

Trump impeachment inquiry takes shape with focus on Ukraine, Pompeo, Giuliani

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Last week we provided an update outlining the formal process set forth by the Intelligence Community Whistleblower Protection Act of 1998 (ICWPA) for handling the whistleblower complaint that triggered House Speaker Nancy Pelosi on September 24 to announce a formal impeachment inquiry of President Donald J. Trump. Now that the impeachment inquiry is moving forward, we provide this update regarding the procedures and possible scenarios for what happens next.

Speaker Pelosi launched the impeachment process last week by charging six House committees—Intelligence, Oversight, Financial Services, Foreign Affairs, Ways and Means and Judiciary—to initiate or continue investigations into President Trump and his administration in regard to the whistleblower complaint regarding the President’s conversation with Ukrainian President Volodymyr Zelensky. Speaker Pelosi’s move departed from impeachment precedent in that she did not introduce a resolution to authorize an official impeachment investigation, a move that has been criticized by House Republicans. Minority Leader Kevin McCarthy has since twice introduced a resolution disapproving of the move. His resolution has been tabled both times, but the criticism is likely to persist as long as the inquiry moves forward without the full House getting a chance to vote to initiate a formal impeachment process.

While the Judiciary Committee has jurisdiction over recommending impeachment to the full House of Representatives in conjunction with the filing of formal articles of impeachment, Speaker Pelosi has made it clear that she wants the impeachment inquiry to focus narrowly on the allegations set forth in the whistleblower complaint. Consequently, she has asked the House Intelligence Committee, led by Chairman Adam Schiff (D-CA), to take the lead in investigating the specific allegations in the whistleblower complaint, with the other named House committees providing support on topics or executive branch agencies relating to the whistleblower complaint that are within their respective jurisdictions. It would then be the responsibility of Judiciary Committee Chairman Jerry Nadler (D-NY) to assemble the evidence of potentially impeachable offenses submitted by the other committees and to draft formal articles of impeachment. The Judiciary Committee would then take the step of considering and approving the articles of impeachment to be submitted to the full House for a vote. All the named committees have the authority to subpoena key witnesses and documents from the administration and elsewhere. It is likely that there will be significant pushback from the administration on responding or honoring deposition requests. There have been reports that Speaker Pelosi would like the impeachment investigation and House action to be concluded within a fairly expedited timeframe, with a possible House vote occurring prior to the Thanksgiving congressional recess.

It remains to be seen whether the House Democratic leadership will limit the articles of impeachment to just the allegations in the whistleblower complaint, or whether the Democratic Caucus will encourage the Judiciary Committee to include other purported offenses that they find to be impeachable. If the Judiciary Committee recommends impeachment and submits formal articles, the House will conduct a floor vote. A simple majority is required for impeachment, which would likely be attainable, given the fact that the Democrats hold a 235-200 majority. Assuming a majority impeachment vote in favor of at least one article, such article would be forwarded to the Senate where an impeachment trial would occur. Although there is some past precedent for Senate dismissal of

impeachment articles or refusal to hold a trial on their merits, Senate Majority Leader McConnell has said that he would be compelled by current Senate rules to conduct an impeachment trial.

The Constitution requires an affirmative vote of two-thirds of the Senate to secure a conviction of impeachment, an outcome that has occurred eight times against federal judges, but never against a US President. The Senate fell one vote short of convicting President Andrew Johnson of impeachment in 1868, and the conviction of President Bill Clinton was defeated by a 55 to 45 vote. Chief Justice Roberts would preside over the trial, with the Senators taking the role of jurors. The President would have the right to be represented during the Senate trial by an attorney. An impeachment conviction in the Senate recommending removal from office would mean that Vice President Pence would become the next Commander-in-Chief. An acquittal by the Senate would likely energize the President's supporters in advance of a vote on his potential reelection. Either way, the entire process is inherently fraught with division.

As part of this series, the Dentons Public Policy Group will provide a weekly update on the subpoenas issued during the impeachment inquiry. Within the past week, Democrats have moved quickly to subpoena individuals involved in the phone call between President Trump and Ukrainian President Zelensky. Last Friday, Secretary of State Mike Pompeo was subpoenaed by three House committee chairmen—Eliot Engel (Foreign Affairs), Adam Schiff (Intelligence) and Elijah Cummings (Oversight)—over his failure to submit documents relating to Ukraine. Secretary Pompeo has made it clear he does not plan on complying with subpoenas for documents and depositions. The committees requested that Secretary Pompeo allow the following individuals to conduct depositions: former US Ambassador to Ukraine Marie Yovanovitch; former envoy to Ukraine Kurt Volker; Deputy Assistant Secretary George Kent; US Ambassador to the European Union Gordon Sondland; and State Department Counselor T. Ulrich Brechbuhl. As of today, Kurt Volker will be deposed this Friday, October 4, and Marie Yovanovitch will be deposed on October 11.

Additionally, Rudy Giuliani was subpoenaed by the House Intelligence, Foreign Affairs and Oversight Committees on September 30. Three associates of Giuliani's were also subpoenaed—Lev Parnas, Igor Fruman and Semyon Kislin.

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