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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable THOM TILLIS, a Senator from the State of North Carolina.

PRAYER

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

Let us pray.

Eternal God, You are our light and salvation, and we are not afraid. You protect us from danger so we do not tremble.

Mighty God, You are not intimidated by the challenges that confront our Nation and world.

Lord, inspire our lawmakers with the knowledge of Your holiness that will give them reverential awe. Remind them of the many prayers they have prayed that You have already answered.

Lord, You have been our help in ages past. You are our hope for the years to come. We magnify Your Holy Name. Don't stay far off. Show Yourself strong to this generation and fill us with Your peace.

We pray in Your powerful Name. Amen.

PLEDGE OF ALLEGIANCE

The Presiding Officer 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.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. GRASSLEY).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 19, 2019.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable THOM TILLIS, a Senator from the State of North Carolina, to perform the duties of the Chair.

CHUCK GRASSLEY,
President pro tempore.

Mr. TILLIS thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

LEGISLATIVE SESSION

NATIONAL LAW ENFORCEMENT MUSEUM COMMEMORATIVE COIN ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the House message to H.R. 1865, which the clerk will report.

The legislative clerk read as follows:

House Message to accompany H.R. 1865, an act to require the Secretary of the Treasury to mint a coin in commemoration of the opening of the National Law Enforcement Museum in the District of Columbia, and for other purposes.

Pending:

McConnell motion to concur in the amendment of the House to the amendment of the Senate to the bill.

McConnell motion to concur in the amendment of the House to the amendment of the Senate to the bill, with McConnell Amendment No. 1258 (to the

House amendment to the Senate amendment), to change the enactment date.

McConnell Amendment No. 1259 (to Amendment No. 1258), of a perfecting nature.

McConnell motion to refer the message of the House on the bill to the Committee on Appropriations, with instructions, McConnell Amendment No. 1260, to change the enactment date.

McConnell Amendment No. 1261 (the instructions (Amendment No. 1260) of the motion to refer), of a perfecting nature.

McConnell Amendment No. 1262 (to Amendment No. 1261), of a perfecting nature.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

IMPEACHMENT

Mr. MCCONNELL. Mr. President, last night the House Democrats finally did what they had decided to do a long time ago. They voted to impeach President Trump.

Over the last 12 weeks, House Democrats have conducted the most rushed, least thorough, and most unfair impeachment inquiry in modern history. Now their slapdash process has concluded in the first purely partisan Presidential impeachment since the wake of the Civil War.

The opposition to impeachment was bipartisan. Only one part of one faction wanted this outcome. The House's conduct risks deeply damaging the institutions of American government. This particular House of Representatives has let its partisan rage at this particular President create a toxic new precedent that will echo well into the future.

That is what I want to discuss right now—the historic degree to which House Democrats have failed to do their duty and what it will mean for the Senate to do ours. So let's start at the beginning. Let's start with the fact

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



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that Washington Democrats made up their minds to impeach President Trump since before he was even inaugurated.

Here is a reporter in April of 2016—April of 2016:

Donald Trump isn't even the Republican nominee yet . . . [but] "Impeachment" is already on the lips of pundits, newspaper editorials, constitutional scholars, and even a few Members of Congress.

April 2016.

On Inauguration Day 2017, the headline in the Washington Post: "The campaign to impeach President Trump has begun." That was day one.

In April 2017, 3 months into the Presidency, a senior House Democrat said: "I am going to fight every day until he is impeached." That was 3 months into the administration.

In December 2017, 2 years ago, Congressman JERRY NADLER was openly campaigning to be the ranking member on the House Judiciary Committee, specifically—specifically—because he was an expert on impeachment. That was NADLER's campaign to be the top Democrat on Judiciary.

This week wasn't even the first time House Democrats have introduced articles of impeachment. It was actually the seventh time. They started less than 6 months after the President was sworn in. They tried to impeach President Trump for being impolite to the press, for being mean to professional athletes, for changing President Obama's policy on transgender people in the military. All of these things were high crimes and misdemeanors according to Democrats. Now, this wasn't just a few people.

Scores—scores—of Democrats voted to move forward with impeachment on three of those prior occasions. So let's be clear. The House's vote yesterday was not some neutral judgement that Democrats came to with great reluctance. It was the predetermined end of a partisan crusade that began before President Trump was even nominated, let alone sworn in.

