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An Overview of the Impeachment Process

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Summary

The Constitution sets forth the general principles which control the procedural aspects of impeachment, vesting the power to impeach in the House of Representatives, while imbuing the Senate with the power to try impeachments. Both the Senate and the House have designed procedures to implement these general principles in dealing with a wide range of impeachment issues. This short report provides a brief overview of the impeachment process, reflecting the roles of both the House and the Senate during the course of an impeachment inquiry and trial.

Relevant Constitutional Provisions:

Art. I, Sec. 2, Cl. 5:

The House of Representatives ... shall have the sole Power of Impeachment.

Art. I, Sec. 3, Cl. 6 & 7:

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 Concurrence of two-thirds of the Members present.

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.

Art. II, Sec. 2, Cl. 1:

The President ... shall have Power to grant Reprieves and Pardons for offenses against the United States, except in Cases of Impeachment.

Art. II, Sec. 4:

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.

The House of Representatives: “Sole Impeachment Power”

A. Initiation.

Impeachment proceedings may be commenced in the House of Representatives by a Member declaring a charge of impeachment on his or her own initiative,¹ by a Member presenting a memorial listing charges under oath,² or by a Member depositing a resolution in the hopper, which is then referred to the appropriate committee.³ The impeachment process may be triggered by non-Members, such as when the Judicial Conference of the United States suggests that the House may wish to consider impeachment of a federal judge,⁴ where an Independent Counsel advises the House of any substantial and credible information which he or she believes might constitute grounds for impeachment,⁵ by message from the President,⁶ by a charge from a State or territorial legislature or grand jury,⁷ or, finally, by petition.⁸

Resolutions regarding impeachment may be of two types. A resolution impeaching a particular individual who is within the category of impeachable officers under Art. II, Sec. 4 of the Constitution is usually referred directly to the House Committee on the Judiciary. A resolution to authorize an investigation as to whether grounds exist for the House to exercise its impeachment power is referred to the House Committee on Rules.⁹ Generally, such a resolution is then referred to the House Judiciary Committee.¹⁰ In the House impeachment investigation with respect to President Richard M. Nixon, a resolution reported out of the House Judiciary Committee, H.Res. 803,¹¹ was called up for immediate consideration as a privileged matter. The resolution authorized the House

¹ III *Hind's Precedents of the House of Representatives*, §§ 2342, 2400, 2469 (1907) (hereinafter *Hind's*).

² III *Hind's* §§ 2364, 2486, 2491, 2494, 2496, 2499, 2515.

³ 116 *Cong. Rec.* 11941-42 (April 15, 1970); 119 *Cong. Rec.* 74873 (Oct. 23, 1973). See also, Brown, W., *House Practice, A Guide to the Rules, Precedents and Procedures of the House*, § 6 (1996) (hereinafter *House Practice*).

⁴ 28 U.S.C. § 355(b).

⁵ 28 U.S.C. § 595(c). The “independent counsel” provisions of federal law expired after June 30, 1999, except for ongoing investigations. See 28 U.S.C. § 599 (“[t]his chapter shall cease to be effective five years after the date of the enactment of the Independent Counsel Reauthorization Act of 1994, except that this chapter shall continue in effect with respect to then pending matters before an independent counsel that in the judgment of such counsel require such continuation until that independent counsel determines such matters have been completed.”).

⁶ III *Hind's* §§ 2294, 2319.

⁷ III *Hind's* §§ 2469, 2487.

⁸ III *Hind's* § 3020.

⁹ *House Practice* § 6.

¹⁰ 3 *Deschler's Precedents of the House of Representatives*, H. Doc. 94-661, ch. 14, §§ 5.10-5.11, 15 (1974).

¹¹ *Investigatory Powers of Committee on the Judiciary with Respect to its Impeachment Inquiry*, H. Rep. No. 93-774, 93rd Cong., 2d Sess. (Feb. 1, 1974).

Committee on the Judiciary to investigate fully whether sufficient grounds existed for the House to impeach President Nixon, specified powers which the Committee could exercise in conducting this investigation, and addressed funding for that purpose. The resolution was agreed to by the House.¹²

While the House Committee on the Judiciary usually conducts impeachment investigations, such matters have occasionally been referred to another committee, such as the House Committee on Reconstruction in the impeachment of President Andrew Johnson, or to a special or select committee. In addition, an impeachment investigation may be referred by the House Judiciary Committee to one of its subcommittees or to a specially created subcommittee.

