116TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 116–266

DIRECTING CERTAIN COMMITTEES TO CONTINUE THEIR ONGOING INVESTIGATIONS AS PART OF THE EXISTING HOUSE OF REPRESENTATIVES INQUIRY INTO WHETHER SUFFICIENT GROUNDS EXIST FOR THE HOUSE OF REPRESENTATIVES TO EXERCISE ITS CONSTITUTIONAL POWER TO IMPEACH DONALD JOHN TRUMP, PRESIDENT OF THE UNITED STATES OF AMERICA, AND FOR OTHER PURPOSES

OCTOBER 30, 2019.—Referred to the House Calendar and ordered to be printed

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Mr. MCGOVERN, from the Committee on Rules, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H. Res. 660]

The Committee on Rules to whom was referred the resolution (H. Res. 660) directing certain committees to continue their ongoing investigations as part of the existing House of Representatives inquiry into whether sufficient grounds exist for the House of Representatives to exercise its Constitutional power to impeach Donald John Trump, President of the United States of America, and for other purposes.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for Legislation	2
Committee Consideration	10
Committee Votes	10
Committee Oversight Findings and Recommendations	16
Performance Goals and Objectives	16
Advisory Committee Statement	17
Section-by-Section Analysis	17
Changes in Existing House Rules Made by the Resolution, as Reported	20
Dissenting Views	21

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PURPOSE AND SUMMARY

This resolution directs certain committees to continue their ongoing investigations as part of the existing House of Representatives inquiry into whether sufficient grounds exist for the House of Representatives to exercise its Constitutional power to impeach Donald John Trump, President of the United States of America. The resolution lays out the procedure for the Permanent Select Committee on Intelligence to continue their ongoing investigation in open hearings, authorizes the release of deposition transcripts, and provides additional procedures in furtherance of the impeachment inquiry, including for the Committee on the Judiciary.

BACKGROUND AND NEED FOR LEGISLATION

The House of Representatives' impeachment inquiry

On September 24, 2019, Speaker Nancy Pelosi announced that the House of Representatives would continue with its impeachment inquiry into President Donald J. Trump.[1] In exercise of its oversight and legislative authorities and under the umbrella of the House's ongoing impeachment inquiry, the Permanent Select Committee on Intelligence (HPSCI), in coordination with the Committee on Foreign Affairs and the Committee on Oversight and Reform, has led a fact-finding investigation of the President's use of the power and instruments of the presidency and the federal government for his personal political gain.[2]

The investigation conducted by these investigative committees has focused on three interrelated lines of inquiry regarding the President's conduct:

1. Did the President request that a foreign leader and government initiate investigations to benefit the President's personal political interests in the United States, including an investigation related to the President's political rival and potential opponent in the 2020 U.S. presidential election?
2. Did the President—directly or through agents—seek to use the power of the Office of the President and other instruments of the federal government in other ways to apply pressure on the head of state and government of Ukraine to advance the President's personal political interests, including by leveraging an Oval Office meeting desired by the President of Ukraine or by withholding U.S. military assistance to Ukraine?
3. Did the President and his Administration seek to obstruct, suppress or cover up information to conceal from the Congress and the American people evidence about the President's actions and conduct?

In deposing witnesses and examining documentary evidence, the Permanent Select Committee on Intelligence, in coordination with the Committees on Foreign Affairs and Oversight and Reform, is assessing the extent to which President Trump jeopardized U.S.

[1] Speaker Nancy Pelosi, "Pelosi Remarks Announcing Impeachment Inquiry," September 24, 2019. (Online at: https://www.speaker.gov/newsroom/92419-0).

[2] Speaker Nancy Pelosi, "Dear Colleague on Work to Advance Impeachment Inquiry During District Work Period," September 27, 2019. (Online at: https://www.speaker.gov/newsroom/92719-1).

national security by pressing Ukraine to initiate politically-motivated investigations that could interfere in U.S. domestic politics.

As part of the ongoing investigation into the President's actions and conduct, the Committees have requested that the White House and Executive Branch agencies and departments produce pertinent documents and records. Due to non-cooperation across the Executive Branch, the Committees served duly authorized subpoenas on the White House, the Office of Management and Budget, the Department of State, the Department of Defense, and the Department of Energy. On October 8, 2019, White House Counsel Pat Cipollone responded on behalf of President Trump, citing among other arguments the lack of a floor vote and other alleged due process considerations: "President Trump cannot permit his Administration to participate in this partisan inquiry under these circumstances."[3] With the exception of the Department of State, the other agencies and departments of the Executive Branch, including the White House, have affirmatively informed the Committees in writing that they would not comply after being served with lawful subpoenas and that they would withhold evidentiary documents and records from the investigative committees involved in the impeachment inquiry. Although the Department of State has not explicitly informed the Committees that it intends not to comply with its subpoena, it has yet to produce a single document or other record in willful defiance of compulsory process. All subpoenas to the Executive Branch remain in full force.

In the context of an impeachment inquiry, the President and his administration's refusal to comply with duly authorized subpoenas, decision to withhold documentary evidence, and attempts to block and discourage witnesses from testifying may be considered as evidence of the President abusing the powers of his office and may lead the committees to draw an adverse inference against the President.

Evidence also suggests President Trump may have corruptly abused the power of his office to obstruct duly authorized federal law enforcement investigations into his conduct and that of his associates. The day before President Trump's July 25, 2019, call with President Zelensky, Special Counsel Robert S. Mueller, III testified before the multiple House Committees.[4] In his testimony and his Report,[5] Mueller described in detail the "sweeping and systemic fashion" in which the 2016 presidential election was attacked by the Russian government and its agents. The Special Counsel also documented evidence strongly indicating that President Trump engaged in a course of conduct designed to obstruct the Special Counsel's investigation, including any investigation into the President's conduct. Both personally and through his subordinates, the President appears to have engaged in a plan to remove the Special Counsel,[6] limit the Special Counsel's investigation and other fed-

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[3] Letter from White House Counsel Pat Cipollone to Speaker Pelosi and Chairmen Engel, Schiff, and Cummings, Oct. 8, 2019.

