

Impeachment Powers

A. GENERALLY

§ 1. Constitutional Provisions; House and Senate Functions

The impeachment power is delineated and circumscribed by several provisions of the U.S. Constitution. They state:

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors. Article II, Section 4.

. . . and [the House of Representatives] shall have the sole Power of Impeachment. Article I, Section 2, clause 5.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present. Article I, Section 3, clause 6.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall

nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law. Article I, Section 3, clause 7.

Two other sections of the U.S. Constitution also mention impeachment:

The President . . . shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment. Article II, section 2, clause 1.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury. . . . Article III, section 2, clause 3.

Since the First Congress of the United States, the House of Representatives has impeached 13 officers of the United States, of whom 10 were federal judges, one was a cabinet officer, one a U.S. Senator, and one the President of the United States.

Conviction has been voted by the Senate in four cases, all involving federal judges. The judges so convicted were John Pickering in 1804, West H. Humphreys in 1862, Robert W. Archbald in 1912, and Halsted L. Ritter in 1936.

On numerous other occasions, the impeachment process has

been initiated in the House as to civil officers and judges but has not resulted in consideration by the House of a report recommending impeachment. In the two most recent cases where investigations have been conducted by the Committee on the Judiciary and its subcommittees, in relation to Supreme Court Associate Justice William O. Douglas in 1970 and in relation to President Richard M. Nixon in 1974, the proceedings have occasioned intense congressional and national debate as to the scope of the impeachment power, the grounds for impeachment and for conviction, the analogy if any between the impeachment process and the judicial criminal process, and the amenability of the impeachment process to judicial review.

It should be noted at this point that of the four judges convicted and removed from office, none has directly sought to challenge through the judicial process his impeachment by the House and conviction by the Senate. Judge Halsted L. Ritter, convicted by the Senate in 1936, indirectly challenged his conviction by filing suit for back salary in the U.S. Court of Claims, where he alleged that the Senate had tried him on grounds not constituting impeachable offenses under the Constitu-

tion. The Court of Claims dismissed the claim for want of jurisdiction, holding that the Senate's power to try impeachments was exclusive under the Constitution. The court cited the Supreme Court case of *Mississippi v Johnson*, wherein Chief Justice Samuel Chase had stated in dictum that the impeachment process was not subject to judicial review.⁽¹⁾ The Court of Claims opinion read in part:

While the Senate in one sense acts as a court on the trial of an impeachment, it is essentially a political body and in its actions is influenced by the views of its members on the public welfare. The courts, on the other hand, are expected to render their decisions according to the law regardless of the consequences. This must have been realized by the members of the Constitutional Convention and in rejecting proposals to have impeachments tried by a court composed of regularly appointed judges we think it avoided the possibility of unseemly conflicts between a political body such as the Senate and the judicial tribunals which might determine the case on different principles.⁽²⁾

Cross References

Discussions of the impeachment process generally, see §§3.6–3.14 and appendix, *infra*.

1. *Ritter v United States*, 84 Ct. Cls. 293 (1936), cert. denied, 300 U.S. 668 (1937), citing *Mississippi v Johnson*, 71 U.S. (4 Wall.) 475, 501 (1867).
2. *Ritter v United States*, 84 Ct. Cls. 293, 300 (1936).

High privilege of impeachment propositions, see §§ 5, 8, *infra*.

Pardon of officer who has resigned before his impeachment by the House, see § 15.15. *infra*.

Collateral References

For early precedents on the impeachment power and process, see the following chapters in *Hinds' Precedents*: Ch. 63 (Nature of Impeachment); Ch. 64 (Function of the House in Impeachment); Ch. 65 (Function of the Senate in Impeachment); Ch. 66 (Procedure of the Senate in Impeachment); Ch. 67 (Conduct of Impeachment Trials); Ch. 68 (Presentation of Testimony in an Impeachment Trial); Ch. 69 (Rules of Evidence in an Impeachment Trial); Ch. 70 (Impeachment and Trial of William Blount); Ch. 71 (Impeachment and Trial of John Pickering); Ch. 72 (Impeachment and Trial of Samuel Chase); Ch. 73 (Impeachment and Trial of James H. Peck); Ch. 74 (Impeachment and Trial of West H. Humphreys); Ch. 75 (First Attempts to Impeach the President); Ch. 76 (Impeachment and Trial of President Andrew Johnson); Ch. 77 (Impeachment and Trial of William W. Belknap); Ch. 78 (Impeachment and Trial of Charles Swayne); Ch. 79 (Impeachment Proceedings not Resulting in Trial).

See also the following chapters in *Cannon's Precedents*: Ch. 193 (Nature of Impeachment); Ch. 194 (Function of the House in Impeachment); Ch. 195 (Function of the Senate in Impeachment); Ch. 196 (Procedure of the Senate in Impeachment); Ch. 197 (Conduct of Impeachment Trials); Ch. 198 (Presentation of Testimony in an Impeachment Trial); Ch. 199 (Rules of Evi-

dence in an Impeachment Trial); Ch. 200 (Impeachment and Trial of Robert W. Archbald); Ch. 201 (Impeachment and Trial of Harold Louderback); Ch. 202 (Impeachment Proceedings not Resulting in Trial).

