

**The 'Nixon Flooding Plan':
How a 'Unitary-Executive' Was Ousted From the Presidency
Without a House Impeachment or Senate Trial**

**A White Paper
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The 'Nixon Flooding Plan': How a 'Unitary-Executive' Was Ousted From the Presidency Without a House Impeachment or Senate Trial

This White Paper details how House Democrats generated the resignation of President Richard M. Nixon on August 9, 1974 for high crimes and misdemeanors against the U.S. Constitution and the American people. Yet without a House impeachment or a Senate trial. It took coordinated, cooperative, clever, and courageous efforts—chiefly during 1973—by 90 House Democrats. They bypassed fear-paralyzed colleagues and halted his overthrow of the Constitution and American democracy and used the threat of investigatory preludes to impeachment and impeachment itself to do it.

It was the House Democrats finest hour in supporting and defending the U.S. Constitution against an “imperial president” who believed he was above the law in war and peace and could first usurp Congressional powers and then nullify it altogether. He terrified most in Congress by lying, spying, and using coercive force via the FBI, the Secret Service, IRS, and White House thugs. He reckoned without a fed-up and courageous band of House Democrats.

His minor crimes included illegal use of campaign funds and tax evasion, but major ones such as expanding the Vietnam war by more than a year of secret carpet-bombings of Cambodia that killed hundreds of thousands, beginning in March 1969. The following year he was forced to confess he was invading that country. Then came the scandal of “Watergate” in mid-June 1972, in which his hirelings were caught breaking into the Democratic National Committee offices in Washington’s Watergate office complex; they’d practiced earlier in a break-in to obtain Daniel Ellsberg’s files concerning his releasing the Pentagon Papers to the media about the sordid origins of the Vietnam war. He believed he was not only commander-in-chief of the armed forces, but of Congress, the courts, and the American people. In truth, he had become a sinister paranoid capable of any criminal or politically evil deed.

Yet instead of cowering before the man “who would be king” or political fears about the next election and behaving as if the Constitution was just a “piece of paper,” a core group of two dozen House Democrats figured out how to oust him without impeachment proceedings, but with its deadly powers wisely included in the Constitution by its Framers. Their Speaker did not say “impeachment was off the table” nor punish those who failed to “go along to get along” if they wanted constituents’ bills passed or to move up a rank in committees. But he obviously feared using that powerful weapon to drive Nixon out of office.

The dice were thrown initially by the super-progressive William Fitts Ryan (NY-20) on May 9, 1972 when he hopped HRes 975 without any cosponsors to impeach Nixon.¹ Instead of signing on as a cosponsor, eight-year member John Conyers, Jr. hopped an un-cosponsored impeachment bill next day (HRes 976). For good measure eight days later (May 18), he hopped another impeachment bill (HRes 989)—also without any cosponsors.² They noticed that the House committees paid more attention to the numbers of bills submitted than a single bill that had required

¹ Among Ryan’s causes were: setting up a Civil Rights Commission, supporting bills to outlaw racial discrimination in housing/protecting migrant workers, supporting Medicare, authoring a bill banning lead paint from federal buildings. He opposed the Vietnam war from the beginning, opposed the Comstat satellite spy program, and voted against President Lyndon Johnson’s supplemental defense bills.

² Because the Thomas archival system for the Library of Congress only began with 1973 bills, those of Ryan and Conyers are unavailable to discern if they were for an impeachment investigation or just impeachment *per se*.

time and energy to round up cosponsors.³ In short, flood a committee with somewhat similar bills so they might feel they had to vote on at least one, preferably one that might be the least dangerous for re-election chances.

Though Democrats were the House majority and Nixon's high crimes were obvious—Watergate in mid June—the three bills gathered dust in the House Judiciary committee (HJC). And then Ryan died on September 17 after surgery for an ulcer. His replacement, however, was the outspoken and colorful Bella Abzug, the Emma Goldman of her time. Between the outcry about Watergate and Nixon's other crimes and increasing anti-war demonstrations, the HJC let the bills die at the end of the first session of the 93rd Congress in December.