[4] *See Oversight of the Report on the Investigation Into Russian Interference in the 2016 Presidential Election: Former Special Counsel Robert S. Mueller, III:* Hearing Before the H. Comm. on the Judiciary, 116th Cong. (July 24, 2019) (Mueller Judiciary Hearing).

[5] *See Robert S. Mueller, III, Report On The Investigation Into Russian Interference In The 2016 Presidential Election,* Vol 1 at p. 1 (March 2019) (Mueller Report).

[6] *See e.g.,* Mueller Report Vol II at II.E.

eral investigations related to Trump,[7] discourage witness cooperation with federal investigators,[8] and provide false statements.[9] The House Judiciary Committee's investigation of these allegations as part of its impeachment investigation remains ongoing.[10] In this investigation—as in others undertaken by the House Judiciary Committee and other committees—the President and the Executive Branch have refused to comply with duly authorized subpoenas, have withheld documentary evidence, and have attempted to block and discouraged witnesses from testifying, all in manners that may be considered as evidence of the President abusing the powers of his office and that may substantiate an adverse evidentiary inference against the President.

The role of impeachment in our constitutional system

The impeachment power serves an extraordinarily important role in the constitutional plan: it allows Congress to remove from office a President who has committed "Treason, Bribery, or other High Crimes and Misdemeanors."[11] Impeachment is thus the most profound check on the Presidency and one of the mightiest safeguards for constitutional democracy.

As Justice Joseph Story wisely recognized, "the power of impeachment is not one expected in any government to be in constant or frequent exercise."[12] But when faced with credible evidence of extraordinary Presidential wrongdoing, it is incumbent on the House of Representatives—which wields "the sole Power of Impeachment,"[13]—to thoroughly investigate and then determine whether to approve articles of impeachment accusing the President of misconduct justifying his removal from office. The House alone is vested with that responsibility because it "represent[s] the great body of the people," and because the need for impeachment arises "from acts of great injury to the community."[14] Following approval of such articles by the House, proceedings shift to the Senate, which must hear evidence and argument and ultimately adjudicate the case pursuant to its "sole Power to try all Impeachments."[15]

The Framers of the Constitution provided for these exceptional procedures because egregious misuse of the Nation's highest office could be "fatal to the republic."[16] They appreciated that "the Executive will have great opportunities of abusing his power,"[17] and

[7] *See e.g.,* Mueller Report Vol II at II.F.

[8] *See e.g.,* Mueller Report Vol II at II.J–II.K.

[9] *See e.g.,* Mueller Report Vol II at II.I.

[10] This point has recently been reaffirmed in litigation in the United States District Court for the District of Columbia regarding grand jury materials relating to the Special Counsel's Report: "Speaker Pelosi and the Committee have confirmed that an impeachment inquiry is underway." Reply of the Committee on the Judiciary, *In re: Application of the Committee on the Judiciary For An Order Authorizing The Release of Certain Grand Jury Materials,* 1:19–gj–48 (D.D.C.), at 16. The District Court relied on that representation in its opinion granting the Judiciary Committee's petition: "The Speaker of the House of Representatives has announced an official impeachment inquiry, and the House Judiciary Committee ("HJC"), in exercising Congress's 'sole Power of Impeachment,' U.S. CONST. art. I, § 2, cl. 5, is reviewing the evidence set out in the Mueller Report." Memorandum Opinion, *In re: Application of the Committee on the Judiciary For An Order Authorizing The Release of Certain Grand Jury Materials,* 1:19–gj–48 (D.D.C. Oct. 25, 2019), at 2; *see also id.* at 57, 62, 64–68.

[11] U.S. Const. art. II, § 4.

[12] *Commentaries on the Constitution of the United States* § 749 (1833).

[13] U.S. Const. art. I, § 2, cl. 5.

[14] Jonathan Elliott (ed.), *The Debates in the Several State Conventions* 113 (1863) (quoting Justice James Iredell).

[15] U.S. Const. art. I, § 3, cl. 6.

[16] Farrand, 2 *The Records of the Federal Convention,* at 66 (James Madison).

[17] *Id.* at 67 (Edmund Randolph).

sought to bury the abhorrent maxim "that the chief Magistrate could do [no] wrong."[18] Championing the adoption of an impeachment provision in the Constitution, Madison therefore cautioned that a President "might betray his trust to foreign powers," or "pervert his administration into a scheme of peculation or oppression."[19] Mason and William Davie, in turn, sharply highlighted the threat that Presidents would pose if they could corrupt the electoral process without fear of being removed from political office for their wrongdoing.[20] Subsequently, in the *Federalist Papers,* Alexander Hamilton also emphasized impeachment as a bulwark against foreign influence in our domestic affairs.[21]

Of course, arguments about the importance of allowing Presidential impeachment were not invented for the very first time at the Constitutional Convention. Every delegate who addressed the loaded subject of impeachment in Philadelphia had personal experience with colonial or state impeachment practice, which ensured their familiarity with the concept of removing senior elected officials.[22] That background caused many Framers to recoil from the European notion that heads of state could never be impeached. As Hamilton later explained, the President would have no more resemblance to the British king than to "the Grand Seignior, to the khan of Tartary, to the Man of the Seven Mountains, or to the governor of New York."[23] As he reasoned in his essays advocating ratification, whereas "the person of the king of Great Britain is sacred and inviolable," the American President could be "impeached, tried, and upon conviction . . . removed from office."[24] Through the Impeachment Clause, the Framers thus confirmed that nobody—not even the President of the United States of America—is above the law. Consistent with the Framers' goals, the purpose of the impeachment power is not to impose personal punishment on the President. Instead, impeachment's "function is primarily to maintain constitutional government."[25] That is why the consequences of conviction in the Senate are expressly limited by the plain text of the Constitution to removal from office and potential disqualification from future office holding.[26] To the extent the President has violated any criminal statutes, the Constitution reserves criminal punishment for the ordinary judicial processes of criminal law.[27] Conviction on articles of impeachment thus goes "just far enough, and no further than, to remove the threat posed to the Republic by an unfit official."[28] This careful balance speaks

