

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H. RES. 863
OFFERED BY MR. IVEY OF MARYLAND**

Page 2, line 2, strike “In his” and all that follows through page 20, line 11, and insert the following:

1 There is no evidence that constitutes grounds for the
2 impeachment of Secretary Alejandro N. Mayorkas based
3 on the constitutional standard for impeachment.

4 At the first impeachment hearing before this Com-
5 mittee on January 10, 2024, constitutional law professor
6 Frank O. Bowman, III, of the University of Missouri
7 School of Law, testified that “the conclusion is universal
8 among those who have studied this question—[and] has
9 been so since the time of the founding—that policy dif-
10 ferences, no matter how severe, no matter how heated, are
11 simply not grounds for impeachment. [. . .] [A] Cabinet
12 secretary—like the President—is not impeachable unless
13 he’s proven to have committed treason, bribery, or other
14 high crimes and misdemeanors. There’s no suggestion that
15 I’m aware of that Secretary Mayorkas has committed ei-
16 ther treason or bribery”.

17 Professor Bowman further elaborated that he had
18 “seen lots of reports about arguments about policy . . .

1 nothing that rises [to] the level of an impeachable of-
2 fense”.

3 Professor Bowman further explained to the Com-
4 mittee that “it’s critical to note that if we could impeach
5 Cabinet officers, or Presidents for that matter, anytime
6 there are legal disputes about the application of the law
7 or their exercise of discretion, then every President and
8 every Cabinet officer would be impeachable”.

9 At the second and final impeachment hearing before
10 this Committee on January 18, 2024, constitutional law
11 expert and Princeton University law professor Deborah
12 Pearlstein testified that “[p]olicy differences—and I agree
13 with my colleague at the last hearing—no matter how pro-
14 found are exactly not what impeachment was meant to be
15 for. They are policies that the Secretary has pursued
16 under the current President of the United States, who ap-
17 pointed the Secretary and was elected to pursue those poli-
18 cies.”.

19 The solution, Professor Pearlstein testified, lies in
20 Congress’s legislative power, not its impeachment power:
21 “[T]he last significant piece of comprehensive immigration
22 legislation to pass Congress with bipartisan support was
23 in 1986. The action under consideration here, impeach-
24 ment, isn’t a tool of policy change—particularly the im-
25 peachment of a single cabinet official who can be replaced

1 by another official given precisely the same role, [which]
2 will have no effect on the heartbreaking problems we have
3 heard described.”.

4 Professor Pearlstein further testified that her
5 “knowledge—just based on Supreme Court cases . . . that
6 have arisen surrounding executive actions over border poli-
7 cies and reading the history there—suggests that these
8 problems have existed through five administrations over
9 decades, largely because Congress has enacted contradic-
10 tory laws that are impossible to comply with, and multiple
11 administrations have struggled to resolve that contradic-
12 tion”.

