



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNSEL

MEMORANDUM

To: House Special Committee on Impeachment Inquiry
From: Jennifer Carbee, Director and Chief Counsel
Date: June 1, 2023
Subject: Overview of impeachable conduct

Introduction

The Vermont Constitution authorizes the House of Representatives to “order impeachments” and “impeach state criminals,” and it makes “[e]very officer of State, whether judicial or executive,” ... liable to be impeached by the House.¹ The Vermont Constitution also requires “[e]very officer, whether judicial, executive, or military, in authority under this State, before entering into the execution of office,” to take an oath or affirmation of allegiance to the State and an oath or affirmation of office.² The oath or affirmation of allegiance requires the officer to swear or affirm that the officer “will be true and faithful to the State of Vermont, and that [the officer] will not, directly or indirectly, do any act or thing injurious to the Constitution or Government thereof.”³ The oath or affirmation of office requires the officer to swear or affirm that the officer “will faithfully execute” their office “and will therein do equal right and justice to all persons, to the best of [the officer’s] judgment and ability, according to law.”⁴

Merriam-Webster’s dictionary defines to “impeach” as “to charge with a crime or misdemeanor,” and more specifically “to charge (a public official) before a competent tribunal with misconduct in office.” *Black’s Law Dictionary* defines “impeach” as “to charge with a crime or misconduct; esp., to formally charge (a public official) with a violation of the public trust.” Despite the common shorthand use of the term “impeachment” to suggest both the charge itself and removal of the accused from office, to impeach an official is only to charge that official with wrongdoing. In Vermont, a vote of two-thirds of the members of the House of Representatives is required to order an impeachment, after which the impeachment is tried in the Senate. Two-thirds of the Senators present must vote to convict the officeholder after the trial; if convicted, the subject of the impeachment may be removed from office and disqualified from holding office in the future.⁵

¹ Vt. Const., Ch. II, §§ 14, 57, and 58.

² *Id.*, § 56.

³ *Id.*

⁴ *Id.*

⁵ *Id.*, §§ 57 and 58.

The Vermont Constitution does not appear to set any standards for what constitutes impeachable conduct, which provides the Vermont General Assembly with broad authority to determine the grounds on which an elected official may be impeached and removed from office. It can be instructive to look to the grounds for impeachment in Vermont's history and in other state and federal impeachment contexts to gain insight into how the bases for articles of impeachment may be established, though it is also important to recognize that some examples are connected to the standards set forth in the other states' and the United States constitutions.

Examples from Vermont impeachments

Vermont has had few impeachments in its history, with the most recent being the impeachment of Washington County Sheriff Malcolm M. Mayo in 1976. To date, most impeachments in Vermont seem to have relied on the grounds of "maladministration." It is unclear whether this was always due to the actual nature of the actions giving rise to the charges in each case or whether it was based on the language in Vt. Const. Ch. II, § 58 that provides that "[e]very officer of State ... shall be liable to be impeached by the House of Representatives, either when in office or after resignation or removal for maladministration." If the latter, it may be that this reliance was misplaced; as Clerk of the House BetsyAnn Wrask noted in her May 4, 2023, memorandum on impeachment to the Speaker of the House, the reference to "removal for maladministration" is likely outdated language left over from an earlier version of Vermont's Constitution that allowed the General Assembly to remove county officers for maladministration.⁶

The charges in the articles of impeachment do tend to be more specific, however, than merely alleging maladministration and point to the conduct that formed the basis for the charges. In the case of Sheriff Mayo, the House resolution impeached the sheriff for "maladministration in office" in violation of his oath and duty through three articles of impeachment: (1) falsification of reports and documents, (2) failure to perform functions of office, and (3) breach of duty as a peace officer.⁷ In support of the first charge, the article identified four reports or documents that had been falsified, either by the sheriff personally or by another at the sheriff's direction. In support of the second charge, the article cited the sheriff's May 28, 1975, order to all members of the Washington County Sheriff's Department not to cooperate with any other law enforcement agency, make patrols, initiate criminal cases, or issue traffic citations, until further notice. In support of the third charge, the article cited three instances in which the sheriff engaged in conduct that breached his duty to preserve the peace and suppress unlawful disorder. The House of Representatives adopted the resolution impeaching Sheriff Mayo, including all three articles of impeachment, but he was acquitted in the Senate.

