Nos. 19-715, 19-760

In the
Supreme Court of the United States

DONALD J. TRUMP, *et al*.,
Petitioners,
– v. –
MAZARS USA, LLP, *et al*.,
Respondents.

DONALD J. TRUMP, *et al*.,
Petitioners,
– v. –
DEUTSCHE BANK AG, *et al*.,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND SECOND CIRCUITS

BRIEF OF *AMICUS CURIAE* PROFESSOR VICTOR WILLIAMS IN SUPPORT OF PETITIONERS

Addressing Unconstitutional Attainder Against President Donald J. Trump, *et al.* (amended)

PROFESSOR VICTOR WILLIAMS
Counsel of Record
Chair and Senior Counsel
LAW PROFESSORS FOR TRUMP
GOP LAWYERS
2200 Wilson Boulevard
Arlington, Virginia 22201
(571) 309-8249
www.goplawyers.com

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
STATEMENT OF INTEREST	1
SUMMARY OF THE ARGUMENT	5
ARGUMENT	6
I. Colonel Alexander Hamilton's Greatest Battle: No Attainders in America	9
II. "Our Age of Attainder [and Trump Derangement Syndrome]"	13
III. Are Bills of Attainder Prohibited by our Constitution, Or Are They "Only Slightly Modified?"	17
CONCLUSION	25

TABLE OF AUTHORITIES

Page(s)

Cases:

Cummings v. Missouri, 71 U.S. (4 Wall.) 277 (1867) 18

Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857) 21

Ex parte Garland, 71 US (4 Wall.) 333 (1866) .. 18

Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123 (1951) 12

Trump v. Mazars, USA, LLP, 940 F.3d 710 (D.C. Cir. 2019) 6

United States v. Brown, 381 U.S. 437 (1965) 19

United States v. Lovett, 328 (1946) 19, 20

United States Constitution:

Art. I, Sec. 9 .... 6, 11

Art. I, Sec. 10 .... 6, 11

Art. II, Sec. 2, Clause 3 15

Statutes:

H.R. Rep. No. 105-830 at 137 (1998) 13

Urgent Deficiency Appropriation Act of 1943, Section 304 .... 19, 20

Other Authority:

2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 376... 11

3 Joseph Story, Commentaries on the Constitution of the United States §1338 (Ronald D. Rotunda & John E. Nowak eds., Carolina Academic Press 1987) (1833) 8

4 ANNALS OF CONG. 934 (1794).......................... 12

4 Blackstone, COMMENTARIES ON THE LAW OF ENGLAND (1769) 7

A.F. House, Mr. Justice Field and Attorney General Garland, 3 ARKANSAS LAW REVIEW 266 (1948-1949) 19

Adam Goldman and Michael S. Schmidt, Rod Rosenstein Suggested Secretly Recording Trump and Discussed 25th Amendment, N.Y. TIMES, Sept 21, 2018 15

Alex Swayer*, Senate Confirms 77 Trump Nominations in End of Congress Deal*, WASH. TIMES, Jan. 2, 2019............................. 5

Alexander Hamilton, *Letter from Phocion to the Considerate Citizens of New York*, (January 1784) (First and Second Letters) https://founders.archives.gov/search/Author %3A%22%E2%80%9CPhocion%E2%80%9D %22).. 8, 10, 11

Alexander Hamilton, THE FEDERALIST NO. 78, 491 (Clinton Rossiter, ed. 1961) 22, 23

Charles L. Black, Jr. and Philip Bobbitt, Impeachment: A Handbook (2018), 28-29 8

Charles-Louis de Secondat, Baron de La Brède et de Montesquieu, THE SPIRIT OF THE LAWS 157 (A. Cohler et al. eds., 1989) 25

CONG. GLOBE, 40th Cong. 2d Sess. Supp. 134 (1868) (Opening Argument of Benjamin Curtis in Senate Impeachment Trial)........... 21

Craig Lerner*, Review: Impeachment, Attainder, and a True Constitutional Crisis: Lessons from the Strafford Trial*, 69 UNIVERSITY OF CHICAGO LAW REVIEW 2057 (2002).. 7

David Frum, *Why Leaking Transcripts of Trump's Calls Is So Dangerous: When the President's Opponents Violate Norms to Undermine Him, They Do Lasting Damage to American Security,* ATLANTIC, Aug 3. 2017 16

Debra Weiss, Law Prof a Write-In GOP Candidate to Challenge Ted Cruz Eligibility, ABA JOURNAL, April 11, 2016 4

Ed Henry, *Democratic Sen. Mark Warner Texted with Russian Oligarch Lobbyist in Effort to Contact Dossier Author Christopher Steele*, FOX NEWS, Feb. 8, 2018 14

Gregory Abernathy, *Impeachment is a Race to the Bottom and Nobody Wins*, WASH. POST, January 21, 2020 22

Harper Neidig, House Lawyers Open Door to More Articles of Impeachment, THE HILL, December 23, 2019 22

Helen Lyons (AP), *Trump Supporters Isolated in Liberal Washington Suburbs*, WASH. TIMES, Nov. 2, 2016, available at https:// www.washingtontimes.com/news/2016/nov/2 /trump-supporters-feel-isolated-in-liberal-washingt/ 24

Inside the Beltway: 'Lawyers for Trump' Founded," WASH. TIMES, July 4, 2016 4

Julian E. Barnes, Michael S. Schmidt, and Matthew Rosenberg, *Shiff Got* Early Account of Accusations as Whistle-Blower's Concerns Grew, N.Y. TIMES, October 2, 2019 14

Katelyn Polantz, *Chuck Cooper Confirms: He's AG Jeff Sessions' Lawyer*, NAT'L L. J. June 20, 2017 16

Katelyn Polantz, *Fighting for McGahn Testimony and Mueller Docs, House Lawyer Says More Impeachment Charges Could Come*, CNN ONLINE, January 3, 2020 22

Katie Benner and Julian Barnes, Durham Is Scrutinizing Ex-C.I.A. Director's Role in Russian Interference Findings, NEW YORK TIMES, Dec. 19, 2019..................... 17

