

# IN HIS IMPEACHMENT DEFENSE, TRUMP CITES MIKE PENCE ADMITTING TRUMP MADE AN UNCONSTITUTIONAL DEMAND

Eleven pages into his 75-page impeachment defense, Trump makes this claim:

President Trump did not direct anyone to commit lawless actions,

In context, he's speaking about his speech before the riot, claiming that his invocation that his mobsters "fight" didn't mean he wanted them to fight *illegally*. His defense only addresses the meaning of that word, "fight," in his speech, while treating impeachment over and over as akin to the passage of a law restricting First Amendment protected speech and not the political act that impeachment is.

But this brief, like in the 14-page answer brief he submitted last week, barely addresses one of the times he quite clearly did direct people to commit lawless action, first, when he called Brad Raffensperger and asked him to find him votes that didn't exist.

The article also discusses in passing other "statements" of Mr. Trump as well as a telephone call to the secretary of state of Georgia.

[snip]

The allegation that Mr. Trump should be convicted for "incitement of insurrection" based upon the telephone call to the Georgia secretary of state rests on even shakier ground. The allegations of "threats of death and

violence” come not from Mr. Trump at all; they come from other individuals from the internet, not identified (nor identifiable) in the House Trial Memorandum, who took it upon themselves to make inane internet threats, which were not urged or “incited” by Mr. Trump in any way shape or form.<sup>150</sup> Examining the discussion with the Georgia secretary of state under the standard of “incitement,” leads to the same conclusion as the January 6, 2021 statements of Mr. Trump: there is nothing said by Mr. Trump that urges “use of force” or “law violation” directed to producing imminent lawless action.<sup>151</sup>

More strikingly, given the greater length of this brief, Trump again completely ignores a key part of the article of impeachment against him: his actions targeting Mike Pence, both his demand that Pence commit an unconstitutional act by throwing out the votes of key swing states, and his comments that specifically riled up the crowd against Pence, even after the rioters started looking for him at the Capitol to assassinate him.

Instead of addressing the actions he took that got Pence targeted for assassination, Trump mentions Pence only in the context of discussions about the 25th Amendment.

The very next day, Speaker Nancy Pelosi and Senate Democratic Leader Chuck Schumer called on Vice-President Pence to invoke the 25th Amendment concluding – without any investigation – that Mr. Trump incited the insurrection and continued to pose an imminent danger if he remained in office as President.<sup>12</sup>

[snip]

First, in an attempt to usurp Constitutional power that is not in any

way hers, the Speaker demanded that Vice-President Michael Pence or the White House Cabinet invoke the 25th Amendment, threatening to launch an impeachment proceeding if they refused. Four days later, on January 11, 2021, an Article of Impeachment was introduced, which charged President Trump with “incitement of insurrection” against the United States government and “lawless action at the Capitol.” See H. Res. 24 (117th Congress (2021-2022)). The Speaker made good on her extortionate threat.

[snip]

After the Article was introduced, Speaker Pelosi again gave Vice President Pence an ultimatum: either he invokes the 25th Amendment within twenty-four hours or the impeachment proceedings would proceed. Vice-President Pence responded in a letter to Speaker Pelosi the following day stating that he would not allow her to usurp constitutional authority that is not hers and extort him (and by extension the Nation) to invoke the 25th Amendment because he believed to do so would not “be in the best interest of our Nation or consistent with our Constitution.”<sup>29</sup> Vice-President Pence also noted that Speaker Pelosi was being hypocritical, as she had previously stated that in utilizing the 25th Amendment, “we must be ‘[v]ery respectful of not making a judgment on the basis of a comment or behavior that we don’t like, but [rather must base such a decision] on a medical decision.”<sup>30</sup>

I suspect Trump’s lawyers will try to defer any questions about Trump’s attacks on Pence by suggesting that Pelosi’s decision to impeach because Pence didn’t invoke the 25th Amendment is *just like* Trump’s incitement of violence targeted at Pence. With their use of the words,

“usurp” and “extort,” Trump’s lawyers grossly overstate the force of language Pence himself used to compare the two:

Last week, I did not yield to pressure to exert power beyond my constitutional authority to determine the outcome of the election, and I will not now yield to efforts in the House of Representatives to play political games at a time so serious to the life of our Nation.

But there are several problems with this: Congress was already intent on impeaching Trump for his actions before the request that Pence intervene. More importantly, even in Pence’s treatment comparing these two, he calls one – Trump’s demand – unconstitutional but the other – Pelosi’s request – a “political game.”

So in one place in his impeachment defense, Donald Trump’s lawyers claim, “President Trump did not direct anyone to commit lawless actions.” Elsewhere, however, they cite a letter in which Mike Pence says he did, that he made a demand, “beyond [his] constitutional authority.”

And with this apparent effort to deflect a key accusation against him, Trump entirely ignores the specific, targeted action he used to lead the mob to attempt to assassinate his Vice President.