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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable MIKE LEE, a Senator from the State of Utah.

PRAYER

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

Let us pray.

Eternal God, we offer You our hearts. Guide our lawmakers. May they strive to permit justice to roll down like waters and righteousness like a mighty stream. Grant that they will join You in Your messianic thrust to bring good news to the marginalized, to announce freedom for those who suffer, and to give sight to the ethically, morally, and spiritually blind. Lord, inspire our Senators to live pure and blameless lives, seeking to bring the greatest glory to You.

We pray in Your strong 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, February 4, 2020.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MIKE LEE, a Senator from the State of Utah, to perform the duties of the Chair.

CHUCK GRASSLEY,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

RECOGNITION OF THE MAJORITY LEADER

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

IMPEACHMENT

Mr. MCCONNELL. Mr. President, these past weeks, the Senate has grappled with as grave a subject as we ever consider: a request from a majority of the House to remove the President. The Framers took impeachment extremely seriously, but they harbored no illusions that these trials would always begin for the right reasons.

Alexander Hamilton warned that ''the demon of faction'' would ''extend his sceptre'' over the House of Representatives ''at certain seasons.'' He warned that ''an intemperate or designing majority of the House'' might misuse impeachment as a weapon of ordinary politics rather than emergency tool of last resort. The Framers knew impeachments might begin with overheated passions and short-term factualism. But they knew those things could not get the final say, so they placed the ultimate judgment not in the fractious lower Chamber but in the sober and stable Senate.

They wanted impeachment trials to be fair to both sides. They wanted them to be timely, avoiding the ''procrastinated determination of the charges.'' They wanted us to take a deep breath and decide which outcome would reflect the facts, protect our institutions, and advance the common good. They called the Senate ''the most fit depositary of this important trust.'' Tomorrow, we will know whether that trust was well-placed.

The drive to impeach President Trump did not begin with the allegations before us. Here was reporting in April of 2016, before the President was the nominee: ''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.''

Here was the Washington Post headline minutes after President Trump's inauguration: ''The campaign to impeach President Trump has begun,'' the Washington Post says.

The Articles of Impeachment before us were not even the first ones House Democrats introduced. This was go-around number, roughly, seven. Those previously alleged high crimes and misdemeanors included things like being impolite to the press and to professional athletes. It insults the intelligence of the American people to pretend this was a solemn process reluctantly begun because of withheld foreign aid. No, Washington Democrats' position on this President has been clear literally for years. Their position was obvious when they openly rooted for the Mueller investigation to tear our country apart and were disappointed when the facts proved otherwise. It was obvious when they sought to impeach the President over and over.

Here is their real position: Washington Democrats think President Donald Trump committed a high crime

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

or misdemeanor the moment he defeated Hillary Clinton in the 2016 election. That is the original sin of this Presidency: that he won and they lost.

Ever since, the Nation has suffered through a grinding campaign against our norms and institutions from the same people who keep shouting that our norms and institutions need defending—a campaign to degrade our democracy and delegitimize our elections from the same people who shout that confidence in our democracy must be paramount.

We have watched a major American political party adopt the following absurd proposition: We think this President is a bull in a China shop, so we are going to drive a bulldozer through the China shop to get rid of him. This fever led to the most rushed, least fair, and least thorough Presidential impeachment inquiry in American history.

The House inquiry under President Nixon spanned many months. The special prosecutors' investigation added many more months. With President Clinton, the independent counsel worked literally for years. It takes time to find facts. It takes time to litigate executive privilege, which happened in both those investigations. Litigating privilege questions is a normal step that investigators of both parties understood was their responsibility. But this time, there was no lengthy investigation, no serious inquiry. The House abandoned its own subpoenas. They had an arbitrary political deadline to meet. They had to impeach by Christmas. They had to impeach by Christmas. So in December, House Democrats realized the Framers' nightmare. A purely partisan majority approved two Articles of Impeachment over bipartisan opposition.

After the Speaker of the House delayed for a month in a futile effort to dictate Senate process to Senators, the articles finally arrived over here in the Senate.

Over the course of the trial, Senators have heard sworn video testimony from 13 witnesses, over 193 video clips. We have entered more than 28,000 pages of documents into evidence, including 17 depositions. And our Members asked 180 questions. In contrast to the House proceedings, our trial gave both sides a fair platform. Our process tracked with the structure that Senators adopted for the Clinton trial 20 years ago.

Just as Democrats such as the current Democratic leader and then-Senator Joe Biden argued at length in 1999, we recognized that Senate traditions imposed no obligation to hear new live witness testimony if it is not necessary to decide the case—if it is not necessary to decide the case; let me emphasize that.

The House managers themselves said over and over that additional testimony was not necessary to prove their case. They claimed dozens of times that their existing case was ''overwhelming'' and ''incontrovertible.''

That was the House managers saying their evidence was overwhelming and incontrovertible at the same time they were arguing for more witnesses.

