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House of Representatives

The House was not in session today. Its next meeting will be held on Thursday, February 11, 2021, at 9 a.m.

Senate

TUESDAY, FEBRUARY 9, 2021

The Senate met at 1 p.m. and was called to order by the President pro tempore (Mr. LEAHY).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal God, author of liberty, take control of this impeachment trial. Lord, permit the words of the New England poet James Russell Lowell to provide our Senate jurors with just one perspective. Lowell wrote:

Once to every man and nation comes the moment to decide, In the strife of Truth with Falsehood, for the good or evil side.

Mighty God, could it really be that simple? Could it really be just truth striving against falsehood and good striving against evil?

Powerful Redeemer, have mercy on our beloved land.

We pray in Your magnificent Name. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Morning business is closed.

TRIAL OF DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES

The PRESIDENT pro tempore. The Senate will convene as the Court of Impeachment.

The PRESIDENT pro tempore. I ask Senators to be seated.

THE JOURNAL

If there is no objection, the Journal of proceedings of the trial are approved to date.

I ask the Sergeant at Arms to make the proclamation.

The Acting Sergeant at Arms, Jennifer A. Hemingway, made the proclamation as follows:

Hear ye! Hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the Article of Impeachment exhibited by the House of Representatives against Donald John Trump, former President of the United States.

The PRESIDENT pro tempore. I note the presence in the Senate Chamber of the managers on the part of the House of Representatives and counsel for the former President of the United States.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

PROVIDING FOR RELATED PROCEDURES CONCERNING THE ARTICLE OF IMPEACHMENT AGAINST DONALD JOHN TRUMP, FORMER PRESIDENT OF THE UNITED STATES

Mr. SCHUMER. Mr. President, in a moment, I will call up a resolution to govern the structure of the second impeachment trial of Donald John Trump.

It has been agreed to by the House managers, the former President's counsel, and is cosponsored by the Republican leader. It is bipartisan.

It is our solemn constitutional duty to conduct a fair and honest impeachment trial on the charges against former President Trump—the gravest charges ever brought against a President of the United States in American history.

This resolution provides for a fair trial, and I urge the Senate to adopt it.

Mr. President, I send a resolution to the desk on my behalf and that of the Republican leader for the organizing of the next phases of this trial.

The PRESIDENT pro tempore. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 47) to provide for related procedures concerning the article of impeachment against Donald John Trump, former President of the United States.

VOTE ON S. RES. 47

The PRESIDENT pro tempore. The question is on agreeing to the adoption of the resolution.

Mr. SCHUMER. I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

[Rollcall Vote No. 56]

YEAS—89

Baldwin	Blunt	Burr
Barrasso	Booker	Cantwell
Bennet	Boozman	Capito
Blackburn	Braun	Cardin
Blumenthal	Brown	Carper

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Casey	Kaine	Rosen
Cassidy	Kelly	Rounds
Collins	Kennedy	Sanders
Coons	King	Sasse
Cornyn	Klobuchar	Schatz
Cortez Masto	Lankford	Schumer
Cotton	Leahy	Shaheen
Cramer	Luján	Shelby
Crapo	Lummis	Sinema
Daines	Manchin	Smith
Duckworth	Markey	Stabenow
Durbin	McConnell	Sullivan
Ernst	Menendez	Tester
Feinstein	Merkley	Thune
Fischer	Moran	Tillis
Gillibrand	Murkowski	Toomey
Graham	Murphy	Van Hollen
Grassley	Murray	Warner
Hassan	Ossoff	Warnock
Heinrich	Padilla	Warren
Hickenlooper	Peters	Whitehouse
Hirono	Portman	Wicker
Hoeven	Reed	Wyden
Hyde-Smith	Risch	Young
Inhofe	Romney	

NAYS—11

Cruz	Lee	Scott (FL)
Hagerty	Marshall	Scott (SC)
Hawley	Paul	Tuberville
Johnson	Rubio	

The PRESIDENT pro tempore. On this vote, the yeas are 89, the nays are 11.

The resolution (S. Res. 47) was agreed to.

(The resolution is printed in today's RECORD under ''Submitted Resolutions.'')

ORDER OF BUSINESS

The PRESIDENT pro tempore. Pursuant to the provisions of S. Res. 47, there shall now be 4 hours of argument by the parties, equally divided, on the question of whether Donald John Trump is subject to the jurisdiction of a Court of Impeachment for acts committed while President of the United States, notwithstanding the expiration of his term in that office.

Mr. Manager RASKIN, are you a proponent or an opponent of this question?

Mr. Manager RASKIN. I am a proponent.

The PRESIDENT pro tempore. Mr. Castor, are you a proponent or an opponent of this question?

Mr. Counsel CASTOR. We are an opponent.

The PRESIDENT pro tempore. Opponent, thank you.

Mr. Manager RASKIN, your party may proceed first. You will be able to reserve rebuttal time, if you wish.

Mr. RASKIN, you are recognized.

MANAGERS' OPENING STATEMENTS

Mr. Manager RASKIN. Thank you very much, Mr. President, distinguished Members of the Senate. Good afternoon.

My name is JAMIE RASKIN. It is my honor to represent the people of Maryland's Eighth Congressional District in the House and also to serve as the lead House manager.

And Mr. President, we will indeed reserve time for rebuttal. Thank you.

Because I have been a professor of constitutional law for three decades, I know there are a lot of people who are dreading endless lectures about the Federalist Papers. Please breathe easy, OK. I remember well W.H. Audens' line that a professor is someone who speaks while other people are sleeping.

You will not be hearing extended lectures from me because our case is based on cold, hard facts. It is all about the facts.

President Trump has sent his lawyers here today to try to stop the Senate from hearing the facts of this case. They want to call the trial over before any evidence is even introduced.

Their argument is that if you commit an impeachable offense in your last few weeks in office, you do it with constitutional impunity; you get away with it. In other words, conduct that would be a high crime and misdemeanor in your first year as President and your second year as President and your third year as President and for the vast majority of your fourth year as President you can suddenly do in your last few weeks in office without facing any constitutional accountability at all.

This would create a brandnew January exception to the Constitution of the United States of America—a January exception. And everyone can see immediately why this is so dangerous. It is an invitation to the President to take his best shot at anything he may want to do on his way out the door, including using violent means to lock that door, to hang on to the Oval Office at all costs, and to block the peaceful transfer of power.

In other words, the January exception is an invitation to our Founders' worst nightmare. And if we buy this radical argument that President Trump's lawyers advance, we risk allowing January 6 to become our future.

And what will that mean for America? Think about it. What will the January exception mean to future generations if you grant it? I will show you.

(Video footage of 1–6–2021.)

Mr. TRUMP. We will stop the steal.

(Applause.)

Mr. TRUMP. Today I will lay out just some of the evidence proving that we won this election and we won it by a landslide. This was not a close election. And after this, we're going to walk down—and I will be there with you—we're going to walk down—we're gonna walk down to the Capitol.

(People chanting: ''Yeah. Let's take the Capitol.'')

Unidentified Male. Take it.

Unidentified Male. Take the Capitol.

Unidentified Male. We are going to the Capitol, where our problems are. It's that direction.

Unidentified Male. Everybody in. This way. This way.

Mr. TRUMP. Tens of thousands of votes. They came in in duffel bags. Where the hell did they come from?

(People chanting: ''USA.'')

Sergeant at Arms: Madam Speaker, the Vice President and the United States Senate.

(Applause.)

Unidentified Male. Off the sidewalk.

Unidentified Male. We outnumber you a million to one out here, dude.

Unidentified Male. Take the building. Take the building.

Unidentified Male. Let us in.

Unidentified Male. Fuck these pigs.

Unidentified Male. Join us.

Unidentified Male. Let us in.

Unidentified Male. That's enough. There's much more coming.

Mr. TRUMP. The Constitution says you have to protect our country and you have to protect our Constitution. And you can't vote on fraud. And fraud breaks up everything, doesn't it? When you catch somebody in a fraud, you're allowed to go by very different rules.

So I hope Mike has the courage to do what he has to do.

Unidentified Male. Talking about you, Pence.

Mr. TRUMP. When we fight, we fight like hell. And if you don't fight like hell, you're not going to have a country anymore.

Unidentified Male. Fuck DC police. Fuck you.

Mr. TRUMP. So we are going to walk down Pennsylvania Avenue. I love Pennsylvania Avenue. And we are going to the Capitol, and we are going to try and give our Republicans—the weak ones because the strong ones don't need any of our help. We are going to try and give them the kind of pride and boldness that they need to take back our country.

Unidentified Male. Get the fuck out of here, you traitors.

The PRESIDING OFFICER. The majority leader.

Mr. MCCONNELL. We are debating a step that has never been taken in American history.

Unidentified Male. Fuck you, traitors.

Mr. MCCONNELL. President Trump claims the election was stolen. The assertions range from specific local allegations to constitutional arguments to sweeping conspiracy theories.

(People chanting: ''USA.'')

Mr. MCCONNELL. But my colleagues, nothing before us proves illegality anywhere near the massive scale—the massive scale—that would have tipped the entire election.

Unidentified Female. Our house, our house, our house, our house.

(People chanting: ''Fight for Trump.'')

Unidentified Male. Fuck you, police.

Unidentified Male. Let's go. Let's go.

Officer GOODMAN. Second floor.

Unidentified Male. You are gonna beat us all? Are you gonna beat us all?

Mr. LANKFORD. My challenge today is not about the good people of Arizona.

The PRESIDING pro tempore. The Senate will stand in recess until the call of the Chair.

Mr. LANKFORD. Thank you.

(People chanting: ''Woot, woot.'')

Mr. GOSAR. Madam—Mr. Speaker, can I have order in the Chamber.

The SPEAKER pro tempore. The House will be in order.

Unidentified Male. Go, go, go.

The SPEAKER pro tempore. The House will be in order. OK.

(People chanting: ''Stop the steal.'')

(People chanting: ''Traitor Pence.'')

(People chanting: ''Stop the steal.'')

Unidentified Male. They are leaving. They are leaving.

(People chanting: ''Break it down.'')

Unidentified Male. Get down. Let's go. Come on. Where the fuck are they?

(People chanting: ''No Trump, no peace.'')

Unidentified Male. Let's go. We need fresh patriots.

(People chanting: ''Traitors.'')

(People chanting: ''Fight for Trump.'')

Mr. TRUMP. There has never been a time like this where such a thing happened, where they could take it away from all of us—from me, from you, from our country. This was a fraudulent election, but we can't play into the hands of these people.

We have to have peace. So go home. We love you. You're very special. You've seen what happens. You've seen the way others are treated that are so bad and so evil.

I know how you feel, but go home, and go home in peace.

(Audience chants: ''USA.'')

Your lies in your own cities, your own counties. Storm your own capitol buildings. We take down every one of these motherfuckers.

Hang them!

Mr. Manager RASKIN. Senators, the President was impeached by the U.S. House of Representatives on January 13 for doing that. You ask what a ''high crime and misdemeanor'' is under our Constitution. That is a high crime and misdemeanor. If that is not an impeachable offense, then there is no such thing. And if the President's arguments for a January exception are upheld, then even if everyone agrees that he is culpable for these events, even if the evidence proves, as we think it definitively does, that the President incited a violent insurrection on the day Congress met to finalize the Presidential election, he would have you believe there is absolutely nothing the Senate can do about it—no trial, no facts. He wants you to decide that the Senate is powerless at that point. That can't be right.

The transition of power is always the most dangerous moment for democracies. Every historian will tell you that. We just saw it in the most astonishing way. We lived through it. And you know what? The Framers of our Constitution knew it. That is why they created a Constitution with an oath written into it that binds the President from his very first day in office until his very last day in office and every day in between.

Under that Constitution and under that oath, the President of the United States is forbidden to commit high crimes and misdemeanors against the people at any point that he is in office. Indeed, that is one specific reason the impeachment, conviction, and disqualification of powers exist: to protect us against Presidents who try to overrun the power of the people in their elections and replace the rule of law with the rule of mobs. These powers must apply even if the President commits his offenses in his final weeks in office. In fact, that is precisely when we need them the most because that is when elections get attacked.

Everything that we know about the language of the Constitution, the Framers' original understanding and intent, prior Senate practice, and common sense, confirms this rule.

Let's start with the text of the Constitution. Article I, section 2 gives the House the sole power of impeachment when the President commits high crimes and misdemeanors. We exercised that power on January 13.

The President, it is undisputed, committed his offense while he was President, and it is undisputed that we impeached him while he was President. There can be no doubt that this is a valid and legitimate impeachment, and there can be no doubt that the Senate has the power to try this impeachment. We know this because article I, section 3 gives the Senate the sole power to try all impeachments. The Senate has the power, the sole power, to try all impeachments. ''All'' means all, and there are no exceptions to the rule. Because the Senate has jurisdiction to try all impeachments, it most certainly has jurisdiction to try this one. It is really that simple. The vast majority of constitutional scholars who studied the question and weighed in on the proposition being advanced by the President, this January exception, heretofore unknown, agree with us, and that includes the Nation's most prominent conservative legal scholars, including former Tenth Circuit Judge Michael McConnell; the cofounder of the Federalist Society, Steven Calabresi; Ronald Reagan's Solicitor General Charles Fried; luminary Washington lawyer Charles Cooper, among hundreds of other constitutional lawyers and professors.

I commend the people I named—their recent writings to you in the newspapers over the last several days. And all of the key precedents, along with detailed explanation of the constitutional history and textual analysis, appear in the trial brief we filed last week and the reply brief that we filed very early this morning.

I will spare you a replay, but I want to highlight a few key points from constitutional history that strike me as compelling in foreclosing President Trump's argument that there is a secret January exception hidden away in the Constitution.

The first point comes from English history, which matters because, as Hamilton wrote, England provided ''the model from which the idea of this institution has been borrowed.'' And it would have been immediately obvious to anyone familiar with that history that former officials could be held accountable for their abuses while in office.

Every single impeachment of a government official that occurred during the Framers' lifetime concerned a former official—a former official. Indeed, the most famous of these impeachments occurred while the Framers gathered in Philadelphia to write the Constitution. It was the impeachment of Warren Hastings, the former Governor-general of the British colony of Bengal and a corrupt guy. The Framers knew all about it, and they strongly supported the impeachment. In fact, the Hastings case was invoked by name at the convention. It was the only specific impeachment case that they discussed at the convention. It played a key role in their adoption of the high crimes and misdemeanors standard. And even though everyone there surely knew that Hastings had left office 2 years before his impeachment trial began, not a single Framer—not one—raised a concern when Virginian George Mason held up the Hastings impeachment as a model for us in the writing of our Constitution.

The early State constitutions supported the idea too. Every single State constitution in the 1780s either specifically said that former officials could be impeached or were entirely consistent with the idea. In contrast, not a single State constitution prohibited trials of former officials. As a result, there was an overwhelming presumption in favor of allowing legislatures to hold former officials accountable in this way. Any departure from that norm would have been a big deal, and yet there is no sign anywhere that that ever happened.

Some States, including Delaware, even confined impeachment only to officials who had already left office. This confirms that removal was never seen as the exclusive purpose of impeachment in America. The goal was always about accountability, protecting society, and deterring official corruption.

Delaware matters for another reason. Writing about impeachment in the Federalist Papers, Hamilton explained that the President of America would stand upon no better ground than a Governor of New York and upon worse ground than the Governors of Maryland and Delaware. He thus emphasized that the President is even more accountable than officials in Delaware, where, as I noted, the constitution clearly allowed impeachment of former officials.

And nobody involved in the convention ever said that the Framers meant to reject this widely accepted, deeply rooted understanding of the word ''impeachment'' when they wrote it into our Constitution. The convention debates instead confirm this interpretation. There, while discussing impeachment, the Framers repeatedly returned to the threat of Presidential corruption aimed directly to elections, the heart of self-government.

Almost perfectly anticipating President Trump, William Davey of North Carolina explained impeachment was for a President who spared ''no effort or means whatever to get himself reelected.''

Hamilton, in Federalist 1, said the greatest danger to republics and the liberties of the people comes from political opportunists who begin as demagogues and end as tyrants and the people who are encouraged to follow them.

President Trump may not know a lot about the Framers, but they certainly knew a lot about him.

Given the Framers' intense focus on danger to elections and the peaceful transfer of power, it is inconceivable that they designed impeachment to be a dead letter in the President's final days in office when opportunities to interfere with the peaceful transfer of power would be most tempting and most dangerous, as we just saw. Thus, as a matter of history and original understanding, there is no merit to President Trump's claim that he can incite an insurrection and then insist weeks later that the Senate lacks the power to even hear evidence at a trial, to even hold a trial.

The true rule was stated by former President John Quincy Adams when he categorically declared:

I hold myself, so long as I have the breath of life in my body, amenable to impeachment by [the] House for everything I did during the time I held any public office.

When he comes up in a minute, my colleague Mr. NEGUSE of Colorado will further pursue the relevant Senate precedents and explain why this body's practice has been supported by the text of the Constitution, and Mr. CICILLINE of Rhode Island will then respond to the fallacies presented by the President's counsel. After these gentlemen speak, I will return to discuss the importance—the fundamental importance of the Senate rejecting President Trump's argument for the preservation of democratic self-government and the rule of law in the United States of America.

I now turn it over to my colleague, Mr. NEGUSE of Colorado.

Mr. Manager NEGUSE. Mr. President, distinguished Senators, my name is JOE NEGUSE, and I represent Colorado's Second Congressional District in the United States Congress.

Like many of you, I am an attorney. I practiced law before I came to Congress, tried a lot of different cases, some more unique than others, certainly never a case as important as this one, nor a case with such a heavy and weighty constitutional question for you all to decide.

