

Opening Statement of Professor Pamela S. Karlan

Mr. Chairman and members of the Committee:

Thank you for the opportunity to testify. I am the Kenneth and Harle Montgomery Professor of Public Interest Law and the Co-Director of the Supreme Court Litigation Clinic at Stanford Law School. Much of my professional life has been devoted to the law of democracy. Before becoming a law professor, I litigated voting rights cases as assistant counsel for the NAACP Legal Defense and Educational Fund. I am the co-author of several leading casebooks, among them Constitutional Law, now in its eighth edition, and The Law of Democracy: Legal Structure of the Political Process, now in its fifth edition. I have served as a Commissioner on the California Fair Political Practices Commission and as a Deputy Assistant Attorney General at the U.S. Department of Justice, where I was responsible, among other things, for reviewing the work of the Voting Section.

Twice, I have had the privilege of representing the bipartisan leadership of this Committee in voting rights cases before the Supreme Court—once when it was under the leadership of Chairman Sensenbrenner and once when it was under the leadership of Chairman Conyers. It was a great honor for me because of this Committee's key role over the past fifty years in ensuring American citizens have the ability to vote in free and fair elections. Today, you are being asked to consider whether protecting those elections requires impeaching a President. This is an awesome responsibility. But everything I know about our Constitution and its values, and my review of the evidentiary record, tells me that when President Trump invited—indeed, demanded—foreign involvement in our upcoming election, he struck at the very heart of what makes this country the “republic” to

which we pledge allegiance. That demand constituted an abuse of power. Indeed, as I want to explain in my testimony, drawing a foreign government into our election process is an especially serious abuse of power because it undermines democracy itself.

Our Constitution begins with the words “We the People” for a reason. Our government, in James Madison’s words, “derives all its powers directly or indirectly from the great body of the people.”¹ And the way it derives this power is through elections. Elections matter—both to the legitimacy of our government and to all our individual freedoms because, as the Supreme Court explained more than a century ago, voting is “preservative of all rights.”²

So it is hardly surprising that the Constitution is marbled with provisions governing elections and guaranteeing governmental accountability. Indeed, a majority of the constitutional amendments we have ratified since the end of the Civil War deal with voting and terms for elective office.

Among the most important constitutional provisions is a guarantee of periodic elections for President—one every four years.³ America has kept that promise for more than two centuries. It has done so even during wartime. For example, we invented the idea of absentee ballots so that Union troops who supported President Lincoln could stay in the field during the election of 1864. And since then, countless other Americans have fought and died to protect our right to vote.

¹ Federalist No. 39.

² *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

³ U.S. Const. art. II, § 1, cl. 1.

But the Framers of our Constitution realized that elections alone could not guarantee that the United States would remain a republic. One of the key reasons for including an impeachment power was the risk that unscrupulous officials might try to rig the election process. At the Constitutional Convention, William Davie warned that unless the Constitution contained an impeachment provision, a president might “spare no efforts or means whatever to get himself re-elected.”⁴ And George Mason insisted that a president who “procured his appointment in the first instance” through improper and corrupt acts should not “escape punishment, by repeating his guilt.”⁵ Mason was responsible for adding “high Crimes and Misdemeanors” to the list of impeachable offenses.⁶ So we know that that list was designed to reach a president who acts to subvert an election—whether it is the election that brought him into office or an upcoming election where he seeks a second term.

Moreover, the Founding Generation, like every generation of Americans since, was especially concerned to protect our government and our democratic process from outside interference. For example, John Adams expressed concern with the very idea of an elected President, writing to Thomas Jefferson that “You are apprehensive of foreign Interference, Intrigue, Influence.—So am I—But, as often as elections happen, the danger of foreign Influence recurs.”⁷ And in his Farewell Address, President Washington warned that

⁴ 2 Records of the Federal Convention of 1787, p. 64 (Max Farrand ed. 1911).

⁵ *Id.* at 65.

