

RESEARCH MEMORANDUM

To: Interested Parties
From: American Accountability Foundation
Date: July 17, 2023
Re: State Department Legal Adviser Nominee, Margaret L. Taylor

Margaret L. Taylor is President Biden's nominee to be legal adviser at the State Department. Taylor has held past positions such as Fellow in Governance Studies at the Brookings Institution and Senior Editor at *Lawfare*. Taylor has also previously worked as Democratic Chief Counsel and Deputy Staff Director for the Senate Foreign Relations Committee. Ms. Taylor's credentials also include serving as a Council on Foreign Relations International Affairs Fellow and clerking for Judge Amalya Kearses of the U.S. Court of Appeals for the Second Circuit.

Our research has found that Taylor:

- Has made statements attacking Senators Paul and Cotton.
- Has repeatedly attacked President Trump and his policies.
- Has made statements in support of the Trump impeachments and Trump investigations.
- Has made statements praising now-discredited Rep. Adam Schiff.

ATTACKED PRESIDENT TRUMP AND HIS POLICIES

SUGGESTED THAT TRUMP WOULD "CONTINUE TO PRESS THE OUTER BOUNDS OF INTERBRANCH POLITICAL NORMS"

On October 5, 2020, Margaret L. Taylor co-authored an article for *Lawfare* titled "The Consequences of Recent Court Decisions for Congress." Taylor's article heavily criticized the Trump administration, insinuating that four more years of his presidency would result in obstructing House Democrats' oversight efforts.¹ Furthermore, Taylor contrasted Trump's hypothetical second term with a scenario featuring President Biden working alongside a Democratic-controlled House and Senate. She suggested that Biden might support the elimination of the Senate filibuster rule for legislation:

...Four more years of the Trump administration stonewalling House Democrats' efforts at oversight is a much different proposition than a President Biden working with a Democratic-controlled House and Senate. Given another four years, and with a new electoral mandate, Trump is likely to continue to press the outer bounds of interbranch political norms. President Biden, by contrast, may have a desire to

¹ LAWFARE "The Consequences of Recent Court Decisions for Congress" [October 5, 2020](#)



restore such norms, though he may end up supporting the demolition of a big one—the Senate filibuster rule for legislation...

CLAIMED “THERE HAS NOT BEEN EVIDENCE OF SIGNIFICANT DISORDER” IN SEATTLE DURING 2020 RIOTS

On June 16, 2020, Margaret L. Taylor co-authored an article on *Lawfare* titled "How Presidents Talk About Deploying the Military in the United States," wherein she criticized President Trump for his tactics regarding the deployment of the military during the civil unrest of the 2020 riots. Taylor suggested that President Trump failed to emphasize that federal troops should not be seen as a substitute for local law enforcement. Instead, President Trump communicated to governors that they needed to "dominate" the streets, or else he would consider deploying troops. Additionally, Taylor questioned the basis of Trump's tweet, implying that there was no significant disorder in Seattle to justify his reference to the city's decision to close a police precinct. Taylor criticized Trump's language and perceived disregard for federalism and constitutional rights:²

...Trump, by contrast, made it clear he was eager to deploy troops and gave few specifics about what he was doing or might do next. Rather than taking pains to make clear that federal troops are not a substitute for local law enforcement, Trump told governors that state and local officials needed to “dominate” the streets or else he would deploy troops to do so...

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...Trump’s tweet may have been a reference to Seattle’s decision to close a police precinct—but there has not been evidence of significant disorder in the city...

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...Trump, by contrast, has adopted the language of battle. And he has not seemed at all concerned with fundamental constitutional notions of federalism and the rights reserved to states under the U.S. Constitution. Of course, Trump has not taken the final step of deploying the military to the states. But by deploying them cavalierly and in huge numbers in Washington, D.C.—without articulating what authorities he was using and over the objection of local officials—he showed that he is not particularly reticent about taking such a step. Trump’s approach, of course, is consistent with two central themes of his presidency. In moments of division, he peddles conspiracy theories and lashes out against his political opponents. And when it suits him, he pushes aggressively on the outer margins of his presidential authority with little regard for the precedent it sets.

