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U.S. House of Representatives Managers

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**IN THE SENATE OF THE UNITED STATES
Sitting as a Court of Impeachment**

In re

**IMPEACHMENT OF
PRESIDENT DONALD J. TRUMP**

**REPLICATION
OF THE UNITED STATES HOUSE OF REPRESENTATIVES
TO THE ANSWER OF PRESIDENT DONALD J. TRUMP
TO THE ARTICLE OF IMPEACHMENT**

United States House of Representatives

Jamie Raskin
Diana DeGette
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Eric Swalwell
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Madeleine Dean
Joe Neguse

U.S. House of Representatives Managers

The House of Representatives, through its Managers and counsel, replies to the Answer of President Donald J. Trump as follows:

The House denies each and every allegation in the Answer that denies the acts, knowledge, intent, or wrongful conduct charged against President Trump. The House states that each and every allegation in the Article of Impeachment is true, and that any affirmative defenses and legal defenses set forth in the Answer are wholly without merit. The House further states that the Article of Impeachment properly alleges an impeachable offense under the Constitution, is not subject to a motion to dismiss, is within the jurisdiction of the Senate sitting as a Court of Impeachment, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment.

Jurisdiction: For the reasons stated in the Trial Memorandum of the United States House of Representatives (“Trial Memo”), the Senate has jurisdiction to try this case. *See* Trial Memo at 48-75. The Framers’ intent, the text of the Constitution, and prior Congressional practice all confirm that President Trump must stand trial for his constitutional crimes committed in office. Presidents swear a sacred oath that binds them from their first day in office through their very last. There is no “January Exception” to the Constitution that allows Presidents to abuse power in their final days without accountability. As former President John Quincy Adams declared, “I hold myself, so long as I have the breath of life in my body, amenable to impeachment by [the] House for everything I did during the time I held any public office.” Cong. Globe, 29th Cong., 1st Sess. 641 (1846).

First Amendment: President Trump’s incitement of insurrection was itself a frontal assault on the First Amendment. As a matter of law and logic—not to mention simple common sense—his attempted reliance on free speech principles is utterly baseless. *See* Trial Memo at 45-48.

The Answer claims that the Article of Impeachment “misconstrues protected speech.” Answer at 10. For instance, it contends that there is “insufficient evidence” to decide whether any of

President Trump’s statements at the January 6 rally were “accurate or not.” *Id.* at 4. It further asserts that one of President Trump’s statements—“if you don’t fight like hell you’re not going to have a country anymore”—was “clearly about the need for fight for election security in general.” *Id.* at 6. Finally, it declares that President Trump never “threatened Secretary Raffensperger.” *Id.* at 8.

To call these responses implausible would be an act of charity. President Trump’s repeated claims about a “rigged” and “stolen” election were *false*, no matter how many contortions his lawyers undertake to avoid saying so. When President Trump demanded that the armed, angry crowd at his Save America Rally “fight like hell” or “you’re not going to have a country anymore,” he wasn’t urging them to form political action committees about “election security in general.” And when the President of the United States demanded that Georgia Secretary of State Raffensperger “find” enough votes to overturn the election—or else face “a big risk to you” and “a criminal offense”—that was obviously a threat, one which reveals his state of mind (and his desperation to try to retain power by any means necessary). The House looks forward to proving each of these points at trial.

Also, to be clear, this is not a case about “protected speech.” The House did not impeach President Trump because he expressed an unpopular political opinion. It impeached him because he willfully incited violent insurrection against the government. We live in a Nation governed by the rule of law, not mob violence incited by Presidents who cannot accept their own electoral defeat.

Dereliction of Duty: The Answer declares that “[t]he 45th President of the United States performed admirably in his role as president, at all times doing what he thought was in the best interests of the American people.” *Id.* at 9. Yet that is plainly inconsistent with the public record of President’s Trump conduct on January 6, which reveals a President concerned almost exclusively with overturning his electoral defeat, rather than quelling the violence or defending the U.S. Capitol. Indeed, even after he incited insurrection, President Trump took numerous steps on January 6 that

further incited the insurgents to escalate their violence and siege of the Capitol. For example, he issued a tweet attacking the Vice President while insurrectionists sought to assassinate him.

Due Process of Law: For the reasons given in the House Trial Memo, President Trump’s objections to the procedures by which the House impeached him—and by which the Senate plans to try him—lack merit. *See* Trial Memo at 42-43. Moreover, the House has invited President Trump to voluntarily testify under oath, yet President Trump immediately rejected that opportunity to tell his story. The House will establish at trial that this decision to avoid testifying supports a strong adverse inference regarding President Trump’s actions (and inaction) on January 6.

Multiplicity: President Trump objects that the Article of Impeachment “[c]harges multiple instances of allegedly impeachable conduct in a single article.” Answer at 12. Not so. The Article of Impeachment charges that President Trump “engaged in high Crimes and Misdemeanors by inciting violence against the Government of the United States.” It then describes a single course of conduct constituting that incitement of insurrection. While the article describes the consequences of that conduct—as well as “prior efforts to subvert and obstruct the certification of the results of the 2020 Presidential election”—it charges President Trump only with a single impeachable offense.

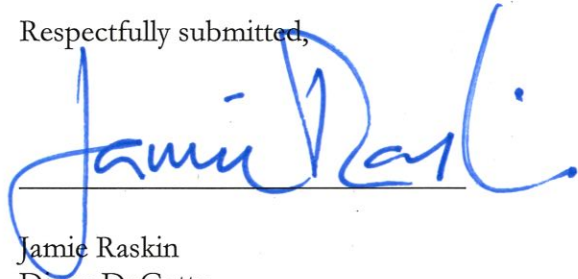
This objection is also legally flawed. In President Clinton’s case, the articles of impeachment *specifically* charged that he had engaged in “one or more” improper acts. *See* H. Res. 611, 105th Cong. (1998). Even so, the Senate rejected President Clinton’s motion to dismiss on the ground that the articles were multiplicitous. That precedent forecloses President Trump’s position here.

Conclusion: The evidence of President Trump’s conduct is overwhelming. He has no valid excuse or defense for his actions. And his efforts to escape accountability are entirely unavailing.

As charged in the Article of Impeachment, President Trump violated his Oath of Office and betrayed the American people. His incitement of insurrection against the United States

government—which disrupted the peaceful transfer of power—is the most grievous constitutional crime ever committed by a President. There must be no doubt that such conduct is categorically unacceptable. The House will establish at trial that President Trump merits conviction and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jamie Raskin", is written over a horizontal line.

Jamie Raskin
Diana DeGette
David Cicilline
Joaquin Castro
Eric Swalwell
Ted Lieu
Stacey Plaskett
Madeleine Dean
Joe Neguse

February 8, 2021

U.S. House of Representatives Managers