Kimberly Strassel, RESISTANCE (AT ALL COSTS): HOW TRUMP HATERS ARE BREAKING AMERICA (2019).. 14

Majorie Hines, PRIESTS OF OUR DEMOCRACY: THE SUPREME COURT, ACADEMIC FREEDOM, AND THE ANTI-COMMUNIST PURGE (2013) 85-86 19

Matea Gold, *The Campaign to Impeach President Trump Has Begun,* WASH. POST, Jan. 20, 2017 14

Michael D. Shear and Lola Fadulu, Trump Says Mueller Was 'Horrible' and Republicans 'Had a Good Day,' N.Y. TIMES, July 24, 2019 16

"N0 WITNESSES: Immediate Trump Acquittal Rejects House's Illegal Attainder Attempt, says Historic Amicus Curiae Brief Lodge by Virginia GOP Candidate Victor Williams," YAHOO FINANCE, September 30, 2020 1

Pete Williams, *Law Professor Challenges Cruz on Citizenship, Candidacy*, NBC NEWS, April 11, 2016 4

Peter Baker, The Blockbuster That Wasn't: Mueller Disappoints the Democrats, N.Y. TIMES, July 24, 2019 16

Reppy, Alison, *The Spectre of Attainder in New York (Parts 1 and 2*), 23 *St. John's Law Review 1 (1948)* 9

Rick Klein and Mary Alice Parks, *The Note: Pelosi's 'Forever' Impeachment Puts GOP on Warning*, ABC NEWS, January 13, 2020 22

Ron Chernow, ALEXANDER HAMILTON (2004) 154-270 10

Rowan Scarborough, *FBI Ambushed Michael Flynn, Then Celebrated: Court Documents*, WASH. TIMES, Oct. 29, 2019 15

Rowan Scarborough, *Wiretap Abuse Report Gives Michael Flynn, other Trump Associates a New Opening for Vindication*, WASH. TIMES, Feb. 2, 2020 14

Sally Persons, *Sen. Mark Warner Texted with Lobbyist with Russian Ties to Get in Touch with Dossier Author: Report,* WASH. TIMES, Feb. 9, 2018 14

Stephen Dinan and S.A. Miller, Fresh Off Smashing Podcast Debut, SCOTUS Vet Ted Cruz to Take Center Stage at Impeachment, WASH. TIMES, January 26, 2020 4

Stuart Streichler, JUSTICE CURTIS IN THE CIVIL WAR ERA (2005) 21

The Bounds of Legislative Specification: A Suggested Approach to the Bill of Attainder Clause, 72 YALE LAW JOURNAL. 330 (1962).. 19

The Bounds of Legislative Specification: A Suggested Approach to the Bill of Attainder Clause, 72 YALE LAW JOURNAL. 330 (1962).... 13

Tierney Sneed, *Victory or Death: The Conservative Legal Warrior Defending Jeff Sessions*, TALKING POINTS MEMO Mar. 8, 2018 16

Victor Williams, *A Constitutional Charge and a Comparative Vision to Substantially Expand and Subject Matter Specialize the Federal Judiciary,* 37 WILLIAM & MARY LAW REVIEW 535-671 (1996) 2

Victor Williams, *Averting a Crisis, The Next President's Appointment Strategy*, NATIONAL LAW JOURNAL, 14 (March 10, 2008) 3

Victor Williams, *NLRB v. Noel Canning Tests the Limits of Judicial Memory: Leon Higginbotham, Spottswood Robinson and David Rabinovitz Rendered 'Illegitimate'?*, 6 HOUSTON LAW REVIEW HLRE: OFF THE RECORD 107-122 (2015) 3

Victor Williams, *No Censure: No Scarlet Letter Option*, LEGAL TIMES, 14 (December 14, 1998) 3, 13

Victor Williams, *No Shortcut in Censure*, LEGAL TIMES, 32 (Sept. 21, 1998) 3, 13

Victor Williams, *Noel Canning Presents a Nonjusticiable Political Question,* CARDOZO LAW REVIEW DE NOVO 45-68 (2014) 3

Victor Williams, *Once an Obama Supporter, Law Professor Now Proudly in Basket of Deplorables,* THE HILL, Sept. 20, 2016, available at https://thehill.com/blogs/pundits-blog/presidential-campaign/296783-law-prof-once-an-obama-supporter-now-in-basket-of 4, 23-24

Victor Williams, Raze the Debt Ceiling: *A Test Case for State and Institutional Bondholder Litigation to Void the Debt Limit*, 72 WASHINGTON AND LEE LAW JOURNAL ONLINE 96-135 (2015) 2

Victor Williams, *Senate 30-hour Per Nominee Fake Debate Rule Hobbles Departments, Agencies, and District Courts*, THE HILL, Feb. 8, 2019 5

Victor Williams, *Third Branch Independence and Integrity Threatened by Political Branch Irresponsibility: Reviewing the Report of the National Commission on Judicial Discipline and Removal*, 5 SETON HALL CONSTITUTIONAL LAW JOURNAL 851-932 (1995) 2

Victor Williams, *Travel Ban Challenges Present a NonReviewable Political Question*, JURIST, Feb. 18, 2017, available at https://www.jurist.org/commentary/2017/02/victor-williams-travel-ban/ 5

Victor Williams, *Trump Will Bring Return to Rule of Law and Economic Growth*, THE HILL, Nov. 6, 2016, available at https://thehill.com/blogs/pundits-blog/presidential-campaign/304291-trump-will-bring-return-to-rule-of-law-and-economic 4

Victor Williams, *Unconstitutional Bills of Attainders or Valid Judicial Impeachment Removals?*, 22 SOUTHWESTERN UNIV. LAW REVIEW 1077-1101 (1993) 3

Zachariah Chafee, Jr., THREE HUMAN RIGHTS IN THE CONSTITUTION OF 1787 (1956) 12

STATEMENT OF INTEREST[1]

Victor Williams is a Washington, D.C. attorney and law professor with over twenty years' experience. Professor Williams has been affiliated with the faculties of the Catholic University of America's Columbus School of Law, the University of Maryland's Carey School of Law, and the City University of New York's John Jay College of Criminal Justice.

