

Coons	Kennedy	Rubio
Cornyn	King	Sanders
Cortez Masto	Klobuchar	Sasse
Cotton	Lankford	Schatz
Cramer	Leahy	Schumer
Crapo	Lee	Scott (FL)
Cruz	Lujan	Scott (SC)
Daines	Lummis	Shaheen
Duckworth	Manchin	Shelby
Durbin	Markey	Sinema
Ernst	Marshall	Smith
Feinstein	McConnell	Stabenow
Fischer	Menendez	Sullivan
Gillibrand	Merkley	Tester
Graham	Moran	Thune
Grassley	Murkowski	Tillis
Hagerty	Murphy	Toomey
Hassan	Murray	Tuberville
Hawley	Ossoff	Van Hollen
Heinrich	Padilla	Warner
Hickenlooper	Paul	Warnock
Hirono	Peters	Warren
Hoeven	Portman	Whitehouse
Hyde-Smith	Reed	Wicker
Inhofe	Risch	Wyden
Johnson	Romney	Young
Kaine	Rosen	
Kelly	Rounds	

TRIAL OF DONALD JOHN TRUMP, PRESIDENT OF THE UNITED STATES

The PRESIDENT pro tempore. A quorum is present.

Under the previous order, the hour of 2:30 p.m. having arrived and a quorum having been established, the Senate will proceed to consideration of the Article of Impeachment against Donald John Trump, the former President of the United States.

The majority leader.

Mr. SCHUMER. Mr. President, at this time, pursuant to rule IV of the Senate Rules on Impeachment and the U.S. Constitution, the President pro tempore emeritus, the Senator from Iowa, will now administer the oath to the President pro tempore, PATRICK J. LEAHY.

Mr. GRASSLEY. Please raise your right hand. Your hand is on the Bible.

Do you solemnly swear that in all things appertaining to the trial of the impeachment of Donald John Trump, former President of the United States, now pending, that you will do impartial justice according to the Constitution and the laws, so help you God?

The PRESIDENT pro tempore. I do, so help me God.

At this time I will administer the oath to all Senators in the Chamber in conformance with article I, section 3, clause 6 of the Constitution and the Senate impeachment rules.

Will all Senators now rise and raise their right hands.

Do you solemnly swear that in all things appertaining to the trial of the impeachment of Donald John Trump, former President of the United States, now pending, you will do impartial justice according to the Constitution and laws, so help you God?

SENATORS. I do.

The PRESIDENT pro tempore. The clerk will call the names in groups of four. The Senators will present themselves at the desk to sign the Oath Book.

The legislative clerk called the roll, and the Senators present answered "I do" and signed the Official Oath Book.

The PRESIDENT pro tempore. The Acting Sergeant at Arms will make the proclamation.

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

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States the Article of Impeachment against Donald John Trump, former President of the United States.

The PRESIDENT pro tempore. The Senator from Kentucky.

Mr. PAUL. Mr. President, article II, section 4 of the Constitution says: "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."

Article I, section 3, clause 6 states: "When the President of the United States is tried, the Chief Justice shall preside."

As of noon last Wednesday, Donald Trump holds none of the positions listed in the Constitution. He is a private citizen. The Presiding Officer is not the Chief Justice, nor does he claim to be. His presence in the Chief Justice's absence demonstrates that this is not a trial of the President but of a private citizen.

POINT OF ORDER

Therefore, I make a point of order that this proceeding, which would try a private citizen and not a President, a Vice President, or civil officer, violates the Constitution and is not in order.

The PRESIDENT pro tempore. Under the precedents of the Senate regarding constitutional points of order, including those of the Senate while sitting as a Court of Impeachment, the Chair submits the question to the Senate: Is the point of order well taken?

The majority leader.

Mr. SCHUMER. Mr. President, the theory that the impeachment of a former official is unconstitutional is flat-out wrong by every frame of analysis: constitutional text, historical practice, precedent, and basic common sense. It has been completely debunked by constitutional scholars from all across the political spectrum.

Now, the junior Senator from Kentucky read one clause from the Constitution about the Senate's impeachment powers. He left out another from article I, section 3: "Judgment 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."

