

AN ANALYSIS OF THE BIDEN IMPEACHMENT INQUIRY

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EXECUTIVE SUMMARY

This week, the House of Representatives is poised to pass a resolution formalizing an impeachment inquiry into President Joe Biden. In this report, we critically assess the evidence offered to justify an impeachment inquiry; we describe the purposes and substantial perils of the impeachment power; we identify ten principles of constitutional law and lessons of history essential to evaluating the House Republicans' position; we describe the legal and political significance of commencing an "impeachment inquiry" (as well as the likely battles ahead); and we conclude by explaining why this House impeachment inquiry is manifestly unjustified.

In Part I, we address the factual background. There, we consider four sets of claims: *first*, that President Biden lied about his role in Biden family schemes abroad; *second*, that President Biden profited from his family's business dealings; *third*, that President Biden acted corruptly in urging the ouster of a Ukrainian prosecutor during the Obama Administration; and *fourth*, that President Biden has obstructed Congress and interfered with law enforcement investigations into Hunter Biden. We conclude that none of these allegations holds water—and that publicly available evidence overwhelmingly disproves or contradicts them.

In Part II, we explain that impeachment exists only for the most extraordinary cases, where a president's conduct reveals him as a continuing menace to the constitutional order and nothing short of immediate removal will protect the Republic. That is a high standard—and rightly so. The impeachment power is terrible in its own right. Activating the machinery of impeachment comes at a steep price for the American people, including the diversion of our leaders at times of crisis, the distortion of checks and balances, and the turbocharging of tribalism and partisanship. While impeachment is necessary in rare cases, as we experienced during the Trump administration, it is inherently hazardous. For that reason, more than any other constitutional power held by Congress, impeachment requires uniquely strong and clear justification—and demands the exercise of wise, nonpartisan statecraft by legislative officials.

In Part III, we offer ten core criteria for impeachment, drawn from the constitutional standard of "high Crimes and Misdemeanors" and centuries of historical experience:

- (1) Impeachable conduct requires a "great and dangerous" offense against the Republic.
- (2) Impeachable conduct must evince clear continuing danger to the Republic.
- (3) Impeachable conduct must be plainly wrong to any reasonable person.
- (4) Impeachable conduct generally requires intentional or willful wrongdoing.
- (5) Impeachable conduct must be defined with precision and specificity.
- (6) Presidents cannot be impeached for pre-office conduct (subject to narrow exceptions).

- (7) Impeachable conduct need not be criminal, though serious criminality is relevant.
- (8) Impeachments should be non-partisan in substance and appearance.
- (9) Congress should treat impeachment as a remedy of last resort and scrupulously assess whether any alternative path can fairly address a president’s conduct.
- (10) Impeachment does not exist for partisan sniping or scoring political points.

In Part IV, we apply these criteria to the House Republicans’ proposed impeachment inquiry. Based on our review of the evidence and our study of constitutional law, as well as a careful examination of the known facts as measured against the impeachment standard, we find that the inquiry is manifestly unjustified. Especially in light of the intensely partisan circumstances surrounding the House proceedings to date, this impeachment process is itself a misuse of power.

In Part V, we conclude by describing the significance of an “impeachment inquiry.” As a political matter, commencing an impeachment inquiry is a very big deal. It sends an unmistakable signal that the machinery of impeachment is being wheeled into position. If an impeachment inquiry starts as a partisan errand, it casts the process straight into illegitimacy. For that reason, an impeachment inquiry should never be soaked in electoral rhetoric or used for partisan retribution. Moreover, as a matter of prior practice and first principles, this step requires extraordinary justification. The House should not proceed with an impeachment inquiry unless it has received weighty, credible evidence of presidential conduct that would constitute “high Crimes and Misdemeanors” if proven true.

None of those criteria are met here. There is no basis for a Biden impeachment inquiry.

I. FACTUAL BACKGROUND

In support of their calls for an impeachment inquiry, House Republicans have pointed to their “top four pieces of evidence.”¹ Here, we will describe that evidence, as well as our best understanding of the broader evidentiary record. We have structured the discussion in four categories in hope of bringing clarity to otherwise diffuse and shifting allegations.

First, we will discuss claims that the Biden family has received tens of millions of dollars from our adversaries around the world—and that President Biden lied about his involvement in those schemes. *Second*, we will address claims that President Biden profited from his family’s business dealings, including through loan repayment checks from James Biden and Hunter Biden. *Third*, we will consider assertions that then-Vice President Biden was involved in a bribery scheme concerning the Ukrainian energy company Burisma. *Finally*, we will turn to allegations that the Biden administration is obstructing the House investigation and inappropriately interfered in the Department of Justice’s investigation of Hunter Biden.

¹ Speaker of the House Mike Johnson, Press Conference, Washington, DC, [December 1, 2023](#)

President Biden's Involvement In His Family's Business Dealings

To start, House Republicans allege that “Biden family members and their affiliate companies received over \$15 million from foreign companies and foreign nationals,” and that Joe Biden “lied at least 16 times about his involvement in his family's business schemes.”²

The evidence for this proposition is virtually nonexistent. Time and again, witnesses have stated that President Biden was not involved in—and did not profit from—any of his family member's business dealings. Even the *Wall Street Journal*, in an editorial supporting an impeachment inquiry, saw “no proof so far that the President cashed checks from foreign sources.”³ Similarly, during testimony to the Oversight Committee, Internal Revenue Service agents assigned to the Department of Justice's Hunter Biden investigation had no direct evidence that Joe Biden was involved in his son's business dealings.⁴ And in a March 2023 non-transcribed interview with Oversight Committee staff, Eric Schwerin (Hunter Biden's former business associate and then-Vice President Biden's former financial adviser), who had access to bank records from 2009 to 2017, stated he was not aware of any involvement by President Biden in his family members' businesses or any transactions into or out of then-Vice President Biden's bank account related to any Biden family member's businesses.⁵

This is consistent with additional evidence. For example, Hunter Biden's former business partner Devon Archer testified to the Oversight Committee that, although Hunter Biden may have sought to leverage his father's stature, President Biden had no involvement in his son's business activities. Archer added that during his decade-long business relationship with Hunter Biden, he never heard him discuss the substance of his business with his father, and that bank records introduced as exhibits did not contain any transfer to Joe Biden.⁶

In a December 2020 interview with the FBI, another former Hunter Biden business partner (Rob Walker) stated that that he “certainly never was thinking at any time that the V.P. [Biden] was a part of anything we were doing.”⁷ To him, the idea President Biden would get involved was “wishful thinking” on the part of another partner, James Gilliar, akin to

² Speaker of the House Mike Johnson, Press Conference, Washington, DC, [December 1, 2023](#)

³ “There Is Evidence for an Impeachment Inquiry,” *Wall Street Journal*, [September 15, 2023](#)

⁴ House Committee on Oversight and Accountability Hearing with IRS Whistleblowers About the Biden Criminal Investigation, [July 19, 2023](#)

⁵ “House Republicans Downplay Meeting With Key Biden Aide,” *HuffPost*, [September 19, 2023](#); Memorandum from Democratic Members of the Committee on Oversight and Accountability, [May 10, 2023](#)

⁶ Committee on Oversight and Accountability Interview of Devon Archer, [July 31, 2023](#)

⁷ “Hunter Biden's former business partner was willing to go before a grand jury. He never got the chance.,” *CBS News*, [June 29, 2023](#)

“unicorn sand rainbows.”⁸ Gilliar, for his part, told reporters in 2020 he was “unaware of any involvement at anytime of the former Vice President” in Hunter Biden’s business deals.⁹