Few detailed records are available of earlier impeachments in Vermont history, but of those identified by the Secretary of State's office, only three impeachments have resulted

⁶ [Memorandum from Clerk of the House BetsyAnn Wrask to Speaker Jill Krowinski](#), dated May 4, 2023, posted to [web page](#) of Special Committee on Impeachment Inquiry on May 23, 2023.

⁷ H.R. 13 (adopted), as printed in the [Journal of the House dated March 9, 1976](#), posted to [web page](#) of Special Committee on Impeachment Inquiry on May 23, 2023.

in convictions, the most recent being in 1785.⁸ Some early efforts at impeachment were complicated by disagreements between the Council of Censors and the House of Representatives (then the only chamber of the General Assembly) regarding the respective scope of each body's authority. In 1800, John Chipman, High Sheriff of Addison County, was ordered by the Council of Censors to be impeached for "mal-administration of his office" by "wittingly and willingly tak[ing] and receiv[ing], for summoning the grand jury to serve before the supreme court holden at Middlebury, ... greater fees for his said services, than are allowed by the law of the state, under colour of his said officer of Sheriff."⁹ Upon investigation, a House committee determined that the Supreme Court had approved Chipman's accounts, and the House voted to take no further action on the Council's order. Similar charges and the same result had occurred the previous year, when the Council of Censors ordered that High Sheriff William Coley of Bennington County be impeached for "mal-administration of his office" for taking higher fees for his services than allowed by law, "under color of his said office of sheriff."¹⁰ The House had also appointed a committee to investigate, which committee determined that the charges against Coley were "wholly unsupported," and the House dismissed the Council's order of impeachment. Prior to the establishment of the Vermont Senate in 1836, impeachments ordered by the House were decided by the Governor, or Lieutenant Governor, and the Executive Council. The records of the Council of Censors indicate that the Council and the House disagreed in both the 1799 Coley case and the 1800 Chipman case about whether the House's role was purely ministerial—that is, to receive the Council's articles of impeachment and transmit them to the Governor and Executive Council for trial—or discretionary, with the authority to investigate and to determine whether or not to impeach. The House treated it as discretionary and elected not to pursue impeachment for either sheriff.

Examples from impeachments of officials in other states

The language used in the articles of impeachment in other states has varied, but the common theme is that the official being impeached allegedly engaged in conduct that is incompatible with the public office held. The following are examples from a few different states to illustrate both the commonalities and the variations in terminology.

Arizona

The Arizona Constitution provides that "the governor and other state and judicial officers ... shall be liable to impeachment for high crimes, misdemeanors, or malfeasance in office."¹¹ While issues surrounding impeachment and impeachable conduct are generally nonjusticiable political questions, the Arizona Supreme Court has weighed in on what may constitute an impeachable offense, finding in a 1989 case involving a gubernatorial impeachment that "there is almost unanimous agreement that offenses are impeachable

⁸ Vermont State Archives & Records Administration, History of Impeachment [web page](#) visited May 30, 2023.

⁹ [Records of the Council of Censors of the State of Vermont](#), Results of the 1799–1800 Council, p. 173 (footnote 18).

¹⁰ *Id.* at pp. 159–160.

¹¹ Ariz. Const. Art. 8 Pt. 2 § 2.

when they ‘involve serious abuse of official power.’”¹² Those offenses include “‘misapplication of funds, abuse of official power, neglect of duty, encroachment on or contempt of legislative prerogatives, and corruption.’”¹³

Connecticut

In 1983–1984, the Connecticut General Assembly considered impeaching Probate Judge James Kinsella for his mishandling of a large estate; Judge Kinsella was also censured by the Council on Probate Judicial Conduct for his actions. An investigatory committee was appointed to investigate and recommend to the Connecticut House of Representatives whether Judge Kinsella should be impeached. The Connecticut Constitution does not specify standards or grounds for impeachment. The committee’s *Final Statement of Information* included some historical information, including that a finding that the purpose of impeachment is to protect the state from abuse of power by its officeholders and that “[t]he emphasis of the impeachment process has been on the significant effects of the conduct—undermining the integrity of office, disregard of constitutional duties and oath of office, abrogation of power, and abuse of the governmental process.”¹⁴

