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The Impeachment Process in the House of Representatives

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SUMMARY

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The Impeachment Process in the House of Representatives

Under the U.S. Constitution, the House of Representatives has the power to formally charge a federal officer with wrongdoing, a process known as impeachment. The House impeaches an individual when a majority agrees to a House resolution containing explanations of the charges. The explanations in the resolution are referred to as "articles of impeachment." After the House agrees to impeach an officer, the role of the Senate is to conduct a trial to determine whether the charged individual should be removed from office. Removal requires a two-thirds vote in the Senate.

The House impeachment process generally proceeds in three phases: (1) initiation of the impeachment process; (2) Judiciary Committee investigation, hearings, and markup of articles of impeachment; and (3) full House consideration of the articles of impeachment.

Impeachment proceedings are usually initiated in the House when a Member submits a resolution through the hopper (in the same way that all House resolutions are submitted). A resolution calling for the impeachment of an officer will be referred to the Judiciary Committee; a resolution simply authorizing an investigation of an officer will be referred to the Rules Committee. In either case, the committee could then report a privileged resolution authorizing the investigation. In the past, House committees, under their general investigatory authority, have sometimes sought information and researched charges against officers prior to the adoption of a resolution to authorize an impeachment investigation.

Impeachment proceedings could also be initiated by a Member on the floor. A Member can offer an impeachment resolution as a "Question of the Privileges of the House." The House, when it considers a resolution called up this way, might immediately vote to refer it to the Judiciary Committee, leaving the resolution in the same status as if it had been submitted through the hopper. Alternatively, the House might vote to table the impeachment resolution. The House could also vote directly on the resolution, but in modern practice, it has not chosen to approve articles of impeachment called up in this fashion. Instead, the House has relied on the Judiciary Committee to first conduct an investigation, hold hearings, and report recommendations to the full House.

Committee consideration is therefore typically the second stage of the impeachment process. In recent decades, it has been more common than not that the Judiciary Committee used information provided from another outside investigation. The committee might create a task force or a subcommittee to review this material and collect any other information through subpoenas, depositions, and public hearings. Impeachment investigations are governed by the standing rules of the House that govern all committee investigations, the terms of the resolution authorizing the investigation, and perhaps additional rules adopted by the committee specifically for the inquiry.

If the committee determines that impeachment is warranted, it will mark up articles of impeachment using the same procedures followed for the markup of other legislation. If the Judiciary Committee reports a resolution impeaching a federal officer, that resolution qualifies for privileged consideration on the House floor; its consideration is the third stage of the impeachment process. The resolution can be called up at the direction of the committee and considered immediately under the hour rule in the House. If called up this way, amendments could be precluded if a majority voted to order the previous question. A motion to recommit, with or without instructions, is in order but is not subject to debate. Alternatively, the House might alter these procedures by unanimous consent to, for example, set a longer time for debate or to allow brief debate on a motion to recommit. A resolution reported from the Rules Committee could also be used to structure floor debate.

If the House approves the impeachment resolution, it will appoint managers to present and argue its case against the federal officer in front of the Senate.

Contents

Introduction 1
Overview 1
Initiation of the Process 2
Introduction of a Simple Resolution 2
Raising a Question of the Privileges of the House 2
Outside and Preliminary Investigations 3
Authorization of Committee Investigation 3
Committee Action 5
Investigation and Hearings 6
Markup of Articles of Impeachment 7
Member Access to Information Prior to Full House Consideration 8
Consideration of Articles of Impeachment on the House Floor 9
Reported by the Judiciary Committee 9
Offered on the Floor as a Question of the Privileges of the House 11
Appointment and Role of House Managers in the Senate Trial 12

Contacts

Author Information 13

Introduction

The U.S. Constitution establishes a two-step process for the House and Senate to remove federal officials—including the President, Vice President, judges, and other civil officers—for "Treason, Bribery, or other high Crimes and Misdemeanors." Under the Constitution, the House alone has the power to formally charge—that is, impeach—a federal official.[1] A House majority can accomplish this by adopting articles of impeachment, which are effectively written accusations (similar to an indictment in ordinary criminal proceedings). The Senate alone has the power to try an impeachment and render a verdict regarding whether the individual should be removed from office and possibly barred from holding future office.[2] Two-thirds of Senators voting must agree to convict and remove an official from office. The Senate could also separately decide to disqualify an officer from holding future federal office. Disqualification requires only a majority vote.

The procedures the House has developed for accomplishing this constitutional responsibility are described below. The House has used this process mostly to impeach federal judges, although the House has also impeached two Presidents and one cabinet official. The Senate has voted to remove eight of these officials, and all of them were federal judges.[3]

The summary of the rules and procedures the House might use to impeach a federal official presented here is drawn from published sources of congressional rules and precedents, as well as the public record of past impeachment proceedings. It relies as well upon in-depth research conducted by Betsy Palmer and Susan Navarro Smelcer, formerly of CRS, on the practice in both chambers with respect to the impeachment of federal judges. This report provides an overview of the procedures and should not be treated or cited as an authority on congressional proceedings. Consultation with the Parliamentarian of the House is always advised regarding the possible application of rules and precedents.

For more information on impeachment, including a discussion of which federal officers are subject to impeachment and possible grounds for impeachment, see CRS Report R44260, *Impeachment and Removal*, by Jared P. Cole and Todd Garvey.

Overview

The impeachment process may be initiated as the result of various actions and events, including the receipt and referral of information from an outside source, investigations by congressional committees under their general authority, or the introduction of articles of impeachment in the form of a House resolution.