Professor Williams is Chair, and Senior Counsel of "Law Professors for Trump" an advocacy project of GOP Lawyers. (www.goplawyers.com). Victor Williams is also a declared 2020 candidate seeking the Republican nomination for the U.S. Senate for Virginia. (www.vw4v.com).

It was in his capacity as a senatorial candidate that Williams lodged a historic *amicus curiae* brief supporting President Donald J. Trump with the U.S. Senate sitting in the nation's High court of Impeachment on January 27, 2020. The brief framed out an alternative defense raising the attainder ban. The brief was lodged with the Presiding Officer but copies were also hand-delivered to select Senate offices.[2]

---

[1] No counsel for a party authored any portion of this brief, and no person other than *amicus* made a monetary contribution to fund the preparation or submission of this brief. Parties have filed blanket *amici* consent letters as shown on docket.

[2] *See "N0 WITNESSES: Immediate Trump Acquittal Rejects House's Illegal Attainder Attempt, says Historic Amicus Curiae Brief Lodge by Virginia GOP Candidate Victor Williams,"* YAHOO FINANCE, September 30, 2020.

Williams earned his J.D. from the University of California-Hastings College of the Law where he was an Articles Editor of the HASTINGS CONSTITUTIONAL LAW QUARTERLY and a National Student Editor of the Federalist Society's HARVARD JOURNAL OF LAW AND PUBLIC POLICY. Williams completed an externship with both Ninth Circuit Court of Appeals Judge Joseph Sneed and Eleventh Circuit Court of Appeals Judge Gerald Bard Tjoflat and then spent two years clerking for Judge William Brevard Hand of the Southern District of Alabama.

Williams completed advanced training in federal jurisdiction and international law from Columbia University's School of Law earning an LL.M., and further training in economic analysis of the law from George Mason University's Antonin Scalia School of Law earning a second LL.M. degree. Williams completed a graduate degree from Harvard after taking his undergraduate degree from Ouachita Baptist University in his home state of Arkansas.

Williams has particular knowledge and expertise regarding the text, history, and interpretation of the U.S. Constitution with many scholarly and popular publications during his career.[3] Williams has

[3] *See e.g.*, Victor Williams, Raze the Debt Ceiling: *A Test Case for State and Institutional Bondholder Litigation to Void the Debt Limit*, 72 WASHINGTON AND LEE LAW JOURNAL ONLINE 96-135 (2015); Victor Williams, *A Constitutional Charge and a Comparative Vision to Substantially Expand and Subject Matter Specialize the Federal Judiciary* , 37 WILLIAM & MARY LAW REVIEW 535-671 (1996); and Victor Williams, *Third Branch Independence and Integrity Threatened by Political Branch Irresponsibility: Reviewing the Report of the National Commission on Judicial Discipline and Removal*, 5 SETON HALL CONSTITUTIONAL LAW JOURNAL 851-932 (1995).

published scholarship and commentary that offered strong support for the constitutional discretion and appointment prerogatives of the past four presidents (without regard to their party affiliation).[4]

Although these past presidents often pursued policy ends at odds with Professor Williams' personal policy preferences, Williams particularly advocates the Executive's use of his unilateral Article II, Section 2, Clause 3 recess appointment power.[5]

Williams has long researched and published in the specific field of constitutional limitations on legislative inquiries and impeachments[6] and flawed impeachment-alternatives such as proposed congressional censures.[7]

Williams was an early 2016 primary supporter of candidate Donald Trump. In spring 2016, Williams launched a widely-reported legal action, after obtaining "competitor candidate standing" as a write-in candidate in several late primary states, to

---

[4] Victor Williams, *Averting a Crisis, The Next President's Appointment Strategy*, NATIONAL LAW JOURNAL, 14 (March 10, 2008).

[5] Victor Williams, *NLRB v. Noel Canning Tests the Limits of Judicial Memory: Leon Higginbotham, Spottswood Robinson and David Rabinovitz Rendered 'Illegitimate'?*, 6 HOUSTON LAW REVIEW HLRE: OFF THE RECORD 107-122 (2015) and Victor Williams *Noel Canning Presents a Nonjusticiable Political Question,* CARDOZO LAW REVIEW DE NOVO 45-68 (2014).

[6] Victor Williams, *Unconstitutional Bills of Attainders or Valid Judicial Impeachment Removals?*, 22 SOUTHWESTERN UNIV. LAW REVIEW 1077-1101 (1993).

[7] Victor Williams, *No Censure: No Scarlet Letter Option*, LEGAL TIMES, 14 (December 14, 1998) and Victor Williams, *No Shortcut in Censure*, LEGAL TIMES, 32 (September 21, 1998).

challenge the ballot eligibility of naturally-born Canadian Ted Cruz.[8] [9]

After Senator Cruz withdrew from the presidential race, Professor Williams also withdrew from the race, formerly endorsed Donald Trump, and founded GOP Lawyers independently to rally lawyers and law professors to support Donald Trump in the general election.[10] Quickly spending more than $1000, archaic and unconstitutional federal election laws required its FEC registration as a political action committee.

---

[8] *See e.g., Debra Weiss, Law Prof a Write-In GOP Candidate to Challenge Ted Cruz Eligibility*, ABA JOURNAL, April 11, 2016, and Pete Williams, *Law Professor Challenges Cruz on Citizenship, Candidacy*, NBC NEWS, April 11, 2016.

[9] Williams supports Ted Cruz's work as a pro-Trump Senator particularly his efforts during the Senate Impeachment Trial of President Trump with his excellent "The Verdict" podcast. *See Stephen Dinan and S.A. Miller, Fresh Off Smashing Podcast Debut, SCOTUS Vet Ted Cruz to Take Center Stage at Impeachment*, WASH. TIMES, January 26, 2020. Of course, Cruz's constitutional ineligibility for the presidency has not, cannot, be changed for 2024..

