

The New Congress Likely Won't Impeach Trump and Remove Him from Office – Here's Why

Removing a president from office is a two-step process. The first step is impeachment. That's when members of the House indict, or charge, the president with an impeachable offense. Impeachment does not remove the president from office. That happens only if a second step is taken and the president is convicted of the alleged crimes.

Jacob Neiheisel, an associate professor at the University at Buffalo, SUNY, answers five questions about how impeachment works – and why we're unlikely to see President Donald Trump removed from office.

1. What sort of crime can lead to impeachment?

[The U.S. Constitution](#) states that the president can be removed from office after being both impeached and convicted for "Treason, Bribery, or other High Crimes and Misdemeanors." Let's consider each of these offenses.

Treason is notoriously difficult to prove, and is narrowly construed. For example, Aaron Burr – a former vice president – was allegedly involved in a plot to gather a force to create a separate nation on some of the lands that would eventually be obtained through the Louisiana Purchase. Part of the alleged plot involved encouraging western states to join him in this endeavor, and he planned to ask Spain and Britain for help. As president, Thomas Jefferson was convinced that Burr himself constituted a threat to the republic and used the incident to go after him. Yet absent witness testimony to the effect that Burr had committed an act of war against the United States, [the jury in his treason trial quickly acquitted him of any wrongdoing.](#)

So what about bribery? To date, no president has been charged with this crime. Could Trump be the first? Some have suggested that Trump's apparent offer to pardon Paul Manafort and Michael Flynn could be [construed as bribery](#). However, it seems a stretch considering [the Supreme Court has tightened the federal definition of bribery in recent years](#). That said, impeachment is, at heart, a political process, not a legal one – so I wouldn't entirely rule it out.

What exactly constitutes a "high crime" or "misdemeanor" has always been open to interpretation, but one thing is clear – partisan politics plays a role.

Scholars argue that Andrew Johnson, the first American president to be impeached, was targeted because of his "soft" approach to states of the former [Confederacy during Reconstruction](#). The [official reason](#) was his violation of the [Tenure of Office Act](#), a law that was later declared unconstitutional by the Supreme Court.

Articles of impeachment were brought against Bill Clinton for perjury, or lying under oath, and [obstruction of justice](#), but there is little doubt that [a Republican desire to weaken Clinton's presidency was behind the charges](#).

Even [Alexander Hamilton](#) expected the process of impeachment to be overtly political. And President Gerald Ford put the matter bluntly when he described an impeachable offense as "whatever a majority of the House of Representatives considers it to be at a given moment in history."

2. How does the process work?

The [process usually begins](#) when a member of the House brings forth articles of impeachment. Last year, five Democrats in the House [did just that](#), and U.S. Rep. Brad Sherman, a Democrat from California, [reintroduced articles of impeachment](#) against Trump in January 2019.

Next comes a vote on the articles of impeachment by the House Judiciary Committee. The Judiciary Committee can choose to investigate the matter – or opt out, as they did in the case of the Clinton impeachment.

With or without an investigation, the committee can recommend for or against impeachment. Either way, their recommendation isn't binding – meaning the House can vote to impeach over their recommendation. The current chair of the judiciary committee, New York Democrat Jerry Nadler, is taking a [“wait and see”](#) approach to the idea of impeachment.

Next comes a vote in the full House, with only a simple majority required.

If the House votes to impeach, the case is referred to the Senate for trial. The trial runs much like a criminal case, and witnesses can be called on either side. A supermajority, or two-thirds, of the Senate then has to vote to convict and remove the president from office.

Although two presidents, Andrew Johnson and Bill Clinton, have been impeached by the House, both avoided a conviction in the Senate and removal from office.

A common misconception is that the Supreme Court plays a major role in the proceedings. The chief justice does preside over impeachment trials in the Senate, but that is the court's only role.

3. When the Republicans held the majority in the House and Senate, Trump was essentially bulletproof. How will that change now that the Democrats have a majority in the House after the 2018 midterms?

A Democratic-led House could certainly move to impeach the president, but any efforts to remove Trump from office would have to contend with the fact that the Senate is still in Republican hands. Democratic leaders in the House know this,

of course, which likely explains their reluctance to take a firm stance on the matter. Reticence on the part of party leaders, however, has not prevented some members from pushing in that direction.

For example, U.S. Rep. Rashida Tlaib said of the newly elected 116th Congress, “We’re gonna go in there and we’re gonna impeach the mother—.”

The articles of impeachment against Trump might look remarkably similar to those levied against Nixon and Clinton. The [articles of impeachment drawn up by Democrats in November 2017](#) – articles that were recently reintroduced in the House – accuse the president of obstruction of justice related to the firing of FBI director James Comey, undermining the independence of the federal judiciary, accepting emoluments from a foreign government and other charges.

Although it is possible that Republican members of the Senate could join with Democrats in calling for Trump’s removal, as we saw happen in the [run-up to Nixon’s resignation](#) over the Watergate scandal, today’s polarized political environment makes such an occurrence unlikely absent clear and convincing evidence of major wrongdoing.

While Nixon’s impeachment was likely inevitable, with Democratic majorities in both houses of Congress in 1974, today substantial Republican defections from Trump would be essential to any movement toward impeachment.

Currently, there are 53 Republicans in the Senate. That means that 20 Republicans would have to join with all of the Democrats and Independents in the Senate in order to remove the president from office.

4. If the president is removed, who takes over? What would happen if the vice president was also implicated in the president’s crime?

If President Trump was removed from office, Vice President Mike Pence would be immediately sworn in. In the unlikely event that both the president and the vice president are impeached by the House and convicted by the Senate, Speaker of the House Nancy Pelosi would become president – but its hard to imagine Republicans in the House allowing this to happen.

5. Can officers other than the president be impeached?

Absolutely. In fact, 15 federal judges have been impeached, although only eight have been removed from the bench. The most recent example was in 2010 when federal [Judge G. Thomas Porteous was found guilty](#) on multiple articles of impeachment by the U.S. Senate. Porteous was found to have accepted bribes from lawyers with dealings before his court.

—

This article updates [a version published](#) on May 17, 2017.

[Jacob Neiheisel](#), Assistant Professor in Political Science, [University at Buffalo, The State University of New York](#). This article is republished from [The Conversation](#) under a Creative Commons license. Read the [original article](#).

[Image Credit: AP Photo/Evan Vucci]