In the same vein, several investigations and independent fact-checkers have found no evidence suggesting that President Biden was involved in Hunter Biden’s business dealings. For example, a Republican-led inquiry conducted by the Senate Homeland Security and Finance Committees in 2020 found no evidence of wrongdoing by President Biden.¹⁰ In 2022, *The Washington Post* investigators came to a similar conclusion after reviewing government records, court documents, bank statements, and emails allegedly stemming from Hunter Biden’s laptop: “The *Post* did not find evidence that Joe Biden personally benefited from or knew details about the transactions with CEFC, which took place after he had left the vice presidency and before he announced his intentions to run for the White House in 2020.”¹¹ Similarly, *FactCheck.org* concluded: “There is currently no proof that Joe Biden was involved in the business deals of his son, Hunter, or that the president ever benefited from those deals or ever used his position as vice president to assist the companies on his son’s behalf.”¹²

Biden Family Loan Repayments

Turning to a second set of allegations, House Oversight Committee Chairman James Comer (R-Ky.) alleges President Biden “profited \$240,000 from his family’s influence peddling schemes.”¹³ Rep. Comer claims that this constitutes “bribery”¹⁴ and “money laundering.”¹⁵

On October 20, 2023, Rep. Comer released a video concerning a 2018 personal check to President Biden from his brother James Biden and James’s wife (Sara Biden), which had the words “loan repayment” written on the front. The check was written on the same day James Biden received a \$200,000 payment from Americore, a struggling health care company

⁸ John Robinson Walker Interview Transcript, [December 8, 2020](#)

⁹ “Hunter Biden’s Ex-Business Partner Alleges Father Knew About Venture,” Wall Street Journal, [October 23, 2020](#)

¹⁰ “Republican Inquiry Finds No Evidence of Wrongdoing by Biden,” New York Times, [September 23, 2020](#)

¹¹ “Inside Hunter Biden’s multimillion-dollar deals with a Chinese energy company,” Washington Post, [March 30, 2022](#)

¹² “FactChecking McCarthy’s Impeachment Inquiry Claims,” FactCheck.org, [September 13, 2023](#)

¹³ “Rob Schmitt Tonight,” Newsmax, [November 6, 2023](#)

¹⁴ “Hannity,” Fox News, [November 1, 2023](#)

¹⁵ “Sunday Morning Futures,” Fox News, [December 1, 2023](#)

with which he was involved.¹⁶ Rep. Comer has stated he does not “believe”¹⁷ that President Biden made a loan and that “there’s no document that shows there was a loan.”¹⁸

However, bank records held by the Oversight Committee provide substantial evidence that the personal check was, in fact, a loan repayment. The bank records demonstrate that in 2017 and 2018, while President Biden was not in office, he made two short-term loans to his brother James, who repaid each loan within two months.¹⁹ Media outlets including *The New York Times*,²⁰ *The Washington Post*,²¹ *The Wall Street Journal*,²² *Politico*,²³ *USA Today*,²⁴ *The Daily Mail*,²⁵ *The Messenger*,²⁶ and *The Washington Examiner*,²⁷ have concluded that the checks were loan repayments. We find their conclusions to be persuasive.

In December 2023, Rep. Comer released another video announcing that subpoenaed bank records show that President Biden received “directly monthly payments” from Hunter Biden’s business account—most notably three “recurring payments” of \$1,380 in late 2018.²⁸ Of course, President Biden did not hold public office in 2018. In addition, it was quickly

¹⁶ “Comer Releases Evidence of Direct Payment to Joe Biden,” House Committee on Oversight and Accountability, [October 20, 2023](#)

¹⁷ “Hannity,” Fox News, [October 20, 2023](#); “Just The News, No Noise,” Real America’s Voice, [October 23, 2023](#); “Kudlow,” Fox Business, [October 23, 2023](#); “The Benny Show,” [October 31, 2023](#)

¹⁸ “Mornings With Maria,” Fox Business, [October 25, 2023](#)

¹⁹ “Fact check: Evidence supports Democrats’ case that Joe Biden made a personal loan to his brother,” CNN, [October 31, 2023](#)

²⁰ “House Republicans Subpoena Biden’s Son and Brother in Impeachment Inquiry,” New York Times, [November 8, 2023](#)

²¹ “Momentum behind impeachment inquiry slows under new speaker,” Washington Post, [November 1, 2023](#)

²² “What to Know About the GOP Probe Into Payments Between Joe Biden and His Brother,” Wall Street Journal, [November 1, 2023](#)

²³ “House GOP subpoenas Hunter Biden in impeachment inquiry,” Politico, [November 8, 2023](#)

²⁴ “Newly issued subpoenas - including to Hunter Biden - ramp up Biden impeachment inquiry,” USA Today, [November 8, 2023](#)

²⁵ “Hunter and James Biden to be called to sit for DEPOSITIONS in impeachment investigation: Republicans will also call in the WIFE of president's son and his ex-lover Hallie for interviews as they ramp up probe,” Daily Mail, [November 8, 2023](#)

²⁶ “GOP Touts Bombshell Biden Payments — But Records Suggest Otherwise,” The Messenger, [October 26, 2023](#)

²⁷ Joe Biden may have lent James Biden money to justify 'loan' repayments, bank records show,” Washington Examiner, [November 8, 2023](#)

²⁸ “Chairman Comer Releases Direct Monthly Payments to Joe Biden from Hunter Biden’s Business Entity,” House Committee on Oversight and Accountability, [December 4, 2023](#)

verified that the \$4,140 in payments were actually Hunter Biden repaying his father for a 2018 Ford Raptor truck²⁹ as had been reported more than a year earlier in the *New York Post*.³⁰

The Burisma-Ukraine Bribery Allegation

House Judiciary Committee Chairman Jim Jordan (R-Oh.) has alleged that President Biden improperly pressured Ukraine to fire Viktor Shokin, the country’s prosecutor general, as part of a corrupt scheme to help Hunter Biden, who had previously served on the board of a Ukrainian natural gas company called Burisma. Rep. Jordan has described this as “the best example”³¹ of corruption and “the most compelling evidence”³² against President Biden. In a similar vein, Rep. Comer has repeated this allegation³³ in numerous venues, including at a September 2023 press conference announcing an impeachment inquiry into President Biden.³⁴

The theory at the heart of this claim has been circulating for many years—advocated by a Russian operative who was sanctioned by the Treasury Department during the Trump administration for election interference³⁵—and has since been repeatedly, squarely debunked.

