney General Rod Rosenstein to remove Special Counsel Mueller from his position;*
- 5. Asking Corey Lewandowski to deliver a message to then-Attorney General Sessions, instructing Sessions to publicly criticize the Mueller investigation;*
- 6. Instructing his White House aides not to publicly disclose emails and other details pertaining to a June 2016 meeting between senior 2016 campaign officials and Russians who offered derogatory information on Hillary Clinton—evidence of the Russian government's efforts to support President Trump's 2016 election;*

7. *Repeatedly asking then-Attorney General Sessions to reverse his recusal and take control of the DOJ Russia interference investigation;*
8. *Asking White House Counsel McGahn to deny that President Trump had ordered him to have Special Counsel Mueller removed from the Russia investigation;*
9. *Commenting privately and publicly about the loyalty and cooperation of Flynn and Paul Manafort during their criminal prosecutions; and*
10. *Praising his personal lawyer Michael Cohen following the FBI's execution of search warrants on Cohen's home and office in April 2018, causing Cohen to expect favored treatment from President Trump in return for silence or false testimony but then publicly criticizing Cohen when Cohen began cooperating with DOJ investigations of Trump.*

In all of this, Donald J. Trump has undermined the integrity of his office, has brought disrepute on the presidency, has betrayed his trust as president and has acted in a manner subversive of the rule of law and justice to the manifest injury of the people of the United States.

Wherefore, Donald J. Trump, by such conduct, warrants impeachment and trial, removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States.

6. Abuse of Power (Russia Investigation)

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 DOJ’s Russia investigation constitute impeachable abuse of power.

Specifically, President Trump’s abuses of the power of the presidency included the following:

- Pressuring FBI Director Comey to end an FBI investigation of Flynn;
- Asking Attorney General Sessions to reverse his recusal and take control of the DOJ Russia investigation;
- Asking Attorney General Sessions to state publicly that Trump was not under investigation;
- Pressuring White House Counsel McGahn to talk Attorney General Sessions out of recusing himself from the Russia investigation;
- Instructing White House Counsel McGahn to tell Deputy Attorney General Rosenstein to remove Special Counsel Mueller from his position;
- Asking White House Counsel McGahn to deny that President Trump had ordered him to have Special Counsel Mueller removed from the Russia investigation;
- Instructing White House aides not to publicly disclose details pertaining to a June 2016 meeting between 2016 campaign officials and Russians—evidence of the Russian

- government's efforts to support Trump's 2016 election;
- Firing FBI Director Comey after Comey refused to tell Congress that Trump was not under investigation;
- Publicly and privately commenting on and dangling the possibility of pardons to individuals involved in the Trump-Russia investigation, including Manafort, Flynn and Cohen.

Through all of these actions, Common Cause believes that President Trump abused the powers of the office of president to obstruct and impede the DOJ's investigation into Russia's interference in the 2016 U.S. elections. On this ground, President Trump should be impeached and removed from office.

Article VI—Abuse of Power (Russia Investigation)

Using the powers and influence of the office of president of the United States, Donald J. Trump, in violation of his constitutional oath faithfully to execute the office of president of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in disregard of his constitutional duty to take care that the laws be faithfully executed, has engaged in conduct that resulted in misuse and abuse of his high office, in that, as president, Donald J. Trump endeavored to obstruct and impede the Department of Justice in its investigation of Russia's interference in the 2016 U.S. elections to his own political benefit.

In doing this, Donald J. Trump has threatened the security of future U.S. elections, has undermined the integrity of his office, has brought disrepute on the presidency, has betrayed his trust as president and has acted in a manner subversive of the rule of law and justice to the manifest injury of the people of the United States.

Wherefore, Donald J. Trump, by such conduct, warrants impeachment and trial, removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States.

7. Foreign and Domestic Emoluments

Common Cause believes impeachment of President Trump is justified because he 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 prohibit the president from receiving any “emolument”—i.e., a gift or payment—on top of his or her salary from any foreign government, the U.S. federal government or from any U.S. state government. 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.¹⁷⁰

While the Domestic Emoluments Clause of Article II of the Constitution 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.¹⁷¹

The Foreign Emoluments Clause prohibits the president from receiving gifts or payments from foreign governments *unless Congress consents* to such receipt of foreign gifts or payments. 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 the 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.”¹⁷² Hence these clauses are expressly designed to ensure that the president remains loyal to the will of the people and cannot be bought.

“[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.” — *The Mueller Report*

President Trump, through his continued ownership of the Trump Organization, has received emoluments from the U.S. government, numerous state governments and numerous foreign governments.

entities that engage in global real estate development, sales and marketing, property management, golf course development, entertainment and product licensing, brand development, restaurants and event planning businesses.¹⁷³ Although President Trump claimed to have relinquished control over the Trump Organization, his adult children continue to operate the organization in his stead, and he has maintained ownership of the Trump Organization while serving as president.¹⁷⁴ Through his ownership of the Trump Organization, President Trump has received payments from foreign governments, the U.S. federal government and numerous U.S. state governments.

