

HYPOTHETICAL WRITTEN TESTIMONY AND STATEMENT FOR THE RECORD — CONGRESS

Educational Disclaimer: This is a hypothetical legal-learning exercise. All facts are assumed for purposes of legal study only, are acknowledged to be unsupported by the public record, improbable, and unbelievable. No factual assertion is made about any person, court, or institution. This document is illustrative of how testimony and written submissions are structured for congressional committees. It is not legal advice and was not submitted to any committee.

BEFORE THE COMMITTEE ON THE JUDICIARY, U.S. HOUSE OF REPRESENTATIVES

Hearing: "Constitutional Disqualification and the Tools of Accountability: Examining the Full Range of Mechanisms for Removing Unfit Officers"

Date of Hearing: September 15, 2026 (hypothetical)

Written Testimony of: Professor [Hypothetical Expert], on behalf of Citizens for Constitutional Accountability

Submitted for the Record: August 28, 2026

I. INTRODUCTION AND SUMMARY

Chairman, Ranking Member, and distinguished Members of the Committee:

Thank you for the opportunity to submit this written statement for the record. I appear today on behalf of Citizens for Constitutional Accountability (hypothetical organization) to address a question of growing public importance: **What tools does Congress possess — beyond impeachment alone — to address disqualification from public office when the ordinary mechanisms of judicial review may be compromised?**

This Committee has asked whether impeachment is the only constitutional mechanism for disqualifying government officers. My research, catalogued in a companion inventory of disqualification mechanisms, demonstrates that it is not. At least **twelve distinct mechanisms** exist under federal and state law that operate entirely without impeachment — including criminal statutes imposing mandatory disqualification, the Fourteenth Amendment's self-executing Section 3, the Judicial Conduct and Disability Act, quo warranto proceedings, and the Appointments Clause challenge recognized in *Ryder v. United States*.

But this testimony goes further. It addresses a specific, hypothetical scenario in which the ordinary mechanisms of judicial review may themselves be compromised — where the judge whose orders are at issue may have a personal stake in the outcome and where the very evidence of the defect has been sealed. In such a scenario, **Congress is not merely one of several available institutions — it may be the only institution constitutionally positioned to act.**

My testimony proceeds in five parts:

1. **Congress's unique constitutional authority** to investigate and address disqualification independently of the judiciary;

2. **The inventory of disqualification mechanisms** available to Congress and to other branches;
 3. **The hypothetical scenario** and why it requires congressional action specifically;
 4. **Specific recommendations** for congressional action, including oversight, subpoena, legislation, and impeachment;
 5. **The constitutional imperative** of congressional action when the judiciary cannot police itself.
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II. CONGRESS'S UNIQUE CONSTITUTIONAL AUTHORITY

A. The Power of Inquiry

Congress's power to investigate is not a mere statutory grant — it is an inherent constitutional power. *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927), held that "the power of inquiry — with process to enforce it — is an essential and appropriate auxiliary to the legislative function." *Watkins v. United States*, 354 U.S. 178, 187 (1957), confirmed that Congress's "power of inquiry" is "as old as the republic" and is "broad" and "indispensable."

This power is not dependent on judicial cooperation. Congress can issue subpoenas, hold hearings, take testimony, compel the production of documents, and hold non-compliant witnesses in contempt — **all without judicial involvement**. The Supreme Court has consistently held that "the Congress shall have access to the information necessary for the performance of its functions." *Eastland v. United States Servicemen's Anti-Draft Fund*, 421 U.S. 491, 504 (1975).

B. The Impeachment Power

Article I, §§ 2 and 3, and Article II, § 4, vest in Congress the **exclusive** power of impeachment. No other branch can remove a sitting federal judge, the President, or other civil officers through impeachment. The Senate's judgment in impeachment cases "shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States."

Impeachment is a **political remedy**, not a judicial one. The Supreme Court has held that impeachment is a "textually demonstrable commitment" to Congress and is nonjusticiable. *Nixon v. United States*, 506 U.S. 224 (1993).

C. The Power to Enforce Section 3 of the Fourteenth Amendment

Trump v. Anderson, 601 U.S. 100 (2024), held that states cannot enforce Section 3 against candidates for federal office — but it left open the question of **congressional enforcement**. The Court's opinion strongly suggested that Congress, through enabling legislation, may enforce Section 3 against federal officeholders. Congress has not yet enacted such legislation, but the power is there to be exercised.

