



Written by [Jack Kenny](#) on March 24, 2014

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Is Obama Impeachable?

The word is in the dictionary and even in the Constitution, but some are reluctant to speak it in respectable circles — or even in Congress. At a hearing of the House Judiciary Committee in December, Rep. Steve King (R-Iowa) called it “the word we don’t like to use in this committee, and I’m not about to utter it here in this particular hearing.” Rep. Blake Farenthold (R-Texas) called impeachment the “I-word,” adding, “which I don’t think would get past the Senate in the current climate.”



The object of the representatives’ disaffection, the one against whom they would like to invoke the “I-word,” is President Barack Obama. The Obama administration’s offenses that various Republicans have at one time or another called impeachable include leaving virtually unprotected the diplomatic outpost in Benghazi, Libya, where the U.S. ambassador and three other Americans were killed in the terrorist attack of September 11, 2012; conducting an air war against Libya without congressional authorization in 2011; the “Fast and Furious” sale of arms to drug cartels in Mexico; the targeting of conservative groups by the Internal Revenue Service for investigations into their tax status; making “recess appointments” while the Senate was in session; suspending enforcement of provisions of the nation’s immigration laws; and bypassing Congress by amending provisions of the Affordable Care Act — his signature “ObamaCare” health insurance reform — by executive order. Obama’s declared readiness to enact through executive order measures that Congress won’t pass prompted Rep. Steve Stockman (R-Texas) to walk out during the president’s nationally televised State of the Union address to a joint session of Congress.

“I could not bear to watch as he continued to cross the clearly defined boundaries of the constitutional separation of powers,” Stockman said in a statement he issued following the president’s speech. “Obama defiantly vowed not only to radically expand the reach of government from cradle to grave, but to smash the Constitution’s restrictions on government power while doing it,” Stockman said, charging that the president’s goal is nothing less than “to eliminate our constitutional republic.” The Texas Republican has arranged for all 435 members of Congress to receive *Impeachable Offenses: The Case for Removing Barack Obama From Office* by Aaron Klein and Brenda J. Elliott, donated by the publisher, WND Books (see review on pg. 31). Klein has described the book as “the first draft of articles of impeachment.”

Rep. Michelle Bachmann (R-Minn.) has accused Obama of “impeachable offenses.” Rep. Duncan Hunter (R-Calif.) warned Obama could be impeached if he intervened in Syria without congressional approval. Rep. Bill Flores (R-Texas) predicted that if the House were to vote on it, it would “probably impeach the president.” Rep. Kerry Bentivolio (R-Mich.) said it would be his “dream come true” to write the Articles of Impeachment against Obama.

The Constitution, in Article II, Section 4, states: “The President, Vice President and all civil Officers of



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the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” The odds weigh heavily against it happening, however, in a politically divided Congress. The leadership in the Republican-controlled House has shown no interest in an impeachment effort. And even if the proponents were to force the issue and garner enough votes for impeachment, the chances of success in the Senate, where Democrats are in the majority, is virtually nil. Even if Republicans should win control of the Senate in this year’s election, reaching the two-thirds majority the Constitution requires for removal from office would require a political sea change.

Republicans and other critics of the current administration will no doubt continue to argue that the president’s unilateral rewriting of laws amounts to a failure — indeed, a refusal — to carry out his constitutional responsibility to “take Care that the Laws be faithfully executed” (Article II, Section 3). Zealous defenders of the Bill of Rights may continue to cite this president’s signing of laws, duly passed by Congress, that provide for the indefinite detention without trial of suspected terrorists, including American citizens. His use of drones in the targeted killing of terror suspects, including American citizens, far from any field of battle, will continue to draw charges of abuse of power. But after a year in which the nation learned that the National Security Agency was routinely making daily collections of everyone’s phone call records and e-mails, the Justice Department had secretly collected Associated Press phone records, and Fox News reporter James Rosen had been labeled a “criminal co-conspirator” and placed under surveillance in a Justice Department investigation of a news leak, the chances for a successful impeachment effort remain remote.

Still, with the president’s favorability rating dropping below 40 percent in recent months, even the talk of impeachment in the Congress and in the press is not a good sign for a president in his second term, working on his “legacy.” And at least some people, outside as well as within the Congress, have been urging House members to stop tiptoeing around the “I-word.”

“I don’t think you should be hesitant to speak the word in this room,” Georgetown University law professor Nicholas Rosenkranz said at a December hearing of the Judiciary Committee. “A check on executive lawlessness is impeachment.”