[18] *Id.* at 66 (Elbridge Gerry).
[19] *Id.* at 65–66.
[20] *See id.* at 65–65.
[21] Wright (ed.), *The Federalist Papers,* Federalist 68, at 444 (1961) ("Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils. How could they better gratify this, than by raising a creature of their own to the chief magistracy of the Union? But the convention have guarded against all danger of this sort, with the most provident and judicious attention.").
[22] *See, e.g.,* Frank O. Bowman III, *High Crimes & Misdemeanors* 50–112 (2019).
[23] Benjamin Wright (ed.), *The Federalist Papers,* Federalist 69, at 444 (1961).
[24] *Id.* at 445.
[25] House Committee on the Judiciary, *Constitutional Grounds for Presidential Impeachment* 24 (1974).
[26] *See* Laurence H. Tribe, *American Constitutional Law* 155 (3d ed. 2000).
[27] *See* U.S. Const. art. I, § 3, cl. 7.
[28] John O. McGinnis, *Impeachment: The Structural Understanding,* 67 GEO. WASH. L. REV. 650, 650 (1999).

to the Framers' acknowledgment of impeachment's role in protecting the democratic system, as well as their realization that criminal punishment through the Judiciary serves a very different purpose in American life than does impeachment and removal from office.

Throughout the Nation's history, the House has undertaken impeachment proceedings against only three Presidents. In 1868, following sustained Presidential resistance to Congressional Reconstruction, the House impeached President Andrew Johnson for violating the Tenure of Office Act and calling Congress into disrepute. In 1974, following the infamous Watergate scandal, the House Committee on the Judiciary approved articles of impeachment against President Richard M. Nixon for obstruction of justice, abuse of power, and obstruction of Congress. (President Nixon resigned before those articles were put to a vote by the full House.) Finally, in 1998, following receipt of a report from Independent Counsel Kenneth Starr, the House impeached President William J. Clinton for obstruction of justice and perjury. Each of these impeachment proceedings arose from Presidential conduct determined by a majority of the House to involve serious wrongdoing that imperiled the rule of law.

Ultimately, as Hamilton taught, the "true spirit" of impeachment in the House is that it serves as a "method of NATIONAL INQUEST into the conduct of public [officials]." [29] Members of the House serve as "inquisitors for the nation," investigating whether the President committed "high Crimes and Misdemeanors" and, if appropriate, approving articles of impeachment for adjudication in the Senate. This is a weighty responsibility, and a grave one, but it is essential to ensuring that the Constitution endures when the President abuses power, betrays the nation, or corrupts our highest office.

The impeachment inquiry process

As described above, the Constitution vests the "sole power of impeachment" in the House of Representatives and provides the Senate "the sole power to try all impeachments" and remove a federal officer, including the president, for certain "high crimes and misdemeanors." [30] The purpose of an impeachment inquiry is to gather evidence to determine whether the president may have committed an impeachable offense, and consequently whether the House should draft and adopt articles of impeachment.

The Trump Administration has challenged this inquiry's legitimacy. He has asserted that it is improper or unconstitutional for the committees to conduct an impeachment inquiry absent an authorizing vote of the full House.[31] This assertion has no basis in the text of the Constitution, House rules, past precedent or any other authority. As noted above, the House possess the "sole power of impeachment." Furthermore, the Constitution provides that each "House may determine the Rules of its Proceedings." [32] As such,

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[29] Wright (ed.), *The Federalist Papers,* Federalist 65, at 427 (1961).
[30] U.S. Const. Art. I § 2, cl. 5; *id.* § 3, cl. 6; Art. II § 4.
[31] Letter to Nancy Pelosi, Speaker, U.S. House of Representatives, Adam Schiff, Chairman, H. Permanent Select. Comm. on Intelligence, Eliot Engel, Chairman, H. Comm. on Foreign Affairs, Elijah Cummings, Chairman, H. Comm. on Oversight and Reform, from Pat Cipollone, Counsel to the President, Oct. 8, 2019.
[32] U.S. Const. Art. I, § 5, cl. 2.

neither the Constitution nor House rules requires that the full House vote to authorize an inquiry. Indeed, a federal district judge recently rejected the assertion that the House must have a full vote to initiate an impeachment inquiry. The holding came in response to the Judiciary Committee's petition for grand jury material related to the Mueller investigation. The Court found that the Trump Administration's argument "has no textual support in the U.S. Constitution, [or] the governing rules of the House . . ."[33] And further recognized that "[e]ven in cases of presidential impeachment, a House resolution has never, in fact, been required to begin an impeachment inquiry."[34] This resolution, while not required, provides a further framework for the House's ongoing impeachment inquiry into the conduct of President Donald Trump.

Under the framework provided by this resolution, HPSCI and others will continue to conduct the fact-finding investigation into the Ukraine matter and HPSCI will report to the Judiciary Committee in connection with that matter. Both the Constitution and the rules of the House permit congressional committees to undertake such investigations regarding the conduct of the President that may result in the adoption of articles of impeachment.[35] The Judiciary Committee, as a matter of precedent, is responsible for considering and potentially recommending articles of impeachment to the full House. Articles of impeachment introduced in the House are by parliamentary precedent referred to the Committee on the Judiciary.[36] Whether by direct referral to the Committee or referral following a vote, "[a]ll impeachments to reach the Senate since 1900 have been based on resolutions reported by the Committee on the Judiciary."[37]

The House's ongoing impeachment inquiry process—both before and after enactment of the resolution—and the additional framework provided by the resolution is commensurate with the inquiry process followed in the cases of President Nixon and President Clinton. The Nixon impeachment inquiry proceeded out of public view for several months—starting in October 1973.[38] The House did not vote to authorize an impeachment inquiry until February 6, 1974.[39] From February 22 to May 9, 1974, only the Chairman, Ranking Member, and inquiry staff had access to the material gathered by the inquiry, to supervise and review the assembly of the evidence prior to the presentation of the evidence to the whole

[33] *See* Memorandum opinion granting the application, *In re Application of The Committee on The Judiciary, U.S. House of Representatives, For An Order Authorizing the Release of Certain Grand Jury Materials,* Misc. No. 1:19–gj–00048–BAH (Oct. 30, 2019) at 49–55.

