

Senate should convict Trump. Why are many in GOP afraid to act?

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Nobody said it better than Rep. Liz Cheney: "The President of the United States summoned this mob, assembled the mob, and lit the flame of this attack."

The question now is whether the Senate will hold Donald Trump accountable. Or will it decide that a president can foment an insurrection with no repercussions?

Any senator with a spine would convict Trump in a heartbeat. So why are so many Republicans invertebrates? How can they credibly justify their actions?

It is hard for them to contest the facts. We have all seen the evidence. Our reality-star president lit the fuse and sent off the torchbearers on live national television.

Without the facts on their side, the Republicans have turned to the last resort of hopeless causes: constitutional gobbledygook.

The Constitution, they say, allows the Senate to convict only a sitting president. Since Trump is no longer in office, their hands are tied. Either they vote to acquit or betray our nation's sacred charter.

How virtuous!

They probably can feel the vertebrae growing inside their bodies.

There is only one problem. Their argument is at loggerheads with history, precedent, and common sense.

I will not belabor the first two. You can find a compelling argument on each point in the House Impeachment Managers' eighty-page brief. Suffice it to say that English impeachment practice, from which ours is drawn, was applied to former officials. The same was true for many state constitutions in existence at the time the framers drafted the U.S. Constitution. And in the most relevant precedent, an impeachment action against William Belknap in 1876, the Senate opted to try Belknap even though he had already resigned from office.

I prefer to talk about common sense. It is not an entirely inappropriate way to interpret the Constitution. A few examples illustrate this point.

The First Amendment says that "Congress shall make no law . . . abridging the freedom of speech." Now what does your common sense tell you? Do you really think that Congress can make "no law" abridging speech? What if someone falsely yells fire in a crowded theater, lies under oath, or distributes child pornography?

If your common sense tells you that "no law" cannot mean "no law," you might think about quitting your day job and joining the Supreme Court. The Justices reached the same conclusion.

How about the fact that the Constitution has a provision forbidding states from denying persons "the equal protection of the laws" but has no comparable provision for the federal government? Do you think that meant the federal government could continue running segregated schools in the District of Columbia even after the Supreme Court, in *Brown v. Board of Education*, said that states must integrate their schools?

If your intuition tells you that the Justices found a way to apply equal protection principles to the federal government, you are right again. Are you batting 1,000 so far?

But what about the fact that the Constitution gives a president the power to appoint federal officials, but says nothing about the president's right to remove such officials? Do you think a president can nevertheless remove officials who do a lousy job? If you think the answer is yes, start getting fitted for judicial robes.

Now that your common sense is warmed up and primed for a challenge, ask yourself this: Can a president who incites an insurrection – in which people are killed – be held accountable? Does the answer change if he does so days before the end of his term, so that his impeachment trial will occur after he leaves office? Keep in mind that the remedies for impeachment include not just removal from office but also disqualifying the convicted individual from holding a federal office in the future.

I will let you answer that one for yourself. While you, like the Senators, ponder that question, let me leave you with one more brainteaser: Can a president pardon himself?

If you are having trouble applying your common sense to that one, just ask any ten-year-old.

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