



**Jeffrey Rosen:** [00:00:00] I'm Jeffrey Rosen, president and CEO of the National Constitution Center, and welcome to We The People, a weekly show of constitutional debate. The National Constitution Center is a nonpartisan, nonprofit chartered by Congress to increase awareness, and understanding of the constitution among the American people. The House of representatives is now debating articles of impeachment against President Trump. On December 2nd here at the National Constitution Center, we hosted a fascinating two-part conversation on the constitutional dimensions of impeachment. The first panel features leading constitutional scholars from diverse perspectives, including Professor Michael Gerhard, our scholar in residence at the Constitution Center, who testified as an impeachment expert before the House judiciary committee. It also features John Malcolm from the Heritage Foundation, who's a member of our Madisonian constitution for all commission. And the next panel features current and former members of Congress, two Republicans, and two Democrats, including the vice chair of the House judiciary committee, representative Mary Gay Scanlon.

Because impeachment involves a mix of legal and political considerations, it's hard to have a purely constitutional debate about impeachment, but I asked the audience during this program to separate their political from their constitutional views. In other words, not to ask as a partisan matter whether or not they believe that President Trump should be impeached, but whether they thought that the constitution compelled it, and how they would vote if they were members of the House of representatives.

I ask you the same question dear We the People listeners, try as hard as you can to listen to this really illuminating discussion with an open mind. And at the end of the podcast, if you find that you've changed your mind about whether or not President Trump should be impeached, then please email me and let me know [jrosen@constitutioncenter](mailto:jrosen@constitutioncenter). I hope you learn as much as I did from this illuminating conversation, and let the constitutional debate begin.

Michael, we must start with you. You cannot and will not talk about your testimony on Wednesday, but you have been guiding the nation through the impeachment process, and we all want to know what broadly to expect on Wednesday and in the weeks ahead. You've, you've written so much including the attacks on the process so far have been flawed. I'll just begin by asking you, what's the most important thing about impeachment that you think the audience needs to know right now?

**Michael Gerhard:** [00:02:41] I- it's a great question. I'll give you the answer. It's not, it's like nothing else. It's not like a trial. It's not like a civil proceedings, not like a criminal proceeding. It's a special, unique constitutional process. And that gets lost almost every time somebody who doesn't know anything about impeachment starts talking about it, because they're going to analyze or analogize it to something they think they know, which is, "Oh, it's gotta be like a civil trial or it's gotta be like a criminal trial." But it's not.

The whole idea was to make it unique. And it's unique in a number of different ways. It differs from civil proceedings in that nobody is going to be liable for damages or enjoined from doing anything else. The only sanctions available in impeachment at the end of the



process are removal and disqualification. To say somebody's impeached means they've been charged with misconduct. But like everything else that's said about the House in the constitution, the House does not have the power to complete any constitutional act. And impeachment is a good example. It can start it, but it can't finish it.

It can impeach somebody, but then the Senate has to complete it. It's also not like a criminal trial for obvious reasons. A person's life, and Liberty are not at stake in an impeachment trial. Again, it's about removal or disqualification. And then there are questions about the people that make decisions about impeachment. They're different than the people that make decisions in trials. Members of Congress were given this special authority because the framers wanted to ensure that the decision makers could be accountable in some way for what they did, in this particular circumstance, politically accountable.

So that's part of the checks and balances. That's part of the beauty of that system that even though members of Congress can make these critical judgments, it's not as if they can just walk away without facing some kind of accountability. They have to make the hard choices here, and then they have to be held accountable just as they may be trying to hold somebody accountable in this particular process. Also different from other processes there are new rules of evidence. You couldn't enforce rules of evidence even if you wanted to, but the most important thing to understand about that is framers gave this responsibility to people the framers thought were more sophisticated than your typical jurors.

And therefore, they wouldn't need the kinds of protections the rules of evidence would provide, and the same to be treasure burdens of proof. My intent tonight was to actually hide in plain sight. And so, I'm going to pass the ball to-

**Audience:** [00:05:01] [laughs].

**Jeffrey Rosen:** [00:05:03] Well, there's no where to hide from the constitutional light-

**Audience:** [00:05:06] [laughs].

**Jeffrey Rosen:** [00:05:06] ... That is being spread from this stage, which you've contributed to by reminding us that the con- the impeachment process is a mix of legal and political judgments. And it's a very interesting point that not only the president but also the representatives and senators themselves will be held politically accountable to the voters. Keith Whittington, you wrote a very interesting and characteristically interesting, and subtle piece arguing that there's no duty to impeach. It may be advisable or not, but that one of the judgments that the House can make in deciding whether or not to impeach is whether it's the most effective remedy against a president they feel is thwarting the law or whether other remedies ranging from reelection to legal constraints on the president. It might be more advisable. Tell us more about that argument and whether or not you think under the circumstances that it is or is not advisable to impeach.

**Keith Whittington:** [00:05:56] Yeah. I think one of the unique features of an impeachment inquiry both at the House level and then eventually with the Senate trial is precisely that you're bringing this before a political body that has to make a political decision. It's partially



they're politically accountable, so they're thinking about their voters, but partially they're also trying to think about the nature of the offenses they're being charged, and what the available remedies are to those offenses. The impeachment power is included in the constitution.

In part because there is a perceived need to have a particular political remedy in case things went horribly wrong with somebody who had a lengthy tenure of office, and a great deal of power at their disposal. And I'm trusted in the House to investigate potential charges against those kinds of officers whether they are judges, or even presidents of the United States. But then also to make an assessment about how serious are those charges? What's the right remedy to address those charges?

Maybe that remedy means waiting until the next election in the case of a president. And you can allow the voters to make a determination. It may mean that there are other mechanisms you can use to try to deal with particular kind of misconduct that's at stake. So maybe there's congressional oversight that can do the job. Maybe you can leverage the presence on policy preferences in order to encourage the White House to behave better in the future and the like.

But then the extreme circumstances, maybe the only remedy available is one of actually trying to remove a sitting officer who simply can't be trusted to continue to exercise that power into the future. And clearly part of what the House has to think about now is whether they've reached that point where there's no, no other options left, including the option of potentially waiting for the election. That the best thing to do now is to move forward to bring it to the Senate trial and ask for the president's removed.

**Jeffrey Rosen:** [00:07:37] Kim Wehle, you have argued that based on the facts that we know on the open record, even before some of the, the testimony in the past weeks, that there was a clear case of abusive power, and I think of of bribery and abusive public office. And you, you characterize the essentially there being no, no defense really. Do you still feel that way? And what defense do you imagine will be made this week?

**Kim Wehle:** [00:08:04] Well, at first I want to thank you for including me. This is really an honor to be here. And I saw, I congratulate everyone for being part of this discussion. I'm a big believer in the constitution, and constitutional literacy is something that we all should be spreading because in this moment it's not just this president that's at stake here or his personal fate, but the fate of democracy, and having an accountable government going forward, it's, it's regardless of what happens to him. Thank you.

So, so I'm not sure ... I write a lot for a number of publications. I'm not sure which piece that was, but I think the argument that w, w that as a lawyer that I laid out was what is the response on the narrative, on the factual narrative? And I know my colleague will have one. We talked in the green room before here but essentially the, the facts as they have been out, even prior to the public impeachment hearings were set forth in the July 25th memorandum, where the president asked a favor of a, of a foreign government to investigate a political rival domestically.



And then we saw last week in the last couple of weeks, impeachment witnesses laying out from a professional, longstanding expertise point of view. These are public servants. They're neighbors and friends like you and me. These are not people with any particular agenda other than really upholding the rule of law, the constitution and doing what's right for the American public. They basically consistently said, "There was no clear basis for withholding the \$400 million of aid. We were all very concerned." This is all was really bad for Ukraine, Ukraine, the word Ukraine. Apparently I'm Ukrainian, I should know this, but my grandmother came from Ukraine.

But it apparently means ... I can't verify ... Apparently means border land. It means frontier. So it's between, it's situated between the Western democracies in Europe, and Russia. And the Russians have been, we saw with Crimea, the invasion of Crimea, part of Ukraine by Putin since 1991. They've been struggling really hard to, to become democratic. And that's in the interest of the United States to spread democracy across the globe. That's been consistently what our position is. And so what I was saying as far as defenses are a number of defenses. One is it didn't happen that way and we haven't really heard that.

