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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, February 15, 2021, at 9:30 a.m.

Senate

FRIDAY, FEBRUARY 12, 2021

The Senate met at 12 noon and was called to order by the President pro tempore (Mr. LEAHY).

TRIAL OF DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES

The PRESIDENT pro tempore. The Senate will convene as a Court of Impeachment.

PRAYER

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

Let us pray.

Mighty God, unsurpassed in both power and understanding, we worship You. Lord, when there is nowhere else to turn, we lift our eyes to You.

As, again, this Senate Chamber becomes a court and our Senators become jurors, guide these lawmakers with Your wisdom, mercy, and grace. Lord, infuse them with a spirit of nonpartisan patriotism. Unite them in their efforts to do what is best for America. As they depend on Your providence and power, may they make choices that will be for Your greater glory.

We pray in Your sovereign Name. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore 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.

THE JOURNAL

The PRESIDENT pro tempore. Senators, will you please be seated.

If there is no objection, the Journal of proceedings of the trial are approved to date.

I would ask the Sergeant at Arms to make the proclamation.

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

Hear ye! Hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the Article of Impeachment exhibited by the House of Representatives against Donald John Trump, former President of the United States.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

ORDER OF BUSINESS

Mr. SCHUMER. Mr. President, for the information of all Senators, we will plan to take short breaks approximately every 2 hours and a longer dinner break around 5 p.m.

The PRESIDENT pro tempore. Pursuant to the provisions of S. Res. 47, the counsel for the former President has 16 hours to make the presentation of their case, and the Senate will hear the counsel now.

We recognize Mr. van der Veen to begin the presentation of the case for the former President.

Go ahead.

COUNSELS' PRESENTATION

Mr. Counsel VAN DER VEEN. Good afternoon, Senators, Mr. President.

The Article of Impeachment now before the Senate is an unjust and blatantly unconstitutional act of political vengeance. This appalling abuse of the Constitution only further divides our Nation when we should be trying to come together around shared priorities.

Like every other politically motivated witch hunt the left has engaged in over the past 4 years, this impeachment is completely divorced from the facts, the evidence, and the interests of the American people. The Senate should promptly and decisively vote to reject it.

No thinking person could seriously believe that the President's January 6 speech on the Ellipse was in any way an incitement to violence or insurrection. The suggestion is patently absurd on its face. Nothing in the text could ever be construed as encouraging, condoning, or enticing unlawful activity of any kind.

Far from promoting ''insurrection'' against the United States, the President's remarks explicitly encouraged those in attendance to exercise their rights ''peacefully and patriotically.'' Peaceful and patriotic protest is the very antithesis of a violent assault on the Nation's Capitol.

The House Impeachment Article slanderously alleges that the President intended for the crowd at the Ellipse to ''interfere with the Joint Session's solemn constitutional duty to certify the results of the 2020 Presidential election.'' This is manifestly disproven by the plain text of the remarks.

The President devoted nearly his entire speech to an extended discussion of how legislators should vote on the question at hand. Instead of expressing a desire that the joint session be prevented from conducting its business, the entire premise of his remarks was that the democratic process would and

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

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should play out according to the letter of the law, including both the Constitution and the Electoral Count Act.

In the conclusion of his remarks, he then laid out a series of legislative steps that should be taken to improve democratic accountability going forward, such as passing universal voter ID legislation, banning ballot harvesting, requiring proof of citizenship to vote, and turning out strong in the next primaries. Not only President—these are not the words of someone inciting a violent insurrection.

Not only President Trump's speech on January 6 but, indeed, his entire challenge to the election results was squarely focused on how the proper civic process could address any concerns through the established legal and constitutional system. The President brought his case before State and Federal courts, the U.S. Supreme Court, the State legislatures, the electoral college, and, ultimately, the U.S. Congress.

In the past, numerous other candidates for President have used many of the same processes to pursue their own election challenges. As recently as 2016, the Clinton campaign brought multiple postelection court cases, demanded recounts, and ridiculously declared the election stolen by Russia.

Many Democrats even attempted to persuade the electoral college delegates to overturn the 2016 results. House Manager RASKIN objected to the certification of President Trump's victory 4 years ago, along with many of his colleagues.

You will remember, it was Joe Biden who had to gavel him down.

(Text of Video presentation.)

Mr. RASKIN. I have an objection because 10 of the 29 electoral votes cast by Florida were cast by electors not lawfully certified.

Ms. JACKSON LEE. I object to the votes from the State of Wisconsin, which would not—should not—be legally certified.

Vice President BIDEN. There is no debate—

Ms. TLAIB. Mr. President, I object to the certificate from the State of Georgia on the grounds that the electoral vote was not——

Vice President BIDEN. There is no debate. There is no debate.

Mr. GRIJALVA. I object to the certification from the State of North Carolina.

Ms. JACKSON LEE. I object to the 15 votes from the State of North Carolina.

Mr. MCGOVERN. I object to the certificate from the State of Alabama. The electors were not lawfully certified.

Vice President BIDEN. Is it signed by a Senator?

Mr. RASKIN. Not as of yet, Mr. President.

Vice President BIDEN. In that case, the objection cannot be entertained.

The objection cannot be entertained.

Debate is not in order.

Ms. LEE of California. Even with the——

Vice President BIDEN. There is no debate in order.

Ms. LEE of California. Even with the——

Mr. BIDEN. There is no debate.

Ms. LEE of California. 87 voting machines are——

Vice President BIDEN. There is no debate in order. Is it signed by a Senator?

There is no debate.

There is no debate. There is no debate by the joint session.

There is no debate.

There is no debate.

Ms. JACKSON LEE. Sixteen voting——

Vice President BIDEN. There is no debate.

Ms. JACKSON LEE. And the mass——

Vice President BIDEN. Please come to order.

Ms. JACKSON LEE. There is the——

Vice President BIDEN. The objection cannot be received.

Ms. JACKSON LEE. What the Russian——

Vice President BIDEN. Section 18, title 20 of the United States Code prohibits debate in the joint session.

Ms. WATERS. I do not wish to debate. I wish to ask, Is there one United States Senator who will join me in this letter of objection?

Vice President BIDEN. There is no debate. There is no debate.

Ms. WATERS. Just one.

Vice President BIDEN. The gentlewoman will suspend.

Mr. Counsel VAN DER VEEN. In 2000, the dispute over the outcome was taken all the way to the Supreme Court, which ultimately rendered a decision.

To litigate questions of an election integrity within this system is not incitement to insurrection. It is the democratic system working as the Founders and lawmakers have designed. To claim that the President, in any way, wished, desired, or encouraged lawless or violent behavior is a preposterous and monstrous lie.

In fact, the first two messages the President sent via Twitter, once the incursion of the Capitol began, were:

Stay peaceful and no violence because we are the party of law and order.

The gathering on January 6 was supposed to be a peaceful event. Make no mistake about that. And the overwhelming majority of those in attendance remained peaceful.

As everyone knows, the President had spoken at hundreds of large rallies across the country over the past 5 years. There had never been any mob-like or riotous behaviors, and, in fact, a significant portion of each event was devoted to celebrating the rule of law, protecting our Constitution, and honoring the men and women of law enforcement.

Contrast the President's repeated combinations of violence with the rhetoric from his opponents.

(Text of Video presentation.)

President TRUMP. I am your President of law and order and an ally of all peaceful protesters.

Vice President BIDEN. The vast majority of the protests have been peaceful.

President TRUMP. Republicans stand for law and order, and we stand for justice.

Ms. PELOSI. I just don't even know why there aren't uprisings all over the country. Maybe there will be.

President TRUMP. My administration will always stand against violence, mayhem, and disorder.

Ms. PRESSLEY. There needs to be unrest in the streets for as long as there is unrest in our lives.

President TRUMP. I stand with the heroes of law enforcement.

Ms. WATERS. And you push back on them, and you tell them they are not welcome anymore anywhere.

President TRUMP. We will never defund our police. Together, we will ensure that America is a nation of law and order.

Vice President BIDEN. If we were in high school, I'd take him behind the gym and beat the hell out of him.

Mr. TESTER. But I think you need to go back and punch him in the face.

Mr. BOOKER. I feel like punching him.

President TRUMP. We just want law and order. Everybody wants that.

Mr. SCHUMER. I want to tell you, Gorsuch; I want to tell you, Kavanaugh: You have released the whirlwind, and you will pay the price.

President TRUMP. We want law and order. We have to have law and order.

Mr. CUOMO. Show me where it says that protests are supposed to be polite and peaceful.

President TRUMP. We believe in safe streets, secure communities, and we believe in law and order.

Tragically, as we know now, the January—on January 6, a small group, who came to engage in violent and menacing behavior, hijacked the event for their own purposes. According to publicly available reporting, it is apparent that extremists of various different stripes and political persuasions preplanned and premeditated an attack on the Capitol. One of the first people arrested was a leader of antifa. Sadly, he was also among the first to be released.

From the beginning, the President has been clear: The criminals who infiltrated the Capitol must be punished to the fullest extent of the law. They should be imprisoned for as long as the law allows.

The fact that the attacks were apparently premeditated, as alleged by the House managers, demonstrates the ludicrousness of the incitement allegation against the President.

You can't incite what was already going to happen.

Law enforcement officers at the scene conducted themselves heroically and courageously, and our country owes them an eternal debt. But there must be a discussion of the decision by political leadership regarding force posture and security in advance of the event.

As many will recall, last summer the White House was faced with violent rioters night after night. They repeatedly attacked Secret Service officers and at one point pierced a security wall, culminating in the clearing of Lafayette Square.

Since that time, there has been a sustained negative narrative in the media regarding the necessity of those security measures on that night, even though they certainly prevented many calamities from occurring.

In the wake of the Capitol attack, it must be investigated whether the proper force posture was not initiated due to the political pressure stemming from the events at Lafayette Square. Consider this: On January 5, the Mayor of the District of Columbia explicitly discouraged the National Guard and Federal authorities from doing more to protect the Capitol, saying:

[T]he District of Columbia is not requesting other federal law enforcement personnel and discourages any additional deployment . . .

This sham impeachment also poses a serious threat to freedom of speech for political leaders of both parties at every level of government. The Senate should be extremely careful about the precedent this case will set.

Consider the language that the House Impeachment Article alleges to constitute incitement:

If you don't fight like hell, you're not going to have a country anymore.

This is ordinary political rhetoric that is virtually indistinguishable from the language that has been used by people across the political spectrum for hundreds of years. Countless politicians have spoken of fighting for our principles. Joe Biden's campaign slogan was ''Battle for the Soul'' of America.

No human being seriously believes that the use of such metaphorical terminology is incitement to political violence. While the President did not engage in any language of incitement, there are numerous officials in Washington who have indeed used profoundly reckless, dangerous, and inflammatory rhetoric in recent years.

The entire Democratic Party and national news media spent the last 4 years repeating, without any evidence, that the 2016 election had been hacked and falsely and absurdly claimed the President of the United States was a Russian spy. Speaker PELOSI herself said that the 2016 election was hijacked and that Congress has a duty to protect our democracy. She also called the President an imposter and a traitor and recently referred to her colleagues in the House as ''the enemy within.''

Moreover, many Democrat politicians endorsed and encouraged the riots that destroyed vast swaths of American cities last summer. When violent, leftwing anarchists conducted a sustained assault on a Federal courthouse in Portland, OR, Speaker PELOSI did not call it insurrection; instead, she called the Federal law enforcement officers protecting the building ''storm troopers.''

When violent mobs destroyed public property, she said: ''People will do what they do.'' The attorney general of the State of Massachusetts stated:

Yes, America is burning, but that's how forests grow.

Representative AYANNA PRESSLEY declared:

There needs to be unrest in the streets for as long as there's unrest in our lives.

The current Vice President of the United States, KAMALA HARRIS, urged supporters to donate to a fund that bailed violent rioters and arsonists out of jail. One of those was released and went out and committed another crime, assault. He beat the bejesus out of somebody. She said, of the violent demonstrations:

Everyone beware . . . they're not gonna stop before Election Day in November, and they're not gonna stop after Election Day. [T]hey're not going to let up—and they should not.

Such rhetoric continued even as hundreds of police officers across the Nation were subjected to violent assaults at the hands of angry mobs. A man claiming to be inspired by the junior Senator from Vermont came down here to Washington, DC, to watch a softball game and kill as many Senators and Congressmen as he could. It cannot be forgotten that President Trump did not blame the junior Senator.

The senior Senator from Maine has had her house surrounded by angry mobs of protesters. When that happened, it unnerved her. One of the House managers—I forget which one—tweeted ''cry me a river.''

Under the standards of the House Impeachment Article, each of these individuals should be retroactively censored, expelled, punished, or impeached for inciting violence by their supporters.

Unlike the left, President Trump has been entirely consistent in his opposition to mob violence. He opposes it in all forms, in all places, just as he has been consistent that the National Guard should be deployed to protect American communities wherever protection is needed.