[34] *Id.*

[35] During the impeachment inquiry of President Richard Nixon, inquiry staff organized and analyzed evidence provided by the Senate Select Committee on Presidential Campaign Activities and made requests for various materials "to the Senate Foreign Relations Committee, the House Armed Services Committee, the Senate Subcommittee on Administrative Practice and Procedure, the Senate Permanent Subcommittee on Investigations, and the CIA." *See Work of the Impeachment Inquiry Staff as of March 1,* Rept. Of the H. Comm. on the Judiciary, 93rd Cong., (1974) at p. 2.

[36] *Jefferson's Manual,* H. Doc. 114–192 § 605, at 321 (2017) ("[R]esolutions . . . that directly call for the impeachment of an officer have been referred to the Committee on the Judiciary[.]").

[37] Charles W. Johnson et al., *House Practice: A Guide to the Rules, Precedents, and Practice of the House,* Ch. 27 § 6, at 615 (2017).

[38] *Summary of the Activities of the H. Comm. on the Judiciary, 93rd Congress, 1st Session,* 93rd Cong. (1974) at 1.

[39] H. Res. 803, 93rd Cong. (1974).

Committee.[40] With regard to the Clinton impeachment inquiry, the Independent Counsel Kenneth Starr transmitted his report to the House of Representatives on September 9, 1998. Two days later, the House adopted H. Res. 525 to allow the Judiciary Committee to review the report behind closed doors before releasing it to the public and "to determine whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced." [41] The House adopted a resolution authorizing an inquiry nearly a month later on October 8, 2019.[42]

The current inquiry must differ from the previous two presidential impeachment inquiries in one fundamental respect, however: the House is conducting a significant portion of the factual investigation itself as it relates to the Ukraine matter. In impeachment inquiries of both President Nixon and Clinton, the House relied upon an investigation conducted by third-parties, such as the Watergate Special Prosecutor's Office investigation and Senate Select Committee investigation into President Nixon, and the Independent Counsel investigation into President Clinton. With regard to the Ukraine matter, the Department of Justice (under Attorney General William Barr) declined to open an investigation after reviewing President Trump's July 25, 2019, call with Ukrainian President Zelensky. The Department issued a statement on September 25, 2019, stating that the Department's Criminal Division "reviewed the official record of the call and determined, based on the facts and applicable law, that there was no campaign finance violation and that no further action was warranted." As a result, the Department asserted that it had "concluded the matter." [43]

Where, as in the case of investigating the conduct of President Trump, there is no such third-party to conduct the investigation, the House, through its committees, must conduct the initial fact-finding investigation with regards to the Ukraine matter.

This resolution represents the next, public-facing phase of that process.

Additionally, the Trump Administration has asserted that the House has failed to provide the President with "constitutionally mandated due process." [44] The initial stages of an impeachment inquiry in the House are akin to those preceding a prosecutorial charging decision. Under this process, the House is responsible for collecting the evidence and, rather than weighing the question of returning an indictment, the Members of the House have the obligation to decide whether to approve articles of impeachment.

As previously described, an impeachment inquiry is not a criminal trial and should not be confused with one. The president's liberty is not at stake and the constitutional protections afforded a criminal defendant do not as a matter of course apply. The constitutionally permitted consequences of impeachment are limited to

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[40] *Impeachment of Richard M. Nixon, President of the United States,* Rept. of the H. Comm. on the Judiciary, 93rd Cong. (1974) at pp. 8–9.

[41] H. Res. 525, 105th Cong. (1998).

[42] H. Res. 581, 105th Cong. (1998).

[43] Department of Justice Press Statement, September 25, 2019 (as sent to HPSCI). See e.g., Matt Zapotosky and Devlin Barrett, "Justice Dept. rejected investigation of Trump phone call just weeks after it began examining the matter," *The Washington Post,* September 25, 2019.

[44] Letter to Nancy Pelosi, Speaker, U.S. House of Representatives, Adam Schiff, Chairman, H. Permanent Select. Comm. on Intelligence, Eliot Engel, Chairman, H. Comm. on Foreign Affairs, Elijah Cummings, Chairman, H. Comm. on Oversight and Reform, from Pat Cipollone, Counsel to the President, Oct. 8, 2019.

immediate removal from office and potentially being barred from holding future federal office. Moreover, it is the Senate that conducts the trial to determine whether the conduct outlined in the articles warrant the president's removal from office, which requires a ⅔ majority vote. Indeed, given the nature of the ongoing investigation into the Ukraine matter, President Trump has received additional procedural protections. During closed door depositions held by HPSCI and others related to the Ukraine matter, minority members have been present and granted equal time to question witnesses brought before the committees. This is unlike the process in the preceding two presidential impeachment inquiries, which relied significantly upon information gathered by third-party investigators. Now, as we enter the next phase of the investigation, this resolution directs HPSCI to conduct open hearings and produce and transmit a report of its factual findings to the Judiciary Committee, which will consider and potentially refer articles of impeachment based on those factual findings and all other factual evidence before it.

Nonetheless, the Committee on the Judiciary has, during certain stages of an impeachment inquiry, adopted procedures governing the presentation of evidence that permit the president to participate in the proceedings. It was only in May 1974 that the committee adopted procedures for the presentation of evidence, which included additional procedural protections for the President.[45] Similarly, the House Judiciary Committee authorized additional procedures for the presentation of evidence, including procedural protections for the president on October 5, 1998, nearly a month after it had received the report of Independent Counsel Starr, and just before the Committee began conducting public hearings.

In keeping with this past practice, the resolution directs the Judiciary Committee to provide procedural protections for the president based on those provided during the Nixon and Clinton inquiries in anticipation of the Committee receiving the results of the ongoing investigations being conducted by other committees of the House. These procedural protections include: that the president and his counsel are invited to attend all hearings; the ability for the president's counsel to cross-examine witnesses and object to the admissibility of testimony; and the ability of the president's counsel to make presentations of evidence before the Judiciary Committee, including the ability to call witnesses. The purpose of providing these protections is to ensure that the president has a fair opportunity to present evidence to the Judiciary Committee if it must weigh whether to recommend articles of impeachment against him to the full House.

