



January 9, 2020

The Honorable John G. Roberts Jr.
Chief Justice
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C., 20543

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C., 20510

The Honorable Charles E. Schumer
Minority Leader
United States Senate
Washington, D.C., 20510

Chief Justice Roberts and Honorable Members of the U.S. Senate,

The Constitution gives you the solemn responsibility of conducting an impeachment trial of President Donald J. Trump. The United States Senate has the “sole Power to try all Impeachments.” Article I, Sec. 3. The Constitution provides that the Chief Justice shall preside over the impeachment trial of a President. *Id.* You will soon take an oath in which you swear or affirm to “do impartial justice according to the constitution and laws.”¹ We write to respectfully request that you ensure that the Senate has access to the evidence it requires to reach an informed verdict in order to help ensure a fair and credible impeachment trial in the Senate.

As you are no doubt aware, the Senate serves dual capacities in an impeachment trial: the Senate is the judge and the jury. Those roles are related. As a jury, the Senate has the ultimate responsibility of determining whether the President committed treason, bribery, or high crimes and misdemeanors and whether those impeachable acts require the removal of the president (and potentially also his disqualification from future office). As a judge, the Senate has the responsibility of ensuring that the body obtains and hears the evidence it needs to reach a verdict and that the trial serves to elucidate the answers to these questions in a fair, impartial manner. The Senate’s ability to do impartial justice when it acts as a jury depends in part on its ability to manage the trial as a judge.

The Senate’s first responsibility is to ensure that it obtains the evidence it needs to do impartial justice. The Senate has completed 15 impeachment trials in its history. In every one of those

¹ Rule of Procedure and Practice in the Senate When Sitting on Impeachment Trials, at 230, *available at* <https://www.govinfo.gov/content/pkg/SMAN-113/pdf/SMAN-113-pg223.pdf>.

trials, the Senate sought and received sworn testimony from fact witnesses.² This includes both prior occasions in which the Senate has conducted an impeachment trial of the President. The Senate heard from three witnesses in the trial of President Clinton and from 41 witnesses in the trial of President Andrew Johnson.³

That unambiguous body of precedent should be the lodestar of your preparations for the impeachment trial of President Trump. Unless an impeachment trial of the President is mooted by his resignation, the Senate should seek and obtain the relevant evidence it needs to review as jurors. This responsibility is heightened where, as here, relevant witnesses have refused to comply with subpoenas that were duly issued by the House of Representatives and the administration has withheld documentary evidence that is facially relevant to the questions the Senate is considering.⁴ The Senate trial will be the last chance to hear withheld testimony and obtain withheld documents prior to reaching a verdict.

A full and fair trial in which the Senate has access to the testimony and documents it needs to fulfil its constitutional duty and in which each side has an opportunity to present relevant evidence is not a self-fulfilling prophecy. To obtain witness testimony as the Senate has done in every impeachment trial it has completed to date, the Senate will almost certainly have to issue subpoenas. We respectfully request that you, the presiding officer and members of the Senate, be prepared to invoke those precedents so that the Senate can fulfill its constitutional obligation to conduct a Senate trial and its responsibility to do impartial justice.

Sincerely,

Citizens for Responsibility and Ethics in Washington

Protect Democracy

² Citizens for Responsibility and Ethics in Washington, *Impeachment Witnesses: An Analysis* (2020) available at <https://www.citizensforethics.org/impeachment-witness-testimony/>. Prior to the impeachment of President Donald J. Trump, the U.S. House of Representatives impeached a total of 19 individuals. Of the four individuals who did not receive a full impeachment trial in the Senate, three (Judge Mark H. Delahay, Judge George W. English, and Judge Samuel B. Kent) resigned before a trial could be completed. *Id.* In the case of the fourth, Senator William Blount, the Senate dismissed articles of impeachment against Blount, a former Senator who has been expelled by the Senate, because it determined that he was not a “civil officer of the United States within the meaning of the Constitution of the United States.” Hinds' Precedents, Vol. 3, ch. 70, at 661-62 (1907), available at <https://www.govinfo.gov/content/pkg/GPO-HPREC-HINDS-V3/pdf/GPO-HPREC-HINDS-V3-19.pdf#page=18>.

³ The Impeachment of Andrew Johnson (1868), President of the United States, The United States Senate, available at https://www.senate.gov/artandhistory/history/common/briefing/Impeachment_Johnson.htm.

⁴ See Report of the House Judiciary Committee on the Impeachment of Donald J. Trump, President of the United States, Dec. 13, 2019, at 154-58, available at <https://docs.house.gov/billsthisweek/20191216/CRPT-116hrpt346.pdf>.