The Trump Organization LLC is a collection of more than 500 business

Among myriad examples, the Trump Organization owns and controls the Trump International Hotel on Pennsylvania Avenue in Washington, D.C., 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 \$60,000.¹⁷⁵ The Trump Organization also owns Trump Tower, a mixed-use skyscraper located at 725 Fifth Avenue in New York City, and rented commercial space to at least two entities owned by foreign states during President Trump’s administration: 1) the Industrial and Commercial Bank of China, which is owned by the Chinese government,¹⁷⁶ and 2) the Abu Dhabi Tourism and Cultural Authority, which is owned by the government of the United Arab Emirates.¹⁷⁷ Before recently reducing

their office space within the tower, the Industrial and Commercial Bank of China 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.¹⁷⁸

Other potential foreign emolument violations include acceptance of Chinese trademark rights,¹⁷⁹ real estate projects in the United Arab Emirates¹⁸⁰ and Indonesia¹⁸¹ and payment of royalties from the international distribution of “The Apprentice” and its spinoffs.¹⁸² President Trump has not sought or received consent from Congress to receive payment for any projects with ties to a 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 Hotel,¹⁸³ the District of Columbia awarding special tax concessions to the Trump Organization¹⁸⁴ and Mississippi giving a \$6 million tax break to a Trump-branded hotel project in the state,¹⁸⁵ among many others.¹⁸⁶

According to an August 2019 report by Citizens for Responsibility and Ethics in Washington, D.C., President Trump, through ownership of the Trump Organization, has received payments from the following:

- The U.S. government relating to hundreds of visits by President Trump and hundreds of executive branch officials to Trump-owned properties, including Trump International Hotel in Washington, D.C.; Trump National Doral, Mar-a-Lago, Trump National Golf Course Bedminster, Trump International Golf Club in West Palm Beach, Trump National Golf Club in Potomac Falls (Virginia), Trump International Golf Club Doonbeg, Trump Turnberry Golf Resort and Trump International Hotel in Waikiki;
- State governments relating to visits by more than 40 state government officials to Trump-owned properties; and
- Foreign governments relating to visits by more than 100 foreign government officials to Trump-owned properties.¹⁸⁷

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, and a third case has been in litigation for more than two years, with no end in sight.¹⁸⁸ While the courts’ refusal to act to prevent these violations is disappointing, it reinforces the need for Congress to hold President Trump accountable through the impeachment process. And though violation of the Foreign and Domestic Emoluments Clauses has never been the basis of impeachment proceedings against a president, violations of the Foreign and Domestic Emoluments Clauses pose serious threats of corruption and constitute impeachable high crimes.¹⁸⁹ On this ground, President Trump should be impeached and removed from office.

Article VII—Foreign and Domestic Emoluments

In his conduct while president of the United States, Donald J. Trump, in violation of his constitutional oath faithfully to execute the office of president of the United States and, to the best of his ability, preserve, protect and defend the Constitution of the United States, in violation of his constitutional duty to take

care that the laws be faithfully executed and in violation of the constitutional prohibition on the president's receipt of any emolument from the U.S. government, any state government or any foreign state has through his continued ownership of the Trump Organization received emoluments from the U.S. government, numerous state governments and numerous foreign governments, including the following:

- 1. Payments by the U.S. government to Trump-owned properties relating to hundreds of visits by President Trump and hundreds of executive branch officials to these properties, including Trump International Hotel Washington, D.C.; Trump National Doral; Mar-a-Lago; Trump National Golf Course Bedminster; Trump International Golf Club in West Palm Beach; Trump National Golf Club in Potomac Falls (Virginia); Trump International Golf Club Doonbeg; Trump Turnberry Golf Resort and Trump International Hotel in Waikiki;*
- 2. Payments by state governments to Trump-owned properties relating to visits by more than 40 state government officials to Trump-owned properties; and*
- 3. Payments by foreign governments to Trump-owned properties relating to visits by more than 100 foreign government officials to Trump-owned properties.*

In all of this, Donald J. Trump has undermined the integrity of his office, has brought disrepute on the presidency, has betrayed his trust as president and has acted in a manner subversive of the rule of law and justice to the manifest injury of the people of the United States.

Wherefore, Donald J. Trump, by such conduct, warrants impeachment and trial, removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States.

8. Abuse of Power (Failure to Adequately Safeguard U.S. Elections From Foreign Interference)

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.”¹⁹⁰ The Constitution also requires the president to take an oath or affirmation to “faithfully execute the Office of President of the United States.”¹⁹¹

Constitutional scholars have identified three “core meanings” of the “Take Care” Clause and its echoing oath.¹⁹² First, this clause stresses how important it was to the framers that the president stays within the authorizations of the law and not act *ultra vires*—or outside the office’s legal authority.¹⁹³ Second, the president is constitutionally prohibited from profiting from the office.¹⁹⁴ Finally, the clause imposes 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.¹⁹⁵

Common Cause believes President 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 that Russian interference in the 2016 elections is a threat to national security. He has failed to take adequate steps to prepare states and counties for interference to come and he has explicitly solicited foreign interference in the 2020 presidential election.

