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How the House could impeach Trump for obstructing its probe

By **Amber Phillips**

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It's looking as if House Democrats' impeachment inquiry will focus less on the Ukrainian allegations and more on the fact that President Trump's administration won't let them investigate what happened. The impeachment inquiry is having a hard time getting central players to even talk, and on Tuesday, the White House said it wouldn't cooperate with the impeachment inquiry in any way.

Democrats are saying all this amounts to obstruction and are hinting strongly at what the House can do to get around this: impeach Trump for blocking the investigation.

“The failure to produce this witness, the failure to produce these documents, we consider yet additionally strong evidence of obstruction of the constitutional functions of Congress, a coequal branch of government,” said House Intelligence Committee Chairman Adam B. Schiff (D-Calif.), who has become the face of the investigation, on Tuesday. He was talking about diplomat Gordon Sondland, who was blocked by the Trump administration from talking to the House hours before he was set to testify about his role in asking Ukraine to investigate former vice president Joe Biden and his son Hunter.

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But Democrats have signaled this warning that they're considering obstruction as a reason to impeach Trump last week, after Secretary of State Mike Pompeo stopped State Department officials from testifying. One did — former special envoy to Ukraine Kurt Volker — but only after he resigned from his post.

By the Constitution's standards, impeaching a president for not participating on an impeachment inquiry is A-okay. Congress gets to decide what "high crimes and misdemeanors" in the impeachment clause are. If it decides blocking Congress from its oversight duties meets that requirement, then so be it. A similar article of impeachment was written up against President Richard M. Nixon and voted out of the House Judiciary Committee. In that article, the Judiciary Committee cited four times that the Nixon administration "willfully disobeyed" subpoenas:

ARTICLE III, DEFIANCE OF SUBPOENAS.

In his conduct of the office of President of the United States, Richard M. Nixon, contrary to his oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has failed without lawful cause or excuse to produce papers and things as directed by duly authorized subpoenas issued by the Committee on the Judiciary of the House of Representatives on April 11, 1974, May 15, 1974, May 30, 1974, and June 24, 1974, and willfully disobeyed such subpoenas

So Trump's impeachment could still continue if his administration won't provide documents or witnesses to the broader inquiry.

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How it plays politically is another question. Democrats would be at risk of pursuing impeachment of a president without a comprehensive investigation of what he did. They won't have the benefit of making their case with public hearings, or by obtaining and releasing more private diplomatic texts. (Schiff said Sondland has related private texts or emails that the State Department may also block from coming to light.)

But maybe Democrats don't need to stretch to make their case. A new Washington Post-Schar School poll shows that a majority of Americans (58 percent) support an impeachment inquiry with the facts that are already out there. The country is still split on whether to impeach Trump, with 49 percent supporting it. But there is growing Republican support for impeachment: A notable 18 percent of Republicans support removing Trump from office. That's not nothing.

On Capitol Hill, there are early signs that pursuing an obstruction charge would be received the same way as impeachment for other stuff, like abuse of power. Rep. Susan Wild (D-Pa.) is a newly elected member of Congress who flipped a district Trump won. She, along with other Democratic moderates, reluctantly supported an impeachment inquiry when the Trump administration wouldn't hand over the whistleblower complaint that started all this. It was the act of not cooperating that convinced her an inquiry was necessary.

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And in front of reporters last week in her district in Allentown, Pa., Wild said any efforts to withhold documents would be considered an obstruction of the impeachment probe — and perhaps an impeachable offense in its own right. “If the administration stonewalls us and refuses to produce things, I would consider that to be an obstruction of justice, and, yes, I believe that would constitute additional grounds” for impeachment, she said.

On the other side of the aisle, there are a handful of House Republicans who have expressed some kind of endorsement of House Democrats' investigations into the whistleblower complaint. They don't support impeaching Trump, but they do seem amenable to the argument that Congress needs to stand up for its right to oversee the executive branch.

“Quite frankly, if you don’t believe in the processes of your own institution, what are you doing there?” Rep. Mark Amodei (R-Nev.) told the New York Times.

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This isn’t an ideal situation for House Democrats. House Speaker Nancy Pelosi (D-Calif.) supported the impeachment inquiry in part because the allegations Trump pressured a foreign country to help his reelection are easy to understand. She urged Democratic investigators to focus just on Ukraine. Now, they may have to shift to a broader, somewhat more esoteric focus: Congress’s role as a separate and coequal branch of government. But it can be done.

This post has been updated.

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