Under the Baude-Paulsen self-executing theory (Baude & Paulsen, "The Sweep and Force of Section Three," 172 U. Pa. L. Rev. (2024)), Section 3 operates by its own force — Congress need only provide a **vehicle** for enforcement, not create the disqualification itself. Legislation such as a revived Enforcement Act or a new statute providing for judicial determination of Section 3 disqualification would be squarely within Congress's power.

D. The Power to Legislate Disqualification Criteria

Congress has already legislated numerous disqualification provisions — 18 U.S.C. §§ 2381, 2383, 2385, 201(b), 2071 — that impose mandatory or discretionary disqualification as a criminal sentencing consequence. Congress has the power to **expand, strengthen, or create new** disqualification mechanisms. It can also legislate to close gaps — for example, by providing a clear enforcement mechanism for Section 3, by

expanding the Judicial Conduct and Disability Act's remedies, or by creating new administrative removal procedures for corrupt officers.

E. Inherent Contempt Power

Congress possesses the **inherent contempt power** — the authority to arrest, try, and imprison a witness who refuses to comply with a lawful congressional subpoena, without referral to the DOJ. *Anderson v. Dunn*, 19 U.S. 204 (1821); *Jurney v. MacCracken*, 294 U.S. 125 (1935). This power is independent of the executive branch and is available when the DOJ cannot or will not enforce congressional subpoenas.

In the hypothetical scenario where the DOJ may be compromised — where DOJ officials may have participated in the concealment that Congress seeks to investigate — the inherent contempt power becomes not merely a tool but a **constitutional necessity**. Congress cannot depend on a potentially compromised DOJ to enforce its subpoenas.

III. THE INVENTORY OF DISQUALIFICATION MECHANISMS

My research catalogues **forty-four distinct mechanisms** across federal and state law. The following table summarizes the mechanisms most relevant to this Committee's inquiry:

Federal Constitutional Mechanisms

Mechanism	Source	Requires Impeachment?	Congress's Role
Insurrection disqualification	14th Amend. § 3	No (self-executing under Baude/Paulsen)	Congress legislates enforcement; refuses to seat members
Impeachment + disqualification	Art. I, §§ 2–3; Art. II, § 4	Yes (exclusive to Congress)	Exclusive congressional power
Appointments Clause challenge	Art. II, § 2, cl. 2	No	Congress can investigate; pass clarifying legislation
"Good Behaviour" tenure	Art. III, § 1	Impeachment is the traditional mechanism; independent enforcement theory is untested	Congress can define "good Behaviour" by legislation
Refusal to seat / expulsion	Art. I, § 5	No (Congress polices its own membership)	Exclusive congressional power

Federal Statutory Mechanisms

Mechanism	Source	Disqualification Type	Congress's Role
Treason	18 U.S.C. § 2381	Mandatory upon conviction	Congress enacted; can strengthen
Insurrection	18 U.S.C. § 2383	Mandatory upon conviction	Congress enacted; can strengthen
Advocating overthrow	18 U.S.C. § 2385	Mandatory 5-year bar	Congress enacted
Bribery	18 U.S.C. § 201(b)	Discretionary (court may impose)	Congress enacted; can make mandatory
Record concealment	18 U.S.C. § 2071	Mandatory upon conviction	Congress enacted; can clarify scope
Obstruction of Congress	18 U.S.C. § 1505	No explicit bar; forms impeachment predicate	Congress enacted; can add disqualification
Judicial misconduct	28 U.S.C. §§ 351–364	Removal referral to Congress	Congress enacted; can expand remedies

Mechanism	Source	Disqualification Type	Congress's Role
Judicial recusal	28 U.S.C. § 455	Orders voidable; misconduct basis	Congress enacted; can strengthen enforcement
Hatch Act	5 U.S.C. §§ 7321-7326	Removal from employment	Congress enacted; can strengthen
Whistleblower protection	5 U.S.C. §§ 1213, 2302(b)(8)	Removal of retaliating official	Congress enacted; can expand
Quo warranto (federal)	D.C. Code §§ 16-3501-16-3510	Ouster from office	Congress enacted via D.C. Code; can expand

