



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

January 22, 2020

The Honorable Kyrsten Sinema
United States Senate
317 Hart Senate Office Building
Washington, DC 20510-0304

The Honorable Martha McSally
United States Senate
404 Russell Senate Office Building
Washington, DC 20510

Dear Senators Sinema and McSally:

As the chief legal officer of our State, I urge you to reject the two articles of impeachment against President Donald J. Trump contained in House of Representatives Resolution 755. These articles represent a threat to the separation of governmental powers that our Founding Fathers embedded in our Nation's Constitution.

Like you, I was elected, and swore an oath to defend our Constitution and ensure that the State of Arizona retains its proper place in our federal system. If the Senate does not reject the articles of impeachment, it could fundamentally reshape the relationship between the branches of the federal government and undermine the division of power that protects us from a federal government that sits far away from the people.

Article I of the House's impeachment resolution bases its claim of "abuse of power" on a flawed theory—that the President should be impeached and removed from office because he exercised his constitutional authority with at least some motivation that a House majority deems to be corrupt or self-interested. Article I alleges no stand-alone crime, or action beyond the authority of the President. Instead, Article I focuses on the existence of "corrupt purposes in pursuit of personal political benefit," alongside otherwise available and valid executive action.

The Senate's acceptance of this theory would reshape our government. It would make any president subject to removal by impeachment when a sufficient majority of the legislative branch disagrees with the rationale for an exercise of executive authority. Whether the dispute results from a pure policy disagreement, or a fear that a choice was made to benefit the President politically, there is no limitation on this theory of impeachment. If accepted, it will weaponize the impeachment process for political purposes, contrary to the Founders' intent.

Were it to accept the legal premise that underlies Article I, the Senate would be blessing the impeachment of a president whenever a sufficient legislative majority believes it has identified a political motivation for an exercise of executive authority, even if that motivation

The Honorable Kyrsten Sinema
The Honorable Martha McSally
January 22, 2020
Page 2 of 2

represents the will of the electorate. For example, the theory would apply to a president who pursues a change in policy, vetoes a bill, compromises in the course of negotiations, or otherwise takes actions within the ambit of executive power to fulfill a campaign promise to the voters. That cannot be.

Article II of the House's impeachment resolution—"obstruction of Congress"—is equally flawed. The Senate should reject the idea that a president can be impeached based solely on a dispute between the executive and legislative branches about the scope of executive privilege absent a court order.

Executive privilege is designed to protect the independence of the executive branch and ensure separation of governmental powers. If a dispute arises about a privilege claim, the judicial branch is called upon by the Constitution to referee. And yet here, the House chose to employ the gravest tool in the Constitution and vote to impeach a president based on a dispute about the scope of executive privilege, which was never presented to a judge.

If not rejected by the Senate, the theory animating both articles of impeachment will upend the Framers' design and desecrate the Constitution's separation of governmental powers. Indeed, the Framers hesitated to give Congress impeachment power over the president, fearing it would be abused. Ultimately, the Constitutional Convention agreed to divide the power of impeachment between the House and Senate and set a high bar for removal from office to prevent impeachment from becoming a weapon of the majority. I urge you to decline the House's invitation to erode our constitutional foundation.

The rule of law is the cornerstone upon which our Nation is built. And the rule of law is the law of rules. Here, there is no rule underlying the impeachment articles that could be accepted without a fundamental reshaping of our constitutional design. The Founders gave us an elegant document with a structure and system that has no equal. That document limited the ability to remove a President in order to protect the Nation's electoral will and guard against erosion of our system of government.

To protect our democracy and the separation of governmental powers that is central to our freedoms, you and your colleagues must vote to reject the theories underlying the articles of impeachment against President Trump. Disagreement with the President's actions should be expressed in the manner in which our Founders' contemplated, namely, in the public square and at the ballot box in November. That is the way to ensure that the blessings of liberty remain available to ourselves and our posterity.

Sincerely,



Mark Brnovich
Arizona Attorney General