



**TOWN OF BROOKLINE
MASSACHUSETTS**

**REPORTS OF SELECTMEN
AND ADVISORY COMMITTEE**

on the

Articles in the Warrant

for the

SPECIAL TOWN MEETING

to be held in the High School Auditorium

Tuesday, May 23, 2017

at

8:00 P.M.

(Please retain this copy for use at the Town Meeting)

Town of Brookline

BOARD OF SELECTMEN

Neil A. Wishinsky, Chairman

Benjamin J. Franco

Nancy S. Heller

Bernard W. Greene

Heather A. Hamilton

Melvin A. Kleckner, Town Administrator

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MODERATOR

Edward N. Gadsby, Jr.

ADVISORY COMMITTEE

Sean M. Lynn-Jones, Chair, 53 Monmouth Street.....	738-6228
Carla Benka, Vice-Chair, 26 Circuit Road	277-6102
Clifford M. Brown, 9 Hyslop Road	232-5626
Carol Caro, 1264 Beacon Street, #2.....	739-9228
Lea Cohen, 1060 Beacon Street, #11.....	947-9713
John Doggett, 8 Penniman Place	739-7266
Dennis Doughty, 57 Perry Street.....	566-5474
Harry Friedman, 27 Clafin Road	232-0122
Janet Gelbart 216 St. Paul Street #601.....	566-5616
David-Marc Goldstein, 22 Osborne Road	232-1943
Neil Gordon, 87 Ivy Street.....	(508)265-1362
Kelly Hardebeck, 18 Littell Road	277-2685
Amy Hummel, 226 Clark Road	731-0549
Sytske V. Humphrey, 46 Gardner Road	277-1493
Angela Hyatt, 87 Walnut Street	734-3742
Alisa G. Jonas, 333 Russett Road	469-3927
Janice Kahn, 63 Craftsland Road.....	739-0606
Steve Kanés, 89 Carlton Street	232-2202
Bobbie M. Knable, 243 Mason Terrace.....	731-2096
David Lescohier, 50 Winchester Street	383-5935
Fred Levitan, 1731 Beacon Street.....	734-1986
Robert Liao, 55 Meadowbrook Road.....	(530)988-8887
Pamela Lodish, 195 Fisher Avenue	566-5533
Shaari S. Mittel, 309 Buckminster Road	277-0043
Mariah Nobrega, 33 Bowker Street	935-4985
Michael Sandman, 115 Sewall Ave., No. 4	232-7125
Lee L. Selwyn, 285 Reservoir Road	277-3388
Stanley L. Spiegel, 39 Stetson Street	739-0448
Charles Swartz, 69 Centre Street	731-4399
Christine M. Westphal, 31 Hurd Road.....	738-7981
Lisa Portscher, Executive Assistant, Town Hall.....	730-2115

MAY 23, 2017
SPECIAL TOWN MEETING
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ARTICLE NO.

TITLE

1. Resolution in Support of Congressional Investigation regarding the impeachment of President Donald J. Trump (Lisa Kolarik, Alexandra Borns-Weil)

2017 SPECIAL TOWN MEETING WARRANT REPORT

The Board of Selectmen and Advisory Committee respectfully submit the following report on Articles in the Warrant to be acted upon at the 2017 Special Town Meeting to be held on Tuesday, May, 23, 2017 at 8:00 p.m.

Note: The following pages of this report are numbered consecutively under each article.

ARTICLE 1

FIRST ARTICLE

Submitted by: Lisa Kolarik, Alexandra Borns-Weil

Resolution in Support of Congressional Investigation regarding

Impeachment of President Donald J. Trump

WHEREAS, the Foreign Emoluments Clause of the United States Constitution provides that “no Person holding any Office of Profit or Trust under the United States, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State,” thereby prohibiting conflicts of interest that could influence the conduct of the foreign affairs of the United States,

WHEREAS, the Domestic Emoluments Clause of the United States Constitution provides that, besides the fixed salary for his four-year term, the President “shall not receive within that Period any other Emolument from the United States, or any of them,” thereby prohibiting conflicts of interest that could influence the conduct of the domestic affairs of the United States,

WHEREAS, the term “emoluments” includes a broad range of financial benefits, including but not limited to monetary payments, purchase of goods and services even for fair market value, subsidies, tax breaks, extensions of credit, and favorable regulatory treatment,

