



Written by [Steve Byas](#) on January 7, 2021

## Calls for Invoking 25th Amendment Demonstrates Ignorance and Disregard of the Constitution

Following the storming of the Capitol on Wednesday by a mob claiming to be supporters of President Donald Trump, some members of Congress are calling on Vice President Mike Pence and Trump's Cabinet to invoke the 25th Amendment so as to remove Trump from office, despite there being less than two weeks left in Trump's term of office. It has also been reported that even some members of Trump's Cabinet are open to considering the idea.

Such calls betray an ignorance or a disregard — or both — of the purpose of the 25th Amendment.



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Representative Adam Kinzinger, an Illinois Republican, joined with some Democrats who have demanded that Pence and the Cabinet act quickly in calling for using the amendment, passed in the 1960s in the wake of the assassination of President John F. Kennedy, to oust Trump from office.

“Sadly, yesterday it became evident that not only has the president abdicated his duty to protect the American people and the people’s House,” Kinzinger said Thursday in a video posted on Twitter, “he invoked and inflamed passions that only gave fuel to the insurrection that we saw here. It’s time to invoke the 25th Amendment and to end this nightmare.”

Kinzinger voted against the president’s impeachment last year, but his 35 score on the Freedom Index indicates that he either has deficiencies in his knowledge of the Constitution, or he does not care what the document says. (The Freedom Index is published by *The New American* magazine, and rates members of Congress on their fidelity to the U.S. Constitution, as measured by their votes).

The 25th Amendment was not intended to be a second impeachment process, but was rather added to the Constitution in 1967, for a specific reason. After President Kennedy was shot in 1963, the fact that he remained alive for 30 minutes after suffering a severe head wound raised serious issues. Had Kennedy lived, with much of his brain destroyed, he almost certainly would have been mentally incapacitated and unable to continue to function in office. In such an instance, the impeachment process would provide no solution. The Constitution offers limited grounds for removing a president from office — bribery, treason, high crimes and misdemeanors.

Because of this, the 25th Amendment was added to provide a solution to a condition in which a president was mentally or physically incapacitated. According to the 25th Amendment, the vice president can declare the president “unable to discharge the powers and duties of his office,” and “immediately assume the powers and duties of the office as Acting President.” (During the Cold War, it was considered a more pressing issue, considering the prospect of a president needing to act quickly in a nuclear stand-off with the Soviet Union.)



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The 25th Amendment also stipulates that a majority of the Cabinet (presently composed of 15 officers of the various government departments) would have to join the vice president in taking such an action. In Kennedy's case, he would have been unable to challenge such an action if he was in a comatose state. However, that is not the case with Trump. The 25th Amendment further provides that a president can challenge such an action by his vice president and Cabinet officers, and simply notify the leaders of Congress that he is not unfit for office. At that point, it would take a two-thirds vote of Congress to side with the vice president and the Cabinet to remove the president from office against his will. As such, this is a higher bar than using the impeachment process to remove a president. In that instance, it only takes a majority of the House and a two-thirds vote of the Senate, rather than a two-thirds vote of both houses.

Kinzinger, however, seems undeterred by the purpose of the 25th Amendment, and is intent on using what Jessica Levinson, a Loyola law professor, called a "constitutional nuclear option." He is justifying the invocation of the 25th Amendment by blaming Trump for the mob action at the Capitol. "Here's the truth: the president caused this. The president is unfit. And the president is unwell, and the president must now relinquish control of the Executive Branch — voluntarily or involuntarily."

Actually, that is not the truth. Trump did not call for a mob to invade the Capitol, and only a small percentage of the pro-Trump crowd actually invaded. He did not incite a riot. Legally, incitement to riot is when a person encourages others to commit a breach of peace without necessarily acting themselves. This may involve statements, signs, or conduct intended to lead others to riot. Of course, Trump did none of this.

Yet, because Trump merely asked his vast army of supporters to come to the nation's capital and exercise the right protected under the First Amendment to peacefully assemble, this is being portrayed by Democratic politicians and media personalities, and even some Republicans such as Kinzinger, Senator Mitt Romney, and Representative Liz Cheney, that Trump incited a riot. Cheney, the daughter of former Vice President Dick Cheney (who had such disregard for the Constitution that he insisted a president can go to war without any approval from Congress whatsoever) even declared, "There is no question that the President formed the mob. The President incited the mob, the President addressed the mob. He lit the flame."

In contrast, Trump posted a video in which he urged his supporters to "go home." Cheney's remarks were highly irresponsible, and by saying that Trump addressed a "mob," she is saying that she does not believe the protections of the First Amendment apply to Trump's supporters simply exercising their right to peacefully protest. Almost every person Trump addressed did nothing but peacefully protest. Calling those peaceful protesters a "mob" is indicative of the lack of regard that she holds both for them and the Constitution, and demonstrates that she is truly Cheney's off-spring. In fact, it sounds much like what Hillary Clinton said when she said Trump supporters were a "basketful of deplorables."

Less than two weeks are left on President Trump's term of office. For those concerned about what happened on Wednesday in the U.S. Capitol, it would seem that any such effort to remove Trump by questionable means and questionable grounds is inviting more such violence. Hopefully, politicians such as Kinzinger, Romney, and Cheney will show some respect for the Constitution and the American people.



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