Regardless of what might instigate an inquiry into whether impeachment is warranted, there are normally three formal stages of congressional action. First, an impeachment inquiry is authorized, and this is most often accomplished through the adoption of a simple resolution (H.Res.___) directing the Judiciary Committee to investigate an official. Second, the committee conducts its investigation, prepares articles of impeachment, and reports them to the House. Third, the full House considers the articles of impeachment and, if they are adopted, appoints managers from the

[1] U.S. Const. art. 1, §2, cl. 5.

[2] U.S. Const. art. 1, §3, cl. 6.

[3] Charles W. Johnson, John V. Sullivan, and Thomas J. Wickham, Jr., *House Practice: A Guide to the Rules, Precedents, and Practices of the House* (Washington: GPO, 2017) (hereinafter, *House Practice*), p. 604.

committee to present the articles in the Senate. As discussed in detail below, the House relies upon many of its usual procedures to consider the resolution explicitly initiating an investigation, conduct the investigation, and consider the articles of impeachment.[4]

Initiation of the Process

Introduction of a Simple Resolution

A Member can initiate an impeachment process by drafting a simple resolution and placing it in the House hopper, the way all simple resolutions are submitted to the House. If the resolution directly calls for an impeachment, it will be referred to the Committee on the Judiciary. If it instead calls for an investigation of an official by a standing committee or proposes the creation of a special committee for that purpose, the resolution will be referred to the Committee on Rules, which has jurisdiction over the authorization of committee investigations. No special procedures restrict when such a resolution can be submitted, although historically they have been submitted relatively infrequently.[5]

Raising a Question of the Privileges of the House

A resolution calling for an impeachment can also be offered on the floor by any Member as a question of the privileges of the House instead of being submitted through the hopper. To do so, a Member gives notice of his or her intent to call up such a resolution. The Speaker must then schedule a time to consider the resolution within two legislative days. (The majority and the minority leader do not need to give notice; if either leader raises a qualifying question of privileges of the House on the floor, it is considered immediately.) The full House could dispose of an impeachment resolution raised in this fashion in any number of ways, including by referring it to the Judiciary Committee instead of by voting on the resolution directly. The House could also agree to a motion to table the resolution and thereby dispose of it permanently and adversely.[6]

Impeachment has been attempted using this method in recent years,[7] but none of the attempts has resulted in approval of articles of impeachment. In cases in which an official has been impeached, the House has always chosen to conduct an investigation first. A resolution offered from the floor

[4] This report assumes some familiarity with the procedures of the House of Representatives. For an introduction to these procedures, see CRS Report 95-563, *The Legislative Process on the House Floor: An Introduction*, by Christopher M. Davis.

[5] From 1789 to 2011, Members attempted to initiate impeachment resolutions against federal judges 98 times (see CRS Report R41110, *The Role of the House of Representatives in Judicial Impeachment Proceedings: Procedure, Practice, and Data*, by Betsy Palmer, p. 3), and no resolutions impeaching federal judges have been introduced since then. Since 1789, Members have attempted to initiate impeachment proceedings against at least 11 Presidents. Archived CRS Report 98-763, *Congressional Resolutions on Presidential Impeachment: A Historical Overview*, by Stephen W. Stathis and David C. Huckabee (available from the authors), identifies nine Presidents with proposed articles of impeachment filed against them from 1789 to 1998, and data from LIS.gov identifies additional resolutions submitted since 1998.

[6] For more information on this process, see CRS Report R44005, *Questions of the Privileges of the House: An Analysis*, by Megan S. Lynch.

[7] See, for example, H.Res. 705 and H.Res. 646 (both President) in the 115th Congress; H.Res. 828 (IRS Commissioner) in the 114th Congress; H.Res. 1345 (President) and H.Res. 799 (Vice President) in the 110th Congress.

that proposed a committee investigation, instead of directly impeaching an officer, would not give rise to a proper question of the privileges of the House.[8]

Outside and Preliminary Investigations

Material related to the conduct of a federal official might reach the House and be referred to committee prior to the adoption of a resolution directing a committee to conduct an investigation. Historically, this has included petitions and materials from citizens. In addition, standing committees, under their general investigatory authority, can seek information and research charges against officers prior to the approval of a resolution to authorize an impeachment investigation.

With respect to federal judges, the Judicial Conduct and Disability Act of 1980 established a process within the judicial branch for responding to complaints about judges. Findings from those investigations could result in the Judicial Conference of the United States informing the House that the impeachment of a judge may be warranted. A letter reporting that the Judicial Conference had reached such a determination would be referred to the Judiciary Committee. Recent impeachments of federal judges were initiated by resolutions submitted after (or near the time of) the receipt of such a determination from the Judicial Conference.[9]

In the last presidential impeachment, a communication from the independent counsel appointed to investigate President Bill Clinton was referred to the Committee on the Judiciary pursuant to an original resolution reported by the Rules Committee.[10] The resolution also directed the Judiciary Committee to review the information from the independent counsel "to determine whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced." The House, in this case, later adopted a resolution reported by the Judiciary Committee to authorize an investigation by the committee.[11]

Authorization of Committee Investigation

If a resolution authorizing an impeachment investigation was introduced through the hopper and referred to the Rules Committee, that committee would then choose whether to report the resolution to the full House for consideration. If reported, the resolution would be privileged, which means a Member could call it up on the floor, though only at the direction of the Rules Committee.[12] The resolution would then be considered under the hour rule, a method of

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[8] See Parliamentarian's Note, U.S. Congress, House, *Deschler's Precedents of the United States House of Representatives*, prepared by Lewis Deschler, 94th Cong., 2nd sess., 1977, 94-661 (Washington: GPO, 1977) [hereinafter *Deschler's Precedents*], vol. 3, ch. 14, §5.8, pp. 480-481.