At its core, election security is a nonpartisan 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.”¹⁹⁶

In January 2017, the Office of the DNI 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, ultimately, to help elect President Trump.¹⁹⁷

President Trump has repeatedly 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.¹⁹⁸ President Trump also has been hesitant to renounce Russian interference in our elections publicly and occasionally has appeared to accept President Putin’s denials of his government’s involvement as fact.¹⁹⁹ During a June 2019 meeting at the G20 Summit, he even facetiously “reprimanded” President 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.²⁰⁰ They both laughed.

Special Counsel Mueller, in his July 24 testimony before the House Intelligence Committee regarding Russia’s interference in the 2016 elections, was asked whether he thought 2016 “was a single attempt by the Russians to get involved in our election, or did [he] find evidence to suggest they’ll try to do this again?” Mueller replied, “It wasn’t a single attempt. The[y’re] doing it as we sit here, and they expect to do it during the next campaign.”²⁰¹ In another line of questioning on the same topic, Mueller was asked whether he shared the concern that we have “established a new normal from this past campaign that is going to apply to future campaigns, so that if any one of us running for the U.S. House, any candidate for the U.S. Senate, and candidacy for the presidency of the United States, aware that if hostile foreign powers trying to influence an election has no duty to report that to the FBI or their authorities[.]” Mueller replied, “I hope this is not the new normal, but I fear it is.”

U.S. intelligence officials have warned that Russia, China and Iran are already trying to manipulate American public opinion before the 2020 elections and may attempt to interfere with our electoral infrastructure.²⁰² President Trump’s hostility toward these issues seemingly has thwarted efforts to address election security within his administration. The “critical infrastructure” designation for U.S. election infrastructure allows the Department of Homeland Security to prioritize requests for security support by local and state governments.²⁰³ 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 2020 elections, Acting White House Chief of Staff Mulvaney told her that it “wasn’t a great subject and should be kept below [Trump’s] level.”²⁰⁴ 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.²⁰⁵

Beyond refusing to rebuke Russians for their interference, President Trump has explicitly welcomed and requested election assistance from foreign nationals, echoing his call in a July 2016 press conference for Russia to find Clinton’s missing emails.²⁰⁶ In a June interview with *ABC News*, President Trump disputed the idea that if a foreign government provided information on a political opponent, it would be considered interference in our election process.

“It’s not an interference, they have information—I think I’d take it,” Trump said. “If I thought there was something wrong, I’d go maybe to the FBI—if I thought there was something wrong. But when somebody comes up with oppo research, right, they come up with oppo research, ‘oh let’s call the FBI.’ The FBI doesn’t have enough agents to take care of it. When you go and talk, honestly, to congressman, they all do it, they always have, and that’s the way it is. It’s called oppo research.”²⁰⁷

Law enforcement veterans found that President 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.²⁰⁸ 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, President Trump’s comment (later somewhat retracted²⁰⁹) 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. Indeed, President Trump has only been emboldened heading into the 2020 election, calling on both Ukraine and China²¹⁰ to investigate his 2020 election opponent Joe Biden. These statements represent a betrayal of his oath to “faithfully execute” and “take care” of the laws because they invite lawbreaking and the corruption of our democracy for the president’s benefit.

President Trump’s hostility toward these issues led the Pentagon to keep him in the dark about its critical efforts to secure the 2018 midterm elections.²¹¹ Pentagon officials have been reluctant to inform President Trump about their efforts to thwart future cyberattacks on our election systems by Russia because “he might countermand it or discuss it with foreign officials.”²¹² 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 2017.²¹³ In January 2018, President Trump’s State Depart-

ment announced that it would not impose congressionally mandated sanctions because the threat itself was enough of a “deterrent.”^{214, 215} 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 Schiff called the move a “grievous disappointment ... far short of what is needed to respond to that attack on our democracy.”²¹⁶

President Trump’s refusal to fully implement sanctions against Russia for its election interference is also a violation of his oath to “faithfully execute” the laws because he is ignoring a lawful congressional mandate to deter future election interference. While President Trump asserts that the sanctions unconstitutionally infringe upon his lawful executive powers,²¹⁷ 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 on 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.

President Trump’s violations of the “Take Care” Clause and his oath to faithfully execute the laws of the United States by failing to acknowledge Russian interference in the 2016 elections, failing to take adequate steps to prepare states and counties for foreign election interference to come and explicitly soliciting foreign interference in the 2020 presidential election—all to advance his personal political interests—constitute abuses of power for which President Trump should be impeached and removed from office.

