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THE CONSTITUTION AND EXECUTIVE PRIVILEGE

By Steve Bakke  November 30, 2019



My letter on 11/28, “Obstruction and ‘executive privilege,’” was attempting to shine a light on the widely held, but incorrect, opinion that asserting executive privilege to prevent certain staff testimony in the impeachment hearings amounts to an impeachable offense. We’ve seen executive privilege claims during most presidencies, most recently with Trump in the Mueller investigation and impeachment hearings.

I thank the editor for adding comments helpful for understanding this issue. The editor points out that: the phrase ‘executive privilege’ is not explicitly stated in the Constitution, and went on to reinforce my assertion that “executive privilege” has a constitutional basis by pointing out: “Some lawyers and judges have contended it’s implicit in the Constitution’s separation of powers.....and the U.S. Supreme Court has acknowledged the principle. But how broadly it can be applied is still uncertain legally.”

That final clarification highlighted something very important, i.e. we don’t know how broadly this principle can be applied. That’s precisely why I concluded: “Contrary to the Democrats’ claim, it’s not an impeachable obstruction for a president to claim executive privilege.....If Congress disagrees with the reasons for those claims, the remedy is clear: Go to court, not impeach.”