Conyers did not re-hopper his bills, but it seems apparent he thought about that tactic of flooding committees with impeachment bills in the second session. Yet the plan would have to be sold to a significant number of the 242 House Democrats. Which it was between Abzug's arrival to year's end. The ringleaders are unknown except to those dozens of "conspirators" from a broad spectrum of states—New York to Hawaii—and a range of strategy and age, freshmen and oldtimers, men and women. Four were members of the HJC: Conyers, Seiberling, Drinan, and Rangel.⁴ Some still serve in the House: Pete Stark (CA-8), John Conyers (MI-1), William Clay (MO-1), David Obey (WI-7), and Charles Rangel (NY-19).

By Christmas, nearly 90 Democrats were part of the plotters. Their tactic involved assigning members to draft bills that would demand the HJC or Rules committees either: 1) investigate whether impeachable high crimes had been committed by Nixon or 2) impeach Nixon on open-and-shut evidence at hand. Nearly 40 bills were hopped in the first session of the 93rd Congress.⁵ Hopped bills started as a trickle and rose to a tsunami by October, most of them following Nixon's Oct. 20 firing of the Watergate investigation's special prosecutor Archibald Cox.⁶ Some would have no cosponsors to appear innocuous, followed by those with 24 to show a constituency buildup was afoot and growing enough votes to impeach.

Most bills demanding investigations were almost identical so no one had to re-invent the language or plead time or energy constraints prevented them from authoring a bill:

A resolution directing the Committee on the Judiciary to inquire into and investigate whether grounds exist for the impeachment of Richard M. Nixon (**Jonathan Bingham, H.Res. 627**).

Resolution: an inquiry into the existence of grounds for the impeachment of Richard M. Nixon (**Romano Mazzoli, H.Res. 630**).

But, aside from one or two bills that in a dozen words demanded impeachment, others in that camp set out two or three separate and formal Articles of Impeachment. Each was involved open-and-shut, easily proved, deeds, drawn from Nixon's long list of high crimes and misdemeanors. The group wanted to ensure that whichever bill the HJC selected for a vote, its articles also would win impeachment in the House, a guilty verdict in the Senate trial and the same if Nixon were indicted in a federal court.

³The champion of multi-bills in the Nixon impeachment tactic was Phillip Burton (OCA-6) who hopped three bills—HRes 628, 629, 630—on Oct. 23, 1973 to investigate whether Nixon's deeds constituted "high crimes rising to the Constitutional level of impeachment."

⁴Committee on the Judiciary, House of Representatives, Ninety-Third Congress, Second Session, February 1974 (Washington, D.C.: U.S. Government printing Office, 1974), ii.

⁵*History of the Committee on the Judiciary of the House of Representatives* (Washington, D.C.: U.S. Government Printing Office, February 1982), 5. <http://www.lib.auburn.edu/madd/docs/pdf/history.pdf>.

⁶*Ibid.*, 28.

For example, Abzug's three articles in HRes 625 were Nixon's: 1) defying a court order to produce tapes, documents, and other data requested by Watergate's special prosecutor Archibald Cox; 2) violating the First Amendment by establishing "personal secret police" immune to accountability as they engaged in burglary, wiretapping, spying, and perjury; 3) illegally collecting and using certain campaign funds to ensure his 1972 reelection.⁷

Stark's H.Res. 703 was not so specific in charging that Nixon with: 1) attaining the presidency "through the use of illegal means"; 2) violating the First Amendment's guarantees of freedom of speech and press and the Fourth Amendment's right of privacy; and 3) "arrogating powers not conferred by the Constitution, or powers expressly reserved to Congress."

