AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

Chapter 12: The Contemporary Era – Separation of Powers/Impeaching and Censuring the President

**Article of Impeachment against President Trump** (2021)[[1]](#footnote-1)

*After weeks of baselessly asserting that the 2020 presidential election had been marred by massive fraud and was stolen by the Democratic Party, President Donald Trump held a rally outside the Capitol Building as his vice president, the House and the Senate met in joint session to perform their duty under the Twelfth Amendment of counting the votes from the presidential electors and formally certifying that Joe Biden was the president-elect. As Congress began its work on the afternoon of January 6, the rally turned violent and a mob of hundreds of the president’s supporters stormed the Capitol building to prevent the votes from being counted and a new president recognized.*

*Five people died during the riot, including a Capitol police officer who was beaten to death by rioters and a Trump supporter who was shot by a Capitol police officer as she attempted to breach the Senate chamber. The vice president and members of Congress were evacuated from the House and Senate chambers and taken to more secure locations within the Capitol building. Bombs were discovered near the Capitol building, and many of the rioters wore tactical gear and carried weapons. At points, the rioters chanted “hang Mike Pence,” and yelled at the overwhelmed police “Tell [Democratic House Speaker Nancy] Pelosi we’re coming for that bitch.” As members of Congress were hiding from the mob in the recesses of the Capitol, the president’s team was continuing to call Republican legislators to urge them to block the electoral count. The president did little, however, to attempt to stop the violence at the Capitol. Hours later, law enforcement, reinforced by the National Guard, were able to retake the Capitol building. That evening, Congress resumed the electoral count and in the early morning hours declared Joe Biden the official president-elect.*

*Nearly a week later, a single article of impeachment was introduced in the House of Representatives. The article charged the president with “incitement of insurrection.” It included the unusual request that Trump be disqualified from holding future federal office. In a largely party-line vote, the House voted to impeach the president for an unprecedented second time. One member of the House Republican leadership, Liz Cheney, the daughter of the former vice president Dick Cheney, joined nine other Republicans in voting to impeach the Republican president. Almost immediately primary challenges were launched against those ten Republicans and Republican House members began a campaign to strip Cheney of her role as Republican Conference Chair.*

*As in the first impeachment of President Trump, the House chose not to immediately deliver the article of impeachment to the Senate. As Joe Biden was inaugurated as president, the Senate still had not been formally notified of the second House impeachment of Donald Trump. As a result, Congress found itself in the unprecedented position of contemplating an impeachment trial in the Senate of a former president.*

Resolved, That Donald John Trump, President of the United States, is impeached for high crimes and misdemeanors and that the following article of impeachment be exhibited to the United States Senate:

. . . .

Article I: Incitement of Insurrection

The Constitution provides that the House of Representatives “shall have the sole Power of Impeachment” and that the President “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors”. Further, section 3 of the 14th Amendment to the Constitution prohibits any person who has “engaged in insurrection or rebellion against” the United States from “hold(ing) any office … under the United States”. In his conduct while President of the United States—and in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed—Donald John Trump engaged in high Crimes and Misdemeanors by inciting violence against the Government of the United States, in that:

On January 6, 2021, pursuant to the 12th Amendment to the Constitution of the United States, the Vice President of the United States, the House of Representatives, and the Senate met at the United States Capitol for a Joint Session of Congress to count the votes of the Electoral College. In the months preceding the Joint Session, President Trump repeatedly issued false statements asserting that the Presidential election results were the product of widespread fraud and should not be accepted by the American people or certified by State or Federal officials. Shortly before the Joint Session commenced, President Trump, addressed a crowd at the Ellipse in Washington, DC. There, he reiterated false claims that “we won this election, and we won it by a landslide”. He also willfully made statements that, in context, encouraged — and foreseeably resulted in — lawless action at the Capitol, such as: “if you don’t fight like hell you’re not going to have a country anymore.” Thus incited by President Trump, members of the crowd he had addressed, in an attempt to, among other objectives, interfere with the Joint Session’s solemn constitutional duty to certify the results of the 2020 Presidential election, unlawfully breached and vandalized the Capitol, injured and killed law enforcement personnel, menaced Members of Congress, the Vice President, and Congressional personnel, and engaged in other violent, deadly, destructive, and seditious acts.

President Trump’s conduct on January 6, 2021, followed his prior efforts to subvert and obstruct the certification of the results of the 2020 Presidential election. Those prior efforts included a phone call on January 2, 2021, during which President Trump urged the secretary of state of Georgia, Brad Raffensperger, to “find” enough votes to overturn the Georgia Presidential election results and threatened Secretary Raffensperger if he failed to do so.

In all this, President Trump gravely endangered the security of the United States and its institutions of Government. He threatened the integrity of the democratic system, interfered with the peaceful transition of power, and imperiled a coequal branch of Government. He thereby betrayed his trust as President, to the manifest injury of the people of the United States.

Wherefore, Donald John Trump, by such conduct, has demonstrated that he will remain a threat to national security, democracy, and the Constitution if allowed to remain in office, and has acted in a manner grossly incompatible with self-governance and the rule of law. Donald John Trump thus warrants impeachment and trial, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

1. Excerpt taken from H. Res. 24: Impeaching Donald John Trump, President of the United States, for high crimes and misdemeanors (January 11, 2021) [↑](#footnote-ref-1)