B. Investigation.

In all prior impeachment proceedings, the House has examined the charges prior to entertaining any vote.¹³ Usually an initial investigation is conducted by the Judiciary Committee, to which investigating and reporting duties are delegated by resolution after charges have been presented. However, it is possible that this investigation would be carried out by a select or special committee.¹⁴

The focus of the impeachment inquiry is to determine whether the person involved has engaged in treason, bribery, or other high crimes and misdemeanors. If the House Committee on the Judiciary, by majority vote, determines that grounds for impeachment exist, a resolution impeaching the individual in question and setting forth specific allegations of misconduct, in one or more articles of impeachment, will be reported to the full House.

C. House Action Subsequent to Receipt of Committee Report.

At the conclusion of debate, the House may consider the resolution as a whole, or may vote on each article separately.¹⁵ In addition, “as is the usual practice, the committee’s recommendations as reported in the resolution are in no way binding on the House.” The House may vote to impeach even if the House Judiciary Committee does not recommend impeachment.¹⁶ A vote to impeach by the House requires a simple majority of those present and voting, upon satisfaction of quorum requirements. If the House votes to impeach, managers are then selected to present the matter to the Senate. In recent practice, managers have been appointed by resolution, although historically they

¹² 120 *Cong. Rec.* 1549 (Jan. 31, 1974); 120 *Cong. Rec.* 2005 (Feb. 4, 1974); 120 *Cong. Rec.* 2350-2363 (Feb. 6, 1974).

¹³ III *Hind’s* §§ 2294, 2487, 2501.

¹⁴ III *Hind’s* §§ 2342, 2487, 2494, 2400, 2409.

¹⁵ III *Hind’s* §§ 2367, 2412; VI *Cannon’s Precedents of the House of Representatives* §§ 500, 514 (1936) (hereinafter *Cannon’s*).

¹⁶ *House Practice*, § 8.

occasionally have been elected or appointed by the Speaker of the House pursuant to a resolution conferring such authority upon him.¹⁷

D. Notification by the House and Senate Response.

The House will also adopt a resolution in order to notify the Senate of its action.¹⁸ The Senate, after receiving such notification, will then adopt an order informing the House that it is ready to receive the managers.¹⁹ Subsequently, the appointed managers will appear before the bar of the Senate to impeach the individual involved and exhibit the articles against him or her.²⁰ After this procedure, the managers would return and make a verbal report to the House.²¹

The Senate: “Sole power to try all impeachments”

A. Trial Preparation in the Senate.

Impeachment proceedings in the Senate are governed by the Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials.²² After presentation of the articles and organization of the Senate to consider the impeachment, the Senate will issue a writ of summons to the respondent, informing him or her of the date on which appearance and answer should be made.²³ On the date established by the Senate, the respondent may appear in person or by counsel.²⁴ The respondent may also choose not to appear.²⁵ In the latter event, the proceedings progress as though a “not guilty” plea were entered.²⁶ The respondent may demur, arguing that he or she is not a civil official subject to impeachment, or that the charges listed do not constitute sufficient grounds for impeachment.²⁷ The respondent may also choose to answer the articles brought against him or her. The House has traditionally filed a replication to the respondent’s answer, and the pleadings may continue with a rejoinder, surrejoinder, and similitur.²⁸

¹⁷ VI *Cannon’s* §§ 499, 500, 514, 517.

¹⁸ III *Hind’s* §§ 2413, 2446.

¹⁹ III *Hind’s* §§ 2078, 2235, 2345.

²⁰ III *Hind’s* §§ 2303, 2370, 2390, 2420, 2449.

²¹ III *Hind’s* §§ 2423, 2451; VI *Cannon’s* § 501.

²² “Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials,” printed in *Senate Manual*, S. Doc. 104-1, 104th Cong., 1st Sess., §§ 100-126, at 177-85 (1995).

²³ III *Hind’s* §§ 2423, 2451.

²⁴ III *Hind’s* §§ 2127, 2349, 2424.

²⁵ III *Hind’s* §§ 2307, 2333, 2393.

²⁶ III *Hind’s* § 2308.

²⁷ III *Hind’s* §§ 2310, 2453.

²⁸ III *Hind’s* § 2455.

B. Trial Procedure in the Senate.

When pleadings have concluded, the Senate will set a date for trial.²⁹ Upon establishing this date, the Senate will order the House managers or their counsel to supply the Sergeant at Arms of the Senate with information regarding witnesses who are to be subpoenaed, and will further indicate that additional witnesses may be subpoenaed by application to the Presiding Officer.³⁰ Under Article I, Section 3, Clause 6 of the Constitution, the Chief Justice presides over the Senate impeachment trial if the President is being impeached.