Thankfully, as Lead Manager RASKIN so thoroughly explained, the Framers have answered that question for you, for us, and you don't need to be a constitutional scholar to know that the argument President Trump asks you to adopt is not just wrong, it is dangerous. And you don't have to take my word for it. This body, the world's greatest deliberative body, the United States Senate, has reached that same conclusion in one form or another over the past 200 years on multiple occasions that we will go through. Over 150 constitutional scholars, experts, judges—conservative, liberal, you name it—they overwhelmingly have reached the same conclusion, that, of course, you can try, convict, and disqualify a former President. And that makes sense because the text of the Constitution makes clear there is no January exception to the impeachment power; that Presidents can't commit grave offenses in their final days and escape any congressional response. That is not how our Constitution works.

Let's start with the precedent, with what has happened in this very Chamber. I would like to focus on just two cases. I will go through them quickly. One of them is the Nation's very first impeachment case, which actually was of a former official.

In 1797, about a decade after our country ratified our Constitution, there was a Senator from Tennessee by the name of William Blount, who was caught conspiring with the British to try to sell Florida and Louisiana. Ultimately, President Adams caught him. He turned over the evidence to Congress. Four days later, the House of Representatives impeached him. A day after that, this body, the United States Senate, expelled him from office, so he was very much a former official.

Despite that, the House went forward with its impeachment proceeding in order to disqualify him from ever again holding Federal office. And so the Senate proceeded with the trial with none other than Thomas Jefferson presiding.

Now, Blount argued that the Senate couldn't proceed because he had already been expelled. But here is the interesting thing: He expressly disavowed any claim that former officials can't ever be impeached. And unlike President Trump, he was very clear that he respected and understood that he could not even try to argue that ridiculous position.

Even impeached Senator Blount recognized the inherent absurdity of that view. Here is what he said:

I certainly never shall contend, that an officer may first commit an offense, and afterwards avoid by resigning his office.

That is the point. And there was no doubt because the Founders were around to confirm that that was their intent and the obvious meaning of what is in the Constitution.

Fast-forward 80 years later—arguably the most important precedent that this body has to consider—the trial of former Secretary of War William Belknap. I am not going to go into all the details, but, in short, in 1876, the House discovered that he was involved in a massive kickback scheme. Hours before the House Committee had discovered this conduct, released its report documenting the scheme, Belknap literally rushed to the White House to resign, tender his resignation to President Ulysses Grant to avoid any further inquiry into his misconduct, and, of course, to avoid being disqualified from holding Federal office in the future.

Later that day, aware of the resignation, what did the House do? The House moved forward and unanimously impeached him, making clear its power to impeach a former official. And when his case reached the Senate—this body—Belknap made the exact same argument that President Trump is making today, that you all lack jurisdiction, any power, to try him because he is a former official.

Now, many Senators at that time, when they heard that argument—literally, they were sitting in the same chair as you all are sitting in today—they were outraged by that argument—outraged. You can read their comments in the RECORD. They knew it was a dangerous, dangerous argument with dangerous implications. It would literally mean that a President could betray their country, leave office, and avoid impeachment and disqualification entirely. And that is why, in the end, the United States Senate decisively voted that the Constitution required them to proceed with the trial.

The Belknap case is clear precedent that the Senate must proceed with this trial since it rejected pretrial dismissal, affirmed its jurisdiction, and moved to a full consideration of the merits.

Now, Belknap ultimately was not convicted but only after a thorough public inquiry into his misconduct, which created a record of his wrongdoing. It ensured his accountability and deterred anyone else from considering such corruption by making clear that it was intolerable. The trial served important constitutional purposes.

Now, given that precedent that I described to you, given all that that precedent imparts, you could imagine my surprise—Lead Manager RASKIN's surprise—when we were reviewing a trial brief filed by the President in which his counsel insists that the Senate actually didn't decide anything in the Belknap case. They say—these are not my words. I will quote from their trial brief:

[It] cannot be read as foreclosing an argument that they never dealt with.

Never dealt with? The Senate didn't debate this question for 2 hours. The Senate debated this very question for 2 weeks. The Senate spent an additional 2 weeks deliberating on the jurisdictional question. And at the end of those deliberations, they decided decisively that the Senate has jurisdiction and that it could proceed, that it must proceed to a full trial.

By the way, unlike Belknap, as we know, President Trump was not impeached for run-of-the-mill corruption, misconduct. He was impeached for inciting a violent insurrection—an insurrection where people died in this building, an insurrection that desecrated our seat of government. And if Congress were just to stand completely aside in the face of such an extraordinary crime against the Republic, it would invite future Presidents to use their power without any fear of accountability. And none of us—I know this—none of us, no matter our party or our politics, wants that.

Now, we have gone through the highlights of the precedent, and I think it is important that you know, as Lead Manager RASKIN mentioned, that scholars, overwhelmingly, that reviewed this same precedent have all come to the same conclusion that the Senate must hear this case.

Let's go through just a few short examples. To start, all of us, I know, are familiar with the Federalist Society. Some of you may know Steven Calabresi personally. He is the cofounder of the Federalist Society. Actually, he was the chairman of the board in 2019. He was the first president of the Yale Federalist Society chapter board, a position I understand Senator HAWLEY later held.

Here is what Mr. Calabresi has to say. On January 21, he issued a public letter stating:

Our carefully considered views of the law lead all of us to agree that the Constitution permits the impeachment, conviction, and

disqualification of former officers, including presidents.

And by the way, he is not the only one, as Lead Manager RASKIN said—President Reagan's former Solicitor General, among many others.

Another prominent conservative scholar known to many of you, again, personally is a former Tenth Court of Appeals judge—my circuit—Judge Michael McConnell. He was nominated by President George W. Bush. He was confirmed by this body unanimously. Senator Hatch—many of you served with—he had this to say about Judge McConnell, that he ''is an honest man. He calls it as he sees it, and he is beholden to no one and no group.''

Well, what does Judge McConnell have to say about the question that you are debating this afternoon? He said the following:

Given that the impeachment of President Trump was legitimate, the text makes clear that the Senate has power to try that impeachment.

You heard Lead Manager RASKIN mention another lawyer, Chuck Cooper, a prominent conservative lawyer here in Washington. He has represented former Attorney General Jeff Sessions and House Minority Leader KEVIN MCCARTHY. He issued an editorial just 2 days ago, very powerful, observing that ''scholarship on this question has matured substantially'' and that, ultimately, arguments that President Trump is championing are beset by ''serious weaknesses.''

Finally, I have gone through a lot of scholars. I will finish on this one. There is another scholar that I know some of you know and some of you have actually spoken with recently. Up until just a few weeks ago, he was a recognized champion—champion—of the view that the Constitution authorizes the impeachment of former officials. And that is Professor Jonathan Turley.

Let me show you what I mean. These are his words. First, in a very detailed study, thorough study, he explained that ''the resignation from office does not prevent trial on articles of impeachment.''

Those are Professor Turley's words. Same piece. He celebrated the Belknap trial. He described it as ''a corrective measure that helped the system regain legitimacy.''

He wrote another article—he has written several on this topic. This one is actually a 146-page study, very detailed.

In that study, he said that the decision in Belknap was ''correct in its view that impeachments historically had extended to former officials, such as Warren Hastings,'' who you heard Lead Manager RASKIN describe.

In fact, as you can see, Professor Turley argued the House could impeach and the Senate could have tried Richard Nixon after he resigned. His quote on this is very telling: ''Future Presidents could not assume that mere resignation would avoid a trial of their conduct'' in the United States Senate.

Finally, last quote from Professor Turley that ''no man in no circumstance, can escape the account, which he owes to the laws of his country.'' Not my words, not Lead Manager RASKIN's words—Professor Jonathan Turley's words. I agree with him because he is exactly right.

Now, a question one might reasonably ask after going through all those quotes from such noted jurists and scholars: Why is there such agreement on this topic? Well, the reason is pretty simple. It is because it is what the Constitution says.

I want to walk you through three provisions of the Constitution that make clear that the Senate must try this case.

First, let's start with what the Constitution says about Congress's power in article I. You heard Lead Manager RASKIN make this point, but it is worth underscoring. Article I, section 2 gives the House ''sole Power of Impeachment.'' Article I, section 3 gives the Senate the ''sole Power to try all Impeachments.''

Based on President Trump's argument, one would think that language includes caveats, exceptions, but it doesn't. It doesn't say ''Impeachment of current civil officers.'' It doesn't say ''Impeachment of those still in office.''

The Framers didn't mince words. They provided express, absolute, unqualified grants of jurisdictional power to the House to impeach and the Senate to try all impeachments—not some, all.

Former Judge McConnell, the judge that we talked about earlier, he provides very effective textual analysis of this provision. You can see it up here on the slide. I will just give you the highlight. He says—and I will quote. This is Judge McConnell:

Given that the impeachment of Mr. Trump was legitimate, the text makes clear that the Senate has power to try that impeachment.

Now, again, here is what—it is pretty interesting to me at least. We presented this argument in our trial brief, which we filed over a week ago, where we laid it out step by step so that you could consider it and so that opposing counsel could consider it as well.

We received President Trump's response yesterday, and the trial brief offers no rebuttal to this point—none. In fairness, I can't think of any convincing response. I mean, the Constitution is just exceptionally clear on this point. Now, perhaps they will have something to say today about it, but they did not yesterday.

There is another provision worth mentioning here because there has been a lot of confusion about it. I am going to try to clear this up. This is the provision on removal and disqualification. We all know the Senate imposes a judgment only when it convicts. Up on the screen, you will see article I, section 3, clause 7. With that in mind, the language says that if the Senate convicts, the judgment ''shall not extend further than'' removal and disqualification.

That is it. The meaning is clear. The Senate has the power to impose removal, which only applies to current officials. And, separately, it has the power to impose disqualification, which obviously applies to both current and former officers. But it doesn't have the power to go any further than that.

Now, as I understand President Trump's argument, they believe that this language somehow says that disqualification can only follow the removal of a current officer, but it doesn't. That interpretation essentially rewrites the Constitution. It adds words that aren't there. I mean, after all, the Constitution does not say ''removal from office and then disqualification.'' It doesn't say ''removal from office followed by disqualification.'' It simply says the Senate can't do more than two possible sentences: removal and disqualification.

This, by the way, is not the first time that this direct question has been debated in this Chamber. One hundred forty-six years ago, during the Belknap trial, Senator George Edmunds of Vermont was one of the most prestigious Republican Senators of his time. He sat right where Senator GRASSLEY sits today. He zeroed in on this exact point during the Belknap trial.

This is his quote:

A prohibition against doing more than two things cannot be turned into a command to do both or neither.

And just imagine the consequences of such an absurd interpretation of the Constitution. If President Trump were right about that language, then officials could commit the most extraordinary, destructive offenses against the American people—high crimes and misdemeanors. They would have total control over whether they could ever be impeached and, if they are, whether the Senate can try the case. If they want to escape any public inquiry into their misconduct or the risk of disqualification from future office, then it is pretty simple. They could just resign 1 minute before the House impeaches or even 1 minute before the Senate trial or they could resign during the Senate trial if it is not looking so well. That would effectively erase ''disqualification'' from the Constitution. It would put wrongdoers in charge of whether the Senate can try them.

The third and final reason why President Trump must stand trial: the provision of article I of the Constitution.

You will see here on the screen that the Constitution twice describes the accused in an impeachment trial. Here is what I want you to focus on. The interesting thing is notice the words. It refers to a ''person'' and a ''party'' being impeached. Now, again, we know that the Framers gave a lot of thought to the words that they chose. They even had a style committee during the Constitutional Convention. They could

have written ''civil officers'' here. They did that elsewhere in the Constitution. That would, ultimately, have limited impeachment trials to current officials, but, instead, they used broader language to describe who could be tried by the United States Senate.

So who could be put on trial for impeachment other than civil officers? Who else could a ''person'' or a ''party'' be? Well, really, there is only one possible answer: former officers.

And, again, that actually might explain why, during the Belknap trial, Senator Thomas Bayard, of Delaware, who later became the Secretary of State for the United States—he sat right where Senator CARPER is sitting now—he found this point so compelling that he felt compelled to speak out on it. During the trial, he concluded that the Constitution must allow the impeachment and trial of people and parties who are not civil officers, and the only group that could possibly encompass was former officials like Belknap and, of course, here, like President Trump.

Just so we are clear, in full disclosure, this is another argument that was not addressed by President Trump in his rebuttal, and we know why they didn't: because their argument doesn't square with the plain text of the Constitution. There is one provision that President Trump relies on almost exclusively, article II, section 4. I am sure you will see it when they present their arguments.

Their argument is that the language you will see on the screen somehow prevents you from holding this trial, by making removal from office an absolute requirement—but, again, where does the language say that? Where does it say anything in that provision about your jurisdiction? In fact, this provision isn't even in the part of the Constitution that addresses your authority. It is in article II, not article I, and it certainly says nothing about former officials.

President Trump's interpretation doesn't square with history, originalism, textualism. In fact, even Chuck Cooper, the famous conservative lawyer I mentioned earlier, with clients like the House minority leader, has concluded that this provision of the Constitution that President Trump relies on ''cuts against'' his position—his words—and that is because, as Cooper says, article II, section 4 means just what it says. The first half describes what an official must do to be impeached—namely, commit high crimes and misdemeanors—and the second half describes what happens when civil officers of the United States, including the sitting President, are convicted: removal from office. That is it.

In Cooper's words:

It simply establishes what is known in criminal law as a ''mandatory minimum'' punishment.

It says nothing about former officials, nothing at all.

Given all of that, it is not surprising that, in President Trump's legal trial brief—a 75-page brief—they struggled to find any professors to support their position. They did cite one professor, though, Professor Kalt, an expert in this field, who they claim agreed with them that the only purpose of impeachment is removal. Professor Kalt's position, which they had to have known because it is in the article that they cite in the brief, is that ''removal'' is ''not the sole end of impeachment.'' Actually, in that same article, he describes the view advocated by President Trump's lawyers as having ''deep flaws.''

Again, you do not have to take my word for it. You can take Professor Kalt's word for it, the professor they cited in their brief, filed yesterday, because he tweeted about it on the screen here. This is what he had to say. I am not going to read through it in great detail. I will just simply give you the highlights.

[President] Trump's brief cites my 2001 article on late impeachment a lot. . . . But in several places, they misrepresent what I wrote quite badly. . . . There are multiple examples of such flat-out misrepresentations. . . . They didn't have to be disingenuous and misleading. . . .

This key constitutional scholar, relied on by President Trump, said it just right.

I have explained in great detail the many reasons the argument that President Trump advocates for here today is wrong. I just want to close with a note about why it is dangerous.

Lead Manager RASKIN explained that impeachment exists to protect the American people from officials who abuse their power, who betray them. It exists for a case just like this one.

Honestly, it is hard to imagine a clearer example of how a President could abuse his office: inciting violence against a coequal branch of government while seeking to remain in power after losing an election—sitting back and watching it unfold. We all know the consequences.

Like every one of you, I was in the Capitol on January 6. I was on the floor with Lead Manager RASKIN. Like every one of you, I was evacuated as this violent mob stormed the Capitol's gates. What you experienced that day, what we experienced that day, what our country experienced that day was the Framers' worst nightmare coming to life. Presidents can't enflame insurrection in their final weeks and then walk away like nothing happened. Yet that is the rule that President Trump asks you to adopt.

I urge you, we urge you to decline his request, to vindicate the Constitution, to let us try this case.

Mr. Manager CICILLINE. Mr. President, distinguished Senators, my name is DAVID CICILLINE. I have the honor of representing the First Congressional District of Rhode Island.

As I hope is now clear from the arguments of Mr. RASKIN and Mr. NEGUSE, impeachment is not merely about removing someone from office. Fundamentally, impeachment exists to protect our constitutional system, to keep each of us safe, to uphold our freedom, to safeguard our democracy. It achieves that by deterring abuse of the extraordinary power that we entrust to our Presidents from the very first day in office to the very last day. It also ensures accountability for Presidents who harm us or our government. In the aftermath of a tragedy, it allows us an opportunity to come together and to heal by working through what happened and reaffirming our constitutional principles, and it authorizes this body and this body alone to disqualify from our political system anybody whose conduct in office proves that they present a danger to the Republic. But impeachment would fail to achieve these purposes if you created, for the first time ever, despite the words of the Framers and the Constitution, a January exception, as Mr. RASKIN explained.

Now, I was a former defense lawyer for many years, and I can understand why President Trump and his lawyers don't want you to hear this case, why they don't want you to see the evidence, but the argument that you lack jurisdiction rests on a purely fictional loophole—purely fictional—designed to allow the former President to escape all accountability for conduct that is truly indefensible under our Constitution. You saw the consequences of his actions on the video that we played earlier. I would like to emphasize in still greater detail the extraordinary constitutional offense that the former President thinks you have no power whatsoever to adjudicate.

While spreading lies about the election outcome, in a brazen attempt to retain power against the will of the American people, he incited an armed, angry mob to riot—and not just anywhere but here in the seat of our government, in the Capitol, during a joint session of Congress, when the Vice President presided while we carried out a peaceful transfer of power, which was interrupted for the first time in our history. This was a disaster of historic proportion. It was also an unforgivable betrayal of the oath of office of President Trump, the oath he swore, an oath that he sullied and dishonored to advance his own personal interests.

And make no mistake about it, as you think about that day, things could have been much worse. As one Senator said, they could have killed all of us. It was only the bravery and sacrifice of the police, who suffered deaths and injuries as a result of President Trump's actions, that prevented greater tragedy.

At trial, we will prove with overwhelming evidence that President Trump is singularly and directly responsible for inciting the assault on the Capitol. We will also prove that his dereliction of duty, his desire to seek personal advantage from the mayhem, and his decision to issue tweets, further inciting the mob by attacking the Vice President, all compounded the already enormous damage.

Now, virtually every American who saw those events unfold on television was absolutely horrified by the events of January 6, but we also know how President Trump himself felt about the attack. He told us. Here is what he tweeted at 6:01 as the Capitol was in shambles and as dozens of police officers and other law enforcement officers lay battered and bruised and bloodied.