But in reality, both of the House's accusations are constitutionally incoherent.

The ''obstruction of Congress'' charge is absurd and dangerous. House Democrats argued that anytime the Speaker invokes the House's ''sole power of impeachment,'' the President must do whatever the House demands, no questions asked. Invoking executive branch privileges and immunities in response to House subpoenas becomes an impeachable offense itself.

Here is how Chairman SCHIFF put it back in October. ''Any action''—any action—''that forces us to litigate, or have to consider litigation, will be considered further evidence of obstruction of justice.''

That is nonsense impeachment. That is nonsense. ''Impeachment'' is not some magical constitutional trump card that melts away the separations between the branches of government. The Framers did not leave the House a secret constitutional steamroller that everyone somehow overlooked for 230 years.

When Congress subpoenas executive branch officials with questions of privilege, the two sides either reach an accommodation or they go to court. That is the way it works.

So can you imagine if the shoe were on the other foot? How would Democrats and the press have responded if House Republicans had told President Obama: We don't want to litigate our subpoenas over Fast and Furious. So if you make us step foot in court, we will just impeach you. We will just impeach you.

Of course, that is not what happened. The Republican House litigated its subpoenas for years until they prevailed.

So much for ''obstruction of Congress.''

And the ''abuse of power'' charge is just as unpersuasive and dangerous. By passing that article, House Democrats gave in to a temptation that every previous House has resisted. They impeached a President without even alleging a crime known to our laws.

Now, I do not subscribe to the legal theory that impeachment requires a violation of a criminal statute, but there are powerful reasons why, for 230 years, every Presidential impeachment did in fact allege a criminal violation.

The Framers explicitly rejected impeachment for ''maladministration,'' a general charge under English law that basically encompassed bad management—a sort of general vote of no confidence. Except in the most extreme circumstances, except for acts that overwhelmingly shocked the national conscience, the Framers decided Presidents must serve at the pleasure of the electorate—the electorate—and not at the pleasure of House majorities. As Hamilton wrote, ''It is one thing to be subordinate to the laws, and another to be dependent''—dependent—''on the legislative body.

So House Democrats sailed into new and dangerous waters—the first impeachment unbound by the criminal law. Any House that felt it needed to take this radical step owed the country the most fair and painstaking process, the most rigorous investigation, the most bipartisan effort. Instead, we got the opposite—the exact opposite.

The House managers argued that the President could not have been acting in the national interest because he acted inconsistently with their own conception of the national interest. Let me say that again. The House managers were basically arguing that the President could not have been acting in the national interest because he acted inconsistently with their conception of the national interest, a conception shared by some of President's subordinates as well.

This does not even approach a case for the first Presidential removal in American history. It doesn't even approach it. Such an act cannot rest alone on the exercise of a constitutional power, combined with concerns about whether the President's motivations were public or personal, and a disagreement over whether the exercise of the power was in the national interests.

The Framers gave our Nation an ultimate tool for evaluating a President's character and policy decisions. They are called elections. They are called elections.

If Washington Democrats have a case to make against the President's reelection, they should go out and make it. Let them try to do what they failed to do 3 years ago and sell the American people on their vision for the country.

I can certainly see why, given President Trump's remarkable achievements over the past 3 years, Democrats might feel a bit uneasy about defeating him at the ballot box. But they don't get to rip the choice away from the voters just because they are afraid they might lose again. They don't get to strike President Trump's name from the ballot just because, as one House Democrat put it, ''I am concerned that if we don't impeach [him], he will get re-elected.''

The impeachment power exists for a reason. It is no nullity. But invoking it on a partisan whim to settle 3-year-old political scores does not honor the Framers' design. It insults the Framers' design.

Frankly, it is hard to believe that House Democrats ever really thought this reckless and precedent-breaking process would yield 67 votes to cross the Rubicon.

Was their vision so clouded by partisanship that they really believed—they really believed—this would be anywhere near enough for the first Presidential removal in American history?

Or was success beside the point? Was this all an effort to hijack our institutions for a month-long political rally?

Either way, ''the demon of faction'' has been on full display, but now it is

time for him, the demon, to exit the stage. We have indeed witnessed an abuse of power—a grave abuse of power—by just the kind of House majority that the Framers warned us about.

So tomorrow—tomorrow—the Senate must do what we were created to do. We have done our duty. We considered all the arguments. We have studied the ''mountain of evidence,'' and, tomorrow, we will vote.

We must vote to reject the House's abuse of power, vote to protect our institutions, vote to reject new precedents that would reduce the Framers' design to rubble, and vote to keep factional fever from boiling over and scorching our Republic.

I urge every one of our colleagues to cast the vote that the facts in evidence, the Constitution, and the common good clearly require. Vote to acquit the President of these charges.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CASSIDY). The clerk will call the roll.

