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America has no time to wait for impeachment

BY FRANCES LYNCH, OPINION CONTRIBUTOR — 05/26/19 02:30 PM EDT

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Congress and the American people are grappling with the question of impeachment. Even though every American lawyer studied constitutional law, which includes a long history of legal challenges based on the Constitution, there seems to be little agreement among lawyers about what impeachment proceedings in 2019 might mean.

It is little wonder then that the average American citizen has a lack of clarity as to how (or if) impeachment would even work. Regardless of the prospects, America has no time to wait for Trump's impeachment.

As a lawyer, I took an oath to uphold and defend the Constitution of the United States of America. I've worked with constitutional questions during my career. The Constitution means something to me, as it does to most American lawyers.

Alexander Hamilton, a brilliant lawyer with a vision of a great American government wrote "a sacred respect for the constitutional law is the vital principle, the sustaining energy of a free government." In order to respect the Constitution, however, it is necessary to follow it. The act of following the law should not be dependent upon the outcome.

The Constitution tells us that the House has the power of impeachment. During prior administrations in which impeachment was an issue, a committee was created to summon witnesses and to subpoena documents and other items (for example, tapes.) The committee then proposed specific articles of impeachment for the entire House. If a

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majority of the House voted to approve, (which it likely would today) the charges were sent to the Senate.

However, the Constitution requires a two-thirds majority in the Senate to remove the president, which would be unlikely to obtain in the current administration, given that the Senate is now Republican controlled. Democrats seem wary of this potential for impeachment failure. In 1998, after the House impeached Bill Clinton, a Democrat, his popularity actually increased. In the Senate, even some Republicans voted against convicting Clinton of the charges. Afterward, Democrats won seats in the midterms and Republican House Speaker Newt Gingrich left Congress.

If impeachment isn't likely to happen because of the make-up of the Senate, why bother going to all of the effort to do the work in the first place? Because the point of following the Constitution is not to obtain a particular outcome. Whether impeachment is likely to succeed in removing Trump from office is not the issue.

The important question is what is best for the country. The United States will be better off if impeachment proceedings begin no matter how the Senate votes. Live testimony would succeed in bringing the Mueller report to life in American households. House Speaker Nancy Pelosi has stated that impeachment requires public support. According to a recent [CNN poll, only 37 percent of Americans favor impeachment](#). Broadcasts of impeachment hearings would impact public opinion, as was the case during the Nixon administration when Americans were glued to their television sets by the Watergate Hearings.

Additionally, America might learn about things it didn't know as a result of impeachment proceedings. This happened during Watergate when it became clear Nixon was trying to hide evidence. If Trump has nothing to hide, and if he is sincere about his oath to uphold and defend the Constitution, he ought not stand in the way of his own impeachment hearings.

Some Democratic lawmakers are calling for impeachment, claiming that President Trump's conduct is clearly obstruction of justice, both criminal and impeachable. It's been pointed out that presidential rejection of congressional subpoenas was an article of impeachment voted against Nixon, and that behavior by Trump is no different.

On the other hand, Democratic congressional leaders have suggested impeaching Trump would be pointless, and that it could actually help Trump (who has often played the political victim card) to get reelected. Additionally, impeachment would take months, even if the House voted today to open an investigation.

There is too great of a risk in waiting. America needs Trump's impeachment because its democracy is suffering. Trump's own people have, according to anonymous op-ed reports, regularly worked against his ill-considered policies. Trump has shown himself to be a politician who will distort information without regard to the facts. He has been [accused of sexual assault and sexual harassment](#), by at least 19 women.

In addition to the obstruction of justice allegations in the Mueller report, several lawsuits have been filed alleging that Trump is violating the emoluments clause of the United States Constitution. Trump has many overseas properties and the clause forbids presidents from taking money from foreign governments. The lawsuits allege Trump is unduly influenced by his dealings with foreign governments. Previous presidents in the

modern era have either divested their holdings or put them in blind trusts. Trump is the only president to be sued over the emoluments clause.

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Theoretically, and even without formal impeachment proceedings, the House still has the ability to conduct hearings within its committees. The House can call administration officials to testify under oath (provided that they appear) and can issue subpoenas and demand documents, videos, emails, and other information. The chair of the Ways and Means Committee supposedly has the power to request Trump's tax returns from the IRS and, with the House's approval, make them public.

But ultimately, it is the job of the entire Congress to act when other agencies subpoena powers are ignored, as when former White House counsel [Donald McGahn](#), at the direction of the president, ignored a congressional subpoena to testify before the House Judiciary Committee this past Tuesday. An act is impeachable when it endangers American democracy, and our democracy is in peril today.

Frances Lynch is an attorney and teaches media law at the University of Arizona. She is the author of the book "Draw The Line: Guide to A Sexual Harassment Free Workplace," (Oasis Press 1995), and is a contributing author to "World of Criminal Justice" (2001), and the "Encyclopedia of Everyday Law" (2002). Follow her on Twitter @ftlynch.

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