Here is what he said:

> These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!

Every time I read that tweet, it chills me to the core. The President of the United States sided with the insurrectionists. He celebrated their cause. He validated their attack. He told them, ''Remember this day forever,'' hours after they marched through these halls looking to assassinate Vice President Pence, the Speaker of the House, and any of us they could find.

Given all that, it is no wonder that President Trump would rather talk about jurisdiction and a supposed January exception rather than talk about what happened on January 6.

Make no mistake, his arguments are dead wrong. They are distractions from what really matters. The Senate can and should require President Trump to stand trial.

My colleagues have already addressed many of President Trump's efforts to escape trial. I would like to cover the remainder and then address the broader issues at stake in this trial.

For starters, in an extension of his mistaken reading of the Constitution, President Trump insists that he cannot face trial in the Senate because he is merely a private citizen. He references here the bill of attainder clause.

But as Mr. NEGUSE just explained, the Constitution refers to the defendant in an impeachment trial as a ''Person'' and a ''Party,'' and certainly he counts as one of those.

Let's also apply some common sense. There is a reason that he now insists on being called ''the 45th President of the United States'' rather than ''Citizen Trump.'' He isn't a randomly selected private citizen. He is a former officer of the United States Government. He is a former President of the United States of America. He is treated differently under a law called the Former Presidents Act.

For 4 years, we trusted him with more power than anyone else on Earth. As a former President, who promised on a Bible to use his power faithfully, he can and should answer for whether he kept that promise while bound by it in office. His insistence otherwise is just wrong, and so is his claim that there is a slippery slope to impeaching private citizens if you proceed.

The trial of a former official for abuses he committed as an official, arising from an impeachment that occurred while he was an official, poses absolutely no risk whatsoever of subjecting a private citizen to impeachment for their private conduct.

To emphasize the point, President Trump was impeached while he was in office for conduct in office—period.

The alternative, once again, is this January exception, in which our most powerful officials can commit the most terrible abuses and then resign, leave office, and suddenly claim that they are just a private citizen who can't be held accountable at all.

In the same vein, President Trump and his lawyers argue that he shouldn't be impeached because it will set a bad precedent for impeaching others. But that slippery slope argument is also incorrect. For centuries, the prevailing view has been that former officials are subject to impeachment. We just heard a full discussion of that. The House has repeatedly acknowledged that fact.

But in the vast majority of cases, the House has rightly recognized that an official's resignation or departure makes the extraordinary step of impeachment unnecessary and maybe even unwise.

As a House manager rightly explained in the Belknap case, and I quote:

> There is no likelihood that we shall ever unlimber [the] clumsy and bulky monster piece of ordinance to take aim at an object from which all danger has gone by.

President Trump's case, though, is different. The danger has not ''gone by.'' His threat to democracy makes any prior abuse by any government official pale in comparison.

Moreover, allowing his conduct to pass without the most decisive response would itself create an extraordinary danger to the Nation, inviting further abuse of power and signaling that the Congress of the United States is unable or unwilling to respond to insurrection incited by the President.

Think about that.

To paraphrase Justice Robert Jackson, who said that precedent that I just described would lie about like a loaded weapon, ready for the hand of any future President who decided in his final months to make a play for unlimited power—think of the danger.

Here is the rare case in which love of the Constitution and commitment to our democracy required the House to impeach. It is for the same reason, the Senate can and must try this case.

Next, President Trump will assert that it somehow is significant or it matters that the Chief Justice isn't presiding over this trial.

Let me state this very plainly: It does not matter. It is not significant. Under article I, section 3, ''When the President of the United States is tried, the Chief Justice shall preside.''

There is only one person who is President of the United States at a time. Right now, Joseph R. Biden, Jr., is the 46th President of the United States. As a result, the requirement that the Chief Justice preside isn't triggered. Instead, the normal rules of any impeachment of anyone other than the sitting President apply, and under those rules, the President Pro Tempore, Senator LEAHY, can preside.

And, of course, this makes perfect sense. The Chief Justice presides because, when the current President is on trial, if the Chief Justice doesn't preside, the Vice President presides, and it would be a conflict for someone to preside over a trial that would become President if there was a conviction. So there isn't that concern when you have a former President on trial, or, for that matter, when you have anyone on trial other than the current President, which is why the Chief Justice presides only in that single case, and why this is exactly the Presiding Officer the Constitution and the Senate rules require.

As a fallback, President Trump and his lawyers may argue today that he should get a free pass on inciting an armed insurrection against the United States Government and endangering Congress because, as he would put it, this impeachment is somehow unconstitutional.

So far as I understand it, from reading the pleadings in this case, this defense involves cobbling together a bunch of meritless legal arguments, all of them attempting to focus on substance rather than jurisdiction and insisting that these kitchen-sink objections lead the Senate to not try the case.

Since they may raise these points, at this juncture I feel obliged, really, to address them.

He may argue, for example, that he didn't receive enough process in the House, even though the House proceedings are more like a grand jury action, which is followed later by trial in the Senate, with a full presentation of evidence; even though the evidence of his high crimes and misdemeanors is overwhelming and supported by a huge public record; even though we are going to put that evidence before you at this trial; and even though he had a full and fair opportunity to respond to it before all of you; even though hundreds of others involved in the events of January 6 have already been charged for their role in the attacks that the President incited; and even though we invited him to voluntarily come here and testify and tell his story, a request, as you know, that his lawyers immediately refused, presumably because they understood what would happen if he were to testify under oath.

Regardless, President Trump's process arguments are not only wrong on their own terms, but they are also completely irrelevant to the question of whether you should hold this trial. That question is answered by the Constitution, and the answer is yes.

In addition, separate from his due process complaints, President Trump and his counsel—particularly his counsel—have both said on TV that to

counter the undisputed evidence of what actually happened in this case, you will see video clips. They will show video clips of other politicians, including Democratic politicians, using what they consider incendiary language.

Apparently, they think this will establish some sort of equivalency or that it will show, in contrast, that President Trump's statements at the Save America rally weren't so bad.

Like so much of what President Trump's lawyers might say today, that is a gimmick. It is a parlor game, meant to inflame partisan hostility and play on our divisions.

So let me be crystal clear. President Trump was not impeached because the words he used, viewed in isolation, without context, were beyond the pale. Plenty of other politicians have used strong language. But Donald J. Trump was President of the United States. He sought to overturn a Presidential election that had been upheld by every single court to consider it. He spent months insisting to his base that the only way he could lose was a dangerous, wide-ranging conspiracy against them and America itself.

He relentlessly attempted to persuade his followers that the peaceful transfer of power that was taking place in the Capitol was an abomination that had to be stopped at all costs.

He flirted with groups like the Proud Boys, telling them to ''stand back and stand by,'' while endorsing violence and sparking death threats to his opponents.

He summoned an armed, angry, and dangerous crowd that wanted to keep him in power and was widely reported to be poised on a hair trigger for violence at his direction.

He then made his heated statements in circumstances where it was clear, where it was foreseeable, that those statements would spark extraordinary, imminent violence.

He then failed to defend the Capitol, the Congress, and the Vice President during the insurrection, engaging in extraordinary dereliction of duty and desertion of duty that was only possible because of the high office he held.

He issued statements during the insurrection targeting the Vice President and reiterating the very same lies about the election that had launched the violence in the first place.

And he issued a tweet 5 hours after the Capitol was sacked in which he sided with the bad guys.

We all know that context matters, that office and meaning and intent and consequences matter. Simply put, it matters when and where and how we speak. The oaths we have sworn and the power we hold matter.

President Trump was not impeached because he used words that the House decided are forbidden or unpopular. He was impeached for inciting armed violence against the Government of the United States of America.

This leads me to a few final thoughts about why it is so important for you to hear this case, as authorized and as, indeed, required by our history and by the Constitution.

President Trump's lawyers will say, I expect, that you should dismiss his case so that the country can ''move on.'' They will assert that this impeachment is partisan, and that the spirit of bipartisanship and bipartisan cooperation requires us to drop the case and march forward in unity.

With all due respect, every premise and every conclusion of that argument is wrong.

Just weeks ago—weeks ago—the President of the United States literally incited an armed attack on the Capitol, our seat of government, while seeking to retain power by subverting an election he lost, and then celebrated the attack.

People died. People were brutally injured. President Trump's actions endangered every single Member of Congress, his own Vice President, thousands of congressional staffers, and our own Capitol Police and other law enforcement.

This was a national tragedy, a disaster for America's standing in the world, and President Trump is singularly responsible for inciting it.

As we will prove, the attack on the Capitol was not solely the work of extremists lurking in the shadows. Indeed, does anyone in this Chamber honestly believe that, but for the conduct of President Trump, that charge in the Article of Impeachment, that that attack at the Capitol would have occurred? Does anybody believe that?

And now his lawyers will come before you and insist, even as the Capitol is still surrounded with barbed wire and fences and soldiers, that we should just move on, let bygones be bygones, and allow President Trump to walk away without any accountability, any reckoning, any consequences. That cannot be right. That is not unity. That is the path to fear of what future Presidents could do.

So there is a good reason why this Article of Impeachment passed the House with bipartisan support. The principles at stake belong to all Americans through all walks of life. We have a common interest in making clear that there are lines nobody can cross, especially the President of the United States, and so we share an interest in this trial where the truth can be shown and where President Trump can be called to account for his offenses.

William Faulkner famously wrote that ''the past is never dead.'' But this isn't even the past. This just happened. It is still happening. Look around as you come to the Capitol and come to work. I really do not believe that our attention span is so short, that our sense of duty so frail, our factional loyalty so all-consuming, that the President can provoke an attack on Congress itself and get away with it just because it occurred near the end of his term.

After a betrayal like this, there cannot be unity without accountability. And this is exactly what the Constitution calls for. The Framers' original understanding, this Chamber's own precedent, and the very words used in the Constitution all confirm unquestionably, indisputably, that President Trump must stand trial for his high crimes and misdemeanors against the American people.

We must not, we cannot continue down the path of partisanship and division that has turned the Capitol into an armed fortress.

Senators, it now falls to you to bring our country together by holding this trial and, once all the evidence is before you, by delivering justice.

Mr. Manager RASKIN. Senators, Mr. President, to close, I want to say something personal about the stakes of this decision whether President Trump can stand trial and be held to account for inciting insurrection against us.

This trial is personal indeed for every Senator, for every Member of the House, every manager, all of our staff, the Capitol Police, the Washington, DC, Metropolitan Police, the National Guard, the maintenance and custodial crews, the print journalists and TV people who were here, and all of our families and friends. I hope this trial reminds America how personal democracy is and how personal is the loss of democracy too.

Distinguished Members of the Senate, my youngest daughter, Tabitha, was there with me on Wednesday, January 6. It was the day after we buried her brother, our son Tommy, the saddest day of our lives. Also there was my son-in-law Hank, who is married to our oldest daughter, Hannah, and I consider him a son, too, even though he eloped with my daughter and didn't tell us what they were going to do. But it was in the middle of COVID–19.

But the reason they came with me that Wednesday, January 6, was because they wanted to be together with me in the middle of a devastating week for our family, and I told them I had to go back to work because we were counting electoral votes that day on January 6. It was our constitutional duty. And I invited them instead to come with me to witness this historic event, the peaceful transfer of power in America. And they said they heard that President Trump was calling on his followers to come to Washington to protest, and they asked me directly: Would it be safe? Would it be safe? And I told them: Of course it should be safe. This is the Capitol.

STENY HOYER, our majority leader, had kindly offered me the use of his office on the House floor because I was one of the managers that day and we were going through our grief. So Tabitha and Hank were with me in STENY's office as colleagues dropped by to console us about the loss of our middle child, Tommy, our beloved Tommy.

Mr. NEGUSE and Mr. CICILLINE actually came to see me that day. Dozens of Members—lots of Republicans, lots of Democrats—came to see me, and I felt

a sense of being lifted up from the agony, and I won't forget their tenderness.

Through the tears, I was working on a speech to the floor when we would all be together in joint session, and I wanted to focus on unity when we met in the House. I quoted Abraham Lincoln's famous 1878 Lyceum speech, where he said that if division and destruction ever come to America, it won't come from abroad, it will come from within, said Lincoln, and in that same speech, Lincoln passionately deplored mob violence. This was right after the murder of Elijah Lovejoy, the abolitionist newspaper writer. Lincoln deplored mob violence, and he deplored mob rule, and he said it would lead to tyranny and despotism in America.

That was the speech I gave that day after the House very graciously and warmly welcomed me back. Tabitha and Hank came with me to the floor, and they watched it from the Gallery, and when it was over, they went back to that office, STENY's office off of the House floor. They didn't know that the House had been breached yet and that an insurrection or a riot or a coup had come to Congress, and by the time we learned about it, about what was going on, it was too late. I couldn't get out there to be with them in that office. And all around me, people were calling their wives and their husbands and their loved ones to say goodbye.

Members of Congress in the House were removing their congressional pins so they wouldn't be identified by the mob as they tried to escape the violence. Our new Chaplain got up and said a prayer for us, and we were told to put our gas masks on, and then there was a sound I will never forget, the sound of pounding on the door like a battering ram, the most haunting sound I have ever heard, and I will never forget it.

My chief of staff, Julie Tagen, was with Tabitha and Hank, locked and barricaded in that office, the kids hiding under the desk, placing what they thought were their final texts and whispered phone calls to say their goodbyes. They thought they were going to die. My son-in-law had never even been to the Capitol before.

When they were finally rescued over an hour later by Capitol officers and we were together, I hugged them, and I apologized, and I told my daughter Tabitha, who is 24 and a brilliant algebra teacher in Teach for America now, I told her how sorry I was, and I promised her that it would not be like this again the next time she came back to the Capitol with me. And do you know what she said? She said: Dad, I don't want to come back to the Capitol.

Of all the terrible, cruel things I saw and I heard on that day and since then, that one hit me the hardest, that and watching someone use an American flagpole, with the flag still on it, to spear and pummel one of our police officers, ruthlessly, mercilessly tortured by a pole with a flag on it that he was defending with his very life.

People died that day. Officers ended up with head damage and brain damage. People's eyes were gouged. An officer had a heart attack. An officer lost three fingers that day. Two officers have taken their own lives.

Senators, this cannot be our future. This cannot be the future of America. We cannot have Presidents inciting and mobilizing mob violence against our government and our institutions because they refuse to accept the will of the people under the Constitution of the United States. Much less can we create a new January exception in our precious, beloved Constitution that prior generations have died for and fought for, so that corrupt Presidents have several weeks to get away with whatever it is they want to do. History does not support a January exception in any way, so why would we invent one for the future?

We close, Mr. President.

RECESS

Mr. SCHUMER. Mr. President, I ask unanimous consent that there now be a 10-minute break. I ask unanimous consent that the Senate recess for 10 minutes.

There being no objection, at 2:41 p.m., the Senate, sitting as a Court of Impeachment, recessed until 3:01 p.m.; whereupon the Senate reassembled when called to order by the President pro tempore.

The PRESIDENT pro tempore. Mr. Castor has 2 hours, and Mr. RASKIN has 33 minutes.

Mr. Counsel CASTOR. May I proceed, Mr. President?

The PRESIDENT pro tempore. You may.

COUNSELS' OPENING STATEMENTS

Mr. Counsel CASTOR. Mr. President and Members of the U.S. Senate, thank you for taking the time to hear from me.

My name is Bruce Castor. I am the lead prosecutor—lead counsel—for the 45th President of the United States. I was an assistant DA for such a long time, I keep saying ''prosecutor,'' but I do understand the difference, Mr. RASKIN.

Before I begin, I want to comment on the outstanding presentation from our opponents and the emotion that certainly welled up in Congressman RASKIN about his family being here during that terrible day.

You will not hear any member of the team representing former President Trump say anything but, in the strongest possible way, denounce the violence of the rioters and those who breached the Capitol, the very citadel of our democracy—literally, the symbol that flashes on television whenever you are trying to explain that we are talking about the United States, an instant symbol. To have it attacked is repugnant in every sense of the word.

The loss of life is horrific. I spent many long years prosecuting homicide cases, catching criminals who committed murders. I have quite an extensive experience in dealing with the aftermath of those things.

Certainly, as an FOP member and a member of many police organizations myself, we mourn the loss of the Capitol Police officer, whom I understand is laying not too far away from here.

And, you know, many of you in this room, over your careers, before they reached this summit here in the Senate, would have had times where you represented your local communities as assistant district attorneys, assistant Commonwealth attorneys, assistant State attorneys. And you know this to be true—that when a horrific event occurred in your county or in your jurisdiction, if it was a State jurisdiction, you know that there was a terrible outcry, and the public immediately reacts with a desire that someone pay because something really bad happened. And that is a natural reaction of human beings. It is a natural reaction of human beings because we are generally a social people. We enjoy being around one another, even in DC.

We recognize that people all the world over, and especially Americans who share that special bond with one another, love the freedoms that this country gives us. And we all feel that if somebody is unsafe when they are walking down the street, that the next person who is unsafe could be you, your spouse, one of your children, some other person that you love and know personally.

So you will never hear anybody representing former President Trump say anything at all other than what happened on January 6 and the storming and breaching of the Capitol should be denounced in the most vigorous terms, nor that those persons responsible should be prosecuted to the fullest extent that our laws allow.

Indeed, I have followed some of those cases and those prosecutions, and it seems to me that we are doing a pretty good job of identifying and prosecuting those persons who committed those offenses. And I commend the FBI and the District of Columbia police and the other Agencies for their work.

It is natural to recoil. It is an immediate thing. It comes over you without your ability to stop it, the desire for retribution. Who caused this awful thing? How do we make them pay?

We recognize in the law—and I know many of you are lawyers. Probably, lawyers—some of you have been a lawyer for 35 years, longer than me—many, longer than me, probably. And we know we have a specific body of law that deals with passion and rage, blinding logic and reason. That is the difference between manslaughter and murder.