The 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 PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. SCHUMER. Mr. President, the majority leader can come up on the floor and repeat his talking points, but there are some salient points that are irrefutable.

The first, this is the first impeachment trial of a President or impeachment trial of anybody else that was completed that has no witnesses and no documents. The American people are just amazed that our Republican friends would not even ask for witnesses and documents.

I thought the House did a very good job. I thought they made a compelling case. But even if you didn't, the idea that that means you shouldn't have witnesses and documents, when we are doing something as august, as important as an impeachment trial, fails the laugh test. It makes people believe—correctly, in my judgment—that the administration, its top people, and Senate Republicans are all hiding the truth. They are afraid of the truth.

Second, the charges are extremely serious. To interfere in an election, to blackmail a foreign country to interfere in our elections gets at the very core of what our democracy is about. If Americans believe that they don't determine who is President, who is Governor, who is Senator, but some foreign potentate out of reach of any law enforcement can jaundice our elections, that is the beginning of the end of democracy.

So it is a serious charge. Republicans refused to get the evidence because they were afraid of what it would show, and that is all that needs to be said.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. HYDE-SMITH). Without objection, it is so ordered.

Mr. THUNE. Madam President, tomorrow we will be voting on the two impeachment articles sent over to us by the House of Representatives, a process, as the leader pointed out, that really started from the very day this President took office.

I will be voting to acquit the President for several reasons. First and foremost, I do not believe the facts in this case rise to the high bar that the Founders set for removal from office. The Founders imposed a threshold for impeachment of ''Treason, Bribery, or other high Crimes and Misdemeanors''—in other words, very serious violations of the public trust.

The Founders were deliberate in their choice of words. They wanted to be clear that impeachment was a severe remedy to be deployed only for very serious violations. When George Mason proposed adding the term ''maladministration'' to the impeachment clause during the Constitutional Convention, the Framers rejected the proposal because, as Madison pointed out, the term was too vague and would be ''equivalent to a tenure during pleasure of the Senate.''

The Founders recognized that without safeguards, impeachment could quickly degenerate into a political weapon to be used to turn over elections when one faction or another decided they didn't like the President. That is why the Founders split the impeachment power, giving the House the sole authority to impeach and the Senate the sole authority to try impeachments. As a final check, the Founders required a two-thirds supermajority vote in the Senate to remove a President from office. All of these things show just how seriously the Founders regarded removing a duly elected President. They intended it as an extreme remedy to be used only in very grave circumstances.

I do not believe that the charges the House has leveled against the President meet that high bar. The House managers' presentation, which stretched over 22 hours, included testimony from more than a dozen witnesses. We also heard from the House managers during more than 16 hours of questions from Senators—in all, about 180 questions—and we received more than 28,000 pages of testimony, evidence, and arguments from the House of Representatives.

I considered all the evidence carefully, but ultimately I concluded that the two charges presented by the House managers—abuse of power and obstruction of Congress—did not provide a compelling case for removing this President.

According to public reporting, House Democrats toyed with charging the President with bribery, believing that it polled well, but they didn't have the evidence to prove that charge or, indeed, to prove any actual crime.

While allegations of specific criminal conduct may not be constitutionally required, they anchor impeachment in the law, and their absence is telling. Lacking evidence of a specific crime, the House decided to use the shotgun approach and throw everything under the catchall ''abuse of power'' umbrella.

Abuse of power is vaguely defined and subject to interpretation. In fact, I don't believe there has been a President in my lifetime who hasn't been accused of some form of abuse of power. For that reason, abuse of power seemed to me a fairly weak predicate on which to remove a democratically elected President from office. During the Clinton impeachment, I voted against the abuse of power article precisely because I believed it did not offer strong grounds for removing the duly elected President.

With respect to the second article, obstruction of Congress, the House took issue with the President's assertion of legal privileges, including those rooted in the constitutional separation of powers. Of course, every President in recent memory has invoked such privileges—for example, when the Obama administration cited executive privilege to deny documents to Congress during the Fast and Furious gunrunning investigation.

The House could have challenged the President's privilege claims by going through the traditional channels to resolve disputes between the executive and legislative branches, that being, of course, the courts. That is what was done in previous impeachment inquiries, like the Clinton impeachment. But the House skipped that step in the hopes that the Senate would bail them out and compel testimony and documents that the House, in its rush to impeachment, was unwilling to procure. Again, it seemed like a very thin basis on which to remove a duly elected President from office.

The facts in the case are that aid to Ukraine was released prior to the end of the fiscal year. No investigation of the scandal-plagued firm Burisma or the Bidens was ever initiated. While we can debate the President's judgment when it comes to his dealings with Ukraine or even conclude that his actions were inappropriate, the House's vague and overreaching impeachment charges do not meet the high bar set by the Founders for removal from office.

My second consideration in voting to acquit the President is the deeply partisan nature of the House's impeachment proceedings. The Founders' overriding concern about impeachment was