For the very first time in modern history, we have seen a political faction in Congress promise from the moment—the moment—a Presidential election ended that they would find some way to overturn it.

A few months ago, Democrats' 3-year-long impeachment in search of articles found its way to the subject of Ukraine. House Democrats embarked on the most rushed, least thorough, and most unfair impeachment inquiry in modern history. Chairman SCHIFF's inquiry was poisoned by partisanship from the outset. Its procedures and parameters were unfair in unprecedented ways. Democrats tried to make Chairman SCHIFF into a de facto special prosecutor, notwithstanding the fact that he is a partisan Member of Congress who had already engaged in strange and biased behavior.

He scrapped precedent to cut the Republican minority out of the process. He denied President Trump the same

sorts of procedural rights that Houses of both parties had provided to past Presidents of both parties. President Trump's counsel could not participate in Chairman SCHIFF's hearings, present evidence, or cross-examine witnesses.

The House Judiciary Committee's crack at this was even more ahistorical. It was like the Speaker called up Chairman NADLER and ordered one impeachment, rush delivery, please.

The committee found no facts on its own and did nothing to verify the Schiff report. Their only witnesses were liberal law professors and congressional staffers.

So there is a reason the impeachment inquiry that led to President Nixon's resignation required about 14 months of hearings—14 months—in addition to a special prosecutor's investigation.

With President Clinton, the independent counsel's inquiry had been underway literally for years before the House Judiciary Committee actually dug in. There were mountains of evidence—mountains—mountains of testimony from firsthand fact witnesses, and serious legal battles to get what was necessary.

This time around? House Democrats skipped all of that and spent just 12 weeks—12 weeks. There was more than a year of hearings for Nixon, multiple years of investigation for Clinton, and they have impeached President Trump in 12 weeks—12 weeks.

So let's talk about what the House actually produced in those 12 weeks. House Democrats' rushed and rigged inquiry yielded two articles—two—of impeachment. They are fundamentally unlike any articles that any prior House of Representatives has ever passed.

The first article concerns the core events which House Democrats claim are impeachable—the timing of aid to Ukraine. But it does not even purport to allege any actual crime. Instead, they deployed a vague phrase "abuse of power"—"abuse of power"—to impugn the President's action in a general, indeterminate way.

Speaker PELOSI's House just gave into a temptation that every other House in history has managed to resist. Let me say that again. Speaker PELOSI's House just gave into a temptation that every other House in our history has managed to resist. They impeach a President whom they do not even allege has committed an actual crime known to our laws. They have impeached simply because they disagree with a Presidential act and question the motive behind it.

So let's look at history. Andrew Johnson's impeachment revolved around a clear violation of a criminal statute, albeit an unconstitutional statute. Nixon had obstruction of justice, a felony under our laws. Clinton had perjury, also a felony.

Now, the Constitution does not say the House can impeach only those Presidents who violate a law, but his-

tory matters. History matters and precedent matters.

There were important reasons why every previous House of Representatives in American history restrained itself—restrained itself—from crossing this Rubicon. The Framers of our Constitution very specifically discussed whether the House should be able to impeach Presidents just for "maladministration"—just for maladministration—in other words, because the House simply thought the President had bad judgment or he was doing a bad job. They talked about all of this when they wrote the Constitution.

The written records of our Founders' debates show they specifically rejected this. They realized it would create total dysfunction to set the bar for impeachment that low.

James Madison himself explained that allowing impeachment on that basis would mean the President serves at the pleasure of the Congress instead of the pleasure of the American people. It would make the President a creature of Congress, not the head of a separate and equal branch. There were powerful reasons why Congress after Congress for 230 years—230 years—required Presidential impeachment to revolve around clear, recognizable crimes, even though that was not a strict limitation—powerful reasons why, for 230 years, no House opened the Pandora's box of subjective, political impeachments. That 230-year tradition died last night.

House Democrats have tried to say they had to impeach President Trump on this historically thin and subjective basis because the White House challenged their requests for more witnesses.

That brings us to the second article of impeachment. The House titled this one "Obstruction of Congress." What it really does is impeach the President for asserting Presidential privilege. The concept of executive privilege is another two-century-old constitutional tradition. Presidents starting with George Washington have invoked it. Federal courts have repeatedly affirmed it is a legitimate constitutional power.