For Democrats, they have clearly demonstrated that their opposition to mobs and their view of using the National Guard depends upon the mob's political views. Not only is this impeachment case preposterously wrong on the facts, no matter how much heat and emotion is injected by the political opposition, but it is also plainly unconstitutional.

In effect, Congress would be claiming the right to disqualify a private citizen, no longer a government official, from running for public office. This would transform the solemn impeachment process into a mechanism for asserting congressional control over which private citizens are and are not allowed to run for President. In short, this unprecedented effort is not about Democrats opposing political violence; it is about Democrats trying to disqualify their political opposition. It is constitutional cancel culture.

History will record this shameful effort as a deliberate attempt by the Democratic Party to smear, censor, and cancel not just President Trump but the 75 million Americans who voted for him. Now is not the time for such a campaign of retribution; it is the time for unity and healing and focusing on the interests of the Nation as a whole.

We should all be seeking to cool temperatures, calm passions, rise above partisan lines. The Senate should reject this divisive and unconstitutional effort and allow the Nation to move forward.

Over the course of the next 3 hours or so, you will hear next from Mr. Schoen, who is going to talk about due process and a couple of other points you will be interested to hear. I will return with an analysis of why the First Amendment must be properly applied here, and then Mr. CASTOR will discuss the law as it applies to the speech of January 6. And then we will be pleased to answer your questions.

Thank you.

Mr. Counsel SCHOEN. Mr. President.

The PRESIDENT pro tempore. Mr. Schoen.

Mr. Counsel SCHOEN. Leaders, Senators, throughout the course of today, my colleagues and I will explain in some detail the simple fact that President Trump did not incite the horrific, terrible riots of January 6. We will demonstrate that, to the contrary, the violence and the looting goes against the law-and-order message he conveyed to every citizen of the United States throughout his Presidency, including on January 6.

First, though, we would like to discuss the hatred, the vitriol, the political opportunism that has brought us here today. The hatred that the House managers and others on the left have for President Trump has driven them to skip the basic elements of due process and fairness and to rush an impeachment through the House, claiming ''urgency.''

But the House waited to deliver the Article to the Senate for almost 2 weeks, only after Democrats had secured control over the Senate. In fact, contrary to their claim that the only reason they held it was because Senator MCCONNELL wouldn't accept the Article, Representative CLYBURN made clear that they had considered holding the Article for over 100 days to provide President Biden with a clear pathway to implement his agenda.

Our Constitution and any basic sense of fairness require that every legal process with significant consequences for a person's life, including impeachment, requires due process under the law, which includes factfinding and the establishment of a legitimate evidentiary record with an appropriate foundation.

Even last year's impeachment followed committee hearings and months of examination and investigation by the House. Here, President Trump and his counsel were given no opportunity to review evidence or question its propriety. The rush to judgment for a snap impeachment in this case was just one example of the denial of due process. Another, perhaps even more vitally significant, example was the denial of any opportunity ever to test the integrity of the evidence offered against Donald J. Trump in a proceeding seeking to bar him from ever holding public office again and that seeks to disenfranchise some 75 million voters—American voters.

On Wednesday of this week, countless news outlets repeated the Democrat talking point about the power of never-before-seen footage. Let me ask you this: Why was this footage never seen before? Shouldn't the subject of an impeachment trial—this impeachment

trial—President Trump, have the right to see the so-called new evidence against him?

More importantly, the riot and the attack on this very building was a major event that shocked and impacted all Americans. Shouldn't the American people have seen this footage as soon as it was available? For what possible reason did the House managers withhold it from the American people and President Trump's lawyers? For political gain?

How did they get it? How are they the ones releasing it? It is evidence in hundreds of pending criminal cases against the rioters. Why was it not released through law enforcement or the Department of Justice? Is it the result of a rushed, snap impeachment for political gain without due process?

House Manager RASKIN told us all yesterday that your job as jurors in this case is a fact-intensive job, but, of course, as several of the House managers have told you, we still don't have the facts.

Speaker PELOSI herself, on February 2, called for a 9/11-style Commission to investigate the events of January 6. Speaker PELOSI says that the Commission is needed to determine the causes of the events. She says it herself. If an inquiry of that magnitude is needed to determine the causes of the riot—and it may very well be—then how can these same Democrats have the certainty needed to bring Articles of Impeachment and blame the riots on President Trump? They don't.

The House managers, facing a significant lack of evidence, turned often to press reports and rumors during these proceedings, claims that would never meet the evidentiary standards of any court. In fact, they even relied on the words of Andrew Feinberg, a reporter who recently worked for Sputnik, the Russian propaganda outlet. You saw it posted. By the way, the report they cited was completely refuted.

The frequency with which House managers relied on unproven media reports shocked me as I sat in this Chamber and listened to this.

(Text of video presentations.)

Mr. Manager CASTRO of Texas. And there is a lot that we don't know yet about what happened that day.

Mr. Manager RASKIN. According to those around him at the time, reportedly responded.

Unidentified Speaker. Trump reportedly.

Mr. Manager NEGUSE. Reports across all major media outlets.

Unidentified Speaker. Major news networks, including FOX News reported.

Mr. Manager NEGUSE. Reported.

Mr. Manager LIEU. Reportedly summoned.

Ms. Manager PLASKETT. Reportedly.

Mr. Manager CASTRO of Texas. Reportedly not accidental.

According to reports.

Unidentified Speaker. President Trump was reportedly.

Mr. Manager CASTRO of Texas. Who reportedly spoke to the guard.

Mr. Manager CICILLINE. It was widely reported.

Mr. Manager RASKIN. Media reports.

Mr. Manager CICILLINE. According to reports.

Mr. Manager NEGUSE. Reported.

Mr. Manager LIEU. Reportedly.

As any trial lawyer will tell you, ''reportedly'' is a euphemism for ''I have no real evidence.'' ''Reportedly'' is not the standard in any American setting in which any semblance of due process is afforded an accused. ''Reportedly'' isn't even ''here is some circumstantial evidence.'' It is exactly as reliable as ''I googled this for you.''

And if you are worried you might ever be tried based on this type of evidence, don't be. You get more due process than this when you fight a parking ticket.

One reason due process is so important with respect to evidence offered against an accused is that it requires an opportunity to test the integrity, the credibility, the reliability of the evidence. Here, of course, former President Trump was completely denied any such opportunity. And it turns out there is significant reason to doubt the evidence the House managers have put before us.

Let me say this clearly. We have reason to believe the House managers manipulated evidence and selectively edited footage. If they did and this were a court of law, they would face sanctions from the judge.

I don't raise this issue lightly. Rather, it is a product of what we have found in just the limited time we have had since we first saw the evidence here with you this week.

We have reason to believe that the House managers created false representations of tweets, and the lack of due process means there was no opportunity to review or verify the accuracy.

Consider these facts. The House managers, proud of their work on this snap impeachment, staged numerous photo shoots of their preparations. In one of those, Manager RASKIN is seen here at his desk, reviewing two tweets side by side. The image on his screen claims to show that President Trump had retweeted one of those tweets.

(Video presentation.)

Now, Members of the Senate, let's look closely at the screen because, obviously, Manager RASKIN considered it important enough that he invited the New York Times to watch him watching it.

What is wrong with this image? Actually, there are three things very wrong with it. Look at the date on the very bottom of the screen on Manager RASKIN's computer screen when we zoom into the picture. The date that appears is January 3, 2020, not 2021. Why is that date wrong? Because this is not a real screenshot that he is working with. This is a recreation of a tweet. And you got the date wrong when you manufactured this graphic. You did not disclose that this is a manufactured graphic and not a real screenshot of a tweet.

To be fair, the House managers caught this error before showing the image on the Senate floor. So you never saw it when it was presented to you.

But that is not all. They didn't fix this one. Look at the blue checkmark next to the Twitter username of the account retweeted by the President. It indicates that this is a verified account, given the blue check by Twitter to indicate it is run by a public figure. The problem? The user's real account is not verified and has no blue checkmark, as you can see. Were you trying to make her account seem more significant or were you just sloppy?

If we had due process of law in this case, we would know the truth. But that is not all that is wrong with this one tweet. House Manager Swalwell showed you this tweet this week, and he emphasized that this tweet reflected a call to arms. He told you repeatedly that this was a promise to call in the cavalry for January 6. He expressly led you to believe that President Trump's supporter believed that the President wanted armed supporters at the January 6 speech—paramilitary groups, the cavalry—ready for physical combat.

The problem is, the actual text is exactly the opposite. The tweeter promised to bring the calvary—a public display of Christ's crucifixion, a central symbol of her Christian faith with her to the President's speech—a symbol of faith, love, and peace.

They just never want to seem to read the text and believe what the text means. You will see this was reported in the media last evening also.

Words matter, they told you. But they selectively edited the President's words over and over again. They manipulated video, time-shifting clips, and made it appear the President's words were playing to a crowd when they weren't. Let's take a look.

(Text of video presentations.)

President TRUMP. After this, we're going to walk down—and I will be there with you—we're going to walk down. We are going to walk down to the Capitol.

And we're going to walk down to the Capitol, and we're going cheer on our brave Senators and Congress men and women, and we're probably not going to be cheering so much for some of them because you will never take back our country with weakness. You have to show strength, and you have to be strong. We have come to demand that Congress do the right thing and only count the electors who have been lawfully slated—lawfully slated.

I know that everyone here will soon be marching over to the Capitol Building to peacefully and patriotically make your voices heard.

''And we are going to walk down to the Capitol.'' They showed you that part. Why are we walking to the Capitol? Well, they cut that off: to ''cheer on'' some Members of Congress, and not others, ''peacefully and patriotically.''

The Supreme Court ruled in Brandenburg that there is a very clear standard for incitement—in short, to paraphrase, whether the speech was intended to provoke imminent lawless action and was likely to do so.

''Go to the Capitol, and cheer on some Members of Congress but not others''—they know it doesn't meet the standard for incitement, so they edited it down.

We heard a lot this week about ''fight like hell,'' but they cut off the video before they showed you the President's optimistic, patriotic words that followed immediately after.

(Text of video presentations.)

President TRUMP. We fight like hell. And if you don't fight like hell, you're not going to have a country anymore.

Our exciting adventures and boldest endeavors have not yet begun. My fellow Americans, for our movement, for our children, and for our beloved country—and I say this despite all that has happened—the best is yet to come.

There is that famous quote, like one of the House managers said: A lie will travel halfway around the world before the truth has a chance to put its shoes on.

Well, this lie traveled around the world a few times and made its way into the Biden campaign talking points and ended up on the Senate floor: the Charlottesville lie, ''very fine people on both sides,'' except that isn't all he said. And they knew it then, and they know it now.

Watch this.

(Text of video presentations.)

President TRUMP. But you also had people that were very fine people—on both sides. You had people in that group—excuse me, excuse me. I saw the same pictures as you did. You had people in that group that were there to protest the taking down of, to them, a very, very important statue and the renaming of a park from Robert E. Lee to another name.

Unidentified Speaker. George Washington and Robert E. Lee are not the same.

President TRUMP. George Washington was a slave owner. Was George Washington a slave owner? So will George Washington now lose his status? Are we going to take down—excuse me. Are we going to take down—are we going to take down statues to George Washington? How about Thomas Jefferson? What do you think of Thomas Jefferson? Do you like him? Are we going to take down the statue? Because he was a major slave owner. Now are we going to take down his statue?

So you know what? It is fine. You're changing history. You're changing culture. And you had people—and I am not talking about the neo-Nazis and the White nationalists because they should be condemned totally. But you had many people in that group other than neo-Nazis and White nationalists, OK? And the press has treated them absolutely unfairly.

Now, in the other group also, you had some fine people, but you also had troublemakers, and you see them come with the black outfits and with the helmets and with the baseball bats. You got—you had a lot of bad—you had a lot of bad people in the other group too.

Unidentified Speaker. Who was treated unfairly, sir? I'm sorry. I just couldn't understand what you were saying. You were saying the press treated White nationalists unfairly? I want to understand what you're saying.

President TRUMP. No. No, there were people in that rally—and I looked the night before. If you look, there were people protesting, very quietly, the taking down of the statue of Robert E. Lee. I am sure in that group there were some bad ones. The following day, it looked like they had some rough, bad people—neo-Nazis, White nationalists—whatever you want to call them. But you had a lot of people in that group that were there to innocently protest and very legally protest because, you know—I don't know if you know, they had a permit. The other group didn't have a permit.

So I only tell you this: There are two sides to a story. I thought what took place was a horrible moment for our country, a horrible moment. But there are two sides to the country.

Does anybody have a final—does anybody have a—you have an infrastructure—

This might be, today, the first time the news networks played those full remarks in their context. And how many times have you heard that President Trump has never denounced White supremacists? Now you and America know the truth.

Here is another example. One of the House managers made much of the President's supposedly ominous words of ''you have to get your people to fight.'' But you knew what the President really meant. He meant that the crowd should demand action from Members of Congress and support primary challenges to those who don't do what he considered to be right. Support primary challenges, not violent action. I know what he meant because I watched the full video, and so did the House managers. But they manipulated his words. You will see where they stopped it and to give it a very different meaning from the meaning it has in full context. Let's watch.

