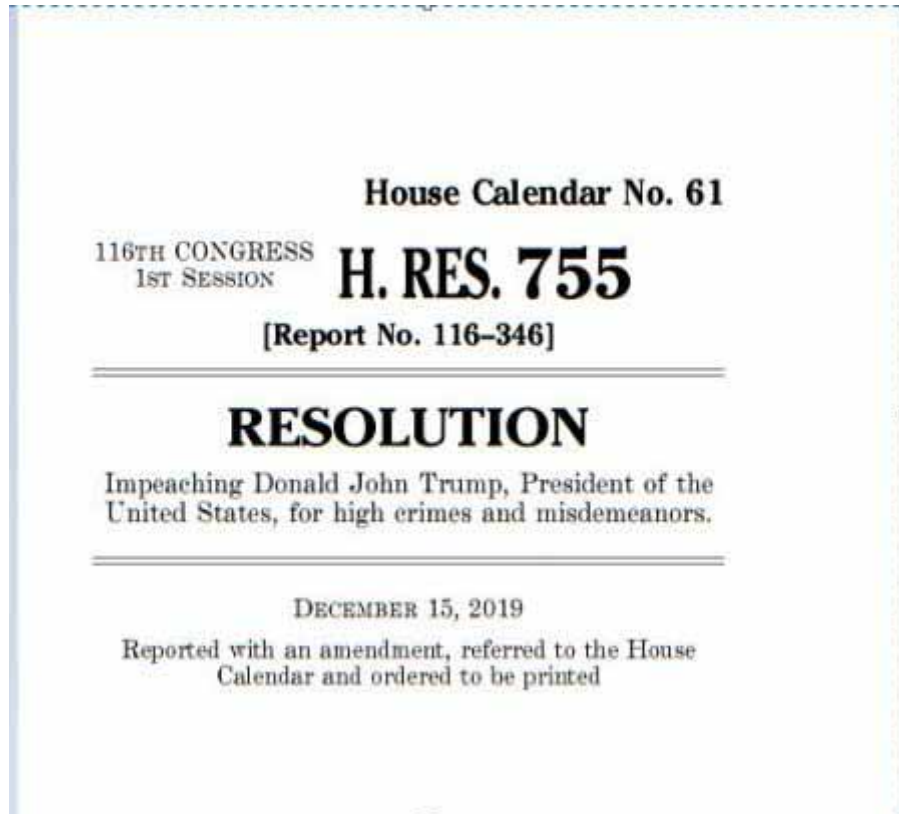


# Of Middle Ground and the Impasse

“BEYOND COMICAL”

by [Joseph DeMaio](#), ©2019



(Dec. 26, 2019) — As the online debate continues over whether (or not) to end the “impasse” between Senator Mitch McConnell and Nancy Pelosi with respect to [House Resolution 755](#), we still have heard nothing dispositive from either side suggesting that a resolution of the matter is at hand.

Pelosi and Senate Minority Leader Chuck Schumer insist that, until McConnell and the Senate establish “rules” acceptable to them for how the impeachment trial would work, what witnesses would be called, etc., the transmittal of Resolution 755 to the Senate – the action purportedly triggering Senate action – will not take place.

This, of course, is the theory espoused by Harvard law professors Noah Feldman and Laurence Tribe: impeach, then shelve the articles until the Senate acquiesces in Pelosi’s and Schumer’s demands. Feldman even argues – speciously – that President Trump can legitimately argue that, until delivery of the resolution and articles to the Senate, he has not been impeached. Seriously? Feldman is actually defending an open-ended limbo for

the resolution and articles? Ummmm..., exactly how much do people pay to go to the institution where Feldman “teaches” law?

It is clear that Pelosi and Schumer do not understand – nor, apparently, do they care to understand – how impeachment works. Once the House “votes” to impeach and formalizes its action in a final resolution of impeachment, there is nothing in the Constitution requiring the “exhibition” or “transmittal” of the resolution to the Senate to bestow jurisdiction on that chamber to act on the resolution, now a matter of public record. This is the implicit teaching of *Nixon v. United States*, 506 U.S. 224 (1993), as discussed [here](#).

By operation of constitutional law – rather than by operation of discretionary procedures invoked or withheld under the extra-constitutional procedural rules of either the House or the Senate – President Trump now stands impeached by the House, an act that took place on December 18, 2019. This act is formalized and memorialized in House Reports 116-346 and 116-355, was voted on and ordered printed in the Congressional Record and now appears therein at Cong. Rec. [Vol. 165, No. 205](#), pp. H12130 – H12206. With this type of formal, official notice confirming that President Trump now stands impeached by the House, any argument that he is *not* impeached by the House, as Noah Feldman suggests, is – to state the matter politely – wrong.

As a matter of evidentiary law, the Senate, acting as the body charged with “trying” the case claiming President Trump, having been impeached by the House, should be removed, could (and likely should) take “senatorial” notice of the formalized declaration of impeachment and act accordingly.

It is that “act accordingly” phrase that now demands attention. On the one hand, it can be argued that the Senate should go through the process of hearing witnesses and taking evidence..., precisely the due process exercises which Representatives Schiff and Nadler, with the behind-the-scenes approval of Pelosi, *denied* to President Trump in the House. The argument that The Wretch of San Crapcisco is justified in withholding transmittal of the articles to the Senate (assuming, for the sake of argument that such action is even required) until she is satisfied that the Senate rules will be “fair” is beyond comical.

The Democrats, having impeached the president on *zero* competent or probative evidence, are now demanding that *they*, rather than Trump, be accorded “due process” and treated “fairly.” One is reminded of the daughter who murdered her parents and at her trial pleaded for mercy because she was an orphan. Memo to Pelosi and Schumer: go... pound... sand.

On the other hand, as suggested [here](#) and [here](#), based on the rationale of the Supreme Court’s unanimous (9-0) opinion in the *Nixon* case, the Senate could pass a resolution of its own declaring that it takes senatorial notice of the impeachment, assumes jurisdiction over the matter, and, following certain “reinterpretations” of its rules, determines to enter a ruling of acquittal. One and done. End it now.

To the extent that Mitch McConnell and/or uneasy Republicans might be concerned about negative blowback from the propaganda arm of the Democrats – previously known as the “independent and objective media” – if the “end-it-now” approach were to be used, consideration might be given to a middle ground. Specifically, instead of acting unilaterally, McConnell could send a notice to Pelosi telling her that she has until close of business on Thursday, January 9, 2020 to “fish or cut bait” and deliver the articles of impeachment to the Senate, with *zero* preconditions or demands. If by that deadline she does not comply, on the morning of Friday, January 10, 2020, the Senate will convene to vote on a motion to acquit. Side out.

Bold? Sure. But remember, Democrats bring guns to knife fights. If McConnell bought into this tactic, it would be – hypothetically speaking, of course – a figurative Spectre AC-130 [gunship](#).

Top that, Nancy.