Article VIII—Abuse of Power (Failure to Adequately Safeguard U.S. Elections From Foreign Interference)

Using the powers and influence of the office of president of the United States, Donald J. Trump, in violation of his constitutional oath faithfully to execute the office of president of the United States and, to the best of his ability, preserve, protect and defend the Constitution of the United States, and in disregard of his constitutional duty to take care that the laws be faithfully executed, has engaged in conduct that resulted in misuse and abuse of his high office, including his power as commander in chief over military matters and foreign affairs, for personal political purposes, in that, as president, Donald J. Trump has failed to acknowledge Russian interference in the 2016 elections, failed to take adequate steps to prepare states and counties for foreign election interference to come and solicited foreign interference in the 2020 presidential election to assist his own 2020 reelection campaign.

In doing this, Donald J. Trump has threatened the national security of the United States, has undermined the integrity of his office, has brought disrepute on

the presidency, has betrayed his trust as president and has acted in a manner subversive of the rule of law and justice to the manifest injury of the people of the United States.

Wherefore, Donald J. Trump, by such conduct, warrants impeachment and trial, removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States.

9. Campaign Finance Violations (“Hush” Payments)

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

On August 21, 2018, President Trump’s personal lawyer Cohen pleaded guilty to eight federal criminal charges, including two campaign finance crimes.²¹⁸ 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 claimed to have had with the president.²¹⁹ Cohen’s testimony under oath directly implicates the president in several federal campaign crimes.

First, in August 2016, Cohen arranged for American Media Inc. (AMI), 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.²²⁰ Cohen promised AMI that it would be reimbursed for its expenditure if it paid McDougal for her story.²²¹ 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.²²² According to court documents, the agreement’s purpose was “to suppress [Karen McDougal’s] story to prevent the story from influencing the election.”²²³ 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 \$150,000 in-kind corporate contribution to the Trump campaign.

Second, in October 2016, Cohen paid adult film actress Stephanie Clifford (aka “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.²²⁴

In both instances, Cohen testified that Trump directed him to arrange payments on Trump’s behalf to avoid damage to Trump’s electoral chances.²²⁵ Moreover, court-released DOJ documents show phone record evidence of multiple contacts between Cohen, 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.²²⁶

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 AMI and an illegal \$130,000 in-kind contribution from Cohen—crimes for which Cohen is serving a three-year prison sentence.²²⁷ President Trump also failed to disclose his campaign’s receipt of these in-kind contributions in violation of campaign finance disclosure laws.²²⁸

President Trump’s receipt of, and failure to disclose, \$280,000 in illegal in-kind political contributions to his campaign to win the presidency is a “high crime” for which he should be impeached and removed from office.

Article IX—Campaign Finance Violations (“Hush” Payments)

In his conduct while successfully seeking the office of president of the United States in 2016, Donald J. Trump, personally and through his subordinates and agents, violated U.S. campaign finance laws by receiving \$280,000 in unreported, illegal in-kind political contributions in the form of “hush” payments made in coordination with Trump and his agent and personal attorney Michael Cohen for the purpose of influencing the 2016 presidential election.

In all of this, Donald J. Trump has undermined the integrity of his office, has brought disrepute on the presidency, has betrayed his trust as president and has acted in a manner subversive of the rule of law and justice to the manifest injury of the people of the United States.

Wherefore, Donald J. Trump, by such conduct, warrants impeachment and trial, removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States.

PART II: SUMMARY OF SENATE IMPEACHMENT TRIAL PROCESS

When the House of Representatives impeaches a public official, the matter then moves to the Senate for a trial on the House-approved articles of impeachment. Article I, Section 3 of the U.S. Constitution 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 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.²²⁹

Key points of the constitutional provision are as follows:

- Although the Constitution states that the Senate has the power to try impeachments, the Constitution does not affirmatively require the Senate to try impeachments;
- A two-thirds supermajority vote of senators present (i.e., 67 out of 100 senators) is required for conviction in a Senate impeachment trial;
- Maximum punishment upon conviction in a Senate impeachment trial is removal from office and disqualification from holding public office in the future; and
- A public official removed from office upon Senate conviction in an impeachment trial can be criminally prosecuted after leaving office.

Although the Constitution does not affirmatively require the Senate to hold a trial for a public official impeached by the House, Senate rules²³⁰ do require the Senate to begin an impeachment trial shortly after the House presents articles of impeachment to the Senate. And Senate Majority Leader Mitch McConnell has indicated that he will abide by the current Senate rules, stating, “The rules of impeachment are very clear when it comes to the trial. ... My own view is that we should give people an opportunity to put the case on. The House will have presenters; the president will no doubt be represented by lawyers as well.”²³¹

Upon impeachment of President Trump by the House of Representatives, the House would choose a team of members to serve as “managers” in the Senate trial—the equivalent of prosecutors. President Trump would choose his own team of defense lawyers. After impeaching President Clinton in 1998, the House chose 13 Republican Congressmen, all lawyers and all members of the Judiciary Committee, who received the assistance of outside lawyers in preparing the case, to serve as managers in the Senate impeachment trial.²³² President Clinton was represented by White House Counsel Charles Ruff and a defense team of at least 10 other attorneys.²³³

A Senate impeachment trial would be conducted in a manner similar to a criminal prosecution in court but under rules and procedures devised by the Senate—some that have been on the books for decades and some that would be adopted by Senate resolution at the start of the trial.