[10] *See Inside the Beltway: 'Lawyers for Trump' Founded,* WASH. TIMES, July 4, 2016; Victor Williams, *Once an Obama Supporter, Law Professor Now Proudly in Basket of Deplorables,* THE HILL, Sept. 20, 2016, available at https://thehill.com/blogs/pundits-blog/presidential-campaign/296783-law-prof-once-an-obama-supporter-now-in-basket-of ; and Victor Williams, *Trump Will Bring Return to Rule of Law and Economic Growth*, THE HILL, Nov. 6, 2016, available at https://thehill.com/blogs/pundits-blog/presidential-campaign/304291-trump-will-bring-return-to-rule-of-law-and-economic.

The group has now transformed into an unfunded professional association and "Law Professors for Trump" is an advocacy project which Williams serves as Chair and Senior Counsel, to advance the Trump administration's disruptive "America First" policies, programs, and nominations[11]. The advocacy group defends Trump and his policies in the media and in the federal courts with *amicus curiae* briefs.[12]

On July 4, 2019, Victor Williams announced his 2020 candidacy to defeat professed anti-Trump incumbent Mark Warner to represent the Commonwealth of Virginia in the U.S. Senate (www.vw4v.com). This brief is filed by Professor Williams in his individual capacity.

SUMMARY OF THE ARGUMENT

This *amicus curiae* brief argues that the House subpoenas against Petitioners should be analyzed by this Court in their context as part a larger unconstitutional attainder.

Amicus respectively reminds that our Constitution's Framers explicitly rejected the abusive British Parliament's practice using of legislative attainders for the harassment of public officers and their ideological associates.

---

[11] *See* Alex Swayer*, Senate Confirms 77 Trump Nominations in End of Congress Deal*, WASH. TIMES, Jan. 2, 2019 and Victor Williams, *Senate 30-hour Per Nominee Fake Debate Rule Hobbles Departments, Agencies, and District Courts*, THE HILL, Feb. 8, 2019.

[12] *See* Victor Williams, *Travel Ban Challenges Present a NonReviewable Political Question*, JURIST, Feb. 18, 2017, available at https://www.jurist.org/commentary/2017/02/victor-williams-travel-ban/.

As our 1787 Framers textually banned both congressional and state attainders in separate sections of Article I, this reminder applies equally well for *Trump v. Vance* (19-635) set for oral argument on the same day as the instant adjudication. U.S. Const. Art. I, Sec. 9 & 10.

This brief's discrete mission is to first present our uniquely American attainder ban as one of Alexander Hamilton's great victories for good government and against ideological hatred. Then the brief applies Hamilton's view of the attainder ban to to the various House actions against Petitioners giving context to the subpoenas at issue.

ARGUMENT

"Awfully close" to a "bill of attainder" is how dissenting D.C. Circuit Judge Naomi Rao characterized her colleague's approval of just one of the 116th House of Representatives' many harassing subpoenas lodged against Donald Trump, his family, and his associates.[13] *Trump v. Mazars*, USA, LLP, 940 F.3d 710 (D.C. Cir. 2019) (Rao, J. dissenting) (Petitioner Appendix at 77-157).

Amicus fully supports, adopts, and incorporates the arguments and conclusion of Petitioners' briefs. This *amicus curiae* brief argues alternatively that the House subpoenas against Petitioners should be analyzed by this Court in their context as a part of a larger unconstitutional attainder.

---

[13] Judge Rao's three judge panel dissent in *Mazars* presents a beginning summary of this Court's attainder jurisprudence which *amicus* will not duplicate.(Petitioner Appendix at 77-157).

Amicus respectively reminds this Court that our Constitution's Framers explicitly rejected the abusive British legislative practice of using of attainders for the harassment of public officers and their associates.[14] As our 1787 Framers textually banned congressional and state attainders in separate sections of Article I, this reminder applies equally well for *Trump v. Vance* (19-635) set for oral argument on the same day as the instant adjudication. Indeed, this brief's emphasis on Alexander Hamilton's 1784 fight against the New York legislature's attainders against his wealthy Tory neighbors on Manhattan Island is most relevant to this Court's consideration of *Trump v. Vance*.

An English "attainder" allowed no process due a targeted official or individual. Its underlying punishing purpose was to permanently blacken the official's reputation. English jurist William Blackstone described "attainder" as a legislative taint, stain, or blackening. The "attintus" results in the person being "without credit or reputation," and thereafter an incredible "witness in any court."[15]

---

[14] For an in-depth presentation of particularly relevant English attainder antecedents, *see* Craig Lerner*, Review: Impeachment, Attainder, and a True Constitutional Crisis: Lessons from the Strafford Trial*, 69 UNIVERSITY OF CHICAGO LAW REVIEW 2057 (2002).

[15] 4 Blackstone, COMMENTARIES ON THE LAW OF ENGLAND (1769). ("He is then called attaint, *attinctus,* stained, or blackened. He is no longer of any credit or reputation; he cannot be a witness in any court; neither is he capable of performing the functions of another man."). Blackstone's defamatory definition of "attainder" controlled when our constitutional Framers prohibited legislative punishment.

If the simple-majority House of Parliament attainder vote failed, the public legislative debate nevertheless accomplished its defamatory purpose of permanent "attintus" of the official's reputation thus damaging his ongoing authority and political future.

Our 1787 Framers understood that the "attainder prohibition applied to any congressional actions dealing the president." Charles L. Black, Jr. and Philip Bobbitt, Impeachment: A Handbook (2018), 28-29. *Amicus* asks this Court to consider the "spirit and equity of the bill of attainder" ban while considering the legislative harm suffered by the Petitioners and the American system of government. *Id.*

The 1891 wisdom of then-Professor Joseph Story perhaps best describes how attainder processes are often done by legislatures without "proofs conformable to the rules of evidence." Story explains that a legislature with attainder-fever is "governed solely by what is deems political necessity or expedience, and too often under the influence of unreasonable fears or unfounded suspicions." 3 Joseph Story, Commentaries on the Constitution of the United States §1338 (Ronald D. Rotunda & John E. Nowak eds., Carolina Academic Press 1987) (1833).