In an effort to bolster this claim concerning President Biden, Senator Chuck Grassley (R-IA) in July 2023 released an internal FBI document containing unverified allegations President Biden was involved in an illegal foreign bribery scheme. The FBI document (known as an FD-1023) says that “an informant described a 2016 meeting where Mykola Zlochevsky, the CEO of Ukrainian energy company Burisma, claimed that he had made two \$5 million payments to ‘the Bidens,’ though he didn’t specify who received the alleged bribes.”³⁶ However, the Department of Justice already reviewed this FD-1023 during the Trump Administration and signed-off on dropping an investigation into the allegation after it was found to not be supported by facts.³⁷ More generally, the FBI states that FD-1023 forms do not “validate,” “establish ... credibility,” or “weigh ... against other information known or developed by the FBI.”³⁸ Additionally, in his testimony before the House Oversight

²⁹ “House Oversight GOP release document showing payments made by Hunter Biden to his dad; documents say they were for a car”, CNN, [December 5, 2023](#)

³⁰ “Joe Biden agreed to pay Hunter’s legal bills tied to Chinese firm deal: email,” New York Post, [April 26, 2022](#)

³¹ Rep. Jim Jordan, Press Conference, Washington, DC, [November 29, 2023](#)

³² “Biden impeachment inquiry end game comes into focus, but moderate Republicans still not sold,” CNN, [November 6, 2023](#)

³³ “National Report,” Newsmax, [August 29, 2023](#)

³⁴ Rep. Jim Jordan, Press Conference, Washington, DC, [September 13, 2023](#)

³⁵ “‘Russian agent’ hit with US sanctions related to election interference,” New York Post, [September 10, 2020](#)

³⁶ “Grassley releases internal FBI document about unverified Biden bribery allegations,” CNN, [July 20, 2023](#)

³⁷ “Comer cancels Wray contempt hearing after reaching agreement on document,” Washington Post, [June 7, 2023](#)

³⁸ “Message from the FBI on the FD-1023 Request from Congress,” [June 14, 2023](#)

Committee, Devon Archer said he would disagree with anyone concluding from the FD-1023 form that President Biden was bribed by Zlochevsky.³⁹

More broadly, claims that President Biden acted improperly in pressuring Ukraine to fire Shokin have been disproven by years of government investigations and independent journalism. Investigative journalists have found that Shokin “was not investigating Burisma or Hunter Biden”⁴⁰ and that “the international community and anti-corruption advocates in Ukraine were also calling for Shokin to be removed from office for his failure to aggressively prosecute corruption.”⁴¹ In addition, a State Department memo dating to November 2015 indicates that official American policy supported removing Shokin: “There is wide agreement that anti-corruption must be at the top of this list, and that reforms must include an overhaul of the Prosecutor General’s Office including removal of Prosecutor General Shokin, who is widely regarded as an obstacle to fighting corruption, if not a source of the problem.”⁴² Even more recently, in September 2023, former president of Ukraine Petro Poroshenko dismissed the idea that President Biden was responsible for Shokin’s firing, calling the former prosecutor a “completely crazy person” who was “fired because of his own statement.”⁴³

Consistent with that view, Republican witnesses during the first Trump impeachment repeatedly rejected assertions of a corrupt deal involving President Biden and Burisma. Thus, Kurt Volker, President Trump’s U.S. special envoy to Ukraine, testified under oath that “the allegations against Vice President Biden are self-serving and non-credible.”⁴⁴ Similarly, George Kent, the former Deputy Assistant Secretary of State, testified that “the U.S. the IMF, the European Union countries, we had all come to the conclusion in the wake of the diamond prosecutors affair that there was going to be no progress for reform on the prosecutor general under Shokin.” He did not say that call to leverage aid came from Joe or Hunter Biden, but rather “from Ambassador Pyatt in discussion with Assistant Secretary Nuland and then was pitched to the Office of the Vice President.”⁴⁵ Kent later testified (in a Republican-led Senate investigation) that Hunter Biden and his associates had no role in the formulation of U.S. policy concerning Ukraine, and that the policies then-Vice President Biden pursued were “intended to advance the interests of the United States of America.”⁴⁶

³⁹ Committee on Oversight and Accountability Interview of Devon Archer, [July 31, 2023](#)

⁴⁰ “A quick guide to Trump’s false claims about Ukraine and the Bidens,” Washington Post, [September 27, 2019](#)

⁴¹ “Trump Revives False Narrative on Biden and Ukraine,” FactCheck.org, [October 15, 2020](#)

⁴² “Republicans’ thin corruption case against Joe Biden, explained,” Vox, [September 28, 2023](#)

⁴³ “One Nation,” Fox News, [September 23, 2023](#)

⁴⁴ “GOP-requested witness rejects Trump ‘conspiracy theories,’” Associated Press, [November 19, 2019](#)

⁴⁵ House Permanent Select Committee on Intelligence, Committee on Oversight and Reform, and Committee on Foreign Affairs Interview of George Kent, [October 15, 2019](#)

⁴⁶ U.S. Senate Committee on Homeland Security & Governmental Affairs-Senate Finance Committee Interview of George Kent, [July 24, 2020](#)

Taken together, this evidence—and lots more corroborating it—confirms that seeking the removal of Shokin was part of official U.S. foreign policy, was well justified as an anti-corruption measure, and was not part of any scheme related to Hunter Biden or Burisma. In other words, Vice President Biden was executing official policy, not any personal agenda.

Allegations of Obstruction and Interference

Finally, Rep. Comer claims that “President Biden’s pattern of lies, corruption, and obstruction demand action from Congress.”⁴⁷ But just a few months ago, Rep. Comer stated: “Every subpoena that I have signed, as Chairman of the House Oversight Committee over the last five months, we have gotten 100% of what we requested, whether it’s with the FBI or with the banks or with Treasury.”⁴⁸ Indeed, throughout House Republicans’ investigations, the DOJ, FBI, and IRS have made witnesses available, including unprecedented testimony by the DOJ Special Counsel in the Hunter Biden case.⁴⁹ The Treasury Department provided more than 2,000 pages of Suspicious Activity Reports,⁵⁰ and the National Archives has handed over tens of thousands of records to the House following its standard practices.⁵¹ While Rep. Comer has not received everything that he requested, including from the White House, the claim that there is a massive wall of resistance simply defies reality—particularly given that some of his requests directly implicate the constitutional separation of powers.

Separately, but in the same vein, House Ways and Means Committee Chairman Jason Smith (R-Mo.) has alleged as follows: “Two brave whistleblowers came forward to expose the political interference impeding an investigation into the tax crimes of the President’s son, Hunter Biden.”⁵² Despite this claim, however, neither whistleblower testified that President Biden or his Attorney General interfered in the investigation.⁵³ And other witnesses involved in the Hunter Biden matter have emphasized that there was no political interference in Special Counsel David Weiss’s investigation. For instance, a former FBI Supervisory Special Agent assigned to the Hunter Biden investigation stated that he was not aware of any such interference.⁵⁴ For their part, Attorney General Merrick Garland⁵⁵ and Special Counsel

⁴⁷ Rep. James Comer, Press Conference, Washington, DC, [November 29, 2023](#)

⁴⁸ “Kudlow,” Fox Business, [June 29, 2023](#)

⁴⁹ “Special counsel in Hunter Biden probe testifies before Congress in an ‘unprecedented step’,” Associated Press, [November 7, 2023](#)

⁵⁰ “Biden family profited from human trafficking scheme, House investigators say,” Washington Times, [April 19, 2023](#)

⁵¹ “National Archives to hand over 62,000 Biden records to House GOP, including emails using aliases,” Fox News, [December 6, 2023](#)

⁵² Rep. Jason Smith, Press Conference, Washington, DC, [November 29, 2023](#)

⁵³ House Committee on Oversight and Accountability Hearing with IRS Whistleblowers About the Biden Criminal Investigation, [July 19, 2023](#)

⁵⁴ “Former FBI agent says he was not aware of interference in Hunter Biden probe,” Reuters, [August 14, 2023](#)

⁵⁵ “Takeaways from the combative House Judiciary Committee hearing with Attorney General Merrick Garland,” CNN, [September 20, 2023](#)

Weiss⁵⁶ have testified before Congress that Special Counsel Weiss has carried out his investigation with full authority and without any Attorney General or White House interference. United States Attorney for Central District of California E. Martin Estrada⁵⁷ and United States Attorney for the District of Columbia Matthew Graves⁵⁸ have also confirmed to the Judiciary Committee that Special Counsel Weiss had full authority to pursue charges against Hunter Biden in their jurisdictions. Indeed, Special Counsel Weiss quite recently announced serious new federal tax charges being filed against Hunter Biden in California.⁵⁹

Given all this evidence, claims that President Biden has impeachably obstructed House investigators—or interfered with the Hunter Biden investigation—are specious. At most, the House has pointed to run-of-the-mill disagreements with the White House over the proper scope of congressional investigations. And no evidence supports charges that President Biden has meddled with Special Counsel Weiss; to the contrary, the Special Counsel’s testimony, as well as his conduct and testimony from other officials, all cuts decisively against that view.