The President and his administration's egregious failure to comply with the lawful subpoenas and requests of the investigating

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[45] *See Impeachment of Richard M. Nixon, President of the United States,* Rept. of the H. Comm. on the Judiciary, 93rd Cong. (1974) at pp. 8–9. ("These procedures were consistent with four general principles: First, the Committee would receive from the staff and consider initially all reliable material which tended to establish the facts in issue. At the time that the evidentiary proceedings began, the Committee would give the President the opportunity to have his counsel present and to receive such documents and materials as the staff presented to the Committee Members for their consideration. Second, during the presentation of this evidentiary material, whether in executive or in open session subject to the rules of the House, the Committee would give the President the opportunity to have his counsel present and to hear the presentation. Third, at the end of this presentation, the Committee would give the President the opportunity to have his counsel make his position known, either orally or in writing, with respect to the evidentiary material received by the Committee.")

committees must of course be taken account of when considering the President's opportunity to himself utilize Congressional procedures to obtain and present witnesses and documents. In construing the resolution, it is understood that the opportunity conferred on the President by the Judiciary Committee procedures, including through his counsel, to call specific witnesses or pose particular questions to them may, in the customary discretion of the chair, be predicated in whole or in part on the President's determinations as to whether to make witnesses available for testimony to, and to produce documents requested by, the investigative committees directed by H. Res. 660 as the committees continue their ongoing investigations into whether sufficient grounds exist for the House of Representatives to exercise its Constitutional power to impeach Donald John Trump, President of the United States of America, and for other purposes. The available remedies within the chair's discretion in such circumstances also include—but are not limited to—drawing adverse evidentiary inferences on questions of fact or finding that the President's unlawful defiance of Congressional subpoenas constitutes obstruction of the Congressional impeachment inquiry. In the exercise of this discretion the chair shall, of course, account for any valid and applicable legal constitutional, procedural, or precedential considerations.

Additionally, the resolution provides additional rights to the minority of the Judiciary Committee. The resolution grants the minority the right to subpoena witnesses subject to a vote of the committee. This subpoena power is based on the power granted to the minority during both the Nixon and Clinton impeachment inquiries.

COMMITTEE CONSIDERATION

The Committee on Rules met on October 30, 2019, in open session and ordered H. Res. 660 favorably reported to the House by a record vote of 9 yeas and 4 nays, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report the legislation and amendments thereto. A motion by Mr. McGovern to report the resolution to the House with a favorable recommendation was agreed to by a record vote of 9 yeas and 4 nays, a quorum being present. The names of Members voting for and against follow:

Rules Committee record vote No. 203

Date: October 30, 2019

Motion to order H. Res. 660 reported favorably to the House. Agreed to: 9–4

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Yea	Mr. Cole	Nay
Mrs. Torres	Yea	Mr. Woodall	Nay
Mr. Perlmutter	Yea	Mr. Burgess	Nay
Mr. Raskin	Yea	Mrs. Lesko	Nay
Ms. Scanlon	Yea		
Mr. Morelle	Yea		
Ms. Shalala	Yea		

Majority Members	Vote	Minority Members	Vote
Mr. DeSaulnier	Yea		
Mr. McGovern, Chairman	Yea		

The committee also considered the following amendments on which record votes were requested. The names of Members voting for and against follow:

Rules Committee record vote No. 186

Date: October 30, 2019

Amendment (no. 1) offered by Mr. Woodall to strike all except Section 4. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 187

Date: October 30, 2019

Amendment (no. 2) offered by Mr. Burgess to strike the Committees on Financial Services and Ways and Means from Section 1. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 188

Date: October 30, 2019

Amendment (no. 3) offered by Mr. Burgess to add language requiring the Committees on Financial Services and Ways and Means to produce and make available to all members documents detailing the nature and scope of their investigations. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		

Majority Members	Vote	Minority Members	Vote
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 189

Date: October 30, 2019

Amendment (no. 4) offered by Mr. Woodall to apply language requiring the chair of the Committee on Rules to promulgate additional procedures to allow for the participation of the President and his counsel in proceedings in the House Permanent Select Committee on Intelligence, the Committee on Oversight and Reform, and the Committee on Foreign Affairs. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 190

Date: October 30, 2019

Amendment (no. 5) offered by Mr. Cole to add language permitting the chair and ranking minority member to yield their time to other members on the House Permanent Select Committee on Intelligence during the extended questioning time. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 191

Date: October 30, 2019

Amendment (no. 6) offered by Mrs. Lesko to allow the minority to call at least an equal number of witnesses and to authorize the ranking minority member to require as deemed necessary, by subpoena or otherwise, the attendance and testimony of any person and the production of records and other materials. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		

Majority Members	Vote	Minority Members	Vote
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 192

Date: October 30, 2019

Amendment (no. 7) offered by Mr. Cole to strike the section requiring written justification from the ranking minority member of the relevance of the testimony of each requested witness to the investigation. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 193

Date: October 30, 2019

Amendment (no. 8) offered by Mr. Cole to require the chair to provide the ranking minority member written justification of the relevance of the testimony of each witness whose testimony is requested or required. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 194

Date: October 30, 2019

Amendment (no. 9) offered by Mr. Woodall to add language that provides the ranking minority members of the House Permanent Select Committee on Intelligence and the Committee on the Judiciary with the authority to issue the same number of subpoenas as their respective chairs. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 195

Date: October 30, 2019

Amendment (no. 10) offered by Mr. Cole to allow the ranking minority member of the House Permanent Select Committee on Intelligence the ability to issue subpoenas without the concurrence of the chair. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 196

Date: October 30, 2019

Amendment (no. 11) offered by Mr. Cole to require the chair to have the concurrence of the ranking minority member to issue subpoenas and, if the ranking minority member does not concur, the chair may put the question before the full committee. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 197

Date: October 30, 2019

Amendment (no. 12) offered by Mrs. Lesko to require the House Permanent Select Committee on Intelligence and any other committee having custody of records or other materials relating to the inquiry to transfer all such records or materials including exculpatory materials to the Committee on the Judiciary. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 198

Date: October 30, 2019

Amendment (no. 13) offered by Mrs. Lesko to allow the ranking members of the House Permanent Select Committee on Intelligence and any other committees having custody of records or other materials relating to the inquiry to also transfer records and materials to the Committee on the Judiciary. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 199

Date: October 30, 2019

Amendment (no. 14) offered by Mrs. Lesko to require the concurrence of the relevant ranking minority member in order to transfer records and other materials to the Committee on the Judiciary. If the ranking minority member does not concur, the chair shall have the right to refer to the committee for a decision. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 200