[9] CRS Report R41110, *The Role of the House of Representatives in Judicial Impeachment Proceedings: Procedure, Practice, and Data*, by Betsy Palmer, pp. 4-5.

[10] H.Res. 525, 105th Congress. The resolution was privileged for consideration under House Rule XIII, clause 5(a)(4). See also H.Rept. 105-703. The independent counsel had been appointed pursuant to the Ethics in Government Act of 1978. The original law provided that the authority to appoint an independent counsel would expire after five years. The provisions were reauthorized in 1983, 1987, and 1994 but were allowed to expire in 1999. For more information, see archived CRS Report RL30092, *Independent Counsel Statute: Considerations in the Decision on Reauthorization*, by Jack Maskell (available from the author).

[11] H.Res. 581, 105th Congress. "Authorizing the Committee on the Judiciary to Investigate Whether Sufficient Grounds Exist for the Impeachment of William Jefferson Clinton, President of the United States," *Congressional Record*, daily edition (October 8, 1998), pp. H10015-H10032.

[12] The resolution is subject to the one legislative day availability requirement of Rule XIII, clause 6.

considering legislation in the House that permits Members to speak for up to an hour—but also allows a numerical majority to vote to end debate and limit the opportunity for amendment.[13] Specifically, the Member who called up the resolution would be recognized for one hour. Debate on the resolution would likely last for that hour or even less, because a majority in the House could agree to order the previous question on the resolution. When the House votes to order the previous question, it ends debate and any opportunity for amendment. A motion to recommit the resolution with or without instructions could be offered after the previous question was ordered, but it would not be debatable.[14] The House could also, however, choose to consider the resolution under any of its other regular processes, including suspension of the rules (requiring a two-thirds vote for passage), a rule from the Rules Committee (requiring only a majority vote), or unanimous consent.

The two most recent resolutions adopted by the House to authorize an impeachment investigation were taken up by unanimous consent at the request of the Rules Committee chair.[15] Rather than convene a committee meeting to order the resolutions reported with a quorum present, the chair asked unanimous consent that the House discharge the Rules Committee and agree to the resolution. Both of these resolutions concerned federal judges, and they were agreed to without debate.

In the case of the most recent authorization of a presidential impeachment inquiry, the full House did debate the resolution. As mentioned above, pursuant to a resolution agreed to by the House, the Judiciary Committee reviewed material submitted by an independent counsel appointed to investigate President Bill Clinton. The Judiciary Committee then reported a resolution (H.Res. 581, 105th Congress) authorizing an investigation into whether sufficient grounds existed for the impeachment of the President. The resolution was privileged for immediate consideration.[16] The chair of the Judiciary Committee called up the resolution and asked unanimous consent that instead of being recognized for the normal one hour, his time be extended to two hours, half of which he would yield to the ranking member of the Judiciary Committee for purposes of debate only. After debate under the terms of this unanimous consent agreement, the House ordered the previous question on the resolution by voice vote, ending further debate of the resolution. A minority-party Representative offered a motion to recommit, and, pursuant to a unanimous consent agreement, the motion was debated for 10 minutes before being defeated on a roll call

[13] For more information, see CRS Report 98-427, *Considering Measures in the House Under the One-Hour Rule*, by James V. Saturno.

[14] The 10 minutes of debate authorized under Rule XIX, clause 2(b)(1), for a motion to recommit applies only to a bill or joint resolution, not to a simple or concurrent resolution. For more information on the motion to recommit with or without instructions, see CRS Report R44330, *The Motion to Recommit in the House of Representatives*, by Megan S. Lynch.

[15] See H.Res. 424, 111th Congress, Authorizing and directing the Committee on the Judiciary to inquire whether the House should impeach Samuel B. Kent, a judge of the United States District Court for the Southern District of Texas, and H.Res. 1448, 110th Congress, Authorizing and directing the Committee on the Judiciary to inquire whether the House should impeach G. Thomas Porteous, a judge of the United States District Court for the Eastern District of Louisiana.

[16] See Parliamentarian's Note, *Deschler's Precedents,* vol. 3, ch. 14, §5.8, pp. 480-481, and §7.4, p. 513. If resolutions of impeachment have been referred to a committee, then that committee may report and call up as privileged for immediate consideration resolutions that are "incidental to the consideration of the impeachment question." The resolution was reported as a question of the privileges of the House under Rule IX, and the written report accompanying the resolution was not subject to the availability requirement of House Rule XI. See U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States One Hundred Fifteenth Congress*, prepared by Thomas J. Wickham, 114th Cong., 2017, H.Doc. 114-192 (Washington: GPO, 2017), §850, pp. 655, 657.

vote. As noted, absent this unanimous consent agreement, the motion to recommit would not have been debatable. The resolution was then agreed to by a record vote, 258-176.

