

# Court ruling declares House impeachment inquiry to be legal

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On Friday, the senior federal district judge in Washington D.C. upheld the legality of the House impeachment inquiry into President Trump and ordered the Department of Justice (DOJ) to turn over grand jury material that was redacted from the report by Special Counsel Robert Mueller.

The ruling by Judge Beryl A. Howell, an Obama appointee and the former counsel for the Democrats on the Senate Judiciary Committee, will very likely be appealed to the Circuit Court of Appeals for the District of Columbia and then to the Supreme Court. But it lays down, in occasionally sharp language, a rebuttal of the arguments made by the White House and congressional Republicans against the constitutionality of the impeachment inquiry.

Howell's 75-page opinion refutes White House claims that the president is effectively above the law: that he cannot be subject to investigation or prosecution in state or federal courts (citing impeachment as the only legal avenue for addressing presidential misconduct), while at the same time refusing to cooperate with an impeachment investigation by the House of Representatives.

Howell wrote that the DOJ position "leaves the House as the only federal body that can act on allegations of presidential misconduct. Yet, under DOJ's reading of Rule 6(e), the Executive Branch would be empowered to wall off any evidence of presidential misconduct from the House by placing that evidence before a grand jury."

She cited in particular the letter sent October 8 by White House Counsel Pat A. Cipollone to House Speaker Nancy Pelosi and other top Democrats declaring that executive branch officials would not provide testimony or documents to the impeachment inquiry because it was "illegitimate." The judge characterized this position as "stonewalling."

"The White House's stated policy of noncooperation with the impeachment inquiry weighs heavily in favor of

disclosure," Judge Howell wrote. "Congress's need to access grand jury material relevant to potential impeachable conduct by a president is heightened when the executive branch willfully obstructs channels for accessing other relevant evidence."

Trump is unquestionably guilty of illegal and unconstitutional actions that justify his removal from office. These include the setting up of a network of concentration camps for immigrants, the deployment, in violation of the posse comitatus statute, of active duty troops to help police the border with Mexico, the enactment of a declaration of emergency to defy congressional control over spending and use Pentagon funds to build the border wall, and repeated defiance of judicial and congressional oversight powers on the presidency.

However, the Democrats are excluding these very real attacks on democratic rights from their impeachment inquiry. Instead, they are limiting it to allegations that Trump threatened U.S. national security, i.e., the international interests of American imperialism, in his July 25 telephone call to the president of Ukraine. In that call, Trump pressured Kiev to announce a corruption investigation involving his potential Democratic opponent in the 2020 election, former Vice President Joe Biden, while withholding \$391 million in military aid to the country.

The Democrats are presenting this as yet another supposed capitulation to Russia, which is backing pro-Russian separatist forces in eastern Ukraine. They are carrying out their impeachment inquiry on the same right-wing basis on which they have opposed Trump from the outset, speaking for factions of the intelligence establishment and the military that demand a more aggressive military posture in Syria and the rest of the Middle East and a more belligerent confrontation with Moscow.

At the same time, they have up to now insisted that all impeachment hearings be held behind closed doors, highlighting the palace coup character of their opposition to Trump. The White House and congressional Republicans have seized on the secretive character of the proceedings to denounce the impeachment inquiry as illegitimate.

Friday's ruling arises from the efforts by the House Judiciary Committee (HJC) to obtain grand jury material that was either redacted from the 448-page Mueller report or served as the basis for the report but was not included in its text and footnotes. This material could run to tens or hundreds of thousands of pages of sworn testimony by current and former Trump administration officials.

The committee sued after Attorney General William Barr refused to turn over the material, citing Rule 6(e) of federal court procedure, which makes grand jury material secret as a matter of standard practice. The committee's lawyers argued that there was a longstanding exception to Rule 6(e) for congressional investigations leading to the impeachment of a president, because these would culminate in a Senate trial which was indisputably a "judicial proceeding."

This exception was codified in the famous 1974 decision in *Haldeman v. Sirica*, in which the Circuit Court of Appeals for the District of Columbia rebuffed efforts by President Nixon's chief of staff, H.R. Haldeman, to block the handover of grand jury materials by Judge John J. Sirica to the House Judiciary Committee, which was considering articles of impeachment against Nixon.

In her ruling, Judge Howell said that the decision in the *Haldeman* case, and in a recent decision by the same court in *McKeever v. Barr*, upheld the principle that grand jury material had to be made available to a congressional impeachment inquiry.

She wrote: "Together, *Haldeman* and *McKeever* hold that an impeachment trial is a 'judicial proceeding' under Rule 6(e), and these decisions bind this Court..."

"These decisions alone require ruling in HJC's favor on the threshold requirement that an impeachment trial is a 'judicial proceeding' within the meaning of Rule 6(e). Indeed, in addition to Chief Judge Sirica and the *Haldeman* Court, every other court to have considered releasing grand jury material to Congress in connection with an impeachment investigation has authorized such disclosure."

Howell suggested, in a particularly stinging footnote, that the Justice Department argument that its views on grand jury material had "evolved" was in bad faith

because "in *McKeever* itself DOJ successfully argued—just last year—that the DC Circuit has treated *Haldeman* as standing only for the proposition that an impeachment proceeding may qualify as a 'judicial proceeding' for purposes of Rule 6(e)." She concluded, "The DOJ position has had a speedy evolution indeed."

Judge Howell also rejected the argument made in a brief supporting the Trump administration position, filed by Representative Doug Collins, the ranking Republican on the House Judiciary Committee, that the impeachment inquiry was illegitimate because it had not been formally authorized by a vote of the House of Representatives.

"Even in cases of presidential impeachment, a House resolution has never, in fact, been required to begin an impeachment inquiry," Howell wrote. "No governing law requires this test—not the Constitution, not House Rules, and not Rule 6(e), and so imposing this test would be an impermissible intrusion on the House's constitutional authority."

She noted that in 1998, during the impeachment inquiry begun by the Republican-controlled House of Representatives against Democratic President Bill Clinton, the House Judiciary Committee obtained grand jury material in July 1998, while the full House did not vote for an impeachment proceeding until three months later. So no such resolution was required, nor could the courts make such a determination, which was reserved to Congress by the text of the Constitution.

House Democrats immediately hailed the ruling, while the Justice Department said only that it would review the decision before any further action. The Trump administration has until October 30 to either hand over the grand jury material or file an appeal.

The ruling gives a green light to expand the House impeachment inquiry to include charges against Trump stemming from the Mueller investigation, either in relation to alleged collusion with Russia or obstruction of justice directed against the preliminary FBI investigation or the Mueller probe itself.



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