II. THE PURPOSE AND PERILS OF IMPEACHMENT

With an understanding of the key facts, we turn next to the governing constitutional principles. We first describe the purpose and perils of impeachment.

The impeachment power serves an important purpose: ensuring that Congress can immediately remove a president if his conduct reveals him as an urgent, unmistakable menace to the continuity of our political order. In cases where the Constitution offers no other off-ramp, impeachment exists to save democracy from a president whose persistence in office risks the Republic. But the impeachment power is also dangerous in its own right. Historical experience teaches that impeachment inquiries can be profoundly destabilizing: they consume immense political energy, activate the ugliest forces of faction, strain the separation of powers, and divert attention from national security, economic growth, and other matters of state. Frequent resort to impeachment talk can sap faith in democracy and make this power seem cheap or trivial. For these reasons, impeachment has come to be understood as a matter of absolute last resort—one that should be avoided if any alternative path can fairly address the president’s alleged misconduct, and that should never be deployed for mere partisan gain.

The Purpose of Impeachment⁶⁰

⁵⁶ “Special counsel in the Hunter Biden case insists he was the ‘decision-maker’ in rare testimony,” Associated Press, [November 7, 2023](#)

⁵⁷ “U.S. attorney for Central California told Congress David Weiss had full authority to charge Hunter Biden in the state,” CBS News, [October 27, 2023](#)

⁵⁸ “Hunter Biden prosecutor wasn’t blocked from bringing California charges, US attorney tells Congress,” Associated Press, [October 25, 2023](#)

⁵⁹ “Hunter Biden charged with 9 criminal counts for allegedly failing to pay taxes,” Politico, [December 7, 2023](#)

⁶⁰ For this section, see “Constitutional Grounds for Presidential Impeachment,” Report by the Majority Staff of the House Committee on the Judiciary, [December 2019](#), at 6-30.

When the Framers gathered in Philadelphia in 1787, they created a strong presidency. They deemed this necessary to ensure effective, energetic leadership for the young nation. But they also recognized the risk of reposing so much public trust in a single person. So they built layered guardrails against misconduct—including a division of authority between the states and the federal government, a separation of powers within the federal government itself, an oath to faithfully execute the law, and a limited four-year presidential term subject to regular elections. In nearly all cases, the Framers expected that these checks would suffice to address concerns about presidential conduct. “Ambition,” explained James Madison, “must be made to counteract ambition.”⁶¹ And Congress hardly lacked for ambition or authority.

Even still, the Framers foresaw that someday a president might come to power whose conduct defied or exceeded all such restraints, and whose persistence in office threatened the viability of the constitutional design. As Raoul Berger recounts, “the Framers were steeped in English history; the shades of despotic kings and conniving ministers marched before them.”⁶² Rather than force the nation to endure such tyranny—or to resort to violence or revolution—the Framers adapted impeachment from English law. They did so mainly to address three forms of malfeasance that, in sufficiently dreadful cases, could pose an existential threat: *First*, the abuse of power, which occurs when a president exercises the authorities of his office to obtain an improper personal benefit while injuring and ignoring vital national interests. *Second*, betrayal involving foreign leaders. *Finally*, corrupt efforts to remain in office.

The impeachment power thus serves a profoundly important purpose: it is the nation’s ultimate line of defense against a president whose conduct imperils the very perpetuation of the American political project. Where a president commits great and dangerous offenses against the Constitution—causing urgent harm to the Nation and revealing himself as a threat to the Republic if allowed to remain in office—impeachment lets Congress remove him from power.

The Perils of Impeachment

Impeachment is one of the great powers of the Constitution, but power can never be exercised without consequence. Invocation of impeachment always comes at a steep cost.

As Justice Joseph Story recognized in 1833, “the power of impeachment is not one expected in any government to be in constant or frequent exercise.”⁶³ That is partly because impeachment is legally cumbersome and politically burdensome. Viscount James Bryce put the point well: “it is like a hundred-ton gun which needs complex machinery to bring it into position, an enormous charge of powder to fire it, and a large mark to aim at.”⁶⁴ The rarity of impeachment also reflects the fact that most presidents have not engaged in grievous offenses

⁶¹ Federalist 51, James Madison (1788).

⁶² Raoul Berger, *Impeachment: The Constitutional Problems* 4 (1974).

⁶³ Joseph Story, *Commentaries on the Constitution of the United States*, 221 (1833).

⁶⁴ Quoted in Laurence H. Tribe & Joshua Matz, *To End a Presidency: The Power of Impeachment* (2018) at 107 n.41.

against the constitutional order—and, when they have done so, Congress has often chosen to respond in less drastic ways. Finally, impeachment has been rare because the Framers set an exceptionally high bar for impeachable offenses, and their vision has largely been honored.

This rarity is a good thing. As Cass Sunstein emphasizes, impeachment is a “national nightmare, a body blow to the republic.”⁶⁵ Even if warranted, it can inflict enduring national trauma—and when unjustified, it risks enduring harm to the American people.

That is true for many reasons. To start with, “an unavoidable risk of any impeachment is that the Congress, the president, and [potentially] the chief justice are diverted from the ordinary business of governing for a prolonged period.”⁶⁶ While addressing an impeachment, these officials “may struggle to give other issues, including emergencies, the attention they deserve.”⁶⁷ Simply stated, an impeachment proceeding drains federal attention from ensuring our nation’s security, economic growth, and well-being.⁶⁸ Given the current state of the world—with ongoing crises in Ukraine and Israel, and a host of urgent domestic challenges confronting the nation—these concerns are particularly salient.

In addition, impeachment can “jeopardize the separation of powers.”⁶⁹ Traditionally, the concern has been that presidents will be undermined or weakened if faced with the threat of impeachment for ordinary political disagreements. But as a practical matter, the greater risk is that Congress will undermine itself by cheapening its ultimate check on the president. That is particularly true because the president will always be motivated to resist impeachment inquiries—and to do so in ways that may durably diminish congressional authority. An impeachment that comes to be seen as illegitimate or partisan may empower the very office that Congress seeks to curb. It may also increase the risk that future presidents get away with far more serious offenses. In these ways, impeachments affect checks and balances across administrations, and can reshape the inter-branch dynamics that keep presidents in check.

In a related vein, impeachments can provoke a backlash against those who initiate them. This is most plainly exemplified by President Clinton’s case: his approval rating in August 1998 was 62%, but then it rose to 71% in mid-December 1998, after the House voted to impeach him.⁷⁰ To be sure, impeachments are not all about public opinion, and Members of Congress must lead as well as follow. But if the House believes that a president’s conduct is highly problematic, it does not always follow that impeachment is the right response—and, in some cases, pursuing impeachment can backfire spectacularly against the House majority.

⁶⁵ Cass R. Sunstein, *Impeachment: A Citizen’s Guide*, 82 (2019).

