Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

RESET *v.* UNITED STATES

APPLICATION FOR A STAY

No. 09–44. Decided June 27, 2020

The House of Representatives impeached President Reset4K on three articles. The first alleged that he bribed two Members of Congress, the second alleged that he made expenditures in return for future votes, and the third alleged that he used his power as Commander-in-Chief to coerce political support from members of the military. The President filed his application for a preemptive stay of his potential conviction in the hopes of remaining in office if convicted by the Senate in his trial later today.

Held: The application is denied. In consideration of longstanding precedent, American history, the text and original meaning of the Constitution, and the written briefs submitted for the Court's consideration, there are thirteen reasons why the application for a preemptive stay must be denied. Variously, each reason shows that the President has not made a strong showing at this stage that he is likely to succeed on the merits of his case and underscores that granting a stay in this case would substantially injure interested parties and run contrary to the public interest. In light of the combined force of these thirteen factors, there are no grounds for issuing a preemptive stay.

No. 09–44, application denied.

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SUPREME COURT OF THE UNITED STATES

No. 09–44

RESET4K, APPLICANT *v.* UNITED STATES

ON APPLICATION FOR STAY

[June 27, 2020]

PER CURIAM.

For the second time this term, the President applies to this Court for a preemptive stay of his potentially impending impeachment conviction. The last time around, he was successful, and his conviction was stayed and later overturned. That outcome, however, has no bearing on our disposition of this case because the issues presented here are markedly different. On June 25th, the House of Representatives adopted the three present articles of impeachment against the President.

The first article charges the President with bribing two Member of Congress. The article contends that the President "offer[ed] money to Congressman Krenth in return for an official act, an apology signed by the Congressman in his capacity as a member of the House of Representatives." H. Res. 3, Art. I (2020). It also alleges that he "offer[ed] something of value [a Senate seat] to . . . Congressman Jtdalejr88 . . . in exchange for the Congressman's resignation from office." *Ibid.* The cited statute is 18 U. S. C. §201 (titled "Bribery of public officials and witnesses").

The second article claims that the President made an illegal expenditure to influence voting. In particular, it alleges that the President used his campaign funds to give a

"potential voter" money to buy a "Jailbreak gamepass" in order to "influence whether [they] w[ould] vote for him or not." *Id.*, Art. II. The cited statute is 18 U. S. C. §597 (titled "Expenditures to influence voting").

The third and final article relates to the President's conduct as Commander-in-Chief. It alleges that he used his military authority—in the form of his access to the military's central discord server—to direct message members of the military to vote for him on polls and in elections. *Id.*, Art. III. The article alleges that "there is a very intimidating pressure when the Commander-in-Chief is personally direct messaging servicemembers." *Ibid.* The cited statute is 18 U. S. C. §609 (titled "Use of military authority to influence voting by members of the Armed Forces").

The Senate is scheduled to convene later today to try each of these articles. To succeed in obtaining a preemptive stay of any possible conviction which might result from that trial, the threshold is high. Applicant must generally first make a "strong showing" that he is "likely to succeed on the merits." *Kolibob* v. *United States*, 9 U. S. ___, ___ (2020) (slip op., at 1) (quotation omitted). But where the preemptive stay of an impeachment conviction is concerned, succeeding on the merits for one or two of the articles is not enough. Because overturning a future removal would require success on *all* the articles, applicant must make a strong showing for the likelihood of success on each and every single article.

Applicant must then show that he will be irreparably injured in the absence of a preemptive stay. In the impeachment context, though, this is usually satisfied as a *per se* matter. After all, in the absence of a preemptive stay, later success on the merits would "present a great deal of additional work as to the unwinding of any significant actions." *Procursive* v. *United States*, 7 U. S. ___, ___, n. 1 (2019) (slip op., at 4, n. 1). Thus, we need not dwell too much on this factor.

Next, the Court considers whether the issuance of a stay would "substantially injure the other parties interested in the proceeding" and "where the public interest lies." *Kolibob*, *supra*. For both of these factors, that means assessing how a preemptive stay would impact Congress' ability to discharge its functions in combination with the implications that would have for society at large.

Naturally, the "the first two" factors are the "most critical" of the bunch and a particularly strong showing on them can outweigh strong interests reflected in the latter two. *Id*., at ___ (slip op., at 2). For the sake of convenience, we consider each of the factors below as a collective whole.

* * *

In consideration of longstanding precedent, American history, the text and original meaning of the Constitution, and the written briefs submitted for our consideration, we conclude that there are thirteen reasons why the application for a preemptive stay must be denied in this case.

First, the public and Congressional interests at stake here stand in particularly forceful opposition to a preemptive stay. To begin with, this is the second time over the course of this term that the House has found it necessary to impeach the President. While some might contend this illustrates excessive reliance by Congress on its impeachment power, that contention gives far too short shrift to the serious nature of the charges presented here. Two of the articles pertain directly to the upcoming election. And the charges are serious enough that the Federal Election Commission found that they warranted taking the extraordinary step of disqualifying the incumbent President from seeking reelection. The Court cannot discount the significance of that step.

This consideration is not, of course, dispositive but taken together with the twelve other factors enumerated below it is sufficient to deny the requested preemptive stay.