Date: October 30, 2019

Amendment (no. 16) offered by Mr. Burgess to define "employee" as "other than a consultant whose services are procured in accordance with section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 4301(i))". Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 201

Date: October 30, 2019

Amendment (no. 17) offered by Mr. Woodall to ensure the House Permanent Select Committee on Intelligence holds more than one open hearing. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 202

Date: October 30, 2019

Amendment (no. 18) offered by Mr. Burgess to state that nothing in this resolution may be construed to limit the right of each Member, Delegate, or Resident Commissioner to have access to committee records pursuant to clause 2(e)(2) of rule XI. Defeated: 4–9

Majority Members	Vote	Minority Members	Vote
Mr. Hastings	Nay	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Mr. DeSaulnier	Nay		
Mr. McGovern, Chairman	Nay		

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee made oversight findings and recommendations that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The resolution directs certain committees to continue their ongoing investigations as part of the existing House of Representatives inquiry into whether sufficient grounds exist for the House of Representatives to exercise its Constitutional power to impeach Donald John Trump, President of the United States of America; authorizes public hearings and the disclosure of deposition transcripts; and sets forth additional procedures in furtherance of the impeachment inquiry. The resolution moves the House's impeachment inquiry into the next phase while providing rights to the minority, including authorizing the ranking minority members of the House Permanent Select Committee on Intelligence and the Judiciary Committee to request subpoenas. In advancing the impeachment inquiry, the resolution also provides for process rights for the Presi-

dent and his counsel, rights that closely mirror those provided during the Nixon and Clinton impeachment inquiries.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

SECTION-BY-SECTION ANALYSIS

Resolved clause

The first section of the resolution directs the Permanent Select Committee on Intelligence ("Select Committee") and the Committees on Financial Services, Foreign Affairs, the Judiciary, Oversight and Reform, and Ways and Means to continue their ongoing investigations as part of the existing House inquiry into whether sufficient grounds exist for the House to exercise its Constitutional power to impeach President Trump.

Section two—Open and transparent investigative proceedings by the Permanent Select Committee on Intelligence

Section two provides procedures under which the Permanent Select Committee on Intelligence may conduct themselves for the purpose of continuing their ongoing investigation as part of the existing House inquiry into whether sufficient grounds exist for the House to exercise its Constitutional power to impeach President Trump.

It directs the chair of the Select Committee to designate one or more open hearings pursuant to the section and provides a specific process for questioning witnesses in those hearings, notwithstanding clause 2(j)(2) of rule XI. At the start of questioning the chair announces how many minutes the chair and ranking minority member are permitted to question the witness during that round, longer than five minutes and up to 45 minutes per side. The time available for each period of questioning must be equal for the chair and ranking minority member. Only the chair and ranking minority member, or a Select Committee employee[46] if yielded to by the chair or ranking member, may question witnesses during these periods. The chair may announce additional rounds using the same process. Following these extended questioning periods, the committee will proceed with questioning by members of the committee under the five-minute rule.

The section also provides that the ranking minority member of the Select Committee may submit written requests for witness testimony to the chair within 72 hours after notice is given for the first open hearing held pursuant to these procedures. The requested witness testimony must be relevant to the investigation described in the first section and must be accompanied by a detailed written justification of the relevance of such testimony. This notice requirement will allow for a full evaluation of minority witness requests.

[46] The 116th Congress *Committees' Congressional Handbook* released by the Committee on House Administration defines "employee" as "an individual appointed to a position of employment in the House of Representatives by an authorized employing authority including individuals receiving pay disbursed by the CAO and individuals in a Leave Without Pay or furlough status." The Handbook further states, "[a] consultant is to act as an independent contractor and is not an employee of the Committee."

The section authorizes the ranking minority member of the Select Committee, in concurrence with the chair of the committee, to require, as deemed necessary to the investigation—by subpoena or otherwise—the attendance and testimony of any person (including at the taking of a deposition), the production of documents, and by interrogatory, the furnishing of information. If the chair declines to concur in a proposed action of the ranking minority member, the ranking minority member shall have the right to refer to the committee for decision the question of whether such authority shall be exercised and the chair shall convene the committee promptly to render that decision, subject to the notice requirements and good-cause exception for a committee meeting under clause 2(g)(3)(A) and (B) of rule XI. Subpoenas and interrogatories authorized by this section may be signed by the ranking minority member and may be served by any person designated by the ranking member. This language is based on language found in the Clinton and Nixon impeachment inquiry resolutions, H. Res. 581 (105th) and H. Res. 803 (93rd), respectively, but is updated to conform with changes to subpoena rules in the House (clause 2(m) of rule XI), which now confer subpoena authority to committees and, by delegation, the chair.

The section authorizes the chair of the Select Committee to make transcripts of depositions conducted by the Select Committee in furtherance of its investigation publicly available in electronic form, with appropriate redactions for classified and other sensitive information.

The section also directs the Select Committee to act collegially to issue a report with its findings and any recommendations, appending any appropriate information and materials with respect to their investigation. The report must be prepared in consultation with the chairs of the Committees on Foreign Affairs and Oversight and Reform. The chair of the Select Committee is directed to transmit the committee report and appendices, along with any views filed pursuant to clause 2(l) of rule XI, to the Committee on the Judiciary and to make the report publicly available in electronic form, with appropriate redactions to any part of the report to protect classified and other sensitive information.

Section three—Transmission of additional materials

Section three authorizes the chair of the Permanent Select Committee, or the chair of any other committee, having custody of records or other materials related to the House impeachment inquiry referenced in the first section of the resolution, to transfer such records or materials to the Judiciary Committee, in consultation with the ranking minority member.

Section four—Impeachment inquiry procedures in the Committee on the Judiciary

Section four provides for the procedures under which the Judiciary Committee is authorized to conduct the impeachment inquiry. The section authorizes the Committee to conduct proceedings relating to the impeachment inquiry pursuant to the procedures, including those that allow for the participation of the President and his counsel, issued by the chair of the Committee on Rules and printed in the Congressional Record on October 29, 2019.

The Judiciary Committee is also authorized to promulgate additional procedures for hearings held pursuant to the resolution as it deems necessary, provided that they are not inconsistent with the procedures inserted in the Congressional Record by the chair of the Committee on Rules on October 29, 2019, the rules of the Committee, and the rules of the House.