We don't have evidence that the president directly asked for said, "Listen, if you don't give me announce an investigation into Joe Biden, I will not give you the \$400 million in aid." but we, he did say, "Rudy Giuliani's in charge of this." And I think anyone suggesting that Rudy Giuliani's acting with, without directives from the president, you know, it doesn't, that doesn't hold any water. And so what we heard from the, the witnesses was that this was really bad for Ukraine, which made it really bad for America. And it was really good potentially for, for the president politically. And good for Vladimir Putin, who's been sort of circulating this, this myth about Ukrainian interference in the election for about a year now.

And we heard tonight through Politico, Natasha Bertran reported that the Senate Intel committee, the Republicans ... It's been leaked, but basically said there is no, that their investigation started in 2017 into Ukrainian [inaudible 00:11:43] pretty much fell flat. So, so if the question is abuse of power, it comes down to, is the president using the power of his office to, on behalf of the American populace as a fiduciary, we the people? It's self-government. That person's not there to do what's best for him and to entrench power. And there it is, is pretty, it's, it's laid out as that's one viable I think story.

And it's human nature as the framers knew to entrench and ultimately to abuse power. That's just how people are wired. As far as defenses you know, if it's very carefully lawyer, we heard procedural defenses that's for a number of reasons that many of us can talk about. That's not meaningful. The, under the constitution, the House gets to set their own rules, and of course the Republicans have participated in this from the beginning. And then there's sort of the whistleblower is, is really to blame that defense has fallen short because that he or she handed the baton off. It's kind of like calling a, you know, a hotline, and you have information on a crime.

Once you pass it along, no one cares what happened, what you thought, you want- they want to talk to the original witnesses. And then there's a story that you know, that the president had a legitimate reason to ask a foreign government to investigate criminally a political



opponent rather than start internally with our own spectacular, stellar national security, and criminal justice apparatus. And of course this is of a piece with Mueller Report, and I just want to make one point on the Mueller Report before I turn it of- turn it over. In the book, my book is very sort of user-friendly for regular people, and it uses common sense.

The idea being, you know, if there's a speed camera hiding on a, in a thoroughfare, people will slow down once they know the speed camera's there, and they'll speed up after that. It's human nature. The question is, where are the checks? Where are the speed cameras and the tickets being issued to the office of the presidency regardless of the person? Because of the OLC memo saying internally you cannot indict a sitting president. The judicial branch through the criminal justice system is out for purposes of actually holding a sitting president accountable. So, my position has generally been the lever of impeachment has to be pulled in this moment to retain an accountable government regardless of what happens to this particular man.

**Jeffrey Rosen:** [00:13:35] Many thanks for that comprehensive account of the case for and against. John, I promised this wasn't, this is not a crossfire debate, but I would love you to give your account of the best defense of the president. Kim ended with the claim that maybe he had a legitimate reason for asking for the investigation of Ukraine. Would that mitigate the charge of a corrupt service of his own private rather than the public interest? And, and make the best case [for impeachment].

**John Malcolm:** [00:14:02] Sure. Well, I too am delighted to, to be here and if, if crossfire it is so be it. You know, I, let me first of all begin by saying that the impeachment is an extraordinary event. I mean, it's only, only 19 people, and only two presidents in our nation's history have been impeached. And one of the things when, when the standards were being discussed for impeachment that in, you know, right, right down the street at the constitutional convention George Mason had proposed adding maladministration as one of the impeachment standards. It was, it was a provision in many state constitutions or colony constitutions at the time. And that was specifically rejected. We don't have a parliamentary system where if you don't like somebody or you don't like their policies, you can immediately call for a no confidence vote and then throw the rascal out. For that we have elections.

So you need to ... So it is an extraordinary remedy. I would agree. I think with my colleagues that it doesn't have to rise to the level of outright criminality, and gross abuse of office could count as this. You know, look, I, I, I'll, I'll try to be as succinct as, as possible. So I'm not going to, to denigrate any of the, you know career officials who operate in the state department. And they may well be right that the Ukrainians have truly turned over a new leaf with the election of President Zelensky. The president after all, at the end of the day, not only released the \$391 million, he went beyond that. He sold them \$39 million in javelin anti-tank missiles.

He received a lot of lobby, not only from those career people, but immediately before those funds were released. He received a visit from vice President Pence who had met with President Zelensky and Warsaw. He received a bipartisan group of senators who came in and



said that they had just met a few days beforehand in Ukraine with Zelensky. They were very impressed with him, believe that he was sincere in his commitment to fighting corruption, that the Congress supported him, and the funds were released. So all of these officials may have thought that the president was wrong for withholding aid.

However, the president had made it very clear, one that he ... And said this in the July 25th call to President Zelensky that he believes that we provide too much foreign aid to other countries when the European should step up to the plate. And also he had clearly a more jaundiced view than a lot of these career officials about Ukraine's commitment to fighting corruption, including by the way investigating Burisma and quite possibly in investigating Joe Biden, not because he was going to be a political rival because he was the vice president in the Obama administration who dealt with Ukraine at the time.

And he also had a more jaundiced view about whether the Ukrainians had attempted to interfere with the election. Now, you know, he may have some theory that is unsupported about perhaps Ukrainians were involved in the DNC hack, but totally setting that aside, it was no secret that there were high ranking Ukrainian officials who were trying to help Hillary Clinton. A Ukrainian court last year found that a Ukrainian elected official, and the head of the anti-corruption Bureau had illegally leaked the so called black ledgers. Those were the payments to Paul Manafort to the United States for this specific purpose of helping Hillary Clinton.

And in political right after the president was elected and before he took the oath of office, wrote an article saying, "Ukrainian efforts to sabotage Trump backfire." Kiev officials are scrambling to make amends with the president elect after quietly working to boost Clinton. So, you know, the president gets to set foreign policy. He had a more jaundiced view of the Ukrainians, and he had a good faith basis for doing what it is that he did. Now, you may decide you don't like his policies, you don't like his manner. There are many, many things that you don't like about him. Fine. Then vote him out of office in November, 2020. But impeachment is a bridge too far.

**Jeffrey Rosen:** [00:18:02] Thank you for that succinct account of a factual narrative that would hold that it was not bribery but a legitimate effort to investigate foreign corruption that might've motivated the president. All right. In this round, you know, this is an important audience, and this is an important event. And I'm just going to ask you, Michael, if I may, to take off all the constraints that we impose on you at the National Constitution Center to be nonpartisan. And if you were, if you were a House member-

**Audience:** [00:18:31] [laughs].

**Jeffrey Rosen:** [00:18:32] You're now, you're now representative Gearhart, and make these speech to your colleagues, the fellow members of the assembly about whether you think on the law of this, what the president is accused of, rises to the level of what the framers thought was treason, bribery or other high crimes, and misdemeanors, and on the facts whether the case is proven, and therefore, whether or not he should be impeached.



**Michael Gerhardt:** [00:18:55] It'll be I'll be very unsuccessful representative because I'm going to try and clarify a couple of points ahead of time, which is exact- Yeah. So, we will not be Daniel Webster.

**Jeffrey Rosen:** [00:19:05] You can answer another question if you like.

**Audience:** [00:19:07] [laughs].

**Michael Gerhardt:** [00:19:07] No, no that will be helpful to my advocacy. No, I'm not Daniel Webster. So we haven't really talked about what's an impeachable offense. And it may be helpful to do that in framing what I'm about to say. So of course the language that's really an issue here is what do other cr- crimes, and misdemeanors? Most people don't use those terms in their everyday existence. We do in my House, but we're different.

**Audience:** [00:19:30] [laughs].

**Jeffrey Rosen:** [00:19:30] You know, Mike, you also have a, a son who plays the violin and extraordinarily.

**Michael Gerhardt:** [00:19:35] Well, I appreciate that. So that's a, that's a low crime, not a high-

**Audience:** [00:19:39] [laughs].

**Michael Gerhardt:** [00:19:40] And so but the, the question always is asked what does that mean? And I, I think the bottom line is if we look at the history and where that language came from, it was language the framers deliberately took from the British. And the British had used those terms, and the colonists obviously were familiar with them to refer to what were understood at that time as political crimes. These are not the kinds of offenses typically for which you could go to jail, but these are the kinds of offenses that could be committed by people who have unique powers of office. So, a president can do things nobody else can do. He can therefore go too far in ways that only he, that would only be limited by the constitution. And when that happens, impeachment is one of the most important, if not the single most important remedy. So what, what do political crimes mean then? They are abuses of power, breaches of public trust.