Paul McCloskey's H.Res. 635 had only two articles, that Nixon: 1) had used bribery, lying, and intimidation to obstruct justice with special prosecutor Cox; and 2) violated the Fourth Amendment on July 15, 1970 by ordering federal agencies and employees to raid people's homes. Patsy Mink's HRes 650 had an article for Nixon's criminal activities, but also ones for obstructing justice by offering a high federal post to a judge during the Daniel Ellsberg-Anthony Russo trial about theft of the Pentagon Papers on the Vietnam War, and shutting down the Office of Economic Opportunity despite a federal law for its continuance.⁸

The tactic's giveaway was that 87 members split cosponsorships of those bills on the session's opening day, signing them all on January 3, 1973. Three sequential bills of Phillip Burton (CA-6) had 24 cosponsors with last names of Abzug to Grasso on the first; 24 ranging from Green to Rees on the second; and 12 from Rooney to Young on the third. Again, three bills were more noticeable to the HJC and Rules committee than one bill with 60 cosponsors. At the start of action, perhaps only parliamentarians recognized what was happening.

Stark led off the hopping section of the flooding plan on June 12 and 25, filing two investigation bills to determine if Nixon had committed impeachable crimes; the first had no cosponsors, but the second had 16. That had to begin worrying House Republicans that the country and their constituents had had enough of Richard Nixon. Besides, the House's Democratic majority had the votes to impeach.

The fiery priest Robert Drinan (MA-4) was next, filing HRes. 513 on July 31 which demanded impeachment; it had no cosponsors. Needless to say, the violently anti-war, anti-Nixon Drinan wound up high on the President's infamous "Enemies List."

The plotters let that action sink in to the Republican members and the Nixon regime during the August/September lull. But when fall recess was over, they hopped a deluge of 21 bills, 12 of them on one day alone (Oct. 23). The October score was 14 bills for investigations, 6 for impeachment, and one advocating censure only (Californian Clarence Long's H..Con.Res. 371).

So heavy was the downpour that on November 15, the House passed HRes. 702 by 367-51 providing \$1,000,000 to the HJC's staff for an investigation to determine if "proper grounds" existed to impeach Nixon.⁹

⁷The Thomas System of the Library of Congress archives for House bills hopped in 1973. □

⁸Three Articles of Impeachment out of five were finally passed by the HJC in 1974 and sent to the House for a vote. Briefly the charges against were: 1) making "false or misleading statement to delay, cover up, or conceal evidence relating to the Watergate break-ins"; 2) engaging "in conduct violating the Constitutional rights of citizens . . . and impairing the due and proper administration of justice" vis-à-vis using the IRS, FBI, Secret Service, et al. to persecute federal agencies and the public; 3) willfully disobeying "the subpoenas of and failed without lawful cause of excuse to produce papers and information for the House Judiciary Committee. . . assuming to himself the functions and judgments given to the house of Representatives by the Constitution. Nixon resigned before the House could impeach him. *United States v Nixon (1974)*, Landmark Supreme Court Cases. Street Law & the Supreme Court Historical Society, <http://www.landmarkcases.org/nixon/nixon.html>.

⁹*History of the Committee on the Judiciary*, 29.

Robert Leggett (CA-4) started 1974 action by hopping an impeachment bill (HRes. 769) on January 21. By then, momentum of the flooding plan had become a tidal wave, sweeping up Republicans as embittered about Nixon as Democrats. In a Democratic-controlled House, the possibility of impeachment now became a reality to a shaken Administration. Their concern was intensified when on February 6, the House voted 410-4 to have the HJC: "investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon..." The committee's staff finished its investigation by May and public hearings on the results were launched on May 9.¹⁰

In the meantime, the last impeachment bill—again, Leggett's—from the group (H.Res. 1022), was hopped on April 2.

The chickens had finally roosted for President Richard M. Nixon. A group of Senate Republican leaders—Barry Goldwater, John Rhodes, Hugh Scott—walked to the White House and broke the news to him that the HJC's staff report probably would result in a vote to send one of the impeachment bills to the House floor where the Democrats ruled that roost.¹¹ Moreover, all signs indicated that 67 Senators would convict and oust him, perhaps followed by a conviction and prison sentence from a federal court. He had a choice of either being the first president to resign and escape or face hearings that would blacken his reputation, oust him as president, and put him in prison.

