Twitter Thread by Teri Kanefield

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(Thread) Over the Cliff Notes: Impeachment #2

Let's start with the Article of Impeachment itself: https://t.co/KRiPGstRwi

The charge: Incitement of Insurrection.

Spoiler: This is a slam-dunk in the impeach-and-convict department, and will create a moment of truth for the GOP.

1/ The basics:

■Impeachment requires a majority vote in the House.

■Impeachment is followed by a Senate Trial.

■Conviction requires 2/3 of the Senate.

After conviction, preventing Trump from holding office again requires a simple majority vote.

2/ This is not a criminal trial.

The Constitution specifically says that a criminal trial may be appropriate AFTER impeachment and removal.

Defendants in a criminal trial have special protections because they stand to lose their liberty, property, or even their life.

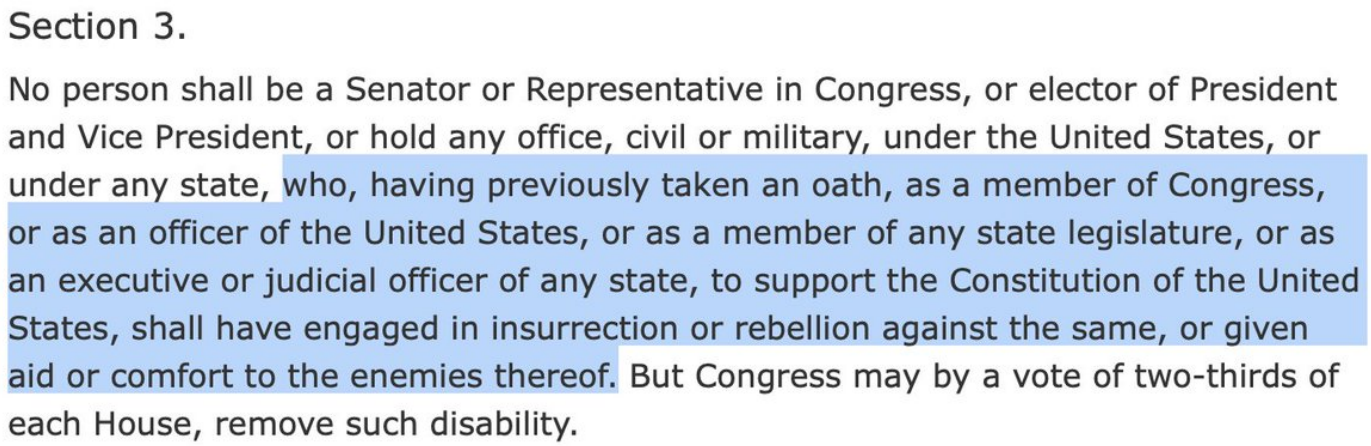
> Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

3/ An impeached president stands to lose his job and the ability to hold the job again.

Therefore certain requirements for a criminal trial, such as the requirement that allegations be proven beyond a reasonable doubt, do not apply.

4/ In addition to charging Incitement of Insurrection, the Article invokes the 14th Amendment (sec 3) and Trump's duty to faithfully execute the oath of office.

Notice the 14th Amendment doesn't give the procedure for determining when Section 3 applies.



Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

5/ Another part of the 14th Amendment — Section 5 — empowers Congress to enforce the entire amendment "by appropriate legislation." But that would require the president to sign off on it, and might violate the ban on a Bill of Attainer.

In other words, it gets complicated.

6/ One judge has said a simple majority is all that is needed to remove under section 3 but that may have been incorrect, for reasons Chicago law prof. Daniel Hemel explains here: https://t.co/hx09waw3B5

7/ Under the impeachment clause, after conviction (2/3 of the Senate) a simple majority can remove Trump's ability to run again for office.

Now, for a close look at the charge of Incitement of Insurrection.

ARTICLE I: INCITEMENT OF INSURRECTION

The Constitution provides that the House of Representatives "shall have the sole Power of Impeachment" and that the President "shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors". Further, section 3 of the 14th Amendment to the Constitution prohibits any person who has "engaged in insurrection or rebellion against" the United States from "hold[ing] any office . . . under the United States". In his conduct while President of the United States—and in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed—Donald John Trump engaged in high Crimes and Misdemeanors by inciting violence against the Government of the United States, in