A. Senate Rules for Impeachment Trials

The current Senate rules for impeachment trials were last revised in 1986 and were in effect for the impeachment trial of President Bill Clinton.²³⁴ Arguably the most important rule—Rule VII—provides that although the chief justice of the Supreme Court serves as the presiding officer when the president is on trial and “shall direct” the proceedings and “rule on all questions of evidence,” any member of the Senate may ask that a vote of the full Senate be taken with respect to any ruling by the presiding officer “in accordance with the Standing Rules of the Senate.” In other words, a Senate majority could overrule any decision by Chief Justice John Roberts in an impeachment trial of President Trump.

Another important rule (Rule XIX) provides that senators may not directly question witnesses or offer motions but, instead, must put such questions or motions in writing to the chief justice. “It shall not be in order for any Senator to engage in colloquy.”

The following is a condensed version of the current Senate rules for impeachment trials:

- When the House notifies the Senate that House managers have been appointed to conduct an impeachment trial, the “Secretary of the Senate **shall immediately** inform the House” that the Senate is ready to have the managers present the articles of impeachment. The House managers then present the articles of impeachment to the Senate (Rules I and II).
- “[T]he **Senate shall**, at 1 o’clock afternoon of the day (Sunday excepted) following such presentation, or sooner if ordered by the Senate, **proceed to the consideration of such articles** and shall continue in session from day to day (Sundays excepted) after the trial shall commence (unless otherwise ordered by the Senate) until final judgment shall be rendered” (Rule III).
- “When the President of the United States ... shall be impeached, the Chief Justice of the United States shall preside” (Rule IV).
- “The Presiding Officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs, and precepts authorized by these rules or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide” (Rule V).
- “The Senate shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, and to punish in a summary way contempts of, and disobedience to, its authority, orders, mandates, writs, precepts, or judgments, and to make all lawful orders, rules, and regulations which it may deem essential or conducive to the ends of justice” (Rule VI).
- “And the Sergeant at Arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs, and precepts of the Senate” (Rule VI).
- “**The Presiding Officer ... shall direct all the forms of proceedings** while the Senate

is sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the Presiding Officer on the trial may rule on all questions of evidence ... , which ruling shall stand as the judgment of the Senate, **unless some Member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision without debate**; or he may at his option, in the first instance, submit any such question to a vote of the Members of the Senate. Upon all such questions the vote shall be taken in accordance with the Standing Rules of the Senate” (Rule VII).

- Following the presentation of articles of impeachment to the Senate, a summons “shall issue to the person impeached, reciting said articles, and notifying him to appear before the Senate upon a day and at a place to be fixed by the Senate and named in such writ” (Rule VIII).
- “If the person impeached, after service, shall fail to appear, either in person or by attorney, ... or, appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty” (Rule VIII).
- “[T]he Presiding Officer of the Senate, **if the Senate so orders**, shall appoint a committee of Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate[.] ... Unless otherwise ordered by the Senate, **the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee** so appointed” (Rule XI).
- “Counsel for the parties shall be admitted to appear and be heard upon an impeachment” (Rule XV).
- “All motions, objections, requests, or applications whether relating to the procedure of the Senate or relating immediately to the trial (including questions with respect to admission of evidence or other questions arising during the trial) made by the parties or their counsel shall be addressed to the Presiding Officer only, and if he, or any Senator, shall require it, they shall be committed to writing, and read at the Secretary’s table” (Rule XVI).
- “Witnesses shall be examined by one person on behalf of the party producing them, and then cross-examined by one person on the other side” (Rule XVII).
- “**If a Senator wishes a question to be put to a witness**, or to a manager, or to counsel of the person impeached, or to offer a motion or order (except a motion to adjourn), **it shall be reduced to writing, and put by the Presiding Officer**. The parties or their counsel may interpose objections to witnesses answering questions propounded at the request of any Senator and the merits of any such objection may be argued by the parties or their counsel. ... It shall not be in order for any Senator to engage in colloquy” (Rule XIX).
- “At all times while the Senate is sitting upon the trial of an impeachment the **doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions**” (Rule XX).
- “The case, on each side, shall be opened by one person. The final argument on the merits may be made by two persons on each side (unless otherwise ordered by the Senate upon application for that purpose), and the argument shall be opened and closed on the part

of the House of Representatives” (Rule XXII).