In the 93rd Congress (1973-1974), multiple resolutions to impeach President Richard M. Nixon were introduced and referred to the Judiciary Committee. The committee began an examination of the charges against the President under its general investigatory authority. The House also approved a resolution, reported by the House Rules Committee, providing additional investigation authority that did not specifically mention impeachment.[17] In late 1973, the House agreed to another resolution that provided for additional expenses of the committee, and floor debate and the report from the Committee on House Administration indicate that the funds were intended in part for the impeachment inquiry.[18] On February 1, 1974, the Judiciary Committee reported an original resolution (H.Res. 803; H.Rept. 93-774) mandating an investigation to determine whether the House should impeach President Nixon and continuing the availability of funds. On February 6, 1974, the chairman of the Judiciary Committee called up the resolution as a question of privilege.[19] It was debated under the hour rule, with the Chairman yielding time to other Members for purposes of debate only. The Judiciary Committee Chair moved the previous question before any other Member was recognized to control time under the hour rule, and the House ordered the previous question 342-70. The resolution authorizing the investigation was then agreed to, 410-4.[20]

Committee Action

The standing rules of the House that affect committee investigations apply as well to impeachment investigations by the Judiciary Committee. A resolution authorizing an impeachment investigation might place additional limitations, or grant additional authorities, to the committee. In addition, the committee itself might adopt rules specific to an impeachment inquiry.[21] It has not been unusual for the Judiciary Committee to authorize subcommittees or to create task forces to conduct impeachment investigations, and in that case the full committee would establish the authority of the subcommittee or task force.

[17] H.Res. 74, 93rd Congress, "Authorizing Committee on the Judiciary to Conduct Studies and Investigations," *Congressional Record*, vol. 119 (February 28, 1973), p. 5933.

[18] See H.Res. 702, 93rd Congress, reported by the Committee on House Administration, *Congressional Record*, vol. 119 (November 15, 1973), pp. 37141-37151; and U.S. Congress, House Committee on House Administration, *Providing Funds for the Committee on the Judiciary*, 93rd Cong., 1st sess., November 14, 1973, H.Rept. 93-641 (Washington: GPO, 1973), p. 2.

[19] *Deschler's Precedents*, vol. 3, ch. 14, §5.8, pp. 480-481 and §7.4, p. 513.

[20] "Investigatory Powers of Committee of the Judiciary with Respect to Its Impeachment Inquiry," *Congressional Record*, vol. 120 (February 6, 1974), pp. 2350-2363.

[21] In 1974, the Judiciary Committee unanimously adopted procedures for the Nixon impeachment inquiry concerning, for example, the presentation of evidence by committee counsel and the opportunity for the President's counsel to respond. For the full procedures, see *Deschler's Precedents*, ch. 15, §6.5, pp. 498-499. For procedures concerning the confidentiality of evidence and other materials, see ch. 14, §6.9, pp. 503-504. In 1998, the committee approved procedures for the Clinton impeachment inquiry modelled after these procedures. See U.S. Congress, House Committee on the Judiciary, *Authorization of an Inquiry Into Whether Grounds Exist for the Impeachment of William Jefferson Clinton, President of the United States; Meeting of the House Comm. on the Judiciary Held October 5, 1998; Presentation by Inquiry Staff Consideration of Inquiry Resolution Adopting Inquiry Procedures*, committee print, 105th Cong., 2nd sess., December 1998, Committee Print Ser. No. 8 (Washington: GPO, 1998).

Investigation and Hearings

Under House Rule XI, committees have the authority to subpoena persons or written records, conduct hearings, and incur expenses (including travel expenses) in connection with investigations.[22] Rule XI, clause 2(h)(2), requires two committee members to take testimony or receive evidence. In past impeachment proceedings, the House has agreed to resolutions authorizing committee staff to take depositions without Members present, and the Judiciary Committee has agreed to internal guidelines for the mode and conduct of depositions.[23] In the 116th Congress, pursuant to H.Res. 6, the chairs of all standing committees (except the Rules Committee) as well as the Permanent Select Committee on Intelligence may order the taking of depositions by committee counsel. In modern practice, the federal official under investigation is generally allowed certain rights, including the right to be represented by counsel.

If a committee were to conduct hearings, these proceedings would generally be governed by House and committee rules (and any specific rules agreed to in the authorizing resolution). Under House Rule XI, notice of hearings must be provided one week in advance, and members of the committee are guaranteed the right to question witnesses under the five-minute rule.

Hearings are generally public, but they could be closed pursuant to regular House rules that allow the committee to agree, by holding a vote in public session with a majority of the committee present, to close a hearing for three specific reasons: the evidence or testimony would endanger national security, compromise sensitive law enforcement information, or would tend to "defame, degrade, or incriminate the witness."[24] Again, the resolution authorizing an impeachment investigation could alter these procedures.

The Judiciary Committee conducted multiple public hearings in connection with the impeachment of federal judges in 2009.[25] The committee had created a task force to investigate whether two federal judges should be impeached. The task force conducted hearings during which they heard from a variety of witnesses, including law professors with expertise on impeachable offenses, individuals with information about the crimes the judges were accused of committing, and task force attorneys who reported on the status of the investigation.

In 1998, the Judiciary Committee held four hearings in connection with the impeachment of President Clinton. The committee received testimony from 19 experts on the history of impeachment at one hearing and from the independent counsel at another. Various witnessed testified at a third hearing on the consequences of perjury and related crimes. Over two days of hearing in early December 1998, at the request of the Administration, the committee also heard testimony from White House counsel.[26]

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[22] For more information on subpoenas, see CRS Report R45653, *Congressional Subpoenas: Enforcing Executive Branch Compliance*, by Todd Garvey.

[23] *House Practice*, p. 616. See, for example, H.Res. 424 in the 111th Congress. See also the remarks of the Rules Committee ranking member that he did not object to approval of H.Res. 424 because he had secured a commitment from the Judiciary Committee that the committee would agree to internal guidelines regarding staff depositions that would protect the minority. *Congressional Record*, daily edition, vol. 155 (May 12, 2009), p. H5444.

