

DAILY STOCK DISH

Experts: Trump Has No Constitutional Right to Confront Whistleblower

December 1, 2019

President Donald Trump on Thursday again challenged House Democrats to produce the "fake whistleblower" behind the complaint a day after the first round of public impeachment hearings — but legal scholars say the president has no right to confront his accuser.

"Where's the fake whistleblower?" .

Fellow Republicans and other Trump supporters have long contended that the Sixth Amendment guarantees the president's right to challenge his complainant in the impeachment inquiry.

"There are good whistleblowers, and there are bad whistleblowers," Trump's attorney Rudy Giuliani recently told the . "There are good informants and there are bad informants.

"That's why we have a trial," the former New York City mayor said. "That's why we have cross-examination.

"It's in the Sixth Amendment of the United States Constitution."

Sen. Lindsey Graham, R-S.C., a lawyer who's sponsored a GOP resolution calling for protections for President Trump, told reporters Thursday: "We're going to do the trial based on due process, common to the American legal system — and that's my bottom line."

The Senate will hold a trial to adjudicate any impeachment articles passed by the House.

In addition, Steve Calabresi, chairman of the Federalist Society's board of directors and a Northwestern University Law School professor, argued that Trump's constitutional rights have been violated.

"House Democrats are abusing their power of impeachment by denying Trump his basic rights as a defendant in the case against him under the Sixth Amendment," Calabresi wrote for last week.

However, scholars say President Trump is not protected by the Sixth Amendment because those rights are guaranteed in criminal proceedings in American courts of law.

The House impeachment hearing is not a criminal proceeding, in which someone is charged with a crime and indicted by a grand jury.

It is "a congressional proceeding — and whatever the outcome may be, it will not, and cannot, result in Trump's imprisonment or any deprivation of his liberty, but only in his removal from office," David Post, a Cato Institute adjunct scholar, wrote in a Tuesday post for .

House Intelligence Committee Republicans have also slammed Chairman Adam Schiff, D-Calif., for dismissing most of the witnesses, including the whistleblower, that they have sought to subpoena for the hearings.

"The Sixth Amendment is clearly about criminal proceedings — and to try to apply rights that belong to Americans in a different setting and a different forum has really missed the gamut," Gregg Nunziata, a former senior counsel to Sens. Marco Rubio, R-Fla., and John Thune, R-S.D., told on Thursday.

During the process involving President Richard Nixon in 1973, the House authorized the Judiciary Committee to subpoena witnesses, testimony, and documents as part of a possible impeachment.

The resolution to the Judiciary chairman, Rep. Peter Rodino, D-N.J., and the ranking Republican, Rep. Edward Hutchinson of Michigan.

Nixon resigned in 1974 after 13 months of impeachment hearings.

The Senate trial, which is required by the Constitution, adjudicates any impeachment articles passed by the House. That also, however, is not a criminal proceeding.

President Trump would have the right to defend himself, though his right to confront the whistleblower is not guaranteed.

The Constitution also authorizes the Senate to "determine the rules of its proceedings," which could include how it governs any impeachment trial.

It also prescribes that the chief justice of the Supreme Court, currently John Roberts, to preside over the trial.

The Senate also must determine whether the president committed "treason, bribery, or other high crimes and misdemeanors," as outlined by the Constitution — not whether a president is guilty or innocent.