⁶⁶ Laurence H. Tribe & Joshua Matz, *To End a Presidency: The Power of Impeachment*, 100 (2018).

⁶⁷ *Id.* at 101.

⁶⁸ *Id.* at 102.

⁶⁹ Sunstein, *Impeachment*, 81.

⁷⁰ “Clinton’s impeachment barely dented his public support, and it turned off many Americans,” Pew Research Center, [October 3, 2019](#).

Impeachments are hazardous for another reason. As Hamilton wrote, they “will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused.”⁷¹ Frequently, this dynamic will connect with “pre-existing factions, and will enlist all their animosities, partialities, influence, and interests on one side or on the other.”⁷² That prediction led Hamilton to fear that impeachments would be “regulated more by the comparative strength of the parties, than by the real demonstration of innocence or guilt.”⁷³ His observation also points to a distinct risk: that impeachments will unleash and concentrate the ugliest forces in American politics. Virtually every source of dysfunction in our democracy—hyper-partisanship, disinformation, manufactured outrage, cultural warfare—could be magnified by an impeachment process. The resulting feelings of “alienation and disenchantment” may “persist for a generation or longer, seeping like a poison into American life.”⁷⁴ Even when impeachment is truly warranted, it can still have these “unnerving collateral consequences,” since history shows that “reactionary and extremist politics flourish when Americans abandon established political institutions.”⁷⁵

Of course, this is not to say that impeachment is always unwise or unjustified. There are times where it is a necessity. There are times when a *failure* to impeach would be the far more dangerous course; that conclusion is why two of us served among counsel to the House during the Trump impeachments. But impeachment inquiries come at a cost. Therefore, more than any other power held by Congress, impeachment requires uniquely strong and clear justification—and demands the exercise of wise, nonpartisan statecraft by legislative officials.

III. TEN CRITERIA FOR IMPEACHMENT⁷⁶

In deciding whether to pursue impeachment, the House can look to our foundational charter and centuries of prior experience. There are ten particularly crucial criteria relevant to

⁷¹ Federalist 65, Alexander Hamilton (1788).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 106.

⁷⁶ The following section reflects our engagement with such scholarly works as these: Tribe & Matz, *The Power of Impeachment*; Black & Bobbit, *Impeachment*; Sunstein, *Impeachment*; Berger, *Impeachment*; Frank O. Bowman, III, *High Crimes and Misdemeanors: A History of Impeachment for the Age of Trump* (2019); John O. McGinnis, *Impeachment: The Structural Understanding*, 67 *Geo. Wash. L. Rev.* 650 (1999); Annette Gordon-Reed, *Andrew Johnson* (2011); Niko Bowie, *High Crimes Without Law*, 132 *Harv. L. Rev. F.* 59 (2018); Kate Shaw, *Impeachable Speech*, 70 *Emory L. J.* 1 (2020); Daphna Renan, *The President’s Two Bodies*, 120 *Colum. L. Rev.* 1119 (2020); Victoria Nourse, *The Constitutional (and Political) Safeguards Against Impeachment*, 87 *Mo. L. Rev.* (2022); Brian C. Kalt, *Impeachment and its Discontents*, 87 *Mo. L. Rev.* (2022); Peter Charles Hoffer & N.E.H. Hull, *Impeachment in America* (1984); John T. Noonan, Jr., *Bribes: The Intellectual History of a Moral Idea* (1984); Jeffrey A. Engel et al., *Impeachment: An American History* (2018). Of course, not every scholar listed here will agree with every principle we describe. We cite these works only to identify some of the sources we are drawing from. In addition, this discussion reflects experiences that two of us had during our tenure as counsel on the House Judiciary staff. Key sources from the Trump impeachments, including those addressing impeachable offenses, are collected here: Victoria Nourse, *The Impeachments of Donald Trump: An Introduction to Constitutional Interpretation* (2021).

the proceedings now unfolding in the House: seven drawn from the constitutional standard of “high Crimes and Misdemeanors,” and the other three drawn from lessons of history.

Defining Impeachable Offenses (Criteria 1-7)

Although the Framers saw impeachment as an essential emergency measure, they also perceived its dangers. Several Framers warned that the newly created office of the presidency would be undermined from the outset if Congress could impeach whenever it disagreed with presidential conduct. Other Framers sought to ensure that presidents would not be impeached for “maladministration”—in other words, based on personal or policy differences, or based on a sense that the president is generally doing a shoddy job. In their lengthy deliberations, the Framers sought to calibrate the impeachment power to ensure it didn’t get out of hand.⁷⁷

The Framers therefore imposed important constitutional limits on impeachment. For example, they circumscribed who could be impeached, prohibiting Congress from using this authority to target private citizens.⁷⁸ They limited the legal consequences of an impeachment, providing that conviction could result only in removal from office and disqualification from future officeholding.⁷⁹ They distinguished impeachment from criminal liability, ensuring that an official convicted on articles of impeachment would face ensuing criminal charges (if any) through the ordinary judicial process.⁸⁰ And they split the impeachment power between the House and Senate, trusting the House to decide when to level charges and requiring the Senate to adjudicate any such charges through a trial (where conviction requires a super-majority).⁸¹

Most significantly, the Framers imposed a rule of wrongdoing: under the Constitution, the president can be impeached and removed only for “Treason, Bribery, or other high Crimes and Misdemeanors.” This phrase has been widely debated. But by studying the Constitutional Convention—as well as the text, structure, and history of the Constitution—one can discern clear guideposts on what it means. These guideposts bring real discipline to any legal analysis. This is confirmed by a series of scholarly works that engage deeply with these questions—and that reflect general consensus on seven fundamental points, which we will summarize here.

⁷⁷ *Id.* at 3-9.

⁷⁸ U.S. Constitution, Art. II, Section 4. “The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”

⁷⁹ U.S. Constitution, Art. I, Section 3. “Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States...”

⁸⁰ U.S. Constitution, Art. I, Section 3. “...but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.”

⁸¹ U.S. Constitution, Art. I, Sections 2 & 3. “The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment... The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.”

First, to quote George Mason, impeachment is justified only for “great and dangerous offenses.”⁸² As evidenced by statements at the Constitutional Convention, and by use of the term “high Crimes and Misdemeanors” (which was drawn from English law), impeachment is reserved for grievous crimes against the constitutional order. Conduct is impeachable only if it is exceedingly wrong, exceedingly serious, and exceedingly dangerous to the Nation. As Cass Sunstein emphasizes, “[b]ad decisions, or politically objectionable decisions, are not sufficient grounds for impeachment, even if much of the nation is up in arms.”⁸³ Unless the president’s conduct truly menaces the Constitution, it is not impeachable as a matter of law.

Second, impeachable conduct must involve a clear continuing danger to the Republic. The impeachment power is not about punishing an official for their prior acts. It serves only to protect us going forward. As Charles Black emphasized, “we could punish a traitorous or corrupt president after his term expired; we remove him principally because we fear he will do it again, or because a traitor or the taker of a bribe is not thinkable as a national leader.”⁸⁴ In that sense, the focus of an impeachment is essentially prospective: based on the conduct at issue, would the Nation remain at grievous risk if this person remained president? Where the president committed misconduct, but their continuance in office does not pose a grave threat to the stability of our constitutional system, they cannot lawfully be impeached.

