

December 13, 2019

House Democrats took a major step toward the impeachment of President Trump this week as the House Judiciary Committee formally introduced, and ultimately adopted, articles of impeachment. The final public hearing on impeachment in the House took place on Monday morning, where lawyers for the House Judiciary and Intelligence Committees presented evidence for and against impeachment. On Tuesday, House Judiciary Committee Chairman Jerry Nadler announced two articles of impeachment—abuse of power and obstruction of Congress. The Judiciary Committee began its debate of the articles on Wednesday night, which continued through Thursday with a surprise postponement of a vote Thursday night, and voted the articles out of committee on a party line vote this morning without any major markups. Speaker Nancy Pelosi must now call an impeachment vote on the House floor, which is likely to take place before the House recesses for the holiday next week.

The Constitution provides the House of Representatives the power to impeach a president for “treason, bribery, or other high crimes and misdemeanors”. There was much speculation leading up to Chairman Nadler’s announcement about what the articles of impeachment would entail. In particular, some in the Democratic caucus wanted the articles to include some of former Special Counsel Robert Mueller’s findings. Ultimately, however, Chairman Nadler decided to limit the articles to the President’s actions detailed in the August 12, 2019, whistleblower complaint and his subsequent actions in response to the congressional impeachment inquiry.

Article I of the House “RESOLUTION Impeaching Donald John Trump, President of the United States, for high crimes and misdemeanors” details an abuse of power by the President by using his office to solicit Ukrainian interference into his re-election. Specifically, House Democrats believe that President Trump abused his office by corruptly soliciting the Government of Ukraine to publicly announce an investigation into former Vice President Joe Biden and a theory that Ukraine, not Russia, interfered in the 2016 presidential election, and conditioning the release of congressionally-appropriated military aid on such an announcement.

Article II details an obstruction of Congress by the President by directing an “unprecedented, categorical, and indiscriminate” defiance of the subpoenas issued by the House during its impeachment inquiry. Specifically, House Democrats believe that President Trump interfered with Congress’s “sole Power of Impeachment” prescribed in the Constitution by preventing executive branch agencies, officers, and officials, including acting White House Chief of Staff Mick Mulvaney and acting Office of Management and Budget Director Russell Vought, from complying with congressional subpoenas relating to the impeachment inquiry.

Republicans on the Judiciary Committee, for their part, were critical of the substance of the articles—questioning whether either represents an impeachable offense—as well as the manner in which their Democratic colleagues on the committee prevented them from holding their own, minority hearing. Chief among their substantive criticisms was the contention that neither article represents a defined crime that the President committed, but instead simply represents differences in opinion over policy, which could set a dangerous precedent for impeaching future presidents over such policy disputes. They also warned about the precedent that the majority on the committee set by preventing

the minority from conducting its own hearing where it could call witnesses. Republicans also took issue with the format of the Monday Judiciary Committee hearing. Devoid of fact witnesses, staffers presented evidence regarding impeachment and also questioned opposing staff, which is highly unusual for congressional hearings.

The House can consider and vote on H. Res 755, the articles of impeachment resolution, as early as next Tuesday, when the House is back in session. Significant debate on the resolution is expected, and there will likely be separate votes for each article. If the impeachment vote passes, the House will then vote to appoint managers to conduct the trial in the Senate. We will provide details about the Senate procedures in a future update, but should note that it is being widely reported that Senate Republicans are currently assessing their options to swiftly acquit the President or at the very least severely limit the scope and duration of the trial

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