(Text of video presentations.)

Mr. Manager NEGUSE. ''You have to get your people to fight.'' He told them.

President TRUMP. You have to get your people to fight. And if they don't fight, we have to primary the hell out of the ones that don't fight. You primary them. We are going to. We are going to let you know who they are. I can already tell you, frankly.

The ''people'' who need to fight are Members of Congress. Why do we have to skip the necessary due diligence and due process of law and any—that any legal proceeding should have? It couldn't have been the urgency to get President Trump out of office. House Democrats held the Articles until he was no longer President, mooting their case.

Hatred, animosity, division, political gain—and let's face it, for House Democrats, President Trump is the best enemy to attack.

(Text of video presentations.)

Mr. RASKIN. I want to say this for Donald Trump, who I may very well be voting to impeach.

Mr. ELLISON. Donald Trump has already done a number of things which legitimately raise the question of impeachment.

Ms. WATERS. I don't respect this President, and I will fight every day until he is impeached.

Mr. CASTRO of Texas. That is grounds to start impeachment proceedings.

Those are grounds to start impeachment.

Those are grounds to start impeachment proceedings.

Yes, I think that's grounds to start impeachment proceedings.

Mr. GREEN of Texas. I rise today, Mr. Speaker, to call for the impeachment of the President of the United States of America.

Ms. WATERS. I continue to say: Impeach him. Impeach 45.

(People chanting: ''Impeach 45.'')

Impeach 45.

Mr. COHEN. So we're calling upon the House to begin impeachment hearings immediately.

Mr. JONES. On the impeachment of Donald Trump, will you vote yes or no?

Ms. OMAR. I would vote yes.

Ms. OCASIO-CORTEZ. I would vote—I would vote to impeach.

Ms. TLAIB. Because we're going to go in there and impeach the mother [bleep].

Mr. SHERMAN. But the fact is, I introduced Articles of Impeachment in July of 2017.

Mr. GREEN of Texas. If we don't impeach this President, he will get reelected.

Mr. COHEN. My oath requires me to be for impeachment.

Have an impeachment hearing. He needs a scarlet ''I'' on his chest.

Mr. BOOKER. The Representatives need to begin impeachment proceedings against this President.

Ms. WARREN. It is time to bring impeachment charges against him.

Bring impeachment charges.

Mr. NADLER. My personal view is that he richly deserves impeachment.

Unidentified Speaker. I'm here at an impeachment rally, and we are ready to impeach the. . . .

Ms. PELOSI. We can impeach him every day of the week for anything he's done.

Mr. Counsel SCHOEN. That same hatred and anger has led House managers to ignore their own words and actions and set a dangerous double standard.

The House managers spoke about rhetoric, about a constant drumbeat of heated language. Well, as I am sure everyone watching expected, we need to show you some of their own words.

(Text of video presentations.)

Ms. PELOSI. I just don't even know why there aren't uprisings all over the country. Maybe there will be.

Ms. PRESSLEY. There needs to be unrest in streets for as long as there is unrest in our lives.

Ms. PELOSI. You've got to be ready to throw a punch.

We have to be ready to throw a punch.

Mr. TESTER. Donald Trump, I think you need to go back and punch him in the face.

Ms. Wallace. I thought he should have punched him in the face.

Mr. BOOKER. I feel like punching him.

Vice President BIDEN. I would like to take him behind the gym if I were in high school.

If I were in high school, I would take him behind the gym and beat the hell out of him.

You know, I wish we were in high school. I could take him behind the gym.

Ms. WATERS. I will go and take Trump out tonight.

Ms. WARREN. Take him out now.

Mr. Depp. When was the last time an actor assassinated a President?

Mr. Wilson. They are still going to have to go out and put a bullet in Donald Trump.

Mr. Cuomo. Show me where it says a protest is supposed to be polite and peaceful.

Ms. WATERS. You push back on them, and you tell them they're not welcome anymore, anywhere.

Madonna. I have thought an awful lot about blowing up the White House.

Mr. BOOKER. Please get up in the face of some Congresspeople.

Ms. PELOSI. People will do what they do.

Mr. SCHUMER. I want to tell you, Gorsuch, I want to tell you Kavanaugh: You have released the whirlwind, and you will pay the price.

Ms. TLAIB. We're going to go in there and we're going to [bleep].

Ms. PRESSLEY. This is just a warning to you Trumpers: Be careful. Walk lightly. And for those of you who are soldiers, make them pay.

Ms. DeGeneres. If you had to be stuck in an elevator with either President Trump, Mike Pence, or Jeff Sessions, who would it be?

Ms. HARRIS. Does one of us have to come out alive?

And there is more.

(Text of video presentations.)

Mr. McDonough. I promise to fight every single day.

One, I'm a fighter and I'm relentless.

But I'm a fighter and I'm relentless.

A fighter and I'm relentless.

I will fight like hell.

Ms. WARREN. The way I see it now is that we pick ourselves up and we fight back; that is what it is all about. We stand up and we fight back. We do not back down, we do not compromise, not today, not tomorrow, not ever. You can lie down, you can whimper, you can pull up in a ball, you can decide to move to Canada, or you can stand your ground and fight back, and that is what it is about. We do fight back, but we are going to fight back. We are not turning this country over to what Donald Trump has sold. We are just not. Look, people are upset, and they're right to be upset.

Now, we can whimper, we can whine, or we can fight back. We're up here to fight back. Me, I'm here to fight back. I'm here to fight back because we will not forget. We do not want to forget. We will use that vision to make sure that we fight harder, we fight tougher, and we fight more passionately more than ever.

We still have a fight on our hands. Fight hard for the changes Americans are demanding. Get in the fight.

To winning the fight.

Fight.

Fighting.

Fighting.

We'll use every tool possible to fight for this change. We'll fight. We'll fight.

Fight.

Fighting hard.

Serious about fighting.

And fight.

We've got to (inaudible) and fight back.

Problems—we call them out and we fight back.

I'm in this fight.

I am fighting.

I am fighting.

Get in this fight. Get in this fight. Get in this fight.

And fighting.

We all need to be in the fight. We all need to stay in the fight. We stay in this fight.

We fought back. We fought back. I am not afraid of a fight. I am in this fight all the way. You don't get what you don't fight for.

Our fight.

Our fight.

We are in this fight for our lives. This is the fight of our lives.

Mr. WARNER. But we are going to make sure this fight doesn't end tonight.

Mr. MENENDEZ. This is a fight for our lives, the lives of our friends and family members and neighbors. It is a fight.

Fight.

And it is a fight that we're going to work to make sure continues.

It is a fight.

It is a fight.

It is a fight.

And that is what this fight is for.

Mr. TESTER. Well, I'm wired to fight anyone who isn't doing their job for us. I'm JON TESTER, and you're damn right I approve this message.

Ms. ROSEN. And I'll have lots of fights ahead of us, and I'm ready to stand up and keep fighting.

We're going to fight.

We're going to fight.

And we need to fight.

Fight.

We need to fight.

We got a few more fights. I'm going to take the privilege of a few more fights.

And we have the biggest fight of all. I will never stop fighting. I will fight like hell to fight back against anyone.

Mrs. SHAHEEN. We need to say loud and clear that we are ready to fight.

Mr. DURBIN. It's a bare knuckles fight.

Mr. WYDEN. Now they're going to actually have to fight back against people.

Mr. SCHATZ. The fight has to be conducted.

Ms. CANTWELL. It is so important that we need to fight.

Ms. MURRAY. Fight that fight.

Mr. KING. We have been fighting.

Mr. COONS. I was fighting very hard.

Mr. VAN HOLLEN. Time is of the essence both in terms of the fight.

Mr. BENNET. I think we should be fighting.

Mr. MERKLEY. I really believe we need to fight.

Mr. HEINRICH. We're simply not going to take this lying down. We're going to keep fighting.

Mr. KAINE. So I'm telling all of my colleagues, this is the fight of our life.

Ms. BALDWIN. Whose side are you on? Who are you fighting for?

Mr. HICKENLOOPER. They're fighting or I'm fighting. We're all fighting. We are both fighting.

Ms. HIRONO. We will fight back. We're not going to take this lying down.

Mr. MURPHY. I'm just going to keep the fight up.

Ms. GILLIBRAND. What we have to do right now is fight as hard as we can.

Ms. STABENOW. We have to rise up and fight back.

Mr. BLUMENTHAL. I am going to be fighting—fight like hell.

Mr. SCHUMER. Keep fighting, fighting, fighting.

And we kept fighting and we did, so we're going to keep fighting.

Mr. PETERS. We have to be fighting every single day.

Mr. WHITEHOUSE. We have to fight back, and we have no choice but to do that. I think we're doing the right thing to do that.

Mr. LUJAN. Fighting.

Mr. MANCHIN. And I'm fighting.

Mr. SANDERS. Our job right now is to fight.

Ms. HASSAN. It is really important, I'm going to keep fighting.

Mr. OSSOFF. I'm asking for the support of the people across the country to fight back.

Mr. PADILLA. And you've got to be fierce in fighting.

Mr. WARNOCK. Fighting.

Ms. SMITH. Proud to have been fighting.

Mr. LEAHY. I told President Biden I will fight like mad.

Ms. CORTEZ MASTO. I will tell you what. Now more than ever, we have to fight like hell.

Mr. MARKEY. We have these battles on the floor of the Senate. I'm going to go down and battle. I'm going to be down there on the floor fighting.

Mr. SCHUMER. We Democrats are fighting as hard as we can.

Democrats are fighting as hard as we can.

Credit it any way, but we're fighting back.

Mr. KAINE. And what we've got to do is fight in Congress, fight in the courts, fight in the streets, fight online, fight at the ballot box.

Mr. BOOKER. Fighting and pushing around the clock.

Fighting and continue to be brave and keep strong and keep fighting. We're getting people engaged in the fight. We're fighting. We've got to keep fighting and keep focused.

Ms. KLOBUCHAR. Fight. This is going to be a fight.

Mr. CASTRO. We will fight him and challenge him every way we can, in the Congress, in the courts, and in the streets.

Ms. HARRIS. To continue fighting, we each have an important role to play in fighting in this fight like so many before it. It has been a fight. The American people are going to have to fight.

And about the importance of fighting. I will always fight.

Fighting.

But we always must fight.

Joe Biden has a deep, deep seeded commitment to fight.

And to fight.

And about the importance of fighting.

We always must fight.

To fight.

To fight.

And to fight.

As our willingness to fight.

Continue the fight.

As Joe Biden says, to fight.

Fighting.

What we are fighting for.

We will tell them about what we did to fight.

About a fight.

Truly I do believe that we're in a fight.

I believe we're in a fight.

I believe we're in a fight.

I believe we're in a fight.

So there's a fight in front of us. A fight for all of these things. And so we're prepared to fight for that.

We know how to fight.

Our ongoing fight.

A fight.

We know how to fight. We like a good fight. We were born out of a fight. This is what is our fight right now.

Mr. RASKIN. There's the fight.

There're the fight.

There's the fight.

And then there's the fight to defend.

Back in the fight.

Ms. PELOSI. Our mission is to fight. That is the guiding purpose of House Democrats.

Fighting.

He has never forgotten who he is fighting for.

March and fought.

And we just have to fight.

But this is a fight for our country.

Mr. SCHUMER. Fighting the health crisis of COVID.

Vice President BIDEN. I led the fight.

And continue to fight.

Never, never, give up this fight. I am a citizen fighting for it.

It means not only fighting.

A leader who fought for progressive change.

As a lawyer who fought for people his whole life.

As well as other fights he's in. I'm proud to have Tim in this fight with me.

And above all, it is time for America to get back up and once again fight.

Mr. Buttigieg. We will fight when we must fight.

Mr. CASTRO of Texas. What kind of America are we fighting for?

We've been fighting.

We need to fight.

But we also need to fight.

Fight for America.

Mrs. CLINTON. I am going to wake up every day and fight hard.

I have been fighting

We're going to fight.
We're going to fight.
We're going to fight.
We're going to fight.
And I will fight.
Mr. BUTTIGIEG. We're in the fight of our lives right now.
Mr. O'ROURKE. We fight like hell.
Mr. WYDEN. To fight.
Ms. ROSEN. To fight.
Mr. CICILLINE. Fight against the Trump administration.
Democrats are standing up to fight.
We're in this fight in a serious way.
Mr. LIEU. To fight.
Ms. DEGETTE. We're eager to take on this fight.
Get in this fight.
Mrs. GILLIBRAND. I have taken on the fights.
Mr. NEGUSE. As representatives for the people and legislators here in the Halls of Congress, our job is to fight.
Ms. PLASKETT. Who has led us in this fight.
Mr. SWALWELL. To fight for this.
This fight.
Mr. WARNOCK. Every day I am in the United States Senate, I will fight.
Mr. BROWN. One of the things we do is fight—should fight.
Ms. OCASIO-CORTEZ. Because my constituents send me here each and every day to fight.
Ms. Abrams. We have been fighting this fight.
And we need to be side by side to succeed.
So I hope that you will all join us in our fight.
And if we fight.
And as the next Governor of Georgia, I will never stop fighting. We can show the old guard something new, and we can fight.
Ms. DEAN. My fight.
Those fights.
And to fight.
To fight an administration.
Ms. HARRIS. Requiring us to fight and fight we will.
Their fight.
In their fight.
In their fight.
The fight is a fight. And so when we fight the fight that we are in.
When we are fighting this fight.
We fight this fight.
The strength of who we are is we will fight.
And we will fight.
We will fight the fight.
We are in a fight.
The fight.
Fight.
Fight.
It is a fight.
It is a fight.
And it is a fight born out of patriotism.
This is a fight.
Fighting.
I say fight on.
Fight on.
Fight on.
Fight on.
Ms. WARREN. I am here to say one more time in public, this is not a fight I wanted to take on, but this is the fight in front of us now.

