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

**House Republican Letter on Late Impeachment** (2021)

*After weeks of baselessly asserting that the 2020 presidential election had been marred by massive fraud and 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. In that joint session, as many as seven Republican senators and 138 Republican representatives voted against counting electoral votes from states that supported Joe Biden. Ultimately, Vice President Mike Pence refused to the entreaties of Trump to set aside the ballots of pro-Biden states and officially announced that Biden had won the 2020 presidential election.*

*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.” In a largely party-line vote, the House voted to impeach the president for an unprecedented second time. 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.*

*After the House voted to impeach President Trump, a group of seven conservative House Republicans, led by Colorado’s Ken Buck, sent a letter to president-elect Joe Biden calling on him to urge congressional Democrats to drop the impeachment. They appealed to the need for unity and healing (a theme that Biden himself would highlight in his inaugural address) and argued that Trump’s second impeachment had been rushed in an unseemly and constitutionally inappropriate way. The president-elect declined to discourage the continuation of the impeachment process, even as he urged Congress to remain focused on other policy priorities.*

Congratulations on your upcoming inauguration as the 46th President of the United States of America. As you well understand, America is intensely divided at this moment, and people across the nation are frustrated and angered. We appreciate the occasions when you have called for healing our divisions. We write to suggest an important step you could take now to hasten this process.

The undersigned members of Congress issued a joint statement on January 4th opposing the objection, made by many of our Republican colleagues, to certifying the Electoral College vote. We did so because we believe the Constitution is clear that the role of Congress is simply to count the electoral votes. The Twelfth Amendment does not give Congress the authority or discretion to disqualify electors based on its own findings or beliefs that fraud took place.

Nor does the Constitution envision impeaching a President without an adequate investigation and congressional hearings. A presidential impeachment should not occur in the heat of the moment, but rather after great deliberation.

In the spirit of healing and fidelity to our Constitution, we ask that you formally request that Speaker Nancy Pelosi discontinue her efforts to impeach President Donald J. Trump a second time. A second impeachment, only days before President Trump will leave office, is as unnecessary as it is inflammatory. This impeachment would undermine your priority of unifying Americans, and would be a further distraction to our nation at a time when millions of our fellow citizens are hurting because of the pandemic and the economic fallout. We respectfully urge you to encourage Speaker Pelosi to set aside this partisan effort immediately.

As members of Congress, we are committed to working with you as we tackle the related health and economic crises confronting our nation. As your fellow Americans, we will be in attendance at your inauguration on January 20th, as we celebrate the peaceful transfer of power, a bedrock of our system of self-government.

We look forward to working with you and your administration.