⁶ *Id.* at 550.

⁷ Letter from John Adams to Thomas Jefferson (Dec. 6, 1787), available at <https://tinyurl.com/founders-archive-gov>.

“history and experience prove that foreign influence is one of the most baneful foes of republican government.”⁸ The very idea that a President might seek the aid of a foreign government in his reelection campaign would have horrified them. But based on the evidentiary record, that is what President Trump has done.

The list of impeachable offenses the Framers included in the Constitution shows that the essence of an impeachable offense is a president’s decision to sacrifice the national interest for his own private ends.⁹ “Treason” lay in an individual’s giving aid to foreign enemies—that is, putting a foreign adversary’s interests above the United States’. “Bribery” occurred when an official solicited, received, or offered a personal favor or benefit to influence official action—that is, putting his private welfare above the national interest. And “high Crimes and Misdemeanors” captured the other ways in which a high official might, as Justice Joseph Story explained, “disregard . . . public interests, in the discharge of the duties of political office.”¹⁰

⁸ Washington’s Farewell Address (1796), available at https://avalon.law.yale.edu/18th_century/washing.asp. More recently, then-Judge Brett Kavanaugh pointed to this “straightforward principle: It is fundamental to the definition of our national political community that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government. It follows, therefore, that the United States has a compelling interest . . . in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process.” *Bluman v. Fed. Election Comm’n*, 800 F. Supp. 2d 281, 287–88 (D.D.C. 2011), *summarily aff’d*, 565 U.S. 1104 (2012).

⁹ See U.S. Const. art. II, § 4 (“The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”).

¹⁰ 3 Joseph Story, Commentaries on the Constitution of the United States § 762 (1833), available at https://www.constitution.org/js/js_005.htm. Justice Story added that “political offenses” for which impeachment will be “so various in their character, and so indefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law. They must be examined upon very broad and comprehensive principles of public policy and duty.” *Id.*

Based on the evidentiary record, what has happened in the case before you is something that I do not think we have ever seen before: a president who has doubled down on violating his oath to “faithfully execute” the laws and to “protect and defend the Constitution.”¹¹ The evidence reveals a President who used the powers of his office to demand that a foreign government participate in undermining a competing candidate for the presidency.

As President Kennedy declared, “[t]he right to vote in a free American election is the most powerful and precious right in the world.”¹² But our elections become less free when they are distorted by foreign interference. What happened in 2016 was bad enough: there is widespread agreement that Russian operatives intervened to manipulate our political process. But that distortion is magnified if a sitting President abuses the powers of his office actually to invite foreign intervention. To see why, imagine living in a part of Louisiana or Texas that’s prone to devastating hurricanes and flooding. What would you think if, when your governor asked the federal government for the disaster assistance that Congress has provided, the President responded, “I would like you to do us a favor.’ I’ll meet with you and send the disaster relief once you brand my opponent a criminal.”? Wouldn’t you know in your gut that such a president had abused his office, betrayed the national interest, and tried to corrupt the electoral process? I believe the evidentiary record shows wrongful acts on that scale here. It shows a president who delayed meeting a foreign leader and providing assistance that Congress and his own advisors agreed served

¹¹ *See id.* art. I, § 2, cl. 8.

¹² Special Message to Congress on Civil Rights (Feb. 28, 1963), available at <https://www.jfklibrary.org/asset-viewer/archives/JFKPOF/043/JFKPOF-043-002>.

Opening Statement of Professor Pamela S. Karlan

December 2, 2019

Page 6

our national interest in promoting democracy and limiting Russian aggression. And it shows a president who did this to strong arm a foreign leader into smearing one of the president's opponents in our ongoing election season. That is not politics as usual—at least not in the United States or any other mature democracy. It is, instead, a cardinal reason why the Constitution contains an impeachment power. Put simply, a candidate for president should resist foreign interference in our elections, not demand it.

If we are to keep faith with the Constitution and our Republic, President Trump must be held to account.