Key Observation: The "One Tool" Fallacy

The notion that impeachment is the only mechanism for disqualifying government officers is demonstrably false. The inventory above lists **at least twelve mechanisms that operate without any impeachment vote**:

1. 18 U.S.C. § 2381 (treason — mandatory bar upon criminal conviction)
2. 18 U.S.C. § 2383 (insurrection — mandatory bar upon criminal conviction)
3. 18 U.S.C. § 2385 (Smith Act — 5-year bar)
4. 18 U.S.C. § 2071 (record concealment — mandatory bar upon conviction)
5. 18 U.S.C. § 201(b) (bribery — discretionary bar imposed by sentencing court)
6. 28 U.S.C. §§ 351-364 (judicial misconduct — investigation, censure, referral)
7. 28 U.S.C. § 455 (recusal — orders voided)
8. D.C. Code quo warranto (ouster from office)
9. Hatch Act removal proceedings
10. Adverse action / civil service removal (5 U.S.C. §§ 7521, 7511)
11. Ryder timely challenge to de facto officer (orders voided)
12. 14th Amendment § 3 (self-executing disqualification, per Baude/Paulsen theory)

As Representative Raskin and scholars Prakash, Smith, Baude, and Paulsen have argued, impeachment is one tool in the toolbox — but it is far from the only one. Congress's role is not merely to impeach; it is to **ensure that the entire toolbox is available and functioning**.

IV. THE HYPOTHETICAL SCENARIO AND WHY CONGRESS MUST ACT

A. Statement of the Hypothetical

This Committee has asked me to address a hypothetical scenario in which:

1. A federal judge issued sealing orders over records that contained evidence of her own potential constitutional disqualification (de facto officer status);
2. The sealed materials included Brady evidence relevant to ongoing criminal prosecutions, whistleblower disclosures submitted before the orders were issued, and evidence that another official may also be a de facto officer;
3. Congress had lawfully demanded the sealed materials before the sealing orders were issued;
4. Other federal courts ordered the release of some of the sealed materials;
5. Journalists and members of the public independently obtained and published some of the sealed information before the permanent sealing order was issued; and
6. The DOJ may have participated in the concealment and selectively enforced the sealing orders.

All of these facts are **assumed for purposes of legal study only**. No factual assertion is made about any person, court, or institution. The scenario is designed to test the legal system's response to a situation in which ordinary mechanisms of judicial review may be unavailable or compromised.

B. Why the Judiciary Cannot Resolve This Alone

In the hypothetical scenario, the judiciary faces a structural paradox:

- The judge whose orders are at issue may be a de facto officer.
- The evidence of the defect is in the very files she sealed.
- She ruled on her own legitimacy — a violation of *nemo iudex in causa sua* and 28 U.S.C. § 455.
- The orders are void on multiple grounds (as argued in the companion judicial amicus brief).
- **But** a higher court must review and vacate the void orders — and if a Supreme Court justice is also implicated and must recuse, the appellate chain may be incomplete.

The judiciary can void the orders (a properly constituted court can vacate them), can order unsealing, can refer for misconduct investigation, and can preside over criminal trials. But the judiciary **cannot**:

- Impeach the judge or justice;
- Legislate new disqualification mechanisms;
- Enforce congressional subpoenas;
- Exercise inherent contempt;
- Determine whether Section 3 applies to a sitting official (this requires congressional legislation or a political process, per *Anderson*);
- Hold executive-branch officials in contempt of Congress.

Only Congress can do these things. In the hypothetical scenario, the judiciary may do its part — a court may vacate the void orders — but the **structural accountability** mechanisms belong to Congress alone.

C. The Obstruction of Congress Is the Core Constitutional Harm

Under the hypothetical, Congress lawfully demanded the sealed materials **before** the sealing orders were issued. A judicial order that retroactively prevents Congress from receiving materials it already demanded is not merely a legal error — it is an **assault on the separation of powers**.

18 U.S.C. § 1505 criminalizes the obstruction of congressional proceedings. The elements are: (1) a pending congressional proceeding; (2) the defendant's awareness; (3) an intentional, corrupt endeavor to obstruct. If a judge sealed files Congress had already demanded, with the intent to prevent Congress from receiving them, the elements of § 1505 are met — regardless of whether the judge has judicial immunity for the act (judicial immunity does not protect criminal conduct, and acts taken "in the clear absence of all jurisdiction" may not be protected at all).

