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## Senate Has to Confront Sworn Duty With Critical Second Impeachment

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The second impeachment of Donald Trump is a wrenching and convulsing event, a disruptive distraction from national problems but nonetheless an obligation for elected officials. Tragic in many ways but necessary in one, it may likely fail in the present with a lack of support in the Senate but will surely nourish our political system in the future.

The partisan claim that the impeachment is unconstitutional is a tactical resort to avoid taking a stand against the sedition of Trump. While some will deny the legitimacy of impeaching a former president, the fact is that neither the Constitution nor any other legal source provides convincing, or let alone conclusive, support for that position.

The Constitution contains only five relevant provisions. The first is that the House may impeach a president. The second is that the Senate holds the “sole power” to try and convict. The third is that there are two penalties, removal from office and disbarment from holding future federal office, for conviction. The fourth is that a president may suffer no other penalty for conviction but may be prosecuted in separate legal cases for the crimes he committed. The fifth is that the Senate may determine procedure and conduct the trial under whatever rules it adopts.

It is clear that the Senate has the right to invoke the second sanction the Constitution provides, which is suitable for punishing a former president. The only serious issue with the second impeachment concerns what the Senate should do on the substantive merits of the case. That conclusion raises another issue. Why bother to have a trial if dozens of Republicans think that the impeachment is unconstitutional?

The reason for moving forward is evident. Our system demands that the devastating facts in all of their detail be made public and inscribed in an official

record for posterity. While in office, Trump lied thousands of times, implicitly urged violence, falsely claimed the election was stolen, incited his followers to overthrow the results, and called on our lawmakers, state officials, the Justice Department, and former vice president Mike Pence to reject the certified votes so he could stay in power.

Inviting his followers to Washington to intensify that pressure, he flattered them as "amazing patriots," repeated his election lies, and urged them to "stop the steal" and "fight like hell." As his inflamed followers marched to the Capitol, he returned to the White House where he watched for hours in fascination while his followers stormed the chambers, battled violently with police, ransacked the offices of lawmakers, and disrupted Congress from carrying out its constitutional duty. Dozens of police and others were injured, and at least five people died in the assault.

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The actions of Trump marked a grave challenge to our democracy. While the United States has confronted many crises of war, it has never faced a concerted effort by a president himself to subvert an election and inspire a violent mob to block a vital constitutional process so he could stay in power. Such actions should be accounted for even if unpunished for the moment. Our government relies on a system in which both parties honor the Constitution and its democratic norms. The hallmark of that system remains a sacred and peaceful transition of power.

But now that system looks vulnerable after Republicans succumbed to a cult of personality and are on the edge of shielding an autocratic leader. Members of the Senate must be forced to confront their sworn duty to preserve, protect, and defend the Constitution. If they fail to honor their oath, they must be identified for all time and must stand the judgment of history. One way or another, our system has to prevail, ideally with two vibrant parties. If Republicans cower and crumble, however, Democrats will offer refuge to the vast majority of Americans.

*Edward Purcell Jr. is the Joseph Solomon distinguished professor with New York Law School and is an author whose latest book is "Antonin Scalia and American Constitutionalism: The Historical Significance of a Judicial Icon."*