[24] See House Rule XI, clause 2(g)(2)(B)(i) and clause 2(k)(5).

[25] U.S. Congress, House Committee on the Judiciary, Task Force on Judicial Impeachment, *To Consider Possible Impeachment of United States District Judge Samuel B. Kent of the Southern District of Texas*, 111th Cong., 1st sess., June 3, 2009, H.Hrg. 111-11 (Washington: GPO, 2009). U.S. Congress, House Committee on the Judiciary, *Impeachment of G. Thomas Porteous, Jr., Judge of the United States District Court for the Eastern District of Louisiana*, 111th Cong., 2nd sess., March 4, 2010, H.Rept. 111-427 (Washington: GPO, 2010), pp. 11-12.

[26] U.S. Congress, House Committee on the Judiciary, *Impeachment of William Jefferson Clinton, President of the*

In recent decades, it has been more common than not that a congressional committee used information provided from another outside investigation. In four of the five judicial impeachment investigations undertaken by the Judiciary Committee since 1980, "the accused judge had either been subject to a federal criminal trial or pled guilty to a federal criminal charge prior to the initiation of impeachment proceedings in the House."[27] In the case of the impeachment of President Bill Clinton, as mentioned above, the results of an independent counsel investigation alleging impeachable offenses were submitted to the House and referred to the Judiciary Committee.

Markup of Articles of Impeachment

A committee charged with investigating impeachable offences might, after conducting its investigation and reviewing any evidence submitted from other investigations, meet to consider articles of impeachment, and such a meeting is referred to as a markup. The articles of impeachment are in the form of a simple resolution (H.Res.___).[28] The procedures for considering and reporting out an impeachment resolution are the same as those used for other legislation.[29] Notice must generally be given of the proposed meeting, and the text of the articles of impeachment must generally be available 24 hours in advance of the meeting, although House Rule XI, clause 2 (g)(3)(B), provides some exceptions to these requirements. Members of the committee could expect an opportunity to offer amendments to the articles of impeachment, which would be debated under the five-minute rule. Importantly, a majority of the committee must be physically present at the time of the vote to report. Alternatively, after an investigation, the committee might also choose to report a recommendation that impeachment was not warranted.[30]

In the case of the two most recent presidential impeachments, the Judiciary Committee held a public, televised markup of the impeachment articles for several days. A motion to recommend a resolution to impeach President Nixon was considered by the Judiciary Committee for six days at the end of July 1974. The committee agreed to special procedures for the markup, such as a 10-hour period for "general debate," and each article of impeachment was considered separately for amendment. The resolution included two articles of impeachment, which were both agreed to, as amended. A third article of impeachment was proposed as an amendment and agreed to, and two additional articles offered as amendments were rejected.[31] The President resigned before the committee reported an impeachment resolution to the full House.

United States, 105th Cong., 2nd sess., December 16, 1998, H.Rept. 105-830 (Washington: GPO, 1998), pp. 127-128.

[27] CRS Report R41110, *The Role of the House of Representatives in Judicial Impeachment Proceedings: Procedure, Practice, and Data*, by Betsy Palmer, p. 12. See pages 4-5 of this report as well for a description of the judicial branch process that can result in the Judicial Conference of the United States certifying to the House that the impeachment of a judge may be warranted.

[28] Four of the last five resolutions that led to an impeachment were first introduced and referred to the Judiciary Committee and then were reported. See H.Res. 1031 and H.Res. 520, 111th Congress; H.Res. 87, 101st Congress; and H.Res. 499, 100th Congress. All concerned the impeachment of judges. The fifth, to impeach the President, H.Res. 611, 105th Congress, was reported as an original measure from the committee.

[29] For details, see CRS Report RL30244, *The Committee Markup Process in the House of Representatives*, by Judy Schneider.

[30] The Judiciary Committee might also choose to take no action on impeachment resolutions referred to it. On past occasions, a committee investigating impeachment has recommended censure.

[31] U.S. Congress, House Committee on the Judiciary, *Impeachment of Richard M. Nixon, President of the United States*, 93rd Cong., 2nd sess., August 20, 1974, H.Rept. 93-1305 (Washington: GPO, 1974), pp. 9-11.

In 1998, the Judiciary Committee considered articles impeaching President Clinton for three days in December under procedures modelled after those used in 1974. A unanimous consent agreement provided that the four articles of impeachment included in the chairman's draft resolution would be debated, amended, and voted on separately.[32] Each member of the committee was allotted 10 minutes for an opening statement. The committee considered and agreed to an amendment to Article I and an amendment to Article IV. All four articles were agreed to, and (105th Congress) was reported to the House. A written report was prepared and several Members submitted additional, minority, and dissenting views, a right protected under House Rule XI, clause 2(l), if notice of intent is given at the time a committee approves a matter.

Member Access to Information Prior to Full House Consideration

Under House Rule XI, clause 2(e), committee records are the property of the House, and all Members can have access to them. The committee may, however, place reasonable restrictions on where, when, and how Members might access the records. In addition, access to committee investigatory material might be limited, at least for a time, while the committee determines if it qualifies as a committee record under House Rule XI, and, if so, if release is prohibited pursuant to other House rules. A committee might also take actions to protect the confidentiality of investigative materials.