In identical language to the subpoena power referenced in section two, the section also authorizes the ranking member of the Judiciary Committee, in concurrence with the chair of the committee, to require, as deemed necessary to the investigation—by subpoena or otherwise—the attendance and testimony of any person (including at the taking of a deposition), the production of documents, and by interrogatory, the furnishing of information. If the chair declines to concur in a proposed action of the ranking minority member, the ranking minority member shall have the right to refer to the committee for decision the question of whether such authority shall be exercised and the chair shall convene the committee promptly to render that decision, subject to notice requirements and good-cause exception for a committee meeting under clause 2(g)(3)(A) and (B) of rule XI. Subpoenas and interrogatories authorized by this section may be signed by the ranking minority member and may be served by any person designated by the ranking member. Like the identical language found in section two, it is based on subpoena language found in the regulations promulgated to govern the procedures of the Clinton and Nixon impeachment inquiries, H. Res. 581 (105th) and H. Res. 803 (93rd), respectively. The language has been updated to conform with changes to subpoena rules in the House (clause 2(m) of rule XI), which now confer subpoena authority to committees and, by delegation, to the chair.

Section 4(c)(2) of the resolution provides that the chair of the Judiciary Committee may schedule a meeting to consider a subpoena or interrogatory request of the ranking minority member which has been declined and referred to the Judiciary Committee, in accordance with the committee meeting notice requirements and good cause exception contained in House rule XI. This provision supersedes the committee meeting notice requirements contained in rule II of the Judiciary Committee's Rules of Procedure. In addition, paragraph B.3 of the Judiciary Committee Impeachment Inquiry Procedures (inserted into the Congressional Record by the chair of the Committee on Rules on October 29, 2019) permits the chair of the Judiciary Committee to schedule a meeting to consider a request by the President's counsel for the Judiciary Committee to receive additional testimony or evidence in accordance with the committee meeting notice requirements and good cause exception contained in House rule XI, notwithstanding rule II of the Judiciary Committee's Rules of Procedure. Paragraph E of the impeachment inquiry procedures allows the chair to provide notice of other meetings as well as hearings being held pursuant to such impeachment inquiry procedures consistent with the House rule XI notice requirements and good cause exceptions, in this case, so long as there are at least twenty-four hours' notice of the same. Again, this paragraph operates notwithstanding the committee meeting notice requirements contained in rule II of the Judiciary Committee's Rules of Procedure.

Finally, the section requires that the Judiciary Committee report to the House such resolutions, articles of impeachment, or other recommendations as it deems proper.

CHANGES IN EXISTING HOUSE RULES MADE BY THE RESOLUTION, AS REPORTED

In compliance with clause 3(g) of rule XIII of the Rules of the House of Representatives, the Committee finds that this resolution does not propose to repeal or amend a standing rule of the House.

DISSENTING VIEWS

We are disappointed that the Democratic Majority has trampled on the rights of the minority and the integrity of the legislative process in their haste to pass H. Res. 660 on the House Floor. There is no practical reason why the legislative process set forth in both the 93rd and 105th Congresses could not have been the model used today. In fact, even the Democratic Majority themselves have made no compelling argument as to why this legislation was written behind closed doors and only made available to members of the minority and the American people a mere 24 hours prior to the Rules Committee marking up the legislation. We also understand that the Majority plans to schedule a floor vote on the resolution less than 24 hours after conclusion of the Rules Committee markup. This haste has no explanation outside of an unfortunately political context—one that serves to validate the significant and grave concerns of the minority as to the abandonment of transparency, fairness, and bipartisanship that existed in prior Congresses when similar grave matters were before this body.

While we are hesitant to assign motivations to the majority, their lack of communication and coordination with the minority leads us to question how H. Res. 660 is anything more than the latest attempt to rationalize a deeply flawed process structured to do one thing, and one thing alone: destroy the credibility of a president. Due process and following the evidence—characteristics of previous impeachment debates—is non-existent in the current context. Rather, fairness and transparency have been replaced by leaking of testimony, pejorative statements, contradictory arguments, and political gamesmanship. This somber truth should leave every member who values this institution saddened by the new precedent being set by the current majority.

In 1998, a current member of the House Democratic Caucus said the following regarding the House's responsibility to remain true to historical precedent when it comes to an issue of such import to our nation as impeachment of a president:

> *Under our Constitution, the House of Representatives has the sole power of impeachment. This is perhaps our single most serious responsibility short of declaration of war. Given the gravity and magnitude of this undertaking, only a fair and bipartisan approach to this question will ensure that truth is discovered, honest judgments rendered and the constitutional requirement observed. Our best yardstick is our historical experience. We must compare the procedures used today with what Congress did a generation ago when*

a Republican President was investigated by a Democratic House.[1]

It is unfortunate that this majority has abandoned the sentiments expressed by now-Chairwoman Zoe Lofgren and now seeks to rewrite the history of their quest to delegitimize the current president even at the expense of our institution and the unity of our nation, and absent any meaningful evidence. H. Res. 660 is little more than a last-minute effort to walk the tightrope of appeasing the Democratic Majority's base while not completely alienating members of their caucus who represent more moderate areas of the country. And yet again, their political efforts run counter to a process characterized by the bipartisanship and thoughtfulness that existed in the two previous impeachment inquiries. Procedural integrity and historical consistency ensure that in even the most chaotic of political times, the legislative branch is able to function, and even more importantly, to govern. Not surprisingly, the 116th Congress has very few examples of the ability of the majority to govern and we dare say, will have even fewer if H. Res. 660 is passed by the House of Representatives.

We would be remiss if we did not note that sharing the text of H. Res. 660 with the minority members of the Rules Committee only 24 hours prior to the scheduled markup would be shocking if it had not become so commonplace in the 116th Congress. We are disappointed that such a grave and important topic as impeachment of a president did not compel the majority to prioritize deliberative discussion and robust debate over political expediency.