House Democrats requested extraordinary amounts of sensitive information from President Trump's White House, exactly the kinds of things over which Presidents of both parties have asserted privilege in the past.

Predictably, and appropriately, President Trump did not simply roll over. He defended the constitutional authority of his office. There is no surprise there. It is not a constitutional crisis for a House to want more information than a President wants to give up. That is not a constitutional crisis. It is a routine occurrence. The separation of powers is messy by design.

Here is what should have happened: Either the President and Congress negotiate a settlement or the third branch of government, the Judiciary, addresses the dispute between the other two.

The Nixon impeachment featured disagreements over Presidential privilege, so they went to the courts. The Clinton impeachment featured disagreements over Presidential privilege, so they went to the courts. This takes time. It is inconvenient. That is actually the point. Due process is not meant to maximize the convenience of the prosecutor. It is meant to protect the accused, but this time was different.

Remember, 14 months of hearings for Richard Nixon, years of investigation for Bill Clinton, but 12 weeks for Donald Trump. Democrats didn't have to rush this, but they chose to stick to their political timetable at the expense of pursuing more evidence through proper legal channels. Nobody made Chairman SCHIFF do this. He chose to.

The Tuesday before last, on live television, ADAM SCHIFF explained to the entire country that if House Democrats had let the justice system follow its normal course, they might not have gotten to impeach the President in time for the election. My goodness.

In Nixon, the courts were allowed to do their work. In Clinton, the courts were allowed to do their work. Only these House Democrats decided due process is too much work, and they would rather impeach with no proof.

They tried to cover for their own partisan impatience by pretending the routine occurrence of a President exerting constitutional privilege is itself—*itself*—a second impeachable offense.

The following is something ADAM SCHIFF literally said in early October. Here is what he said: "Any action . . . that forces us to litigate, or have to consider litigation, will be considered further evidence of obstruction of justice." That is ADAM SCHIFF.

Here is what the chairman effectively said and what one of his committee members restated just this week: If the President asserts his constitutional right, it is that much more evidence he is guilty.

If the President asserts his constitutional rights, it is that much more evidence he is guilty.

That kind of bullying is antithetical to American justice. Those are the House Democrats' two Articles of Impeachment. That is all their rushed and rigged inquiry could generate: an act that the House does not even allege is criminal and a nonsensical claim that exercising a legitimate Presidential power is somehow an impeachable offense.

This is, by far, the thinnest basis for any House-passed Presidential impeachment in American history—the thinnest and the weakest, and nothing else even comes close.

Candidly, I don't think I am the only person around here who realizes this. Even before the House voted yesterday, Democrats had already started to signal uneasiness—uneasiness—with its end product.

Before the articles even passed, the Senate Democratic leader went on tele-

vision to demand this body redo House Democrats' homework for them; that the Senate should supplement Chairman SCHIFF's sloppy work so it is more persuasive than Chairman SCHIFF himself bothered to make it. Of course, every such demand simply confirms that House Democrats have rushed forward with a case that is much too weak.

In June, Speaker PELOSI promised the House would "build an ironclad case." Never mind that she was basically promising impeachment months—months—before the Ukraine events, but that is a separate matter. She promised "an ironclad case."

In March, Speaker PELOSI said this: "Impeachment is so divisive to the country that unless there's something so compelling and overwhelming and bipartisan, I don't think we should go down that path, because it divides the country."

By the Speaker's own standards, she has failed the country. This case is not compelling, not overwhelming, and as a result not bipartisan. The failure was made clear to everyone earlier this week when Senator SCHUMER began searching for ways the Senate could step out of our proper role and try to fix the House Democrats' failures for them.

It was made even more clear last night when Speaker PELOSI suggested that House Democrats may be too afraid—too afraid—to even transmit their shoddy work product to the Senate.

It looks like the prosecutors are getting cold feet in front of the entire country and second-guessing whether they even want to go to trial. They said impeachment was so urgent that it could not even wait for due process but now they are content to sit on their hands. This is really comical.

Democrats' own actions concede that their allegations are unproven. The articles aren't just unproven; they are all constitutionally incoherent—incoherent. Frankly, if either of these articles is blessed by the Senate, we could easily see the impeachment of every future President of either party.

