



## Trump's language, which defined his presidency, is now what's on trial

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Feb. 10, 2021

Among the most consistent themes of the Trump era was the former president's use of discriminatory language that was shocking, and his critics say, often caused real, tangible harm.

The final chapter in that presidency is still playing out: A trial in which senators are considering whether the words he used merit the ultimate punishment for a president: an impeachment conviction.

Donald Trump's critics say his language has encouraged everything from a rise in hate crimes to bullying in schools to, now, a deadly riot at the U.S. Capitol.

"His words became their actions," Rep. Joaquin Castro (D-Tex.), one of the impeachment managers, said Wednesday.

Trump's lawyers say his speech is protected by the First Amendment.

"This is a very, very dangerous road to take with respect to the First Amendment, putting at risk any passionate political speaker, which is against everything we believe in this country," Trump attorney David Schoen said last week on Fox News.

And he further challenged the Democrats' argument on Tuesday in the Senate, saying that their ultimate goal is to strip Trump of his First Amendment rights. He said:

They've made clear in public statements that what they really want to accomplish here in the name of the Constitution is to bar Donald Trump from ever running for political office again. But this is an affront to the Constitution no matter who they target today. It means nothing less than a denial of the right to vote and the independent right for a candidate to run for elected political office guaranteed by the First and 14th amendment to the United States Constitution under the guise of impeachment as a tool to disenfranchise.

But Rep. Jamie Raskin (D-Md.), the lead House impeachment manager, pushed back on that argument Wednesday, even citing some conservative scholars who disagree with the argument presented by Trump's attorneys.

"Incitement to violence is, of course, not protected by the First Amendment," Raskin said.

"That's why most Americans have dismissed Donald Trump's First Amendment rhetoric simply by referring to Justice Oliver Wendell Holmes' handy phrase 'You can't shout fire in a crowded theater.'"

“But even that time-honored principle doesn’t begin to capture how off-base the argument is,” said Raskin, a constitutional law professor, before explaining how Trump’s language was more akin to a fire chief actually sending a mob to set a theater on fire.

Trump’s language going back to the days of the 2016 presidential campaign to his final moments before leaving the White House have been a threat to the safety of people of color, women and other marginalized communities that did not fit his idea of a great America, said LaTosha Brown, a voting rights activist.

“For people who have been on the receiving side of that language, it has created safety issues and insecurities,” said Brown, a co-founder of Black Votes Matter. “It has made an environment more dangerous for us to freely move and express ourselves and just be citizens.”

A 2018 Harvard study argued that the former president’s violent language was directly tied to an increase in hate crimes against people of color, religious minorities and women when compared to incidents of violence following previous presidential campaigns.

Long before Twitter suspended Trump’s Twitter account there were calls for such action based on the nature of his language. Then-Sen. Kamala D. Harris (D-Calif.) in 2019 supported suspending Trump from Twitter.

Even dozens of Republican lawmakers condemned Trump’s word choices in July 2019 after he told four Congress members of color to “go back” to their ancestral countries after they criticized American politicians and the U.S. government.

Former Rep. Will Hurd (R.-Tex.), who in The Post last month criticized the GOP for helping normalize Trump’s language, denounced the former president’s language.

“I think those tweets are racist and xenophobic. They’re also inaccurate,” he said in July 2019 on CNN. “It’s also behavior that’s unbecoming of the leader of the free world. You should be talking about things that unite us, not divide us.”

Brown says punishing Trump for his language is necessary because “behind those words have come violent terror.” And she wants other elected officials to know that if they speak the way Trump did, they risk activists mobilizing to make sure they lose their elected seat.

“For anyone to operate as if ‘Let’s move on’ is the answer, part of it is they have a higher tolerance for racism because in many ways they share some of those beliefs,” Brown said. “It is not as offensive to them because it doesn’t effect and impact them the same way it does us.”

And Bakari Sellers, a podcast host and former South Carolina lawmaker, said Trump’s rhetoric has already made stars of younger Republicans who speak and tweet in ways that mimic Trump’s style. Holding Trump accountable for his words is key in preventing up-and-coming conservative lawmakers from adopting his communication style.

“People want us to get to a level of healing and a level of turning the page, but nobody wants to have atonement or accountability,” Sellers said. “They want us to turn the page with no atonement and I think this is necessary because people have to know that there is at least a pursuit of justice.”

Several months after Trump defended white nationalists who marched in Charlottesville in 2017, Rep. Al Green (D.-Tex.) filed articles of impeachment against him, claiming that his discriminatory language made him unfit for office.

“Although he may not be the first bigot in the White House, he is the first who routinely uses Twitter and other public statements to feed an alt-right hate machine, antithetical to the constitutionally protected interests of many minorities, women, Muslims & the LGBTQ community,” he wrote.

Green told The Fix last month that holding the former president accountable for his words is about more than Trump.

“I do believe that it can act as a deterrent, but it’s supposed to deter the person who did it, who performed the acts, as well as the persons who would want to pursue the same course of conduct,” he said.

Ilya Somin, a law professor at George Mason University, wrote in The Post that the argument that holding Trump accountable for inciting the Jan. 6 riot would violate his right to free speech displays a fundamental misunderstanding about the First Amendment and the purpose of impeachment.

“Government officials can be impeached and removed for speech that is not criminal,” the adjunct scholar at the Cato Institute, a libertarian think tank, wrote. “The First Amendment protects private citizens against criminal and civil sanctions for a wide range of speech. But it doesn’t protect government officials against impeachment and conviction.”

For critics of the Trump — particularly those who were on the receiving end of his most incendiary language — punishment for using language to cause harm would be the most fitting coda to a presidency that was built on that.