Third, the wrongness of the impeachable conduct should not be a matter of reasonable dispute. The Constitution abhors ambush: the *Ex Post Facto* Clause, the Due Process Clause, and the Bill of Attainder Clause all confirm that point. When it comes to impeachment, the conduct at issue should be plainly wrong to any reasonable person—and should be wrong “without reference to partisan politics or differences of opinion on policy.”⁸⁵ If there is a fair debate to be had about the propriety of disputed presidential action, it is not impeachable.

Fourth, impeachable offenses generally require willful misconduct. This is clear from the reference to Treason and Bribery, both of which require proof of intent, and it also follows from statements made by Framers and Ratifiers of the Constitution.⁸⁶ While some acts may conceivably be impeachable on their face—*e.g.*, an order that the army shoot at peaceful political protestors—impeachment virtually always requires proof that the president willfully engaged in great and dangerous offenses against the Republic. Negligence isn’t enough. Nor is a lack of good judgment under stressful circumstances. At its heart, impeachment is about intentional wrongdoing. It is ordinarily justified only by evidence of bad faith, willful malfeasance that reveals the president as a continuing threat to constitutional governance.

⁸² Max Farrand, ed., *The Records of the Federal Convention of 1787*, 392 (1911).

⁸³ Sunstein, *Impeachment*, 56.

⁸⁴ Charles L. Jr. Black & Philip Bobbitt, *Impeachment: A Handbook*, 36 (2018).

⁸⁵ *Id.* at 30.

⁸⁶ “Constitutional Grounds for Presidential Impeachment,” 50.

Fifth, impeachable offenses must be defined with specificity. The Framers rejected the idea that presidents could be removed for “maladministration,” and instead required proof of “high Crimes and Misdemeanors.” Where the allegations of misconduct are insufficiently precise, the president cannot fairly defend himself (raising due process concerns), and there is a risk that the presidency as a whole is being put on trial (rather than any specific alleged wrongful act). To again quote Black, “the phrase ‘high Crimes and Misdemeanors’ carries another connotation—that of distinctness of offense. It seems that a charge of high crime or high misdemeanor ought to be a charge of a definite act or acts, each of which in itself satisfies the [constitutional] requirements. General lowness or shabbiness ought not to be enough.”⁸⁷

Sixth, presidents cannot be impeached for conduct before they took office, subject only to narrow exceptions. The major purpose of the impeachment power is to guard against abuse or corruption of office. Thus, private citizens cannot be impeached, and the consequences of impeachment affect only access to office. Given this, conduct before a president took office is ordinarily irrelevant as a matter of law. The prevailing view, however, recognizes two limited exceptions: cases where a candidate for the presidency corrupts their own election and thereby comes into power (since there is a tight connection between the acts and the office), and cases where the president’s prior conduct is so immensely evil as to render them plainly unviable as the leader of a democratic society (for instance, if it were suddenly discovered that president had committed first-degree murder).⁸⁸

Seventh, and finally, impeachable offenses need not be crimes, though evidence of a serious crime can support a finding of impeachability. We will not belabor this point, which has been covered at length elsewhere. The bottom line is that crimes and impeachable offenses are different in important ways. In assessing whether presidential conduct constitutes “high Crimes and Misdemeanors,” the criminal code is at best a sometimes-helpful reference point.

Pulling this all together: Under the Constitution, the president can be impeached only for “high Crimes and Misdemeanors.” Such offenses must be “great and dangerous” in their implications for the Republic; they must establish that leaving the president in office poses a continuing grievous risk to the Nation; they must involve conduct that is plainly wrong to any reasonable person; they ordinarily must involve willfully nefarious conduct; they must be defined and charged with precision; they generally must involve conduct that occurred while the president was in office; and they need not implicate the statutory criminal code. To borrow Black’s more elegant phrasing, impeachable offenses are those “which are rather obviously wrong, whether or not ‘criminal,’ and which so seriously threaten the order of political society as to make pestilent and dangerous the continuation in power of their perpetrator.”⁸⁹

⁸⁷ Black & Bobbitt, *Impeachment*, 36.

⁸⁸ As Black put it, such acts are those that “so stain a president as to make his continuance in office dangerous to public order.” (Black & Bobbitt, *Impeachment*, at 35). See also *id.* at 89-94; Tribe & Matz, *The Power of Impeachment*, at 58-61.

⁸⁹ Black & Bobbitt, *Impeachment*, 36.

The Constitution’s specific reference to “Bribery” exemplifies this point. In 2019, the House Judiciary Committee published a detailed analysis of the issue. In short, “impeachable ‘Bribery’ occurs when a President offers, solicits, or accepts something of personal value to influence his own official action.”⁹⁰ A President who would trade public power for private favors through a *quid pro quo* is a threat to the Republic, not least because he might do it again. As William Blackstone explained, bribery is “the genius of despotic countries where the true principles of government are never understood”—and where “it is imagined that there is no obligation from the superior to the inferior, no relative duty owing from the governor to the governed.”⁹¹ Consistent with the principles described above, impeachable bribery is obviously wrong, is a great and dangerous offense, signifies a continuing risk to the nation, can be ascertained and charged with precision, and requires proof of willful, intentional corruption of office through a *quid pro quo*. To be sure, this is a very high standard, demanding clear and exacting evidence of a specific corrupt deal. As recent Supreme Court cases indicate, showing willfully corrupt action by public officials requires a highly context-sensitive analysis, as well as a full accounting of the norms and nature of the political office at issue (not to mention a clear view of the specific public policies allegedly sold through the act of bribery).⁹²

Adhering to the Constitution’s requirement of “high Crimes and Misdemeanors” is fundamental in any consideration of impeachment. The Framers made a choice to impose a demanding standard. Departing from it would offend the Framers’ design—and would also offend the constitutionally grounded expectations of those voters who select the president and understand that he will serve a full term in office unless he commits truly heinous acts.

Lessons of History (Criteria 8-10)

When faced with calls to impeach, the House must respect constitutional limits—and should also honor lessons from historical experience. That is particularly important because the House cannot escape the obligation to exercise its own good judgment here. Strictly speaking, impeachment is never mandatory: nobody can sue to force the House to impeach, and the Constitution never affirmatively obligates it to take that step. Instead, the Constitution sets a minimum requirement (“high Crimes and Misdemeanors”) and otherwise leaves the “sole Power of Impeachment” to the House. The House thus holds two related powers: the power to impeach, and the power *not* to do so. “[I]n the hands of a conscientious legislator, the power not to impeach allows full consideration of all factors relevant to ending a presidency.”⁹³ The House has repeatedly exercised this discretion—perhaps most notably during the Iran-Contra affair, but also on many other occasions where the president was accused of serious wrongdoing and the House relied on alternative tools to address it.⁹⁴

⁹⁰ “Impeachment of Donald J. Trump President of the United States,” Report by the Committee on the Judiciary: House of Representatives, [December 2019](#), 43.

⁹¹ William Blackstone, *Commentaries on the Laws of England, Book 4, ch. 10* “Of Offenses Against Public Justice” (1765–1770).

⁹² See Tribe & Matz, *The Power of Impeachment* at 31-33.

⁹³ *Id.* at 71.

⁹⁴ *Id.* at 72-91.

Because the House has broad discretion in deciding how to respond to claims of presidential abuse, the Constitution calls on legislators to reflect solemnly on the greater good and to ask: is pursuing an impeachment not only legally justified, but also the right path on which to lead the nation?

Three lessons from history—which complete our set of ten criteria—are vital to the exercise of sound judgment by the House on matters of presidential impeachment.