Let me say that again. If the Senate blesses this historically low bar, we will invite the impeachment of every future President. The House Democrats' allegations, as presented, are incompatible with our constitutional order. They are unlike anything that has ever been seen in 230 years of this Republic.

House Democrats want to create new rules for this President because they feel uniquely enraged—they feel uniquely enraged. Long after the partisan fever of this moment has broken, the institutional damage will remain.

I have described the threat to the Presidency, but this also imperils the Senate itself. The House has created an unfair, unfinished product that looks nothing—nothing—like any impeachment inquiry in American history. If the Speaker ever gets her House in

order, that mess will be dumped over here on the Senate's lap.

If the Senate blesses this slapdash impeachment—if we say that from now on this is enough—then we invite an endless parade of impeachable trials. Future Houses of either party will feel free to toss a "jump ball" every time they feel angry—free to swamp the Senate with trial after trial no matter how baseless the charges.

We would be giving future Houses of either party unbelievable new power to paralyze the Senate at their whim—more thin arguments, more incomplete evidence, more partisan impeachments.

In fact, this same House of Representatives has already indicated they themselves may not be finished impeaching. The House Judiciary Committee told a Federal court this very week that it will continue its impeachment investigation even after voting on these articles, and multiple Democratic Members have already called publicly for more.

If the Senate blesses this, if the Nation accepts this, Presidential impeachments may cease being once-in-a-generation events and become a constant part—a constant part—of the political background noise. This extraordinary tool of last resort may become just another part of the arms race of polarization.

Real statesmen would have recognized, no matter their view of this President, that trying to remove him on this thin and partisan basis could unsettle the foundations of our Republic.

Real statesmen would have recognized, no matter how much partisan animosity might be coursing through their veins, that cheapening the impeachment process was not the answer.

Historians will refer to this as the very irony of our era: that so many who professed such concern for our norms and traditions themselves proved willing to trample our constitutional order to get their way.

It is long past time for Washington to get a little perspective. President Trump is not the first President with a populist streak, not the first to make entrenched elites uncomfortable. He is certainly not the first President to speak bluntly, to mistrust the administrative state, or to rankle unelected bureaucrats. Heaven knows, he is not the first President to assert the constitutional privileges of his office rather than roll over when Congress demands unlimited sensitive information. None of these things—none of them—is unprecedented.

I will tell you what would be unprecedented. It will be an unprecedented constitutional crisis if the Senate literally hands the House of Representatives a new, partisan "vote of no confidence" that the Founders intentionally withheld, destroying the independence of the Presidency. It will be unprecedented if we agree that any future House that disliked any future President can rush through an unfair

inquiry, skip the legal system, and paralyze the Senate with a trial. The House can do that at will under this President. It will be an unprecedented if the Senate says secondhand and third-hand testimony from unelected civil servants is enough to overturn the people's vote. It will be an unprecedented constitutional crisis if the Senate agrees to set the bar this low—forever.

It is clear what this moment requires. It requires the Senate to fulfill our founding purpose. The Framers built the Senate to provide stability, to take the long view of our Republic, to safeguard institutions from the momentary hysteria that sometimes consumes our politics, and to keep partisan passions from literally boiling over. The Senate exists for moments like this.

That is why this body has the ultimate say in impeachments. The Framers knew the House would be too vulnerable to transient passions and violent factionalism. They needed a body that could consider legal questions about what has been proven and political questions about what the common good of our Nation requires. Hamilton said explicitly in Federalist 65 that impeachment involves not just legal questions but inherently political judgments about what outcome best serves the Nation. The House can't do both. The courts can't do both.

This is as grave an assignment as the Constitution gives to any branch of government, and the Framers knew only the Senate could handle it. Well, the moment the Framers feared has arrived. A political faction in the lower Chamber has succumbed to partisan rage. A political faction in the House of Representatives has succumbed to a partisan rage. They have fulfilled Hamilton's prophecy that impeachment will "connect itself with the pre-existing factions . . . enlist all their animosities . . . [and] 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."

Alexander Hamilton.

That is what happened in the House last night. The vote did not reflect what had been proven; it only reflects how they feel about the President.

The Senate must put this right. We must rise to the occasion. There is only one outcome that is suited to the paucity of evidence, the failed inquiry, the slapdash case. There is only one outcome suited to the fact that the accusations themselves are constitutionally incoherent. There is only one outcome that will preserve core precedents rather than smash them into bits in a fit of partisan rage because one party still cannot accept the American people's choice in 2016. It could not be clearer which outcome would serve the stabilizing, institution-preserving, fever-breaking role for which the U.S. Senate was created and which outcome would betray it.

