

**JOINT RESOLUTION CENSURING UTAH SENATOR MITT
ROMNEY**

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Phil Lyman

Senate Sponsor: _____

LONG TITLE

General Description:

This joint resolution censures Senator Mitt Romney for his actions in relation to the impeachment and trial of President Donald Trump.

Highlighted Provisions:

This resolution:

- ▶ sets forth the reasons for censuring Senator Romney;
- ▶ censures Senator Romney; and
- ▶ admonishes Senator Romney.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, in 2019, the United States House of Representatives' Intelligence and Judiciary Committees ("the House Committees") made impeachment inquiries, conducted impeachment-related investigations, took impeachment-related witness depositions, and heard witnesses testify at impeachment-related committee hearings (collectively "the House impeachment proceedings"), all for the purpose of determining whether the House of Representatives should impeach President Donald Trump ("the President") under the Constitution;



28 WHEREAS, the House Committees purported to subpoena several witnesses, including
29 the President's former adviser, John Bolton, to testify in the House impeachment proceedings;

30 WHEREAS, the President challenged the validity of several of the House Committee
31 witness subpoenas, including that of John Bolton, on legal various theories, including the
32 assertion of Executive Privilege;

33 WHEREAS, the House Committees filed a lawsuit asking the United States District
34 Court for District of Columbia to: uphold the validity of the challenged House Committees'
35 witness subpoenas, including the John Bolton subpoena; and enforce the House Committee
36 witness subpoenas, including that of John Bolton;

37 WHEREAS, the House Committees voluntarily withdrew their lawsuit and sought its
38 dismissal before the Court ruled on the President's challenge to the several House Committee
39 witness subpoenas, including the John Bolton subpoena, even though the court announced its
40 intention to decide the case and make a ruling between December 2019 - January 2020;

41 WHEREAS, the President's challenges with respect to several House Committee
42 witness subpoenas, including the subpoena of John Bolton, still stand;

43 WHEREAS, the House Committees did not obtain witness testimony from John Bolton
44 and others who were the subject of the President's subpoena challenges, and the House
45 Committees abandoned even trying to seek a court order to enforce the subpoenas and compel
46 the witness testimony of John Bolton and others;

47 WHEREAS, based on the House Committees' record of documents and witness
48 testimony, the House Committees recommended, and the House of Representatives adopted,
49 two articles of impeachment against the President, one for alleged abuse of power and one for
50 alleged obstruction of Congress;

51 WHEREAS, the two House impeachment articles do not allege any crimes by the
52 President, nor does the accompanying record support the commission of any crimes by the
53 President;

54 WHEREAS, the United States Constitution, Article II, Section 4, limits grounds of
55 impeachment to "Treason, Bribery, or other high Crimes and Misdemeanors";

56 WHEREAS, in 1787, the framers in the Constitutional Convention, through the
57 Committee of Detail, reported impeachment grounds as "Treason (or) Bribery or Corruption"
58 and the Committee of Eleven reduced the phrase to "Treason, or bribery." On September 8,

59 1787, George Mason objected to this limitation, observing that the term did not encompass all
60 the conduct that should be grounds for removal; he therefore proposed to add "or
61 maladministration" following "bribery." But James Madison objected that "[s]o vague a term
62 will be equivalent to a tenure during pleasure of the Senate," so George Mason suggested
63 "other high crimes and misdemeanors," which was adopted without further recorded debate.

64 WHEREAS, the framers' use of the word "other" to link "high crimes and
65 misdemeanors" with "treason" and "bribery" indicated the types and seriousness of conduct
66 encompassed by "high crimes and misdemeanors";

67 WHEREAS, in the words of constitutional scholar and presidential defense team
68 member Alan M. Dershowitz, constitutional analysis always begins with the text. The words
69 "treason, bribery, or other high crimes and misdemeanors" certainly sound criminal. William
70 Blackstone, the 18th century English jurist, said that misdemeanors are a species of crime, and
71 that the words "crimes and misdemeanors" are synonymous. Opponents of this view argue that
72 the framers intended to adopt the British meaning of high crimes and misdemeanors. The
73 historical evidence contradicts that argument. One of the central criteria for impeachment under
74 British law was the crime of "maladministration." When one of the framers introduced that
75 term, the father of the Constitution, James Madison, vehemently opposed it. He argued that "so
76 vague a term will be equivalent to a tenure during pleasure of the Senate." This proves that the
77 framers did not accept the British approach whole hog. By explicitly rejecting
78 maladministration, they implicitly rejected abuse of power as a permissible criterion for
79 impeachment. Maladministration and abuse of power were regarded as analogous terms;