The committee suggested that the House should consider an official’s course of conduct, not merely individual acts, when determining if impeachment is warranted. It recommended two articles of impeachment against Judge Kinsella, charging that, by his course of conduct, he:

1. “did abuse the power of, undermine the integrity of, and bring disdain upon the office and trust he held (1) by his course of conduct while serving as judge of probate in and incident to the matter of the Estate of Ethel F. Donaghue, Incapable and (2) by his course of conduct in furnishing under oath false and misleading evidence in official proceedings relating to the Estate of Ethel F. Donaghue, Incapable”; and
2. “did abuse the power of, undermine the integrity of, and bring disdain upon the office and trust he held by his course of conduct in grossly disregarding the proper supervision and control of his employees and appointees and by refusing to cooperate with official investigations of the probate court and of his conduct as a judge of probate.”¹⁵

The Connecticut House did not ultimately vote on the articles of impeachment after Judge Kinsella resigned, but it did engage in some discussion and debate on the articles. During the floor debate, several House members expressed thoughts on what would constitute impeachable conduct, including conduct that is improper, wrongful, brings

¹² *Meacham v. Arizona House of Representatives*, 162 Ariz. 267, 268 (1989) (citing L. Tribe, *American Constitutional Law* § 4-17, at 291 (2d ed. 1988)).

¹³ *Id.*

¹⁴ *Impeachable Offenses*, Connecticut Office of Legislative Research (OLR) Research Report 2004-R-0134 (2004) and *Burden of Proof for Impeachment*, OLR Research Report 2004-R-0144 (2004).

¹⁵ *Id.* (citing Conn. H.R. No. 17 (1984)).

disdain or disrespect upon the office, violates the public trust, violates a position of trust, or constitutes an abuse of power.¹⁶

Nebraska

Unlike impeachment in most states, in which the House of Representatives orders the impeachment, and the Senate conducts the trial, Nebraska has only one legislative chamber. Thus, while the Nebraska Constitution specifies that “[t]he Legislature shall have the sole power of impeachment,” an impeachment ordered by its unicameral legislature is then tried by the Nebraska Supreme Court.¹⁷ The Nebraska Constitution says that officials “shall be liable to impeachment for any misdemeanor in office or for any misdemeanor in pursuit of such office.”¹⁸

The Nebraska Supreme Court has long indicated that “misdemeanor in office” is not limited to violations of statutory or constitutional law but includes “neglect of duty willfully done, with a corrupt intention,” and “negligence ... so gross and ... disregard of duty so flagrant as to warrant the inference that it was willful and corrupt.”¹⁹ Citing its earlier decisions, the Nebraska Supreme Court held in a 2006 case that there are three categories of conduct that “may constitute an impeachable offense by a state officer:

1. An act that violates a statute, constitutional provision, or oath and is related to the officer’s duties;
2. A simple neglect of duty committed for a corrupt purpose; or
3. A neglect or disregard of duty that is so gross or flagrant, the officer’s willful and corrupt intent may be inferred.”²⁰

Texas

The Texas Constitution does not specify standards or grounds for impeachment, but the Supreme Court of Texas held in 1924 that impeachment has a long history in English and American parliamentary law and “was designed, primarily, to reach those in high places guilty to official delinquencies or maladministration.”²¹ The Court said that:

“the wrongs justifying impeachment need not be statutory offenses or common-law offenses, or even offenses against any positive law. Generally speaking, they were designated as high crimes and misdemeanors, which, in effect meant nothing more than grave official wrongs.

¹⁶ *Id.*

¹⁷ [Neb. St. Const. Article III-17.](#)

¹⁸ [Neb. St. Const. Article IV-5.](#)

¹⁹ *State v. Douglas*, 217 Neb. 199, 201 (1984) (citing *State v. Hastings*, 55 N.W. 774, 780–781 (1893)).