In impeachment trials, the full Senate may receive evidence and take testimony, or may order the Presiding Officer to appoint a committee of Senators to serve this purpose. If the latter option is employed, the committee will present a certified transcript of the proceedings to the full Senate. The Senate will determine questions of competency, relevancy, and materiality. The Senate may also take further testimony in open Senate, or may order that the entire trial be before the full Senate.³¹

At the beginning of the trial, House managers and counsel for the respondent present opening arguments outlining the charges to be established and controverted, respectively. The managers for the House present the first argument.³² During the course of the trial evidence is presented, and witnesses may be examined and cross-examined.

The Senate has not adopted standard rules of evidence to be used during an impeachment trial. The Presiding Officer possesses authority to rule on all evidentiary questions. However, the Presiding Officer may choose to put any such issue to a vote before the Senate. Furthermore, any Senator may request that a formal vote be taken on a particular question.³³ Final arguments in the trial will be presented by each side, with the managers for the House of Representatives opening and closing.³⁴

C. Judgment of the Senate.

When the presentation of evidence and argument by the managers and counsel for the respondent has concluded, the Senate as a whole meets in closed session to deliberate. Voting on whether to convict on the articles of impeachment commences upon return to open session, with yeas and nays being tallied as to each article separately.³⁵ A conviction on an article of impeachment requires a two-thirds vote of those Senators present. If the respondent is convicted on one or more of the articles against him or her, the Presiding Officer will pronounce the judgment of conviction and removal. No formal vote is

²⁹ VI *Cannon's* § 508.

³⁰ VI *Cannon's* § 508.

³¹ “Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials,” Rule XI.

³² “Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials,” Rule XXII.

³³ “Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials,” Rule VII.

³⁴ “Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials,” Rule XII.

³⁵ III *Hind's* §§ 2098, 2339.

required for removal, as it is a necessary effect of the conviction. The Senate need not vote on all of the articles before it. Where an individual has already been convicted on one or more of the articles, the Senate may decide that subsequent votes on the remaining articles are unnecessary. Conversely, when the Senate did not convict President Andrew Johnson in the votes on three of the articles of impeachment against him, the Senate did not vote on the remaining articles.

The Senate may subsequently vote on whether the impeached official shall be disqualified from again holding an office of public trust under the United States.³⁶ If this option is pursued, a simple majority vote is required.³⁷

For further reading, the following CRS products may be of interest:

- CRS Report 98-186. *Impeachment: An Overview of Constitutional Provisions, Procedure, and Practice*, by Elizabeth B. Bazan. Updated February 27, 1998.
- CRS Report 98-524. *The Intersection between the Former Presidents Act and the Impeachment process*, by Elizabeth B. Bazan. June 5, 1998.
- CRS Report 98-730. *Vice presidential vacancies: congressional procedures in the Ford and Rockefeller nominations*, by Thomas H. Neale. August 21, 1998.
- CRS Report 98-808. *Perjury Under Federal Law: A Brief Overview*, by Charles Doyle. September 24, 1998.
- CRS Report 98-807. *Perjury Under Federal Law: A Sketch of the Elements*, by Charles Doyle. September 30, 1998.
- CRS Report 98-831. *Obstruction of Justice Under Federal Law: A Review of Some of the Elements*, by Charles Doyle. October 5, 1998.
- CRS Report 98-831. *Obstruction of Justice Under Federal Law: An Abbreviated Sketch*, by Charles Doyle. October 7, 1998.
- CRS Report 98-883. *Impeachment Grounds: A Collection of Selected Materials*, by Charles Doyle. Updated October 29, 1998.
- CRS Report 98-843. *Censure of the President by the Congress*, by Jack H. Maskell. December 8, 1998.
- CRS Report 98-990. *Standard of Proof in Senate Impeachment Proceedings*, by Thomas B. Ripy. Updated January 7, 1999.
- CRS Report RL30042. *Compendium of Precedents Involving Evidentiary Rulings and Applications of Evidentiary Principles from Selected Impeachment Trials*, by Elizabeth B. Bazan, et al. January 29, 1999.
- CRS Report RL31246. *Independent Counsel Law Expiration and the Appointment of 'Special Counsels,'* by Jack H. Maskell. January 15, 2002.
- CRS Report RL31761. *Presidential and Vice Presidential Succession: Overview and Current Legislation*, by Thomas H. Neale. Updated September 27, 2004.
- CRS Report 98-249. *Former Presidents: Federal Pension and Retirement Benefits*, by Stephanie Smith. Updated February 8, 2005.

³⁶ III *Hind's* § 2397; VI *Cannon's* § 512.

³⁷ VI *Cannon's* § 512.