² LAWFARE "How Presidents Talk About Deploying the Military in the United States" [June 16, 2020](#)



CRITICIZED SENATOR COTTON AND REP. GAETZ FOR RHETORIC AGAINST 2020 RIOTERS

On June 2, 2020, Margaret L. Taylor co-authored an article titled "Can Congress Work Together to Calm the Country?" where she expressed criticism of President Trump's response to the George Floyd riots. Additionally, she singled out Senator Tom Cotton and Rep. Matt Gaetz for their support of Trump's rhetoric. Taylor began by accusing President Trump of responding to the protests with inflammatory and divisive rhetoric. She highlighted President Trump's criticism of governors for not using more force and his threat to invoke the Insurrection Act. She further criticized the use of tear gas on protesters to facilitate a photo opportunity for Trump in front of a church. Taylor argued that it was important to recognize the alleged grievances of protesters amid the global pandemic.³

As demonstrations involving both peaceful protesters and violent provocateurs and looters continue in major cities around the country, President Trump has responded with inflammatory and divisive rhetoric. On Monday, he criticized and insulted governors for not using more force. On Tuesday, he threatened to invoke the Insurrection Act, and moved to deploy "thousands and thousands" of heavily armed soldiers to Washington, D.C. Immediately following that speech, federal police tear-gassed peaceful protesters outside the White House in order to clear a path for Trump to stage a photo op in front of a church.

With a president apparently bent on escalating tensions, the country needs a resolved legislative response. While there are plenty of members piling on divisive and escalatory rhetoric—Tom Cotton and Matt Gaetz being recent notable examples—there are nonetheless glimmers of hope for a constructive bipartisan response. This type of reaction is still possible, though it may ultimately be limited in scope and effect...

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...To begin, there is the underlying issue of the use of force by police against racial minorities that led to the death of George Floyd and the background conditions of racial disparity that tolerate and encourage police brutality and racial profiling. Here, there is some—admittedly small—cause for optimism in Congress, including plans in the works on Capitol Hill that have the potential for broad bipartisan support. For example, the chair of the House Judiciary Committee, Jerry Nadler, said he is looking at taking up legislation to establish a commission to investigate racial disparities in education, criminal justice and other policy areas...

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...There is also a need for congressional action to respond to the disproportionate use of violent tactics by police, including federal law enforcement officers apparently acting at the direction of the White House, against peaceful protesters. And there is an urgent need for oversight over the president's and the administration's disjointed and counterproductive response. Here, the picture is dimmer. Some nascent

³ Source: LAWFARE "Can Congress Work Together to Calm the Country?" [June 2, 2020](#)



oversight of the administration's response—including investigating the U.S. Secret Service's treatment of protesters outside the White House on Monday—has begun, but it is unclear whether that will gain bipartisan support...

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...Likewise, no legislative consensus has emerged on how to respond either to Trump's threats to invoke the Insurrection Act or to his legally empty claim that he will be designating "Antifa" as a terrorist organization...

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...In addition to the risk that foreign adversaries will artificially fuel divisions as they've done in the past, the converse risk is also present in the current situation. There is concern that overstating the degree and impact of foreign disinformation could be used to diminish and minimize the legitimate grievances of very real Americans—people who are taking to the streets amid a global pandemic not because of Russia bots but because of painful lived experience...

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...Certainly, the White House is not a reliable source...