Congress does not need the judiciary's permission to investigate obstruction of its own proceedings. The Speech or Debate Clause (Art. I, § 6) protects Members from judicial interference in their legislative functions. Congress can hold hearings, issue subpoenas, and refer matters for criminal prosecution — all without waiting for a court to void the sealing orders.

V. SPECIFIC RECOMMENDATIONS FOR CONGRESSIONAL ACTION

Based on the hypothetical scenario and the inventory of disqualification mechanisms, this Committee should consider the following actions:

Recommendation 1: Exercise Oversight and Subpoena Authority Immediately

This Committee should issue subpoenas for all materials subject to the sealing orders, including:

- The sealed records themselves (directly to Congress, which has an independent constitutional right);
- All communications related to the sealing orders (between the judge, DOJ officials, and any third parties);
- The whistleblower disclosure that was allegedly submitted before the orders were issued;
- All Brady material relevant to any prosecution affected by the seal.

Legal basis: *McGrain v. Daugherty*; *Trump v. Mazars*. Congress does not need judicial approval to enforce its subpoenas through inherent contempt. If the DOJ refuses to enforce, Congress can exercise its inherent contempt power under *Anderson v. Dunn*.

Recommendation 2: Hold Public Hearings on Judicial Misconduct and Disqualification

This Committee should hold hearings examining:

- The full inventory of disqualification mechanisms and their adequacy;
- Whether the Judicial Conduct and Disability Act (28 U.S.C. §§ 351–364) provides adequate remedies for the type of misconduct described in the hypothetical;
- Whether the recusal statute (28 U.S.C. § 455) needs stronger enforcement mechanisms;
- The *Ryder* timely-challenge doctrine and its application to de facto judicial officers;
- The self-executing nature of Fourteenth Amendment § 3 and the need for congressional enforcement legislation.

Recommendation 3: Introduce Legislation to Enforce Section 3

Trump v. Anderson strongly suggested that Congress can enforce Section 3 through legislation. This Committee should introduce a bill:

- Providing a clear judicial mechanism for determining whether an individual is disqualified under § 3;
- Authorizing the Attorney General or private plaintiffs to bring § 3 enforcement actions in federal court;
- Creating an expedited process for removal of officials found to have engaged in insurrection;
- Clarifying that § 3 is self-executing (codifying the Baude-Paulsen thesis, if this Committee finds it persuasive).

Precedent: The Enforcement Act of 1870 (formerly 16 Stat. 140) provided criminal penalties for holding office in violation of § 3. While much of the Act was repealed, Congress has the same authority today to enact new enforcement legislation.

Recommendation 4: Strengthen 18 U.S.C. § 1505 to Add Disqualification

Currently, obstruction of Congress (§ 1505) does not include an explicit disqualification provision. Congress should amend § 1505 to add mandatory or discretionary disqualification from federal office upon conviction — mirroring the disqualification provisions in §§ 2381, 2383, and 2071.

This would close a significant gap: an official who obstructs Congress can currently be imprisoned but not statutorily barred from future office. Adding a disqualification provision would make § 1505 consistent with other obstruction and corruption statutes.

Recommendation 5: Strengthen the Judicial Conduct and Disability Act

The current Act (28 U.S.C. §§ 351–364) explicitly states that its remedies **do not include removal** — only impeachment can remove an Article III judge. This Committee should consider:

- Expanding the Act's remedies to include temporary suspension from judicial duties (pending impeachment or other proceedings);
- Creating a presumption that a judge who seals evidence of her own disqualification has committed misconduct warranting referral for impeachment;
- Requiring automatic referral to the House of Representatives when the Judicial Council finds that a judge adjudicated her own legitimacy (§ 455 violation in the paradigmatic sense);
- Providing for the appointment of a special counsel to investigate judicial misconduct when the DOJ may be conflicted.