The Senate's duty is clear. The Senate's duty is clear. When the time comes, we must fulfill it.

MEASURES PLACED ON THE CALENDAR

Mr. MCCONNELL. Mr. President, I understand there are three bills at the desk due for a second reading en bloc.

The ACTING PRESIDENT pro tempore. The clerk will read the titles of the bills for the second time en bloc.

The legislative clerk read as follows:

A bill (H.R. 397) to amend the Internal Revenue Code of 1986 to create a Pension Rehabilitation Trust Fund, to establish a Pension Rehabilitation Administration within the Department of the Treasury to make loans to multiemployer defined benefit plans, and for other purposes.

A bill (H.R. 1759) to amend title III of the Social Security Act to extend reemployment services and eligibility assessments to all claimants for unemployment benefits, and for other purposes.

A bill (H.R. 4018) to provide that the amount of time that an elderly offender must serve before being eligible for placement in home detention is to be reduced by the amount of good time credits earned by the prisoner, and for other purposes.

Mr. MCCONNELL. In order to place the bills on the calendar under the provisions of rule XIV, I would object to further proceedings en bloc.

The ACTING PRESIDENT pro tempore. Objection having been heard, the bills will be placed on the calendar en bloc.

Mr. MCCONNELL. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Democratic leader is recognized.

IMPEACHMENT

Mr. SCHUMER. Mr. President, last night, the House of Representatives voted to impeach President Donald Trump. It is only the third time in our Nation's history that the President of the United States has been impeached.

The articles of impeachment charge that President Trump abused the powers of his office by soliciting the interference of a foreign power in our elections, not for the good of the country but to benefit himself personally. The articles also charge that the President obstructed Congress in the investigation of those matters. Together, these articles suggest the President committed a grave injury to our grand democracy.

The conduct they describe is very much what the Founders feared when they forged the impeachment powers of the Congress. The Founders, in their

wisdom, gave the House the power to accuse and the Senate the power to judge. We are now asked to fulfill our constitutional role as a court of impeachment.

Now that the House of Representatives has impeached President Trump, the Nation turns its eyes to the Senate. What will the Nation see? Will the Nation see what Alexander Hamilton saw—a body of government with "confidence enough . . . to preserve, unawed and uninfluenced, the necessary impartiality," or will the Nation see the Senate dragged into the depths of partisan fervor?

The Nation just witnessed how the Republican leader sees his role in this chapter of our history—demonstrating both an unfortunate descent into partisanship and demonstrating the fundamental weakness of the President's defense.

Leader MCCONNELL claimed that the impeachment of President Trump is illegitimate because the House voted along party lines. Forgive me, but House Democrats cannot be held responsible for the cravenness of the House Republican caucus and their blind fealty to the President.

Leader MCCONNELL claimed that the impeachment was motivated by partisan rage—this from the man who said proudly, "I am not impartial. I have no intention to be impartial at all" in the trial of President Trump. What hypocrisy.

Leader MCCONNELL accused the House Democrats of an obsession to get rid of President Trump—this from the man who proudly declared his "number one goal" was to make President Obama a one-term President.

Leader MCCONNELL claimed that Democrats impeached the President for asserting Executive privilege. President Trump never formally claimed Executive privilege; he claimed "absolute immunity," and the White House Counsel wrote a letter stating simply that the administration would not comply with any subpoenas.

Leader MCCONNELL claimed that the Democrats' "obsession" with impeachment has prevented the House from pursuing legislation to help the American people. Leader MCCONNELL knows very, very well that the House Democratic majority has passed literally hundreds of bills that gather dust here in the Senate, condemned to a legislative graveyard by none other than Leader MCCONNELL himself, who proudly called himself the Grim Reaper.

Members of the 116th Senate have been denied the opportunity to legislate by Leader MCCONNELL. We aren't even allowed to debate the issues that would impact the American people: healthcare, infrastructure, prescription drugs. We could have spent the year debating these issues. We weren't doing impeachment. Leader MCCONNELL has chosen not to focus on these issues and to put none of these bills on the floor. As he reminds us often, he alone decides what goes on the floor.