If the Framers intended impeachment to merely be a vehicle to remove sitting officials from their office, they would not have included that additional provision: disqualification from future office. The Constitution also gives the Senate the "sole power" to try all impeachments.

So what did past Senates decide on this question? In 1876, President Grant's Secretary of War, William Belknap, literally raced to the White House to tender his resignation before the House was set to vote on his impeachment. Not only did the House move forward with the impeachment, but the Senate convened a trial and voted as a Chamber that Mr. Belknap could be tried "for acts done as Secretary of War, notwithstanding his resignation of said office."

The language is crystal clear, without any ambiguity. The history and precedent is clear. The Senate has the power to try former officials, and the reasons for that are basic common sense. It makes no sense whatsoever that a President or any official could commit a heinous crime against our country and then defeat Congress's impeachment powers and avoid disqualification by simply resigning or by waiting to commit that offense until their last few weeks in office.

The theory that the Senate can't try former officials would amount to a constitutional get-out-of-jail-free card for any President who commits an impeachable offense.

Ironically, the Senator from Kentucky's motion would do an injury to the Constitution by rendering the disqualification clause effectively moot. So, again, by constitutional text, precedent, and common basic sense, it is clearly and certainly constitutional to hold a trial for a former official. Former President Trump committed, in the view of many, including myself, the gravest offense ever committed by a President of the United States.

The Senate will conduct a trial of the former President, and Senators will render judgment on his conduct.

MOTION TO TABLE

Therefore, the point of order is ill-founded and, in any case, premature. If Senators want this issue debated, it can and will be argued during the trial. Therefore, I move to table the point of order, and 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.

The result was announced—yeas 55, nays 45, as follows:

[Rollcall Vote No. 8]

YEAS—55

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

Van Hollen
Warner

Warnock
Warren

Whitehouse
Wyden

NAYS—45

Barrasso
Blackburn
Blunt
Boozman
Braun
Burr
Capito
Cassidy
Cornyn
Cotton
Cramer
Crapo
Cruz
Daines
Ernst

Fischer
Graham
Grassley
Hagerty
Hawley
Hoeven
Hyde-Smith
Inhofe
Johnson
Kennedy
Lankford
Lee
Lummis
Marshall
McConnell

Moran
Paul
Portman
Risch
Rounds
Rubio
Scott (FL)
Scott (SC)
Shelby
Sullivan
Thune
Tillis
Tuberville
Wicker
Young

The PRESIDENT pro tempore. On this vote, the yeas are 55, the nays are 45.

The motion to table is agreed to; the point of order is not sustained.

The majority leader.

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

Mr. SCHUMER. Mr. President, I have a resolution to organize the pretrial proceedings at the desk.

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

The legislative clerk read as follows:

A resolution (S. Res. 16) to provide for related procedures concerning the article of impeachment against Donald John Trump, President of the United States.

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.

The result was announced—yeas 83, nays 17, as follows:

[Rollcall Vote No. 9]

YEAS—83

Baldwin
Barrasso
Bennet
Blumenthal
Blunt
Booker
Boozman
Braun
Brown
Burr
Cantwell
Capito
Cardin
Carper
Casey
Cassidy
Collins
Coons
Cornyn
Cortez Masto
Cramer
Crapo
Duckworth
Durbin
Ernst
Feinstein
Fischer
Gillibrand

Graham
Grassley
Hassan
Heinrich
Hickenlooper
Hirono
Hoeven
Inhofe
Kaine
Kelly
Kennedy
King
Klobuchar
Lankford
Leahy
Lujan
Lummis
Manchin
Markey
McConnell
Menendez
Merkley
Moran
Murkowski
Murphy
Murray
Ossoff
Padilla

Peters
Portman
Reed
Romney
Rosen
Rounds
Sanders
Sasse
Schatz
Schumer
Shaheen
Sinema
Smith
Stabenow
Sullivan
Tester
Thune
Tillis
Toomey
Van Hollen
Warner
Warnock
Warren
Whitehouse
Wicker
Wyden
Young

NAYS—17

Blackburn
Cotton
Cruz
Daines
Hagerty
Hawley

Hyde-Smith
Johnson
Lee
Marshall
Paul
Risch

Rubio
Scott (FL)
Scott (SC)
Shelby
Tuberville

The PRESIDENT pro tempore. On this vote, the yeas are 83, the nays are 17.