- **“An article of impeachment shall not be divisible for the purpose of voting thereon** at any time during the trial. **Once voting has commenced on an article of impeachment, voting shall be continued until voting has been completed on all articles of impeachment** unless the Senate adjourns for a period not to exceed one day or adjourns sine die. On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment separately; and if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the Members present, a judgment of acquittal shall be entered” (Rule XXIII).
- For each article of impeachment, the “Presiding Officer shall first state the question; thereafter each Senator, as his name is called, shall rise in his place and answer: guilty or not guilty.” (Rule XXIII)
- Oath to be administered to senators and the presiding officer: “I solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of ———, now pending, **I will do impartial justice** according to the Constitution and laws: So help me God.” (Rule XXV)
- “If the Senate shall at any time fail to sit for the consideration of articles of impeachment on the day or hour fixed therefor, the Senate may, by an order to be adopted without debate, fix a day and hour for resuming such consideration.” (Rule XXVI)

B. Additional Procedures Used in Clinton Impeachment Trial

The current Senate rules for impeachment trials create an outline of the proceedings but would likely be supplemented by a Senate resolution passed at the beginning of an impeachment trial of President Trump, establishing how long the trial would last, how much time would be given to House managers to present their case, how much time would be given to President Trump’s defense team, how many witnesses could be called, what types of evidence would be admissible, etc.

In the Senate impeachment trial of President Clinton, Senate leadership from both parties agreed on supplemental rules and procedures—and unanimously adopted a resolution on the second day of the Senate trial.²³⁵ Republican Senate Majority Leader Trent Lott called Senate Minority Leader Tom Daschle one day after the House passed the Clinton articles of impeachment.²³⁶ Lott reportedly told Daschle, “Tom, whether we like it or not, this is in our lap. I’d like to work with you to make sure it’s done in a fair way and in a responsible way.” The call was followed by two months of “slow, methodical negotiation over how to hold the first presidential impeachment trial since 1868,” leading to the unanimously adopted resolution.²³⁷ One important matter, however, went unresolved in the resolution: whether witnesses could be called during trial and, if so, any parameters to doing so.

All told, the Senate trial of Clinton lasted about five weeks, beginning at 1 p.m. every day, which left the mornings for legislative business.²³⁸ As provided for in the resolution,²³⁹ President Clinton’s attorneys submitted a written brief answering the articles of impeachment,²⁴⁰ and the House managers submitted a reply brief together with the House Judiciary Committee record of the impeachment proceedings.²⁴¹ The procedures resolution allowed the House managers

up to 24 hours total to present their case and provided the president's defense lawyers up to 24 hours to present their defense.²⁴² The House managers took three days to present their case and the president's lawyers likewise took three days to present their defense.²⁴³ Under the procedures resolution, following the president's defense, senators were permitted to question parties for up to 16 hours.²⁴⁴ Senators passed 150 questions to presiding officer Chief Justice William Rehnquist, who posed the questions to the House managers and defense counsel.²⁴⁵

Following the questioning period, and as explicitly allowed by the procedures resolution,²⁴⁶ Democratic senators moved for dismissal of the charges against Clinton. The motion to dismiss was defeated on a party-line vote. Under the procedures resolution, following debate on the motion to dismiss, motions to subpoena witnesses and present evidence not in the record were allowed.²⁴⁷ On a party-line vote, Senate Republicans approved three videotaped depositions of witnesses over the objection of Democratic senators, who objected to any witnesses being called.²⁴⁸ Excerpts of the videotaped depositions were admitted as evidence in the impeachment trial.²⁴⁹ Each side then had three hours for closing arguments.²⁵⁰ The Senate deliberated for three days behind closed doors, with each senator limited to 15 minutes of speaking time, before reopening the proceedings to the public and voting on the Senate floor on a bipartisan basis to acquit President Clinton on two articles of impeachment.²⁵¹

C. Standard of Proof in Senate Impeachment Trial

Over the course of history, defendants in impeachment proceedings have argued that proof "beyond a reasonable doubt" (i.e., criminal standard) is required for conviction in an impeachment trial, while House managers, who present the case for conviction, have urged the adoption of a lower standard of "preponderance of the evidence" (i.e., civil standard).

The Congressional Research Service has concluded that "an examination of the constitutional language, history, and the work of legal scholars provides no definitive answer to the question of what standard is to be applied. In the final analysis the question is one which historically has been answered by individual Senators guided by their own consciences."²⁵²

By way of example, the Congressional Research Service details the 1986 Senate impeachment trial of Judge Harry Claiborne in which his attorneys filed a motion to designate "beyond a reasonable doubt" as the applicable standard for the Senate. The House managers argued in response that the reasonable doubt standard was designed to protect criminal defendants who risked "forfeitures of life, liberty and property" and that such a standard was inappropriate in a Senate impeachment trial because conviction resulted only in removal from office.²⁵³

The motion was debated on the floor of the Senate and, when the presiding officer was asked to explain the consequence of rejecting the motion, the presiding officer responded that rejection of the motion left individual members free to apply a standard of their choice, including the reasonable doubt standard. The presiding officer then rejected Judge Claiborne's motion, and Senator Hatch requested the yeas and nays. The motion was rejected by a vote of 75 to 10.²⁵⁴

In any Senate impeachment trial of President Trump, senators would exercise their own discretion in determining the standard of proof that should guide their decision-making.