Every single one of you and every one of you—that is OK. You didn't do anything wrong. It is a word people use. But please stop the hypocrisy.

Did you tone down the rhetoric last summer when all of this was happening? Did you condemn the rioters, or did you stand with NANCY PELOSI, who said: People are going to do what they are going to do.

(Text of video presentations.)

Ms. HARRIS. This is a movement. I'm telling you, they're not going to stop. And everyone beware because they're not going to stop. They're not going to stop before election day in November, and they're not going to stop after.

Mr. Cuomo. Please, show me where it says a protest is supposed to be polite and peaceful.

Ms. PELOSI. I just don't even know why there aren't uprisings all over the country. Maybe there will be.

Unidentified Speaker. It was a violent night in St. Louis. They shot and killed David in cold blood.

Ms. Hannah-Jones. Destroying property, which can be replaced, is not violence.

Unidentified Speaker. This is an apartment complex on fire. It just collapsed.

Unidentified Speaker. The building just collapsed.

Unidentified Speaker. I don't know where to go now. These people did this for no reason.

Unidentified Speaker. This is just a snapshot of some of the damage people will be waking up to.

Mr. SCHUMER. I am proud of New York, and I am proud of the protests.

Unidentified Speaker. There is damage everywhere you look. Honestly, it looks like a war zone.

Ms. PELOSI. Heartwarming to see so many people turn out peacefully.

Mr. SCHUMER. They keep doing it day after day after day.

In fact, our country is a nation of protests. The patriots were protesters.

Unidentified Speaker. St. John's Church is on fire.

Unidentified Speaker. Can you disavow that was antifa?

Mr. NADLER. That is a myth.

Unidentified Speaker. I hope someone burns down your whole precinct with all y'all inside.

Mr. Velshi. It is not, generally speaking, unruly.

Ms. WATERS. You push back on them, and you tell them they're not welcome anymore, anywhere.

Ms. HARRIS. They are not going to let up, and they should not.

Mr. Counsel SCHOEN. You claim that it is wrong to object to the certification of election results. You, along with your allies in the media, attempted to cancel and censor Members of this Chamber who voiced concerns and objected to certification.

Manager RASKIN, you had been in Congress only 3 days when you objected in 2017. It is one of the first things you did when you got here.

(Text of video presentations of 1–6–2017.)

Mr. RASKIN. I have an objection because 10 of the 29 electoral votes cast by Florida were cast by electors not lawfully certified.

Vice President BIDEN. Is the objection in writing and signed not only by a Member of the House of Representatives but also by a Senator?

Mr. RASKIN. It is in writing, Mr. President.

Vice President BIDEN. Is it signed by a Senator?

Mr. RASKIN. Not as of yet, Mr. President.

Vice President BIDEN. In that case, an objection cannot be entertained.

Ms. JAYAPAL. Mr. President, I object to the certificate from the State of Georgia on the grounds that the electoral vote does not——

Vice President BIDEN. There is no debate. There is no debate.

Mr. GRIJALVA. I object to the certificate from the State of North Carolina based on violation of the——

Vice President BIDEN. There is no debate. There is no debate in the joint session.

Ms. LEE. I object because people are horrified by the overwhelming evidence——

Vice President BIDEN. Section 18, title 3 of the United States Code prohibits debate.

Ms. JACKSON LEE. I object.

(Text of video presentation of 1–6–2005.)

Ms. TUBBS JONES. I object to the counting of the electoral votes of the State of Ohio.

(Text of video presentations of 1–6–2017.)

Mr. MCGOVERN. I object to the certificate from the State of Alabama. The electors were not lawfully certified.

Ms. JACKSON LEE. I object to the 15 votes from the State of North Carolina because of the massive voter suppression and the closing of voting booths in early voting——

Vice President BIDEN. There is no debate. There is no debate.

Ms. JACKSON LEE. 16 to 1——

Vice President BIDEN. There is no debate.

Ms. JACKSON LEE. And the massive voting suppression that occurred——

Vice President BIDEN. The gentlewoman will suspend.

(Text of video presentations of 1–5–2001.)

Mr. FILNER. I have an objection to the electoral votes.

Ms. WATERS. The objection is in writing, and I don't care that it is not signed by a Member of the Senate.

(Text of video presentations of 1–6–2017.)

Ms. WATERS. I do not wish to debate. I wish to ask: Is there one United States Senator who will join me in this letter of objection?

Vice President BIDEN. There is no debate.

Ms. JAYAPAL. The objection is signed by a Member of the House but not yet by a Member of the Senate.

Vice President BIDEN. Well, it is over.

(Laughter.)

Mr. Counsel SCHOEN. And when the House managers realized that the President's actual words could not have incited the riot, as you alleged in your Article of Impeachment, you attempted to pivot. You said that raising the issue of election security and casting doubt on the propriety of our elections was dangerous.

One of the House managers, Mr. CICILLINE, told you that this is not about the words Mr. Trump used in isolation. Rather, it is about the big lie, the claim that the election was stolen. The House managers told you that it is the big lie that incited the riot and that the big lie was President Trump's claim that the election was not a fair election or that the election was stolen.

Claiming an election was stolen, you were told, are words that are inciteful to a candidate's followers and cause people to respond violently. Claiming an election was stolen or not legitimate is something that a candidate should never do because he or she knows or should know that such a

claim and such words can actually incite violent insurrection, you were told.

Well, it seems that the House managers' position must actually be a bit narrower than that. The House managers' position really is that, when Republican candidates for office claim an election is stolen or that the winner is illegitimate, it constitutes inciting an insurrection and the candidate should know it, but Democratic Party candidates for public elective office are perfectly entitled to claim the election was stolen or that the winner is illegitimate or to make any other outrageous claim they can.

It is their absolute right to do so, and it is their absolute right to do so irrespective of whether there is any evidence to support the claim. Democratic candidates can claim that an election was stolen because of Russian collusion or without any explanation at all, and that is perfectly OK and is in no way incitement to an insurrection, and somehow, when Democratic candidates publicly decry an election as stolen or illegitimate, it is never a big lie. You have been doing it for years.

(Text of video presentation of 2–10–2021.)

Mr. Manager CASTRO of Texas. But can you imagine telling your supporters that the only way you can possibly lose is if an American election was rigged and stolen from you? And ask yourself whether you have ever seen anyone at any level of government make the same claim about their own election.

(Text of video presentation of 11–14–2018.)

Mr. BROWN. If Stacey Abrams doesn't win in Georgia, they stole it. It's clear. It's clear. And I say that publicly. It's clear.

(Text of video presentation of 5–4–2019.)

Ms. CLINTON. You can run the best campaign—you can even become the nominee—and you can have the election stolen from you.

(Text of video presentation of 9–29–2019.)

Ms. CLINTON. He knows he's an illegitimate President. He knows. He knows that there were a bunch of different reasons why the election turned out the way it did.

(Text of video presentation of 11–6–2018.)

Ms. Abrams. Votes remain to be counted. There are voices that are waiting to be heard.

(Text of video presentation of 11–16–2018.)

Ms. Abrams. And I will not concede.

(Text of video presentation of 11–18–2018.)

Mr. Tapper. I respect the issues that you're raising, but you're not answering the question. Do you think it was——

Ms. Abrams. I am.

Mr. Tapper. You're not using the word ''legitimate.''

(Text of video presentations of 1–6–2005.)

Ms. PELOSI. There are still legitimate concerns over the integrity of our elections and of ensuring the principle of one person, one vote.

Mr. SANDERS. I agree with tens of millions of Americans who are very worried that when they cast a ballot on an electronic voting machine that there is no paper trail to record that vote.

Ms. PELOSI. But constantly shifting vote tallies in Ohio and malfunctioning electronic machines which may not have paper receipts have led to an additional loss of confidence by the public. This is their only opportunity to have this debate while the country is listening, and it is appropriate to do so.

Mr. Counsel SCHOEN. House Manager CASTRO no longer has to try to imagine it thanks to the distinguished Senator and others. It didn't have to be this way. The Democrats promised unity. They promised to deliver the very COVID relief, in the form of $2,000 stimulus checks, that President Trump called for. They should have listened to their own words of the past. I leave you with the wise words of Congressman JERRY NADLER.

(Text of video presentation of 12–11–1998.)

Mr. NADLER. The effect of impeachment is to overturn the popular will of the voters. We must not overturn an election and remove a President from office except to defend our system of government or our constitutional liberties against the dire threat, and we must not do so without an overwhelming consensus of the American people. There must never be a narrowly voted impeachment or an impeachment supported by one of our major political parties and opposed by the other. Such an impeachment will produce the divisiveness and bitterness in our politics for years to come and will call into question the very legitimacy of our political institutions.

The American people have heard the allegations against the President, and they overwhelmingly oppose impeaching him. They elected President Clinton. They still support him. We have no right to overturn the considered judgment of the American people.

Mr. Speaker, the case against the President has not been made. There is far from sufficient evidence to support the allegations, and the allegations, even if proven true, do not rise to the level of impeachable offenses.

Mr. Speaker, this is clearly a partisan railroad job. The same people who today tell us we must impeach the President for lying under oath almost to a person voted last year to re-elect a Speaker who had just admitted lying to Congress in an official proceeding.

The American people are watching, and they will not forget. You may have the votes, you may have the muscle, but you do not have the legitimacy of a national consensus or of a constitutional imperative. This partisan coup d'etat will go down in infamy in the history of this Nation.

Thank you, Mr. Speaker.

I yield back the balance of my time.

Mr. Counsel SCHOEN. Thank you.

Mr. VAN DER VEEN. Good afternoon again, Senators, Mr. President.

There are two fundamental questions for purposes of this free speech analysis. First, does the First Amendment to the Constitution apply in this Chamber to these impeachment proceedings? Second, if it does, do the words spoken by Mr. Trump at the Ellipse on January 6 meet the definition of ''constitutional incitement'' so as to void the protections afforded by the First Amendment? I will explain why the answers to both of these questions must be a resounding yes.

The Constitution and the First Amendment must certainly apply to these impeachment proceedings, and Mr. Trump's speech deserves full protection under the First Amendment, but before getting into the legal analysis, some preliminary observations about the House managers' case should be made.

First, this case, unfortunately, is about political hatred. It has become very clear that the House Democrats hate Donald Trump. This type of political hatred has no place in our political institutions and certainly no place in the law. This hatred has led the House managers to manipulate and selectively edit Mr. Trump's speech to make it falsely appear that he sought to incite the crowd to violently attack the Capitol. He didn't, and we will show you why.

The hatred has also led the House managers to make some astounding legal arguments. They astoundingly urge you to disregard your oath by ignoring the First Amendment of the Constitution. They also ignore landmark binding United States Supreme Court cases, precedents—Wood and Bond—both of which unequivocally hold that elected officials have core First Amendment rights to engage in the exact type of political speech which Mr. Trump engaged in. I was shocked the House managers not only spent a mere three pages on the First Amendment analysis in their trial memo but that, yesterday, they spent a mere 10 minutes, at the end of their case, as a throwaway. What we have read and what we have heard is devoid of any constitutional analysis, far less than what I would expect from a first-year law student. They left out landmark cases—total intellectual dishonesty.

And, finally, hatred is at the heart of the House managers' frivolous attempt to blame Donald Trump for the criminal acts of the rioters based on double hearsay statements of fringe rightwing groups based on no real evidence other than rank speculation.

Hatred is a dangerous thing. We all have to work to overcome it. Hatred should have no place in this Chamber, in these proceedings.

The second observation.

The Senate is presented with an extraordinary task of sitting in judgment of a former President's words in a speech that he gave at a political event. The House managers accused Mr. Trump of using his words to incite the horrific events at the Capitol on January 6, but yesterday, they gave you a new and novel standard of incitement, with an element of foreseeability, a negligence concept. They cite zero case law. They made it up. This task of applying a completely made-up legal standard of incitement to an impeachment proceeding is truly an unprecedented task for the Senate, and that is something the Senate must

seriously consider when deciding the issue.

Do you want to create a precedent where the Senate will be tasked with sitting in judgment as to the meaning and implied intent of a President's words or words of any elected official?