He chose to resign August 9.

However, Congress grinds slowly and exceedingly fine. On August 30, the HJC submitted its investigatory report to the House (HR Rep. No. 93-1305), recommending three of the original five articles of impeachment be put to a House vote. However, post-resignation impeachment was made moot when Gerald Ford was now president. On September 8, he granted Nixon a "full and unconditional" pardon, saving Congressional and court actions.¹² Nevertheless, on that same day, the House passed HR 1333 which acknowledged receipt of the committee's report and, noted Nixon's resignation.

His high crimes against the Constitution—foreign and domestic—and view he was above the law were scarcely as well known to the public as most high crimes Cheney and Bush have committed since 2001. And even though Democrats controlled Congress back in 1972, this brave band of 90 certainly had no power initially to get colleagues to support even threatening impeachment of a then rather popular president. Most seemed terrified of Nixon's immense police powers to destroy them financially, politically, or physically if they used the one tool to oust an imperious president (or vice president) that the Founders provided in the Constitution: Impeachment.

But like the nobles who rose above their terrors (the axe and/or estate confiscations) to impose Magna Carta on King John in 1215, this group's focus was on saving the Constitution. It was clearly a non-political, non-partisan Cause against those who would overthrow that document and, thereby, democracy right along with it. They resisted concerns about the possible retaliatory powers of the House Speaker, the Democratic leadership in both houses, and put their country and Constitutional powers first. Like the Framers, they recognized and feared an "Imperial President" seizing power by instigating and pursuing war.

The Nixon Flooding Plan, as the national We the People Coalition call it, can be resurrected and put in motion immediately to oust Bush and/or Cheney. All it takes is two or three dozen courageous House members to do exactly what the Starks,

¹⁰"Judiciary Committee Impeachment Hearings," Watergate.com, <http://www.watergate.info/judiciary>.

¹¹*History of the Committee on the Judiciary*, 35.

¹²*Ibid.*

Conyers, Drinans and Abzugs did 25 years ago: Using the threat of an investigation or impeachment itself by hopping a wave of such bills to which the HJC or Rules committee will have to pay heed.

To keep signing statements from nullifying Congress as it now does, they could draft dozens of bills—two-thirds of them for investigations—within two or three weeks. Then, stage a mass one-day signup of co-sponsors, followed by hopping a bill each day until the HJC acts. Model bills are in Appendix IV. The list of Bush/Cheney high crimes up to 2005 are in the HJC staff report, now in the paperback *The Constitution in Crisis*. Since then, many more Constitutional violations have been uncovered and even admitted and continued by Bush—notably warrantless wiretapping that began prior to September 11, 2001.

It has long been predicted that once investigations begin and subpoenas are issued for hearings, Cheney will resign within two weeks for reasons of health. And why not? That's what happened to Nixon's vice president Spiro Agnew in 1973 when McCloskey hopped an investigatory bill (HRes. 573) on October 2 about his financial illegalities. Agnew resigned eight days later.¹³ It is not known whether that action triggered that inundation of bills, but it aptly demonstrated how flooding first a House Speaker and then a committee with bills for investigations or impeachment itself can oust those with monarchical aspirations or presidents and vice presidents dangerous to our republic.

And without disruptions and expense of the actual investigations or impeachment hearings and Senate trial. Most important, the Nixon Flood Plan will not leave the precedents of Bush's and Cheney's high crimes against the Constitution and the American people in place for future presidents and vice presidents. Once illegal power is in place, it is a certainty that future presidents will use it.

¹³ McCloskey on Oct. 2 also had filed an impeachment bill with no co-sponsors against Vice President Spiro Agnew (H.Res 573) directing the HJC: "to conduct a full and complete investigation of the charges of impeachable offenses alleged to have been committed by Spiro T. Agnew" with a 45-day reporting deadline.