Manslaughter is the killing of a human being upon sudden and intense provocation. But murder is done with cold blood and reflective thought.

We are so understanding of the concept that people's minds can be overpowered with emotion, where logic does not immediately kick in, that we have recognized examples that otherwise would be hearsay, and said that,

no, when you are driving down the street and you look over at your wife and you say: ''Hey, you know what, that guy is about to drive through the red light and kill that person,'' your wife can testify to what you said because, even though it is technically hearsay, it is an exception because it is the event living through the person. Why? No opportunity for reflective thought.

There are all sorts of examples that we recognize in the law for why people immediately desire retribution, immediately recognize in the law that people can be overcome by events.

And you know, Senators of the United States, they are not ordinary people. They are extraordinary people—in the technical sense, extraordinary people.

When I was growing up in suburban Philadelphia, my parents were big fans of Senator Everett Dirksen from Illinois. Senator Dirksen recorded a series of lectures that my parents had on a record. We still know what records are, right? The thing you put the needle down on and you play it.

And here is little Bruce—8, 9, 10 years old—listening to this back in the 1960s. And I would be listening to that voice.

If you ever heard Everett Dirksen's voice, it is the most commanding, gravelly voice that just oozes belief and sincerity. He must have been a phenomenal U.S. Senator. He doesn't talk about ordinary people, as we do in the law. We apply the ordinary person standard. He talks about extraordinary people. He talks about ''Gallant Men,'' which was the name of the album, and, now, of course, as a sign of the times, gallant men and women.

I would watch television, and I would watch Senator Goldwater or Senator Byrd or Senator Mansfield or Senator Dole, and I would be fascinated by these great men.

And everybody's parents say this when they are growing up: You could grow up to be a U.S. Senator. You could do that. They are just men and women like you are.

Well, then, Everett Dirksen tells us that they are not; they are gallant men and women who do extraordinary things when their country needs them to do it.

U.S. Senators really are different. I have been around U.S. Senators before. Two of them in this room from Pennsylvania, I would like to think, are friendly toward me or at least friends of mine when we are not politically adverse. And I have been around their predecessors.

One thing I have discovered, whether it be Democrats or Republicans, U.S. Senators are patriots first—patriots first. They love their country. They love their families. They love the States that they represent.

There isn't a Member in this room who has not used the term ''I represent the great State of''—fill in the blank. Why? Because they are all great? Yeah. But you think yours is greater than others because these are your people. These are the people who sent you here to do their work. They trusted you with the responsibility of representative government.

You know, I feel proud to know my Senators—Senator CASEY, up here in the back, and Senator TOOMEY, over to the left.

You know, it is funny. This is an aside, but it is funny. Do you ever notice how, when you are talking or you hear others talking about you, when you are home in your State, they will say, ''You know, I talked to my Senator'' or ''I talked to somebody on the staff of my Senator''? It is always ''my Senator.''

Why is it that we say ''my Senator''? We say that because the people you represent are proud of their Senators. They absolutely feel that connection of pride because that is not just PAT TOOMEY of Pennsylvania. That is my Senator from Pennsylvania. Or BOB CASEY from Scranton—that is my Senator.

And you like that. People like that. The people back home really do.

U.S. Senators have a reputation, and it is deserved. They have a reputation for coolheadedness, being erudite—the men and women who we send from back home to DC to look after our interests. We feel a sense of ownership and a sense of pride in our Senators.

There is plenty of times I have been around in political gatherings where I hear, There is no way Senator TOOMEY is going to allow that—I don't mean to pick you on, PAT—or There is no way Senator CASEY is going to allow that—because we feel pride.

When something bad is potentially in the wind, we expect our U.S. Senators not reacting to popular will and not reacting to popular emotions. We expect them to do what is right, notwithstanding what is immediately and expedient that the media tells us is the topic of the day.

So Senators are patriots. Senators are family men and women. They are fierce advocates for the great State which they represent. And somewhere far down that list of attributes, way below patriot and way below love of family and country and way below fierce advocates for their States, far down—at least that is what I thought, anyway, and I still think that. Somewhere far down that list, Senators have some obligation to be partisans, to represent a group of beliefs that are similar to beliefs shared by other United States Senators.

I understand that. And, in fact, I have no problem with that system. It helps us debate and decide what is best for America, the robust debate of different points of view. And I dare say that Senator SCHUMER and Senator MCCONNELL represent those things in this body and make sure that everything is talked out and robustly debated in this room before United States Senators make a decision of extreme importance to the people they represent.

I know you aren't allowed to talk, but I don't see either one of them jumping up and saying I am wrong about that because I think that that is what happens. I think United States Senators try to listen to each other's views. I think United States Senators try to do what is right for the country, and far down is partisanship.

In our system of government, and if you read the Federalist Papers—we are very fortunate because the Federalist Papers were authored as an explanation for why it is the States, the original States, should adopt the Constitution. These were persuasive documents about why the Constitution is a good thing, because if the individual State legislatures didn't adopt the Constitution, we would not have it.

So Mr. Jay and Mr. Madison and Mr. Hamilton, they had an incentive to explain what they were thinking when they wrote it because they are explaining to other erudite people who represent individual States why it is that they feel that this is the right thing to do. And, in fact, as many of you well know, Madison had to promise that there would be a Bill of Rights immediately upon adoption or we wouldn't have a Constitution. Even then there was horse trading going on in the legislative body of the United States.

The other day, when I was down here in Washington—I came down earlier in the week to try to figure out how to find my way around. I worked in this building 40 years ago. I got lost then, and I still do.

But in studying the Constitution in all the years I was a prosecutor, where so many things depend on interpretations of phrases in the Constitution, I learned that this body, which one of my worthy colleagues said is the greatest deliberative body in the entire world—and I agree—that was—that particular aspect of our government was intentionally created, if you read the Federalist Papers.

The last time a body such as the United States Senate sat at the pinnacle of government with the responsibility that it has today, it was happening in Athens and it was happening in Rome.

Republicanism, the form of government republicanism, throughout history has always and without exception fallen because of fights from within, because of partisanship from within, because of bickering from within. And in each one of those examples that I mentioned—and there are certainly others, probably, that are smaller countries that lasted for less time that I don't know about off the top of my head.

But each one of them, once there was the vacuum created that the greatest deliberative bodies—the Senate of Greece sitting in Athens, the Senate of Rome—the moment that they devolved into such partisanship, it is not as though they ceased to exist; they ceased to exist as representative democracy, both replaced by totalitarianism.

Paraphrasing the famous quote from Benjamin Franklin, who, as a Philadelphian, I feel as though I can do that because he is my Founding Father too: He who would trade liberty for some temporary security deserves neither liberty nor security. If we restrict liberty to attain security, we will lose both.

And isn't the way we have enshrined in the Constitution the concepts of liberty that we think are critical, the very concepts of liberty that drove us to separate from Great Britain—and I can't believe these fellas are quoting what happened prerevolution as though that is somehow of value to us.

We left the British system. If we are really going to use prerevolutionary history in Great Britain, then the precedent is we have a Parliament and we have a King. Is that the precedent that we are heading for?

Now, it is not an accident that the very first liberty—if you grant me that our liberties are enumerated in the Bill of Rights, it is not an accident that the very first liberty in the first article of the Bill of Rights is the First Amendment, which says: ''Congress shall make no law . . . abridging freedom of speech,'' and et cetera. ''Congress shall make no law . . . ''—the very first one, the most important one, the ability to have free and robust debate, free and robust political speech.

Something that Mr. RASKIN and his team brought up is that it is somehow a suggestion from former President Trump's team that when various public officials were not denouncing the violence that we saw over the summer, that that was somehow the former President equating that speech to his own. Not at all. Exactly backwards.

I saw a headline: Representative so-and-so seeks to walk back comments about—I forget what it was—something that bothered her. I was devastated when I saw that she thought it was necessary to go on television yesterday or the day before and say she needs to walk back her comments.

She should be able to comment as much as she wants, and she should be able to say exactly as she feels. And if she feels that the supporters of then-President Trump are not worthy of having their ideas considered, she should be permitted to say that, and anybody who agrees should be permitted to say they agree. That is what we broke away from Great Britain in order to be able to do: to be able to say what we thought in the most robust political debate.

My colleague Mike van der Veen is going to give you a recitation on the First Amendment law of the United States. I commend to your attention the analysis that he is going to give you.

I don't expect and I don't believe that the former President expects anybody to walk back any of the language. If that is how they feel about the way things transpired over the last couple of years in this country, they should be allowed to say that, and I will go to court and defend them if anything happens to them as a result. If the government takes action against that State representative or that U.S. Representative who wants to walk back her comments, if the government takes action against her, I have no problem going into court and defending her right to say those things, even though I don't agree with them.

This trial is not about trading liberty for security. It is about trading—it is about suggesting that it is a good idea that we give up those liberties that we have so long fought for. We have sent armies to other parts of the world to convince those governments to implement the freedoms that we enjoy.

This trial is about trading liberty for the security from the mob? Honestly, no, it can't be. We can't be thinking about that. We can't possibly be suggesting that we punish people for political speech in this country. And if people go and commit lawless acts as a result of their beliefs and they cross the line, they should be locked up.

And, in fact, I have seen quite a number of the complaints that were filed against the people who breached the Capitol. Some of them charged conspiracy. Not a single one I noticed charged conspiracy with the 45th President of the United States, probably because prosecutors have an ethical requirement that they are not allowed to charge people with criminal offenses without probable cause. You might consider that.

And if we go down the road that my very worthy adversary here, Mr. RASKIN, asks you to go down, the floodgates will open. I was going to say it will—instead of ''floodgates,'' I was going to say originally it will ''release the whirlwind,'' which is a Biblical reference, but I subsequently learned, since I got here, that that particular phrase has already been taken, so I figured I had better change it to ''floodgates.''

But the political pendulum will shift one day. This Chamber and the Chamber across the way will change one day, and partisan impeachments will become commonplace.

You know, until the impeachment of Bill Clinton, no one alive had ever lived through a Presidential impeachment, not unless some of you are 150 years old. Not a single person alive had lived through a Presidential impeachment. Now most of us have lived through three of them.

This is supposed to be the ultimate safety valve, the last thing that happens, the most rare treatment, and a session where this body is sitting as a Court of Impeachment among the most rare things it does.

So the slippery-slope principle will have taken hold if we continue to go forward with what is happening today and scheduled to happen later this week. And after we are long done here and after there has been a shift in the political winds and after there is a change in the makeup of the United States House of Representatives and maybe a change in the makeup of the United States Senate, the pressure from those folks back home, especially for Members of the House, is going to be tremendous because, remember, the Founders recognized that the argument that I started with, that political pressure is driven by the need for immediate action because something under contemporary community standards really horrific happened and the people represented by the Members of the United States House of Representatives become incensed.

And what do you do if a Federal issue—you are back in suburban Philadelphia and something happens that makes the people who live there incensed? You call your Congressman. And your Congressman, elected every 2 years, with their pulse on the people of their district, 750,000 people, they respond. And, boy, do they respond. The Congressman calls you back, a staffer calls you back, and you get all the information that they have on the issue. Sometimes you even get invited to submit language that would improve whatever the issue is.

Well, when the pendulum swings, perhaps the next person who gets impeached and is sent here for you to consider is Eric Holder during Fast and Furious, the Attorney General of the United States, or any other person whom the other party considers to be a political danger to them down the road because of their avowed abilities and being articulate and having a resume that shows that they are capable.

I picked Eric simply because I think he has a tremendous—he has had a tremendous career, and he might be somebody whom some Republicans somewhere might be worried about. So maybe the next person they go after is Eric Holder.

And, you know, the Republicans might regain the House in 2 years. History does tend to suggest that the party out of power in the White House does well in the midterm elections. Certainly, the 2020 elections, the House gained—the House majority narrowed, and there was a gain of Republicans.

The Members of the House—they have to worry about these consequences because if they don't react to whatever the problem of the day is, somebody in that jurisdiction there—somebody is going to say: If you make me the Congressman, I react to that. And that means that the sitting Member has to worry about it because their terms are short.

And it is not just Members of the House of Representatives with their short—with their short terms. I saw on television the last couple of days the honorable gentleman from Nebraska, Mr. SASSE—I saw that he faced backlash back home because of a vote he made some weeks ago, that the political party was complaining about a decision he made as a United States Senator.

You know, it is interesting because I don't want to steal the thunder from the other lawyers, but Nebraska, you are going to hear, is quite a judicial-thinking place, and just maybe Senator SASSE is onto something, and you will hear about what it is that the Nebraska courts have to say about the issue that you all are deciding this week. There seem to be some pretty smart jurists in Nebraska, and I can't believe a United States Senator doesn't know that.

A Senator like the gentleman from Nebraska, whose Supreme Court history is ever present in his mind, and rightfully so, he faces the whirlwind even though he knows what the judiciary in his State thinks.

People back home will demand their House Members continue the cycle as political fortunes rise and fall. The only entity that stands between the bitter in-fighting that led to the downfall of the Greek Republic and the Roman Republic and the American Republic is the Senate of the United States.

Shall the business of the Senate and thus the Nation come to a halt, not just for the current weeks while a new President is trying to fill out his administration, but shall the business of the Senate and the Nation come to a halt because impeachment becomes the rule rather than the rare exception? I know you can see this as a possibility because not a single one of you ever thought that you would be doing a second impeachment inside of 13 months, and the pressure will be enormous to respond in kind.

To quote Everett Dirksen, the gallant men and women of the Senate will not allow that to happen. And this Republic will endure because the top responsibility of the United States Senator and the top characteristic that you all have in common—and, boy, this is a diverse group, but there isn't a single one of you who, A, doesn't consider yourself a patriot of the United States, and 2, there isn't a single one of you who doesn't consider the other 99 to be patriots of the United States. And that is why this attack on the Constitution will not prevail.

The document that is before you is flawed. The rule of the Senate concerning impeachment documents, Articles of Impeachment, rule XXIII, says that such documents cannot be divided. You might have seen that we wrote that in the answer. It might have been a little legalistic or legalese for the newspapers to opine on very much, but there is some significance.

The House managers, clever fellows that they are, they cast a broad net. They need to get 67 of you to agree they are right. And that is a good strategy. I would use the same strategy, except there is a rule that says you can't use that strategy. You see, rule XXIII says that the Article of Impeachment is indivisible, and the reason why that is significant is you have to agree that every single aspect of the entire document warrants impeachment because it is an all-or-nothing document. You can't cut out parts that you agree with that warrant impeachment and parts that don't, because it is not divisible. It flat-out says in the Senate rules it is not divisible.

Now, previous impeachments, like President Clinton's, said the President shall be found guilty of high crimes and misdemeanors for engaging in one or more of the following and then gives a list, so all you had to do was win one, but they didn't do that here. It has to be all or nothing.

Some of these things that you are asked to consider might be close calls in your mind, but one of them is not. The argument about the 14th Amendment is absolutely ridiculous. The House managers tell you that the President should be impeached because he violated the 14th Amendment. Here is what the 14th Amendment says:

> No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or [any other] state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or [as] a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, [and] shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may vote by two-thirds of each House [to] remove such disability.

It doesn't take a constitutional scholar to recognize that that is written for people who fought for the Confederacy or who were previous military officers or were in the government of the Confederacy, and it doesn't take a constitutional scholar to require that they be convicted first in a court, with due process of law. So it never—that question can never be ripe until those things have happened.

If you agree with those arguments—and I know you will all get your Constitutions out and you will read it, and if you agree with those arguments, the suggestion that the 14th Amendment applies here is ridiculous. And if you come to that conclusion, then, because the managers have not separated out the counts, any counts within the Article of Impeachment, the whole thing falls.

I didn't write that. They are married to that. I wrote it out in individual responses because I didn't know how to respond to the cast-the-wide-net effort. And fortunately Senators sometime in the past realized that you can't do that because you passed a rule that says: Hey, you can't do that. So that is why it is flawed. It is flawed in other ways, too, and my colleague will explain that.

I was struck—I thought the House managers who spoke earlier were brilliant speakers, and I made some notes. They will hear about what I think about some of the things they said later when I am closing the case, but I thought they were brilliant speakers, and I loved listening to them. They are smart fellows. But why are the House managers afraid and why is the majority—the House of Representatives afraid of the American people?

I mean, let's understand why we are really here. We are really here because the majority in the House of Representatives does not want to face Donald Trump as a political rival in the future. That is the real reason we are here. That is why they have to get over the jurisdictional hurdle, which they can't get over, but that is why they have to get over that in order to get to the part of the Constitution that allows removal. So that is the—nobody says it that plainly, but unfortunately I have a way of speaking that way.

And the reason that I am having trouble with the argument is, the American people just spoke, and they just changed administrations. So in the light most favorable to my colleagues on the other side of the aisle here, their system works. The people are smart enough—in the light most favorable to them, they are smart enough to pick a new administration if they don't like the old one, and they just did, and he is down there at Pennsylvania Avenue now, probably wondering, how come none of my stuff is happening up at the Capitol?

Why do the Members of the House of Representatives—the majority of the House of Representatives—why are they afraid of the very people who sent them to do this job, the people they hope will continue to send them back here? Why are they afraid that those same people who were smart enough to pick them as their Congressmen aren't smart enough to pick somebody who is a candidate for President of the United States? Why fear that the people will all of a sudden forget how to choose an administration in the next few years?

In fact, this happens all the time when there are changes in administrations from one-term Presidents to others. Well, Nixon was sort of 1½ term, but Nixon to Ford, Ford to Carter, Carter to Reagan, Bush 41 to Clinton. It happens. The people get tired of an administration they don't want, and they know how to change it. And they just did.

So why think that they won't know how to do it in 2024 if they want to, or is that what the fear is? Is the fear that the people in 2024, in fact, will want to change and will want to go back to Donald Trump and not the current occupant of the White House, President Biden? Because all of these other times, the people were smart enough to do it, choose who the President should be, and all these other times, they were smart enough to choose who their Members of Congress were—and, by the way, choose you all as well—but they are not smart enough to know how to change the administration, especially since they just did. So it seems pretty evident to me that they do know how. It has worked 100 percent of the time. One hundred percent of the time in the

United States, when the people had been fed up with and had enough of the occupant of the White House, they changed the occupant of the White House.