Will that allow and maybe encourage a majority party to weaponize the awesome power of impeachment against the minority to suppress a point of view?

Will the Senate then have to deal with constant Articles of Impeachment by a majority party accusing minority Presidents or other elected officials of so-called inciteful or false speeches?

You can see where this would lead.

Sadly, we have all seen the political rhetoric get ratcheted up over the last few years. We have all been witnesses to many incendiary words by our officials at political events, broadcast over the media and internet. In each of those instances, will there now be Senate impeachment hearings?

One last observation.

We agree with the House managers: Context does, indeed, matter.

The inflammatory rhetoric from our elected officials must be considered as part of the larger context of Mr. Trump's speech at the Ellipse on January 6.

The inflammatory language from both sides of the aisle has been alarming, frankly, but this political discourse must be considered as part of these proceedings to contextualize Mr. Trump's words.

We have some video to play that highlights some of what I am talking about. I preface this video by noting I am not showing you this video as some excuse for Mr. Trump's speech. This is not about—this is not whataboutism. I am showing you this to make the point that all political speech must be protected.

(Text of video presentations.)

Ms. PELOSI. I just don't even know why there aren't uprisings all over the country. Maybe there will be.

Ms. PRESSLEY. There needs to be unrest on the streets for as long as there is unrest in our lives.

Ms. PELOSI. We gotta be ready to throw a punch.

You have to be ready to throw a punch.

Mr. TESTER. Donald Trump, I think you need to go back and punch him in the face.

Ms. Wallace. I thought he should have punched him in the face.

Mr. BOOKER. I feel like punching him.

Vice President BIDEN. I'd like to take him behind the gym, if I were in high school.

If we were in high school, I'd take him behind the gym and beat the hell out of him.

You know, I wish we were in high school. I could take him behind the gym.

Ms. WATERS. I will go and take Trump out tonight.

Ms. WARREN. Take him out now.

Mr. Depp. When was the last time an actor assassinated a President?

Mr. Wilson. They're still going to have to go out and put a bullet in Donald Trump.

Mr. Cuomo. Show me where it says that protest is supposed to be polite and peaceful.

Ms. WATERS. And you push back on them, and you tell them they are not welcome anymore, anywhere.

Madonna. I have thought an awful lot about blowing up the White House.

Mr. BOOKER. Please, get up in the face of some Congresspeople.

Ms. PELOSI. People will do what they do.

Mr. SCHUMER. I want to tell you, Gorsuch, I want to tell you, Kavanaugh: You have released the whirlwind, and you will pay the price.

Ms. TLAIB. We are going to go in there, we are going to impeach the [bleep].

Ms. Johnson. This is just a warning to you Trumpers: Be careful. Walk lightly. And for those of you who are soldiers, make them pay.

Ms. DeGeneres. If you had to be stuck in an elevator with either President Trump, MIKE PENCE, or Jeff Sessions, who would it be?

Ms. HARRIS. Does one of us have to come out alive?

Mr. Counsel VAN DER VEEN. Again, I did not show you their robust speech to excuse or balance out the speech of my client, for I need not. I showed you the video because in this political forum, all robust speech should be protected, and it should be protected evenly for all of us.

As a brief aside, we should all reflect and acknowledge the rhetoric has gotten to be too much and over the top. It is grating on the collective well-being of the body public, the citizens. Most would like it to stop. But the point is, when you see speech such as this, you have to apply the First Amendment evenly, blindly. She is blind, Lady Justice.

Question No. 1: Does the First Amendment apply to this Chamber in these proceedings?

The House managers' position, as stated in their trial brief, is ''The First Amendment does not apply at all to an impeachment proceeding.'' That is their position. This is plainly wrong. The text of the First Amendment expressly restricts Congress from regulating speech.

It says:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

To ignore the Constitution would be contrary to the oath of office of a United States Senator:

> I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same—

Well, you all know the rest.

No, the Senate cannot ignore the First Amendment. The Constitution itself limits the ability of the House to impeach to limited items, such as ''high crimes and misdemeanors.''

The position advanced by the House managers is essentially an unlimited impeachment standard without constitutional guardrails, unmoored to any specific legal test other than the unbridled discretion of Congress.

This is distinctly not the intent of the Framers. The Framers were aware of the danger of any impeachment process that would make the President ''the mere creature of the Legislature,'' a quote directly from the Framers while debating the impeachment process on the floor of the Constitutional Convention of 1787. The Framers were fearful that any impeachment process that gave Congress full discretion on the standard for impeachment would constitute nothing less than a violation—''a violation of the fundamental principle of good Government.''

One Founding Father, James Wilson, wrote extensively on the impeachment process. Mr. Wilson was a renowned legal scholar at the time, a law professor at the University of Pennsylvania in Philadelphia. He was a major force in drafting and adopting the Constitution in 1787. He served as one of the first Supreme—one of the first six Supreme Court Justices from 1789 to 1798. He was appointed by President George Washington. In fact, Wilson taught the first course on the new Constitution to President Washington and his Cabinet—the first in the Nation's history—in Philadelphia at the University of Pennsylvania in 1789.

Wilson, in his law lectures, the first of their kind under the Constitution, plainly states that the Senate may not ignore the Constitution in impeachment proceedings. He states that lawful and constitutional conduct may not be used as an impeachable offense. Let me say that again. He states that lawful and constitutional conduct may not be used as an impeachable offense.

Read along with me:

> The doctrine of impeachments is of high import in the constitutions of free states. On one hand, the most powerful magistrates should be amenable to the law: on the other hand, elevated characters should not be sacrificed merely on account of their elevation. No one should be secure while he violates the constitution and the laws: everyone should be secure while he observes them.

To be clear, James Wilson is saying that the Constitution does indeed apply when judging whether to convict an official by impeachment. If the complained-of conduct is constitutional, it cannot be impeachable. Are we to ignore the words and teachings of James Wilson? The House managers surely want you to.

The House managers have made several references to this letter signed by 140 partisan ''law professors'' calling Mr. Trump's First Amendment defense ''legally frivolous.'' This is really an outrageous attempt to intimidate Mr. Trump's lawyers.

Whenever a lawyer advances a truly ''frivolous'' argument, they may violate professional, ethical rules and could be subject to discipline.

This letter is a direct threat to my law license, my career, and my family's financial well-being. These ''law professors'' should be ashamed of themselves, and so should the House managers.

How dare you? Do you really hate Donald Trump so much that you are willing to destroy good, hard-working people's lives, people that are only

doing their jobs, and, frankly, as counsel for an accused fulfilling a constitutional role? It is astounding, really. I am a citizen, not a politician.

I know these First Amendment arguments are not anywhere close to frivolous. They are completely meritorious.

Interestingly, the law professors' letter was issued on February 5—3 days before we even filed our legal brief in this matter—and they ignored landmark, bedrock Supreme Court cases directly addressing this issue.

In our brief, we have a direct quote from James Wilson, the Founding Father, supporting our position. The direct quote was documented in the Founding Father's original legal papers on the subject. He was the primary draftsman of the Constitution who taught the new Constitution to President Washington. He says so long as acts of elected officials like Mr. Trump are constitutionally protected, he should not be impeached.

We have landmark U.S. Supreme Court decisions—Wood and Bonds, which I will explain in detail—supporting our position.

All of this the House managers and the partisan law professors completely and misleadingly ignore.

Frivolous? Hardly. The letter is a bully tactic, and I think evidence is the House managers know they have a problem with the First Amendment defense on the merits, so they are resorting to such tactics.

The House managers' suggestion that the First Amendment does not apply to this impeachment process is completely untenable.

Ignoring the First Amendment would conflict with the Senators' oath of office. It would also conflict with well-settled Supreme Court precedent and ignore the intent of the Framers of the Constitution, such as James Wilson. Above all else, ignoring the Constitution would adopt the new Raskin ''commonsense'' doctrine we heard yesterday, eroding hundreds of years of First Amendment protections.

We are here under the Constitution. It is illogical what the House managers said. The Constitution does apply to this constitutional impeachment process. It is double talk. Nonsense. Illogical.

If the House managers had their way, they would ignore all of the Constitution. Does that include the Sixth Amendment? The right to counsel? They would have Mr. Trump sitting here without lawyers. And who would be next? It could be anyone—one of you or one of you.

You must reject this invitation to ignore the First Amendment. It is anti-American and would set dangerous precedent forever.

The law has developed over the years to clearly establish elected officials have the right to engage in protected speech. Mr. Trump is not just a guy on the street or a guy at a bar or a fire chief or a police officer—there were a few of them in there—all analogies given by the House managers. These sideways analogies are wrong. Mr. Trump was an elected official, and there is an entire body of law, Supreme Court landmark cases, supporting the conclusion that Mr. Trump actually has enhanced free speech rights because he is an elected official. These cases are ignored by the House managers and the law professors, and that, too, is total intellectual dishonesty.

The Supreme Court has long held that the First Amendment's right to freedom of speech protects elected officials.

Two important, on-point decisions from the Supreme Court—Wood v. Georgia and Bond v. Floyd—expressly contradict the House managers' position. The House managers do not even cite those cases in their brief. They barely acknowledge them in their reply, and they were mum on them yesterday.

In Wood v. Georgia, the Supreme Court addressed the case involving a sitting sheriff whose reelection was being investigated by a grand jury impaneled by a judge based on allegations of irregular ''Negro bloc voting.'' It was in the sixties.

The sheriff spoke publicly in multiple press releases calling the grand jury investigations ''racist,'' ''illegitimate,'' and an attempt to ''intimidate'' voters. He even urged the grand jurors on how to decide the issues and ''not let its high office be a party to any political attempt to intimidate'' voters. The sheriff viewed the grand jury's challenging the legitimacy of his election.

The sheriff even sent a letter to the grand jurors with these allegations, which is an extraordinary step since laws in most States, including Georgia, prohibit attempts to influence or intimidate jurors. The sheriff was charged and convicted of contempt of court and obstruction of the grand jury. But the Supreme Court, in a decision written by Justice Brennan, reversed. The Court held that the First Amendment protected an elected public official's speech because the voting controversy directly affected the sheriff's political career:

> The petitioner was an elected official and had the—

Read with me, please, everybody.

> The petitioner was an elected official and had the right to enter the field of political controversy, particularly where his political life was at stake. The role that elected officials play in our society makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance.

Wood thus stands for the proposition that a difference of political opinion, expressed in speech on an issue of voting irregularity, cannot be punishable where all that was done was to encourage investigation and peaceful political speech—just like Mr. Trump has done here. The legal scholars call that directly on point.

A second case, Bond v. Floyd involved a State legislature punishing an elected official for protected political speech. Bond is particularly instructive here, too. In Bond, the Supreme Court squarely addressed a question of an elected official's punishment by a legislature for statements alleged to have incited public violation of law—the burning of draft cards. The Court unequivocally rejected the idea—advanced here by the House managers—that an elected official is entitled to no protection under the First Amendment. The Supreme Court held that the Georgia House of Representatives was in fact forbidden by the First Amendment from punishing Bond, by not seating him, for advocating against the policy of the United States.

There are three fundamental holdings in Bond.

No. 1:

> The manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy.

No. 2:

> Just as erroneous statements must be protected to give freedom of expression the breathing space it needs to survive, so statements criticizing public policy and the implementation of it must be similarly protected.

Third holding:

> Legislators have an obligation to take positions on controversial political questions so that their constituents can be fully informed by them, and be better able to assess their qualifications—

Please, read along with me—

> their qualifications for office; also so they may be represented in governmental debates by the person they have elected to represent them.

Mr. Trump enjoys this same First Amendment protection from Congress. The First Amendment's protections guarantee free speech addressing the electoral integrity issues essential to his career that Mr. Trump has consistently advocated.

The House managers argue that ''the First Amendment''—and I quote—''does not shield public officials who occupy sensitive policymaking positions from adverse actions when their speech undermines important government[al] interests.'' That is flat wrong. They are in essence attempting to treat Mr. Trump as their employee.

This is not the law under Wood and Bond. Mr. Trump was elected by the people. He is an elected official. The Supreme Court says elected officials must have the right to freely engage in public speech.

Indeed, the Supreme Court expressly rejected the House managers' argument in Wood v. Georgia, holding that the sheriff was ''not a civil servant,'' but an elected official who had ''core'' First Amendment rights which could not be restricted. That is Wood v. Georgia, page 395, footnote 21.

The House managers do not mention Wood or Bond in the trial brief or anywhere else. Why? Why not? Because it does not fit their narrative or their

story. They want to punish Mr. Trump for engaging in constitutionally protected free speech and they do not want you to consider the issue. But you must.

Question 2: Does Mr. Trump's speech deserve protection under the First Amendment?

There is no doubt Mr. Trump engaged in constitutionally protected political speech that the House has, improperly, characterized as ''incitement of insurrection.'' The fatal flaw of the House's arguments is that it seeks to mete out governmental punishment—impeachment—based on First Amendment political speech.