D. Requirements and Expectations for a Senate Impeachment Trial of President Trump

Every senator swears an oath to “support and defend the Constitution of the United States against all enemies, foreign and domestic; ... and that I will well and faithfully discharge the duties of the office on which I am about to enter[.]”²⁵⁵ In addition, every senator sitting as a juror in an impeachment trial swears to “do impartial justice according to the Constitution and laws[.]”²⁵⁶

In the event that the House of Representatives impeaches President Trump, Common Cause calls on each and every senator, regardless of party affiliation, to fulfill their oaths to “support and defend the Constitution” and “do impartial justice” by meeting the following basic requirements for a fair Senate trial:

- Reach bipartisan agreement before the trial begins on procedures to supplement existing Senate impeachment trial rules, including subpoenaing witnesses and admission of evidence;
- Allow all publicly available House impeachment inquiry materials so designated by the House Judiciary Committee, including transcripts of depositions, public hearing testimony and other documents, to be admitted into the Senate trial record as evidence;
- Allow full presentation of the House managers’ case before any votes on motions to dismiss or other motions that could terminate the Senate impeachment trial;
- Return any and all political contributions raised by President Trump for any political committee with which you are affiliated or recuse yourself from the Senate trial;
- Permit public access to the Senate trial to the greatest extent possible, limiting transparency only in furtherance of compelling interests, such as protection of classified information, whistleblower anonymity and confidentiality of final deliberation of articles of impeachment following closing arguments.

CONCLUSION

Careful consideration of the facts led us to conclude we had to call for impeachment of a president for the first time in Common Cause's nearly 50-year history. It is because our history stretches back to 1970, just before the Watergate scandals, that we are also mindful of the cyclical nature of life and politics, and so leave you with wisdom and hope from our founder.

John Gardner was a philanthropist, philosopher, and professor. While we quote him from time-to-time, this moment—both for our nation and for Common Cause as we prepare to mark our 50th anniversary in 2020—calls for an extended excerpt from one of Gardner's 11 books, *The Recovery of Confidence*. The following is from the book's chapter six, which begins with the epigraph *Dum spiro spero*—a Latin phrase meaning “While I breathe, I hope.”

“We have all reacted against naïve optimism, the optimism that believes everything will come out all right, that imagines it has found a sure path to salvation.

“I speak for another kind of optimism, an optimism that does not assume it has found a cure for all life's ills, that recognizes the deep, intrinsic difficulties in social change, that accepts life's often unfavorable odds---but will not stop hoping, or trying, or enjoying when it's possible to enjoy.

“No doubt the world is, among other things, a vale of tears. It is full of absurdities that cannot be explained, evil that cannot be countenanced, injustices that cannot be excused. The individual who does not understand that is disarmed in a hazardous environment.

“But then there is the resilience of the human spirit. Hope runs deeper than intellectual appraisal. We were designed for struggle, for survival. Only fatal and final injuries neutralize that irrepressible striving toward the light. Our conscious processes—the part of us that is saturated with words and ideas—may arrive at exceedingly gloomy appraisals, but an older, more deeply rooted, biologically and spiritually stubborn part of us continues to say yes to hoping, yes to striving, yes to life.

“If there is a long chance we can replace brutality with reason, inequity with justice, ignorance with enlightenment, we must try. And our chances are better if we have not convinced ourselves that the cause is hopeless. All effective action is fueled by hope. Pessimism may be an acceptable attitude in literary and artistic circles, but in the world of action it is the soil in which desperate and extreme solutions germinate, among them reaction and brutal oppression.

“It is not given to man to know the worth of his efforts. It is arrogant of the individual to imagine that he has grasped the larger design of life and discovered that effort is calculated to accomplish some immediate increment in the dignity of a fellow human. Who is to say it is useless? Our purpose in life is to try.”¹²⁵⁷