Now, I know that one of the strengths of this body is its deliberative action.

I saw Senator MANCHIN on the TV the other night talking about the filibuster. And the main point was that Senator MANCHIN was explaining to those of us who don't operate here all the time, that this body has an obligation to try to reach consensus across the aisle to legitimize the decisions it makes. Obviously, he is capable of making his own pronouncements on it, but that is what came across on the television. And I think that that is a good way of saying why the Senate of the United States is different than other places.

You know, the Constitution is a document designed to protect the rights of the minority, not the rights of the majority. Congress shall make no law abridging all of these things. That is because those were the things that were of concern at the time. It is easy to be in favor of liberty and equality and free speech when it is popular.

I think that I want to give my colleague Mr. Schoen an opportunity to explain to all of us the legal analysis on jurisdiction.

I will be quite frank with you. We changed what we were going to do on account that we thought that the House managers' presentation was well done, and I wanted you to know that we have responses to those things.

I thought that what the first part of the case was, which was the equivalent of a motion to dismiss, was going to be about jurisdiction alone, and one of the fellows who spoke for the House managers—who was a formal criminal defense attorney—seemed to suggest that there was something nefarious that we were discussing jurisdiction in trying to get the case dismissed, but this is where it happens in the case because jurisdiction is the first thing that has to be found.

We have counterarguments to everything that they raised, and you will hear them later on in the case from Mr. van der Veen and from myself.

But on the issue of jurisdiction—the scholarly issue of jurisdiction—I will leave you with this before I invite David to come up and give you the erudite explanation. Some of this was shown on the screen, but article I, section 3 says:

> Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold . . . any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to law.

So this idea of a January amnesty is nonsense. If my colleagues on this side of the Chamber actually think that President Trump committed a criminal offense—and let's understand a high crime is a felony and a misdemeanor is a misdemeanor. The words haven't changed that much over time. After he is out of office, you go and arrest him.

So there is no opportunity where the President of the United States can run rampant into January, the end of his term, and just go away scot-free. The Department of Justice does know what to do with such people. And so far, I haven't seen any activity in that direction.

And not only that, the people who stormed this building and breached it were not accused of conspiring with the President. But the section I read—''Judgment''—in other words, the bad thing that can happen—the ''Judgment in Cases of Impeachment''—i.e., what we are doing—''shall not extend further than . . . removal from Office.''

What is so hard about that? Which of those words are unclear?

> Shall not extend further than removal . . . from Office.

President Trump no longer is in office. The object of the Constitution has been achieved. He was removed by the voters.

Mr. Schoen, are you ready—now that I have taken all of his time.

Thank you, Mr. President.

The PRESIDENT pro tempore. Mr. Schoen.

Mr. Counsel SCHOEN. Mr. President, leaders.

I stand before you in what I always thought as the hallowed ground of democracy. In this room, American lives have been changed so dramatically in just my lifetime through so many of your legislative initiatives from the Civil Rights Act, when I was a child, through, most recently, the FIRST STEP Act—laws that have provided major opportunities for Americans to move forward and upward and more fully enjoy all of the attributes of what has been the greatest Nation on Earth.

I have seen the changes these laws have made to my clients every day for the past 36 years. These laws have enabled me to fight for their enjoyment of a fair stake in our American project.

I stand before a group of 100 United States Senators who have chosen to serve your country from all corners of this great Nation, giving up all sorts of professions, time with family, and perhaps other more lucrative opportunities to serve your country.

Mr. President, you are a man who so honorably served this Nation in the Senate and in public service before your tenure here. It is an honor to appear in this historic hall of democracy.

Yet today, that honor is tempered by an overriding feeling of grave concern, grave concern for the danger to the institution of the Presidency that I believe even convening these proceedings indicates. The joy I believed I would feel if I ever had the great privilege of appearing before this body is replaced by sadness and pain. My overriding emotion is, frankly, wanting to cry for what I believe these proceedings will do to our great, so long-enduring, sacred Constitution and to the American people on both sides of the great divide that now characterizes our Nation.

Esteemed Members of the Senate, going forward with this impeachment trial of a former President of the United States is unconstitutional for reasons we have set out in our brief, some of which we will focus on here. And as a matter of policy, it is wrong as wrong can be for all of us as a nation.

We are told by those who favor having these proceedings that we have to do it for accountability. But anyone truly interested in real accountability for what happened at the Capitol on January 6 would, of course, insist on waiting for a full investigation to be completed. Indeed, one is underway in earnest already, intent on getting to the bottom of what happened.

Anyone interested in ensuring that it is truly the one or ones responsible from whom accountability is sought would more than willingly wait for the actual evidence, especially with new evidence coming in every day about preplanning, about those who were involved, and about their agenda bearing no relationship to the claims made here.

They say you need this trial before the Nation can heal, that the Nation cannot heal without it. I say our Nation cannot possibly heal with it. With this trial, you will open up new and bigger wounds across the Nation, for a great many Americans see this process for exactly what it is: a chance by a group of partisan politicians seeking to eliminate Donald Trump from the American political scene and seeking to disenfranchise 74 million-plus American voters and those who dare to share their political beliefs and vision of America. They hated the results of the 2016 election and want to use this impeachment process to further their political agenda.

These elitists have mocked them for 4 years. They called their fellow Americans who believe in their country and their Constitution ''deplorables.'' And the latest talk is that they need to deprogram those who supported Donald Trump and the Grand Old Party. But at the end of the day, this is not just about Donald Trump or any individual. This is about our Constitution and abusing the impeachment power for political gain.

They tell us that we have to have this impeachment trial, such as it is, to bring about unity, but they don't want unity. And they know this so-called trial will tear the country in half, leaving tens of millions of Americans feeling left out of the Nation's agenda, as dictated by one political party that now holds the power in the White House and in our national legislature.

But they are proud Americans who never quit getting back up when they are down, and they don't take dictates from another party based on partisan

force-feeding. This trial will tear this country apart, perhaps like we have only seen once before in our history.

And to help the Nation heal, we now learn that the House managers, in their wisdom, have hired a movie company and a large law firm to create, manufacture, and splice for you a package designed by experts to chill and horrify you and our fellow Americans. They want to put you through a 16-hour presentation over 2 days, focusing on this as if it were some sort of blood sport. And to what end? For healing? For unity? For accountability? Not for any of those. For, surely, there are much better ways to achieve each. It is, again, for pure, raw, misguided partisanship that makes them believe playing to our worst instincts somehow is good.

They don't need to show you movies to show you that the riot happened here. We will stipulate that it happened, and you know all about it.

This is a process fueled irresponsibly by base hatred by these House managers and those who gave them their charge, and they are willing to sacrifice our national character to advance their hatred and their fear that one day they might not be the party in power. They have a very different view of democracy and freedom.

From Justice Jackson who once wrote:

> [But][F]reedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch at the heart of the existing order.

They have a very different view of democracy and freedom. This is nothing less than the political weaponization of the impeachment process—pure, raw sport, fueled by the misguided idea of party over country when, in fact, both will surely suffer.

I can promise you that if these proceedings go forward, everyone will look bad. You will see and hear many Members of our Congress saying and doing things they must surely regret. But, perhaps, far worse than a moment of personal shame in a world in which history passes from our memories in a moment, our great country, a model for all the world, will be far more divided and our standing around the world will be badly broken. Our arch enemies who pray each and every day for our downfall will watch with glee, glowing in the moment as they see you at your worst and our country in internal divide.

Let's be perfectly clear. If you vote to proceed with this impeachment trial, future Senators will recognize that you bought into a radical, constitutional theory that departs clearly from the language of the Constitution itself and holds—and this is in their brief—that any civil officer who ever dares to want to serve his or her country must know that they will be subject to impeachment long after their service in office has ended, subject only to the political and cultural landscape of the day that is in operation at any future time. This is exactly the position taken by the House managers at page 65 of their brief—unprecedented, radical position. They unabashedly say so.

Imagine the potential consequences for civil officers you know and who you believed served so honorably but who, in the view of a future Congress, might one day be deemed to be impeachment worthy. Imagine it now because your imagination is the only limitation.

The House managers tell you a correct reading of the impeachment power under the Constitution is that it has no temporal limit and can reach back in time without limitation to target anyone who dared to serve our Nation as a civil officer. Now add that to their demand that you Members put your imprimatur on the snap impeachment they returned in this case and can do again in the future if you endorse it by going forward with this impeachment trial. This is an untenable combination that literally puts the institution of the Presidency directly at risk, nothing less, and it does much more.

Under their unsupportable constitutional theory and tortured reading of the text, every civil officer who has served is at risk of impeachment if any given group elected to the House decides that what was thought to be an important service to the country when they served now deserves to be canceled.

They have made clear in public statements that what they really want to accomplish here, in the name of the Constitution, is to bar Donald Trump from ever running for political office again, but this is an affront to the Constitution no matter who they target today. It means nothing less than the denial of the right to vote and the independent right for a candidate to run for elective political office, guaranteed by the 1st and 14th Amendments to the Constitution, using the guise of impeachment as a tool to disenfranchise.

Perhaps my friend put the situation simply and sharply into focus last week on his radio show. My friend is a distinguished lawyer who served as an Ambassador to former President Obama and has friends among you. He described himself to his listeners as a dyed-in-the-wool, lifelong Democrat, but he said the idea of 100 people in these circumstances deciding that tens of millions of American voters cannot cast their vote for their candidate for President ever again is unthinkable, and it truly should be.

I will discuss today several reasons this matter should not and must not proceed; why the Senate lacks jurisdiction to conduct this trial of a former President—a President no longer in office and now a private citizen. Any single reason in our trial memorandum or discussed today suffices, but I want to start with a discussion of the fundamental due process lacking from the start, and that would last through the end if this goes forward because it is this irretrievably flawed process and its product—a dangerous snap impeachment—that brings us here and that threatens to send a message into the future that we will all regret forever and that will stain this body, which up to now our Founding Fathers believed was uniquely suited for the most difficult task of conducting an impeachment trial, as Mr. Hamilton wrote in Federalist No. 65.

These aren't just niceties. I make no apology for demanding in your name, in the name of the Constitution, that the rights to due process guaranteed under the Constitution are adhered to in a process as serious as this in our national lives.

The denial of due process in this case, of course, starts with the House of Representatives. In this unprecedented snap impeachment process, the House of Representatives denied every attribute of fundamental constitutional due process that Americans correctly have come to believe is part of what makes this country so great. How and why did that happen? It is a function of the insatiable lust for impeachment in the House for the past 4 years.

Consider this:

(Video footage.)

Mr. RASKIN: I want to say this for Donald Trump who I may well be voting to impeach.

Mr. Ellison: Donald Trump has already done a number of things which legitimately raise the question of impeachment.

Ms. WATERS: I don't respect this President, and I will fight every day until he is impeached!

Mr. CASTRO: That is grounds to start impeachment proceedings. Those are grounds to start impeachment. Those are grounds to start impeachment proceedings. Yes, I think that's grounds to start impeachment proceedings.

Mr. GREEN: I rise today, Mr. Speaker, to call for the impeachment of the President of the United States of America.

Ms. WATERS: I continue to say, Impeach him! Impeach 45! Impeach 45!

(People chanting: ''Yeah.'')

Mr. COHEN: So we are calling upon the House to begin impeachment hearings immediately.

Mr. Commentator: On the impeachment of Donald Trump, would you vote yes or no?

Ms. OCASIO-CORTEZ: I would vote yes.

Ms. OMAR: I would vote to impeach.

Ms. TLAIB: Because we're going to go in there, and we're going to impeach the [bleep bleep]!

Mr. SHERMAN: The fact is I introduced Articles of Impeachment in July of 2017.

Mr. GREEN: If we don't impeach this President, he will get reelected.

Mr. COHEN: My oath requires me to be for impeachment, have impeachment hearings, and leave a scarlet ''I'' on his chest.

Mr. BOOKER: The Representatives should begin impeachment proceedings against this President.

Ms. WARREN: It is time to bring impeachment charges against him. Bring impeachment charges.

Mr. NADLER: My personal view is that he richly deserves impeachment.

Ms. TLAIB: We are here at an impeachment rally, and we are ready to impeach the—

(People chanting: ''Yeah.'')

I can't say it.

The relevant timeline in the House reveals the rush to judgment.

On the day following the January 6 riot, the House leadership cynically sensed a political opportunity to score points against the outgoing then-President Trump, and the Speaker demanded that Vice President Pence invoke the 25th Amendment, threatening immediate impeachment for the President if Mr. Pence did not comply with this extraordinary and extraordinarily wrong demand.

Four days later, on January 11, 2021, the instant Article of Impeachment was introduced in the House. Speaker PELOSI then gave the Vice President another ultimatum, threatening to begin impeachment proceedings within 24 hours if he did not comply. Vice President Pence rejected Speaker PELOSI's demand, favoring instead adherence to the Constitution and the best interests of the Nation over a politically motivated threat.

On January 12, Speaker PELOSI announced who the nine impeachment managers would be, and on January 13, 2021, just days after holding a press conference to announce the launching of an inquiry, the House adopted the Article of Impeachment, completing the fastest impeachment inquiry in history and, according President Trump, no due process at all over strong opposition, based in large part on the complete lack of due process.

To say there was a rush to judgment by the House would be a grave understatement. It is not as if the House Members who voted to impeach were not mightily warned about the dangers to the institution of the Presidency and to our system of due process. They were warned in the strongest of terms from within their own ranks adamantly, clearly, and in no uncertain terms not to take this dangerous snap impeachment course. Those warnings were framed in the context of the constitutional due process that was denied here.

Consider the warnings given by one Member during the House proceedings, pleading with the other Members to accord this decision the due process the Constitution demands.

This is Representative COLE of Oklahoma:

> With only 1 week to go in his term, the majority is asking us to consider a resolution impeaching President Trump, and they do so knowing full well that even if the House passes this resolution, the Senate will not be able to begin considering these charges until after President Trump's term ends.
>
> I can think of no action the House can take that is more likely to further divide the American people than the action we are contemplating today. Emotions are clearly running high and political divisions have never been more apparent in my lifetime.

Said by Representative COLE.

Mr. COLE's words on the floor emphasizing the care that must be taken with respect to the consideration of the Article of Impeachment echo the concerns by our Founding Fathers on this subject.

Listen to this from Mr. Hamilton in Federalist No. 65:

> A well constituted court for the trial of impeachments, is an object not more to be desired than difficult to be obtained in a government wholly elective. . . . The prosecution of them, for this reason, will seldom fail to agitate the passions of the whole community, and to divide it into parties, more or less friendly or inimical, to the accused. In many cases, it will connect itself with the pre-existing factions, and will inlist all their animosities, partialities, influence and interest on one side, or on the other; and in such cases there will always be the greatest danger, that the decision will be regulated more by the comparative strength of parties than by the real demonstrations of innocence or guilt.

Prescient thinking by Mr. Hamilton, as we see often.

In what I say to you is a proof of the need for due process, based on the critically serious nature of the singular role the impeachment process has in our government, Mr. Hamilton characterized the consideration of an impeachment in these terms:

> The delicacy and magnitude of a trust, which so deeply concerns the political reputation and existence of every man engaged in the administration of public affairs, speak for themselves.

This, too, is in Federalist No. 65.

Now back to the House and the warnings against this rushed judgment in this case.

Mr. COLE of Oklahoma again. In the name of healing, a path forward he said our people so desperately need, he warned that ''the House is moving forward erratically with a truncated process that does not comport with the modern practice and that will give members no time to contemplate the serious nature of action before us.''

Mr. COLE emphasized to his colleagues that such care must be taken with the consideration of an Article of Impeachment ''in order to ensure that the American people have confidence in the procedures the House is following and because the Presidency itself demands due process in the impeachment proceedings.''

Congressman COLE continued:

> Unfortunately, the majority has chosen to race to the floor with a new Article of Impeachment, forgoing any investigation, any committee process or any chance for Members to fully contemplate this course of action before proceeding.

Mr. COLE complained that ''the majority is failing to provide the House with an opportunity to review all the facts—which are still coming to light—to discuss all the evidence, to listen to scholars, to examine the witnesses, and to consider precedence.''

He noted further:

> This is not the type of robust process we have followed for every modern impeachment, and the failure to do so does a great disservice to this institution and to this country.

Mr. COLE complained right on the House floor that ''rather than following the appropriate processes the House has used in every modern impeachment, the majority is rushing to the floor, tripping all over themselves in their rush to impeach the President a second time.'' And in Mr. COLE's words, it was doing so to ''settle scores.'' He warned this snap impeachment approach would cause great division as the country looks ahead to the start of a new administration.

He said to them:

> In a matter as grave and consequential as impeachment, shouldn't we follow the same process we have used in every modern impeachment rather than rushing to the floor?

And he implored them:

> On behalf of generations of Americans to come, we need to think more clearly about the consequences of our action today.

Mr. COLE then reached across the aisle and credited a Member of this body, Senator MANCHIN, having voiced similar sentiments about how ill-advised this rushed process was, suggesting that the underlying events were a matter for the judicial system to investigate, not one for a rushed political process.

Finally, Mr. COLE admonished his fellow House Members, telling them:

> We need to recognize that we are following a flawed process.

The alarm Mr. COLE sounded went unheeded.

Now let us consider the process in the House that actually was due. The House managers assert in their memorandum that ''[t]he House serves as a grand jury and prosecutor under the Constitution.'' They told you that again today. If this is accurate, then they highlight the complete failure to adhere to due process.

> One should not diminish the significance of impeachment's legal aspects, particularly as they relate to the formalities of the criminal justice process. It is a hybrid of the political and the legal, a political process moderated by legal formalities.