And it's oftentimes sometimes phrased as things are just so plainly wrong or bad that injure the Republic, that you know it when you see it. That's, that's condensing a lot of stuff. But that's the background. So, the question just becomes with President Trump what, whether or not he's ex- he's exceeded that, whether he's violated the constitutional standard. Has he abused his power, for example, or has he committed bribery? I think there's a powerful case to be made that he's done both of those things. One reason why you might think of it as an abuse of power is because no other president in American history has ever done this. No other president in American history has ever asked for a personal favor in exchange for doing his job. That's what the transcript says. And guess what? I am not making this up.

That is what it says. And by the way, that was not a one off. There was a systematic effort to bring that outcome about, and it included the removal of meritorious officer. By the way,





one of the examples of the constitutional convention was if the president removes meritorious officers. And so if we could find language all over the convention that fits this to a T, I would say. But in terms of this particular kinds of misconduct, I think where we're at ... And I'm almost wrapped up .... Is, is it's very analogous in my view to pick up on the, the traffic analogy. It's always helpful. I got two boys that drive. I'm thinking about that all the time. And so if we, I don't have to see the person that's just been charged with driving 75 miles an hour in a school zone to know that person broke the law.

I don't have to see it. It's obvious, not even close. That's what this is. This is not even close. To use another analogy, this is as if the person robbing a bank was caught right before they walked out with the money. The reason why the money gets released is because that same day, that morning, the president found, was notified the whistleblower complaint. That's when he decided to release the, the, the money. So, when we look at the context, I would argue it's impossible to infer good faith. Just the opposite. It's easy, I think, to infer bad faith, and there's a bad act here. Those are exactly the things you need for an impeachable offense.

**Jeffrey Rosen:** [00:22:57] Keith, I think it's, I think it's the same question to you, and all of your colleagues for this last round before the re- the real representatives come on stage. But you know, in the course of answering, you can argue as you are moved to do about whether or not it meets the standard for impeachment, and then whether prudential considerations might counsel against impeaching and, and so forth. What, what will you say to the assembly?

**Keith Whittington:** [00:23:19] Yeah, so I think one of the questions that the House is going to have to contemplate and ultimately the Senate is going to have to contemplate is this question of how to distinguish what President Trump has done from this possibility of policy disagreements or maladministration to borrow, George Mason's language from the constitutional convention. We don't want to use the impeachment power as a tool by which partisan congresses can beat up presidents for things just because the Congress thinks they should have done things differently.

They should have pursue different policy. You should have used different personnel. And the like all presidents, all congresses are going to have those kinds of disagreements. And the constitutional standard of high crimes, and misdemeanors wasn't designed to capture that. Moreover the high bar in the Senate as to what it takes to convict a president or any other official for high crimes, and misdemeanors is quite high.

And so, ultimately you have to get some level of bipartisanship in order to actually convict and remove somebody from, for misbehavior, and simply focusing on policy disagreements isn't going to get you there. You need to be able to demonstrate there's actually an abuse of office that looks different. Than simply what policy differences would look like. One of the complications I think with President Trump from this perspective is he so unconventional in how he conducts his office, generally.

He doesn't have a lot of experience in the office. He doesn't bring people to him who have a lot of experience in these roles. And as a consequence, he does all kinds of things in a very





unconventional way. Everything surrounding the Ukraine episode is also very unconventional. And so, one question on the table is not only does President Trump have a different view about how to think about the Ukrainian situation than members of Congress might, or members of the state department or even members of zone National Security Council might as well?

But what should we infer from the way in which he was conducting that policy? What should we infer about his motives? And one natural inference is going to be to conclude that President Trump is in fact motivated by bad motives, that he's not pursuing the national interests. He's pursuing his own personal interest. And we can see that through the relatively strange behavior about how he's conducted this policy. But you might think that some of that's just a function of the fact that the administration is dysfunctional and inexperienced about how they engage things.

And so, one thing I think the House is going to have to try to establish is that what we are looking at should be counted as abuse. It shouldn't simply be counted as policy differences. And the president can't be excused simply because he's behaving in inexperienced, unconventional ways. But instead what we're seeing as a pattern that's better explained as something that suggests a corrupt motive and a desire to abuse power rather than something that simply reflects he doesn't know how to do this in a, in a more competent way.

**Jeffrey Rosen:** [00:25:51] Kim, as you make your closing arguments for this part of the segment, I'm, I'm interested in your thoughts on Keith's challenge. How would you persuade your colleagues that this does meet the standard of a corrupt motive rather than the more charitable interpretation that John's suggested, which is possibly a legitimate foreign policy motive? And do you, would you include in your remarks thoughts about what the consequences of a failed impeachment might be, and if the Senate rejects the charges as it's what they're expected to do. And why you think it's still important to carry forward despite the fact that this would be the third failed presidential impeachment in history?

**Kim Wehle:** [00:26:31] Yeah. So on the question of intent. And we, and I mentioned the Mueller Report, and that was kind of ... It just sort of fizzled in part because there we're in a new world when it comes to the media which I participated in obviously. I worked in the Whitewater investigation for Ken Starr. And back then there were major news networks that had a consistent narrative. The facts came through. There was standards of journalism television, and print media. So, the public got a single set of facts, and then it's what do you do about the facts? Now, we have facts, and we have lies, and alternative narratives, some of which are being imprinted by Vladimir Putin. I think it's important to keep in mind this human being who is this president with respect to the Mueller Report, it was clear that he willingly, his campaign willingly accepted interference in the 2020 or 2016 election.

He told George Stephanopoulos for ABC he'd happily except interference in the election. It's illegal under the campaign finance laws to do that. So, the notion that somehow that was not part all of a sudden of, of this exchange just doesn't, doesn't pass the logic test in my mind. And you know, at the end of the day voting, if people say, "Oh, I get cynical about



voting." But if, if voting didn't matter, then there wouldn't be all this effort to interfere with voting. Voting is the heart and soul of democracy.

I mean, it's a real privilege that we have that in this country and other parts of the world, it does not exist. And I think most Americans don't really feel that in their bones how important and serious this infraction was, which was not the case in the last two impeachments with respect to Bill Clinton and Nixon, we didn't have foreign interference in the election. The, the thing as far as persuading people, I'll give a couple thoughts. One is this notion of yeah, we've all had jobs and there's a job description. If someone doesn't up, if someone's stealing from the, from the cash register, and that's not ... That you don't hold that person accountable for that, eventually the restaurant will fail or the shop will, will close.

And we have to think about this not as this man, but as the office of the presidency enlarging the belt, and suspenders of the office. So that instead of three co-equal branches, we have one mega branch and kind of a junior branch and a baby branch. That would be the Congress. That's why I think that even if it's not a successful impeachment, having the Congress stand up for its prerogative as a co-equal branch that's required on behalf of the people to conduct oversight is as important as the ultimate outcome here.

The other thing is with respect to intent, I, I have a hard time getting around the consistent information that this was really dangerous for national security. And you know, I agree that the president has wide discretion in that field, but not unlimited discretion, otherwise it wouldn't be an impeachment clause that's political. And the other thing that came through is the sort of just rejection of expertise. The dismantling of the administrative state and people that spend the- their careers, you know, devoted to this level of expertise. All of that went by the wayside. Think about it again as a job description. Who do you want in that office? The people that are going to actually do what's best for the entity of the America or just do what he or she feels like is best for them or for whatever other reason? That's the basis of for impeachment.

And the last piece has to do again with the separation of powers. This withholding of funds was another place where the Trump of went around the appropriations clause. One way that Congress keeps control of the presidency is through the purse, the power of the purse. This money was appropriated months before, almost a year before. It was authorized that May. The Ukrainians had gone through the bells and whistles. The corruption question had been answered, and the president did not follow the law in, in withholding the aid. Ultimately, he did turn it over, but the, the steps that were supposed to be filed in the interim were not. And we saw this also with the declaration of a national emergency. And I'll say one last point, just metaphor is I also have two kids that drive, so I'm going to switch metaphors off of driving and go to Sharpie pens, which we've heard a lot from this president.