Endnotes

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- 3 U.S. Const., art. II, § 4.
- 4 *Id.* at art. I, § 2, cl. 5.
- 5 *Id.* at art. I, § 3, cl. 6 & 7.
- 6 *Common Cause Calls for Congressional Impeachment Investigation to Counter White House Stonewalling*, Press Release (July 24, 2019), <https://www.commoncause.org/press-release/common-cause-calls-for-congressional-impeachment-investigation-to-counter-white-house-stonewalling/>.
- 7 Common Cause, *The Case for an Impeachment Inquiry of President Trump* (July 24, 2019), <https://www.commoncause.org/wp-content/uploads/2019/07/ImpeachmentInquiryv6.pdf>.
- 8 Andrew Desiderio, *Nadler: "This is formal impeachment proceedings," POLITICO* (Aug. 8, 2019), <https://www.politico.com/story/2019/08/08/nadler-this-is-formal-impeachment-proceedings-1454360>.
- 9 Jen Kirby, "Read: Nancy Pelosi's full statement on launching Trump impeachment inquiry," *Vox* (Sept. 24, 2019), <https://www.vox.com/policy-and-politics/2019/9/24/20882453/impeachment-trump-nancy-pelosi-statement>.
- 10 Numerous alternative English language spellings of Ukraine's president's last name have been used in the press, in impeachment inquiry documents and by the president himself in social media and other communications since he took office earlier this year. The president himself has seemingly settled on the spelling "Zelenskyy," using this spelling on his passport and in other documents. Throughout this report, Common Cause uses President Zelenskyy's preferred spelling except when directly quoting a source that uses an alternative spelling. See Hanna Kozłowska, "How many Y's are in Volodymyr Zelensky(y)'s name?," *Quartz* (Sept. 25, 2019), <https://qz.com/1716173/is-it-zelensky-or-zelenskyy/>.
- 11 U.S. Const., art. II, § 4.
- 12 "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.
- 13 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 not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States." 18 U.S.C. § 201(b)(2).
- 14 Laurence H. Tribe, "Defining 'high crimes and misdemeanors': Basic principles," 67 *Geo. Wash. Rev.* 712, 718 (1999) (quoting directly); see also C.M. Ellis, "The causes for which a president can be impeached," *The Atlantic* (June 1867), <https://www.theatlantic.com/magazine/archive/1867/01/the-causes-for-which-a-president-can-be-impeached/548144/>.
- 15 Historically, British Parliament has removed and charged members for "high crimes and misdemeanors," including a variety of statutory and nonstatutory offenses since the phrase came into common use. Wm. Holmes Brown et al., *House Practice: a Guide to Rules, Precedents, and Procedures of the House* 594 (2011).
- 16 See *Federalist* No. 65 *supra* note 2.
- 17 Elizabeth Holtzman, *The Case for Impeaching Trump* 18 (2018).
- 18 Asher C. Hinds, *Hinds Precedents of the House of Representatives of the United States*, Vol. III §§ 2385–97 (1907), <https://www.govinfo.gov/content/pkg/GPO-HPREC-HINDS-V3/pdf/GPO-HPREC-HINDS-V3.pdf>; *House Practice supra* note 15, at 597.
- 19 Hinds *supra* note 18 at §§ 2342–63; *House Practice supra* note 15, at 597.
- 20 Hinds *supra* note 18 at §§ 2364–66. The Senate later acquitted Judge Peck, but the House believed Peck's conduct warranted impeachment because his actions were unjust, arbitrary and beyond the scope of his judicial duties. *House Practice supra* note 15, at 598.
- 21 Judge Kent later resigned before the Senate could convict him and the proceedings were discontinued. *House Practice supra* note 15, at 598.
- 22 See *Nixon v. United States*, 506 U.S. 224, 236 (1993).
- 23 U.S. House of Representatives Permanent Select Committee on Intelligence, *Chairman Schiff Issues Subpoena for Whistleblower Complaint Being Unlawfully Withheld by Acting DNI from Intelligence Committees*, Press Release (Sept. 13, 2019), <https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=688>.
- 24 *Id.*
- 25 Michael K. Atkinson, Inspector General of the Intelligence Community, *Letter to the Honorable Adam Schiff and the Honorable Devin Nunes* (Sept. 17, 2019), https://intelligence.house.gov/uploadedfiles/20190917_-_ic_ig_second_letter_to_hpsci_on_whistleblower.pdf; see also Michael K. Atkinson, Inspector General of the Intelligence Community, *Letter to the Honorable Joseph Maguire, Director of National Intelligence (Acting)*, (Aug. 26, 2019), https://intelligence.house.gov/uploadedfiles/20190826_-_icig_letter_to_acting_dni_unclass.pdf.
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227 The Federal Campaign Finance Act (FECA; 52 U.S.C. §§ 30101 et seq.) imposes a \$2,700 limit on “campaign contributions” to federal candidates from individuals and prohibits federal candidates from receiving contributions from corporations. See 52 U.S.C. § 30116(a), (f); 30118(a)-(b); 11 C.F.R. § 110.8. FECA defines “expenditure” as “any purchase, payment, distribution, loan, advance, deposit, or gift or money to anything of value, made by any person for the purpose of influencing any election for federal office.” 52 U.S.C. § 30101(9)(A)(i); see also 11 C.F.R. §§ 100.110-100.114. FECA provides that “expenditures made by any person in cooperation, consultation or concert, with, or at the request or suggestion of, a candidate, his authorized political committee, or their agents, shall be considered to be a contribution to such candidate.” 52 U.S.C. § 30116(a)(7)(B)(i). See also 11 C.F.R. § 108.20(a). Any expenditure that is “coordinated” with a candidate is an in-kind contribution to the candidate subject to limits and reporting requirements. Here, Michael Cohen made a \$130,000 payment to Stormy Daniels to influence the election, while AMI made a \$150,000 payment to Ms. McDougal to influence the election, making both payments “expenditures” under federal campaign finance law. These expenditures were made “in cooperation, consultation, or concert, with, or at the request or suggestion” of Michael Cohen and likely Donald Trump, which renders the expenditures illegal in-kind contributions to the Trump campaign.

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