The primary mechanism by which an investigating committee can and has chosen to limit access to inquiry information is through the use of executive—or closed—session. Under House Rule XI, clause 2(g)(1), a committee can operate in executive session by majority vote, a quorum being present, to restrict attendance at a business session to only committee members or others authorized by the committee.[33] Similarly, a committee can receive evidence or testimony as if in executive session, which, under Rule XI, clause 2(k)(7), may only be released through authorization by the committee.[34] Even when access to information received in executive session is granted to Members, the material may be subject by the committee to further conditions under which it may be viewed. In addition, the copying, releasing, or taking notes on materials received in executive session is strictly prohibited without permission of the committee.[35] Executive sessions were periodically used during the inquiries into Presidents Nixon and Clinton.

Further restrictions on access to information can be adopted by the House or the investigating committee. As previously mentioned, the Judiciary Committee adopted special procedures by unanimous consent in 1974 that, among other provisions, limited access to information to select

[32] The unanimous consent agreement had provided that if any article of impeachment was agreed to, the motion to favorably report the resolution "shall be considered as adopted and the Chairman shall report to the House said resolution of impeachment, together with such articles as have been agreed to." U.S. Congress, House Committee on the Judiciary, *Impeachment of William Jefferson Clinton, President of the United States*, 105th Cong., 2nd sess., December 16, 1998, H.Rept. 105-830 (Washington: GPO, 1998), p. 128.

[33] Clause 2(g)(1) of the rule specifies that entering into executive session is warranted when "disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, would tend to defame, degrade, or incriminate any person, or otherwise would violate a law or rule of the House."

[34] House Rule XI, clause 2(k)(7). See Parliamentarian's Note, *Deschler's Precedents*, vol. 3, ch. 14, §6.9, p. 2052, which references a failed attempt by Representative John Erlenborn to access Judiciary Committee files regarding the impeachment inquiry into President Nixon on the grounds that "all Members of the House have access to [committee] records" pursuant to clause 2(e)(2)(A) of the rule. See also *Deschler's Precedents*, vol. 3, ch. 14, §18.2, pp. 2714-2715.

[35] See, U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States 115th Congress*, prepared by Thomas J. Wickham, 114th Cong., 2nd sess., H.Doc. 114-192 (Washington: GPO, 2017) (hereinafter *House Manual*), §§796-797.

individuals within the committee and laid out rules for staff.[36] As a precursor to the formal impeachment inquiry of President Clinton, the House agreed to H.Res. 525 during the 105th Congress directing the Judiciary Committee to review the independent counsel's report to Congress to determine if impeachment proceedings were warranted. Section 4 of the resolution limited access to executive session material to the Judiciary Committee and employees designated by the chairman and ranking member—a more strict requirement than called for under House Rule XI.[37] Notably, the resolution also made 445 pages of the independent counsel's report immediately available to the public and set a deadline by which the rest of the report would be released from its executive session status based on recommendations by the committee.[38] Prior to the adoption of H.Res. 525, House leadership reportedly discussed at length the issue of access to the independent counsel report by the public, the President, and Members of the House.[39]

Consideration of Articles of Impeachment on the House Floor

Although floor consideration of an impeachment resolution largely resembles floor consideration of legislation, there is one difference regarding disorderly language: Under regular House procedures, it is not in order to use language that is personally offensive toward the President, which would include accusations that the President committed a crime or allusions to unethical behavior. During consideration of an impeachment resolution, however, remarks in debate can refer to the alleged misconduct of the President that is under consideration by the House.[40] Members should still abstain from other language "personally offensive" to the President.[41]

Reported by the Judiciary Committee

Articles of impeachment reported by the Judiciary Committee are privileged for immediate consideration on the House floor. The chair of the committee (or a designee) could call up the resolution containing the articles at any time other business is not pending, and the resolution would be considered immediately under the hour rule. Under this procedure, a majority of the House controls the length of debate and can prevent amendment. After some debate, the majority

[36] See footnote 16. Among the procedures adopted by the committee, initial access to all information was restricted to the committee's chair, ranking member, special counsel, and minority counsel. The rules for inquiry staff went into detail about security for the workspace, including requiring the posting of a guard 24 hours a day and allowing for the review of sensitive material only under supervision within a secured workspace. The Judiciary Committee would adopt special procedures during the impeachment inquiry into President Clinton in 1998 modeled after the Nixon procedures. However, unlike in 1974, the Clinton procedures did not limit access to information within the committee, nor did it prescribe particular rules for staff.

[37] H.Res. 525, 105th Congress.

[38] The committee met in executive session to vote on proposals to keep certain materials in executive session, redact portions of the report prior to being made public, and offer potential alternative timelines for releasing information. See U.S. Congress, House Committee on the Judiciary, *Votes of the Committee in Executive Session Pursuant to* H.Res. 525, committee print, 105th Cong., 2nd sess., September 17, 18, 25, 1998, (Washington: GPO, 1998).

[39] See U.S. Congress, House Committee on the Judiciary, *Impeachment of William Jefferson Clinton, President of the United States*, report to accompany H.Res. 611, 105th Cong., 2nd sess., December 16, 1998, H.Rept. 105-930 (Washington: GPO, 1998), pp. 123-126. For further discussion, see William McKay and Charles W. Johnson, *Parliament and Congress* (Oxford: Oxford University Press, 2010), pp. 507-508.

[40] *House Manual*, §370.

[41] For more information and precedents concerning language considered personally offensive toward the President, see *House Manual*, §370, and *House Practice*, pp. 412-13.

could vote to order the previous question, which, as mentioned above, brings the House to an immediate vote on the main question: whether to agree to the impeachment resolution, in this case. Passage is by simple majority vote.

