



IMPEACHMENT FAQ's

"The President must be held accountable. No one is above the law."

House Speaker Nancy Pelosi, September 24, 2019

On Tuesday September 24, Speaker of the House Nancy Pelosi announced the beginning of a formal impeachment inquiry against President Donald Trump. While the inquiry is anticipated to focus on Trump's [dealings with the Ukrainian president](#), several other issues provide relevant context, including obstruction of justice allegations resulting from Special Counsel Mueller's investigation and alleged violations of the Constitution's Emoluments Clauses.

What is the process for impeaching the president?

Article I of the Constitution grants the House of Representatives the "sole power of impeachment" and the Senate the "sole power to try all impeachments."¹ The House must first recommend articles of impeachment. If at least one article gets a majority vote of the full House, the president is impeached – "which is essentially the equivalent of being indicted." Next, the proceedings move to the Senate where a "team of lawmakers from the House, known as managers, play the role of prosecutors," the president is represented by defense counsel of his choosing, and the Senate sits as jury. The Chief Justice of the United States oversees the trial. If two-thirds of senators find the president guilty, he is removed from office. There is no appeal. Charlie Savage, [How the Impeachment Process Works](#), NYTimes (Sept. 24, 2019).

Is there a role for the courts?

The Supreme Court has held that because the Constitution grants the "sole power to try all impeachments" to the Senate, appeals from impeachment convictions are nonjusticiable.² Therefore, outside of the Chief Justice's overseeing of a Senate impeachment trial, there is no role for the judiciary in the impeachment process. There may be, however, judicial involvement in disputes bearing upon the impeachment, such as the limits of executive privilege when Congress seeks information from the executive branch.

See Quinta Jurecic, [The Supreme Court Has No Role in Impeachment](#), Lawfare (April 24, 2019).

¹ U.S. CONST., art. I, §§ 2 & 3.

² *Nixon v. United States*, 506 U.S. 224 (1993).

What constitutes an impeachable offense?

The Constitution authorizes impeachment of the president and other high-ranking officers in cases of “treason, bribery, or other high crimes and misdemeanors.”³ Alexander Hamilton described impeachable offenses as “the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.”⁴ High crimes and misdemeanors are generally agreed to be “abuses of public office” and not to include simple “incompetence or general unfitness for office.”

Neil Kinkopf and Keith Whittington, [The Interactive Constitution: Article 11, Section 4](#), The National Constitution Center.

Is criminal conduct required?

“Our founders deliberately drafted the Constitution’s impeachment clause to ensure the potential grounds for impeachment would cover more than criminal activity. Many crimes are not impeachable (jaywalking, for example). Other activity isn’t necessarily criminal but is obviously a basis for impeachment (not defending the United States against a foreign attack).” Neil Katyal, [Trump Doesn’t Need to Commit a Crime to Be Kicked Out of Office](#), NYTimes (Sept. 25, 2019). The majority view is that a president can legally be impeached for “intentional, evil deeds” that “drastically subvert the Constitution and involve an unforgivable abuse of the presidency” — even if those deeds didn’t violate any criminal laws.

Laurence Tribe & Joshua Matz, TO END A PRESIDENCY (2018).

Do the current allegations regarding Trump’s engagement with the Ukrainian president rise to the level of high crimes and misdemeanors?

“[The Zelensky memo] demonstrates that Mr. Trump sought multiple favors from a foreign leader for his personal political gain and in doing so violated his solemn oath to preserve, protect and defend the Constitution.”

Noah Bookbinder, [The Zelensky Memo Is All the Proof Needed to Impeach Trump](#), (Sept. 25, 2019).

See also Leah Litman, [Trump’s Ukraine Call Mentioning Biden is the Strongest Reason Yet for Impeachment](#), NBC News (Sept. 24, 2019).

Do the current allegations constitute a violation of campaign finance laws?

U.S. campaign finance laws prohibit foreign nationals from contributing money or things of value to candidates for federal office and prohibit the solicitation of foreign money in U.S. elections. “[S]oliciting information about the Biden family from a foreign government — the Ukrainians...is [a] violation of federal campaign finance law and could provide additional grounds for impeachment.”

Ciara Torres-Spelliscy, [Congress Has Used Campaign Finance for Impeachment Before: Here’s How To Do It Now](#), ACSBlog (Sept. 26, 2019).

³ U.S. CONST., art. I, §§ 2 & 3.

⁴ THE FEDERALIST NO. 65 (Alexander Hamilton).

See also Richard Hasen, [Trump's Ukraine Gambit Could Be Another Campaign Finance Crime](#), Slate, (Sept. 22, 2019).

Other Allegations of Potentially Impeachable Conduct

Obstruction of Justice

Special Counsel Mueller's March 2019 report cites "10 instances of potential obstruction of justice," but declined to make "a traditional prosecution or declination decision" because of [a Justice Department determination](#) that the president may not be indicted for a criminal offense while in office. Over [1,000 former federal prosecutors](#) weighed in: "Each of us believes that the conduct of President Trump described in Special Counsel Mueller's report would, in the case of another person ..., result in multiple felony charges for obstruction of justice."

Corey Brettschneider, [Mueller Just Showed Why Impeachment Proceedings Should Begin Soon](#), Wash Post (July 25, 2019).

Violations of the Emoluments Clauses

Article I's Foreign Emoluments Clause, which prohibits the president from accepting any "Emolument, Office, or Title...from any King, Prince, or foreign State," and Article II's Domestic Emoluments Clause, which prohibits a change in the president's compensation or receipt of any other benefit during his term, were intended to prevent corruption of the presidency⁵. There are [numerous allegations](#) and [pending litigation](#) contending that Trump has violated one or both clauses. President Trump's "decision to assume the presidency without separating from his business has undermined vital protections in our Constitution meant to ensure that the President does not put his personal interests above the interests of the nation and subvert our constitutional system."

Constitutional Accountability Center, [The Domestic Emoluments Clause: Its Text, Meaning, and Application to Donald J. Trump](#) (July 26, 2017).

See also Sharon La Franiere, [U.S. Appeals Court Reinstates Emoluments Case Against Trump](#), NYTimes (Sept. 13, 2019).

⁵ U.S. CONST., art. I, § 9 and art. II § 1.