This brief's discrete mission is to first present our uniquely American attainder ban as one of Alexander Hamilton's great victories for good government and against ideological hatred.[16] And,

---

[16] Alexander Hamilton, *Letter from Phocion to the Considerate Citizens of New York*, (January 1784) (First and Second Letters) https://founders.archives.gov/search/Author%3A%22%E2%80%9CPhocion%E2%80%9D%22).

then the brief applies Hamilton's view of the attainder ban to the 116th House harms against Petitioners and the separation of powers.

I. Colonel Alexander Hamilton's Greatest Battle: No Attainders in America

English attainder abuse was brought to Colonial America. The politically-effective result and defamatory-abusive methods caught fire during and for some years the Revolutionary War.

The rebelling colonial legislatures, and then the new state legislatures, abused British-loyal Tories by voting attainders of forfeiture and retaliatory political defamation. New York's legislature was perhaps the worst abuser.

Spiteful New York legislators were zealous in their attainder harassments of their Tory neighbors who they judged as having been too long loyal to Mother England. The loyal Tory, of course, rightly viewed the "patriots" to legally be nothing more-or-less than murderous traitors. Still, it was the patriots need to pay Revolutionary War debt that put the most wealthy Tories in the legislature's confiscatory cross-hairs.[17]

After critical victory in his Yorktown field command, Colonel Alexander Hamilton returned home to New York, embraced a call to the bar, and soon came to fight such legislative attainders. With the same passion that he fought the British army, Hamilton forcefully challenged his state legislature's attainder abuse of his wealthy Manhattan Island

---

[17] Reppy, Alison, *The Spectre of Attainder in New York (Parts 1 and 2*), 23 *St. John's Law Review 1 (1948).*

neighbors. *See* Ron Chernow, ALEXANDER HAMILTON (2004) 154-270.

Not yet 30-years of age, fledgling-lawyer Hamilton challenged the retaliatory attainders in both in newly-independent state courts and in the public square.

In Alexander Hamilton's too neglected public commentary -- two issues of -- LETTER FROM PHOCIOM TO THE CONSIDERATE CITIZENS OF NEW YORK, he warned against permitting petty politicians to harass unpopular citizens or officials.

Hamilton argued that allowing his neighbors to be harassed and punished for their ideological beliefs -- outside even the semblance of a valid judicial process -- violated principles that should be sacred to the new nation:

> "We should then have sacrificed important interests to the little, vindictive, selfish, mean passions of a few." [1st letter] [18]

Colonel Hamilton rejected the legislators' excuse that "unusual circumstances" justified the direct attainder harassments that most knew to be abusive and wrong:

> "When the advocates for legislative discriminations are driven from one subterfuge to another, their last resting place is — that this is a new case…. Your principles are all right say they, in the ordinary course of society, but they

[18] Alexander Hamilton, *Letter from Phocion to the Considerate Citizens of New York*, (January 1784) (First and Second Letters) (https://founders.archives.gov/search/Author%3A%22%E2%80%9CPhocion%E2%80%9D%22

> do not apply to a situation like ours." [2nd letter][19]

The future Secretary of the Treasury knew the new nation could not afford to alienate Tories who would provide capital investment in American markets. And, Hamilton also explained that the legislators were interfering with the nation's foreign relations. The attainders circumvented the 1783 Paris Peace Treaty with King George III of Great Britain. The New York legislature's harassment and punishment of Tories jeopardized quite-favorable *quid pro quo* peace treaty terms that had been secured by citizen-emissaries John Jay, Benjamin Franklin, and John Adams.

Three years later, Constitutional Convention delegate Alexander Hamilton joined with our other 1787 Framers in Philadelphia to prohibit all attainders whether by state or national legislatures.

Article I's Sections 9 and 10 forbids legislative harassment and punishment: "No *ex post facto* law or bill of attainder shall be passed." U.S. Const. Art. I, Sec. 9 & 10.

The inclusion of the attainder ban in the list of powers denied Congress was meant to affirmatively retard legislative processes and debates that might defame disfavored individuals and groups. [20] The

---

[19] *Id.*

[20] The Attainder Clauses inclusion were subject to no serious opposition and little discussion in the 1787 Convention. *See* 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 376 (Max Farrand ed., rev. ed. 1937) ("Mr. Govr. Morris thought the precaution . . . essential as to bills of attainder.. . . The first part of the motion relating to bills of attainder was agreed to [without contradiction].").

proscription against legislative defamatory punishment together with the protection of legislator debate immunity were two complimentary, radical 18th Century human rights advancements. *See* Zachariah Chafee, Jr., THREE HUMAN RIGHTS IN THE CONSTITUTION OF 1787 (1956).

In November 1794, just five years after the Constitution was ratified, the 3rd House of Representatives debated levying a resolution of "censure" against certain western farmers accused of fermenting the Whiskey Tax Rebellion. [21]

James Madison (then a House member from Virginia) damned the "procedural innovation" of staining and tainting his fellow citizen farmers for their civil disobedience and/or for their anti-tax ideology. The House resolution had no harsher purpose than to influence "public opinion" and to damage the farmers' reputation. Representative Madison argued:

> "It is vain to say that this indiscriminate censure is no punishment. Crimes cannot be noticed by the Legislature. Is not this proposition a vote of attainder?"

4 ANNALS OF CONG. 934 (1794), *quoted in Joint Anti-Fascist Refugee Comm. v. McGrath,* 341 U.S. 123, 144 n.1 (1951) (Black, J., concurring).

---

[21] Of no legal relevance, perhaps, was that the distillation tax also worked as a tax on a necessary food preservation technique –grains with benefits.

Fast forward to find the 105th House of Representatives acknowledging that legislative defamatory processes such as those of a censure resolution, are attainder.[22]

> [F]or the President or any other civil officer, censure as a shaming punishment by the legislature is precluded by the Constitution.... Not only would [censure] undermine the separation of powers by punishing the President . . . in a manner other than expressly provided for in the Constitution, but it would violate the Constitution's prohibition on Bills of Attainder."

H.R. Rep. No. 105-830 at 137 (1998).

II. "Our Age of Attainder [and Trump Derangement Syndrome]"

The House actions against Petitioners are born not just of partisanship but also of extreme ideological hatred, establishment fear of loss of power, and globalist push back against Trump's disruptive "America First" movement.