The resolution (S. Res. 16) was agreed to.

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

The PRESIDENT pro tempore. The majority leader.

MOTION TO ADJOURN

Mr. SCHUMER. Mr. President, I move the Senate, sitting as a Court of Impeachment, adjourn until Tuesday, February 9, 2021, under the provisions of S. Res. 16.

The PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

Thereupon, at 3:26 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Tuesday, February 9, 2021.

The PRESIDENT pro tempore. The majority leader.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

(Ms. SINEMA assumed the Chair.)

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

The PRESIDING OFFICER (Mr. MURPHY). Without objection, it is so ordered.

MORNING BUSINESS—Continued

BIDEN ADMINISTRATION

Mr. CORNYN. Mr. President, throughout the Presidential campaign, President Biden spoke often about the need to unify the country. He talked about the need for people across our great Nation to come together to empathize with one another and to mend the divisions that exist in our society. He echoed that same theme in his inaugural address, saying:

Without unity, there is no peace, only bitterness and fury. No progress, only exhausting outrage. No nation, only a state of chaos.

I agree with President Biden that there is an imperative to restore unity and civility throughout our country, but for all of the talk of uniting, compromising, and working together, the early pages of this new chapter read quite differently.

For starters, there are the actions of our Democratic colleagues who are trying to eliminate the legislative filibuster. They have echoed and praised the President's call for unity and bipartisanship while threatening to tear down the very rules that force us to work together in a bipartisan way. We know that the filibuster, or the cloture requirement that requires 60 votes to close off debate, is designed to encourage a fulsome debate of the issues that

confront 330 million Americans. It is what distinguishes the Senate from other legislative bodies. Unlike in the House of Representatives, where you need a simple majority in order to work your will, the Senate requires 60 votes to be in agreement in order to close off debate before a bill can be passed with 51 votes or more. It really forces us to do what sometimes we resist, which is to work together in a bipartisan way. The American people may believe that it is in our best interest for us to pass things on a partisan basis, but it is certainly not in their best interest. So the cloture requirement, or the filibuster rule, is designed to prevent either party from steamrolling the other, and that is a good thing.

The new majority leader, the Senator from New York, has threatened to blow up the filibuster and clear a path for a sweeping, radical agenda—this despite the fact that our Democratic friends have themselves relied on the filibuster over the last 6 years as the minority party and that President Biden himself, based on his 36 years of experience in the U.S. Senate, has affirmed the importance of this 60-vote requirement. I am glad that two of our colleagues on the other side of the aisle—one from West Virginia and one from Arizona—have offered their assurances that they will not vote to end the legislative filibuster, but I am disappointed that only two of our Democratic colleagues have done that. This should not be controversial or newsworthy to begin with. So far, the majority of Senate Democrats has made no legitimate effort to pursue President Biden's call for unity or bipartisanship.

Unfortunately, it is not just the actions of our Democratic colleagues which have caused concern. President Biden himself has acted unilaterally, time and again, by issuing a lengthy list of Executive orders within hours of his inauguration. The policies that President Biden is addressing in his Executive orders should be addressed here in Congress with bipartisan legislation. One of those was a 100-day moratorium on enforcing bipartisan immigration laws, which was enjoined by a Federal judge in my State earlier today.

It would be better for the country if our Democratic colleagues tried to legislate instead of litigate these Executive orders in court. I think the experience with DACA, or the experience with the Deferred Action for Childhood Arrivals, is instructive. President Obama, back in 2012, decided to take it upon himself to enact this new policy. It has been tied up in the courts for the ensuing 8, now going on 9 years. I support providing a permanent solution for DACA recipients, but it has to be done here on a bipartisan basis, not just ordered unilaterally from the Oval Office, or else we are going to see these bogged down in lawsuit, after lawsuit, after lawsuit, which, I think, will be satisfying to virtually no one.