

Censure Trump? What a joke

Gene Healy

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With the Democratic base demanding action on the Mueller Report and the House leadership gun-shy on impeachment, the search is on for a viable alternative. A growing number of House Democrats think congressional censure is that alternative. According to Rep. Ro Khanna(D-CA), censuring President Trump will “send a clear message that the President’s unethical and illegal conduct is wrong and hold him accountable.”

The Democratic majority certainly has the power to pass a sense-of-the-House resolution dressing down the president. That move would be just as constitutional as Congress declaring it “National Nurses’ Week” — and about as effective. Rep. Khanna touts censure as “a permanent mark on the president’s record,” but history suggests it’s more like a kid’s washable tattoo. The few successful censure resolutions against sitting presidents have mostly faded into obscurity.

Four presidents have been formally reprimanded by the House or the Senate, according to the Congressional Research Service: Andrew Jackson, James Buchanan, Abraham Lincoln and William Howard Taft. For Lincoln and Taft, the resolutions were watered down by amendment “so that they no longer clearly censured the president.” Buchanan and Jackson received sharper scoldings, but those episodes give us little reason to be impressed with censure’s bite.

In 1860, as the secession crisis loomed, the House formally rebuked President James Buchanan for awarding military contracts based on “party relations,” a practice “dangerous to the public safety and deserving the reproof of this House.” The 15th president is widely considered one of the nation’s worst, but few historians remember the military patronage kerfuffle, and even fewer would put that charge near the top of their list.

The Senate’s 1834 censure of Andrew Jackson over the “Bank War” is somewhat better-known. By removing federal deposits from the Bank of the United States and refusing to provide a document demanded by the Senate, the resolution charged, Jackson had “assumed upon himself authority and power not conferred by the Constitution or the laws.” Not three years later, a new Jacksonian majority in the upper chamber had the measure expunged from the record.

Unless you’re a historical trivia buff, you probably don’t remember these episodes. But most politically aware Americans *can* name the two presidents who were impeached — Andrew Johnson and Bill Clinton — and the one who resigned to avoid that fate, Richard Nixon. That ignominious distinction is central to all three presidencies. And although Johnson and Clinton avoided removal by the Senate, their legacies were permanently scarred. Even if it fails to produce a conviction in the Senate, impeachment by the House is censure with teeth.

Conventional wisdom holds that it’s a waste of time to impeach a president if it’s unlikely he’ll be removed. As House Judiciary Committee chairman Rep. Jerrold Nadler (D-N.Y.) has put it:

“Yes, you could impeach the president in the House. But you need a two-thirds vote in the Senate, and what’s the point of it?”

Actually, impeachment’s history shows that even failed attempts at removal can make their point stick. The Framers borrowed the institution from England, where, as historians Peter Hoffer and N.E.H. Hull explain, “On many occasions the Commons did not even prosecute—the impeachment itself was sufficient warning or inconvenience to the accused.” In American practice as well, “failed” impeachments have successfully checked official abuse and vindicated important constitutional norms. In our first presidential impeachment, Andrew Johnson’s in 1868, removal wasn’t necessary to put an end to the president’s aggressive use of executive power to thwart Reconstruction.

In Trump’s case, an impeachment inquiry could also help the House in ongoing court battles over executive privilege. The president has announced a policy of massive resistance to congressional demands for information: “we’re fighting all the subpoenas.” But Congress’s right to compel evidence is at its strongest when impeachment is in play.

None of that means impeachment is the right course of action for Trump’s opponents or the country as a whole. Speaker Nancy Pelosi (D-Ca.) may be right to worry about the political costs of an all-consuming impeachment effort. And the argument for letting the voters decide directly gets stronger the closer we get to the 2020 election.

But the House leadership shouldn’t kid themselves, or the Democratic caucus, that a performative sense-of-the House resolution will hold the president accountable — it won’t.

Healy is a vice president at the Cato Institute and author of "Indispensable Remedy: The Broad Scope of the Constitution’s Impeachment Power."