The impeachment power under parliamentary law, see *House Rules and Manual* §§ 601-620 (Jefferson's Manual) (1973).

Impeachment, Selected Materials, Committee on the Judiciary, H. Doc. No. 93-7, 93d Cong. 1st Sess., Oct. 1973 (constitutional provisions and historical precedents and debate).

Impeachment, Selected Materials on Procedure, Committee on the Judiciary, Committee Print, 93d Cong. 2d Sess., Jan. 1974 (relevant extracts from *Hinds'* and *Cannon's Precedents of the House of Representatives*).

Impeachment and the Federal Courts

§ 1.1 The Speaker laid before the House a communication from the Clerk, informing the House of the receipt of a summons and complaint naming the House as a defendant in a civil action, instituted in a U.S. District Court, seeking to enjoin impeachment proceedings pending in the House.

On May 28, 1974, Speaker Carl Albert, of Oklahoma, laid before the House a communication from the Clerk, advising of his receipt

of a summons and complaint issued by the U.S. District Court for the Eastern District of Virginia, in connection with Civil Action No. 74-54-NN, *The National Citizens' Committee for Fairness to the President v United States House of Representatives*.⁽³⁾

Parliamentarian's Note: The plaintiff in this action sought to enjoin the impeachment proceedings pending in the House against President Richard M. Nixon. The Clerk did not request representation by the appropriate U.S. Attorney, under 2 USC §118, because the House has the sole power of impeachment under the U.S. Constitution and because of the application of the doctrine under the Constitution of the separation of powers of the executive, legislative, and judicial branches of government.

§ 1.2 Where a federal court subpoenaed in a criminal case certain evidence gathered by the Committee on the Judiciary in an impeachment inquiry, the House adopted a resolution granting such limited access to the evidence, except executive session materials, as would not violate the privileges of the House

3. 120 CONG. REC. 16496, 93d Cong. 2d Sess.

or its sole power of impeachment under the U.S. Constitution.

On Aug. 22, 1974,⁽⁴⁾ Speaker Carl Albert, of Oklahoma, laid before the House certain subpoenas issued by a U.S. District Court in a criminal case, requesting certain evidence gathered by the Committee on the Judiciary and its subcommittee on impeachment, in the inquiry into the conduct of President Richard Nixon. The House adopted House Resolution 1341, which granted such limited access to the evidence as would not violate the privileges or constitutional powers of the House. The resolution read as follows:

H. RES. 1341

Whereas in the case of United States of America against John N. Mitchell et al. (Criminal Case No. 74-110), pending in the United States District Court for the District of Columbia, subpoenas duces tecum were issued by the said court and addressed to Representative Peter W. Rodino, United States House of Representatives, and to John Doar, Chief Counsel, House Judicial Subcommittee on Impeachment, House of Representatives, directing them to appear as witnesses before said court at 10:00 antemeridian on the 9th day of September, 1974, and to bring with them certain and sundry papers in the possession and under the control of the

4. 120 CONG. REC. 30026, 93d Cong. 2d Sess.

House of Representatives: Therefore be it

Resolved, That by the privileges of this House no evidence of a documentary character under the control and in the possession of the House of Representatives can, by the mandate of process of the ordinary courts of justice, be taken from such control or possession but by its permission; be it further

Resolved, That the House of Representatives under Article I, Section 2 of the Constitution has the sole power of impeachment and has the sole power to investigate and gather evidence to determine whether the House of Representatives shall exercise its constitutional power of impeachment; be it further

Resolved, That when it appears by the order of the court or of the judge thereof, or of any legal officer charged with the administration of the orders of such court or judge, that documentary evidence in the possession and under the control of the House is needful for use in any court of justice, or before any judge or such legal officer, for the promotion of justice, this House will take such action thereon as will promote the ends of justice consistently with the privileges and rights of this House; be it further

Resolved, That when said court determines upon the materiality and the relevancy of the papers and documents called for in the subpoenas duces tecum, then the said court, through any of its officers or agents, have full permission to attend with all proper parties to the proceeding and then always at any place under the orders and control of this House and take copies of all

memoranda and notes, in the files of the Committee on the Judiciary, of interviews with those persons who subsequently appeared as witnesses in the proceedings before the full Committee pursuant to House Resolution 803, such limited access in this instance not being an interference with the Constitutional impeachment power of the House, and the Clerk of the House is authorized to supply certified copies of such documents and papers in possession or control of the House of Representatives that the court has found to be material and relevant (except that under no circumstances shall any minutes or transcripts of executive sessions, or any evidence of witnesses in respect thereto, be disclosed or copied) and which the court or other proper officer thereof shall desire, so as, however, the possession of said papers, documents, and records by the House of Representatives shall not be disturbed, or the same shall not be removed from their place of file or custody under any Members, officer, or employee of the House of Representatives; and be it further

Resolved, That a copy of these resolutions be transmitted to the said court as a respectful answer to the subpoenas aforementioned.

