

Under Article II, Sec. 4 of the US Constitution, Congress has the power to impeach the President, the Vice President and “all civil Officers of the United States” for “Treason, Bribery, or other high Crimes and Misdemeanors.” If the House approves one or more articles of impeachment by a simple majority vote, the Senate conducts a trial that will result in a removal from office only if two-thirds of the Senate votes to convict.

This publication examines (I) the process of impeachment, (II) the two prior instances in which a US President has been impeached, but not convicted (as well as the instances in which judges have been impeached) and (III) the impeachment efforts targeting US President Donald Trump.

The Process of Impeachment

The impeachment process formally begins in the House of Representatives, with the filing of articles of impeachment, and is followed by a trial in the Senate. Impeachment proceedings can be triggered by lawmakers or prompted by individuals outside the US Congress, such as through recommendations from entities like the Judicial Conference of the United States, independent counsels with substantial and credible information that could constitute grounds for impeachment, or a charge from a state or territorial legislature or grand jury. But, whatever the source, the process cannot begin until one or more Members of Congress formally introduces a resolution setting forth the basis for impeachment.

Although the Constitution speaks in terms of “Treason, Bribery, or other high Crimes and Misdemeanors,” non-criminal activity has also served as grounds for impeachment. Grounds for impeachment fall into three broad categories: (1) conduct unsuited to the function or purpose of the office, (2) abuse of office for personal gain or an improper purpose and (3) improperly exceeding or abusing the powers of the office.

Historically, the first category includes actions such as providing false information on federal income tax forms, appearing on the bench intoxicated, alleged sexual assault and judicial favoritism. President Clinton’s 1998 impeachment articles most closely fall into this category, as lying to a grand jury and obstructing justice are considered unsuited to the presidency. The second category, abusing the office for personal gain or improper purpose, has involved false contempt charges, receiving payments and favors in exchange for judicial outcomes and influencing cases.

Two federal judges have been removed under the third category for abuse of power. President Andrew Johnson’s impeachment, involving the removal of a cabinet member, can also be seen as exceeding his presidential powers. These categories are not definitive or exhaustive, but exist to summarize the majority of impeachment proceedings conducted thus far in the US.

Each individual charge of alleged wrongdoing is an article; together, the charges are the articles of impeachment. The articles are generally referred to the House Judiciary Committee, which conducts an initial investigation and then votes on a resolution of one or more articles. Next, the entire House considers the resolution. Members can adopt the resolution as a whole or vote on each article individually. If a simple majority of the House votes in favor of one or more of the articles, then the individual is considered impeached by the House.

After the House votes to impeach, “managers,” who will act as the prosecution during the Senate trial, are selected from among House members. Once the proceedings move to the Senate, the individual will enter a pleading and a “trial date” is set. There are no formal rules governing how the trial will be conducted. In practice, the Senate Majority Leader and the Senate Minority Leader negotiate terms broadly acceptable to their respective caucuses, which then are voted upon.¹ During the trial, witnesses can be subpoenaed, evidence considered and testimony taken, either by the full Senate or a committee of Senators selected by the Presiding Officer. The Presiding Officer is traditionally the Vice President, acting in his role as the President of the US Senate. Notably, however, the Chief Justice of the Supreme Court presided over the two instances where a sitting US president was impeached, as discussed in Section II.

At the close of the trial, the Senate deliberates and votes on each individual article. A two-thirds vote of Senators present is required for conviction. Because each article contains a separate charge, an individual may be convicted of all, some or none of the articles. Conviction on a single article will result in removal from office. The Senate may then vote to disqualify the individual from ever serving in an “office of public trust” in the US again. This vote requires only a simple majority to pass.

Notably, the Constitution specifies that an individual is not immune from criminal liability once convicted. An individual who is facing impeachment, or who has already been impeached, may face separate criminal proceedings.