And if you think about rules, you know kids jumping on the couch, and it's against the jumping on the couch. You know, there's a rule against jumping on the couch. If you, if you're for parents out there, or grandparents, or people have siblings, if you do not enforce



the rule a single time, that kid knows you can jump on the couch, right? Then you're fighting with that kid every single time because then you get one chance to blow it. And if we don't enforce parts of the constitution, we can get out our Sharpies, and cross them out.

And so, if you're, if people are okay with that, with, you know, your worst case scenario, president winning the next election of the next election, enhancing the power, minimizing the checks, then okay, then maybe we can tolerate this moment. But, but my children can't vote in this process. My children don't have a voice. And I'm really committed to maintaining the structure, and the office of an accountable government. That's my, that's my deepest concern right now.

**Jeffrey Rosen:** [00:31:34] John, the last word is to you, and in your powerful essay *Impeaching Donald Trump: A Game of Political High Stakes Poker*, you quoted, I'm so glad you did Federalist 65 Hamilton's definitive statement on impeachment, and I'll read it. And Hamilton said that impeachment should be reserved for those offenses which proceeded from the misconduct of public men or in other words from the abuse or violation of some public trust. They are of a nature which may be with peculiar propriety be denominated political as they relate chiefly to injuries done immediately to the society itself. I asked you already to make the defense on the facts. What is the defense on the law? And what would you tell our friends about why you believe that the offenses that President Trump is accused of committing are not political and they in that sense they are not injuries done immediately to the society?

**John Malcolm:** [00:32:28] It's a little tough to do that without talking somewhat about the facts because a lot of factual representations were just made by both Michael and Kim. First of all, Kim has twice referred to the Mueller Report. Volume one of the Mueller Report makes it quite clear that he came to the conclusion that there was no collusion between the Russian government and anybody connected with the Trump campaign. That's was his conclusions. You can look at volume one yourself if you want to. The other thing is the president didn't violate the impoundment act. If it, the fiscal year had ended, maybe he would have. But he did not violate the law by delaying aid to the Ukrainians. And there is a long history of presidents withholding aid and using it as a leverage point. Barack Obama withheld for a period of time, hundreds of millions of dollars to the Egyptians until they cooperated more with our counter terrorism efforts.

He did the same thing with African countries that did not adopt more pro-gay rights policies that he liked. And if you want to look at the quintessential example of somebody threatening to withhold aid and interfering directly in the inner workings of another country, you need no look no further than Joe Biden who told Petro Poroshenko that he was going to withhold \$1 billion in previously approved military aid unless and until they fired their prosecutor general who is the equivalent of their attorney general of the United States.

You know, with respect to you know, asking other countries to cooperate in investigation, Barack Obama did precisely that when he initiated what ultimately became the Mueller probe by requesting assistance from other countries. And in fact, in may of 2018, three democratic senators, Menendez who was it? It was Menendez, Lahey, and Durban wrote to



the prosecutor general in Ukraine and said, "We may withhold funds from you in the future unless you continue cooperating with the Muller probe." And the last thing I would add, I don't know Marie Yovanovitch, the Ukrainian prosecute, former Ukrainian ambassador, or, or ambassador to the Ukraine. She may be the greatest person in the world.

She may be a genuine patriot, but there were allegations and she even sort of said that she had made some statements to the prosecutor general in Ukraine that she suggested that they not pursue certain investigations. He has said further, he has said, "She gave me a do not prosecute list." And you also need to look no further than the transcript of that July 25th call in which President Zelensky said, "I am glad you got rid of her ambassador Yovanovitch. She clearly supported my opponent, Petro Poroshenko. She would not have been able to work with me." So, you know, there were lots of facts running around that could give a president pause and would explain why he did what he did.

**Jeffrey Rosen:** [00:35:05] For illuminating our understa- no, well, you can hiss according to the first amendment, but I know that all of you more enthusiastically will want to applaud our scholars for illuminating the facts and law of the constitution and impeachment. And now it is my great pleasure to welcome current and former members of the House of representatives. Here they are. Congressman, so great to see you. Congressman Evans, it was your wonderful idea to convene this group. You thought it was important to do it at the Constitution Center. Why did you ask us to convene this group, and what do you hope that our guests, and friends will learn about the impeachment process tonight?

**Rep. Dwight Evans:** [00:35:57] Well, I quickly learned how much people don't know and understand about the constitution. And I thought about 435 congressional district. What better place could this happen? Right, the only one Constitution Center, and the fact that it matters where it was constitution. I always say that in Washington you know, things started here. As a constant reminder I say to people. I also happen to sit on the, the, the commission for the 250th anniversary of the constitution. So I always been trying to figure out how to get people engaged, and I figured what place would two things happen? One seeing you [inaudible 00:38:12] use on television, and having a discussion about the constitution. I said, "What better place?" And then also Charlie and I. I know Charlie Dent from, we was in the state House together. And we just did a workshop on civility.

**Audience:** [00:36:54] [laughs].

**Rep. Dwight Evans:** [00:36:55] I know [inaudible 00:38:32].

**Jeffrey Rosen:** [00:36:56] Beautiful. That's a great thing.

**Rep. Dwight Evans:** [00:36:58] Charlie and I, Charlie and I did a a workshop together on civility which I'm one of those ones. When people ask me what kind of Democrat am I. I tell them I'm from the governing wing.

**Audience:** [00:37:10] [laughs].



**Rep. Dwight Evans:** [00:37:11] Know that right there. So, Charlie and I have a really extensive relationship. So, I think it was that combination [inaudible 00:38:56]. And I mean this has turned out to be a success. So, I think this would help.

**Jeffrey Rosen:** [00:37:21] I'm so glad you convene us. Thank you so much. Congressman, you in addition to this great buddy team you have with Congressman Evans talking about civility, wrote a very powerful piece on CNN called Fellow Republicans Please Take The Impeachment Inquiry Seriously. You talked about facts that you think merited warrant opening the impeachment inquiry. You said there are problems with the process the House Democrats have employed. But you concluded to my Republican congressional colleagues and friends with whom I served until last year President Trump takes your loyalty for granted and mocks your support. It's time to reclaim your institutional prerogatives, protect your legacy, and do what is best for our country. Tell us more about ... That, that was published pretty recently on October 28th. You've now heard the beginning of the testimony. What would you say to your fellow Republicans today?

**Fmr. Rep. Charlie Dent:** [00:38:16] Take this seriously. Don't simply argue process. Well, process is important and you can find a lot of flaws from this process. At the end of the day my sense is most people really don't care about the process. They don't, they look at the substance and they want to judge based on that. But one thing I've noticed with impeachment and having been a former chair of the House Ethics Committee, and I did not volunteer for that assignment. It's like being head of internal affairs in the police department, but basically you're dealing with standards of conduct. And that's essentially what you're dealing with with impeachment, at least in three out of four cases. Nixon, Clinton and now Trump, Andrew Johnson was different. That was policy differences after the civil war. But standards of conduct. And I think that at some point as an institution, you have to deal with it.

You can't simply ignore these issues. So, that would be my, my message, try to, you know, try to review the facts, and the evidence as they are, and then make a decision. No, I get it. This is not a court of law. This is a very political process, and people will make their decisions in many cases based on the politics. And we'll try to make it based on the facts and the evidence. But the end of the day, I, I say take it seriously. You know, I wrote that at the time when, you know, people were storming the skiff, which I thought was juvenile.

You know, and they, they stormed the skiff during the, the hearings. This was before there was a vote on the inquiry. And there are other little stunts like that that I thought were really not very helpful. And kind of made, and I think, you know, diminish the process, which is a constitutional process, an imperfect one, but a constitutional. And so bottom line is, you know, take it seriously and try to make the judgment based on the facts and the evidence.

**Jeffrey Rosen:** [00:39:48] Thank you for that thoughtful council. Congresswoman Scanlon, you're on the judiciary committee as I understand. So you will be at the center of the opening of the public portion of the process on Wednesday. You also had supported articles of impeachment even before the Ukraine scandal broke as I understand. Tell us as a member why you thought it was important to impeach the president. Then in light of the Mueller



Report and as a member of the committee, what you'll be looking for, and what we can expect.

**Rep. Mary Gay Scanlon:** [00:40:19] So, what I had supported was starting an impeachment investigation. I thought that the Mueller Report warranted that, that it raised enough questions that we needed to get to that. And that in fact is what judiciary committee did, started the investigation. Although, we have been stonewalled to an unprecedented extent by the president refusing to turn over documentation or allow witnesses to come in. So that was sort of where we were before the Ukraine scandal broke and, and a number of other people came on board with thinking that it at least warranted investigation if not articles of impeachment. But, but like Congressman Evans, I had found that being out in the district that people had a lot of questions ranging from, you know, people are talking about you have to have a vote. Are these things really happening in secret? How come you can't enforce your subpoenas?