As Yale Law Professor John Hart Ely wrote of the red scare and generation long Russian witch hunt, while he was still a student: "The similarity between our age and past 'ages of attainder' is startling." Note, *The Bounds of Legislative Specification: A Suggested Approach to the Bill of Attainder Clause*, 72 YALE LAW JOURNAL. 330 (1962).

---

[22] *See also*, Victor Williams, *No Censure: No Scarlet Letter Option*, LEGAL TIMES, 14 (Dec. 14, 1998) and Victor Williams, *No Shortcut in Censure*, LEGAL TIMES, 32 (Sept. 21, 1998).

Ours is the "Age of Attainder and Trump Derangement Syndrome." At the exact time of Donald Trump's January 20, 2017 swearing-in, House Democrats and establishment Republicans raged against the new Chief Executive and they swore to "impeach 45."[23] Congressional Democrats then worked in lockstep with anti-Trump "resistance" fighters in the dens of the establishment and media elites. *See* Kimberly Strassel, RESISTANCE (AT ALL COSTS): HOW TRUMP HATERS ARE BREAKING AMERICA (2019).

In a most shocking fashion, Democrat House[24] and Senate[25] leaders began to act in concert with both foreign agents and domestic deep-state officials in attempted defamation and attempted destruction of Trump, his family, and his associates.[26]

The zeal of the deep-state treachery against Trump and his associates was quickly manifest as Obama hold-over Attorney General Sally Yates' Justice Department orchestrated an ambush

---

[23] Matea Gold, *The Campaign to Impeach President Trump Has Begun,* WASH. POST, Jan. 20, 2017.

[24] *See e.g.*, Julian E. Barnes, Michael S. Schmidt, and Matthew Rosenberg, *Shiff Got Early Account of Accusations as Whistle-Blower's Concerns Grew*, N.Y. TIMES, October 2, 2019.

[25] *See* Ed Henry, *Democratic Sen. Mark Warner Texted with Russian Oligarch Lobbyist in Effort to Contact Dossier Author Christopher Steele*, FOX NEWS, Feb. 8, 2018 and Sally Persons, *Sen. Mark Warner Texted with Lobbyist with Russian Ties to Get in Touch with Dossier Author: Report,* WASH. TIMES, Feb. 9, 2018.

[26] *See* Rowan Scarborough, *Wiretap Abuse Report Gives Michael Flynn, other Trump Associates a New Opening for Vindication*, WASH. TIMES, Feb. 2, 2020.

interview to set a perjury trap for Trump's nascent National Security Advisor Michael Flynn. The establishment tasted blood in the water.[27] To support Trump, to work for Trump, and certainly to be nominated for a senior position by Trump painted a target on one's back.

For those nominees serious about aiding the Trump's disruptive mission, the Senate confirmation process turned into a prolonged orgy of attainder-like-defamation. The quite-intended appointment consequence was an early administration packed with many establishment loyalists and some committed Never Trumpers.[28]

Keystone-Cop-Coup discussions soon began about secretly recording the president conversations to glean information on which to base a 25th Amendment removal.[29] Of course, deep-state anti-Trump actors in the intelligence agencies had been

---

[27] *See* Rowan Scarborough, *FBI Ambushed Michael Flynn, Then Celebrated: Court Documents*, WASH. TIMES, Oct. 29, 2019.

[28] *Amicus* further asserts that the congressional harassments of Trump and his associates through the subpoenas at issue in this case and in those subpoenas at issue in *Trump v. Vance* -- as well as the meritless impeachment removal trial -- are obviously purposed to retard the Chief Executive's future success in staffing his administration with supportive personnel. And such House harassments and interference work to substantially interfere with Trump's ability to secure timely Senate confirmation for his executive, agency, and judicial nominees –outside a post-*Noel Canning* creative utilization of President Trump's Article II, Section 2, Clause 3 recess appointment power.

[29] *See* Adam Goldman and Michael S. Schmidt, *Rod Rosenstein Suggested Secretly Recording Trump and Discussed 25th Amendment*, N.Y. TIMES, Sept 21, 2018.

listening to Trump and Trump associates since soon after the famed Trump Tower escalator ride down into the political pit.[30]

Trump's first Attorney General was fooled, some charitably say counseled by ethics experts, into taking a historically-naïve and incalculably-destructive recusal from his office's responsibilities.[31] And, thus the two-year Mueller-Weissmann ordeal began complementing and directly aiding congressional "oversight" investigations. Absurd in its cost to the American taxpayer, the concerted anti-Trump investigations proved punishingly expensive to those Trump associates and innocent bystanders forced to retain counsel to avoid our government's Flynn-like perjury traps.

Anti-Trump ideological hatred only intensified with the Mueller-Weissmann investigation's embarrassingly-enfeebled end.[32] And, the passion escalated after President Trump's politically-effective reporting of "No Collusion, No Obstruction." reports.[33] The breadth and depth of deep-state

---

[30] *See generally,* David Frum, *Why Leaking Transcripts of Trump's Calls Is So Dangerous: When the President's Opponents Violate Norms to Undermine Him, They Do Lasting Damage to American Security,* ATLANTIC, Aug 3. 2017.

[31] *See generally*, Katelyn Polantz, *Chuck Cooper Confirms: He's AG Jeff Sessions' Lawyer*, NAT'L L. J. June 20, 2017 and Tierney Sneed, *Victory or Death: The Conservative Legal Warrior Defending Jeff Sessions*, TALKING POINTS MEMO Mar. 8, 2018.

[32] *See* Peter Baker, *The Blockbuster That Wasn't: Mueller Disappoints the Democrats*, N.Y. TIMES, July 24, 2019.

[33] Michael D. Shear and Lola Fadulu, *Trump Says Mueller Was 'Horrible' and Republicans 'Had a Good Day,'* N.Y. TIMES, July 24, 2019.

treachery against Trump and Trump's associates will not likely be known until U.S. Attorney John Durham completes his investigation.[34]

III. Are Bills of Attainder Prohibited by our Constitution, Or Are They "Only Slightly Modified?"

It has been relatively seldom in our national experience that overwhelming ideological division has manifested. It is exactly during such hard times, however, that legislatures often attempt to harass and punish by attainder.