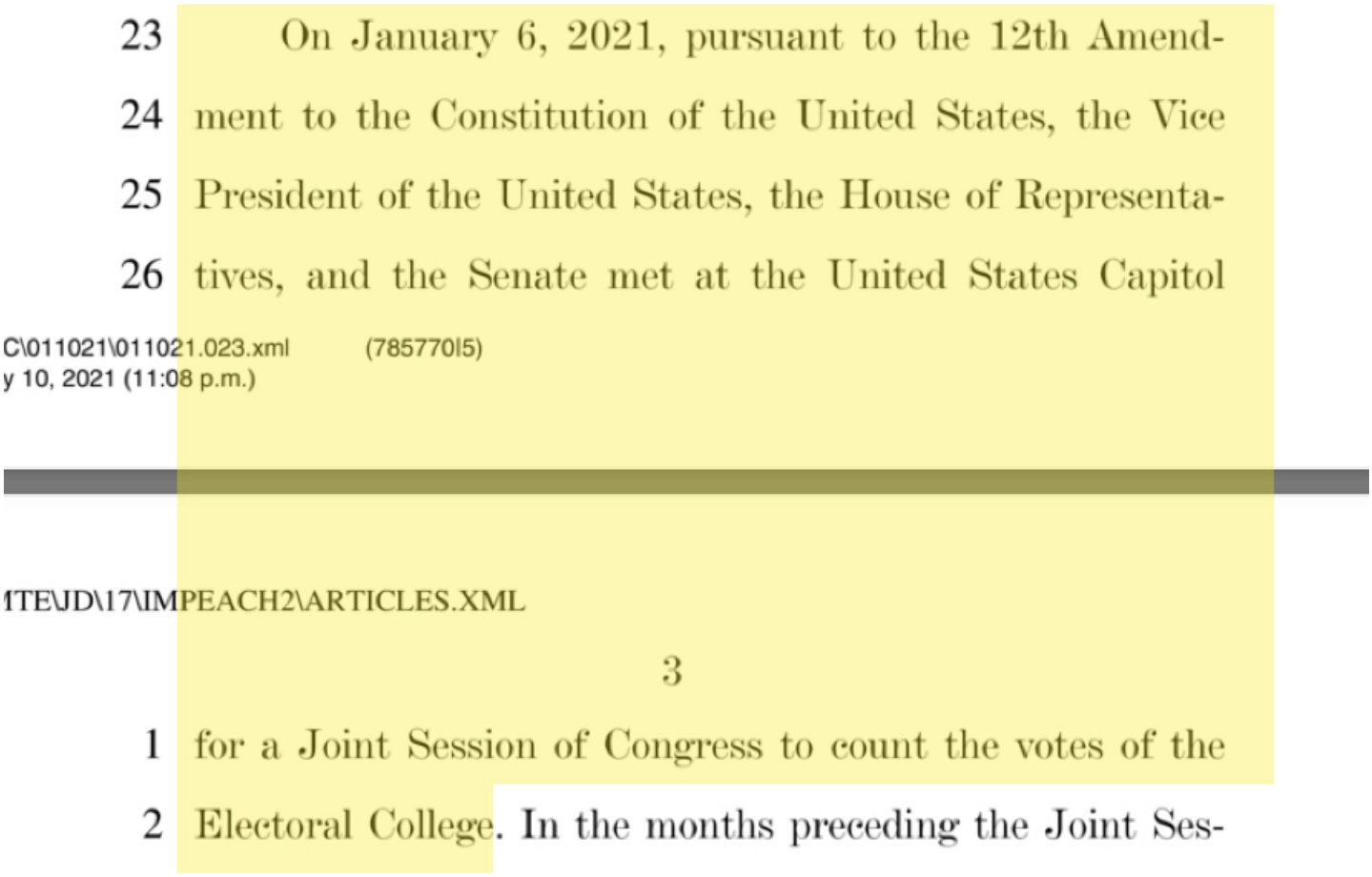
8/ Note: The statement of facts don't have to be complete.

Additional facts can come out at the trial, which is sort of what trials are for.

This is particularly true when a crime was actually televised and members of the Senate conducting the trial were witnesses.

9/ Facts given in the Article of Impeachment:

On January 6, Congress and the VP were carrying out the duties given in the 12th Amendment.



On January 6, 2021, pursuant to the 12th Amendment to the Constitution of the United States, the Vice President of the United States, the House of Representatives, and the Senate met at the United States Capitol

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for a Joint Session of Congress to count the votes of the Electoral College. In the months preceding the Joint Ses-

10/ During the proceeding months, Trump repeatedly lied and said the election results shouldn't be accepted because they were the result of widespread fraud.

Just before the insurrection, Trump addressed a crowd and, among other things, said the following:

officials. Shortly before the Joint Session commenced, President Trump, addressed a crowd at the Ellipse in Washington, DC. There, he reiterated false claims that "we won this election, and we won it by a landslide". He also willfully made statements that, in context, encouraged—and foreseeably resulted in—lawless action at the Capitol, such as: "if you don't fight like hell you're not going to have a country anymore". Thus incited by Presi-

11/ After being incited by Trump, the crowd did the following■■

Trump's conduct followed his efforts on Jan. 2 when he "urged" Georgia SOS Raffensperger to "find" enough votes to overturn GA's presidential election results and "threatened" Raffensperger if he failed to do so.

going to have a country anymore". Thus incited by President Trump, members of the crowd he had addressed, in an attempt to, among other objectives, interfere with the Joint Session's solemn constitutional duty to certify the results of the 2020 Presidential election, unlawfully breached and vandalized the Capitol, injured and killed law enforcement personnel, menaced Members of Congress, the Vice President, and Congressional personnel, and engaged in other violent, deadly, destructive, and seditious acts.

12/ The part about the repeated lies explains why Trump's enablers are trying so hard to derail Impeachment, despite the seriousness of the crime.

They don't want the truth to come out.

They don't want to acknowledge their complicity or discredit their own propaganda machine.

13/ Flashback to Impeachment #1 when the GOP essentially put Trump above the law by ignoring the fact that Trump was strong-arming the Ukrainian president to open an investigation that would help Trump politically.

Who is getting strong-armed now?
https://t.co/48Y3SLnvZf

> According to a GOP source on conference phone call yesterday, Kevin McCarthy warned members not to verbally attack colleagues who vote for impeachment because it could endanger their lives.
>
> — John McCormack (@McCormackJohn) January 12, 2021

14/ Nah.

He was president when the Article was drafted. One requested remedy is that he can't hold office again.

The idea that a president can commit a heinous act during the final days of his presidency and thus escape accountability makes no sense.
https://t.co/61q0aUL53T

> Do you think it would create any kind of problem\u2014if the trial were to begin after January 20th\u2014that the resolution refers to Trump as President of the United States?
>
> — David Waldman-1, of Yorktown LLC\u2122 (@KagroX) January 12, 2021

15/ What I meant in the first tweet by "slam dunk" and "moment of truth" is that when the facts are this clear, the party defines itself by how it responds.