Recommendation 6: Strengthen the Whistleblower Protection Act

The hypothetical scenario involves a whistleblower who disclosed evidence of judicial misconduct before the sealing orders were issued — and whose disclosure was then sealed as retaliation. This Committee should:

- Expand whistleblower protections to explicitly cover disclosures about judicial misconduct and de facto officer status;
- Create a protected channel for whistleblowers to disclose directly to Congress (currently, most federal whistleblowers must go through the OSC or agency IG);
- Make retaliation against a whistleblower who discloses information to Congress a standalone criminal offense with disqualification consequences;
- Establish that sealing a whistleblower disclosure is itself a form of retaliation under 5 U.S.C. § 2302(b)(8).

Recommendation 7: Consider Impeachment

If the hypothetical facts were established through congressional investigation, this Committee would have a constitutional basis to draft articles of impeachment against:

- The judge who sealed evidence of her own disqualification (Art. II, § 4: "high Crimes and Misdemeanors" — abuse of authority, self-dealing, obstruction of Congress, violation of the public trust);
- Any official who participated in the concealment (if DOJ officials cooperated in sealing files Congress demanded, they may have committed "high Crimes and Misdemeanors").

Impeachment is the only mechanism that can **remove a sitting Article III judge** from the bench. It is Congress's exclusive prerogative. In the hypothetical, it may be the only mechanism that can fully address the structural defect — because the judge's orders may be void, but the judge herself remains on the bench unless impeached.

Recommendation 8: Exercise Inherent Contempt Against Non-Compliant Officials

If the DOJ refuses to enforce congressional subpoenas — particularly in the hypothetical scenario where the DOJ may be compromised — Congress should exercise its inherent contempt power. Under *Anderson v. Dunn* (1821) and *Jurney v. MacCracken* (1935), Congress can arrest, try, and imprison a witness who refuses to comply, using the Sergeant-at-Arms. This power does not depend on the DOJ or the courts.

VI. THE CONSTITUTIONAL IMPERATIVE: WHEN THE JUDICIARY CANNOT POLICE ITSELF

The hypothetical scenario presents what scholars call a "self-referential institutional failure": the institution charged with policing violations of law is itself the site of the violation, and the person charged with adjudicating the defect is the person whose status is defective.

The Framers anticipated this problem. The Federalist Papers, particularly No. 51 (Madison), recognized that "if men were angels, no government would be necessary" and that "the great security against a gradual concentration of the several powers in the same department" is the capacity of each department "to resist the encroachments of the others."

Congress is the department with the **greatest capacity to resist judicial self-protection**:

- Congress can investigate without judicial permission (Speech or Debate Clause);
- Congress can subpoena without judicial enforcement (inherent contempt);
- Congress can impeach without judicial review (*Nixon v. United States*, 506 U.S. 224 (1993));
- Congress can legislate disqualification mechanisms that operate independently of the courts;
- Congress can refuse to accept the legitimacy of judicial orders that violate the Constitution.

In the hypothetical scenario, if the judiciary cannot or will not police its own — if a judge has sealed evidence of her own disqualification and the appellate chain is compromised — **Congress is not merely one of several available institutions; it is the only institution that can act.**

This is not a partisan argument. It is a structural argument rooted in the design of the Constitution. The Framers gave Congress the impeachment power, the contempt power, the power of inquiry, and the legislative power precisely because they understood that no single branch can be trusted to police itself.

VII. CONCLUSION

Chairman, Ranking Member, and Members of the Committee:

The question before this Committee is not whether impeachment is available — it clearly is. The question is whether impeachment is **sufficient**. My research demonstrates that it is not. The cataloguing of forty-four disqualification mechanisms reveals a legal landscape far richer than the single tool of impeachment, and the hypothetical scenario demonstrates situations in which impeachment alone would be too slow, too narrow, or too dependent on the very institutional cooperation that has broken down.

Congress should:

1. **Exercise its oversight and subpoena authority** to investigate the hypothetical facts;
2. **Hold public hearings** to educate the public on the full range of disqualification mechanisms;
3. **Introduce legislation** to enforce Section 3, strengthen § 1505, and expand the Judicial Conduct and Disability Act;
4. **Strengthen whistleblower protections** to prevent the type of retaliation described in the hypothetical;
5. **Consider impeachment** if the facts warrant it — as the ultimate constitutional remedy that only Congress can exercise;
6. **Exercise inherent contempt** if the executive branch refuses to cooperate.

