



Written by [Steve Byas](#) on January 11, 2021

## Liberal Law Professor Warns of Dangers of Second Impeachment Attempt

Writing in an essay for *The Hill*, Jonathan Turley, a professor at George Washington University Law School, quoted novelist Franz Kafka, who once wrote, “My guiding principle is this. Guilt is never to be doubted.”

Turley commented, “Democrats suddenly appear close to adopting that standard into the Constitution as they prepare for a second impeachment of President Trump. With seeking his removal for incitement, Democrats would gut not only the impeachment standard but also free speech, all in mad rush to remove Trump just days before his term ends.”



Photo: Traitov / iStock / Getty Images Plus

Turley is not a Tea Party Activist, or a member of The Federalist Society (the conservative lawyer organization), but an avowed liberal. He added, “Democrats are seeking to remove Trump on the basis of his remarks to supporters before the rioting at the Capitol. Like others, I condemned those remarks as he gave them, calling them reckless and wrong. I also opposed the challenges to electoral votes in Congress. But his address does not meet the definition for incitement under the criminal code. It would be viewed as protected speech by the Supreme Court.”

Incitement to riot is a crime, with a specific definition. For someone to be guilty of this crime, the person must have urged the listeners to his speech or other talk to take some violent action. Otherwise, Senator Bernie Sanders could be held accountable because one of his supporters shot and almost killed a Republican member of Congress, Steve Scalise. After all, Sanders, like all politicians across the political spectrum rail against their political opposition all the time. But Sanders did not urge anyone to shoot that political opposition.

Nothing in Trump’s speech in D.C. on January 6 came anywhere close to urging his supporters to invade the Capitol by force. Giving a speech castigating political opposition at a political rally is hardly incitement to riot. Both the protests and the president’s speech are rights specifically protected by the First Amendment.

Turley wrote that many Democratic politicians are guilty of the same type of rhetoric that they say caused the violent incursion into the Capitol on Wednesday of last week. “Democrats are pushing this dangerously vague standard while objecting to their own remarks [being] given new meaning from critics. Conservatives have pointed to Maxine Waters asking her supporters to confront Republicans in restaurants, while Ayanna Pressley insisted amidst the violent marches last year that ‘there needs to be unrest in the streets,’ and Kamala Harris said ‘protesters should not let up’ even as some of those marches turned violent.”

“They can legitimately argue their rhetoric was not meant to be a call for violence, but this standard is



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filled with subjectivity.”

Turley offered a warning about the terrible precedent that a second impeachment of President Donald Trump could set. “The damage done by the rioters this week was enormous, however, it will pale in comparison to the damage from a new precedent of a snap impeachment for speech protected under the First Amendment. It is the very threat that the framers sought to avoid in crafting the impeachment standard.”

In a criminal proceeding, an accused person is afforded certain due process rights. We rightly consider it a travesty and a miscarriage of justice if a person is found guilty after a rushed trial, in which all relevant evidence, including evidence of innocence, is not fairly considered.

“In a process of deliberative judgment,” Turley explained, “reference to a snap impeachment is a contradiction. In this new system, guilt is not doubted and innocence is not deliberated. This would do to the Constitution what the violent rioters did to the Capitol and leave it in tatters.”

One might add that House Speaker Nancy Pelosi’s demand that Vice President Mike Pence and Trump’s Cabinet use the 25th Amendment to remove Trump also would leave the Constitution in tatters. After all, the 25th Amendment was crafted to allow for the removal of a president who had become incapacitated. It was not intended as a second form of the impeachment process. The amendment was seen as necessary after the assassination of President John Kennedy, because he lived for 30 minutes after a head wound of such severity that much of his brain was destroyed. Congress was desirous of providing a solution for a president who was alive, but in a comatose condition.

Adding to that undermining of the Constitution, Pelosi attempted to intimidate Pence and the Cabinet into invoking the 25th Amendment, by threatening to taking another impeachment vote in the House of Representatives, if they did not do so. She knew that many members of Congress would prefer not to have to take up such a toxic proposal. It is unthinkable that the framers of the 25th Amendment, the members of Congress who voted for it, nor the state legislators who voted to ratify it, would have supported either it being used as a second form of impeachment or Pelosi’s threat of an impeachment vote if they did not invoke it.

While 180 House Democrats are reported by the *Washington Examiner* as supporting impeachment for Trump for “willfully inciting violence,” Senate Majority Leader Mitch McConnell threw cold water on the effort, noting that even if the House were to impeach, the Senate will simply not have enough time to conduct a trial before January 20, when Joe Biden is expected to replace Trump as president at noon, eastern time. Pelosi’s idea of a snap trial is “give him a fair trial, then remove him.”

Pelosi has to know that her impeachment push has no chance of succeeding. Interestingly, those who supported the president’s call to reject the electors from several states have been accused of knowing the effort could not succeed, as well, but were simply going through the motions for political reasons. This would lead one to conclude, then, that Pelosi is making her threats for political reasons. Perhaps she wants to please the radicals in her Democratic caucus, or perhaps she wants to tar Republicans — particularly those Republicans such as Senator Ted Cruz and Senator Josh Hawley — with being co-conspirators in Trump’s supposed incitement to riot.

Whatever her reasons are, it demonstrates that Pelosi, and those who are supporting her effort, care nothing about the U.S. Constitution, or the country itself, but only in advancing their left-wing agenda.



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