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Second Keynote Address: The Two Impeachments of Donald J. Trump*

Senator Richard Durbin, Speaker

I want to thank Professor Frank Bowman and *Missouri Law Review* for holding this symposium on the impeachment trials of President Donald Trump. The topic is critically important and timely.

It was just two years ago this month that the Senate acquitted President Trump in the first impeachment trial, and one year ago this week, he was acquitted in the second trial for inciting an insurrection against the government of the United States. Now, in the first trial, Republican Senators voted to prohibit the trial managers, the actual prosecutors, from subpoenaing any witnesses or documents. They won because they were in the majority. Before both trials, enough Republican Senators, known as jurors, announced that they had already made up their minds to acquit the President—that the not-guilty verdicts were essentially rendered even before the trial started.

That raises an obvious question. The Constitution sets a high bar, two-thirds of the vote in the Senate to convict and remove a President from office. In the four impeachment trials of three different presidents, that super majority threshold has never been met. The closest, 1868, President Andrew Johnson escaped conviction by a single vote. The whole world watched in disbelief as Donald Trump summoned a mob to Washington, told them they had to “fight like hell,” pointed to the Capitol, and turned them loose. And then did nothing, did absolutely nothing for hours to stop the pillaging and carnage. Even as police officers were being poisoned with bear spray, pummeled with weapons including iron bars and even flag poles. I was in the middle of that horror. I lived through it. The whole world witnessed it. And yet, only seven of the fifty Republican Senators voted to convict President Trump in his second trial.

Combined with all fifty Democrat and Independent Senators, that made for fifty-seven guilty votes. Clear majority. But still at least ten votes short of what was needed to remove President Trump from office. So, here’s the question. Given the pre-ordained verdicts, were the two impeachment trials of Donald J. Trump a mistake? A waste of time? In

*On February 17–18, 2022, the *Missouri Law Review* and the Kinder Institute on Constitutional Democracy jointly presented a symposium discussing the facts, constitutional questions, and future implications of the two impeachments of President Donald Trump. These remarks have been annotated and edited by the Journal staff.

this age of hyper-partisanship, is it even possible for the Senate to remove from office a president who commits high crimes and misdemeanors, or is impeachment now just an empty threat?

Before I address those issues, let me give you a bit of my background. In addition to now chairing the Senate Judiciary Committee, I'm one of only fourteen senators in the history of America who has served as a juror in three of the four presidential impeachment trials. I missed the Andrew Johnson trial for obvious reasons. Despite the verdicts, I believe that both of the Trump impeachment trials provided sufficient cause to remove Trump from office. Both were necessary, and here's why.

First, when Donald Trump illegally withheld \$400 million in security aid from Ukraine, and extorted the Ukrainian government into investigating his political rival Joe Biden – the basis for the first impeachment – he not only violated the law, he endangered a struggling young democracy in Ukraine. And he caused other nations, our allies and adversaries alike, to wonder if America is still committed to the rule of law and democracy. In a world in which democracy is under assault and autocracy is on the rise, Donald Trump's role in inciting an insurrection threatened not only those of us in the Capitol building that day, but democracy itself, in this country and throughout the world.

Second, we now know that the insurrection on January 6th was just the most visible part of President Trump's attempted coup. Every week with his big lie, we learn more about how deep the rot actually went. We know as a result of an investigation by the Senate Judiciary Committee, which I took part in, that President Trump relentlessly pressured the Justice Department to help him overturn the election. We know that he reportedly considered ordering U.S. military to seize ballot boxes in several key states. And we now know that he regrets absolutely none of it. The big lie continues.

In recent weeks, Donald Trump has said unequivocally that Vice President Pence should have overturned the election. And Trump has said he would pardon those insurrectionists of January 6th, some of whom were charged with seditious conspiracy. Trump wants to be president again to have that opportunity to issue those pardons. Assaults on the rules and norms of democracy that go unchallenged become precedent. Impeachment is the constitutional challenge to tyranny.

Third, and finally, the impeachment trials were necessary because Americans today and in future generations must know the truth. If we ignore history and try to rewrite it for our convenience, we are in danger of repeating the worst of it. That is why the work in the House Select Committee on January 6th and the Senate Judiciary Committee, the continued revealing report on these matters by news organizations, and thoughtful forums such as this one, are so important. Our democracy is precious and fragile. By seeking the truth, you reinforce the guard rails that protect democracy here and throughout the world.

Thanks for inviting me to be part of your program.