Speech for political purposes is the kind of activity to which the First Amendment offers its strongest protection. These are bedrock principles recognized by our Supreme Court for decades. The Court has stated in no uncertain terms the importance of these principles to our democratic principles:

The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, ''was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.''

New York Times v. Sullivan.

Our First Amendment decisions have created a rough hierarchy in the constitutional protection of speech. Core political speech occupies the highest, most protected position. . . .

Even political speech that may incite unlawful conduct is protected from the reach of government punishment. The Court has said:

Every idea is an incitement, and if speech may be suppressed whenever it might inspire someone to act unlawfully, then there is no limit to the State's censorial power.

The government may not prohibit speech because it increases the chances of an unlawful act will be committed ''at some indefinite time'' in the future. The House managers showed you a series of tweets going all the way back to 2015 in an effort to prove ''incitement.'' All of that evidence is totally irrelevant under the constitutional definition of incitement.

Brandenburg v. Ohio is really the landmark case on the issue of incitement speeches. The applicable case was mentioned yesterday. In the Brandenburg v. Ohio case, another landmark, the Court held the government may only—the government may only—suppress speech for advocating the use of force or a violation of law if ''such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.''

The Brandenburg holding has been interpreted as having three basic prongs to determine if speech meets the definition of ''incitement.''

The Brandenburg test precludes speech from being sanctioned as incitement to a riot unless—

This is one—

the speech explicitly or implicitly encouraged use of violence or lawless action,

Two:

the speaker intends that his speech will result in use of violence or lawless action, and—

Three—

the imminent use of violence or lawless action is the likely result of the speech.

The House managers cannot get past the first prong of the Brandenburg test. They have not and cannot prove Mr. Trump explicitly or implicitly encouraged use of violence or lawless action—period.

Brandenburg requires a close examination of the words themselves. The words are either important or they are not. The House managers admitted that the incitement issue is not about the words. Why not? Because on the face of it, Mr. Trump's words are no different than the figurative speech used by every one of the Senators assembled here today. If it is not about the words but about the ''Big Lie'' of a ''stolen election'' then why isn't House Manager RASKIN guilty, since he tried to overturn the 2016 election? The more the House managers speak, the more hypocrisy gets revealed—hypocrisy.

Even though they say it is not about the words, the law under Brandenburg requires a close analysis of the words to determine incitement. So we need to look at those words.

Mr. Trump did the opposite of advocating for lawless action—the opposite. He expressly advocated for peaceful action at the Save America rally. He explicitly stated—these are the words:

I know that everyone here will soon be marching over to the Capitol building to peacefully and patriotically make your voices heard.

''To peacefully and patriotically make your voices heard''—that is how this President has spoken for years when he condemns violence, lawlessness, and rioters.

The House managers have played manipulated, selectively edited parts of Mr. Trump's speech. They focus heavily on the word ''fight.'' The President used the word ''fight'' 20 times in his speech. They picked only two. Why? Why not the other 18? Because they don't tell the story in the way they want to tell it.

Here are all of them. Listen to the context.

(Text of video presentation of 1–6–2021.)

President TRUMP. And, Rudy, you did a great job. He's got guts. You know what? He's got guts unlike a lot of people in the Republican Party. He's got guts. He fights. He fights. I'll tell you.

Thank you very much, John. Fantastic job. I watched. That is a tough act to follow, those two.

There's so many weak Republicans. And we have great ones. JIM JORDAN and some of these guys—they're out there fighting. The House guys are fighting. But it's—it's incredible.

Many of the Republicans, I helped them get in. I helped them get elected.

Did you see the other day where Joe Biden said: I want to get rid of the America First policy? What's that all about? Get rid of. How do you say I want to get rid of America First? Even if you're going to do it, don't talk about it, right? Unbelievable what we have to go through. What we have to go through.

And you have to get your people to fight. And if they don't fight, we have to primary the hell out of the ones that don't fight. You primary them. We're going to. We're going to let you know who they are. I can already tell you, frankly.

Republicans are constantly fighting like a boxer with his hands tied behind his back. It's like a boxer. And we want to be so nice. We want to be so respectful of everybody, including bad people. And we're going to have to fight much harder.

And Mike Pence is going to have to come through for us, and if he doesn't, that will be a, a sad day for our country, because you're sworn to uphold our Constitution.

And the accountability says if we see somebody in there that doesn't treat our vets well or they steal, they rob, they do things badly, we say: Joe you're fired. Get out of here.

Before you couldn't do that. You couldn't do that before.

So we've taken care of things. We've done things like nobody's ever thought possible. And that's part of the reason that many people don't like us, because we've done too much. But we've done it quickly.

And we were going to sit home and watch a big victory, and everybody had us down for a victory. It was going to be great and now we're out here fighting. I said to somebody, I was going to take a few days and relax after our big electoral victory. 10 o'clock it was over.

The American people do not believe the corrupt, fake news anymore. They have ruined their reputation. But you know, it used to be that they'd argue with me. I'd fight. So I'd fight, they'd fight, I'd fight, they'd fight. Pop pop. You'd believe me, you'd believe them. Somebody comes out. You know, they had their point of view; I had my point of view. But you'd have an argument.

Now what they do is they go silent. It's called suppression, and that's what happens in a Communist country. That's what they do. They suppress. You don't fight with them anymore unless it's a bad story. They have a little bad story about me. They make it 10 times worse, and it's a major headline.

But Hunter Biden, they don't talk about him. What happened to Hunter? Where's Hunter?

With your help over the last four years, we built the greatest political movement in the history of our country and nobody even challenges that.

I say that over and over, and I never get challenged by the fakeness, and they challenge almost everything we say.

But our fight against the big donors, big media, big tech, and others is just getting started. This is the greatest in history. There's never been a movement like that.

Our brightest days are before us. Our greatest achievements, still away.

I think one of our great achievements will be election security. Because nobody until I came along had any idea how corrupt our elections were.

And again, most people would stand there at 9 o'clock in the evening and say I want to thank you very much, and they go off to some other life. But I said something's wrong here, something is really wrong, can have happened.

And we fight. We fight like hell. And if you don't fight like hell, you're not going to have a country anymore.

Our exciting adventures and boldest endeavors have not yet begun. My fellow Americans, for our movement, for our children, and for our beloved country.

And I say this despite all that's happened. The best is yet to come.

''A boxer fighting with his hand tied behind his back''? ''Members of Congress fighting''? ''Rudy being Rudy.'' These are the metaphorical, rhetorical uses of the word ''fight.'' We all know that, right?

Suddenly, the word ''fight'' is off limits. Spare us the hypocrisy and false indignation. It is a term used over and over and over again by politicians on both sides of the aisle. And, of course, the Democrat House Managers know that the word ''fight'' has been used figuratively in political speech forever. But don't take it from me. It is best to listen to them.

(Text of video presentations.)

Ms. HARRIS. Our mission is to fight.
Our job is to fight.
We are in a fight.
We are in a fight.
We are in a fight.
Mr. SCHUMER. Democrats are fighting as hard as we can.
Mr. CICILLINE. Democrats are standing up to fight.
Ms. HARRIS. We know how to fight.
We like a good fight.
Mr. SCHUMER. Democrats are going to fight like hell.
Mr. O'ROURKE. We fight like hell.
Mr. SWALWELL. We're going to fight like hell.
Mr. McDonough. I will fight like hell.
Mr. BLUMENTHAL. We're going to fight like hell.
I'm going to fight like hell.
Fight like hell.
Ms. ROSEN. I will fight like hell.
Ms. CORTEZ MASTO. We have to fight like hell.
Mr. SANDERS. I know many of the Senators and Members of the House will fight like hell.
Mr. Perez. We're going to fight like hell.
Ms. KLOBUCHAR. We're going to fight like hell.
Vice President BIDEN. Fight like hell.
Ms. PELOSI. And we just have to fight.
Mrs. CLINTON. We're going to fight.
We are going to fight.
We're going to fight.
We're going to fight.
Mr. LIEU. Because we will have to fight.
Ms. ROSEN. To fight.
Mr. SANDERS. Political revolution.
That means that millions—
Millions.
Millions.
Have got to stand up—
And fight.
And fight.
And fight.
Stand up and fight back.
Mr. WYDEN. Fight.
Vice President BIDEN. Continue to fight.
Once again, fight.
Mr. RASKIN. Back the fight.
Mr. SCHUMER. We are fighting back.
Ms. DEAN. My fight. To fight an administration.
Ms. WARREN. You don't get what you don't fight for.
Mr. CASTRO of Texas. We will also fight him and challenge him in every way that we can.
Mr. KAINE. Fight him in Congress, fight him in the courts, fight him in the streets.
Mr. CASTRO of Texas. In the Congress, in the courts, and in the streets.
Mr. RASKIN. There's the fight.
There's the fight.
There's the fight.
And then there's the fight to defend.
Ms. DEGETTE. We're eager to take on this fight.
Ms. HARRIS. The American people are going to have to fight.
Ms. WARREN. Get in this fight.
Ms. DEGETTE. Get in this fight.
Mr. BOOKER. Around the clock fighting.
We've got to keep fighting and keep focused.
Mr. Buttigieg. We will fight when we must fight.
Mr. CASTRO of Texas. We've been fighting.
But we need to fight.
But we also need to fight.
Vice President BIDEN. Always going to be an uphill fight.
Ms. KLOBUCHAR. This is going to be a fight.
Ms. HARRIS. We always must fight.
Mr. Buttigieg. We're in the fight of our lives.
Mr. CICILLINE. We're going to be in for the fight of our lives.
Mr. KAINE. This is the fight of our lives.
Vice President BIDEN. Fight of their lives.
Ms. WARREN. We are in this fight for our lives.
Ms. HARRIS. We cannot ever give up fighting.

Hypocrisy. The reality is, Mr. Trump was not in any way, shape, or form instructing these people to fight or to use physical violence. What he was instructing them to do was to challenge their opponents in primary elections, to push for sweeping election reforms, to hold Big Tech responsible—all customary and legal ways to petition your government for redress of grievances, which, of course, is also protected constitutional speech.

But the House Managers don't want you to focus on those things because, again, it does not fit their story. In the end, I leave you with this quote from Benjamin Franklin:

> Freedom of speech is a principal pillar of a free government; when this support is taken away, the constitution of a free society is dissolved, and tyranny is erected on its ruins.

Thank you.

RECESS

Mr. SCHUMER. Mr. President, I ask unanimous consent that the Senate recess for a 15-minute break.

There being no objection, at 1:53 p.m., the Senate, sitting as a Court of Impeachment, recessed until 2:34 p.m.; whereupon the Senate reassembled when called to order by the President pro tempore.

COUNSELS' PRESENTATION—CONTINUED

The PRESIDENT pro tempore. Who seeks recognition?

Mr. Counsel CASTOR. I do, Mr. President.

The PRESIDENT pro tempore. Mr. Castor is recognized.

Mr. Counsel CASTOR. Mr. President, Members of the Senate, good afternoon.

It has been my great privilege over the past couple of weeks to lead this outstanding team of lawyers and dedicated professionals in the defense of the 45th President of the United States. One of the most difficult things in leading such a talented group is deciding who is responsible for what and the strategy and the order in which we will present our evidence.

You have heard from Mr. van der Veen and Mr. Schoen on the importance of the First Amendment and the importance of due process of law, and because I had the opportunity to set out the schedule, I decided that I would take the last substantive part of the case for myself. You can take that two ways. The first, perhaps, is the best, and that would be that it is almost over. The second is that perhaps you have to wait another hour for it to be over.

The reason why I chose this section—and believe me, it was a very difficult decision to make because I thought that the other arguments presented by Mr. Schoen and Mr. van der Veen were outstandingly researched, thoroughly vetted, and wonderfully and articulately presented by them. But the critical issue in this case is the very narrow issue that is charged against the 45th President, and that issue is, did the 45th President engage in incitement of—they continue to say ''insurrection''? Clearly, there was no insurrection.

''Insurrection'' is a term of art defined in the law, and it involves taking over a country, a shadow government, taking the TV stations over, and having some plan on what you are going to do when you finally take power. Clearly, this is not that. What our colleagues here across the aisle meant is incitement to violence, to riot. So the word ''incitement'' is the critical case and the critical issue in the case.

Now, the first time that you heard from us, I told you that you would never hear from our side that what happened on January 6 was anything other than horrific and that the 45th President of the United States and his lawyers and his entire team adamantly denounce that violence by those criminals that occurred in this very Chamber, this very building.

There was a reason why we started our presentation back on Tuesday in that way, because I did not want the Senators to consider that there was any challenge to that particular fact. Yet the House managers, knowing it was not contested at all, chose to spend 14-plus hours showing you pictures of how horrific the attack on the United States Capitol was. They spent no time at all in connecting legally the attack on the Capitol to the 45th President of the United States, which is the only question that needs to be answered, is, Was Donald Trump responsible for inciting the violence that came to this building on January 6?

Now, by any measure, President Trump is the most pro-police, anti-mob rule President this country has ever seen. His real supporters know this. He made it clear throughout his Presidency. He made it clear during the violence this past summer. He made it clear on January 6. But politics changes things. Politics has created and interposed an element that should

not be here. It has interposed the element of hatred. And the political world changes when hatred becomes part of the dynamic.

