

MEMORANDUM TO SENATORS RE IMPEACHMENT TRIAL: EXECUTIVE SUMMARY

On December 18, 2019, the House of Representatives passed two articles of impeachment against President Donald J. Trump for high crimes and misdemeanors ([H. Res. 755](#)). Once Speaker of the House Nancy Pelosi delivers these articles of impeachment to the Senate, the Senate will commence its third presidential impeachment trial in U.S. history—and the first ever to raise the question of national security misconduct—to determine whether President Trump should be removed from office. Supported by the Peter Gruber Rule of Law Clinic at Yale Law School, former U.S. Senators Russ Feingold (D-WI 1993-2011) and Chuck Hagel (R-NE 1997-2009) delivered a bipartisan [Memorandum to Senators](#) regarding the Senate’s appropriate role in a presidential impeachment trial.

This memorandum is bipartisan in spirit. Former Senators Feingold and Hagel recognize the national importance of an impeachment trial amid the troubling level of partisanship that currently pervades American politics. Consequently, they thought it useful to set forth an objective memorandum highlighting the issues, procedures, and constitutional duties that should guide conscientious senators during a presidential impeachment trial. Former Senators Feingold and Hagel have considerable first-hand experience with Senate presidential impeachment proceedings. During Feingold’s 18 years and Hagel’s 12 years in the Senate, both participated in the impeachment trial of President William J. Clinton in 1999. Both also sat on the impeachment trial of federal judge Walter Nixon, and Senator Hagel served as chief of staff to a Republican Member of the House during the Nixon impeachment proceedings. Even bearing in mind their different party affiliations, they recognize that, especially when removal of an impeached president is at issue, certain core constitutional principles and processes must transcend party lines.

This memorandum explores the key documents that guide a Senate impeachment trial. The memorandum starts from the premise that impeachment trials should be governed by constitutional law, not partisan politics. Thus, throughout the impeachment trial, senators should be guided in their decision making by fundamental constitutional principles and provisions. The Constitution clearly establishes that (1) “[t]he Senate shall have the sole Power to try all Impeachments”; and that (2) the President shall be removed from office upon “[i]mpeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” While the Constitution itself provides only sketchy guidance on the specific rules and procedures that senators should follow during an impeachment trial, the Senate’s “Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials,” last amended in 1986, provide an additional, vital roadmap.

This memorandum clarifies senators’ constitutional duties in an impeachment trial. Former Senators Feingold and Hagel clarify the Senate’s role in an impeachment trial and provide guidance to current senators on how they can best fulfill their constitutional duties in four different areas:

- Part I describes the issues likely to arise during a presidential impeachment trial and the procedures that will govern those issues;
- Part II presents a timeline of how a Senate trial is likely to proceed;
- Part III explains why it would be inconsistent with both senators’ constitutional duties and precedent to avoid holding a full impeachment trial; and

- Part IV asks and answers specific questions that may arise during an impeachment trial.

The authors present this memorandum in the spirit of bipartisanship and fidelity to the Constitution. They intend this memorandum to serve as a helpful resource to all sitting senators—and indeed to all Americans—as they seek to understand the Senate’s critical constitutional duty to hold just, effective and impartial presidential impeachment trials.