This is a quote, Richard Broughton.

The Fifth Amendment to the United States Constitution provides, in relevant part, that ''no person shall be . . . deprived of life, liberty or property, without due process of law.'' The Supreme Court long ago recognized in Matthews v. Eldridge that, at its core, due process is about what we all want, what we all have the right to demand—fundamental fairness. One scholar, Brian Owsley, has written that ''the impeachment process should and does include some of the basic safeguards for the accused that are observed in a criminal process such as fairness, due process, presumption of innocence, and proportionality''—basic American values. And, of course, we know that the Supreme Court has recognized that due process protections attend congressional investigations. While Congress is empowered to make its own rules of proceeding, it may not make rules that ignore constitutional restraints or violate fundamental rights.

While the case law is limited in terms of spelling out what due process looks like in impeachment hearings and, of course, in the Nixon case—Walter, not Richard—we know that there is a great deal of leeway afforded Congress with respect to its impeachment

rules. It is clear that the fundamental principles that underlie our understanding of what due process must always look like apply.

In Hastings v. United States, a DC court case vacated on different grounds, they address the matter, clearly concluding that the due process clause applies to impeachment proceedings and that it imposes an independent constitutional constraint on how the Senate exercises its sole power to try all impeachments under article I, section 3, clause 6.

The court wrote in Hastings:

> Impeachment is an extraordinary remedy. As an essential element of our constitutional system of checks and balances, impeachment must be invoked and carried out with solemn respect and scrupulous attention to fairness. Fairness and due process must be the watchword whenever a branch of the United States Government conducts a trial, whether it be in a criminal case, a civil case or a case of impeachment.

A 1974 Department of Justice memo suggested the same view, opining that ''whether or not capable of judicial enforcement, due process standards would seem to be relevant to the manner of conducting an impeachment proceeding.''

More specifically, as the Hastings court described it, ''one of the key principles that lies at the heart of our constitutional democracy: fairness.''

Again, fairness.

The Supreme Court's ''precedents establish the general rule that individuals must receive notice and an opportunity to be heard before the government deprives them'' of a constitutionally protected interest. It is also true that ''in any proceeding that may lead to deprivation of a protected interest, it requires fair procedures commensurate with the interests at stake.''

Impeachment proceedings plainly involve deprivations of property and liberty interests protected by the due process clause, and the House surely seeks to strip Donald Trump of his most highly cherished constitutional rights, including the right to be eligible to hold public office again, should he so choose.

Due process must apply, and, at a minimum, due process in the impeachment process must include that the evidence must be disclosed to the accused, and the accused must be permitted an opportunity to test and confront the evidence, particularly through ''the rights to confront and cross-examine witnesses,'' which ''have long been recognized as essential to due process.'' In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine.

It is unfathomable that the Framers, steeped in the history of Anglo-American jurisprudence, would create a system that would allow the Chief Executive and Commander in Chief of the Armed Forces to be impeached based on a process that developed evidence without providing any of the elementary procedures that the common law developed over centuries for ensuring the proper testing of evidence in an adversarial process. We would never countenance such a system in this country.

Current Members of the House and Senate leadership are themselves on record repeatedly confirming these procedural due process requirements. Indeed, Congressman NADLER is on record asserting that, in the context of the House impeachment investigation, due process includes the ''right to be informed of the law, of the charges against you, to call your own witnesses, and to have the assistance of counsel.''

Then-President Trump was not given any semblance of the due process Congressman NADLER clearly believes he deserves, based on the Congressman's description of due process, that must be afforded to an accused in an impeachment proceeding, as reflected in the statement he made relating to another impeachment in 1998. No reason was found for the apparent change in the Congressman's point of view with respect to the two objects of the impeachments at issue.

These fundamental aspects of due process have been honored as required parts of modern impeachment protocol since at least 1870. It is not seriously debatable, nor should it be—nor should it be—by any American legislator.

In spite of all this, the House leadership defied all the norms and denied the then-President all of his basic and constitutionally protected rights. With then-President Donald Trump, the House impeachment procedure lacked any semblance of due process whatever. It simply cannot be credibly argued to the country, and we do not make special rules for different targets. It is the very integrity of the institution that suffers when we do, and that is what the House leadership knowingly has caused.

A review of the House record revealed that the Speaker streamlined the impeachment process—H. Res. 24—to go straight to the floor for a 2-hour debate and a vote, without the ability for amendments. The House record reflects no committee hearing, no witnesses, no presentation or cross-examination of evidence, and no opportunity for the accused to respond or even have counsel present to object.

As the New York Times recently reported, ''there were no witness interviews, no hearings, no committee debates and no real additional fact finding.''

House managers claim the need for impeachment was so urgent that they had to rush the proceedings, with no time to spare for a more thorough investigation or, really, any investigation at all.

But that claim is belied by what happened or didn't happen next. The House leadership unilaterally and by choice waited another 12 days to deliver the Article to this Senate to begin the trial process. In other words, the House leadership spent more time holding the adopted Article than it did on the whole process leading up to the adoption of the Article.

That intentional delay, designed to avoid having the trial begin while Mr. Trump was still President, led to yet another egregious denial of due process. Article I, section 3, clause 6 of our Constitution, of course, provides, in pertinent part, that:

> The Senate shall have the sole Power to try all impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside.

By intentionally waiting until President Trump's term of office expired before delivering the Article of Impeachment to the Senate to initiate trial proceedings, Speaker PELOSI deprived then-President Trump of the express constitutional right—and the right under the Senate's own rule IV—to have the Chief Justice of the United States preside over his trial and wield the considerable power provided for in the Rules of Procedure and Practice in the Senate when sitting on impeachment trials.

That power includes, under rule V, the Presiding Officer's exclusive right to make and issue all orders; under rule VII, to make all evidentiary orders subject to objection by a Member of the Senate.

We say, respectfully, that this intentional delay by Speaker PELOSI, such that in the intervening period, President Trump became private citizen Mr. Trump, constitutes a lapse or waiver of jurisdiction here, for Mr. Trump no longer is ''the President'' described as subject to impeachment in article I, section 3, clause 6 and in article II, section 4, and this body, therefore, has no jurisdiction as a function of that additional due process violation by Speaker PELOSI.

Moreover, with all due respect, then-President Trump suffered a tangible detriment from Speaker PELOSI's actions, which violates not only his rights to due process of law, but also his express constitutional right to have the Chief Justice preside.

That tangible detriment includes the loss of the right to a conflict-free, impartial Presiding Officer—with all due respect—the very purpose behind requiring the Chief Justice to preside over the President's impeachment trial, along with the other benefits of having the two branches combined—the Chief Justice from the Judiciary and the Senate—for the impeachment trial of the President, reflected in Federalist 66, one of the reasons the Chief Justice was chosen for that task.

Mr. Trump now faces a situation in which the Presiding Officer will serve as both judge, with all the powers that the rules endow him with, and juror with a vote. And beyond that, the Presiding Officer, although enjoying a lifelong, honorable reputation, of course,

has been Mr. Trump's vocal and adamant opponent throughout the Trump administration. And, in fact, in the very matter on trial, the Presiding Officer, respectfully, already has publicly announced his fixed view before hearing any argument or evidence that Mr. Trump must be convicted on the Article of Impeachment before the Senate and, indeed, that Members in both parties have an obligation to vote to convict, as well.

Nowhere in this great country would any American—and, certainly, not this honorable Presiding Officer—consider this scenario to be consistent with any stretch of the American concept of due process and a fair trial and certainly not even the appearance of either.

By no stretch of the imagination could any fairminded American be confident that a trial so conducted would or could be the fair trial promised by the leader.

While most procedural aspects of a Senate impeachment trial may be nonjusticiable political questions, this is not an excuse to ignore what law and precedent clearly require. The present situation either presents a violation of the constitutional text found in the articles mentioned above that require the Chief Justice to preside when the President is on trial or it is a clear denial of due process and fair trial rights for Private Citizen Trump to face an impeachment trial so conducted by the Senate.

The impeachment Article should be treated as a nullity and dismissed based on the total lack of due process in the House. It should be dismissed because of Speaker PELOSI's intentional abandonment or waiver of jurisdiction, if the House ever acquired jurisdiction, and the Article should be dismissed because the trial in the Senate of a private citizen is not permitted, let alone with the conflicts just described that attend this proceeding.

Finally, on the subject of due process in this matter, I say the following: This is our Nation's sacred Constitution. It has served us well since it was written, and it has been amended only through a careful process. It is a document unique in all the world. It is a foundational part of what makes the United States a beacon of light among the other nations of the world. It not only has room for a tremendous variety of perspectives on the philosophical and political direction our country should take, it encourages the advocacy of our differences.

But we have long held that fundamental to its health and well-being and, therefore, to ours as a nation, is its insistence on due process for every citizen. The emphasis on the right to due process long ago was recognized as its life breath, a primary guarantor of its eternal viability as our political, civic, and national guiding light.

We all well know that there are many systems in other countries around the world that do not offer any semblance of the safeguards our constitutional concept of due process provides. Some of them have chosen their own handbooks, which direct their citizens' conduct on penalty of death. This is one of them.

There can be no room for due process in such a system as this or the system would be lost. Snap decisions are required in a system like this to maintain power for one political philosophy over all others in those kinds of systems.

But we as a nation have rejected those systems and the kind of snap decisions they demand to maintain control for one party, for one point of view, and for an imposed way of life. We choose to live freely under a constitution that guarantees our freedom.

Other countries fear those freedoms and seek to ensure adherence to a party line in all civic, political, spiritual, and other affairs and to ensure that the party line is toed. And those systems have no place for due process. Snap decisions that remove political figures are the norm. Maintaining their systems depend on it. That is not our way in America and never must be.

We choose in America to live by our Constitution and its amendments and the due process this document demands for every citizen among us. By putting your imprimatur on the snap judgment made in this matter, to impeach the President of the United States without any semblance of due process at every step along the way, puts the Office of the President of the United States at risk every single day. It is far too dangerous a proposition to countenance, and you must resoundingly reject it by sending the message now that this proceeding, lacking due process from start to finish, must end now with your vote that you lack jurisdiction to conduct an impeachment trial for a former President, whose term in office has expired and who is now a private citizen.

So one reason you must send this message here and now is because of the complete lack of due process that brought this Article of Impeachment before this body. God forbid we should ever lower our vigilance to the principle of due process.

An impeachment trial of Private Citizen Trump held before the Senate would be nothing more nor less than the trial of a private citizen by a legislative body. An impeachment trial by the Senate of a private citizen violates article I, section 9 of the United States Constitution, which provides that ''[n]o bill of attainder . . . shall be passed.''

The bill of attainder, as this clause is known, prohibits Congress from enacting ''a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial.''

A bill of attainder is a legislative act which inflicts punishment without a judicial trial—

A judicial trial—

The distinguishing characteristic of a bill of attainder is the substitution of a legislative determination of guilt and legislative imposition of punishment for judicial finding and sentence.

[The Bill of Attainder Clause], and the separation of powers doctrine generally, reflect the Framers' concern that trial by a legislature lacks the safeguards necessary to prevent the abuse of power.

As the Supreme Court explained in United States v. Brown, ''[t]he best available evidence, the writings of the architects of our constitutional system, indicate that the Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply—trial by legislature.'' The bill of attainder ''reflected the Framers' belief that the Legislative Branch is not so well suited as politically independent judges and juries.''

When the Senate undertakes an impeachment trial of a private citizen, as it clearly understands to be the case here, supported by the fact that the Chief Justice is not presiding and Mr. Trump is not ''the President,'' it is acting as a judge and jury rather than a legislative body. And this is exactly the type of situation that the bill of attainder constitutional prohibition was meant to preclude.

It is clear that disqualification from holding future office, the punishment the House managers intend to seek here, is a kind of punishment, like banishment and others, that is subject to the constitutional prohibition against the passage of bills of attainder, under which designation bills of pains and penalties are included. The cases include Cummings, Ex parte Garland, and this Brown case. The Supreme Court three times has struck down provisions that precluded support of the South or support of communism from holding certain jobs as being in violation of this prohibition. Thus the impeachment of a private citizen in order to disqualify them from holding office is an unconstitutional act constituting a bill of attainder.

Moreover, this is the exact type of situation in which the fear would be great that some Members of the Senate might be susceptible to acting in the haste the House acted in when it rushed through the Article of Impeachment in less than 48 hours, acting hastily simply to appease the popular clamor of their political base—the very kind of concern expressed by Mr. Hamilton in Federalist 65.

Moreover, as Chief Justice Marshall warned in Fletcher v. Peck, ''it is not to be disguised that the framers of the constitution viewed, with some apprehension, the violent acts that might grow out of the feelings of the moment; and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property

from the effects of those sudden and strong passions to which men and women are exposed. The restrictions on the legislative power of the states are obviously founded in this sentiment; and the constitution of the United States contains what may be deemed a bill of rights for the people of each state. No state shall pass any bill of attainder. In this form the power of the legislature over the lives and fortunes of individuals is expressly restrained.''

So now let's turn to the text of the Constitution.

Turning to the text of the Constitution is, for many, of course, the most appropriate and the most important starting place to trying to answer a Constitution-based question. There are several passages of the United States Constitution that relate to the Federal impeachment process. Let's turn to a reading of the text now.

A true textual analysis, as the name implies, always begins with the words of the text and only resorts to legislative history or history itself if the meaning of the text is not plain. As the Supreme Court has emphasized, ''[s]tatutory interpretation, as we always say, begins with the text.'' ''In interpreting this text, we are guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.'' And ''[w]e must enforce plain and unambiguous statutory language according to its terms.''

If a President is impeached, the unambiguous text of the Constitution commands that the Chief Justice of the United States shall preside, as we discussed earlier. Again, the Chief Justice is disinterested and nonpartisan. His presence brings dignity and solemnity to such a proceeding. In this case, the Chief Justice clearly is not presiding, and the conflict of interest wouldn't necessarily just arise as a substitute for the Vice President. It is the appearance of a conflict of interest and the—and a conflict of interest and the prejudgment that we have discussed. In this case, as we say, the Chief Justice clearly is not presiding. The Senate President pro tempore is presiding. It appears that in the leader's view, undoubtedly joined by other Senators, this is permitted by the Constitution because the subject of the trial is a non-President. As such, it is conceded, as it must be, that for constitutional purposes of the trial, the accused is a non-President. The role of the Senate, though, is to decide whether or not to convict and thereby trigger the application of article II, section 4:

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

From which office shall a non-President be removed if convicted? A non-President doesn't hold an office, therefore cannot be impeached under this clause, which provides for the removal from office of the person under the impeachment attack.

The House managers contend that the fact that the Chief Justice is not presiding does not impact the constitutional validity of this trial. Notably, they devote only a single paragraph of their trial memorandum to a development so significant that it prompted multiple Senators to declare the entire proceeding suspect, with one going so far as to say it ''crystalized'' the unconstitutional nature of this proceeding. And the single paragraph that the House managers do devote to the issue is entirely unpersuasive on the merits.

The House managers' position ignores traditional statutory canons of interpretation. It is well established that ''[a] term appearing in several places in a statutory text is generally read the same way each time it appears.'' This presumption is ''at its most vigorous when a term is repeated within a given sentence.'' Additionally, the Court in at least one instance has referred to a broader ''established canon'' that similar language contained within the same section of a statute be accorded a consistent meaning.

I know this is a lot to listen to at once—a lot of words, but words are what make our Constitution, and the interpretation of that Constitution, as you well know, is a product of words.

If the text, ''the President of the United States'' in the constitutional provision requiring the Chief Justice to preside can refer only to the sitting President, and not to former presidents, then the textual identification of ''[t]he President'' contained in article II, section 4, which makes the President amenable to impeachment in the first place, also excludes anyone other than the sitting President. In full, that sentence provides that ''[t]he President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.'' This is the substantive phrase of the Constitution vesting the conviction and removal power in the Senate, and it contains a clear jurisdictional limitation. The House managers do understand what the word ''President'' means for the purposes of other constitutional provisions, and so they should understand this limitation as well. Only a sitting President is referred to as the President of the United States in the Constitution. And only a sitting President may be impeached, convicted, and removed upon a trial in the Senate. ''The President'' in article II, section 4 and ''the President'' in article I, section 3 identify the same person. If the accused is not ''the President'' in one, he is not ''the President'' in the other. No sound textual interpretation—I emphasize ''textual interpretation''—principle permits a contrary reading. In the words of the Supreme Court, it is a ''normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning.'' Unwittingly or unwillingly as it may be, Senate Democrats, in their announcement that Senator LEAHY will preside, have already taken their position on this matter. The accused is not the President. The text of the United States Constitution therefore does not vest the Senate with the power to try him and remove him—a factual nullity; he can't be removed—or disqualify him—a legal nullity—as if he was the President.

The House managers contend that the Senate has jurisdiction over this impeachment because despite the fact that he is no longer the President, the conduct that the former President is charged occurred while he was still in office. That argument does not in any way alter the Constitution's clear textual identification of ''the President.''

The House managers justify their strained argument by noting that ''[t]he Constitution's impeachment provisions are properly understood by reference to this overarching constitutional plan.'' But with that very justification in mind, their argument fails once again. In an impeachment, it is the accused's office that permits the impeachment. Ceasing to hold that office terminates the possibility and the purpose of impeachment.

Private persons may not be impeached in America, and so they ask you to look back at the British model. The Constitution, as I see it, does not make private citizens subject to impeachment. The Founders rejected the British model that allowed Parliament to impeach anyone, except for the King, and so they limited impeachment to certain public officials, including Presidents in our country.

Next on the textual front, the primary and, in fact, only required remedy of a conviction is removal.

Article II, Section 4, states a straightforward rule: whenever a civil officer is impeached and convicted for high crimes and misdemeanors, they shall be removed.