As we wrote in our answer to the original charging document—and I hope that this is a phrase that lives on long after we are all departed and I hope someday this becomes the mantra by which all of us operate who work for the benefit of the public—that political hatred has no place in the American justice system and most certainly no place in the Congress of the United States.

To illustrate the contrast that I am speaking of, we have a video.

(Text of video presentations.)

President TRUMP. I am your President of law and order and an ally of all peaceful protesters.

Vice President BIDEN. The vast majority of the protests have been peaceful.

President TRUMP. Republicans stand for law and order, and we stand for justice.

Ms. PELOSI. I just don't even know why there aren't uprisings all over the country, and maybe there will be.

President TRUMP. My administration will always stand against violence, mayhem, and disorder.

Ms. PRESSLEY. There needs to be unrest in the streets for as long as there is unrest in our lives.

President TRUMP. I stand with the heroes of law enforcement.

Ms. WATERS. (Inaudible.)

You tell them that they are not welcome anymore, anywhere.

President TRUMP. We will never defund our police. Together, we will ensure that America is a nation of law and order.

Vice President BIDEN. If I were in high school, I would take him behind the gym and beat the hell out of him.

Mr. TESTER. I think you need to go back and punch him in the face.

Mr. BOOKER. I feel like punching him.

President TRUMP. We just want law and order. Everybody wants that.

Mr. SCHUMER. I want to tell you, Gorsuch, I want to tell you, Kavanaugh: You have released the whirlwind, and you will pay the price.

President TRUMP. If we want law and order, we have to have law and order.

Mr. Cuomo. Show me where it says that protesters are supposed to be polite and peaceful.

President TRUMP. We believe in safe streets, secure communities, and we believe in law and order.

Is there truly anyone in this Chamber who disagrees with the words as spoken by President Trump on that video? Surely not. Surely not.

This contrast and in this context, I ask you to keep that in mind. My colleagues here—actually, my colleague here, Mr. RASKIN, hopes that you don't. They have used selective editing and manipulated visuals to paint a picture far different from this truth.

Make no mistake, and I will repeat it now and anytime I am ever asked, January 6 was a terrible day for our country. The attack on this building shocked us all. President Trump did not incite or cause the horrific violence that occurred on January 6, 2021. They know that. We know the President did not incite the riot because of his plain words that day, as Mr. van der Veen elucidated on a few moments ago. We know the President could not have incited the riots because of the timeline of the events of that day.

We heard a great deal from the House managers about their prosecutorial bona fides and their ability to analyze evidence, apply it to statutes, use timelines, and figure out what happened based on circumstantial evidence and direct evidence and testimony and forensic analysis. I can't recall any of the House managers who got up that didn't make some reference to prosecutorial bona fides. Well, I spent more than three decades locking up killers. And I do know a little bit about applying facts to the law.

We know that the President would never have wanted such a riot to occur because his longstanding hatred for violent protesters and his love for law and order is on display, worn on his sleeve every single day that he served in the White House. But if we are going to apply the facts to the statute, it has to be done systematically. It has to be done with precision, the way a court would expect us to do that.

Let's look at the letter of the law. Again, Mr. van der Veen gave you an overview of the Brandenburg case and some of the related cases. You notice that when Mr. Van der Veen listed the elements that he took verbatim or close to verbatim right out of Brandenburg, they bore no reference whatsoever to the elements that flashed up by the Democratic managers the other day repeatedly. He actually used the Supreme Court's case. He didn't make it up.

Let's look at the letter of the law. The Supreme Court of the United States, over 50 years ago, laid out a clear test to determine whether speech is incitement. Under that test, the Brandenburg v. Ohio test, there are three elements that must be proven beyond a reasonable doubt, by a preponderance of the evidence—whatever the Senate considers—I suggest beyond a reasonable doubt.

First, the speech in question must explicitly or implicitly encourage the use of violence or lawless action. But here the President's speech called for peaceful protests.

Second, the speaker must intend that his speech will result in the use of violence or lawless action. And, again, as Mr. van der Veen pointed out, the President clearly deplores rioters and political violence and did so throughout his term as President and never hesitated to express his admiration for the men and women that protect this country.

Finally, the third element under the Brandenburg test is the imminent use of violence—imminent use of violence—in other words, right then. The imminent use of violence or lawless action must be the likely result of the speech—the likely result of the speech. Well, that argument is completely eviscerated by the fact that the violence was preplanned, as confirmed by the FBI, Department of Justice, and even the House managers—not the result of the speech at all.

Several of my colleagues of the House managers got up and spoke about the proceeding in the House being like a grand jury proceeding. Well, I have been in grand jury proceedings. I have run grand juries. In grand jury proceedings, you call witnesses; you hear evidence; you make transcripts; you take affidavits; you develop physical evidence; you hear reports from police officers; you hear forensic analysis from scientists; in fact, you invite the target of the grand jury to come in and testify if he or she pleases to be heard by the grand jury.

Which one of those things happened in the House prior to the Impeachment Article? I don't believe any of them happened. So the suggestion that what happened in the House was anything at all like a grand jury investigating a case and referring it for prosecution is complete nonsense. And if the House managers are trying to fool you about that, you must ask yourself: What else are they trying to fool you about?

Let's look more closely at the President's speech. We have mentioned this lie before, but it is so critical, we need to talk about it again. The President asked that the attendees at his rally peacefully make their voices heard.

(Text of video presentation.)

President TRUMP. I know that everyone here will soon be marching over to the Capitol Building to peacefully and patriotically make your voices heard.

The managers would have you believe that the President's supporters usually follow his every word but, in this case, imputing some imaginary meaning to them while ignoring his most clear instructions. President Trump said ''peacefully and patriotically make your voices heard.'' And the House managers took from that ''go down to the Capitol and riot.'' So you are supposed to put yourselves in the heads of the people who hear ''peacefully and patriotically make your voices heard'' and conclude that those words do not mean what the President said.

More than that, the President criticized the destruction wrought by left-wing anarchists and rioters. He told his supporters that they build; they don't destroy.

(Text of video presentation.)

President TRUMP. If this happened to the Democrats, there'd be hell all over the country going on. There'd be hell all over the country. But just remember this: You're stronger. You're smarter. You've got more going than anybody. And they try and demean everybody having to do with us. And you're the real people. You're the people that built this Nation. You're not the people that tore down our Nation.

Is it possible, listening to those words in the proper cadence without them being edited or the sound changed so that they are indistinguishable or sounds as though the crowd is right there, but listening to it here as you have here, unedited by us—is it

possible that President Trump's disdain for political violence could be any clearer to the persons listening as he was speaking?

Is it possible his words could have been misunderstood?

I suggest to you that is the possibility.

Now, the House managers said the President told the crowd: ''You have to get [out] your people to fight.'' The House managers' claim is that the President of the United States was telling the audience to get each other to physically fight, but that is not what the President said.

The people who should fight, he said, were Members of Congress. If they don't fight, what the President said is, what should the rally attendees do? If Members of Congress wouldn't fight for the principles they held dear, what was it that the President specifically told his supporters at that rally he wanted them to do? He wanted them to support primary challenges.

Now, nobody in this Chamber is anxious to have a primary challenge. That is one truism I think I can say with some certainty. But that is the way we operate in this country. When the people of a State want to change their Representatives and their Senators, they use the electoral process. President Trump told his listeners that if their Members of Congress won't fight for their views, then go back home and find others that will. That is what President Trump said—the people who should fight were the Members of Congress.

(Text of video presentations.)

Mr. Manager NEGUSE. ''You have to get your people to fight,'' he told them.

President TRUMP. You have to get your people to fight. And if they don't fight, we have to primary the hell out of the ones that don't fight. You primary them. We're going to let you know who they are. I can already tell you, frankly.

It is pretty stark contrast when you watch that video, isn't it? When you see the House manager tell you—and I don't know if we're under oath here, but when I walked into this room, I sure as heck felt as if I was under oath and felt like I was speaking not only to Senators of the United States but before the entire world and with God watching.

And a House manager got up here and told you that the President of the United States, on January 6, 2021, told the crowd that they had to go and fight. And the implication that they wanted you to draw was that he was sending them down to Capitol Hill to go and breach the building and trash the very sacred Halls of Congress.

But we now know that is not at all anything near what the President said. What the President said was: If you can't get your Members of Congress to do as you would like them to do, you primary them. That is the American way.

The first way that the House managers presented and wanted you to conclude, that is the criminal way. But what the President said was the American way.

Again, the House managers manipulated President Trump's words. I can't stand here and pretend to tell you that I know every time from all those videos that the House managers manipulated what the President said, put up evidence that was not with the foundation of correctness and admissibility we expect. I can't tell you that I picked up every one. I don't think Mr. van der Veen or Mr. Schoen or any of the others who worked with us can tell you that.

But what I can tell you is there were an awful lot of times. And I know at least some of you were judges in previous lives. If one of the lawyers was able to create the impression that one side intentionally presented false or misleading evidence, that judge would give an instruction called falsus in uno, falsus in omnibus: False in one thing, false in everything. In other words, if they are trying to fool you about one thing, not only might they be trying to fool you in something else, but under that maxim of the law, you may conclude they are trying to fool you in everything else.

President Trump was immediate in his calls for calm and respect for law enforcement. The House managers emphasized President Trump's tweet in the 6 p.m. hour where he told the crowds:

Go home with love & in peace. Remember this day.

What is it they left out? Well, the House starts their recitation of what President Trump said as far as the aftermath of when the Capitol was breached at roughly 6 p.m. What they don't tell you and didn't tell you—and which you probably don't know because I think I am the first one to say it in this forum—is at 2:38, President Trump urged protesters at the U.S. Capitol to stay peaceful:

Please support our Capitol Police and Law Enforcement. They are truly on the side of our Country. Stay peaceful!

Before we run the graphic, I just want to point out to you, President Trump's speech ended at 1:11 p.m. So at 2:38 p.m., by the time word reaches the President that there is a problem down here, he is out urging people to support the police, stay peaceful, support our Capitol Police and law enforcement. They are on the side of the country. Stay peaceful.

At 3:13 p.m., President Trump urged protesters at the U.S. Capitol to remain peaceful:

No violence. Remember, WE are the Party of Law and Order. Respect the law and our great men and women in blue.

3:13 p.m.

President Trump's words couldn't have incited the riot at the Capitol. The day's events make this clear. Let's walk through the actual timeline.

At 11:15 a.m. police security camera videos show crowds forming at First Street, near the Capitol Reflecting Pool. This is a full 45 minutes before President Trump even took the stage on January 6. Let me repeat that. Violent criminals were assembling at the Capitol, over a mile away, almost an hour before the President uttered a single word on the Ellipse. You did not hear that fact during the hours and hours of the House managers' presentation, did you?

When the President spoke, what did he call for? He called for rally attendees to peacefully and patriotically make their voices heard, for them to walk down Pennsylvania Avenue to cheer on Members of Congress.

President Trump went on for more than an hour, ending at 1:11. Now, why is this important? Because of all of the events that I am about to describe, they all occurred before—before—President Trump's remarks concluded.

At 12:49 p.m., the first barriers at the U.S. Capitol Grounds were pushed over, and the crowd entered the restricted area.

At 1:05 p.m., Acting Defense Secretary Christopher Miller received open source reports of demonstrator movements to the U.S. Capitol.

At 1:09 p.m., U.S. Capitol Police Chief Steven Sund called the House and Senate Sergeant at Arms, telling them he wanted an emergency declared, and he wanted the National Guard called.

The point: Given the timeline of events, the criminals at the Capitol were not there at the Ellipse to even hear the President's words. They were more than a mile away, engaged in their preplanned assault on this very building. This was a preplanned assault—make no mistake—and that is a critical fact.

Watch this.

(Text of video presentation of 2–10–2021.)

Mr. Manager CICILLINE. Does anyone in this Chamber honestly believe that but for the conduct of President Trump that that charge in the Article of Impeachment, that that attack on the Capitol would have occurred? Does anybody believe that?

(Text of video presentations.)

Mr. Blitzer. It was not some sort of spontaneous decision by a bunch of ''protesters'' to go up to Capitol Hill and storm Capitol Hill. This was all planned out.

Mr. Tapper. How much of it was planned? How much of this was strategized ahead of time?

Mr. Perez. They are getting indications, some evidence that indicates that there was some level of planning.

Ms. Quijano. There appears to be premeditation.

Mr. Muir. An FBI internal report the day before the siege, warning of a violent war at the Capitol.

Ms. Quijano. The FBI issued a warning of a ''war'' at the Capitol.

Mr. Colbert. The FBI warned law enforcement agencies about this specific attack.

(Text of audio presentation.)

Be ready to fight. Congress needs to hear glass breaking, doors being kicked in.

(Text of video presentations.)

Mr. D'Antuono. We developed some intelligence that a number of individuals were planning to travel to the DC area with intentions to cause violence. We immediately shared that information.