Saving “Government Motors”

Obama came into office on January 20, 2009, after a winning election campaign in which he announced the goal of “fundamentally transforming the United States of America.” Yet in many ways his policies became more a ramping up of, rather than break with, those of the previous administration. Obama picked up where his predecessor left off by continuing the bailout of the financial industry that had collapsed in the fall of 2008 and getting Congress to approve a \$792 billion “economic stimulus” package to offset the effects of the recession. Then came the rescue of the auto industry that resulted in a government takeover of General Motors and United Auto Workers ownership of Chrysler. On the auto bailout, both George W. Bush and Barack Obama acted illegally and unconstitutionally.

On December 11, 2008, the House approved President Bush’s request for \$14 billion in loans to GM and Chrysler. The Senate defeated the measure, however, which should have been the end of the matter. But a week later Bush and Treasury Secretary Henry Paulson announced the administration would make \$17.4 billion available to the auto companies under terms similar to what the Senate had voted down. The money would come from the Troubled Asset Relief Program that Congress had approved in



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legislation that stipulated the money was to be used to assist financial institutions. A group of 26 congressional Republicans sent a letter to the president, protesting: “Congress never voted for a federal bailout of the automobile industry, and the only way for TARP funds to be diverted to domestic automakers is with explicit congressional approval.”

As is often said in the legal profession, two wrongs don’t make a right, but they do make a precedent. In March 2009, the Obama administration stepped up with another round of loans, diverting nearly \$77 million of TARP money to GM and Chrysler while demanding the ouster of CEO Rick Wagoner from General Motors and giving Chrysler 30 days to complete a merger with Italian automaker Fiat. Before the spring was over, the administration concluded that the companies’ restructuring plans were insufficient and directed them into Chapter 11 bankruptcy. Claims of the UAW pension fund took precedence over obligations to creditors with secured bonds, contrary to U.S. bankruptcy law. The creditors were forced to settle for 29 cents on the dollar while the UAW pension fund received 40 cents. Two of the nation’s Big Three automakers were “saved” by a flouting of the bankruptcy law and the use of taxpayers’ dollars in ways never authorized by Congress. The process opened the door to still further politicization by both the president and the lawmakers. GM’s emphasis on hybrid and electric cars reflected the policy preferences of environmentalists and the Obama administration, not market demand. As the auto companies began shedding assets and reallocating resources, representatives and senators intervened to save dealerships and suppliers in their respective districts and states. “There is little doubt,” wrote George Mason University law professor Todd Zywicki, “that General Motors — and, in all probability, Chrysler too — would have emerged stronger and more competitive had they pursued normal bankruptcies (perhaps with some help in obtaining financing), not massive bailouts followed by bankruptcies run by the government.”

The Tempting of Sestak

The first talk of impeaching Obama may have come from Rep. Darrell Issa of California early in 2010. Rep. Joe Sestak (D-Pa.) was in a Senate primary race against five-term Sen. Arlen Specter, a former liberal Republican who had changed his affiliation to Democrat to avoid what apparently would have been a losing Republican primary battle against the more conservative Rep. Pat Toomey. Obama and Vice President Joe Biden were backing Specter, and rumors circulated that they were trying to get Sestak to drop out of the race. During an interview in February on Comcast Network’s *Voice of Reason*, newsman Larry Kane asked Sestak: “Is it true that you were offered a high-ranking job in the administration in a bid to get you to drop out of the primary against Arlen Specter?” Sestak answered “Yes,” but wouldn’t comment further, except to say the job was “high up.”

Federal law makes it a crime for anyone “who directly or indirectly, promises any employment, position, compensation, contract, appointment, or any other benefit” to someone else “as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office.” It is also illegal for a government official to use “his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate.” Issa, the ranking Republican (now chairman) of the House Oversight and Government Reform Committee, said the offer to Sestak “could be impeachable.” In a move reminiscent of the Watergate investigation, Issa and all seven Republicans on the Senate Judiciary Committee asked the Justice Department to appoint a special prosecutor. The request was denied.



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Three months went by before the Obama administration publicly addressed the allegation. On May 28, a White House statement disclosed that chief of staff Rahm Emanuel had engaged former President Bill Clinton to act as an intermediary, offering Sestak an “unpaid advisory position” if he would remain in the House and drop out of the Senate race. The statement did not say what the advisory position was. White House counsel Robert Bauer insisted there was no impropriety nor ethical breach in seeking to avoid a divisive party primary by offering Sestak “uncompensated advisory board options.” According to that explanation, a former two-term president and the politically savvy White House operatives believed a congressman who had already launched a campaign for the U.S. Senate could be persuaded to drop that quest in exchange for an “uncompensated advisory board” position. The official version did not overcome suspicions that Sestak had been offered something more substantial. The episode was soon forgotten, however, after Sestak defeated Specter in the primary, but lost to Toomey in the general election.

