

Idaho Statesman

Democrats know removing Trump from office won't be easy. They want to try anyway

Francesca Chambers, David Lightman and Alex Roarty

January 13, 2020

Democrats are charging ahead with a plan to impeach President Donald Trump over inciting last week's Capitol Hill riot, even though the rapidly developing effort faces a set of daunting challenges that make it unlikely he'll be removed from office before Joe Biden's inauguration next week.

Maintaining that Trump could provoke additional violence during his last days in office, Democrats said Monday that they would vote quickly on measures aimed at pressuring the president to leave office earlier than the end of his term on Jan. 20.

The goal for some Democratic lawmakers is to keep Trump from holding office ever again, barring a potential comeback for the outgoing Republican president.

Whether or not a congressional vote or action can bar Trump from holding office again is unclear. There is no historical precedent for such action, and scholars see the law as open to interpretation.

Democratic Party strategists say the chance to send a message to Trump that his role in the attack was unacceptable is worth waging the legal and political battle that could overshadow Biden's inauguration and his first days in office.

"Since all members of Congress swore an oath to protect and defend the Constitution, unless the 25th Amendment is invoked, the Democrats have no choice but to lead the effort to impeach President Trump for inciting an attack on a separate but equal branch of government," said Hilary McLean, a Sacramento-based Democratic consultant.

The House plans to vote Tuesday on a measure that calls on Vice President Mike Pence to invoke the 25th Amendment and take steps that would quickly oust Trump. Pence has not given any indication of being inclined to take such drastic action. The House will try on Wednesday to impeach him for an unprecedented second time.

An estimated 218 Democrats, enough for a House majority, are expected to back the measure, which says Trump was "inciting violence" against the government. Little Republican support is anticipated, and the effort faces a murky future in the Senate, where a trial and a vote would be required to get a conviction. Senators do not plan to return to Washington until the day before Biden is sworn into office.

Seeking the legal removal of a president is one of the most consequential actions Congress can take. Only three presidents — Andrew Johnson, Bill Clinton, and Trump — have ever been impeached, and none was convicted in the Senate. Richard Nixon resigned from office before the House could impeach him.

“There’s no reason to impeach a president after he’s left the White House unless you’re attempting to ban him from holding office in the future. And for fundraising, of course,” said former White House assistant special counsel Steven Groves, an attorney who advised Trump during Special Counsel Robert Mueller’s investigation into Russian interference.

House Democrats insisted on Monday that action was necessary, regardless of the possible Senate outcome, as protection against another outburst from Trump, who has not been publicly seen or heard from since Twitter suspended his account.

“The President represents an imminent threat to our Constitution, our Country and the American people, and he must be removed from office immediately,” House Speaker Nancy Pelosi, D-Calif., said. “As our next step, we will move forward with bringing impeachment legislation to the Floor. The President’s threat to America is urgent, and so too will be our action.”

POLITICS OF IMPEACHMENT

The politics of removal have been a mixed bag for the party leading the charge: Democrats managed to gain seats in Congress after the GOP impeached Clinton, while Trump’s approval hardly budged after the House impeached him in 2019.

Trump’s defeat in last year’s election was attributed by many analysts to the coronavirus pandemic that induced an economic recession and left more than 200,000 Americans dead by November.

Some Democrats argue impeachment politics are more favorable for them now than their last go-round with Trump, when Democrats say the president abused his power to demand the leader of Ukraine into supplying false but damaging information on then-candidate Biden.

A poll released Monday by Quinnipiac University showed a small majority of voters, 52% of them, support removing Trump from office, with 45% opposing removal. A slightly higher share, 56%, say they hold the president responsible for last week’s violence.

Trump’s overall approval, meanwhile, sank to 33%, tied for his all-time low in the survey.

Tara McGowan, a Democratic strategist, said the violence at the Capitol provokes a much deeper reaction with voters than allegations of corruption, which was at the heart of the last impeachment effort.

“When you are talking about corruption, it’s one thing,” she said. “When you are talking about a violent mob storming our Capitol, that is a different experience that Americans are having right now.”

Party operatives say they expect the measure could receive more Republican votes than the last effort, when only one Senate Republican, Utah Sen. Mitt Romney, voted in favor of removing Trump from office.

And even if they are confident about the politics, it’s a secondary consideration to what they describe as a necessary response to a deeply disturbing event.

“I personally don’t think this is being driven by politics,” said Zac Petkanas, a Democratic strategist. “I think people on Capitol Hill and across the country are shaken to their very core and

legitimately scared about whether we are going to have a Republic by the end of this decade. That's the sense I'm getting from everybody."

The strategy will put enormous pressure on Republican senators to put consequential action behind their condemnation of Trump's rhetoric in the immediate aftermath of the attack.

Romney in a statement to McClatchy indicated on Monday that he was actively considering supporting impeachment again and other efforts by Democrats to bar Trump from holding further office.

"When the President incites an attack against Congress, there must be a meaningful consequence. We will be considering those options and the best course for our nation in the days ahead," Romney said.

To convict Trump, Democrats would need the votes of at least 17 Republican senators. At least one GOP senator, Pat Toomey of Pennsylvania, has said he backs impeachment, while Sen. Lisa Murkowski of Alaska has said Trump should resign.

Republican Sen. Tim Scott of South Carolina said Monday, however, that a peaceful transfer of power on Jan. 20 is the proper way forward.

Neither impeachment nor the 25th Amendment would "heal and unite our fractured nation," Scott said in statement to McClatchy. "Democrats know that impeachment would only fan the flames of division and that the process cannot be done before Inauguration Day."

UNTESTED PROCESS

The Senate is currently in recess and is not scheduled to conduct new business until Jan. 19. Senate Majority Leader Mitch McConnell said in a memo that it would take unanimous consent from all 100 senators to reconvene before then.

With division in the GOP over impeachment, it is highly unlikely that the Senate would return earlier to conduct a trial before Biden is sworn into office.

But once Trump is no longer president, the legality of a conviction is unclear. Constitutional experts told McClatchy there is legal precedent for impeaching and trying federal officials after they have already left office. But never before has the standard been applied to a former president, and Trump's lawyers would almost certainly seek that the conviction to be invalidated in court, they said.

"It doesn't automatically bar him from holding office," said Kermit Roosevelt, professor of law at the University of Pennsylvania Carey School of Law, referring to conviction.

If convicted, there could be other consequences. There have been precedents with other convictions of federal officials, notably a loss of federal benefits such as pensions

Another alternative for punishing Trump mentioned by Pelosi, in a message to colleagues Sunday, would involve the 14th Amendment's Section 3. She said colleagues' views on it would be "valued."

The section bars anyone from holding certain state and federal offices who “shall have engaged in insurrection or rebellion” against the government unless Congress by a two-thirds vote allows them to serve.

But using that provision to prohibit Trump from ever holding federal office would be difficult, said Robert Levy, a constitutional scholar and chairman of the Cato Institute’s board of directors.

Among the issues is whether Trump could be deemed to have engaged in an insurrection — a prerequisite for triggering the section. The House impeachment resolution does not go that far, charging Trump incited an insurrection.

The 14th Amendment section was written as a response to the Civil War and designed specifically for Confederate rebels. “It has not been used to rebuke the president, and this would be a unique application,” Levy said.