80 WHEREAS, this confirms the view that had the framers been presented with a proposal
81 to include abuse of power or obstruction of Congress, they would have rejected it with the
82 same vehement certainty and fears that inclined them to reject maladministration;

83 WHEREAS, the intellectual burden - and it is a heavy one - is on those who would not
84 follow the plain meaning of the constitutional criteria for impeachment. To claim that these
85 criminal words should be interpreted to include vague noncriminal behavior is in clear
86 violation of every rule of constitutional construction and common sense. As Justice Antonin
87 Scalia once observed: "If one speaks of Mickey Mantle, Rocky Marciano, Michael Jordan and
88 other great competitors, the last noun does not reasonably refer to Sam Walton (a great
89 competitor in the market) or Napoleon Bonaparte (a great competitor on the battlefield)." This

90 common sense rule of interpretation would clearly require that the words "other high crimes
91 and misdemeanors" be interpreted only to include criminal conduct akin to treason and bribery.
92 That burden has not been met by flawed and incomplete historical claims that the framers
93 intended to follow the British system whole hog - a claim that is completely undercut by their
94 rejection of maladministration;

95 WHEREAS, the House Committees' record in support of the two House impeachment
96 articles did not include any witness testimony by John Bolton;

97 WHEREAS, the Speaker of the House, the chairs of the House Committees, and other
98 impeachment proponents in the House nevertheless stated emphatically that the two articles of
99 impeachment and the supporting record of documents and transcripts of the testimony of
100 seventeen witnesses, some of which are still sealed to this day, developed in the House
101 impeachment proceedings, would convincingly and overwhelmingly compel the Senate's
102 constitutional conviction and removal of the President from office;

103 WHEREAS, 33 days after their adoption by the House, the two House impeachment
104 articles and supporting record of documents and witness testimony were formally transmitted
105 to the Senate for action;

106 WHEREAS, the Senate conducted an impeachment trial of the President on the two
107 House impeachment articles;

108 WHEREAS, the chairs of the House Committees, their attorneys, and others
109 (collectively "the House managers") prosecuted the case in the Senate impeachment trial, and a
110 team of attorneys, House Republicans, and others acted as the President's defense team in the
111 Senate impeachment trial;

112 WHEREAS, the House managers sought to have John Bolton subpoenaed as a witness
113 to testify in the Senate trial, arguing that the record developed in the House proceedings is
114 inadequate and John Bolton's testimony is necessary for the House managers to prove their
115 case;

116 WHEREAS, the President's defense team objected to John Bolton's being subpoenaed
117 as a witness to testify in the Senate trial, arguing that the House impeachment proceedings, not
118 the Senate trial, are the time and place for the House managers to fully develop a record to
119 prosecute their impeachment articles, that the House Committees had the opportunity but
120 abandoned their pursuit of a court order to strike down the President's asserted Executive

121 Privilege and compel John Bolton's witness testimony in the House impeachment proceedings,
122 and that the Senate's sole constitutional power to try impeachments should not be degraded by
123 indulging the House managers' failure to do their homework to develop their case in the House
124 impeachment proceedings. As the President's counsel, Jay Sekulow, put it during the Senate
125 trial, "[House Democrats] created the record. Do not allow them to penalize the country, and
126 the Constitution, because they failed to do their job";

127 WHEREAS, the President's defense team further objected to John Bolton's being
128 subpoenaed as a witness to testify in the Senate trial on the same grounds asserted in the House
129 impeachment proceedings, that John Bolton's testimony is barred by Executive Privilege;

130 WHEREAS, and above all else, the President's defense team argued that John Bolton's
131 expected testimony, even if believed, would not prove any more that the President's conduct is
132 constitutionally impeachable under the two House articles of impeachment, because those
133 articles fail to allege constitutionally-impeachable presidential conduct. As Senator Lamar
134 Alexander of Tennessee stated in in his January 30, 2020, announcement of his intent to vote
135 against calling additional witnesses, "Even if the House charges were true, they do not meet the
136 Constitution's 'treason, bribery, or other high crimes and misdemeanors' standard for an
137 impeachable offense";

138 WHEREAS, the dispute over whether to subpoena John Bolton and possibly other
139 witnesses to testify at the Senate trial was decided January 31, 2020, with a 51 to 49 Senate
140 vote to defeat a motion to call additional witnesses;

141 WHEREAS, in the face of the Senate defense team's arguments, Senator Mitt Romney
142 of Utah supported the House managers in their wish to call John Bolton as a witness, and voted
143 with the entire Democrat partisan bloc in favor of the unsuccessful motion to call additional
144 witnesses;