Second, the claim that the President's alleged conduct is outside the bounds of the bribery statute cited in support of the first article is a point of serious contention and applicant does not sufficiently brief the issue for the Court to find a "strong showing" that he is likely to succeed on the merits of it. The explanation provided by applicant is confined to positing that while the bribery statute requires a *quid pro quo* involving "official act[s]," under *McDonnell* v. *United States*, 579 U. S. ___ (2016), issuing an apology letter and resigning from office are not "official acts." But this claim requires additional development. It is plausible to argue on the other side that issuing a formal statement using a government letter head is an "official action" by a public official or that resigning from office—because it has a concrete legal effect—is an "official act." Applicant's threadbare claim, based only on an unexplained citation to *McDonnell*, does not constitute a "strong showing."

Third, applicant appears to overread the applicability of *McDonnell*. *McDonnell* did, as applicant argues, hold that some "official acts" must involve "formal exercise[s] of government power." *Id.*, at ___ (slip op., at 15). But the Court qualified that holding in two pertinent ways. First, it only applied to four categories of "official acts," not all six of them. See *ibid* (explaining that its analysis applied only to "[t]he last four words in th[e] list"). Second, even with respect to those four, the Court was far from emphatic. Indeed, the Court conceded that it was "difficult to define the precise reach of those [four] terms." *Ibid.*

Applicant cites the Court's summary of this conclusion, see *id.*, at ___ (slip op., at 21), but that is not to the contrary. Indeed, the Court acknowledged that cursory acts like "[s]etting up a meeting, talking to another official, or organizing an event"—unless "without more"—could constitute "official acts" under the bribery statute. *Ibid.*

Fourth, applicant alludes to additional facets of this argument but a statement of what he "intends to argue" is not

a substitute for an actual statement of that argument. The Court cannot treat that as contributing to a "strong showing" of likely success on the merits.

Fifth, although applicant does not explicitly make this argument, it is worth noting that no argument that the first article is insufficiently serious to constitute a "high" crime would be apposite. After all, "bribery" is enumerated as a ground for impeachment by the Constitution completely separate from the phrase "high crimes and misdemeanors."

Sixth, regarding applicant's arguments on the second article, the claim that the article relies on "highly objectionable and easily forgeable evidence" is not remotely developed enough to amount to a "strong showing" of merits success likelihood. Applicant does not describe what standards he believes apply to evidence in impeachment trials or where those standards would come from. Nor does applicant explain what is actually defective about the evidence relied on in the article.

Seventh, although applicant disputes the credibility of the evidence, he does not dispute the facts the evidence is cited to show. Our precedents, though, require merely a "basis in fact" to support a finding of factual guilt. *Reset* v. *United States*, 9 U. S. ___, ___ (2020) (slip op., at 37) (*Reset I*). Moreover, "[i]t doesn't really matter where that basis comes from or how it was obtained as long as it is real and supports Congress's conclusion." *Kolibob*, *supra*, at ___ (slip op., at 7). Applicant does not tie his argument to this legal standard. The Court cannot overturn a finding of factual guilt applicant does not himself dispute if his only objection is to the manner in which that conceded guilt is proven. While it is possible that this is not the argument applicant intended to make, the applicable standard requires a "strong showing" and our job is to hold the arguments submitted to that bar.

Eighth, applicant appears to rely on the clear error standard pressed by the petitioner and rejected by the Court in

Reset I. Needless to say, the correct standard (as we just recounted) turns on whether Congress has a "basis in fact" for its factual conclusions. This is a highly deferential mechanism of review.

Ninth, applicant says that he made no mention of a vote when he offered funds in the events of the second article, but the statutory standard makes no mention of "intent," but only purpose. When campaign funds are used to pay a non-employee for extraneous and apparently gratuitous reasons, there is a strong appearance that the purpose of the expenditure was to induce voting behavior. This uncertainty is sufficient to rebut the "strong showing" required of applicant.

Tenth, applicant's response to the third article appears to miss the point the House is trying to make. The article does not suggest that "election campaigning" is "criminalized," only that direct campaigning by the President using a medium he has access to by virtue of his military title creates a strong potential for coercion.

Eleventh, applicant argues the insufficiency of the evidence included in support of the third article. The Court's role, however, is to determine "whether the allegations in the articles have a basis in fact, not whether the evidence presented at trial conclusively proves these allegations." *Reset I*, *supra*, at ___ (slip op., at 37). Moreover, it is hard to see how an argument about the insufficiency of the House's evidence can be maintained at this stage when the House has not yet presented its case to the Senate, where it is free to present other evidence not included in the articles themselves.

Twelfth, applicant alludes to an argument that "no impeachable offense was committed" with respect to the third article but fails to ground this argument in any analysis of the statutory text or the allegations in the third article. That must be rejected out of hand.

Thirteenth, and finally, applicant fails to explain how a

the cited disclaimer the President included in his communications to military members ("if interested ofc") negates the perception cited by Congress among some military members that any request (even one phrased as voluntary) from the Commander-in-Chief was effectively an order.

* * *

As we said recently, "an impeachment is strong medicine." *Kolibob*, *supra*, at ___ (slip op., at 7). There are circumstances where it should be used and circumstances where it should not. But the decision of when impeachment *should* be used is one left to Congress. Our responsibility is only to use the law to figure out whether it *can* be used in a particular case. Here, applicant has not made the required showing to obtain a preemptive stay.

The application is therefore denied.

It is so ordered.