ACCUSED ATTORNEY GENERAL BARR OF VIOLATING TORTURE CONVENTION FOR WANTING TO DEPORT ASYLUM SEEKERS INFECTED WITH COVID

On March 25, 2020, Margaret L. Taylor co-authored an article for *Lawfare* titled "What's in the Department of Justice's Proposals to Congress for Addressing Issues Created by the COVID-19 Pandemic?" In this article, Taylor expressed strong criticism towards the policies of the Trump administration's Justice Department, particularly under Attorney General Bill Barr. Regarding asylum applications, Taylor criticized the Justice Department's proposal to potentially disallow infected migrants from applying for asylum. While raising questions about public health considerations and the implications of presidential proclamations, Taylor asserted that the proposal is driven by "Trumpian anti-immigration politics".

Taylor accused the department of being "cruel" for proposing that individuals with valid asylum claims, who may be infected, could be subject to deportation. She argued that quarantine would be a more appropriate response and questioned why the department did not consider this option, stating, "The department offers no explanation of why the right answer for such people isn't quarantine—why a brief period of potential contagiousness justifies sending a person with a genuine fear of persecution to the country where he or she faces that persecution." Taylor also



criticized the Justice Department's proposals, calling them "silly" and referring to the protocols as an "April Fool's Day joke":⁴

...This is silly, and also potentially a broad delegation of authority to the president. It is perfectly reasonable not to allow entry into the United States of aliens who are carrying the virus. But asylum applications take a long time. The adjudications take even longer. Is the Justice Department proposing that migrants present in the country should not be permitted to make an asylum claim if they are infected? How would that protect the public health with respect to a person already present and seeking to make an asylum claim? The idea of not allowing someone even to apply for asylum while infected seems like a kind of non sequitur driven more by Trumpian anti-immigration politics than by public health concerns.

In addition, the language disallowing asylum applications by aliens subject to a presidential proclamation suspending and limiting the entry of aliens into the United States is potentially very broad—and its usefulness unclear. Clearly it would apply to the various proclamations addressing COVID-19 directly, like this one. It is unclear what would be achieved, from a public health perspective, by limiting such individuals—those already present in-country but to whom the presidential proclamations would apply—from applying for asylum. Moreover, what types of future proclamations might the president make that would trigger this provision? Granting such an open-ended delegation of authority to the president would be a mistake...

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...This provision is more than silly. It is cruel. For example, having disallowed asylum applications by people infected with the virus, the department now proposes that people with valid asylum claims, who happen to have the virus, should be deportable notwithstanding the threats they face should they be deported. The department offers no explanation of why the right answer for such people isn't quarantine—why a brief period of potential contagiousness justifies sending a person with a genuine fear of persecution to the country where he or she faces that persecution. The department likewise offers no explanation for why those in-country, but subject to presidential proclamation suspending and limiting entry into the United States, should be subject to removal...

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...No, Attorney General Barr is not proposing to torture aliens with COVID-19. He's just proposing to let other governments torture them. The Torture Convention forbids, among other things, returning people to countries where they face a likelihood of torture or other cruel, inhuman or degrading treatment. This provision would remove that protection as applied to aliens with the virus, and aliens who are the subject of presidential proclamations suspending and limiting entry of aliens into the United States.

We would have assumed that this was the department's April Fool's Day joke, but April is still a week away. In any event, two weeks of quarantine for an infected

⁴ LAWFARE "What's in the Department of Justice's Proposals to Congress for Addressing Issues Created by the COVID-19 Pandemic?" [March 25, 2020](#)



potential torture victim is probably a better approach than defying the nation's obligations under the Torture Convention by delivering the person to a country that will abuse him or her...

