



**When Mueller Concludes:  
Congress's Role in Assessing Any Findings of Presidential Obstruction-of-Justice  
and Abuse of Power and Ensuring Accountability**

When the new Congress gavels in on January 3, 2019, it has a constitutional duty to serve as a check on the President and to investigate any abuses of executive power. In this summary and the accompanying report, *[When Mueller Concludes: Congress's Role in Assessing Any Findings of Presidential Obstruction-of-Justice and Abuse of Power and Ensuring Accountability](#)*, we set forth the historical and constitutional framework establishing this duty. Fundamentally, a president's abuse of his powers to obstruct an investigation into his own crimes puts him above the law in a way that is anathema to our constitutional scheme. History, law, and constitutional principles make it clear that such behavior demands accountability and could be grounds for impeachment. When credible allegations of such abuses of power arise, Congress must conduct its own investigation and weigh the myriad factual and political questions presented by the president's behavior to determine, under the circumstances, the appropriate accountability.

As others, including the Brookings Institution, have documented elsewhere, President Donald Trump's actions that have become public to date may constitute criminal obstruction of justice.<sup>1</sup> Yet President Trump has claimed that he cannot be held accountable for using his official powers to interfere in a Department of Justice ("DOJ") investigation. Setting aside whether President Trump can or will be indicted for a crime of obstruction, we explain why Congress has a vital role to play in policing the President's exercise of his official powers to impede an investigation.

History supports the conclusion that obstruction of justice may be an impeachable offense. The House of Representatives has twice considered articles of impeachment that included charges of obstruction of justice. President Nixon abused his official authority to obstruct justice by impeding a federal investigation into the break-in at Democratic Party headquarters in the Watergate Hotel, and resigned to avoid impeachment. President Clinton was alleged to have obstructed justice by seeking to cover up his affair with Monica Lewinsky, though the Senate eventually declined to remove him from office. One key

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<sup>1</sup> See BARRY H. BERKE, NOAH BOOKBINDER & NORMAN L. EISEN, PRESIDENTIAL OBSTRUCTION OF JUSTICE: THE CASE OF DONALD J. TRUMP (2d ed. Aug. 22, 2018), *available at* [https://www.brookings.edu/wp-content/uploads/2018/08/GS\\_82218\\_Obstruction\\_2nd-edition.pdf](https://www.brookings.edu/wp-content/uploads/2018/08/GS_82218_Obstruction_2nd-edition.pdf).

difference between the two presidents is that President Nixon, unlike President Clinton, abused his official powers over the Federal Bureau of Investigation (“FBI”), Central Intelligence Agency, and DOJ to stymie the investigation into his own conduct. But in both cases, Congress conducted aggressive investigations of the president’s actions to determine whether the president could appropriately remain in office.

The abuse of official presidential powers to obstruct justice is particularly offensive to our constitutional scheme. The Constitution demands that the president “take Care that the Laws be faithfully executed.” When he uses his power over the executive branch to impede an investigation, he fails in that constitutional responsibility. This jeopardizes the Founders’ careful balance of powers between the three coequal branches.

Moreover, the president’s role as the head of the executive branch does not give him the right to control investigations into himself or his associates. While the president is the head of the executive branch, the Constitution does not allow him to abuse his presidential powers for his own personal gain. Even those with the most robust views of executive authority don’t argue that the President may interfere with an investigation into his own wrongdoing; they differ from other scholars of presidential powers in believing that only political, not legal, remedies are available for such abuses of power. Congress, with its investigative and impeachment powers, holds the power to impose such political remedies. Thus it’s entirely appropriate for Congress, under any constitutionally grounded theory of executive power, to evaluate the president’s motives and, when those motives are improper, take appropriate actions for accountability.

Even without knowing the full scope of the evidence the Special Counsel has amassed, there is ample public evidence that President Trump has abused his power to obstruct the investigation into Russian interference in the 2016 election. In interviews, the president has explained that he fired both FBI director James Comey and Attorney General Jeff Sessions because of their roles in the Russia investigation. He has made public statements applauding his campaign chairman Paul Manafort’s resistance to cooperation with the Special Counsel and — in what could be a quid pro quo for withholding information — stated that a pardon of Manafort is “on the table.” Congress hasn’t investigated these potential abuses, and it must take steps to do so in order to determine whether political accountability — in the form of censure, impeachment, or something else — is needed.