It is undeniable that in this instance removal is moot in every possible regard. Removal is a factual and legal impossibility. Yet the Article of Impeachment itself—read it in the wherefore clause; it calls for removal. This is one reason why impeachment proceedings are different from ordinary trials and why the Constitution pointedly separates the two. In ordinary criminal jurisprudence, a person convicted of public crimes committed while he or she was in office may still be punished even though they no longer hold that office. Not so with impeachment. In a Senate impeachment trial, conviction means and requires removal, and conviction without a removal is no conviction at all. Only upon a valid conviction and its requisite, enforceable removal may the additional judgment of disqualification plausibly be entertained.

Presidents are impeachable because Presidents are removable. Former presidents are not because they cannot be removed. The Constitution is clear. Trial by the Senate sitting as a Court of Impeachment is reserved for the President of the United States, not a private citizen who used to be President of the United States. Just as clear, the judgment required upon conviction is removal from office, and a former President can no longer be removed from office.

The purpose, text and structure of the Constitution's impeachment Clauses confirm this intuitive and common-sense understanding.

So wrote Judge Michael Luttig, former judge in the United States Court of Appeals for the Fourth Circuit.

And, indeed, there are State court decisions that analyze this very same language and conclude that impeachment can only be entertained against an existing officer subject to removal, in State v. Hill, from Nebraska, and Smith v. Brantley, a 1981 decision from the Florida supreme court.

This is the first time that the United States Senate has ever been asked to apply the Constitution's textual identification of ''the President'' in the impeachment provisions to anyone other than the sitting President of the United States. And, of course, most significantly from a textual approach, the term specifically used is ''the President'' not ''a President.'' And there can only be one ''the President''—the incumbent—at a time. Judge Luttig relies on this textual reading for his firm conclusion that a former President cannot be impeached or convicted. Consider the alternative, as Robert Delahunty and John Yoo have: If Mr. Trump can be convicted as ''the President,'' the language the Constitution uses, then why is he still not ''the President'' under the Commander in Chief clause, for example? They are joined by Professor Alan Dershowitz and University of Chicago Professor Richard Epstein in their focus and conclusion. They point out the dangers of an approach that deviates from a focus on the text. If there is no temporal limitation—that is what they suggested to you—remember, you can go back in time and impeach any civil officer who ever served for anything that occurred during the course of their service, time immemorial. With the House managers' position, the concept necessarily includes all executive officers and judges, including, perhaps, the impeachment now of Jimmy Carter for his handling of the Iran hostage scandal, as one example. That flows logically from their argument without any hesitation. Further, they ask, why not then countenance the broad reading of other terms? When I say ''they ask,'' I mean the experts who opined on this.

Why not then countenance a broad reading of other terms, such that terms like ''high crimes and misdemeanors,'' however broadly construed, are not intended to be exclusively the only kind of conduct intended as impeachable. They conclude—these experts—by writing that a nontextual impeachment power would undermine the Constitution's effort to make the President independent of Congress, a central goal of the Founding Fathers. The authors convincingly argue for textual analysis over nontextual reliance on a presentation of history, suggesting that if one's presentation of history were to control, it would expressly permit conduct contrary to the express language, leading to clearly unintended results.

I must tell you that I have spoken to Judge Ken Starr at some length over this past week about this. This textual approach is something he, too, feels very strongly about. I also happen to be friendly with Chuck Cooper, by the way. He is a fine person. He also happens to be a person who has a strong animus against President Trump. But Chuck Cooper is a fine lawyer and a fine person, as I am sure our friends from Alabama know.

As we already have discussed, the risks to the institution of the Presidency and to any and all past officers is limited only by one's imagination. The weakness of the House managers' case is further demonstrated by their reliance on the unproven assertion that if President Trump is not impeached, future officers who are impeached will evade removal by resigning either before impeachment or Senate trial.

For example, they contend, citing various law professors, that ''[any official] who betrayed the public trust and was impeached could avoid accountability simply by resigning one minute before the Senate's final conviction vote.''

This argument is a complete canard. The Constitution expressly provides in article I, section 3, clause 7 that a convicted party, following impeachment, ''shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law'' [after removal]. Clearly, a former civil officer who is not impeached is subject to the same.

We have a judicial process in this country. We have an investigative process in this country to which no former officeholder is immune. That is the process that should be running its course. That is the process the bill of attainder tells us is the appropriate one for investigation, prosecution, and punishment, with all of the attributes of that branch. We are missing it by two articles here that the article III courts provide. They provide that kind of appropriate adjudication. That is accountability.

There are appropriate mechanisms in place for full and meaningful accountability not through the legislature, which does not and cannot offer the safeguards of the judicial system, which every private citizen is constitutionally entitled to.

But more to the point here. Their argument does nothing to empower a different reading of the Constitution's plain text; that is, one that reads ''the President'' in one provision to include former Presidents but reads ''the President'' in the other provision to mean only the sitting President.

Second, this red herring of an argument also fails because the former President did not resign, even amid calls by his opponents that he do so. As a result, the Senate need not decide whether it possesses the power or jurisdiction to try and convict the former President who resigned or how it might best proceed to effectuate justice in such a case. That is not this case.

The plain meaning of the Constitution's text, faithfully and consistently applied, should govern whether the United States Senate is vested by the Constitution with the power to convict a private citizen of the United States. It is not.

The House managers posit in their trial memorandum that despite the fact that the primary and only necessary remedy upon conviction, removal, is a legal nullity, this late impeachment trial is appropriate because the other, secondary, optional remedy that the Senate is not even required to consider and which only takes effect upon a later, separate vote—disqualification from future office—can still theoretically be applied to a former President.

The managers contend that ''Article II, Section 4 states a straightforward rule: whenever a civil officer is impeached and convicted for high crimes and misdemeanors, they 'shall be removed.' Absolutely nothing about this rule implies, let alone requires, that former officials—who can still face disqualification—are immune from impeachment and conviction.''

That is what they say. I told you that today. In other words, so the argument goes, a President no longer holding office does not moot the entirety of remedies afforded by impeachment. This, however, also flies in the face of both the plain meaning of the text and the canons of statutory interpretation.

First of all, the managers, once again, simply choose to ignore the text. Even in the passage that the managers cite, the word ''shall'' does, to put it mildly, imply a requirement, an imperative such that an impeachment in which removal would be impossible is invalid. '' 'Shall' means shall. The Supreme Court . . . ha[s] made clear that when a statute uses the word 'shall,' Congress has imposed a mandatory duty upon the subject of the command,'' as in shall remove. Indeed, ''the mandatory 'shall' . . . normally creates an obligation impervious to judicial discretion.''

And ''[w]herever the Constitution commands, discretion terminates.'' ''Shall'' means mandatory, and ''shall be removed'' is not possible for a former officer no longer in office. Impeachment cannot apply.

Now, here is the ''and'' argument. You may have heard about it or read

about it if you follow such things. This is another one Judge Starr is big on, and many of the textual scholars have written about it.

The managers critically ignore this language in article I, section 3, clause 7, which states that ''[j]udgment in Cases of Impeachment 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.''

Ordinarily, as in everyday English, use of the conjunctive ''and'' in a list means that all of the listed requirements must be satisfied, while use of the disjunctive ''or'' means that only one of the list of requirements needs to be satisfied.

Judge Kenneth Starr subscribes strongly to this argument and understands the comma to provide further support for the reading.

As Judge Michael Luttig, again, recently argued, ''The Constitution links the impeachment remedy of disqualification from future office with the remedy of removal from the office that person currently occupies; the former remedy does not apply in situations where the latter is unavailable.'' Conviction and removal are inextricably entwined. If removal no longer is possible, neither is an impeachment conviction.

Judge Luttig's view is consistent with that of Justice Joseph Story in his famous ''Commentaries on the Constitution of the United States,'' wherein Justice Story analyzed ''that impeachment is inapplicable to officials who have left their position because removal—a primary remedy that the impeachment process authorizes—is no longer necessary.''

Justice Story noted that he is not coming to a firm posit on this. This is his belief, and this is his thought process.

There is also much force in the remark, that an impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender, as to secure the state against gross official misdemeanors. It touches neither his person, nor his property; but simply divests him of his political capacity.

Professor Philip Bobbitt. Now, this is—I have to say this is insulting. We heard earlier today we don't cite any scholars. Professor Philip Bobbitt is a distinguished Webster professor at Columbia University who, along with Professor Charles Black, wrote the handbook on impeachment used for many, many years. He is a constitutional expert on impeachment. He has written that ''there is little discussion in the historical record surrounding the precise question of whether a person no longer a civil officer can be impeached—and in light of the clarity of the text, this is hardly surprising,'' Professor Bobbitt wrote.

Professor Bobbitt, by the way, who has a rich family history in the Democratic Party—LBJ—also asserted the following, as recently as January 27, 2021, arguing against holding this trial. He said:

There is no authority granted to Congress to impeach and convict persons who are not ''civil officers of the United States.'' It's as simple as that. But simplicity doesn't mean unimportance.

Professor Bobbitt wrote:

Limiting Congress to its specified powers is a crucial element in the central idea of the United States Constitution: putting the state under law.

Professor Bobbitt and former Stanford University Law professor Richard Danzig have remarked that impeachment's principal purpose, as the 66th of the Federalist Papers makes clear, is to check the ''encroachments of the executive.'' Trial by jury, rules of evidence, and other safeguards are put aside, they write, because of the need to protect the public from further abuse of office.

Similarly, yesterday, Professor Eugene Kontorovich wrote: The Constitution provides that the impeachment process is to be used to remove ''all Civil officers of the United States''—that is, people holding a government position. Yet in the case of Mr. Trump, the House is reading the Constitution as if it said the process applies to ''all Civil officers of the United States, and people who aren't civil officers, but once were.'' Exactly what it does not say.

We have been told by the House managers about missed citations in our brief. I would like to draw your attention to page 37. This is a substantive misrepresentation to you, I would respectfully suggest, and it reflects to me a very different view of democracy—a fear of democracy.

They wrote on page 37 of their brief that the Framers—I am paraphrasing the first part.

The Framers themselves would not have hesitated to convict on these facts. Their worldview was shaped by a study of classical history, as well as a lived experience of resistance and revolution. They were well aware of the danger posed by opportunists who incited mobs to violence for political gain. They drafted the Constitution to avoid such thuggery, which they associated with ''the threat of civil disorder and the early assumption of power by a dictator.''

The citation is ''178, Bernard Bailyn, The Ideological Origins of the American Revolution.'' That is this book.

Professor Bailyn, when he gave his description of the threat of civil disorder and the early assumption of power by a dictator and thuggery, was referring to early colonists' view toward democracy. They feared democracy. That is what they called thuggery, democracy, because it is an elitist's point of view—an elitist's political point of view. We don't fear democracy. We embrace it.

In summing up, let's be crystal clear on where we stand and why we are here. The singular goal of the House managers and House leadership in pursuing the impeachment conviction of Donald J. Trump is to use these proceedings to disenfranchise at least 74 million Americans with whom they viscerally disagree and to ensure that neither they nor any other American ever again can cast a vote for Donald Trump. And if they convince you to go forward, their ultimate hope is that this will be a shot across the bow of any other candidate for public office who would dare to take up a political message that is very different from their own political point of view as to the direction in which they wish to take our country.

Under our Constitution, this body and the impeachment process must never be permitted to be weaponized for partisan political purposes. This Article of Impeachment must be dismissed for lack of jurisdiction based on what we have discussed here today and what is in our brief. The institution of the Presidency is at risk unless a strong message is sent by the dismissal of the Article of Impeachment.

Before we close, I want to leave you with two thoughts. One was expressed by Abraham Lincoln. He comes to mind first because of the way in which our Nation is now divided. We must learn from his times. He had a simple but important message about the paramount importance of doing what is right. Mr. Lincoln said:

Stand with anybody that stands Right. Stand with him when he is right and Part with him when he goes wrong. . . . In both cases you are right. In both cases you oppose the dangerous extremes. In both cases you stand on moral ground and hold the ship level and steady. In both you are national and nothing less than national.

And the second message is from one of Mr. Lincoln's favorite poets who wrote in 1849, at a time fraught with division and at risk for even more. The message from that other time of division—a call for hope and unity to bring strength—has special meaning today.

A poem Longfellow wrote:

Sail forth into the sea, O ship!
Through wind and wave, right onward steer!
The moistened eye, the trembling lip,
Are not the signs of doubt or fear.
Sail forth into the sea of life,
O gentle, loving, trusting wife,
And safe from all adversity
Upon the bosom of that sea
Thy comings and thy goings be!
For gentleness and love and trust
Prevail o'er angry wave and gust;
And in the wreck of noble lives
Something immortal still survives!
Thou, too, sail on, O Ship of State!
Sail on, O Union, strong and great!
Humanity with all its fears,
With all the hopes of future years,
Is hanging breathless on thy fate!
We know what Master laid thy keel,
What Workmen wrought thy ribs of steel,
Who made each mast, and sail, and rope,
What anvils rang, what hammers beat,
In what a forge and what a heat
Were shaped the anchors of thy hope!
Fear not each sudden sound and shock,
'Tis of the wave and not the rock;
'Tis but the flapping of the sail,
And not a rent made by the gale!
In spite of rock and tempest's roar,
In spite of false lights on the shore,
Sail on, nor fear to breast the sea!
Our hearts, our hopes, are all with thee,
Our hearts, our hopes, our prayers, our tears,
Our faith triumphant o'er our fears,
Are all with thee,—are all with thee!

Mr. Manager RASKIN. Mr. President, it has been a long day. We thank you, and we thank all the Senators for their careful attention to the legal arguments and your courtesy to the managers and to the lawyers here.

This has been the most bipartisan impeachment in American history, and we hope it will continue to be so in the days ahead. And nothing could be more bipartisan than the desire to recess.

So the only issue before the Senate today, of course, is whether Donald Trump is subject to the Court of Impeachment that the Senate has convened. We see no need to make any further argument that this body has the power to convict and to disqualify President Trump for his breathtaking constitutional crime of inciting a violent insurrection against our government.

Tomorrow, we will address the amazing array of issues suggested by the thoughtful presentations by our colleagues, by including the First Amendment, due process, partisanship under our Constitution, the bill of attainder clause, and many, many more.

But, in the meantime, we waive all further arguments. We waive our 33 minutes of rebuttal, and we give those 33 minutes, gratefully, back to the Senate of the United States.

(Chorus of Hear! Hear!)

The PRESIDENT pro tempore. Is all time yielded back?

All time has been yielded back.

The question is whether Donald John Trump is subject to the jurisdiction of a Court of Impeachment for acts committed while President of the United States, notwithstanding the expiration of his term in that office?

Mr. SCHUMER. I ask for the yeas and nays, Mr. President.

The PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

[Rollcall Vote No. 57]

YEAS—56

Baldwin	Hickenlooper	Romney
Bennet	Hirono	Rosen
Blumenthal	Kaine	Sanders
Booker	Kelly	Sasse
Brown	King	Schatz
Cantwell	Klobuchar	Schumer
Cardin	Leahy	Shaheen
Carper	Luján	Sinema
Casey	Manchin	Smith
Cassidy	Markey	Stabenow
Collins	Menendez	Tester
Coons	Merkley	Toomey
Cortez Masto	Murkowski	Van Hollen
Duckworth	Murphy	Warner
Durbin	Murray	Warnock
Feinstein	Ossoff	Warren
Gillibrand	Padilla	Whitehouse
Hassan	Peters	Wyden
Heinrich	Reed	

NAYS—44

Barrasso	Cotton	Grassley
Blackburn	Cramer	Hagerty
Blunt	Crapo	Hawley
Boozman	Cruz	Hoeven
Braun	Daines	Hyde-Smith
Burr	Ernst	Inhofe
Capito	Fischer	Johnson
Cornyn	Graham	Kennedy
Lankford	Portman	Sullivan
Lee	Risch	Thune
Lummis	Rounds	Tillis
Marshall	Rubio	Tuberville
McConnell	Scott (FL)	Wicker
Moran	Scott (SC)	Young
Paul	Shelby	

The PRESIDENT pro tempore. On this vote, the yeas are 56, the nays are 44.

Pursuant to S. Res. 47, the Senate having voted in the affirmative on the foregoing question, the Senate shall proceed with the trial as provided under the provisions of that resolution.

MORNING BUSINESS

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–336. A communication from the Director of Legislative Affairs, Federal Deposit Insurance Corporation, transmitting, pursuant to law, the report of a rule entitled ''Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions'' (RIN3064–AE94) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Banking, Housing, and Urban Affairs.

EC–337. A communication from the Legal Counsel, Equal Employment Opportunity Commission, transmitting, pursuant to law, the report of a rule entitled ''Compliance Manual on Religious Discrimination'' (RIN3046–ZA01) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Health, Education, Labor, and Pensions.