SUGGESTED USE OF IMPEACHMENT AND ARREST POWERS TO ENSURE TRUMP ADMINISTRATION OVERSIGHT COMPLIANCE

In a September 23, 2019 *Lawfare* article, Margaret Taylor discussed the ability of Congress to check the powers of President Trump. Taylor noted that President Trump had already utilized emergency powers to fund the southern border wall and questioned whether there were any major policy initiatives from the White House that would require legislative action. Taylor also highlighted Trump's preference for acting Cabinet members, which allows him more flexibility, and suggested that budgetary pressures would necessitate coordinated action from both houses of Congress. She contemplated various avenues, including delaying confirmation hearings, withholding support for administration programs, initiating impeachment proceedings, and utilizing arrest powers, but expressed uncertainty about their effectiveness given the current political landscape.⁵

...I wrote in January, in theory, Congress could look to its other constitutional tools—like delaying confirmation hearings, refusing to move forward on legislation the president needs to achieve his agenda, using the power of the purse to withhold support for administration programs, initiating impeachment proceedings and perhaps even utilizing arcane arrest powers—to vindicate its prerogatives. But even if Democrats had such cooperation from Senate Republicans, it is not clear which tools would actually work on this president...

...

...He is already utilizing emergency powers to pay for his highest priority—a southern border wall. As to legislation, it is not clear that there are any major policy initiatives from the White House that would require legislative action. Confirmations? On Jan. 6, the president actually said he is in “no hurry” to get his Cabinet members confirmed; “I sort of like ‘acting’ [because] it gives me more flexibility; do you understand that? I like ‘acting.’” And as to budgetary pressures—like, say, cutting off funds for presidential travel to his own resorts—that would require the coordinated action of both houses of Congress.”

It remains to be seen which tools will work in the current political environment, and whether the erosion of Congress's role as a check on the presidency can be checked by the courts...

CALLED SENATOR PAUL'S LACK OF SOCIAL DISTANCING “RECKLESS”

⁵ LAWFARE "Just How Outrageous Was the Lewandowski Hearing?" [September 23, 2019](#)



In an article for *Lawfare* titled "Congress Needs a Coronavirus Failsafe—Before It's Too Late," published on March 23, 2020, Margaret L. Taylor co-authored an article expressing concerns regarding the adherence to social distancing measures by Senator Rand Paul. She highlighted the importance of responsible actions in the face of the COVID-19 pandemic and pointed out the potential risks associated with not following recommended protocols. Considering Senator Paul's subsequent diagnosis with COVID-19, Taylor voiced her belief that his behavior might be "reckless":⁶

...On Sunday, March 22, Sen. Rand Paul made public that he too had tested positive for the virus, despite exhibiting no symptoms. Within hours, several Republican senators who had had contact with Paul announced that they were self-quarantining, joining numerous other legislators who have taken such steps after being exposed to the virus or exhibiting symptoms. Moreover, the reluctance of Paul and other lawmakers to observe social distancing means that many more members of Congress are likely to find themselves in a similar position. Before he received his test results, Paul—like many other infected and exposed legislators—was still active on the Senate floor and in congressional gatherings, even going for a swim at the Senate gym as late as the morning before his diagnosis.

This behavior might look reckless—and in some cases, it is. But for many members of Congress, such resistance to social distancing is also a requirement of their jobs. Both the House and Senate maintain rules that require legislators to be physically present to cast votes. And if a majority of either chamber cannot assemble in person, then the same rules prevent Congress from enacting any legislation—even in the midst of a national emergency...

WROTE OP-ED IN SUPPORT OF ADAM SCHIFF

In a *New York Times* op-ed from October 4, 2019, titled "Adam Schiff Is the Right Man for the Moment," Margaret Taylor praised Adam Schiff ahead of the impeachment trial of President Trump. Taylor emphasized Schiff's role in "setting the tone and strategy" of the impeachment inquiry. Taylor lauded his organization of key witness depositions and warned the administration about potential obstruction and delays, drawing parallels to the article of impeachment against Richard Nixon in 1974.⁷ She highlighted Schiff's vocal desire to shed light on the 2016 election and address broader issues, such as the intersection of the president's foreign policies and the Trump family's global financial interests.