A motion to recommit the impeachment resolution, with or without instructions, would be in order after the previous question was ordered but before the vote on the resolution. This motion, however, would not be subject to debate. As is always the case, any instructions in the motion to recommit must be germane to the resolution.[42]

In the two most recent instances in which the House considered an impeachment resolution of a federal judge, the resolution was called up as privileged and debated for an hour, and no Member offered a motion to recommit. In both cases, a Member demanded a division of the resolution, which allowed the House to vote separately on each article of impeachment.[43]

When the House considered a resolution (H.Res. 611, 105th Congress) to impeach President Clinton, the reported resolution was called up as a question of privilege. A unanimous consent request propounded by the majority floor manager that provided for four hours of debate on the resolution, equally divided, and 10 minutes of debate on a motion to recommit was objected to. The House then considered the resolution for several hours, as no Member moved the previous question, until another unanimous consent agreement was propounded and agreed to. This agreement allowed debate to continue until 10 p.m. that night and provided for an additional hour of debate the next day, a Saturday. It further provided that if a motion to recommit with instructions was offered, it would be debatable for 10 minutes.[44]

On the second day of consideration, after the previous question was ordered, a Member moved to recommit the impeachment resolution with instructions. The instructions proposed an amendment to censure the President. The Speaker, however, ruled that the amendment in the instructions was not germane. The House sustained the ruling of the Speaker by voting to table an appeal. A Member demanded a division of the resolution, and the House agreed to two of the four articles of impeachment under consideration.[45]

In the case of the Nixon impeachment proceedings, the full House never acted on a resolution of impeachment. As noted, President Nixon resigned before the Judiciary Committee reported its recommendation that the President be impeached. The House approved a resolution using the suspension of the rules procedure acknowledging that the Judiciary Committee had approved articles of impeachment, commending the members of the Judiciary Committee for their work, and providing for the printing of its report.[46]

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[42] For more information, see CRS Report R44330, *The Motion to Recommit in the House of Representatives*, by Megan S. Lynch.

[43] See consideration of H.Res. 1031 (111th Congress), "Impeaching Judge G. Thomas Porteous, Jr.," *Congressional Record*, daily edition, March 11, 2010, pp. H1327-1337 and of H.Res. 520 (111th Congress), "Impeaching Judge Samuel B. Kent," *Congressional Record*, daily edition (June 19, 2009), pp. H7053-H7067.

[44] "Privileges of the House—Impeaching William Jefferson Clinton, President of the United States, for High Crimes and Misdemeanors," *Congressional Record*, daily edition (December 18, 1998), p. H11792.

[45] "Privileges of the House—Impeaching William Jefferson Clinton, President of the United States, for High Crimes and Misdemeanors," *Congressional Record*, daily edition (December 19, 1998), pp. H11968-H12042.

[46] The Judiciary Committee agreed to articles of impeachment in late July 1974. Before the committee actually reported a resolution impeaching President Richard M. Nixon, however, the President resigned on August 9, 1974. On August 20, 1974, the Judiciary Committee chair submitted a privileged report to the House summarizing the committee's investigation and including the adopted articles of impeachment. The report was filed without an accompanying resolution of impeachment. The House, also on August 20, 1974, suspended the rules and agreed to H.Res. 1333, a resolution introduced by the Speaker that accepted the Judiciary Committee's report and provided for its printing. See

Rather than considering an impeachment resolution under the hour rule, the House could also choose to consider an impeachment resolution under the terms of a resolution reported by the Rules Committee (a special rule). This process would operate in the same two-step way it does for major legislation in the House.[47] The House would first debate the Rules Committee–reported resolution setting the terms for consideration of the impeachment resolution. The rule from the Rules Committee could provide for a particular length of debate, structure any amendment process, and potentially structure voting to allow each article to be voted on separately. It could preclude motions that would otherwise be in order under the hour rule, such as a motion to table the resolution. After the House agreed to the rule, it would then consider the impeachment resolution under the terms established by that rule.

Finally, consideration and debate of an impeachment resolution could be governed by a unanimous consent agreement. The House might take up the resolution by unanimous consent or call it up as a question of privilege and change the terms of its consideration by unanimous consent, such as was described above in the case of the Clinton impeachment resolution. A unanimous consent agreement can structure consideration just like a special rule, but it is agreed to without a vote and usually with little or no floor debate. The major difference is that, procedurally, it is necessary for all Representatives to support a unanimous consent agreement, while only a simple majority is necessary to agree to a special rule. The fact that the same terms for consideration could be established through a rule can influence unanimous consent agreements.

Offered on the Floor as a Question of the Privileges of the House

As described in an earlier section of this report, any Member of the House could also offer on the floor a resolution containing articles of impeachment as a "question of the privileges of the House." Taking this action will not necessarily result in a direct vote on the articles of impeachment or even debate of the articles, because the House could choose instead to take a different action on the resolution, such as to refer it to the Judiciary Committee.

To raise a question of the privileges of the House, a Member would take the following steps:

- Draft a new, unnumbered resolution containing articles of impeachment.
- Consult with the Office of the House Parliamentarian to ensure that the resolution qualifies as a question of the privileges of the House.
- On the House floor, rise to give notice of intent to offer a question of the privileges of the House. The Member giving notice reads the draft resolution in full on the floor. (The majority and minority leader do not need to give notice; a question of the privileges of the House raised by either leader would be considered immediately.) The Speaker is required to schedule consideration of the question of the privileges of the House within two legislative days.[48]
- At a time scheduled by the Speaker, rise to offer the resolution as a question of the privileges of the House. The Speaker will rule as to whether the resolution constitutes a proper question of the privileges of the House. If it does, the

"Report on Committee on the Judiciary," *Congressional Record* (August 20, 1974), pp. 29361-29362.