WHEREAS, Donald J. Trump, the President of the United States, owns various business interests and receives various streams of income from all over the world,

WHEREAS, many of these businesses receive, and streams of income include, emoluments from foreign governments, states of the United States, or the United States itself,

WHEREAS, leading constitutional scholars and government ethics experts warned Donald J. Trump shortly after the November 2016 election that, unless he fully divested his businesses and invested the money in conflict-free assets or a blind trust, he would violate the Constitution from the moment he took office,

WHEREAS, on January 11, 2017, nine days before his inauguration, Donald J. Trump announced a plan that would, if carried out, remove him from day-to-day operations of his businesses, but not eliminate any of the ongoing flow of emoluments from foreign governments, state governments, or the United States government,

WHEREAS, on January 20, 2017, Donald J. Trump took the oath of office and became President of the United States,

WHEREAS, from the moment he took office, President Trump was in violation of the Foreign Emoluments Clause and the Domestic Emoluments Clause of the United States Constitution,

WHEREAS, these violations undermine the integrity of the Presidency, corruptly advance the personal wealth of the President, and violate the public trust,

WHEREAS, our democracy is premised on the bedrock principle that no one is above the law, not even the President of the United States,

NOW, THEREFORE, THE Town of Brookline RESOLVES to call upon the United States House of Representatives to support a resolution authorizing and directing the House Committee on the Judiciary to investigate whether sufficient grounds exist for the impeachment of Donald J. Trump, President of the United States, including but not limited to the violations listed herein; and,

BE IT FURTHER RESOLVED that copies of this resolution be transmitted officially to the Member of the United States House of Representatives that represents the city, namely, the Honorable Joseph Kennedy III; and,

BE IT FURTHER RESOLVED that copies of this resolution be transmitted officially to certain other cities and communities in this state, namely, Boston, Newton, Wellesley, and Needham.

or act on anything relative hereto.

PETITIONER'S ARTICLE DESCRIPTION

We are writing to urge Town Meeting members to pass a resolution in support of a congressional investigation regarding the impeachment of President Donald J. Trump. The resolution calls on the U.S. House of Representatives to begin the impeachment process. As you probably know the cities of Cambridge, Massachusetts, Richmond and Alameda, California and Charlotte, Vermont have passed such resolutions, and the movement to impeach is gaining momentum.

These resolutions can help build public support for impeachment and make Representatives understand that their constituents favor starting the impeachment process.

There is plenty of evidence now to impeach President Trump for violations of the Foreign and Domestic Emoluments Clauses of the Constitution. It is our duty as citizens to make sure that the Constitution is enforced.

SELECTMEN'S RECOMMENDATION

The Board of Selectmen will have their public hearing on this article on May 16, 2017. A report and recommendation on this article will be in the Supplemental Mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

A report and recommendation by the Advisory Committee under this article will be provided in the Supplemental Mailing.

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ARTICLE 1

BOARD OF SELECTMEN’S SUPPLEMENTAL RECOMMENDATION

Article 1 is a resolution concerning a congressional investigation regarding the impeachment of President Donald J. Trump. Passage of the Article would cause Town Meeting to call upon the United States House of Representatives to begin a formal investigation utilizing the Domestic Emoluments Clause of the United States Constitution.

The Board acknowledges that Town Meeting has previously passed countless resolutions encouraging federal and state elected officials to pursue policy goals and pass specific pieces of legislation. The filing of Article 1 of at this Special Town Meeting is an opportunity for Town Meeting to share its opinion concerning the President of the United States. The Board points out that Town Meeting considered a similar resolution in 2006 regarding impeachment of George W. Bush, and, therefore, Town Meeting's consideration of this subject matter is not unprecedented. The Board respects the language provided by the Advisory Committee, and more specifically the edits and work done by the ad hoc subcommittee, because it honed in the resolution and refocused it on factual information.

Selectmen voted 5-0 Favorable Action on the Advisory Committee’s recommendation.