There were so many questions. So last month we held a couple town halls in my district bringing in folks from UPenn law to talk about what is impeachment, not for or against, but just what is it, what's the process, why is it in the constitution? So, that's very much what I've been looking for and particularly resonating with the idea that the framers put impeachment in the constitution and believed that Congress would be jealous of its powers, and would want to do the institutional right thing, which I think Congressman Dent was referring to. Making sure that we ended up with this three branches of government that could check, and balance each other rather than having one branch just give it away.

**Jeffrey Rosen:** [00:41:47] I, I have to ask because you're on the committee, will the testimony that you hear influence the way articles are drafted if they are drafted?

**Rep. Mary Gay Scanlon:** [00:41:55] Well, I know we have some very erudite people coming in to testify, so I'm sure that there will be some impact.

**Audience:** [00:42:00] [laughs].

**Jeffrey Rosen:** [00:42:02] Wonderful. Well, not necessarily wonderful for a [crosstalk 00:44:01] depending on your perspective-

**Audience:** [00:42:06] [laughs].

**Jeffrey Rosen:** [00:42:07] But, but is, it's wonderful that you summon such erudite scholars, and I know that they'll be enlightening everyone. Congressman, I gather that you do not want to take a position one way or the other about impeachment, although, you can if you like. But you served with great distinction for a for two terms. And you've heard the debate tonight from the scholars and from your colleagues. I, I'll, I'll, I'll ask an open ended question. What, what do you want to say about where you think the impeachment process stands now? And I guess how would you approach it if you were in Congress?

**Fmr. Rep. Ryan Costello:** [00:42:42] So I think with where this started, since the President Trump released the, the phone call transcript to where we are now, I've not seen much in the way of movement either from Democrats a way from thinking that impeachment is the



appropriate way to deal with any misuse, or abuse, or errant behavior. Nor have I seen Republicans move away from saying it was anything less than a perfect phone call. I think Charlie on his ... When Charlie retired he said something funny that sticks with me today. He said, "You know, the f- the fun in dysfunction has been removed from serving in Congress."

**Jeffrey Rosen:** [00:43:26] [laughs].

**Audience:** [00:43:26] [laughs].

**Fmr. Rep. Ryan Costello:** [00:43:27] And, and you know, the thing I ... And I think Congresswoman Scanlon said something very appropriate in terms of the institution of Congress should jealously guard what the role and function of Congress is as it was delineated in our constitution. And the erosion of constitute of, of congressional authority, vis a vis the executive branch has been one that's been taking place over 75 years, if not more. But when you serve in Congress, to sit there knowing what your role is supposed to do, supposed to be mindful that you're not actually exercising those prerogatives is something that's deeply frustrating.

Moving forward since it was an open ended question. I, my big concern is that no matter, no matter what happens, right? I, I, my sense is that the House probably brings up articles and probably votes on them, although I still tend to think that there are a number of House Democrats that do not want to take this vote because it will hurt them in their districts. But let's just assume House Dems vote the way vote articles out of impeachment, it goes to the Senate. The Senate is not going to vote to impeach the president, absent- something extraordinary coming out between now and when they have the vote. Looking at this two years from now, four years from now, 10 years from now when a president of another party is in there or even the same party, and something less than the type of bribery we're talking about, which isn't here, "You take this money and I'll give you this." But sort of, "If you do this, then I can, I can help you with the favor."

Sort of this muddled way that even the president talks, right? I, I think there's a difference between what you think obviously, the president meant by what he said versus what you can prove. And I just worry longterm whether we've normalized the extraordinary remedy of impeachment longterm. That's not, that says nothing, that is not a judgment call on either of the sitting members of Congress here who I think are doing their utmost in terms of diligence, and honesty, and doing what they feel is right. Longterm institutionally, I wonder where we're going to be 10 years from now as a Congress the next time something remotely close to this happens.

**Jeffrey Rosen:** [00:45:43] Thank you very much. For that. Congressman Evans the, the Congressman raises, you know, two really important points. One is that impeachments have become so partisan that we're not going to see much cross partisan support. He says that that might hurt even some Dems, especially in swing districts. And he worries that that could both make the other party more likely to use impeachments in the future and that normalization could lead to more failed impeachments and more partisanship. You've been a strong supporter of impeachment under these facts what's your response to his points, and what would you say to members who feel the same?





**Rep. Dwight Evans:** [00:46:22] I didn't, I didn't go to Washington to impeach. That was not, you know, I was elected in November in special election of 2016. So, I've been there three years. That was not, not my first course of action. I would argue I was driven to that course of action because of certain behavior. I don't disagree with Brian that a poli- the pol- the process has eroded for a lot of reasons. There's no question. And I also participated in impeachment at a state level. Charlie you may remember was a Supreme Court justice.

**Fmr. Rep. Charlie Dent:** [00:47:07] [inaudible 00:49:16].

**Rep. Dwight Evans:** [00:47:08] Yes. That we did it in Harrisburg. So I'm aware with it. You don't, I don't believe that it's something you take lightly. So, let me be very clear. I don't believe you take it lightly. But I do believe, you know, the most proudest title is not Congressman. It is citizen. That is the most proudest title. You have open enrollment coming up, and that means you have the ability to operate. And I think there should be a serious discussion about this. So Jeffrey, that's why, what better place to have that didn't have this serious discussion? Because something is not right. You can look at the Mueller Report. You talked about Jim call me, call me. You could just go down a laundry list, and you could debate it about if that is a peach- impeachable and removable, but we in the House can't do that anyway. There's a Senate, they have to take an action.

So when you're there, Jeffrey, in my view, you look, you evaluate, you look at the information that's provided to you, and, and you take the course of action, because you know Ben Franklin made the statement, "Is it a monarchy or is it a Republic?" And what I understand is, is I've been around a little while. I was in that same position that Ben Franklin had. I used to have just under 300 years difference through a dream Ben Franklin and I.

**Audience:** [00:48:42] [laughs].

**Rep. Dwight Evans:** [00:48:42] Ben Franklin was chairman of Ways and Means at the Pennsylvania. I was chairman of the appropriation committee. I was born in the hospital that Ben Franklin found. So, I know a little bit about that. So, I don't take it lightly.

**Audience:** [00:48:56] [laughs].

**Rep. Dwight Evans:** [00:48:56] So I don't disagree with what Ryan is saying, but accountability, accountability is something you tell, take lightly, Democrat or Republican. And that's how strong I feel about this particular situation. That's what I hear in the third congressional district. I know it's the bluest of the blue districts. But then people got a right too. So, I mean I hear Ryan saying that, but I just say that this is one time, I think in the particular cases that something has to be done.

**Jeffrey Rosen:** [00:49:29] Thank you so much for that, and thank you really for re- reminding all of us of the purpose of this convening. Friends, fellow citizens, the Congressman has said you have the most important job, and what we're going to do at the end of this forum, obviously, I should've thought of this at the beginning, you're going to vote. And you're going to vote about whether or not you think based on the facts and the law that you've heard, that you think that the president should be impeached. But I want you to really think



about, listen to the rest of the discussion with a very open mind. Because I'm also going to ask you who changed his or her mind based on the facts or the constitutional law that you heard in the course of this discussion.

So, open yourself up to the possibility of reaching a conclusion, which differs from your, from your political or partisan views. So with that in mind, let's use the rest of our time to again, appeal to our fellow citizens. So, Congressman you said your fellow Republicans should take the process seriously. You now know, we know a lot of facts, we know what the standards for impeachment are. If you're comfortable doing so, why don't you tell our fellow citizens whether or not you think on the facts and the law the president should be impeached?

**Fmr. Rep. Charlie Dent:** [00:50:38] Well, I think the ... I do think that the facts and evidence as I understand them do rise to the level of impeachment. I do. And I look at it from this perspective, had a member of the House of representatives used his or her office to solicit a foreign leader to investigate a political opponent, I serve on the appropriations committee ... And then, "By the way, and if you don't do that, you know that that aid that we send you, well, I'll put a legislative hold on it." And it were publicly revealed, I suspect the department of justice would be crawling up that member's backside right now.