Ms. Herridge. And they pushed out that information through this JTTF structure.

Mr. D'Antuono. It was immediately disseminated through a written product and briefed to our command post operation to all levels of law enforcement.

Unidentified Speaker. The FBI says two pipe bombs discovered near the Capitol on January 6 were placed there the night before.

Unidentified Speaker. New video appears to show a person suspected of planting pipe bombs near the U.S. Capitol the night before.

Unidentified Speaker. The FBI now says the bombs were planted the night before the Capitol siege, between 7:30 and 8:30 p.m.

Mr. Muir. They were planted the day before.

Ms. Herridge. It all goes to the idea of premeditation and coordination among individuals.

Mr. Comey. This was a planned assault of people going after a castle.

Mr. Counsel CASTOR. So, to answer the question of the House manager, ''Does anybody believe that this would have occurred but for the speech of Donald Trump?'' I do.

All of these facts make clear that the January 6 speech did not cause the riots. The President did not cause the riots. He neither explicitly nor implicitly encouraged the use of violence or lawless action but, in fact, called for the peaceful exercise of every American's First Amendment right to peacefully assemble and petition their government for redress of grievances. In other words, the Brandenburg standard is not made out.

The House managers admitted many facts are unknown. Even Speaker PELOSI admitted not knowing the real cause of the violence when she called for a 9/11-style Commission to examine the facts and causes that led to the violence.

(Text of audio presentation.)

On the screen is Speaker PELOSI's call for the 9/11 Commission.

Let's touch now on the second absurd and conflated allegation in the House managers' single Article.

President Trump's phone call to Georgia Secretary of State Brad Raffensperger—surreptitiously recorded, by the way—included multiple attorneys and others on the call. Let me point out the very obvious fact that the House managers ignored. The private call that was made public by others cannot really be the basis to claim that the President intended to incite a riot, because he did not publicly disclose the contents of the call.

How could he have hoped to use this call to invite his followers if he had no intent to make the conversation public and, indeed, had nothing to do with its being secretly recorded?

The House managers told you that the President demanded that the Georgia secretary of state ''find'' just over 11,000 votes. The word ''find,'' like so many others the House managers highlighted, is taken completely out of context. The word ''find'' did not come out of thin air. Based on an analysis of publicly available voter data that the ballot rejection rate in Georgia in 2016 was approximately 6.42 percent and even though a tremendous amount of new, first-time mail-in ballots were included in the 2020 count, the Georgia rejection rate in 2020 was a mere fourtenths of 1 percent—a drop-off from 6.42 percent to .4 percent.

President Trump wanted the signature verification to be done in public. How can a request for signature verifications to be done in public be a basis for a charge for inciting a riot?

With that background, it is clear that President Trump's comments and the use of the word ''find'' were solely related to his concerns with the inexplicable dramatic drop in Georgia's ballot rejection rates.

Let's examine how the word ''find'' was used throughout that conversation.

Mr. Trump's first use of the word ''find'' was as follows:

We think that, if you check the signatures, a real check of the signatures going back in Fulton County, you will find at least a couple hundred thousand of forged signatures of people who have been forged, and we are quite sure that's going to happen.

President Trump also used ''find'' as follows:

Now, why aren't we doing signature, and why can't it be open to the public, and why can't we have professionals do it instead of rank amateurs who will never find anything and don't want to find anything? They don't want to find—you know, they don't want to find anything. Someday, you'll tell me the reason why, because I don't understand your reasoning, but, someday, you'll tell me the reason why, but why don't you want to find?

President Trump echoed his previous sentiments again in the context of pursuing a legitimate and robust investigation into the lack of signature verification for mail-in and absentee ballots.

And why can't we have professionals do it instead of rank amateurs who will never find anything and don't want to find anything? They don't want to find anything. You know, they don't want to find anything. They don't want to find—you know, they don't want to find anything. Someday, you'll tell me why, because I don't understand your reasoning, but, someday, you'll tell me why, but why don't you want to find?

We can go through signature verification, and we'll find hundreds of thousands of signatures, and you could let us do it, and the only way you can do it, as you know, is to go to the past, but you didn't do that in Cobb County. You just looked at one page compared to another. The only way you could do a signature verification is to go from one that's signed on November ''whatever,'' recently, and compare it to 2 years ago, 4 years ago, 6 years ago, you know, or even 1, and you'll find that you have many different signatures, but in Fulton, where they dumped ballots, you will find that you have many that aren't even signed and that you have many forgeries.

Mr. Trump continued to use the word ''find'' throughout the conversation, each and every other time in the context of his request that Mr. Raffensperger undertake a review of signature verifications and his concerns, generally, with ballot integrity and his reported electoral deficit. Here are a few examples.

But why wouldn't you want to find the right answer, Brad? Instead of keep saying that the numbers are right, because those numbers are so wrong.

Another example:

We think that, if you check the signatures—a real check of the signatures—going back in Fulton County, you will find at least a couple hundred thousand of forged signatures of people who have been forged, and we are quite sure that's going to happen.

Moreover, there was nothing untoward with President Trump or any other candidate, for that matter, speaking with the lead elections officer of the State. That is why the Georgia secretary of state took a call, along with members of his team, one of whom decided to record it and release it to the press. The only reason this conversation is being discussed in this Chamber is because, once again, the media and their Democratic allies distorted the true conversation to mislead you and the American public. So we have a complete lack of evidence to the Article of Impeachment presented by the House managers.

So why are we here?

Politics. Their goal is to eliminate a political opponent, to substitute their judgment for the will of the voters.

(Text of video presentations.)

Mr. Capehart. Why bother with a Senate trial of Donald Trump? He's no longer President.

Mr. Pelley. He will be out of office anyway.

Ms. Wallace. Is it to keep him from ever running again?

Ms. DEGETTE. To make sure he may never run for office again.

Mr. CASTRO of Texas. To keep him from running for office again.

Mr. KAINE. So Donald Trump will not be able to run for office again.

Ms. BALDWIN. Barring him from running for office again.

Mr. VAN HOLLEN. To disqualify him from running for office.

Ms. CLARK of Massachusetts. To disqualify him from ever running for office again.

Mr. SCHIFF. To disqualify him from running for office again.

Mr. Emanuel. It's about focusing so that he can never run again.

Mr. SCHUMER. To remove him from ever running for office again.

Mr. POCAN. To never be able to run for office again.

Ms. KLOBUCHAR. To ban former President Trump from running again.

Mr. GREEN of Texas. If we don't impeach this President, he will get reelected.

Mr. Counsel CASTOR. The goal is to eliminate a political opponent, to substitute their judgment for the will of the voters.

Members of the Senate, our country needs to get back to work. I know that you know that, but, instead, we are here. The majority party promised to unify and deliver more COVID relief, but, instead, they did this. We will not take most of our time today—us of the defense—in the hopes that you will take back these hours and use them to get delivery of COVID relief to the American people.

Let us be clear. This trial is about far more than President Trump. It is about

silencing and banning the speech the majority does not agree with. It is about canceling 75 million Trump voters and criminalizing political viewpoints.

That is what this trial is really about. It is the only existential issue before us. It asks for constitutional cancel culture to take over in the United States Senate.

Are we going to allow canceling and banning and silencing to be sanctioned in this body?

To the Democrats, who view this as a moment of opportunity, I urge you instead to look to the principles of free expression and free speech. I hope, truly, that the next time you are in the minority, you don't find yourself in this position.

To the Republicans in this Chamber, I ask when you are next in the majority, please resist what will be an overwhelming temptation to do this very same thing to the opposing party.

Members of the Senate, this concludes the formal defense of the 45th President of the United States to the Impeachment Article filed by the House of Representatives.

I understand that there is a procedure in place for questions, and we await them; thereafter, we will close on behalf of President Trump.

Mr. President, we yield the balance of our time.

The PRESIDENT pro tempore. The majority leader.

RECESS

Mr. SCHUMER. Mr. President, I ask unanimous consent that we take a 15-minute recess.

There being no objection, at 3:16 p.m., the Senate, sitting as a Court of Impeachment, recessed until 3:54 p.m.; whereupon the Senate reassembled when called to order by the President pro tempore.

SENATORS' QUESTIONS

The PRESIDENT pro tempore. The Senate will come to order.

Pursuant to the provisions of S. Res. 47, the Senate has provided 4 hours during which Senators may submit questions in writing directed either through the managers on the part of the House of Representatives or counsel for the former President.

The majority leader.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the answers within the 4-hour question period be limited to 5 minutes each, and if the questions are directed to both parties, the times be equally divided; furthermore, that questions alternate sides proposing questions for as long as both sides have questions.

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

Mr. SCHUMER. Mr. President, I send a question to the desk.

The PRESIDENT pro tempore. The Senator will submit it.

The question from Senator SCHUMER with Senator FEINSTEIN is directed to the House managers.

The clerk will read it.

The legislative clerk read the question as follows:

Isn't it the case that the violent attack and siege on the Capitol on January 6 would not have happened if not for the conduct of President Trump?

The PRESIDENT pro tempore. The House managers have up to 5 minutes.

Mr. Manager CASTRO of Texas. Good afternoon, everybody. To answer your question very directly, Donald Trump assembled the mob. He assembled the mob, and he lit the flame. Everything that followed was because of his doing, and although he could have immediately and forcibly intervened to stop the violence, he never did. In other words, this violent, bloody insurrection that occurred on January 6 would not have occurred but for President Trump.

The evidence we presented in trial makes this absolutely clear. This attack, as we said, didn't come from one random speech, and it didn't happen by accident, and that mob didn't come out of thin air.

Before the election, Donald Trump spread lie after lie about potential fraud—an election, remember, that hadn't even happened yet. Months before the election took place, he was saying it was rigged and that it was going to be stolen. All of his supporters believed that the only way he was going to lose is if the election was stolen, if the election was rigged.

And when he did lose, he spent week after week inciting his supporters to believe that their votes had been stolen and that the election was fraudulent and it was their patriotic duty to fight like hell to stop the steal and take their country back.

And, remember, this is in the United States, where our vote is our voice. You tell somebody that an election victory is being stolen from them, that is a combustible situation.

And he gave them clear direction on how to deal with that.

For example, on December 19, 18 days prior to January 6, President Trump told them how and where to fight for it. He first issued his call to action for January 6. This was a ''save the date'' sent 18 days before the event on January 6, and it wasn't just a casual one-off reference or a singular invitation.

For the next 18 days, he directed all of the rage he had incited to January 6; and that was, for him, what he saw as his last chance to stop the transfer of power, to stop from losing the Presidency. And he said things like, ''Fight to the death'' and January 6 will be a ''wild'' and ''historic day.'' And this was working. They got the message.

In the days leading to the attack, report after report, social media post after social media post, confirmed that these insurgents were planning armed violence, but they were planning it because he had been priming them, because he had been amping them up. That is why they were planning it.

And these posts, confirmed by reports from the FBI and Capitol Police, made clear that these insurgents were planning to carry weapons, including guns, to target the Capitol itself. And yet Donald Trump, from January 5 to the morning of his speech, tweeted 34 times, urging his supporters to get ready to stop the steal.

He even, on the eve of the attack, warned us that it was coming. He warned us that thousands were descending into DC and would not take it anymore.

When they got here at the Save America March, he told them again in that speech exactly what to do. His lawyer opened with:

Let's have trial by combat.

That was Rudy Giuliani. And Donald Trump brought that message home. In fact, he praised Rudy Giuliani as a fighter, and President Trump used the words ''fight'' or ''fighting'' 20 times in that speech.

Remember, you have just told these people—these thousands of people—that somebody has stolen your election, your victory; you are not going to get the President that you love.

Senators, that is an incredibly combustible situation when people are armed and they have been saying that they are mad as hell and they are not going to take it anymore.

He looked out to a sea of thousands, some wearing body armor, helmets, holding sticks and flag poles, some of which they would later use to beat Capitol Police; and he told them that they could play by different rules—play by different rules. He even, at one point, quite literally, pointed to the Capitol as he told them to ''fight like hell.''

After the attack, you know, we have shown clearly, well, that once the attack began, insurgent after insurgent made clear they were following the President's orders. You saw us present that evidence of the insurgents who were there that day who said: I came because the President asked me to come. I was here at his invitation. You saw that of the folks that were in the Capitol that day.

The PRESIDENT pro tempore. The time has expired.

Are there further questions?

Mr. GRAHAM. Mr. President.

The PRESIDENT pro tempore. Does the Senator from South Carolina have a question?

Mr. GRAHAM. Thank you very much, Mr. President.

I send a question to the desk on behalf myself, Senators CRUZ, MARSHALL, and CRAMER to counsel.

The PRESIDENT pro tempore. Senator GRAHAM, for himself, Senator CRUZ, Senator MARSHALL, and Senator CRAMER, submits a question to the counsel for Donald Trump.

The clerk will read the question.

The legislative clerk read as follows:

Does a politician raising bail for rioters encourage more rioting?

The PRESIDENT pro tempore. Counsel has 5 minutes.