

**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 The Committee’s failure to satisfy the constitutional
5 standard, and the complete absence of evidence that could
6 justify impeachment, is underscored by pre-eminent con-
7 stitutional law scholar, Harvard Professor Lawrence Tribe
8 and 24 other constitutional law scholars who wrote in a
9 January 10, 2024, letter: “Although House Republicans
10 have offered various justifications for an impeachment, the
11 underlying basis appears to be their view that Secretary
12 Mayorkas’s policy decisions have degraded border security
13 and involved objectionable uses of enforcement discretion.
14 House Republicans have also publicly asserted that Sec-
15 retary Mayorkas testified falsely in stating that he is en-
16 forcing existing federal law and that the southern border
17 is closed and secure. When the Framers designed the Con-
18 stitution’s impeachment provisions, they made a conscious

1 choice not to allow impeachment for mere ‘maladministra-
2 tion’—in other words, for incompetence, poor judgment,
3 or bad policy. Instead, they provided that impeachment
4 could be justified only by truly extraordinary misconduct:
5 ‘Treason, Bribery, or other high Crimes and Mis-
6 demeanors.’ U.S. Const., art. II, § 4. Thus, as Charles
7 L. Black, Jr. noted in his influential handbook, impeach-
8 ment is not permitted for ‘mere inefficient administration,
9 or administration that [does] not accord with Congress’s
10 view of good policy.’ Simply put, the Constitution forbids
11 impeachment based on policy disagreements between the
12 House and the Executive Branch, no matter how intense
13 or high stakes those differences of opinion. Yet that is ex-
14 actly what House Republicans appear poised to undertake.
15 The charges they have publicly described come nowhere
16 close to meeting the constitutional threshold for impeach-
17 ment.”.