ADVISORY COMMITTEE’S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

This Warrant Article asks the Judiciary Committee of the U.S. House of Representatives to start the impeachment process by investigating whether there are grounds for impeachment. The resolution suggests that President Trump may have violated the Foreign Emoluments Clause and the Domestic Emoluments Clause of the United States Constitution by receiving various forms of income and benefits. The Advisory Committee, by a vote of 15–2–4, recommends Favorable Action on a resolution that includes minor changes in the original language of the Warrant Article.

BACKGROUND:

Impeachment is the process of removing a government official from his or her position because that official has broken the law. But impeachment, and especially impeachment of the President, is not just an exercise in criminal justice. It’s an exercise in politics, and the process is political theater.

The process of impeaching the President that is prescribed by the United States Constitution casts the House Judiciary Committee as the prosecutor. The committee investigates the charge that the president has committed “high crimes and misdemeanors” and by majority vote, it reports to the House, which acts as a grand jury. Acting by majority vote, the full House decides whether the indictment carries sufficient weight to be referred to the Senate.

The Senate is the trial jury. A two-thirds vote is required to convict the office-holder of the charges drafted by the House Judiciary Committee and accepted by the House.

For those who think of impeachment as being a judicial event, it’s worth noting that the only time a member of the judiciary appears on stage is when the chief justice presides over the trial of the president in the Senate.

Three presidents have been the subject of indictments passed by the House Judiciary Committee. Lincoln’s vice president, Andrew Johnson, was accused of violating a law passed by Congress that was designed to protect Edward M. Stanton, the secretary of war and the official in charge of administering the Reconstruction process after the end of the Civil War. Johnson was a Tennessee Democrat and was not in favor of Reconstruction. The House, controlled by Radical Republicans from the North, voted to impeach. Johnson avoided conviction in the Senate by just one vote.

Richard Nixon was indicted in October 1973 by the House Judiciary Committee for obstruction of justice related to the Watergate burglary. All of the Democrats and one-third of the Republicans on the Judiciary Committee voted in favor of three articles of impeachment. Nixon saw the handwriting on the wall and resigned on August 9, 1974.

Bill Clinton was impeached in 1998 by the House for obstruction of justice in what was the most politically motivated of the three precedents. The Republican majority in the House knew full well that Clinton would not be convicted by the Senate, but they proceeded anyway as a means of weakening the Clinton administration.

DISCUSSION:

The petitioners ask for Step One in the impeachment process—an investigation by the House Judiciary Committee. They base their request on two clauses in the Constitution, one prohibiting officers of the United States from accepting emoluments from “any King, Prince or foreign state” without the consent of Congress, and the other forbidding the President from accepting gifts beyond his or her salary from the individual states, or from the United States.

An emolument is a salary, fee, or profit received from employment or from an office. President Trump may be in violation of both the foreign and the domestic emoluments clauses by virtue of his ownership in corporations that do business with foreign governments and with agencies of the U.S. government. Although there is little

disagreement that Trump’s companies are benefitting from doing that business, there is disagreement among legal scholars that the payments are “emoluments.” There are those who say that if the chancellor of Germany pays for a night in a Trump-owned hotel, that’s just an arm’s length commercial transaction.

Brookline Town Meeting cannot resolve that question. The resolution at hand goes to the limit of what we can do, which is to ask our Congressional representative, Joseph P. Kennedy III to request that the House Judiciary Committee investigate the matter.

An *ad hoc* subcommittee of the Advisory Committee worked with the petitioners to narrow the preamble to the proposed resolution so that the various “whereas” clauses were deemed to be factual. The subcommittee recommended favorable action by a vote of 5 to 0 with 1 abstention.

Coincidentally, President Trump’s dismissal of FBI Director James Comey became known shortly before the Advisory Committee voted. Note, however, that the resolution focuses primarily on the emoluments clause issue.

Debate in the Advisory Committee centered on whether the Committee was qualified to offer a recommendation to Town Meeting. Some members argued that unlike budget line items or zoning by-laws, we were no more able to study the issue in depth than anyone else in Town Meeting.

A motion to offer no recommendation was defeated by a vote of 10 to 11.

RECOMMENDATION:

The Advisory Committee, by a vote of 15–2–4, recommends FAVORABLE ACTION on the following motion:

(Additions to the language of the Warrant are in **bold**; deletions are in ~~striketrough~~.)