As discussed above, an early time involved the profound hatred of Tory colonists who had refused to betray their King-in-Parliament during and after our Revolutionary War.

---

[34] *See generally*, Katie Benner and Julian Barnes, *Durham Is Scrutinizing Ex-C.I.A. Director's Role in Russian Interference Findings,* NEW YORK TIMES, Dec. 19, 2019. Although inconvenient facts have a way of organically emerging. Consider how the Presiding Officer of the ongoing Senate Impeachment Trial effectively outed the identity of the so-called whistleblower as being CIA operative Eric Ciaramella by refusing to allow Senator Rand Paul to ask a question that simply referenced the individual along with the name of a House staffer in a general context. As reported by the Washington Examiner and Real Clear Investigations, Ciaramella is an Obama hold-over as Ukraine Director on the National Security Council whose "political bias" favoring Joe Biden was acknowledged in a letter from the Intelligence Community's Inspector General. He is now a deputy national intelligence officer for Russia and Eurasia on the National Intelligence Council. Senator Paul's was the only question that the Presiding Officer disallowed thus giving the effective outing even greater exposure.

Consider also the times of profound ideological strife that led to Justice Stephen Johnson Field, writing for this Court, striking down attainders in the companion cases of *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277 (1867) and *Ex parte Garland*, 71 US (4 Wall.) 333 (1866).[35] And, then at each end of

---

[35] A reminder of the attainder facts of *Ex Parte Garland* might be helpful. Congress established an ideology test for all federal public offices in 1862, and expanded it in 1865 to include lawyers practicing before all federal courts. No postbellum federal appointee could serve, no lawyer could practice, if they had once served the Confederate cause.

Augustus Garland was an unusual Arkansas attorney. He dared to risk popular disfavor by litigating on behalf of a slave in the Arkansas appellate courts and eventually won her freedom. In addition, Garland was a vocal opponent of Arkansas' secession from the Union. However, once Arkansas formally joined the rebel movement, Garland served his state in both the House and Senate of the Confederate States of America ("CSA").

In 1865, President Andrew Johnson granted Garland a full pardon, and the attorney began working to facilitate Arkansas' formal reentry into the United States. The Garland pardon and many other Johnson pardons of confederates – including a pardon for CSA President Jefferson Davis – added to the growing House passion for President Johnson's impeachment.

With presidential pardon in hand, Garland petitioned the U.S. Supreme Court to return to practice before its bar. In *Ex Parte Garland* (1866), Justice Field, writing for the high court, ruled that the congressional defamation of ideology--- like the Missouri Constitution's defamation of an ideology at issue in *Cummins* -- was an attainder punishment.

With the grey attainder taint removed, Garland returned to his Supreme Court legal practice. He subsequently served as one of Arkansas' reconstruction Governors and then represented Arkansas in the U.S. Senate when the state's representation in the upper chamber was finally restored. Garland was appointed by President Grover Cleveland to serve

the generation-long red witch hunt, this Court nullified attainders first in *United States v. Lovett*, 328 (1946)[36] and then in *United States v. Brown*, 381 U.S. 437, 442 (1965).

---

as the 38th U.S. Attorney General. August Garland died after suffering a stroke while delivering an argument before the U.S. Supreme Court. S*ee generally,* A.F. House, Mr. Justice Field and Attorney General Garland, 3 ARKANSAS LAW REVIEW 266 (1948-1949).

[36] Also instructive to this adjudication are the attainder facts of a two House committee rope-a-dope at issue in the *Levitt* case. In the early 1940s, the House used the special "Un-American Activities Committee" ("HUAC"), chaired by Martin Dies, to conduct hundreds of initial investigations against federal government officials. With the assistance of the FBI, the infamous House Committee sought to root out "crackpot, radical bureaucrats." HUAC eventually selected over 39 named federal officials and federal employees to further target with procedurally deficient committee hearings. *See* Majorie Hines, PRIESTS OF OUR DEMOCRACY: THE SUPREME COURT, ACADEMIC FREEDOM, AND THE ANTI-COMMUNIST PURGE (2013) 85-86. Chair Dies judged that the named officials' nontraditional beliefs, violations of accepted norms, and associations made them unfit to hold a Government position. HUAC next submitted its list of names and defamatory investigative reports to the Appropriations Committee which conducted another round of procedurally-deficient subcommittee hearings.

Appropriations Subcommittee Chairman John Kerr stated that the core question to be addressed was "whether or not the people of this country want men who are not in sympathy with the institutions of this country to run it." *Id. See* also Note, *The Bounds of Legislative Specification: A Suggested Approach to the Bill of Attainder Clause*, 72 YALE LAW JOURNAL. 330 (1962). In the second step of the punishment, Congress passed a rider to Section 304 of the Urgent Deficiency Appropriation Act of 1943 targeting federal employees Robert Lovett, William Dodd, and Goodwin Watson. The rider forbade salaries for the three officials -- unless they successfully completed a Senate confirmation process for reappointment to the posts. The

Most relevant to our times and this case, it is important to consider the 40th House of Representatives' ideological hatred of President Andrew Johnson for his efforts at compassion for, and reunification with, the separated southland.

After the War between the States, Johnson's post-bellum, disruption of the victors' "expected institutional norms" of retaliation was not tolerated by the establishment. The vindictive House and the deep-state-military equally intent on a brutally harsh occupation of Dixie led to the orchestration of the ultimate attainder punishment of President Johnson -- meritless impeachment.

---

predicament obvious was that any confirmation hearings would have provided another forum in which to defame the three men, and the previous HUAC defamations would have made any subsequent confirmation votes improbable.

After reviewing the Court of Claims judgment, which had given partial victory to the three officials, the Supreme Court struck down Section 304's effective removal of the public officials as attainder. Justice Hugo Black explained: "Those who wrote our Constitution well knew the danger inherent in special legislative acts which take away the life, liberty, or property of particular named persons because the legislature thinks them guilty of conduct which deserves punishment." *Lovett at* 317.