²⁰ *Nebraska Legislature ex re. State v. Hergert*, 271 Neb. 976, 995–96 (2006) (citing *Douglas* and *Hastings*).

²¹ *Ferguson v. Maddox*, 114 Tex. 85, 96 (1924).

In the nature of things, these offenses cannot be defined, except in the most general way. A definition can, at best, do little more than state the principle upon which the offense rests. Consequently, no attempt was usually made to define impeachable offenses, and the futility as well as the unwisdom of attempting to do so has been commented upon. In the Constitution of the United States impeachable offenses are designated as ‘treason, bribery, or other high crimes and misdemeanors.’ Const. U. S. art. 2, s 4. Substantially the same language is used in many of the state Constitutions. In others ‘misdemeanors in office,’ ‘maladministration,’ ‘oppression in office,’ and the like, are declared to be impeachable offenses.”²²

Most recently, on May 27, 2023, the Texas House of Representatives impeached its Attorney General, Warren Kenneth Paxton, Jr., adopting 20 articles of impeachment against him. These articles comprise:

1. seven charges of disregard of official duty, including several charges that Paxton misused his official powers to benefit a specific individual or that individual’s business entities, and that Paxton terminated and retaliated against employees who reported his misdeeds to law enforcement;
2. one charge of misapplication of public resources;
3. two charges of constitutional bribery;
4. two charges of obstruction of justice;
5. three charges of making false statements in official records, including failing to fully and accurately disclose his financial interests in the personal financial statements he filed with the Texas Ethics Commission;
6. one charge of conspiracy and attempted conspiracy;
7. one charge of misappropriation of public resources by causing his employees to perform services for his benefit and for the benefit of others;
8. one charge of dereliction of duty by violating the Texas Constitution, his oaths of office, statutes, and public policy against public officials acting contrary to the public interest;
9. one charge of unfitness for office; and
10. one charge of abuse of public trust by using, misusing, or failing to use his official powers in a manner calculated to subvert the lawful operation of the Texas government and obstruct the fair and impartial administration of justice, thereby bringing the Office of Attorney General into scandal and disrepute to the prejudice of public confidence in the government of the state.²³

Examples from impeachments of federal officials

It is well known that, under Article II, Section 4 of the U.S. Constitution, federal officials may be “removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” It is also generally accepted that there is no

²² *Id.* at 96–97.

²³ [Texas H.R. No. 2377](#) (2023) (adopted).

specific definition of “other high Crimes and Misdemeanors,” much as there is no specific definition of what constitutes a “state criminal” under the Vermont Constitution.

According to the U.S. House of Representatives Practice Manual, impeachments usually involve charges of “misconduct incompatible with the official position of the office holder,” with conduct falling into three broad categories:

1. abusing or exceeding the lawful powers of the office;
2. behaving in a manner grossly incompatible with the office; and
3. using the power of the office for an improper purpose or for personal gain.²⁴

As an example of abusing or exceeding the lawful powers of the office, one of the articles of impeachment recommended by the U.S. House Judiciary Committee against President Richard Nixon in 1974 was that “he used the power of the office of the Presidency to violate citizens’ constitutional rights, ‘impair[]’ lawful investigations, and ‘contravene[]’ laws applicable to executive branch agencies.”²⁵

There are many examples of federal officials acting in a manner alleged to be grossly incompatible with their office. Judge John Pickering was impeached by the House in 1803 for committing errors during trial in violation of his trust and duty as a judge and for appearing on the bench during trial intoxicated and using profane language. Associate Supreme Court Justice Samuel Chase was impeached in 1804 for permitting partisan views to influence his conduct during trials, which was alleged to be a serious breach of his duty to judge impartially and reflected (poorly) on his competence to continue to exercise the power of his office. More recently, in 2009, Judge Samuel Kent was impeached “for allegedly sexually assaulting two court employees, obstructing the judicial investigation of this behavior, and making false and misleading statements to agents of the Federal Bureau of Investigation about the activity.”²⁶

In 1926, Judge George English was impeached by the U.S. House for showing judicial favoritism and failing to give impartial consideration to cases before him, creating distrust in his official actions and destroying public confidence in his court.²⁷ In a report following its investigation into whether the charges against Judge English warranted indictment, the investigatory committee determined that the Constitution did not limit impeachment only to acts that are prohibited by the Constitution or federal laws, but also for those that

“affect the public welfare. Thus an official may be impeached for offenses of a political character and for gross betrayal of public

²⁴ [House Practice: A Guide to the Rules, Precedents, and Procedures of the House](#), Chapter 27, Impeachment, §§ 3 and 4, 2017.