First, impeachments should be non-partisan in substance and appearance. As a matter of substance, nonpartisanship requires “a principle committed to the structure and culture of our democratic constitution, apart from mere party or personal interest.”⁹⁵ A helpful question for legislators on all sides of the issue is this: how would you feel about impeachment if you had opposite partisan or personal feelings about the president threatened with removal? As a matter of appearance, an impeachment voted entirely along partisan lines “would go to the Senate tainted, or at least suspicious, and would be unlikely to satisfy the country, because party motives would be suspected.”⁹⁶ So, too, would any impeachment that appears to be a tactic for electoral gain or political retribution. In that sense, a partisan impeachment is presumptively illegitimate—and surely doomed to failure. Partisan impeachments are also imprudent for yet another reason: as Keith Whittington writes, “if the impeachment power is perceived to be little more than a partisan tool for undermining election officials and overturning election results, then the value of elections for resolving our political disagreements is significantly reduced.”⁹⁷ To be sure, impartiality runs both ways: “Just as the president’s opponents must act responsibly, so must his own party.”⁹⁸ But in assessing whether an impeachment is nonpartisan, the analysis does not begin with the final vote in the Senate. Instead, it starts with procedural votes in the House. Where members of only a single party support an impeachment inquiry, that is a huge red flag signaling danger to the country ahead.

Second, Congress should always treat impeachment as a remedy of last resort and scrupulously assess whether any alternative path can fairly address the president’s conduct. The impeachment power exists for “moments when the nation faces clear peril and the constitutional scheme offers no other plausible exit.”⁹⁹ Seeking to undo the nation’s election of the president—or even embarking on that path—is a profoundly destabilizing act. Thus, “one of the best ways to keep faith with the founding document is to avoid resorting to the impeachment mechanism without sufficient cause.”¹⁰⁰ In nearly all cases, there will be no need to put impeachment on the table: “Congress is well equipped to corral a rogue president

⁹⁵ *Id.* at 139.

⁹⁶ Black & Bobbitt, *Impeachment*, 10.

⁹⁷ Quoted in Tribe & Matz, *The Power of Impeachment* at 140 n.49.

⁹⁸ Tribe & Matz, *The Power of Impeachment*, 140.

⁹⁹ *Id.* at 23.

¹⁰⁰ Sunstein, *Impeachment*, at 81.

through less extreme measures.”¹⁰¹ When roused to action and backed by the public, Congress has many methods of checking a president, thwarting future misconduct, and ensuring fierce accountability. Among other steps, it can impose new statutory limits, defund administration priorities, engage in exacting public oversight, exercise its contempt power, activate the press and other informal checks on the executive branch, and pass a resolution of censure.¹⁰² To quote Ezra Klein, “Congress is a tiger that we pretend is made of paper.”¹⁰³ If moved to address alleged presidential malfeasance, Congress has a toolbox short of impeachment—and best upholds its duty by reaching for impeachment only when no other tool is sufficient.

Finally, the use of “impeachment talk” and the deployment of impeachment process without any credible chance of removal can itself be injurious to democracy.¹⁰⁴ This has become clear since the failed effort to oust President Clinton. Whereas impeachment talk played a marginal role in American politics for most of our history, it has skyrocketed since the late 1990s. Calls for impeachment—and outraged denunciations of those calls—are now a fixture of workaday partisan conflict. That dynamic is corrosive and unfortunate. It has “trapped the American people in a massive ‘boy-who-cried-wolf’ dilemma” that cheapens the impeachment power as a weighty affair of state.¹⁰⁵ It has turbocharged forces of partisan dysfunction and tribalism by pushing our politics to destabilizing extremes. And it risks easing the path for presidents to abuse their power, since impeachment talk is increasingly taken for granted and often provokes the president’s supporters to rally around him even more intensely. Rather than accelerate this trend, legislators would be well served to seek a course correction. In the meantime, threats of impeachment viewed as partisan and plainly implausible only further undermine congressional authority—and sow the seeds of angrier, meaner politics.

We say this with a full appreciation that some of us were involved in the impeachments of President Trump. From our perspective, those impeachments were well justified, urgent, and effective in important respects. They enjoyed a historic degree of bipartisan support. They invoked the core purposes of presidential impeachment. They addressed a clear, continuing threat to the very foundation of our constitutional order. And no alternative would have been sufficient. When a president abuses his power to extort a vulnerable foreign ally to interfere in our elections for his benefit—or incites violence at the Capitol as part of a broader scheme to thwart the peaceful transfer of power—impeachment is an appropriate, necessary response. In both cases, our national security and democratic legitimacy were squarely at stake.

The fact that President Trump met the high bar for impeachment twice during his four-year term reflects (we hope) only an extreme historical anomaly. The lesson of that experience should not be the routinization of impeachment in a game of partisan tit-for-tat. Nor is it right

¹⁰¹ Tribe & Matz, *The Power of Impeachment*, 81.

¹⁰² *See id.* at 81-85.

¹⁰³ Quoted in *id.* at 85.

¹⁰⁴ *See* “The Danger of Constant Impeachment Talk,” Wall Street Journal, [May 4, 2018](#) and Tribe & Matz, *The Power of Impeachment* at 151-242.

¹⁰⁵ “The Danger of Constant Impeachment Talk,” Wall Street Journal, [May 4, 2018](#).

to conclude that Congress should impeach whenever it feels strongly about an issue (or a president). It would be equally wrong to conclude that supporters of the Trump impeachments are preempted from warning against the dangers of impeachment—especially when some of those supporters wrote passionately on this subject during the Trump years. Instead, as we all move forward, the question in any impeachment is whether the constitutional standard is met and, if it is, whether impeachment is truly the right path on which to set our national project.

IV. ASSESSING A BIDEN IMPEACHMENT INQUIRY

Applying the ten criteria set forth above to the House Republicans' inquiry establishes that it is manifestly unjustified. Indeed, it is not a close question, for several reasons.

Most fundamentally, the evidentiary support for an impeachment inquiry is utterly lacking. In characterizing President Biden as corrupt, his critics have seriously misread or mischaracterized the publicly available evidence. There is simply no evidence—let alone the sort of clear, compelling evidence essential an impeachment—that President Biden could be thought culpable for any dealings on the part of his family. There is no evidence that President Biden personally profited from such transactions. Nor is there evidence that he leveraged his official position to Hunter Biden's benefit. With respect to the Ukraine matter, that ground has been plowed *many* times over; there is overwhelming reason to comprehend then-Vice President Biden's advocacy as the proper pursuit of official United States foreign policy. With respect to claims of obstruction, the Biden Administration has made voluminous productions to Congress and is nowhere close to impeachment territory (particularly as that concept was defined by Republicans during the Trump impeachment). And with respect to interference in the Hunter Biden investigation, virtually all public evidence is emphatically to the contrary.

For that reason alone, this impeachment inquiry is ill-conceived. But there is more, as confirmed by a review of the constitutional and historical criteria for impeachment. For many reasons, even if the allegations against President Biden were given some measure of credence beyond what the evidence now supports, they still would not involve impeachable conduct.

First, the alleged conduct is hardly a “great and dangerous offense” against the United States. One of the core requirements of impeachment is seriousness: the president's conduct must strike at the foundations of our constitutional system. This is not that. Even taking the House Republicans' claims at face value, they do not suggest clear peril to the Republic.

Second, and relatedly, there is no credible reason to believe that allowing President Biden to serve out the remainder of his term poses a grievous risk to the Nation. Whatever policy-based, political, or personal opinions one might hold about him, the specific alleged conduct does not suggest that his continuance in office is somehow an extraordinary threat.

