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An Impeachment Primer for the 2nd Impeachment of Donald John Trump

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Critical Question Series #3

An Impeachment Primer for the 2nd Impeachment of Donald John Trump.

Impeachment is a way to ensure federal officers are upholding the core values of the United States. Although impeachment does not happen often, it is an important part of American democracy. While only one impeachment occurred in the first 200 years of the nation's history, three more have occurred in the last 22 years with Donald Trump becoming the first president to be impeached twice. Since impeachment is a rarely utilized process there is much to be learned and considered during this experience.

Question #1. What is Impeachment and what did the Framers say about it?

The concept of impeachment originates from English law and is considered to be crucial to the United States' system of checks and balances. Article II of the United States Constitution identifies it as a process to remove "The President, Vice President, and all civil Officers of the United States" if they are found guilty of "Treason, Bribery, or other high Crimes and Misdemeanors" by Congress. The idea was discussed at the 1787 Constitutional Convention and by Alexander Hamilton in Federalist 65. The Impeachment Clause, and what it should entail, were widely debated. Some had concerns about impeaching a president, while others felt that this clause was a way to deter the abuse of power by leaders. After much consideration, the majority of delegates agreed that an impeachment clause was a necessary addition to the Constitution. The Framers set out to create a process that would be reserved for egregious offenses and therefore set a high bar for the removal of elected officials.

While the Constitution lays the groundwork for the impeachment process, the House and Senate maintain a great deal of discretion in how they pursue it. During impeachment proceedings, the House of Representatives holds the responsibility of charging an official of the federal government by approving articles of impeachment. A majority vote in the House is needed to approve an article of impeachment. Once approved, Senators are tasked with the responsibility to hold a trial, study the evidence, and then vote to acquit or convict the impeached individual. The Constitution requires a two-thirds majority vote from the Senate in order to convict. If convicted, the penalty is removal from office and potential denial of the convicted official's right to hold public office again. Since 1789 only half of all Senate impeachment trials have resulted in a conviction and no federally elected officials have ever been removed from office.

Question #2. What has happened in past impeachment proceedings?

Impeachment is rare. Throughout history, less than two dozen impeachments have occurred. Only three Presidents have been formally impeached and none have been removed from office. Andrew Johnson, Bill Clinton, and Donald Trump have all been impeached in the House of Representatives and all were acquitted as a result of their Senate trials. Donald Trump is now the first president who has been impeached twice. Richard Nixon was threatened with impeachment, but resigned from office before the trial. Although no president has been completely removed from office, Congress has impeached 15 federal judges, and removed eight of them.

The bar for an impeachment conviction is very high--requiring a two-thirds majority vote to be found guilty. Political party loyalty has proven to be a significant factor in impeachment proceedings. With presidential impeachments, only Andrew Johnson witnessed notable party defections. Johnson narrowly escaped removal by just one vote. The other two presidential impeachment hearings have not come close to reaching the two-thirds majority. During Bill Clinton's trial the Senate ruled 55-45 to acquit on charges of perjury, and a 50-50 split on charges of obstruction of justice. In Donald Trump's first impeachment trial in the Senate, all Senators, except Mitt Romney, voted along their party lines which made the vote 52-48 to acquit on the charge of abuse of power and 53-47 to acquit on charges of obstruction of Congress.

Question #3. What has happened with Donald Trump's second impeachment and what can we expect next?

In the weeks and days leading up to the January 6th counting of the Electoral College votes, Donald Trump stated that if Mike Pence did the "right thing" that day he would win the election and encouraged his supporters to "fight" against the Electoral College certification process. Shortly thereafter a mob overtook the United States Capitol Building and disrupted the counting of the Electoral College votes. A week later, the House of Representatives voted 232-197 to impeach Donald Trump for inciting the insurrection. Ten Republicans joined with Democrats to impeach Trump.

Several prominent Republicans have argued that Trump should not stand trial given that he has completed his term. Republican Senator Chuck Grassley (R-IA) represents this view: "It's one

thing, according to the constitution, to impeach a president, but can you impeach a citizen? Because now it's not President Trump, it's citizen Trump.”

On January 26th, the Senate refused Kentucky Senator Rand Paul's motion to dismiss the trial on these grounds by a vote of 55-45. The solidarity by most Republicans to dismiss the trial suggests there is little chance Democrats will find at least 17 Republicans that will be needed to join them to convict Trump.

The Senate trial is set to begin the week of February 8th.

Parting Thoughts

Impeachments are a rarely used constitutional power granted to the legislative branch designed to hold executive officials accountable for their actions. While the threshold to impeach is not particularly high, the threshold to convict is. Past impeachments have been largely driven by partisanship and the actions by legislators thus far suggest that the conviction of Donald Trump will likely fall short as votes will largely fall along party lines.