Bombing Libya

In 2011, the United States participated in a NATO bombing campaign over Libya in support of United Nations Security Council Resolution 1973, calling for a cease-fire in that nation’s civil war and the establishment of a no-fly zone to prevent Moammar Gadhafi’s air force from killing rebels and civilians. The campaign began in March and continued to the end of October after Gadhafi had been overthrown and killed. The military action was undertaken without either a declaration of war by Congress, as the Constitution requires, or compliance with the terms of the War Powers Resolution passed by Congress in 1973. The law requires the president to notify Congress within 48 hours of committing armed forces to military action, and forbids armed forces from remaining in the action for more than 60 days (with a further 30-day withdrawal period) without congressional authorization or declaration of war. It was passed over the veto of President Nixon, whose secret bombing campaign in Cambodia was the inspiration for the measure and later became one of the Articles of Impeachment against him approved by the House Judiciary Committee.

Rep. Dennis Kucinich (D-Ohio) called for Obama’s impeachment over the Libya campaign. The maverick Democrat had also called for the impeachment of President George W. Bush and Vice President Dick Cheney over deceptions leading to the Iraq War. In each case he found little support from members of either party as he made his case repeatedly on a variety of media platforms. As he told the bellicose Bill O’Reilly on Fox News, “You have to come to Congress if you’re going to attack another country. [Obama] didn’t do that, that’s not a small matter.”

“Benghazigate”

On September 11, 2012, the U.S. compound in Benghazi, Libya, was attacked and burned, followed by a mortar and rocket attack against a U.S. diplomatic annex in the city. U.S. Ambassador Christopher Stevens and three other Americans were killed in the attack. Early reports described the attack as mob violence inspired by a video made in the United States that mocked Islam and the prophet Mohammed. Five days later, U.S. Ambassador to the United Nations Susan Rice appeared on five Sunday talk shows and, following what were later found to be State Department and CIA talking points, described what happened as a “spontaneous attack.” Republicans charged that the Obama administration was attempting to cover up its failure to respond to previous warnings of an al-Qaeda-led attack and to requests for more security in Libya. The failure or inability of U.S. armed forces to respond to the attack



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also became an issue, along with the Obama administration's shipment of U.S. arms to Libyan rebels during their insurrection a year earlier. The transfer of some of those weapons to al-Qaeda-dominated rebel forces in Syria's ongoing civil war is another factor that has kept the Benghazi assault a bone of contention one and a half years after the event.

"Of all the great cover-ups in history — the Pentagon Papers, Iran-Contra, Watergate, all the rest of them — this ... is going to go down as [the] most egregious cover-up in American history," Sen. James Inhofe (R-Okla.) said in a May 10, 2013 interview. "People may be starting to use the I-word before long," he suggested. Impeachment "could be within the realm of possibilities," Rep. Jason Chaffetz (R-Utah) said at the time. "I'm not willing to take that off the table. But that's certainly not what we're striving for."

IRS Targets Conservatives

The news that the IRS had been targeting conservative groups — particularly those with "Tea Party" or "Patriot" in their names — for investigations into their tax status brought renewed talk of impeachment. Some advocates recalled that one of the charges in the Articles of Impeachment against President Nixon was that he "endeavored to obtain from the Internal Revenue Service ... income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner." In a Washington press conference with Tea Party leaders last May, Rep. Michelle Bachmann said her constituents were calling for Congress to file charges against Obama.

"There isn't a weekend that hasn't gone by that someone says to me, 'Michelle, what in the world are you all waiting for in Congress? Why aren't you impeaching the president? He's been making unconstitutional actions since he came into office.'" Reince Priebus, chairman of the Republican National Committee, and Sen. Rand Paul (R-Ky.) said the impeachment talk was premature when they appeared together at a fundraiser in New Hampshire, though Paul said it "stretches credulity" to think no one in the Obama administration had been aware of what the IRS was doing. "For goodness sake, somebody's got to be fired, if not go to prison," Paul said.

Usurping Legislative Powers

In June 2012, Obama announced he was suspending deportation of some illegal immigrants and would grant them work permits. The executive order would affect an estimated 800,000 people who came to the United States before they were 16 and are younger than 30. To qualify they must have no felony convictions, have been in the country for at least five continuous years, and either have a high-school diploma or GED equivalent or have served in the military.

The first article of the Constitution declares in Section 1: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Obama's order achieved by executive fiat many of the goals written into the proposed Development Relief and Education for Alien Minors (DREAM) Act that has languished in Congress since it was introduced in 2001. Rep. Allen West (R-Fla.) promptly labeled Obama's order "another example of executive overreach." Any change in the law should come by action of the legislative branch, West said. "That's how we do business in the United States."