Third, even viewed in a light sympathetic to the House Republicans, most of these allegations do not involve behavior plainly wrong to any reasonable person. That is certainly true of the positions taken by President Biden concerning the House document requests. It is also true of his advocacy in Ukraine, which reflected official United States foreign policy in the region. And with respect to his family's business dealings, President Biden appears to have

drawn a reasonably defensible line between the obligations of duty of office and family—a line that ensured his official position was not improperly drawn into any personal or familial affairs.

Fourth, the House has yet to offer any credible evidence of willful, intentional corrupt conduct in office. As explained above, negligence and poor judgment are not enough: the impeachment power is concerned with nefarious, bad faith wrongdoing. The case made by House Republicans falls decisively short of that crucial showing—a fact that independently explains why attempts to describe his behavior as impeachable “Bribery” are meritless.

Fifth, particularly with respect to the first two sets of allegations (concerning his family’s business dealings), the House Republicans have failed to define their charges or even their suspicions with specificity. To the contrary, they have offered an ever-shifting narrative, in which pieces of evidence are seized upon, debunked, and then shuffled aside in favor of some new and explosive allegation (which is itself debunked in short order). This imprecision has led the House Republicans to attempt a fishing expedition at the White House—which has understandably prompted resistance, and which renders the whole affair quite dubious.

Sixth, significant parts of the alleged misconduct (including most of the financial and business matters) occurred while President Biden did not hold federal office. That conduct, moreover, does not fall within either of the exceptions we have described: it was not closely connected to his campaign, and it does not suggest he is fundamentally unviable as a political leader. It is therefore out of bounds as a sufficient basis for impeachment. Separately, the Ukraine allegations implicate a novel question: whether conduct from a distinct prior period of federal officeholding could be relevant to a presidential impeachment. Reasonable minds may differ on that point. But even assuming it can be relevant, evidence from so long ago—concerning an issue that has since been thoroughly ventilated—is obviously weaker as a basis for impeachment now. That is particularly true given the absence of any claim that there is a continuing pattern of such purported personal diversions in President Biden’s handling of foreign affairs. For these reasons, the pre-presidency nature of the issue indeed matters.

Seventh, although criminality is not a prerequisite for impeachment, evidence of a serious crime can be relevant—and the House Republicans have yet to adduce such proof, apart from highly generalized assertions of criminality (which offer more heat than light).

Eighth, it would be an understatement to describe this impeachment inquiry as partisan. Most obviously, it is backed only by one party, which controls a wafer-thin majority of the House chamber. Some members of that party have pressed their position in reliance on arguments diametrically opposed to positions they took during the Trump impeachments. That includes Speaker Mike Johnson, who has flip-flopped on the circumstances under which he believes that an impeachment is appropriate.¹⁰⁶ Others have admitted their hope that this impeachment boosts their preferred candidates’ odds in the 2024 election. For instance, Rep.

¹⁰⁶ See Andrew Kaczynski and Em Steck, House Speaker Mike Johnson pursues impeachment strategy he once said could cause ‘irreparable damage’ to the country, CNN ([Dec. 11, 2023](#)).

Troy Nehls (R-Tx) reportedly stated that “he wants to give Trump ‘a little bit of ammo to fire back’ and say Biden has also been impeached.”¹⁰⁷ In a similar vein, Rep. Marjorie Taylor Greene (R-Ga) reportedly declared, “We are going to drag Biden and everyone who covered up his crimes through the headlines day after day, month after month, and prove to the country the entire Democrat party is corrupt and can’t be trusted.”¹⁰⁸ Still other Republicans have characterized this impeachment inquiry as achieving partisan vengeance for Trump. Most notably, Rep. Comer indicated that the “GOP is targeting Biden as retaliation for Trump impeachments.”¹⁰⁹ In all these respects, the impeachment is quite partisan in both substance and appearance.

Ninth, the House Republicans have overtly treated impeachment as a matter of first rather than final resort. This is precisely the sort of inter-branch disagreement that could be appropriately resolved through more ordinary checks and balances. Nothing about it suggests an urgent need to remove the president from office to save the Republic. But rather than seek alternatives or off-ramps, the House Republicans have rushed toward impeachment, as some of their most prominent members urged from the earliest days of these investigations.

Finally, the House Republicans have approached this impeachment like an extension of the presidential election campaign, rather than as a weighty act of political governance. This view of impeachment as yet another vehicle for partisan spectacle, hyper-partisanship, and personal attacks on the President Biden undermines the seriousness of the episode.

Pulling all these points together, the House Republicans’ impeachment resolution is plainly improper. As a matter of evidence and law, it is deficient many times over. And the process has been conducted in an overtly partisan, results-oriented, unserious manner.

V. CONCLUSION: THERE IS NO BASIS FOR A BIDEN IMPEACHMENT INQUIRY

As a political and constitutional matter, commencing an impeachment inquiry is a decision of the highest order. It sends an unmistakable signal that the machinery of impeachment is being wheeled into position. For that reason, formalizing an impeachment inquiry is a momentous step that requires weighty justification. If an inquiry starts as a partisan errand—or appears to be a façade for crude political motives—it casts the entire impeachment process straight into illegitimacy.

Put simply, an impeachment inquiry should not be used as part of a scheme for partisan vengeance or electoral advantage. Nor should it seek to enact a political vendetta against the president. As one of us has written, “when only Republicans (or only Democrats)

¹⁰⁷ See Ken Tran, Are House Republicans getting closer to impeaching Joe Biden? GOP leaders eye significant escalation, USA Today ([Dec. 4, 2023](#)).

¹⁰⁸ See Bevan Hurley, Marjorie Taylor Greene admits aim of Biden impeachment is to ensure Democrats ‘lose big’ at next election, The Independent ([Sept 15 2023](#)).

¹⁰⁹ See Sarah K. Burris & Matt Laslo, James Comer suggests GOP is targeting Biden as retaliation for Trump impeachments, Raw Story ([July 20, 2023](#)).

view the president’s conduct as justifying removal, there’s a strong risk that policy disagreements or partisan animus have overtaken the proper measure of congressional impartiality.”¹¹⁰ While an inquiry does not require overwhelming bipartisan support—and, as a formal matter, requires only a simple majority of the House—some bipartisan backing is crucial for it to have any credibility.

Because commencing an impeachment inquiry is an extraordinary step, it requires extraordinary justification. The House should not proceed with even an inquiry unless it has received weighty, credible evidence of presidential conduct that would constitute “high Crimes and Misdemeanors” if proven true. Where the evidence is lacking, or does not forcefully point to conduct satisfying the high bar for impeachment, an inquiry is not justified. A strictly partisan split over whether that standard is met strongly indicates that it is not.

At bottom, a vote by the House to commence an “impeachment inquiry” is no minor event. It is a milestone moment in our constitutional history—one that will invite continued political and legal controversy, particularly if the vote is flagrantly partisan and (in that respect) facially dubious.

For all these independent reasons, there is no basis for an impeachment inquiry into President Biden. The evidence isn’t there. Neither is the law. And the House Republicans’ conduct of this whole enterprise is at odds with centuries of impeachment law, policy, and practice. Their misuse of power has led them to run roughshod over commitments to nonpartisanship, impartiality, seriousness of purpose, and the avoidance of impeachment when less destabilizing alternative responses would address any genuine concerns. The impeachment inquiry as to President Biden is unfounded and should meet a swift end.

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¹¹⁰ Tribe & Matz, *The Power of Impeachment*, 140.