And by the same token, I also said I saw the same thing with the Clinton impeachment. And having been a, again, chairman of the ethics committee, I was involved with resignations of members. I don't know how that goes, but I always said, you know, if a male member of Congress had done in his office with a female intern what Bill Clinton did, and a Republican discovered that member of Congress, he'd be out of office by the end of the day, guarantee you. And that when I ... Believe me, I've seen these types of things enforced. So bottom line is, but based on this evidence, you cannot use your office. The, you know, there's the quid pro quo, but forget about the quid pro quo for one second. Just the act of asking a foreign leader to interfere in the campaign by itself is a very serious issue. That by itself.

Now when you say, "And if you don't do that, then I'm going to hold up 400 million, \$400 million in military assistance." Well, now you've got a bigger problem. So based on that, I think it's a, it's a quite serious, and, and based on the witness testimony I've seen so far from Vidman, and Hill, and Taylor, they all seem to be corroborating what each other have said. So, I think it's a pretty powerful argument. It's pretty hard to argue against it.

Now that said, I'm not, I'm not always sure the Democrats should pull the trigger here. Do they really want to have a partisan impeachment? I mean, that's, that might not be something they want to do at the end of the day. But I think, you know, if this were just based on the facts, and the evidence, you do that. But if you're a Republican member in a ruby red district in Northern Alabama, you know 80% of your constituents are calling it, "Don't you dare impeach the president, no matter what the evidence says." What do you do? It's a political decision. It's political decision. It's going to happen. I was gonna vote not to impeach. It's gonna happen.

**Jeffrey Rosen:** [00:52:55] A, a powerful reminder that you reached a decision based on the facts and the law. But then as a representative, you have to make all of them be a political



decision because it's a mix of politics, and the constitution. Congresswoman, same to you, you're making your appeal to our fellow citizens. But as a member of the judiciary committee, you will be perhaps helping to draft articles of impeachment. So, in the course of your, your oration, or your, your address, maybe tell us how, how you would ... You know, what the charges would be?

We've heard charges of solicitations simply asking for foreign aid. We've heard a charge of bribery itself, offering something, a value to the Ukraine in exchange for something of value namely the investigation. There've been charges of obstruction by refusing to cooperate with Congress. What articles do you imagine are most persuasive and which ones would you support?

**Rep. Mary Gay Scanlon:** [00:53:46] Well, I think that is one of the questions here. I mean, we have an embarrassment of riches from which to select.

**Audience:** [00:53:51] [laughs].

**Rep. Mary Gay Scanlon:** [00:53:52] And that is part of the problem. You know, I, I agree with Professor Malcolm that, you know, we have elections for one purpose, but then we also have impeachment for another purpose. And so, I may not agree with, for example, the president's morals or his policy choices, but those are things that would be dealt with through the electoral system. But the concern in the impeachment process is, are we seeing behavior that is eroding our government? We heard about eroding the power of the executive. But I, on judiciary, I've had a front row seat to the erosion of the powers of Congress, not just, you know, the ways that Congress may have let its power slip away through war powers resolutions and that kind of thing but through ... And, and as I said before, an absolutely unprecedented attempt by an executive not to release any information, any documents, any witnesses using this theory of absolute immunity, which is something that the courts have now rejected every time it's been brought up.

It was rejected again last week. So we're not talking about executive privilege, we're just talking about someone saying, "No, no one who works in this White House can come forward and talk about anything that happens in the White House." Now, that the courts completely rejected again this past week saying, "No, that's, that's a monarchy. That's a, you cannot question situation, and that's not what we're talking about." So I am very struck by the fact that we have been unable to get to the bottom of multiple scandals because the White House has completely denied access to information and not because of national security, not because of executive privilege, because why?

And it is that total obstruction that I think is really troubling. So that's part of it. But going to the, the Ukraine example, it does start to appear to become part of a pattern of behavior. Where the president seeks foreign interference in an election, whether, "It's do me a favor though." Or, you know, "Russia, are you listening?" Or, "I love WikiLeaks." I mean seeking interference in an election. So there's national, national security issues. There's election integrity issues. Then when an investigation starts, there's a cover up or there's a withholding of evidence. So, we saw that with the Muller report. We saw that with the



Ukraine, and what else it's happened with? We don't know yet because our regular oversight functions have been, have been stymied.

I think Dwight said he didn't go to co- didn't go to Congress to impeach. I don't think anyone in their right mind goes to Congress to impeach. I did run for office in 2018 because I thought there had to be a check and balance. And ordinarily when there's an election, midterms and, and there's a shift in power that acts as a check and balance. But this president's memory seems to be stuck in 2016. He says, "Elections matter." He forgets that 2018 matters too. But that's where, again, this obstruction of the normal oversight functions of Congress showed that there's kind of a fundamental breakdown in our system right now.

**Jeffrey Rosen:** [00:56:48] Thank you for that. Congresswoman, Congresswoman Scanlon points to a frustration with sort of arguments in the alternative. On the one hand, the claim is, and most agree the president can't be indicted in office. Then the president's lawyers invoke the inability to indict the president to argue that he can't be investigated by Congress. And then there's the further argument that impeachment is not a legitimate remedy. So, she says that leaves the president unaccountable, maybe a response to that. But more broadly, we have a group of open-minded citizens who I've heard some good arguments for and against both the facts and the law and also the politics of it. So what would you say to them?

**Fmr. Rep. Ryan Costello:** [00:57:27] Sure. Well, two, two points just for context for me before I go down this dangerous terrain.

**Audience:** [00:57:35] [laughs].

**Fmr. Rep. Ryan Costello:** [00:57:35] I saw a poll yesterday, like 50%, just so everybody's aware of this, 50% of Republican voters right now think that President Trump is a greater president than Abraham Lincoln.

**Audience:** [00:57:50] [laughs].

**Fmr. Rep. Ryan Costello:** [00:57:53] So, I'm not in that 50%.

**Fmr. Rep. Ryan Costello:** [00:57:55] [laughs]. And I thought this two summers ago when he stood next to Vladimir Putin and spoke about how he believed Putin rather than his own intelligence agencies on Russia interference, to me was one of the most, was one of the worst experiences I've had as a member of Congress. So just, that's context. I think as, as it relates to any member of Congress and their frustration with an administration and the role and oversight, you're, you're going to have an administration that only cooperates with you when they feel like cooperating with you. And I take the Congresswoman, congresswoman's point a little bit deeper than that though, because this administration literally will throw their middle finger up at any attempt to get anything.

And frankly, I think they view that as a to their political benefit because of just the chemical reaction that the base gets every time the president fights back and pushes back against the opposing party. Where we're, what I struggle with right now, if, if I were a member of Congress the gray areas right here, where you can leap to the conclusion and say "Yes, he



asked for a favor, he asked to investigate Biden. Republicans are going to say yes, but he was looking back to 2016." or "Oh, well it was just a favor." I mean there's always defenses and I, I looked at what the, the House Republican response was that they just put out. I saw a summary of it. Where I think the rubber hits the road for a, a Republican member that's looking at this, not worrying about their re- not worrying about what their base says, not worrying about whether they're going to get reelected.

Just kind of if they were still in law school, right? Like looking at this and write, having to write an exam paper is, I would, I would struggle with the fact that certain members of the administration are stonewalling, right? They're legitimately stonewalling. And there's likely to be an article of impeachment that says, "You are not allowed to be doing what you're doing." And so therefore, that's an article of impeachment. I struggle with the fact that those are the member, those are the individuals that can either connect dots, or refute, or rebut what is likely to be, what the articles of impeachment are.

And we know what the defenses are from the administration, and from members of Congress on the Republican side of the aisle. And given just the gravity of what impeachment means with an election nine months from now ... And by the way, I wonder who was really thought about whether impeaching the president would help him or hurt him politically. I tend to think it may actually help him. So, for those who don't want to see a second Trump administration, that would be a political consideration to think about. But I, I would really like to see exhausted and attempt to get those stonewalling administration officials to either testify or to face the consequences of not testifying because they're the ones that tie the bow around a serious infraction or, or refuse to testify, and have to deal with what those consequences would be. That's my humble opinion.

**Jeffrey Rosen:** [01:01:09] Than- thank you for it. Well we have one more round and a very important vote at the end of these statements.