[47] For more information, see CRS Report R43424, *Considering Legislation on the House Floor: Common Practices in Brief*, by Elizabeth Rybicki, pp. 2-5.

[48] A "legislative day" begins when the House convenes after an adjournment and ends when the House adjourns. Legislative days almost always correspond with calendar days that the House is in session.

resolution will be assigned a number and will be pending before the House for consideration.[49]

A question of the privileges of the House is considered under the hour rule. Often, the House votes to dispose of such resolutions by referring them to committee or by tabling them. The House could also order the previous question to end debate on the resolution and then vote directly on it. However, the House has never impeached an officer without a committee investigation.[50]

Appointment and Role of House Managers in the Senate Trial

After the House has agreed to articles of impeachment, it then appoints Members to serve as managers in the Senate trial. In recent practice, the House has appointed managers by agreeing to a House resolution. The House also, by resolution, informs the Senate that it has adopted articles of impeachment and authorizes the managers to conduct the trial in the Senate. The House could agree to separate resolutions or, as has been the case with recent impeachments, to a single resolution accomplishing each of these purposes.[51] Such resolutions are privileged, and sometimes they have been taken up and agreed to by unanimous consent.

After the Senate receives the resolution(s) from the House, the Senate informs the House when the managers can present the articles of impeachment to the Senate. At the appointed time, the House managers read the resolution authorizing their appointment and the resolution containing the articles of impeachment on the Senate floor and then leave until the Senate invites them back for the trial. At the trial, the House managers, who might be assisted by outside counsel, present evidence against the accused and could be expected to respond to the defense presented by the accused (or his or her counsel) or to questions submitted in writing by Senators.

[49] For additional information, including floor scripts, see CRS Report R44005, *Questions of the Privileges of the House: An Analysis*, by Megan S. Lynch.

[50] The House of Representatives has impeached 19 individuals since 1789. Of those, 15 saw investigations conducted by the Judiciary Committee in some form (whether by the full committee, a subcommittee, or selected Members acting under the authority of the Judiciary Committee). The Judiciary Committee was not the body to conduct an impeachment inquiry in four instances. The three earliest cases all predated the existence of the Judiciary Committee, which formed in 1813; the fourth related to the impeachment of William W. Belknap in 1876, which resulted from a broader investigation by the Committee on Public Expenditures "into any errors, abuses, or frauds that may exist in the administration" (see III *Hinds' Precedents of the House of Representatives*, §2444 [1907]). A complete list of individuals impeached by the House of Representatives can be found on the House Office of the Historian's webpage at https://history.house.gov/Institution/Impeachment/Impeachment-List/.

[51] See, for example, H.Res. 565, 111th Congress, Appointing and authorizing managers for the impeachment of Samuel B. Kent, a judge of the United States District Court for the Southern District of Texas; H.Res. 1165, 111th Congress, Appointing and authorizing managers for the impeachment of G. Thomas Porteous, Jr., a Judge for the United States District Court for the Eastern District of Louisiana, and H.Res. 10, 106th Congress, Appointing the authorizing managers for the impeachment trial of William Jefferson Clinton, President of the United States.

A full description of Senate procedures in an impeachment trial is beyond the scope of this report.[52] The Senate has a special set of rules—agreed to in the 19th century—that provide some guidance for impeachment trial proceedings.[53] However, in modern practice the Senate has agreed to alternative or supplemental procedures both for judicial impeachment trials and the impeachment trial of President Clinton.[54]

The 19th-century impeachment trial rules seemingly require a series of actions by the Senate upon the receipt of articles of impeachment from the House. The Senate, however, just like the House, can set aside its rules by, for example, agreeing to a simple resolution. Under the regular rules of the Senate that govern consideration of legislation, such a resolution would not be subject to any debate restrictions. As a result, in that circumstance, a cloture process, requiring the support of three-fifths of the Senate, would be necessary to reach a vote on the resolution. But an impeachment trial does not occur under the regular rules of the Senate. In fact, the Senate impeachment trial rules and related precedents restrict debate on many resolutions and motions.[55] The debate restrictions could allow a simple majority to determine the procedures for responding to articles of impeachment sent from the House.

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[52] For a description of the Senate procedures in the impeachment trial of President Clinton, see *House Manual*, §608a. See also CRS Report R41172, *The Role of the Senate in Judicial Impeachment Proceedings: Procedure, Practice, and Data*, by Betsy Palmer.

[53] See U.S. Congress, Senate, *Procedures and Guidelines for Impeachment Trials in the United States Senate*, Revised Edition, prepared by Floyd M. Riddick and Robert B. Dove, 99th Cong., 2nd sess., August 15, 1986, 99-33 (Washington: GPO, 1986).

[54] In the case of the impeachment of President Clinton, the Senate agreed to two resolutions that governed impeachment proceedings: S.Res. 16, 106th Congress, A resolution to provide for the issuance of a summons and for related procedures concerning the articles of impeachment against William Jefferson Clinton, President of the United States; and S.Res. 30, 106th Congress, A resolution relative to the procedures concerning the articles of impeachment against William Jefferson Clinton.

[55] For example, in 1926, after an impeachment trial had begun, the accused judge resigned, and a motion to dismiss the impeachment proceedings was agreed to 70-9. The Vice President stated the motion was not debatable; however, several Senators made statements by unanimous consent. *Congressional Record*, vol. 68 (December 13, 1926), pp. 344-348.

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