¹ For more information on the politics of this process during President Bill Clinton’s impeachment trial, see <https://www.washingtonpost.com/opinions/2019/10/23/tom-daschle-trent-lott-senate-can-hold-fair-impeachment-trial-we-did-it/>

Historical US Impeachments

Nineteen individuals have been impeached by the House, but three individuals resigned after the House took action, resulting in only 16 full impeachment trials in the Senate. These 16 trials resulted in eight convictions, all of them federal judges.

Only two presidents have been impeached: Andrew Johnson and Bill Clinton. They are discussed, in turn, below.²

Andrew Johnson

In 1868, the House of Representatives adopted 11 articles of impeachment against Andrew Johnson. Many of them dealt with President Johnson's violation of the Tenure of Office Act – he replaced his Secretary of War in violation of the Act. The Senate only voted on three of the articles, each of which fell one vote short of the two-thirds majority required for conviction. After the three votes failed, the trial adjourned without votes on the remaining articles. That year, President Johnson failed to receive the Democratic nomination for president necessary for reelection and left office at the end of his term in 1869.

Bill Clinton

In 1998, House lawmakers considered four articles of impeachment against Bill Clinton. During a sworn deposition for a sexual harassment lawsuit stemming from his time as Governor of Arkansas, President Clinton denied a sexual relationship with White House intern Monica Lewinsky. This relationship later proved to be true and President Clinton was impeached on two articles: lying to a grand jury and obstruction of justice. President Clinton was ultimately found not guilty under both articles.

Impeachment Efforts Targeting US President Donald Trump

115th Congress

Demands for President Donald Trump's impeachment began before his swearing in. However, these demands did not reach the floor of the House of Representatives until months into his term. On May 17, 2017, Rep. Al Green (D-Texas) called for President Trump's impeachment while on the House floor. Rep. Brad Sherman (D-California) joined Rep. Green in drafting articles of impeachment, which they formally introduced in H. Res. 438. In the articles, they alleged that the President obstructed and impeded the investigation of Russian interference in the 2016 election. Rep. Green introduced a second set of articles in December 2017 that alleged President Trump "associated the Presidency with White Nationalism, Neo-Nazism, and Hatred."

Lawmakers introduced another set of articles after the August 2017 "Unite the Right" rally in Charlottesville, Virginia. Seventeen Democratic Representatives signed onto H. Res. 621, which accused President Trump of undermining the freedom of the press and obstruction of justice, along with other charges.

All three sets of proposed articles failed to gain traction, and expired with the end of the 115th Congress on January 3, 2019.

116th Congress

Early Efforts

With the change in majority in the House of Representatives in 2019, the topic of impeachment again emerged. At an event in January, newly elected Representative Rashida Tlaib (D-Michigan) made headlines when she told an audience that Democrats were going to "impeach the mother----er."

However, many of the Democrats elected in the recent blue wave represent more moderate districts, whose constituents may not support impeachment. Democratic leadership did not make impeachment a large issue in the 2018 election, in part due to fear of backlash from moderate and independent voters.

Democratic leaders, such as Speaker Nancy Pelosi (D-California) and House Majority Leader Steny Hoyer (D-Maryland), largely avoided impeachment talk for most of 2019. Hoyer, for example, called it a "distraction" from other Democratic priorities. Senate Minority Leader Chuck Schumer (D-New York) has been more outspoken on the issue – when asked in September 2018 when President Trump would be impeached, he said "the sooner the better," though Senator Schumer's spokesperson later reported that the Senator had misunderstood the question.

September and October 2019

On September 24, 2019, Speaker Pelosi announced that the House would begin an impeachment inquiry of President Trump in the midst of allegations that the President and top administration officials pressured the leader of Ukraine to advance the President's political interests. The inquiry will allow lawmakers to investigate what, if any, "high crimes and misdemeanors" the President may have committed. Given the nature of the issue, the impeachment inquiry is in the hands of the House Intelligence Committee, the House Committee on Oversight and Reform, and the House Foreign Affairs Committee. Should a resolution containing articles of impeachment be introduced, it will be referred to the House Judiciary Committee.