**Fmr. Rep. Ryan Costello:** [01:01:18] Don't impeach us.

**Audience:** [01:01:19] [laughs].

**Jeffrey Rosen:** [01:01:19] No, we will thank you. And we will find out what our fellow citizens have decided. So, so Congressman, I think it's, I think it's time for a very serious closing argument. You know, consider it a dress rehearsal for what you might make on the floor of the House. But tell her, tell your fellow citizens, because as you said, they're the most important people here about why, why, why you think the president should be impeached.

**Rep. Dwight Evans:** [01:01:45] I mean, no one, none of us up here or anyone sits in 1,600 is above it all. No one. It's been too many examples shown over and over again when that, you know, is it a rig system? Is it something where you are connected, and wired and then you know, you can look the other way? This is a part of the process. I didn't create it. I think this little document in my pocket right here. Am I right? It's in here, right? [inaudible 01:05:04] it's in here. I didn't create it. It's one of the tools. You may not agree with the tool that you have, but it's one of the tools. I have a duty, and obligation. I take an oath. That's what I do. I take an oath.



If you don't like this action that I take, April the 28th, you will have a shot. April the 28th it's open enrollment. So, if you think I have made the wrong decision, then come April the 28th, then I will, you'll fire me. Because that's the way it works. 435 was for reelection. So, I'm saying to you that it is not easy. This is not an easy decision. And I hear over and over again about the uncertainty in people's minds about their future, about their kids' future. I hear that regularly about, "What are we going to do?" That's what they say. It's not like I can go make a citizen arrest, right? I can't go make a citizen arrest.

So this is the process. You know, you don't like it. Whatever. That's, you can change it [laughs] and that [inaudible 01:06:27] you can change it. You can hold us accountable and change it. So, for the circumstances that are provided to me, and for where I stand, I don't think there's any other choice, personally. That's me. I've heard the debate from a lot of people. I don't think there's any other choice. Got to take this action.

**Audience:** [01:04:17] [laughs].

**Jeffrey Rosen:** [01:04:19] Congressman, closing statement.

**Fmr. Rep. Charlie Dent:** [01:04:21] Yeah. Just one thing on impeachment. You know, I, I was elected in 2004 to the US House. And it wasn't long after, I believe it was Dennis Kucinich who would come down to the House floor regularly with articles of impeachment for George Bush over, over policy disagreements, which, you know, I thought it was, you know, it was totally ridiculous at the time. Obama gets elected and I, I think there was a Republican or two would come down and want to impeach Obama over some policy difference. And then of course there was the impeachment of the IRS commissioner John Koskinen, which all of you have forgotten by now. When the, they wanted to, they wanted to hang Lois Lerner, but she was already out of government. So, why not get this guy who had nothing to do with the underlying offense, but they wanted to hang somebody and you know, it was the wrong guy.

And, and I remember having to go to the whips, and they asked me to go find 40 votes to kill it. And I said, "Yeah, I'll, I'll do it, but you're going to help? You know, I mean, seriously. I mean, this is a ridiculous." But we ... So impeachment at times I think has been trivialized. And now we have a situation that is really serious. And I think that now that we've got, you know, the, the weight of the evidence and with the you know, and the fact that this is so much different, by the way, than, you know, Bill Clinton and Richard Nixon, because we were talking about foreigners using official office in a way that you know, I just, you know, I just haven't seen from a president certainly in my lifetime.

So I, again, I, I keep coming back to that standard. What is the standard? You know, again, if this were any other elected official, you know, if, you know, if the mayor of the City of Allentown, where I live, former mayor, I should say, who is sitting in jail for 15 years for basically trading campaign contributions for contracts. Same thing, you know political benefit, and and in exchange for that, you know, he you know, awarded contracts, that was the, what he was convicted of, among other things, 47 counts. I lost track. But the long story short, you know, this is, this is not the same thing is, it's not as direct, but it's still rises to this level that I think they just, they just cannot ignore it.



Now, having said that, I agree with what Ryan said. This is such a political process and you know, he's, he will likely be impeached by the House and the Senate will likely not convict. I suspect. And and I just wanted to say one thing on the politics of this. I think it cuts both ways. I do certainly think there are members of the House particularly House Democrats and these swing districts that, you know, have some political risk if they vote for impeachment. Particularly those from Oklahoma, and South Carolina, and Utah, and a few other places.

By the same token, I would say that the swing state Senate Republicans were up for election this year are really at risk, you know, from Maine, to Colorado, to Arizona, to North Carolina, to Iowa. There's great risk, and probably more for them frankly than in the House members. So, and we were, you know, were paid the com-, I'm paid to comment. Now you guys can't be paid to comment.

**Audience:** [01:07:17] [laughs].

**Fmr. Rep. Charlie Dent:** [01:07:17] But it's kind of fun. [laughs]. They pay me to do what- they pay me to do this. I used to do it for free. It's great. [laughs].

**Audience:** [01:07:25] [laughs].

**Fmr. Rep. Charlie Dent:** [01:07:25] And so and so, long story. So but ... I lost my train of thought, but doesn't matter.

**Audience:** [01:07:32] [laughs].

**Fmr. Rep. Charlie Dent:** [01:07:32] But it doesn't really matter. So at the end of the day, it's you know, we'll, we'll see where this goes, but there's political risk everywhere. We, we're paid to comment, but none of us really know how this will play politically. We think we do, but we don't. I think we're in an, we're kind of in an uncharted water right now. You know, we kinda got a sense how it played in, you know, in '74 with the Nixon resignation. You know, played with Bill Clinton. I think we just were really not sure. You know, who's really gonna, who's going to benefit or are going to be harmed politically. So just keep that in mind. And my final comment, I just want to say my, my cousin Kevin Lynch is here someplace. He works for the constitution center. I saw him earlier.

**Jeffrey Rosen:** [01:08:06] Oh yeah.

**Fmr. Rep. Charlie Dent:** [01:08:07] There he is. All right, Kevin, I gotta get that off my chest.

**Audience:** [01:08:10] [laughs].

**Fmr. Rep. Charlie Dent:** [01:08:10] And make sure I acknowledge you, you here fine young man. And so bottom line is I, you know, I don't, I don't envy these House members right now. I would hate to have to be sitting there in judgment. Because it is a, it's a very harsh thing to do. And the final thing on, on process, you know, I used to have to authorize the issuance of subpoenas when I was chair of the ethics committee. I'll tell you what, if anybody ever thought that they were going to ignore the subpoena, I mean that was just a human rights violation as far as I was concerned.





**Audience:** [01:08:38] [laughs].

**Fmr. Rep. Charlie Dent:** [01:08:38] I mean, we were going to enforce the subpoena. We basically told their lawyers, you know, they don't comply, guess what? We're going to hold them in contempt, and they're going to get their names dragged through the mud. We're going to have a vote. You know, know, you know what, we never had anybody not comply with a subpoena ever. Now, we ended up negotiating with people. We would say to them, their lawyers. "You know what? We want you to testify, you know, and if you don't testify, we're gonna subpoena you. So let's negotiate something." And we usually ended up negotiating. The only person, we did have some people defy a subpoena, and they were foreigners. So we couldn't bring them in from Azerbaijan or can, we couldn't, couldn't drag them in. [laughs].

So didn't have any authority. So again, I'm just kinda going off here, but bottom line is I just don't like where the country is right now. We're in a, a really rough spot. And you know, I just wanted to say, Ryan, you mentioned about that poll Abraham Lincoln versus Donald Trump.

**Jeffrey Rosen:** [01:09:27] He's, he's, [inaudible 01:12:21] I think we're probably, look [crosstalk 01:12:22]-

**Fmr. Rep. Charlie Dent:** [01:09:30] [crosstalk 01:12:22] Abraham Lincoln. [laughs] Abraham Lincoln never told me I was going to destroy the Republican party, but Donald Trump did. [laughs]. So, so, so I'm an Abraham Lincoln on that one. Okay, so then, I'll stop right now. Thank you. [laughs].

**Audience:** [01:09:46] [laughs].

**Jeffrey Rosen:** [01:09:46] Thank, thank you for all of that.

**Audience:** [01:09:47] laughs].

**Jeffrey Rosen:** [01:09:49] ... Including the shout out to Kevin Lynch, our great colleague who is a scholar and inspiring scholar who's going to be writing a biography of James Otis, the man who denounced the writs of assistance, and sparked the American revolution very much in the spirit of this evening's great discussion. Congresswoman, were your closing arguments to the assembled citizens, some of them are undecided, so as you address them about why you believe the president should be impeached, make arguments both about the facts, and the law, and about the politics, and how they should balance that in favor of a vote for impeachment.