"You can have executive orders that implement already existing laws, but what Obama has done in the DREAM Act ... is unbelievably unconstitutional," columnist Charles Krauthammer said on Fox News



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Special Report. “He’s done that over and over again on immigration, drug laws, climate change, and, of course, on ObamaCare, which he has unilaterally altered lawlessly at least 15 times,” Krauthammer said. “It’s as if a Republican ran and said, ‘I don’t like the capital-gains tax,’ Congress rejects an abolition of that tax, and then he orders the IRS not to collect it. People would be up in arms and would be impeaching.” While the immigration order came in a presidential election year, bolstering Obama’s huge lead over Republican challenger Mitt Romney among Hispanic voters, the president’s frequent amendments by executive order to the Affordable Care Act — including delays for some labor unions and for small to medium-size employers — may be an effort to spare Democrats a backlash against ObamaCare in this year’s congressional elections.

Republicans, however, are not the only ones objecting to the president’s frequent bypassing of Congress to change laws by executive order. Nat Hentoff, a legal scholar and civil liberties advocate whose column was a popular feature for decades in the left-wing *Village Voice*, recently penned a column arguing that Obama is eminently “impeachable.”

“The very core of what makes America different from all other nations is our Constitution’s separation of powers,” Hentoff wrote. “But here comes our commander-in-chief, who customarily tosses the separation of powers into the nearest wastepaper basket.” Obama’s Justice Department has persuaded federal courts to ban suits against the government for a practice that came to light during the Bush administration, that of using “extraordinary renditions” to send terror suspects abroad to be interrogated by governments known to practice torture. “He used the state secrets privilege to close off our system of justice more often than Bush ever did,” Hentoff wrote. “Since then, Obama has not forbade renditions. And because renditions are classified, we don’t know who has been taken where.” Obama signed into law National Defense Authorization Acts that permit the military to “arrest and detain U.S. citizens indefinitely — including in this country — for allegedly being ‘associated’ with terrorists, without evidence presented before an American court. If these reminders of Chinese justice don’t add pressing cause for an impeachment investigation, what on earth will?” Hentoff asked.

Journalist and former civil liberties lawyer Glenn Greenwald, who has championed the cause of NSA whistleblower Edward Snowden, has repeatedly hammered liberal Democrats for quietly accepting under Obama invasions of privacy and violations of liberty they railed against under President Bush. George Washington University law professor Jonathan Turley, a liberal who agrees with many of Obama’s policy goals, nonetheless faults Obama for his role in creating a “surveillance state of unprecedented size.” As Turley noted on his blog site:

The great irony is that the greatest loss of constitutional protections has occurred under a man who came to office promising to reform security laws and often refers to himself as a former constitutional law professor. An iconic figure for many liberals, President Barack Obama has divided the civil liberties community and expanded both the security state and his own unchecked powers. He has taken actions that would have made Richard Nixon blush — from warrantless surveillance to quashing dozens of privacy lawsuits, to claiming the right to kill any citizen, on his sole authority. He has also rolled back key international principles in expanding drone attacks and promising not to prosecute officials for torture.

Commenting a year ago on the 40th anniversary of the Watergate scandal, Turley wrote: “From unilateral military actions to warrantless surveillance that were key parts of the basis for Nixon’s impending impeachment, the painful fact is that Barack Obama is the president that Nixon always



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wanted to be.”

The House probably won't press for impeachment because, as Sen. Ted Cruz (R-Texas) said, “There aren't enough votes in the Senate” to remove the president from office. But in the impeachment process, the House of Representatives is the equivalent of a grand jury. It is up to the representatives to turn in an indictment if they believe the president has been running a lawless administration. If the Senate should turn a blind eye to that lawlessness, as it most likely would, that would be the senators' decision and their job to explain to voters in their respective states why they have permitted the president to be above the law. It might even be worth finding out if the voters care.

On the other hand, should House Republicans bring the impeachment question to a vote, they would no doubt be heavily ridiculed by the “mainstream” media for wasting the public's time and money on a vain and foolish effort to discredit the president. The impeachment of President Clinton and the hapless effort to remove him from office in 1998-'99 would no doubt be revisited in ways Republicans might rather forget. Besides, even some of the most zealous, partisan Republicans might blanch at an effort to remove Obama from office, considering who is next in line to succeed him. Rep. Trey Gowdy (R-S.C.) told the *New York Times* that when voters ask him about impeachment, he merely asks: “Have you met Joe Biden?”

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