EC–338. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments; Amendment 3931'' ((RIN2120–AA65) (Docket No. 31341)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–339. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments; Amendment 3932'' ((RIN2120–AA65) (Docket No. 31342)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–340. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments; Amendment 3928'' ((RIN2120–AA65) (Docket No. 31338)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–341. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments; Amendment 3927'' ((RIN2120–AA65) (Docket No. 31337)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–342. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments; Amendment 3929'' ((RIN2120–AA65) (Docket No. 31339)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–343. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments; Amendment 3930'' ((RIN2120–AA65) (Docket No. 31340)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–344. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Charlevoix, Michigan'' ((RIN2120–AA66) (Docket No. FAA–2020–0803)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–345. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class D and Class E Airspace; Airspace; Toccoa, Georgia'' ((RIN2120–AA66) (Docket No. FAA–2020–0645)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–346. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class D and Class E Airspace; Truckee, California'' ((RIN2120–AA66) (Docket No. FAA–2020–0768)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–347. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class D and Class E Airspace; Fallon, Nevada'' ((RIN2120–AA66) (Docket No. FAA–2020–0741)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–348. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Hartford, Kentucky'' ((RIN2120–AA66) (Docket No. FAA–

2020–0730)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–349. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Montezuma, Georgia'' ((RIN2120–AA66) (Docket No. FAA–2020–0736)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–350. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class D and E Airspace; Waterloo, Iowa'' ((RIN2120–AA66) (Docket No. FAA–2020–0708)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–351. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revocation of Class E Airspace; Delavan, Wisconsin'' ((RIN2120–AA66) (Docket No. FAA–2020–0734)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–352. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Dassault Aviation Airplanes; Amendment'' ((RIN2120–AA66) (Docket No. FAA–2020–0803)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–353. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Dassault Aviation Airplanes; Amendment 39–21326'' ((RIN2120–AA64) (Docket No. FAA–2020–0582)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–354. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Textron Aviation, Inc. (Type Certificate Previously Held by Cessna Aircraft Company) Airplanes; Amendment 39–21336'' ((RIN2120–AA64) (Docket No. FAA–2020–0493)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–355. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Piper Aircraft, Inc. Airplanes; Amendment 39–21335'' ((RIN2120–AA64) (Docket No. FAA–2017–1059)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–356. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes; Amendment 39–21331'' ((RIN2120–AA64) (Docket No. FAA–2020–0753)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–357. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; ATR–GIE Avions de Transport Regional; Amendment 39–21330'' ((RIN2120–AA64) (Docket No. FAA–2020–1024)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–358. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Helicopters; Amendment 39–21322'' ((RIN2120–AA64) (Docket No. FAA–2020–0652)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–359. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Helicopters; Amendment 39–21325'' ((RIN2120–AA64) (Docket No. FAA–2020–0685)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–360. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Leonardo S.p.a. Helicopters; Amendment 39–21323'' ((RIN2120–AA64) (Docket No. FAA–2020–0987)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–361. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Helicopters; Amendment 39–21318'' ((RIN2120–AA64) (Docket No. FAA–2020–0987)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–362. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Helicopters; Amendment 39–21321'' ((RIN2120–AA64) (Docket No. FAA–2020–0513)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–363. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; The Boeing Company Airplanes; Amendment 39–21332'' ((RIN2120–AA64) (Docket No. FAA–2020–0686)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–364. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled '' Airworthiness Directives; Airbus SAS Airplanes; Amendment 39–21328'' ((RIN2120–AA64) (Docket No. FAA–2020–1019)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–365. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus SAS Airplanes; Amendment 39–21327'' ((RIN2120–AA64) (Docket No. FAA–2020–0788)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–366. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Helicopters; Amendment 39–21319'' ((RIN2120–AA64) (Docket No. FAA–2018–0893)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–367. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Textron Aviation Airplanes; Amendment 39–21295'' ((RIN2120–AA64) (Docket No. FAA–2020–0472)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–368. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Dassault Aviation Airplanes; Amendment 39–21293'' ((RIN2120–AA64) (Docket No. FAA–2020–0677)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–369. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes; Amendment 39–21301'' ((RIN2120–AA64) (Docket No. FAA–2020–0746)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–370. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes; Amendment 39–21296'' ((RIN2120–AA64) (Docket No. FAA–2020–0745)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–371. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Dassault Aviation Airplanes; Amendment 39–21292'' ((RIN2120–AA64) (Docket No. FAA–2020–0678)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–372. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to

law, the report of a rule entitled ''Airworthiness Directives; Airbus Helicopters; Amendment 39–21297'' ((RIN2120–AA64) (Docket No. FAA–2020–0585)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–373. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Helicopters; Amendment 39–21288'' ((RIN2120–AA64) (Docket No. FAA–2020–0618)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–374. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus SAS Airplanes; Amendment 39–21291'' ((RIN2120–AA64) (Docket No. FAA–2020–0583)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–375. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Helicopters Deutschland GmbH; Amendment 39–21300'' ((RIN2120–AA64) (Docket No. FAA–2020–0919)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–376. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bell Helicopter Inc. (Type Certificate Previously Held by Bell Helicopter Textron Inc. Helicopters); Amendment 39–21303'' ((RIN2120–AA64) (Docket No. FAA–2020–0921)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–377. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes; Amendment 39–21285'' ((RIN2120–AA64) (Docket No. FAA–2020–0744)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–378. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Polskie Zaklady Lotnicze Sp. z o.o Airplanes; Amendment 39–21308'' ((RIN2120–AA64) (Docket No. FAA–2020–0473)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–379. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus SAS Airplanes; Amendment 39–21312'' ((RIN2120–AA64) (Docket No. FAA–2020–0590)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–380. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Austro Engines GmbH Engines; Amendment 39–21310'' ((RIN2120–AA64) (Docket No. FAA–2019–0664)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–381. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus SAS Airplanes; Amendment 39–21304'' ((RIN2120–AA64) (Docket No. FAA–2020–0968)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–382. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Helicopters; Amendment 39–21309'' ((RIN2120–AA64) (Docket No. FAA–2020–0462)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–383. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; GE Airbus SAS Airplanes; Amendment 39–21302'' ((RIN2120–AA64) (Docket No. FAA–2020–0451)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–384. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; GE Aviation Czech s.r.o. (Type Certificate Previously Held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Turboprop Engines; Amendment 39–21317'' ((RIN2120–AA64) (Docket No. FAA–2020–0979)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–385. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes; Amendment 39–21320'' ((RIN2120–AA64) (Docket No. FAA–2020–0898)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–386. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes; Amendment 39–21313'' ((RIN2120–AA64) (Docket No. FAA–2020–0719)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–387. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Helicopters; Amendment 39–21264'' ((RIN2120–AA64) (Docket No. FAA–2019–1019)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–388. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; The Boeing Company Airplanes; Amendment 39–21311'' ((RIN2120–AA64) (Docket No. FAA–2020–0779)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–389. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus SAS Airplanes; Amendment 39–21307'' ((RIN2120–AA64) (Docket No. FAA–2020–0464)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–390. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Helicopters; Amendment 39–21316'' ((RIN2120–AA64) (Docket No. FAA–2020–0378)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–391. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Rolls-Royce Corporation (Type Certificate Previously Held by Allison Engines Company) Turboprop Engines; Amendment 39–21314'' ((RIN2120–AA64) (Docket No. FAA–2020–0687)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–392. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus SAS Airplanes; Amendment 39–21305'' ((RIN2120–AA64) (Docket No. FAA–2020–0970)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–393. A communication from the Yeoman Chief Petty Officer, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Lower Mississippi River, Natchez, Mississippi'' ((RIN1625–AA08) (Docket No. USCG–2020–0641)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–394. A communication from the Yeoman Chief Petty Officer, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Neuse River, New Bern, North Carolina'' ((RIN1625–AA00) (Docket No. USCG–2020–0645)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–395. A communication from the Yeoman Chief Petty Officer, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Security Zone; Fleet Week Demonstration Area, San Diego Bay, San Diego, California'' ((RIN1625–AA08) (Docket No. USCG–2020–0655)) received in the Office of the President of the Senate on February 2, 2021;

to the Committee on Commerce, Science, and Transportation.

EC–396. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Prohibition Against Certain Flights in the Baghdad Flight Information Region'' ((RIN2120–AL56) (Docket No. FAA–2018–0927)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–397. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Extension of the Prohibition Against Certain Flights in the Pyongyang Flight Information Region'' ((RIN2120–AL57) (Docket No. FAA–2018–0838)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–398. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of the Prohibition Against Certain Flights in Specified Areas of the Simferopol and Dnipropetrovsk Flight Information Regions (FIRs) (UKFV and UKDV)'' ((RIN2120–AL58) (Docket No. FAA–2014–0225)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–399. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of V–5 and V–178, and Revocation of V–513 in the Vicinity of New Hope, Kentucky'' ((RIN2120–AA66) (Docket No. FAA–2020–0497)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–400. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Second Limited Extension of Relief for Certain Persons and Operations During the Coronavirus Disease 2019'' ((RIN2120–AL66) (Docket No. FAA–2020–0446)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–401. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Removal of the Special Rule for Model Aircraft'' ((RIN2120–AL43) (Docket No. FAA–2020–1067)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–402. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Limited Extension of Relief for Certain Persons and Operations During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency'' ((RIN2120–AL64) (Docket No. FAA–2020–0446)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–403. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Extension of the Prohibition Against Certain Flights in the Damascus Flight Information Region (FIR) (OSTT)'' ((RIN2120–AL55) (Docket No. FAA–2017–0768)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–404. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Prohibition Against Certain Flights in the Tehran Flight Information Region (FIR) (OIIX)'' ((RIN2120–AL49) (Docket No. FAA–2020–0874)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–405. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Special Flight Authorization for Supersonic Aircraft'' ((RIN2120–AL30) (Docket No. FAA–2019–0451)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–406. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Norway, Maine'' ((RIN2120–AA66) (Docket No. FAA–2020–0669)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–407. A communication from the Yeoman Chief Petty Officer, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Special Local Regulation; Fort Lauderdale Air Show; Atlantic Ocean, Fort Lauderdale, Florida'' ((RIN1625–AA08) (Docket No. USCG–2020–0128)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EC–408. A communication from the Management and Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Remote Identification of Unmanned Aircraft Systems'' ((RIN2120–AL31) (Docket No . FAA–2019–1100)) received in the Office of the President of the Senate on February 2, 2021; to the Committee on Commerce, Science, and Transportation.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of a nomination was submitted:

By Mr. CARPER for the Committee on Environment and Public Works.

*Michael Stanley Regan, of North Carolina, to be Administrator of the Environmental Protection Agency.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SCHUMER (for himself and Mr. MCCONNELL):

S. Res. 47. A resolution to provide for related procedures concerning the article of impeachment against Donald John Trump, former President of the United States; considered and agreed to.

ADDITIONAL COSPONSORS

S. RES. 34

At the request of Mr. MENENDEZ, the names of the Senator from Connecticut (Mr. MURPHY), the Senator from Rhode Island (Mr. WHITEHOUSE), the Senator from Illinois (Mr. DURBIN), the Senator from New Hampshire (Mrs. SHAHEEN), the Senator from Maryland (Mr. VAN HOLLEN), the Senator from Delaware (Mr. COONS), the Senator from Delaware (Mr. CARPER), the Senator from New Hampshire (Ms. HASSAN), the Senator from Connecticut (Mr. BLUMENTHAL), the Senator from New York (Mr. SCHUMER), the Senator from Florida (Mr. RUBIO) and the Senator from Colorado (Mr. BENNET) were added as cosponsors of S. Res. 34, a resolution recognizing the 200th anniversary of the independence of Greece and celebrating democracy in Greece and the United States.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 47—TO PROVIDE FOR RELATED PROCEDURES CONCERNING THE ARTICLE OF IMPEACHMENT AGAINST DONALD JOHN TRUMP, FORMER PRESIDENT OF THE UNITED STATES

Mr. SCHUMER (for himself and Mr. MCCONNELL) submitted the following resolution; which was considered and agreed to:

S. RES. 47

Resolved,

SECTION 1. The House of Representatives shall file its record with the Secretary of the Senate, which will consist of those publicly available materials that have been submitted to or produced by the House Judiciary Committee, including transcripts of public hearings or mark-ups and any materials printed by the House of Representatives or the House Judiciary Committee pursuant to House Resolution 24 or House Resolution 40. All materials filed pursuant to this section shall be printed and made available to all parties.

SEC. 2. When, pursuant to Senate Resolution 16, the Senate convenes as a Court of Impeachment on Tuesday, February 9, 2021, there shall immediately be 4 hours of argument by the parties, equally divided, on the question whether Donald John Trump is subject to the jurisdiction of a court of impeachment for acts committed while President of the United States, notwithstanding the expiration of his term in that office. Each side may determine the number of persons to present argument on the foregoing question.

The Senate, without any intervening action, motion, or amendment, except for deliberation by the Senate, if so ordered under the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials (referred to in this resolution as the ''Rules of Impeachment''), shall then decide the foregoing question by the yeas and nays. If a majority of Senators voting, a quorum being present, shall vote in the negative, the Senate shall order that the article of impeachment be immediately dismissed and the Secretary shall notify the House of Representatives of the order of dismissal. If a majority of Senators voting, a quorum being present, shall vote in the affirmative, the Senate shall proceed as provided in this resolution.

SEC. 3. The former President and the House of Representatives shall have until 9:00 a.m. on Wednesday, February 10, 2021, to file any motions permitted under the Rules of Impeachment with the exception of motions to subpoena witnesses or documents or any other evidentiary motions. Responses to any such motions shall be filed no later than 11:00 a.m. on Wednesday, February 10, 2021. All materials filed pursuant to this section shall be filed with the Secretary and be printed and made available to all parties. Arguments on such motions shall begin at 12:00 p.m. on Wednesday, February 10, 2021, and each side may determine the number of persons to make its presentation, following which the Senate shall deliberate, if so ordered under the Rules of Impeachment, and vote on any such motions.

SEC. 4. Following the disposition of such motions, or if no motions are made, then the House of Representatives shall make its presentation in support of the article of impeachment for a period of time not to exceed 16 hours, over up to 2 session days. If no motions are made under section 3, the House of Representatives shall begin its presentation at 12:00 p.m. on Wednesday, February 10, 2021. Following the House of Representatives' presentation, the former President shall make his presentation for a period not to exceed 16 hours, over up to 2 session days. Each side may determine the number of persons to make its presentation. Each side shall have the right to decide for how many hours it shall make its presentation on each of the up to 2 session days allotted to it, except that neither side shall make its presentation for more than 8 hours on any single session day. The parties' presentations need not be limited to argument from the record described in section 1.

SEC. 5. Upon the conclusion of the period allotted for presentations by the parties as provided under section 4, Senators may question the parties for a period of time not to exceed 4 hours over not more than 1 session day.

SEC. 6. Upon conclusion of the period allotted for Senators' questions as provided under section 5, there shall be 2 hours of argument, equally divided between the parties, followed by deliberation by the Senate, if so ordered under the Rules of Impeachment, on the question of whether it shall be in order to consider and debate under the Rules of Impeachment any motion to subpoena witnesses or documents. The Senate, without any intervening action, motion, or amendment, shall then decide by the yeas and nays whether it shall be in order to consider and debate under the Rules of Impeachment any motion to subpoena witnesses or documents. Following the disposition of that question, other motions provided under the Rules of Impeachment shall be in order.

SEC. 7. (a) If the Senate agrees to allow either the House of Representatives or the former President to subpoena witnesses, the witnesses shall first be deposed and the parties shall be allowed other appropriate discovery. The Senate shall decide after deposition and other appropriate discovery which, if any, witnesses shall testify, pursuant to the Rules of Impeachment. No testimony shall be admissible in the Senate unless the parties have had the opportunity to depose such witnesses and to conduct other appropriate discovery.

(b) If the Senate agrees to allow either party to subpoena witnesses, provisions for the admission of evidence, issuance of subpoenas, arrangements for depositions, other appropriate discovery, testimony by witnesses in the Senate, if such testimony is ordered by the Senate, and any related matters are to be determined by subsequent resolution of the Senate.

SEC. 8. (a) If the Senate decides that no party shall be permitted to subpoena witnesses pursuant to section 6, the House of Representatives shall be recognized to make a motion to admit into evidence the materials relied upon by the House of Representatives during the trial. The House of Representatives shall be recognized to make such a motion, however, only if it has disclosed to the former President all materials it will move to admit into evidence at least 48 hours before making said motion. Arguments on the motion shall be limited to 1 hour equally divided. The Senate, without any intervening action, motion, or amendment, shall then decide by the yeas and nays whether to admit into evidence such materials. If a majority of Senators voting, a quorum being present, shall vote in the affirmative, the materials shall be admitted into evidence. If a majority of Senators voting, a quorum being present, shall vote in the negative, the materials shall not be admitted into evidence. The former President shall then be recognized to make a motion to admit into evidence the materials relied upon by the former President during the trial. The former President shall be recognized to make such a motion, however, only if he has disclosed to the House of Representatives all materials he will move to admit into evidence at least 48 hours before making said motion. Arguments on the motion shall be limited to 1 hour equally divided. The Senate, without any intervening action, motion, or amendment, shall then decide by the yeas and nays whether to admit into evidence such materials. If a majority of Senators voting, a quorum being present, shall vote in the affirmative, the materials shall be admitted into evidence. If a majority of Senators voting, a quorum being present, shall vote in the negative, the materials shall not be admitted into evidence.

(b) The disclosure requirements established under subsection (a) shall not apply to evidence discovered by the movant after the disclosure deadline, so long as the movant declares in writing that the movant was unaware of such evidence until after the disclosure deadline, and that such evidence could not reasonably have been discovered until after the disclosure deadline.

(c) The admission of any evidence pursuant to this section shall not be treated as a concession by any party as to the truth of the matter asserted by the parties, and the Senate as the trier of fact shall decide the weight to be given such evidence.

SEC. 9. Unless the Senate shall have already voted on the article of impeachment, the Senate shall convene as a Court of Impeachment at 2:00 p.m. on Sunday, February 14, 2021, notwithstanding rule III of the Rules of Impeachment.

SEC. 10. Immediately upon the conclusion of any action by the Senate under section 8, or immediately upon the next day on which the Senate reconvenes as a Court of Impeachment after the conclusion of such action, the Senate shall proceed to final arguments as provided in the Rules of Impeachment, waiving the 2-person rule contained in rule XXII of the Rules of Impeachment. Such arguments shall not exceed 4 hours, equally divided between the parties.

SEC. 11. At the conclusion of final arguments as provided under section 10, the Senate, without intervening action, except for deliberation if so ordered under the Rules of Impeachment, shall vote on the article of impeachment.

The PRESIDENT pro tempore. The majority leader.

ADJOURNMENT UNTIL TOMORROW

Mr. SCHUMER. Mr. President, I ask unanimous consent that the trial adjourn until 12 noon tomorrow, Wednesday, February 10; and that this order also constitute the adjournment of the Senate.

There being no objection, at 5:10 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Wednesday, February 10, 2021, at 12 noon.