

Statement for the Record of David B. Rivkin, Jr.

U.S. House Committee on the Judiciary

The Impeachment Inquiry into President Donald J. Trump: Constitutional Grounds for
Presidential Impeachment

December 4, 2019

President Trump has not committed an impeachable offense. His request to Ukraine for an investigation of potentially corrupt behavior by Ukrainian government officials and possible 2016 election interference by Ukrainians, is entirely within his constitutional authority as the head of the Executive Branch. Thus, this request is presumptively constitutional and cannot constitute an impeachable “high-crime or misdemeanor”.

Calling President Trump’s conduct vis-à-vis Ukraine bribery, abuse of office or an effort to seek foreign intervention in U.S. elections is nothing more than partisan rhetoric. Even if it were theoretically possible to recharacterize President Trump’s conduct of U.S. foreign policy vis-à-vis Ukraine as bribery or abuse of office, and I do not believe this to be the case, this would require clear and compelling evidence that the President undertook this action entirely and exclusively for the purposes of obtaining a personal benefit and that it was not in any way connected to what he believed to be in the U.S. national interest. The House Democrats have not only failed to put forward any such evidence regarding President Trump’s intentions, but they have chosen to avoid any judicial determination that could have helped them obtain testimony that would have shed definitive light on President Trump’s intentions from his senior White House advisors.

The claim that President Trump may have been able to obtain some political advantage from the Ukrainian investigation is constitutionally irrelevant. Virtually every action, whether in the foreign policy or domestic policy areas, by a politician in a democratic country involves some political consequences. Under Democrat legal theory, every President would be committing an impeachable offense on a daily basis. This cannot be true and this approach was also definitively rejected by the Framers, who rejected broader constitutional language that would have allowed impeachment for “maladministration” and chose to give the impeachment clause a more cabined scope, by opting for language that allowed impeachment only upon “conviction of, treason, bribery, or other high crimes and misdemeanors.”

The House Democrat-driven impeachment is the most partisan and procedurally flawed impeachment in U.S. history. They have made no case against President Trump. As such, it represents a gross abuse of impeachment power and threatens to destroy the Constitution’s separation-of-powers architecture. With this in mind, the Senate should not only acquit President Trump, but it must chastise the House’s entire impeachment exercise as being extra-constitutional.

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