However, considering the subsequent revelations about Adam Schiff's push for the Russian collusion narrative against Trump, it becomes apparent that Taylor's judgment was ideologically motivated against Trump. In a recent development that raises significant concerns about Adam Schiff's credibility, the House of

⁶ Source: LAWFARE "Congress Needs a Coronavirus Failsafe—Before It's Too Late" [March 23, 2020](#)

⁷ NYT "Adam Schiff Is the Right Man for the Moment" [October 4, 2019](#)



Representatives took the unprecedented step of censuring Schiff in June 2023 for his role in spreading false accusations of Trump-Russia collusion. This action highlights the serious doubts surrounding Schiff's integrity and calls into question the validity of the assertions made by Margaret Taylor in her op-ed. Schiff knowingly misled the American people, willfully disregarding the truth in his relentless pursuit of a political agenda. By spreading baseless accusations, Schiff abused his position of power, eroding public trust and tarnishing the integrity of our democratic institutions.

...Mr. Schiff is a stickler for process. When the whistle-blower approached him and his staff, they did precisely the right thing: They directed the whistle-blower to obtain legal counsel and file the complaint through the appropriate channels laid out in the Intelligence Community Whistleblower Protection Act.

Mr. Schiff went public only after receiving a letter from the intelligence community inspector general indicating the acting director of national intelligence had not followed process requirements outlined in the law. The president can concoct all the conspiracy theories he wants, and Lindsey Graham and others may pick up the tune, but Mr. Schiff played it by the book...

...

...Mr. Schiff is setting the tone and strategy of the inquiry, quickly setting up depositions of key witnesses and warning the administration that obstruction and delay could form the basis for a distinct article of impeachment similar to one approved by the Judiciary Committee against Richard Nixon in 1974."

...

...Mr. Schiff was vocal about his desire to tell the American people, in an open and public way, exactly what happened in the 2016 election. He also signaled he would seek to address wider issues, like the intersection of the president's foreign policies and the Trump family's global financial interests. Mr. Schiff has become the Democrats' go-to articulator of the importance of core American values like the rule of law, election integrity, respect for human rights and anti-corruption — as well as broader foreign policy challenges like the rise of authoritarianism around the world...

...

...Before the 2016 election, Mr. Schiff was a well-respected but relatively obscure member of Congress. In a 2018 California Sunday Magazine profile, he was described this way: "Dressed in a crisp blue suit and sensible dress shoes, he cultivates a cheerfully beleaguered demeanor. He speaks without notes and tells jokes the way a dad would if that dad had access to highly classified intelligence..."

...

...Mr. Schiff's status as a credible, effective communicator who can speak to Americans in ways that ring true may be the most important contribution he can make over the next few weeks and months...

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...This is not a disagreement about facts or process. It is about whether what Mr. Trump is doing is improper and impeachable. The ultimate outcome of this process could depend on Democrats' ability to draw a straight line between the president's actions and the most profound concerns of the authors of the Constitution about the abuse of executive power.

This type of fight has always been Mr. Schiff's strong suit.

STATEMENT ON PRESIDENT TRUMP'S IMPEACHMENT

During a podcast for the Brookings Institution called *The Current* on September 24, 2019, Margaret Taylor delved into the Trump impeachment proceedings. Taylor suggested that the inclusion of a whistleblower complaint added credibility to the allegations, and that the involvement of the intelligence community intensified the national security implications.⁸

"(4:56) TAYLOR: It's a good question. I think because there is this whistleblower complaint, it adds an air of validity to pretty serious accusations. I also think there's also some aspect of it coming from the intelligence community that is interesting and alarming to people because that directly relates to a national security issue. So there's a lot of elements of all this, that when you put them all together, it really looks like what we classically think of as an abuse of power. Then you've also got the angle where the domestic political opponent is involved. It's really just got all of the hallmarks of an abuse of power and the subject of an impeachment inquiry."

⁸ THE BROOKINGS INSTITUTION "THE CURRENT: Why is the Trump-Ukraine whistleblower complaint so important? [September 24, 2019](#)

