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OPINION | REVIEW & OUTLOOK

The Senate Has a Duty

The House impeached Trump. The other house needs to hold a trial.

By The Editorial Board

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Speaker of the House Nancy Pelosi and Majority Leader Mitch McConnell. PHOTO: SAUL LOEB/AGENCE FRANCE-PRESSE/GETTY IMAGES

Speaker Nancy Pelosi continues to withhold the House articles of impeachment from the Senate, further trivializing a serious constitutional power and process. Senate Republicans seem content to play along while ridiculing her gambit, but they should take their own duties more seriously and hold a trial.

One emerging dodge seems to be that President Trump isn't formally impeached until the articles are transmitted to the Senate. This is absurd. The House voted on two articles and passed them with a majority. The House broadcast this fact to the country along with more-in-sorrow-than-anger claims that they are doing their solemn constitutional duty.

There's nothing in the Constitution that says impeachment requires a formal transmittal of the articles to the Senate, whether by sedan chair or overnight FedEx, or that the House must appoint impeachment managers. The parchment merely says the House has sole power over impeachment and the Senate the sole power to try an impeachment. The act of impeachment is the vote.



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The Founders also defined impeachment as consisting of two parts—the House vote followed by a Senate trial. They are two stages of the same process. The Founders gave the first impeachment step to the House knowing it would often be governed by populist and partisan

passions.

They gave the Senate control over the trial as a check on the House. They knew the Senate, with its two Members per state, would represent the different interests of varied states. And with staggered elections every six years, two thirds of the Senate wouldn't face immediate re-election after a trial and vote.

This means the current Senate has a responsibility to fulfill its part of the Constitution's impeachment duty as a check on the partisan excesses of the Pelosi House. This isn't merely to give Mr. Trump a chance to defend himself and be acquitted of the House charges. The more important obligation is to the separation of powers and to the Senate itself.

By making a fuss of withholding the articles until she hears the Senate's specific plans for a trial, Mrs. Pelosi is trying to dictate to the Senate how to hold a trial. But the Constitution reserves this power for the Senate. If she never sends the articles and there is no trial, she will have effectively trampled on executive power and Senate prerogatives by maligning a President without the chance for acquittal at trial.

She will be turning impeachment into the equivalent of a censure resolution wrapped in the claim of impeachment. This sets an awful precedent, making impeachment more likely because a President is unlikely to be removed, but also less potent if a President does deserve to be removed from office for real abuses. If impeachment without trial becomes common, genuinely dangerous Presidents will cite that history as a partisan shield.

Current Senate rules say a trial isn't triggered until the House appoints impeachment managers who deliver the articles to the Senate. But those rules were written when Senators never anticipated the House would treat impeachment in such a cavalier fashion. The constitutional lawyer and our contributor David Rivkin argues that in this context the Senate rules violate the constitutional duty to hold a trial. If Democrats refuse to cooperate by providing the two-thirds

necessary to change the rules, Republicans should vote to change the rules with a simple majority.

Mr. McConnell could tell Mrs. Pelosi to nominate managers by a certain date or he will appoint lawyers to make the case for the House. Or he could announce the start of the trial by a certain date, and proceed without the House managers if they fail to show up. The President's lawyers could make their case, and then the Senate could vote.

This carries some political risk, but faced with such a choice Mrs. Pelosi is likely to appoint House managers in the end. Political risks also exist if Mr. McConnell continues with his current posture of refusing to hold a trial if Mrs. Pelosi doesn't appoint managers. She and the Democrats will claim from here to November that Republicans were afraid to hold a trial because they know Mr. Trump is guilty.

For Senate Republicans, their constitutional duty here is also the best politics. Don't join Nancy Pelosi in defining impeachment down. Honor the Constitution by holding a trial.

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