VOTED: That the Town adopt the following resolution:

Resolution in Support of Congressional Investigation regarding
Impeachment of President Donald J. Trump

WHEREAS, the Foreign Emoluments Clause of the United States Constitution provides that “no Person holding any Office of Profit or Trust under **them** [i.e. the United States], shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State,” thereby prohibiting conflicts of interest that could influence the conduct of the foreign affairs of the United States,¹

¹ US Constitution, Article I, Section 9, Clause 8.

WHEREAS, the Domestic Emoluments Clause of the United States Constitution provides that, besides the fixed salary for his four-year term, the President “shall not receive within that Period any other Emolument from the United States, or any of them,” thereby prohibiting conflicts of interest that could influence the conduct of the domestic affairs of the United States,²

WHEREAS, the term “emoluments” includes a broad range of financial benefits, including but not limited to monetary payments, purchase of goods and services ~~even for fair market value~~, subsidies, tax breaks, extensions of credit, and favorable regulatory treatment,³

WHEREAS, Donald J. Trump, the President of the United States, owns various business interests and receives various streams of income from all over the world,

WHEREAS, many of these businesses receive, ~~and streams of income include~~, income and benefits from foreign governments, states of the United States, or the United States itself,

WHEREAS, leading constitutional scholars and government ethics experts warned Donald J. Trump shortly after the November 2016 election that, unless he fully divested his businesses and invested the money in conflict-free assets or a blind trust, he would violate the Constitution from the moment he took office,

WHEREAS, on January 11, 2017, nine days before his inauguration, Donald J. Trump announced a plan that would, if carried out, remove him from day-to-day operations of his businesses, but not eliminate any of the ongoing flow of ~~emoluments~~ **income and benefits** from foreign governments, state governments, or the United States government,

² US Constitution, Article II, Section 1, Clause 7

³ Norman Eisen, Richard Painter & Laurence H. Tribe, *The Emoluments Clause: Its Text, Meaning, and Application to Donald J. Trump*, GOVERNANCE STUDIES AT BROOKINGS INSTITUTION 11 (December 16, 2016). (“[T]he Clause unquestionably reaches any situation in which a federal officeholder receives money, items of value, or services from a foreign state.”) Norman L. Eisen, a fellow at the Brookings Institution, was the chief White House ethics lawyer from 2009 to 2011 and ambassador to the Czech Republic from 2011 to 2014. He is the chair of Citizens for Responsibility and Ethics in Washington (CREW). Richard W. Painter, a professor at the University of Minnesota Law School, was the chief White House ethics lawyer from 2005 to 2007. He is the vice chair of CREW. Laurence H. Tribe is the Carl M. Loeb University Professor and Professor of Constitutional Law at Harvard University.

WHEREAS, on January 20, 2017, Donald J. Trump took the oath of office and became President of the United States,

WHEREAS, **evidence suggests that** ~~from the moment he took office,~~ President Trump ~~was~~ **is** in violation of the Foreign Emoluments Clause and the Domestic Emoluments Clause of the United States Constitution,

WHEREAS, ~~these~~ **any such** violations **would** undermine the integrity of the Presidency; ~~corruptly advance the personal wealth of the President,~~ and violate the public trust,

WHEREAS, our democracy is premised on the bedrock principle that no one is above the law, not even the President of the United States,

NOW, THEREFORE, ~~THE Town of Brookline~~ **Brookline Town Meeting** RESOLVES to call upon the United States House of Representatives to support a resolution authorizing and directing the House Committee on the Judiciary to investigate whether sufficient grounds exist for the impeachment of Donald J. Trump, President of the United States, including but not limited to the violations listed herein; and,

BE IT FURTHER RESOLVED that copies of this resolution be transmitted officially to the Member of the United States House of Representatives that represents the ~~city~~ **town**, namely, the Honorable Joseph Kennedy III. ~~;~~ ~~and,~~

~~BE IT FURTHER RESOLVED that copies of this resolution be transmitted officially to certain other towns, cities and communities in this state, namely, Boston, Newton, Wellesley, and Needham.~~

BOARD OF SELECTMEN

Neil A. Wishinsky, Chair
Benjamin J. Franco
Nancy S. Heller
Bernard W. Greene
Heather A. Hamilton

ADVISORY COMMITTEE

Sean Lynn-Jones, Chair