Censure of Federal Civil Officers

§ 1.3 In the 72d Congress, the House amended a resolution abating impeachment proceedings against a federal judge where the committee report censured him for improper conduct, and voted to

impeach him by adopting the resolution as amended.

On Feb. 24, 1933, a resolution (H. Res. 387) was called up by Mr. Thomas D. McKeown, of Oklahoma, at the direction of the Committee on the Judiciary; the resolution stated that the evidence against U.S. District Court Judge Harold Louderback did not warrant impeachment. The committee report (H. Rept. No. 2065), censured the judge as follows:

The committee censures the judge for conduct prejudicial to the dignity of the judiciary in appointing incompetent receivers, for the method of selecting receivers, for allowing fees that seem excessive, and for a high degree of indifference to the interest of litigants in receiverships.⁽⁵⁾

The House rejected the recommendation of the committee by adopting an amendment in the nature of a substitute impeaching the judge for misdemeanors in office. During debate on the resolution, Mr. Earl C. Michener, of Michigan, addressed remarks to the power of censure in relation to civil officers under the United States:

MR. MICHENER: Mr. Speaker, in answer to the gentleman from Alabama,

5. 76 CONG. REC. 4913, 4914, 72d Cong. 2d Sess. See, generally, 6 Cannon's Precedents §514, and §§17.1, 17.2, *infra*.

let me make this observation. The purpose of referring a matter of this kind to the Committee on the Judiciary is to determine whether or not in the opinion of the Committee on the Judiciary there is sufficient evidence to warrant impeachment by the House. If the Committee on the Judiciary finds those facts exist, then the Committee on the Judiciary makes a report to the House recommending impeachment, and that undoubtedly is privileged. However, a custom has grown up recently in the Committee on the Judiciary of including in the report a censure. I do not believe that the constitutional power of impeachment includes censure. We have but one duty, and that is to impeach or not to impeach. Today we find a committee report censuring the judge. The resolution before the House presented by a majority of the committee is against impeachment. The minority members have filed a minority report, recommending impeachment. I am making this observation with the hope that we may get back to the constitutional power of impeachment.

Parliamentarian's Note: On several past occasions, the resolution reported to the House by the committee investigating impeachment has proposed the censure of the officer involved.⁽⁶⁾ Such resolu-

6. See, for example, 3 Hinds' Precedents §§2519, 2520.

When a subcommittee report recommended against the impeachment of Associate Judge William O. Douglas in the 91st Congress, the minority views of Mr. Edward Hutchinson (Mich.) indicated the view that Jus-

tions were not submitted as privileged and were not considered by the House. Although censure of a Member by the House is a privileged matter,⁽⁷⁾ censure of an executive official has not been held privileged for consideration by the House and has on occasion been held improper.⁽⁸⁾

Justice Douglas could have been censured or officially rebuked for misconduct by the House (see §14.16, *infra*).

7. See 3 Hinds' Precedents §§2649–2651.

Members of the House are not subject to impeachment under the Constitution (see §2, *infra*) but are subject to punishment for disorderly behavior. See U.S. Const. art. I, §5, clause 2.

8. See 2 Hinds' Precedents §§1569–1572.

The issue whether a proposition to censure a federal civil officer would be germane to a proposition for his impeachment has not arisen, but it is not in order to amend a pending privileged resolution by adding or substituting a matter not privileged and not germane to the original proposition. 5 Hinds' Precedents §5810.

See 6 Cannon's Precedents §236 for the ruling that a proposition to censure a Member of the House is not germane to a proposition for his expulsion. Speaker Frederick H. Gillett (Mass.) ruled in that instance that although censure and expulsion of a Member were both privileged propositions, they were "intrinsically" different.

§ 2. Who May Be Impeached; Effect of Resignation

Article II, section 4 of the U.S. Constitution subjects the President, Vice President, and all civil officers of the United States to impeachment, conviction, and removal from office. It has been settled that a private citizen is not subject to the impeachment process except for offenses committed while a civil officer under the United States.⁽⁹⁾

In one case, it was determined by the Senate that a U.S. Senator (William Blount [Tenn.]) was not a civil officer under article II, section 4, and the Senate disclaimed jurisdiction to try him.⁽¹⁰⁾

In view of the fact that the Constitution provides not only for automatic removal of an officer upon impeachment and conviction, but also for the disqualification from holding further office under the United States (art. I, §3, clause 7), the House and Senate have affirmed their respective power to impeach and try an accused who has resigned.⁽¹¹⁾

9. 3 Hinds' Precedents §§2315, 2007.

A commissioner of the District of Columbia was held not to be a civil officer subject to impeachment under the Constitution. 6 Cannon's Precedents §548.

10. 3 Hinds' Precedents §§2310, 2316.

11. The question whether the House may impeach a civil officer who has