The deficiencies in the manner in which this majority has conducted oversight of this president and his administration are significant. The substance of H. Res. 660, or lack thereof, continues in this same unfortunate theme. While we offered a number of amendments designed to restore some fairness and due process to this partisan resolution, there are no amendments that can undo the weeks of damage inflicted on this institution by the politically charged and defective process that has led us to consideration of H. Res. 660. However, in the interest of governing, we did attempt to address some of the most egregious violations of fairness in the resolution.

A key example of the failure of the Democratic Majority relates to the treatment of the president's counsel. Committee procedures during the 93rd and 105th Congresses included the ability of the president's counsel to attend all hearings, including those in executive session; question any witness called before the Committee; submit written requests for additional testimony and precise summaries of what he would propose to show; and respond to evidence received and testimony presented either orally or in writing, as determined by the Committee. The president's counsel could also review all evidence obtained in the course of the impeachment inquiry. H. Res. 660 bifurcates the impeachment and only allows the president's counsel to participate in Judiciary Committee proceedings. Even then, the rights of the President's counsel to participate are significantly limited to the discretion of the Chair, includ-

[1] U.S. Congress, House, Committee on Rules, *Hearing before the Committee on Rules on H. Res. 525*, 105th Cong., 2d Sess., September 10, 1998.

ing providing the Chair the right to limit the scope and duration of any such questioning. It provides no ability to participate in the ongoing investigation by the House Permanent Select Committee on Intelligence (HPSCI.) This is particularly devoid of fairness as it is HPSCI's report and findings of fact that will presumably be the basis for any articles of impeachment brought by the Judiciary Committee, and thus due process would demand that president's counsel be permitted to participate in all impeachment related hearings including those in the Intelligence Committee.

Another example deserving of particular emphasis relates to the treatment of subpoena authority and the rights of the minority. The 93rd and 105th Congresses authorized both the chairman and the ranking member of the Judiciary Committee to issue subpoenas, acting jointly or unilaterally. If either the chairman or ranking member declined to act, the other had the right to refer the decision to exercise subpoena authority in a specific circumstance to the full Committee.

H. Res. 660 represents a departure from this equitable arrangement and subjects the rights of the minority to the whims of chairmen who have already shown themselves to be ill-equipped to act in a manner befitting their positions. H. Res. 660 authorizes the chairs of HPSCI and the Judiciary Committee to issue subpoenas and authorizes the ranking members of HPSCI and the Judiciary Committee to issue subpoenas—but if, and only if, they have the blessing of their chairman. Merely paying lip service to due process, as H. Res. 660 does, is beneath the dignity of this body and a disservice to the prior congresses who took seriously their responsibility to design an impeachment process that would elevate the debate and ensure that the treatment of the minority is a reflection of their equal standing under the Constitution. Additionally, H. Res. 660 does not allow either ranking member to check the authority of their respective chairman to issue subpoenas.

To remedy the fatal flaws in H. Res. 660 would require both a time machine and a Democratic Majority willing to accept amendments offered by members of the minority. Unfortunately, we have neither.

It also seems that the majority has abandoned their previous views on the appropriate amount of floor debate on a topic so important to the nation as impeachment. On October 8, 1998, the now-Chairman of the Judiciary Committee made comments on the speed of debate that we urge the majority to heed:

> *The supreme insult to the American people, an hour of debate on the House floor on whether to start, for the third time in the American history, a formal impeachment proceeding. We debated two resolutions to name post offices yesterday for an hour and a half. An hour debate on this momentous decision is an insult to the American people and another sign that this is not going to be fair.*[2]

Surely the circumstances of today should compel more debate on the House floor than a single hour. Particularly given the fact that unlike previous impeachment contexts, the Rules Committee did

[2] Representative Nadler, speaking on H. Res. 581, 105th Cong., 2d sess., *Congressional Record* 144 (October 8, 1998): H10018.

not hold a hearing on H. Res. 660 and did not allow members to testify. In the words of Chairman Jerry Nadler, this is "another sign that this is not going to be fair."

We continue to caution the majority that the precedent being set by their handling of this impeachment investigation is a disservice to this institution and to the preservation of the rights of the minority. We cannot support H. Res. 660 on both procedural and substantive grounds and we note for the record that our calls for due process and transparency are once again ignored. We cannot help but remind our Democratic colleagues of their own words, as they have demonstrated no interest in our perspectives as it relates to conducting constitutional and prudent oversight. As the then-Ranking Member of the Ways and Means Committee stated during debate on the House floor on September 11, 1998, during consideration of a resolution reported by the Committee on Rules that provided for a deliberative review by the Committee on the Judiciary of a communication from an independent counsel, and for the release thereof:

> *So the American people want to make certain that when we judge the conduct of the President of the United States, we judge him not by a political standard, not by an individual standard, but a standard of fairness that takes into consideration that he was not appointed, he was not selected, he was elected as President of these United States. As we get closer to the November elections, in recognizing just by being political animals, there will be a temptation for us to allow our politics to get involved with our constitutional responsibilities. It will be tragic if this happens. But remember, as we judge the President of the United States, the people of the United States will also be judging us.*[3]

It is unfortunate that the sentiments of the current Majority Leader, spoken when the House last considered impeachment of a president, no longer seem to be as passionately held as they were at the time they were uttered. We, however, find them to perfectly describe the decisions being made by Democratic Leadership behind closed doors, irrespective of the procedural integrity of the House of Representatives:

> *Our citizens expect fairness. America's constitutional system is almost unique in its adherence to due process, to giving citizens their right to be heard. We should do no less for those whose conduct we have the responsibility to oversee. This week, I tell my friends, is not a harbinger of fairness to come. Without notice, quickly, and to some, surprisingly, with unique timing, theatrically, obviously designed for television exposure, a report was delivered to this House, creating, I suggest to you, more of a circus atmosphere than a judicial, considered atmosphere.*[4]

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[3] Representative Rangel, speaking on H. Res. 525, 105th Cong., 2d sess., *Congressional Record* 144 (September 11, 1998): H7591.

[4] Representative Hoyer, speaking on H. Res. 525, 105th Cong., 2d sess., *Congressional Record* 144 (September 11, 1998): H7597.

We oppose H. Res. 660 and urge the House to return to the deliberative and bipartisan model of impeachment inquiries established in the 93rd and 105th Congresses.

TOM COLE.
ROB WOODALL.
MICHAEL C. BURGESS, M.D.
DEBBIE LESKO.