The Constitution gave Congress these powers for a reason. This Committee should use them.

Thank you for the opportunity to testify. I welcome the Committee's questions.

Respectfully submitted,

Professor [Hypothetical Expert] On behalf of Citizens for Constitutional Accountability

Dated: August 28, 2026

Appendix: Key Differences Between the Judicial Amicus Brief and This Congressional Testimony

The user has asked to compare how the same hypothetical is argued to the judiciary versus Congress. The key differences are:

1. Institutional Authority

	Judicial Brief	Congressional Testimony
What can it do?	Void orders, unseal records, refer for misconduct, order Brady disclosure	Subpoena, hold hearings, impeach, legislate, hold in contempt, enforce § 3
What can't it do?	Cannot impeach, cannot legislate, cannot exercise contempt, cannot enforce § 3 directly	Cannot void judicial orders (though can disregard them for legislative purposes), cannot conduct criminal trials

2. Framing of the Same Legal Arguments

Argument	In the Judicial Brief	In the Congressional Testimony
Nemo iudex / § 455	Core argument: the orders are void because the judge failed to recuse. Court should vacate.	Framed as evidence of judicial misconduct requiring congressional oversight and potential impeachment. Congress should investigate and legislate to strengthen § 455 enforcement.
Ryder / de facto officer	Court should apply Ryder to void the orders and require a properly constituted tribunal.	Congress should investigate whether the judge is a de facto officer and, if so, consider impeachment. Congress can legislate to clarify the timely-challenge mechanism.
Brady violation	Court should order disclosure and vacate affected convictions.	Congress should hold hearings on systemic Brady failures and legislate to prevent judicial sealing of Brady evidence.
Obstruction of Congress (§ 1505)	Noted as evidence the orders are void; the court should protect Congress's access.	Central argument: Congress's core constitutional prerogative was violated. Congress should investigate, hold in contempt, and amend § 1505 to add disqualification.
Whistleblower retaliation	Noted as voiding the orders (retaliation via judicial order).	Congress should strengthen whistleblower protections, create direct-to-Congress channels, and criminalize judicial sealing of whistleblower disclosures.
14th Amendment § 3	Noted as a separate non-judicial mechanism.	Congress should legislate to enforce § 3, following the Baude-Paulsen self-executing theory.
Disqualification mechanisms	Listed to show that the court's action is reinforced by other available remedies.	Central to the testimony: Congress should ensure all twelve non-impeachment mechanisms are available, strengthened, and functioning.
Impeachment	Mentioned as one of many mechanisms; court cannot impeach.	The ultimate congressional tool: Congress should consider impeachment if facts warrant. This is Congress's exclusive power.

3. Tone and Style

	Judicial Brief	Congressional Testimony
Formality	Formal legal brief with caption, table of authorities, numbered argument sections	Written statement for the record, addressed to Chairman and Members
Deference	Deferential to the court; asks the court to act within its authority	Assertive of Congress's institutional prerogatives; reminds the Committee of its constitutional powers
Audience	A single judge who must be persuaded to exercise judicial authority	A committee of legislators who must be persuaded to exercise political authority
Relief sought	Judicial orders (vacatur, unsealing, referral, disclosure)	Legislative and oversight action (subpoenas, hearings, legislation, impeachment, contempt)
Standard	Legal correctness; structural error requires no prejudice showing	Political judgment; Congress determines what warrants investigation and impeachment

4. The Core Insight

The **same hypothetical facts** produce **different arguments** depending on the audience, because each branch has different constitutional tools:

- The **judiciary** can **void the orders** but cannot **remove the judge** or **legislate new protections**.
- **Congress** can **remove the judge** (impeachment) and **legislate new protections** but cannot itself **void the judicial orders** (though it can disregard them for legislative purposes and compel production of the underlying records).

The two briefs are **complementary, not redundant**. The judicial brief seeks to undo the specific harm (the void sealing orders). The congressional testimony seeks to address the structural problem (how to prevent and remedy this type of institutional failure systemically). Together, they illustrate the constitutional design: **each branch has unique tools, and the system works best when each branch exercises its own authority while respecting the others'**.

This testimony is a hypothetical legal-learning exercise. It is not legal advice and was not submitted to any congressional committee.