



UNITED STATES SENATE

January 17, 2021

The Honorable Charles Schumer
Democratic Leader
United States Senate
Washington DC, 20510

Democratic Leader Schumer:

As you said, the January 6, 2021, attack on the United States Capitol will live in infamy in United States history. Those who were complicit in this attack will be held accountable. And the Congress can be proud that it returned to business that same day to fulfill its constitutional duty and certify Joe Biden as the 46th President of the United States.

Vice President Pence stood in the breach against unconstitutional calls for him to overturn the 2020 election and violate his oath to defend the Constitution. Mitch McConnell, the Senate's Majority Leader, likewise rejected those same calls. Virtually all of us rejected further challenges to the 2020 election.

But now, in your first act as Majority Leader, rather than begin the national healing that the country so desperately yearns for, you seek vengeance and political retaliation instead. While the Vice President and Senate Republicans rejected unconstitutional actions, you seek to force upon the Senate, what would itself be but one more unconstitutional action in this disgraceful saga—the impeachment trial of a former president.

Both the plain text and the evident purpose of Congress' constitutional impeachment power make manifestly clear that the Congress is without the constitutional power to impeach a president, once he has left office.

The impeachment power exists to protect the Nation from the harm that an incumbent president might inflict upon the Nation were he to remain in office, not to vindicate political grievances after a president has left office.

Article II, Section 4 of the Constitution reads, "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 similarly reads "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." The two remedies for impeachment—removal and disqualification—are only remedies for an impeachment that is constitutional, which a trial of the former President would not be. They are not separate remedies for two different constitutional impeachments, the one for a president who is incumbent in office and the other for a president who is no longer incumbent in

office. If a Senate trial is not constitutional, then the remedy of disqualification is unavailable to the Congress as a punishment for the unconstitutionally impeached president.

It cannot be that the Framers intended to empower Congress to disqualify any former officer it would like, whenever it would like, and with no investigation. And of course, they did not. The two constitutional remedies for impeachment are available only when an official has been impeached by the constitutional impeachment process set forth in the Constitution. The disqualification remedy is available for a constitutionally impeached official as an additional option to the Congress. It is not itself support for an unconstitutional impeachment.

Leader Schumer, proceeding with the spectacle of the impeachment of a former President is as unwise as it is unconstitutional.

Where does this all end? When Republicans in the 115th Congress had control of both chambers, should they have impeached and disqualified President Obama from future office for his handling of Benghazi? Should Democrats now just “go ahead” and disqualify Trump administration officials from future office while they hold both chambers, just because they believe they can?

The Senate’s attempt to disqualify a President from future office who is no longer in office, would be an unconstitutional act of political vengeance, not a righteous constitutional act to protect the Nation by removal of an incumbent president. Such a gratuitous, meaningless effort by the Senate of the United States is neither worthy of our great institution, nor a service to the Nation and the American People. It will incite further division.

The Trump Presidency is over in three days. The Vice President of the United States withstood immense and unprecedented partisan pressure and fulfilled his oath to the Constitution of the United States. We, and you, must now do the same.

The Senate should vote to dismiss the article of impeachment once it is received in the Senate. We will be delaying indefinitely, if not forever, the healing of this great Nation if we do otherwise. Our obligation to the People we represent is clear. History will judge us harshly, as it should, if we do not rise to the occasion of this historic moment in our history.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lindsey Graham", with a long horizontal flourish extending to the right.

Lindsey O. Graham
United States Senator