²⁵ [Congressional Research Service \(CRS\): Impeachment and Removal](#), at 12 (citing *Impeachment of Richard. M. Nixon*, H.Rept. 93-1305, at 1–3 (1974)).

²⁶ CRS: Impeachment and Removal, at 13 (citing *Impeachment of Judge Samuel B. Kent*, H.Rept. 111-159, at 2–3 (2009)).

²⁷ House Practice, § 4 at 610.

interests. Also, for abuses or, betrayal of trusts, for inexcusable negligence of duty, for the tyrannical abuse of power, or ... for a 'breach of official duty by malfeasance or misfeasance, including conduct such as drunkenness when habitual, or in the performance of official duties, gross indecency, profanity, obscenity, or other language used in the discharge of an official function, which tends to bring the office into disrepute, or for an abuse or reckless exercise of discretionary power as well as the breach of an official duty imposed by statute or common law.'"²⁸

Examples of federal officials using the power of their office for an improper purpose have included the vindictive use of power against critics and political foes, while examples of using an office for personal gain or giving the appearance of financial impropriety have included receiving payments in return for making appointments, falsifying business accounts, falsifying tax returns, and judges securing business favors from litigants and potential litigants.²⁹ Other language used in federal impeachments has included violation of an officer's official oath and violation of duty.

Most recently, the House of Representatives adopted articles of impeachment against President Donald Trump in 2019 and in 2021. The 2019 resolution contained two articles of impeachment, one for abuse of power and one for obstruction of Congress.³⁰ The abuse of power charge alleged that the President, "[u]sing the powers of his high office," solicited interference of the government of Ukraine in the 2020 U.S. presidential election, which "compromised the national security of the United States and undermined the integrity of the United States democratic process."³¹ The obstruction of Congress charge alleged that, by directing Executive Branch agencies, offices, and officials not to comply with subpoenas issued by congressional committees investigating President Trump's interference in the 2020 presidential election, the President "abused the powers of his high office" and "interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, and assumed to himself functions and judgments necessary to the exercise of the 'sole Power of Impeachment' vested by the Constitution in the House of Representatives."³² The House agreed to both articles in the 2019 resolution on December 18, 2019; the Senate adjudged the President not guilty as charged in each article on February 5, 2020. The 2021 resolution contained just one article of impeachment, incitement of insurrection, alleging that the President violated his constitutional oath of office and "engaged in high Crimes and Misdemeanors by inciting violence against the Government of the United States" in his actions on and leading up to January 6, 2021.³³ The resolution impeaching the President was agreed to on January 13, 2021; the Senate adjudged the President not guilty on February 13, 2021.

²⁸ [Cannon's Precedents, Volume VI](#), Chapter CCII at 779–780 (1935).

²⁹ House Practice, § 4 at 610–612.

³⁰ [H. Res. 755, 116th Cong. \(2019\)](#) (adopted).

³¹ *Id.*

³² *Id.*

³³ [H. Res. 24, 117th Cong. \(2021\)](#) (adopted).

Conclusion

There are many ways to articulate the bases for articles of impeachment, including abuse of power, violation of the oath of office, violation of the public trust, and behaving in a manner (grossly) incompatible with the office. While the language of impeachment may vary based on the circumstances and the jurisdiction, the recurring theme appears to be that the subject of the impeachment has behaved in a manner that is incompatible with the position of trust to which the official has been elected and, for the good of the state (or nation), the official should be removed from office. A common element throughout almost all impeachment cases to have been reviewed by the courts is a recognition that impeachment is solely a legislative power, and thus determination of the grounds for impeachment and what constitutes an impeachable offense or impeachable conduct is solely within the purview of the Legislative Branch.