Although House Democrats have been conducting multiple investigations through these and other committees, the impeachment now appears to be focused on President Trump's July 2019 exchanges with Ukraine President Volodymyr Zelensky. A recent whistleblower complaint claims President Trump, along with personal attorney Rudy Giuliani, repeatedly pushed President Zelensky to investigate Democratic presidential contender Joe Biden and his son Hunter Biden in an effort to solicit information for the 2020 US election. The complaint also alleged that President Trump threatened to withhold US\$400 million in US military aid from Ukraine if President Zelensky failed to comply with the demands and that several White House officials attempted to cover up the contents of the phone call.

² Impeachment proceedings began against a third, Richard Nixon, and reached the House Judiciary Committee stage before President Nixon resigned. As impeachment is meant to remediate bad players within the government, and has no bearing on criminal liability, impeachment proceedings against President Nixon stopped once he resigned. He was spared any criminal prosecution by President Gerald Ford, who issued a full and unconditional pardon of President Nixon's activities while president.

In a response to the allegations, the Trump Administration released a five-page transcript of the phone call, which confirmed that President Trump asked President Zelensky to “look into the Biden controversy.”

In response to the whistleblower complaints, the chairs of key House committees – Intelligence, Foreign Affairs and Oversight – issued subpoenas to both Secretary of State Mike Pompeo and President Trump’s personal attorney, Rudy Giuliani, to determine their participation in the phone call in July 2019. The chairs demanded that all relevant documents and communications be submitted by October 15, 2019.

In addition to issuing subpoenas to Secretary Pompeo and Rudy Giuliani, the House Committees have issued multiple other subpoenas to a variety of Trump Administration offices. The list includes Vice President Mike Pence and Energy Secretary Rick Perry, along with other senior officials, many of whom have refused to cooperate with subpoena requests. White House counsel Pat Cipollone has deemed the impeachment inquiry “a one-sided effort by House Democrats to gather information favorable to their views and to selectively release it as only they determine.”

Although senior officials have ignored requests, many lower-level subpoenaed officials have agreed to testify. However, in an effort to persuade officials to keep silent, the Trump Administration sent warning letters to individuals who testified before Congress. One such witness, Laura Cooper, a Pentagon official, received a warning letter stating that her testimony would be legally invalid without agency counsel and that “Executive Branch personnel cannot participate in the impeachment inquiry under these circumstances.”

While the White House continues efforts to shut down the inquiry by claiming that it violates a constitutionally mandated due process, Chief Judge Beryl A. Howell of the Federal District Court for the District of Columbia ruled that the House Judiciary Committee was entitled to view secret grand jury evidence. The Trump Administration is likely to appeal the ruling. Speaker Pelosi has not set any timeline for the House committees to complete their work, although she did call for a vote on a resolution formalizing the procedures of the impeachment inquiry on October 31. The vote was 232-196, largely on party lines, with only two Democrats voting against the resolution. Broadly, the resolution clarifies procedurally how the House will progress with moving the impeachment inquiry into its next phase.

The House will begin public impeachment hearings the week of November 11.

The congressional investigations section of our Public Policy team is closely monitoring the current impeachment proceedings and will provide regular updates to this historic process.

Members of our congressional investigations team have worked with the Democratic and Republican staffs on the major investigative committees in the House and Senate. We have an unparalleled insider’s knowledge of the congressional investigations process, key members and staff, and how to prepare for and respond to document requests, subpoenas and hearings. We understand the relationships in Congress that drive the decisions members make. Our team includes white collar and general litigators who coordinate to guard against any adverse collateral impacts. We represent corporations, private individuals and public officials prior to and at different stages during an investigation.

Our team stands ready to address your questions.

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