Hugo Black, having endured his own defamatory appointment controversy after he quickly moved from the U.S. Senate to the U.S. Supreme Court -- with his commission, freshly-signed by FDR, literally carried under his arm -- had little difficulty seeing punishment inherent in the legislative action. Black wrote that the two House Committee rope-a-dope operated "as a legislative decree of perpetual exclusion' from a chosen vocation." Black recognized that a "permanent proscription from any opportunity to serve the Government" was "punishment, and of a most severe type." *Id. at* 316.

Former Supreme Court Justice Benjamin Curtis, famed as one of two dissenters[37] in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), defended Johnson before the Senate Impeachment Court – he did so in-part explaining why the impeachment was in-part unconstitutional retroactive attainder. With attainder, legislatures "make the law for the facts they find." CONG. GLOBE, 40th Cong. 2d Sess. Supp. 134 (1868) (Opening Argument of Benjamin Curtis in Senate Impeachment Trial).

President Johnson was being impeached for exercising his removal and appointment discretion, for his compassion for the vanquish south, and for delivering speeches at rallies throughout the nation – speeches that were perhaps imprudent and speeches that purposely inflamed the already raw ideological passions of the House. Curtis argued that if Congress could retroactively punish Johnson for his sectional compassion and with two specific articles of impeachment targeting the president just for delivering speeches, then "bills of attainder are not prohibited by this Constitution, they are only slightly modified."

Even now, House Speaker Nancy Pelosi continues to speak proudly of the House actions purposed to permanently taint and stain President Trump. She passes out pens with her personal signature emblazed on each to celebrate the first -- but likely

---

[37] After *Dred Scott*, Curtis resigned from this Court, largely on grounds of principled disagreement with his brethren although he had also grown tired of "riding circuit" and being woefully underpaid compared to his private sector colleagues. *See* Stuart Streichler, JUSTICE CURTIS IN THE CIVIL WAR ERA (2005).

not last -- "permanent" blackening of Trump. [38] And House lawyers recently promised the D.C. Circuit that more attainder wrapped in impeachment inquiry cloth was likely.[39]

Our Constitution's Framers reacted against procedurally-deficient British parliamentary harassment practices by restricting the authority of the national legislature to punish individuals with defamatory attainder processes.

In Federalist Paper Number 78, Alexander Hamilton addressed the unique and fundamental duty of courts to honor the Constitution's explicit restriction on legislatures:

> By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, *ex post fac*to laws, and the like. Limitations of this kind can be preserved in practice no other way that through the medium of the courts of justice; whose duty it must be to declare all acts

---

[38] *See* Gregory Abernathy, *Impeachment is a Race to the Bottom and Nobody Wins*, WASH. POST, January 21, 2020 and Rick Klein and Mary Alice Parks, *The Note: Pelosi's 'Forever' Impeachment Puts GOP on Warning*, ABC NEWS, January 13, 2020.

[39] See Harper Neidig, House Lawyers Open Door to More Articles of Impeachment, THE HILL, December 23, 2019 and Katelyn Polantz, *Fighting for McGahn Testimony and Mueller Docs, House Lawyer Says More Impeachment Charges Could Come*, CNN ONLINE, January 3, 2020. ("House attorneys told judges the Democrats could still pursue impeaching the President for other reasons, even after the current impeachment regarding Ukraine has passed.")

> contrary to the manifest tenor the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

THE FEDERALIST NO. 78, 491 (Alexander Hamilton) (Clinton Rossiter, ed. 1961) (emphasis added). The uniquely American constitutional proscription against attainder is protects the separation of powers and it is a solid shield of individual liberty for all Americans, including public officials and their associates, whose ideology might be the subject of intense, passionate hatred and establishment opposition.

And, yes, although anti-Trump passions appear to increase with each passing month, the attainder ban protects Donald John Trump, his family, his businesses, and his associates. Indeed, what Professor Charles Black described as the "spirit and the equity" of the attainder prohibition should extend to Trump voters.

It should especially apply to those Trump-supporting Americans described by 2016 Democrat nominee Hillary Clinton as 50 percent falling into a basket of "deplorables" who were "irredeemable" racists, sexists, homophobics, and Islamaphobics. Clinton said the second 50 percent of all Trump supporters fell into a pity-basket of government-skeptics, substance-abusers, unemployed, and career dead-enders.[40] The former Secretary of State

---

[40] Since launching "Law Professors for Trump" in 2016, *Amicus* acknowledges that profound anti-Trump sentiment in the legal academy has lead to his alternative occupation of each of Madame Secretary Clinton's two baskets. *Amicus* finds loving, happy, patriotic company in each creel. *See* Victor Williams,

signaled the formal launch of a pattern of ever-increasing ideological hatred and public defamation against Trump, his associates, and his supporters that leads directly to this present adjudication and that of *Trump v. Vance* (19-635).

Once an Obama Supporter Law Professor Now Proudly in Basket of Deplorables, THE HILL, Sept. 20, 2016, available at https://thehill.com/blogs/pundits-blog/presidential-campaign/296783-law-prof-once-an-obama-supporter-now-in-basket-of, and Helen Lyons (AP), *Trump Supporters Isolated in Liberal Washington Suburbs*, WASH. TIMES, Nov. 2, 2016, available at https://www.washingtontimes.com/news/2016/nov/2/trump-supporters-feel-isolated-in-liberal-washingt/

CONCLUSION

For its 230 year history, this Court has heeded Judge Montesquieu's warning about legislative overreach working attainder. When any legislative body has defaming, punishment power, "the life and liberty of the subject would be exposed to arbitrary control."[41]

Now, once again, this Court has opportunity and duty to take-up Colonel Alexander Hamilton's cause to insure that defamatory attainder processes will not be allowed in America.

Respectfully submitted,

PROFESSOR VICTOR WILLIAMS
Counsel of Record
Chair and Senior Counsel
LAW PROFESSORS FOR TRUMP
GOP LAWYERS
2200 Wilson Boulevard
Arlington, Virginia 22201
(571) 309-8249
www.goplawyers.com

---

[41] Charles-Louis de Secondat, Baron de La Brède et de Montesquieu, THE SPIRIT OF THE LAWS 157 (A. Cohler et al. eds., 1989).