

The “End It Now” Option

“FIGHTING FIRE WITH FIRE”

by [Joseph DeMaio](#), ©2019



<https://www.congress.gov/bill/116th-congress/house-resolution/755/text>

(Dec. 24, 2019) — Ren Jander may be on to something with his recent [post](#) positing that, as a matter of constitutional law – backed up by the U.S. Supreme Court decision in *Nixon v. United States*, 506 U.S. 224 (1993) – the U.S. Senate need not dither with The Wretch of San Crapcisco or wait for her to deign to “exhibit” to Mitch McConnell the House articles of impeachment against President Trump.

Instead, assuming that Senator McConnell will discover the authority set out in the *Nixon* case and commit to acting upon it – decidedly, a separate question – Jander contends that the Senate, following a “reinterpretation” of its rules, could on a simple majority vote of the senators and without the need for a “trial” at all, immediately acquit President Trump of the charges set out in the House articles as embodied in [House Resolution 755](#). This approach has been floated [before](#), but without the critical citation to and discussion of the *Nixon* case supplied by Jander.

After reading the *Nixon* case, it would appear that Jander’s analysis is correct, *viz.*, that if McConnell, after completing some Senate rule “reinterpretations,” determines to schedule and call for a vote on a motion to acquit (assuming that even such a motion were deemed necessary), and a majority of the senators concurred in the motion, the ordeal would be over. End it now; declare victory; go home. However, whether or not as a *political* matter McConnell would do that remains to be seen.

Recall that while Democrats subscribe to the principle that a gun is much better than a knife in combat, Republicans will usually pause to analyze the size of the knife as compared to the caliber of the gun before deciding whether any response by them might be deemed to be “disproportionate” and thus subject to condemnation and ridicule by CNN and the Gray Troll. Yikes. One is reminded of the line from the original “Aliens” movie. The Marines are ordered to unload their weapons lest the explosive-tipped rounds those guns fire cause unintended catastrophic damage. One soldier responds: “So what do we use to fight the aliens..., harsh language?” The time for fighting fire with fire may be upon us.

Moreover, Jander is not alone in this analysis of the *Nixon* case. He points out in his post that none other than one Robert (“Bob”) Bauer argued essentially the same things in an article published January 19, 2019 on the Lawfare.com blogsite. That article appeared well before The Wretch switched gears, launched the impeachment hoax and ultimately secured – without a single vote of support from a Republican – the adoption of the two articles of impeachment now sulking over President Trump.

And while Bauer does not identify the *Nixon* case, he references “a 1993 case involving a judicial impeachment [where] the Supreme Court affirmed that the Senate’s ‘sole power’ to ‘try’ means that it is not subject to any limitations on how it could conduct [such] a proceeding.” That’s *Nixon*.

And although not mentioned in the Jander post, faithful P&E readers will recognize Mr. Bauer as the attorney who was once a senior partner at the D.C. offices of the Perkins Coie law firm. Yes, Virginia, the same firm of Fusion/GPS/Glenn Simpson/Hillary-funded-Russian Dossier [fame](#). He is also the Bob Bauer who, while serving as White House Counsel in the Obama regime, assured the public that Barack Hussein Obama, Jr. was constitutionally eligible to serve as president, as he displayed copies of a “[birth certificate](#)” which he claimed established Obama’s eligibility.

While Bauer’s analysis of the “end-it-now” tactic closely parallels Jander’s analysis, Bauer’s January 2019 article colors his conclusions with not-so-subtle jabs and pejoratives directed at President Trump, Mitch McConnell and Republicans in general. But after outlining what *could* be done, he cites Hah-vahd law Professor Laurence Tribe for that academic’s position – back in January 2019 – that the Senate “has a duty to try any impeachment *voted* by the House....” (Emphasis added). Does anyone out there doubt that an “impeachment” has now been “voted” by the House?

Ah, but what a difference ten months make: Tribe now urges that the “trial” be indefinitely delayed by Pelosi because the articles have not been “delivered” and “exhibited” to the Senate, thereby purportedly justifying further delay. Tribe thinks this is “exactly” where [we should be](#). Bauer adds in his Lawfare article that individual senators “would violate their oath in altogether ignoring the House’s constitutional judgment that the president [*i.e.*, Donald Trump], having committed impeachable offenses, is unfit to retain the office. For the Senate and a majority to adopt this course is wrong and dangerous.” That was then; now is now. Bauer’s comment that a House determination,

through impeachment, that a president would be “unfit to retain the office” is so rich with irony that your faithful servant had to pause a bit to recover from a fit of hysterical laughter.

For Bob Bauer to suggest that Donald Trump, following House impeachment, is “unfit to retain the office” while having contended (successfully... twice...) that Barack Hussein Obama, Jr. was not only “fit” to hold the office of the president, but also constitutionally *eligible* to the office gives new meaning to the term “hypocrisy.” Mind you, this is coming from the lawyer who told reporters that Perkins Coie lawyer Judith Corley had to get a letter from Obama seeking “special treatment” from Hawaiian officials and had to jump through incredibly difficult hoops, including a flight to Hawaii, to get what they *claimed* to be genuine certified copies of Obama’s Hawaiian birth certificate. In fact, a person who is *actually* born in Hawaii can, upon proof of his identity, apply *online* for and obtain in the mail a certified copy of their original birth certificate upon payment of (\$10.00). See Hawaii Revised Statutes [§ 338-14.5](#).

Memo to Mitch McConnell: if the tables were turned and, for example, a Republican-controlled House had sent a resolution of impeachment far better substantiated than this one to a Democrat-controlled Senate seeking the removal of Obama for usurpation of the office, how long do you think it would have taken Harry Reid to adopt the “end it now” option? One nanosecond? Maybe two?