145 WHEREAS, had the position prevailed for which Senator Romney voted, forcing the
146 Senate to entertain additional witness testimony expected to show only non-impeachable
147 presidential conduct, the precedent of such an outcome would have: (1) diluted and degraded
148 the high constitutional bar of presidential impeachment; (2) weaponized political
149 impeachments to be used against future presidents whenever the House of Representatives is of
150 a different political party; and (3) awarded hurried, shallow, and flawed House investigative
151 efforts that fail to develop a true and complete record of impeachable presidential conduct

152 worthy to bring to the Senate, with this last point being underscored in the January 31, 2020,
153 statement by Senator Lisa Murkowski of Alaska explaining her announcement to vote against
154 calling additional witnesses: "The House chose to send articles of impeachment that are rushed
155 and flawed. I carefully considered the need for additional witnesses and documents, to cure the
156 shortcomings of its process, but ultimately decided to vote against considering motions to
157 subpoena.";

158 WHEREAS, the House managers at the Senate impeachment trial did not prove or even
159 allege the commission of any crimes;

160 WHEREAS, in the face of the House managers' failure to allege or prove that President
161 Trump committed any crimes, Senator Romney voted with the Democrat partisan bloc to
162 convict President Trump for abuse of power, which again was not alleged to be a crime;

163 WHEREAS, the Senate on a vote of 51 to 49 acquitted President Trump of the charge
164 of abuse of power;

165 WHEREAS, had the position prevailed for which Senator Romney voted and the
166 President were convicted for so-called abuse of power, that outcome would have: (1)
167 cheapened and degraded the Constitution and trampled its plain language regarding the
168 required grounds of presidential impeachment; (2) weaponized political impeachments to be
169 used against future presidents whenever the House of Representatives is of a different political
170 party; and (3) rewarded the gross denial of due process to the President, his lawyers, and the
171 minority members of the House investigating committees during the House impeachment
172 proceedings;

173 WHEREAS, in the words of Senate Majority Leader Mitch McConnell, "This does not
174 even approach a case for the first presidential removal in American History, ... Such an act
175 cannot rest alone on the exercise of constitutional power combined with concerns about
176 whether the President's motivations were public or personal and a disagreement over whether
177 the exercise of power was in the national interest.... We must vote to reject the House abuse of
178 power. Vote to protect our institutions. Vote to reject new precedents that would reduce the
179 framers' design to rubble ... Vote to acquit the President of these charges."; and

180 WHEREAS, Senator Romney flaunted these concerns of the Majority Leader by voting
181 to convict:

182 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah

183 hereby CENSURES Senator Mitt Romney for: (1) voting on January 31, 2020, in favor of
184 subpoenaing more witnesses at the Senate impeachment trial of President Donald Trump,
185 where such additional witness testimony could show at best only non-impeachable presidential
186 conduct falling short of the high bar of constitutional presidential impeachment, in a case
187 where the House articles of impeachment did not even allege impeachable presidential
188 conduct; and (2) voting on February 5, 2020, to convict President Trump for alleged abuse of
189 power under the first House impeachment article, where the article failed to even allege the
190 commission of a crime, much less the House managers failed to allege or prove the article at
191 the Senate trial.

192 BE IT FURTHER RESOLVED that this censure is appropriate, because, had Senator
193 Romney's positions prevailed for which he voted, that would: (1) dilute and degrade the high
194 constitutional bar of presidential impeachment; (2) award hurried, shallow, and flawed United
195 States House of Representatives investigative efforts that fail to develop a true and complete
196 record of impeachable presidential conduct worthy to bring to the Senate; and (3) encourage
197 weaponized political impeachments to be used against future presidents whenever the House of
198 Representatives is of a different political party, thus ripping the country apart along the seams
199 of cultural divisions that already exist.

200 BE IT FURTHER AND FINALLY RESOLVED that Senator Romney is admonished
201 to refrain from any more inclinations to so vote in future Senate presidential impeachment
202 trials, if any, unless: (1) the House transmits valid articles of impeachment to the Senate that
203 actually allege constitutionally impeachable criminal presidential conduct; (2) the House
204 impeachment proceedings have fully developed a record of witnesses and documents in fair
205 proceedings that accord due process to the President and to the minority members of the
206 investigating House Committees; (3) unforeseen circumstances as opposed to the mere failure
207 of House Committees to do their homework, are what necessitate the calling additional
208 witnesses at the Senate trial; and (4) the testimony of additional witnesses is expected to
209 materially prove or disprove more than the current record does: the commission of presidential
210 impeachable criminal conduct as properly alleged in the House articles.