**Rep. Mary Gay Scanlon:** [01:10:21] Well, I do think we've had a couple of comments about the politics of it all saying that it should be bipartisan. It would be bipartisan, except Justin Amash got thrown out of the Republican party.

**Audience:** [01:10:31] [laughs].



**Rep. Mary Gay Scanlon:** [01:10:31] And our lovely former members here are no longer in the House to help make that decision. So, you know, there is some kind of political realignment going on here with both major parties, with generations, et cetera. So, I think that's adding to a lot of the chaos that we're seeing. But just in terms of how I've been approaching this whole situation, I mean, this is not my first time at the Constitution Center. I've been coming here regularly since 2006 because I've been involved with constitution high school up the street, part of its advisory board. It's the one civics themed high school in the state in from ... At any rate, it has a, a curriculum that is based on public service and civics.

I also played a similar role with my children's schools. So, the idea that rule of law matters, our constitution matters. That this is how governance happens. I mean, that's very close to my heart. That's what I have done with my free time for decades. So to be in a position where we're talking about is this a moment where we have to impeach because there's obstruction, because there's interference with elections? It really hits very close to home. And, and what I kind of think about a lot when came to the decision that I had to say I, I was in favor of an impeachment inquiry it was when the weekend I read the Mueller Report. And I read the Mueller Report, and started talking to other members of Congress. And it was like this moment that was far beyond Hamilton because I don't rap.

**Audience:** [01:11:59] [laughs].

**Rep. Mary Gay Scanlon:** [01:11:59] [laughs]. But I suddenly felt very close, very close to the people who wrote the constitution. And maybe because as Dwight said it, it happened right over here-

**Jeffrey Rosen:** [01:12:07] Yes.

**Rep. Mary Gay Scanlon:** [01:12:07] ... And it's so much a part of the fabric of this city. But to be in a situation where suddenly you are reading this conduct, and then you're going back and reading Federalist papers, and you're reading the constitutional debates about why the framers put impeachment. And they didn't have to have impeachment. There was debate about it. The delegate from Pennsylvania said, "No, no, we don't want that." Until he was convinced that it was necessary, and what kinds of things were impeachable, and then to see where we are at that moment. And to be having those conversations with, with my colleagues, suddenly the framers are not, you know, these, these metallic people over across the hall, perhaps-

**Audience:** [01:12:43] [laughs].

**Rep. Mary Gay Scanlon:** [01:12:44] ... But they're actually living and breathing bakers, and farmers, and brewers and everything else that they did. And, and you feel a real kinship with trying to wrestle with the decisions that they had to make. You know, based upon the evidence that's been suggested with respect to Mueller, but which we have not been able to confirm because of obstruction. And then the evidence that's come out from multiple sources coming in from around the world without the opportunity to collate their testimony or, or whatever. I think there's, there's certainly a good case to be made that this is a point where we have to break the glass and try that remedy. So that's where I'm at.



**Jeffrey Rosen:** [01:13:23] Thank you very much for that. And thank you for your service to constitution high school and to civics education. Congressman, last word to you. We're about to have our vote.

**Fmr. Rep. Ryan Costello:** [01:13:32] Sure. I'll-

**Jeffrey Rosen:** [01:13:33] Tell, tell, tell our fellow citizens what, how you think they should make their decision.

**Fmr. Rep. Ryan Costello:** [01:13:37] I th- I think everyone, probably not nothing I say will-

**Audience:** [01:13:43] [laughs].

**Fmr. Rep. Ryan Costello:** [01:13:43] I'll make a few quick comments. This time in our history, we'll pass, you know, a year, two, three, four years, hopefully we'll all be very happy and healthy as well our families. What I struggle most with is that some portion percentage of democratic voters for a long time now have wanted to impeach the president. And if and when the Senate does not vote to impeach, they're gonna feel that the president got away with something. And some percentage of Republican voters right now, 25, 35 for whatever it is, when the House Democrats vote to impeach the president, and the Senate doesn't vote to impeach are going to feel that the Democrats tried to s- to undo an election. Now, you may not agree, you may not fall in either one of those camps.

A lot of people here may not, right? Because there's a portion of the country that doesn't fall in either of those camps. But two, three, four, eight years from now, those people who always wanted to impeach, and those people who feel that that he got away with something, and those folks on the right who feel that they were trying to unwind an election, I worry that all those folks are still going to feel exactly how they feel right now. And what that is ultimately does to the fabric of our representative government is just create more cynicism more distrust, more us versus them. Because we are very torn right now as a country, more than I've ever seen. I mean the stuff people ... I, I served in local office, county office, federal office, and I understand once you get to the federal level they say more mean stuff about you.

But the stuff I had to deal with once Trump got elected was so much different than before he got elected. And and I just worry about our Republic, and where we're heading, and the sort of folks that we're going to be electing to office, which is in no way a reflection of anyone on this stage at all. I, I, but, but, but if you think about it, the values that a lot of voters right now are using to vote have nothing to do with like taxes, regulations, healthcare, et cetera, et cetera. Some folks vote that way, but a lot of people either want to get rid of him because they hate him or they love him, and he's fighting for us, and they don't care about issues right now. That's not good for our country. It's just not. So that's, that's my longterm.

I mean, I'm 43, you know, so I got hopefully a few more years left in me, and I don't want 10 years from now to look like what it looks like now. And I love government. I love public service, and I hope that the next, I hope your kids and grandkids, if they want to run for



elective office, they don't say no because everybody out there just thinks they're a bunch of criminals. Right? That's not good for our country. It's fundamentally not a healthy thing because then you get, you get people in there that you don't want to necessarily be wrestling with the sort of very difficult issues that, that we're dealing with right now. O- one final point, I struggle ... If I were in the House, to be very honest with you, I would struggle with the fact, and I know what the counter arguments to all this.

I get it. The fact that the aid was released, and I understand he found out, and then he released it. That to me, if, if he never released it, then I think there's like clean things you can put together. But there's just a lot of gray to this. And it's a really extraordinary thing to do to impeach. And I, I do worry about what that will do to our political culture five, 10, 20 years from now when we start, when, when a, when a group of people ... To Charlie's point about Kucinich going down and filing articles of impeachment.

You know, I hope that if and when Democrats do ultimately issue articles that it is devoid of the sort of things that you know, some of their base may be most animated about, but, but instead it's very literal and contextual. And then the final point I'll make, you know, we talk about, I talked a lot about the politics, but the legal side of this, what the gentleman on the far end said earlier, you know, you know, it's not like black letter law, right? I mean, it's up to 435 members of Congress to decide what's impeachable.

And depending upon your Congress, some people may find certain conduct impeachable, other congresses may not find it impeachable. And so, as you're voting here tonight, you know, you can, you can agree on the same set of facts and disagree on whether it's impeachable or not. And that's what I think is very unique about our system of government.

**Jeffrey Rosen:** [01:18:29] Let me begin by saying how honored I am on behalf of the Constitution Center to have convened such an extraordinary group of Republicans and Democrats to debate so thoughtfully the question of the constitutional impeachment. This is exactly what the Constitution Center was established to do when it was established by Congress during the bicentennial of the constitution to educate Americans about the constitution. And I'm so glad Congressman Evans that you have the inspired idea of convening us for this evening of civic action.

**Jeffrey Rosen:** [01:19:25] Today's show was engineered by Greg Scheckler, and produced by Jackie McDermott. Research was provided by Lana Ulrich and Jackie McDermott. Please rate, review, and subscribe to We The People on Apple podcasts, and recommend the show to friends, colleagues, or anyone, anywhere who is hungry for a weekly dose of civil, thoughtful, and illuminating constitutional debate. And always remember that the National Constitution Center is a private nonprofit. We rely on the generosity of people from across the country who are inspired by our nonpartisan mission of constitutional education and debate in these partisan times.

We The People, friends, we all know that this mission is more urgently important than ever. You can support our mission by becoming a member@constitutioncenter.org/membership or give a donation of any amount to support our work, including this



[podcast@constitutioncenter.org](mailto:podcast@constitutioncenter.org)/Dunning on behalf of the national constitution center on Jeffrey Rosen.