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# Impeachment in Vermont (and elsewhere)

# What does it mean to “impeach”?

- ▶ *Black’s Law Dictionary:*

To charge with a crime or misconduct; esp., to formally charge (a public official) with a violation of the public trust

- ▶ *Merriam-Webster:*

To charge with a crime or misdemeanor

Specifically: to charge (a public official) before a competent tribunal with misconduct in office

# Vermont Constitution, Ch. II, §§ 14, 57, 58

## § 14. [Powers of House]

The Representatives so chosen ... shall be styled the House of Representatives: they shall have power to ... *impeach state criminals*.

## § 57. [Impeachments, House may order]

The House of Representatives shall have the power to *order impeachments*, which shall in all cases be by a vote of two-thirds of its members.

## § 58. [Liability to; Senate to try; judgment]

Every officer of State, whether judicial or executive, *shall be liable to be impeached by the House of Representatives*, either when in office or after resignation or removal for maladministration.

The Senate *shall have the sole power of trying and deciding upon all impeachments*. When sitting for that purpose, they shall be on oath, or affirmation, and no person shall be convicted, without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold or enjoy any office of honor, or profit, or trust, under this State. But the person convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

# Typical Impeachment Process: House

- ▶ Identify or create committee to investigate, recommend to House whether to proceed with articles of impeachment
  - ▶ [H.R.11](#) created Special Committee on Impeachment Inquiry to “investigate whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Franklin County State’s Attorney John Lavoie or Franklin County Sheriff John Grismore, or both”
- ▶ Articles of impeachment (if any) introduced by resolution
  - ▶ Includes articles charging (“impeaching”) officer
  - ▶ Calls on Speaker to appoint House members to serve as managers to present resolution and articles of impeachment to Senate
- ▶ After introduction, articles debated on House floor
  - ▶ Resolution (and thus articles) can be amended
- ▶ Articles must be adopted by 2/3 of *members of the House*:  
100+ members

# Typical Impeachment Process: Senate

- ▶ If House impeaches, matter goes to Senate
- ▶ Senate has sole power of trying and deciding whether to convict
  - ▶ Senate adopts rules of impeachment session, including rules of evidence
  - ▶ House managers act as prosecutors; present evidence, call witnesses
  - ▶ Respondent represented by counsel; can present evidence, call witnesses
- ▶ Conviction requires concurrence of  $2/3$  of Senate members *present*
  - ▶ E.g., 30 members present → 20 must concur; 24 members present → 18 must concur
- ▶ Senate's remedies limited to removal from office and disqualification from future office
- ▶ Senate trial *not* a judicial proceeding – at most quasi-judicial; Legislature has sole power over impeachment procedure
  - ▶ Mayo v. State, 138 Vt. 419, 420 (1980).
- ▶ Respondent can be criminally and civilly liable for same conduct <sup>5</sup>

# Historical Vermont Impeachments

- ▶ Few impeachments in Vermont history
- ▶ Most articles of impeachment have cited “maladministration”
  - ▶ Unclear if because of conduct at issue or if based on language in Vt. Const. Ch. II, § 58, “or after removal for maladministration”
  - ▶ Also unclear if reference to “removal for maladministration” still applies or is a relic from 1777 Vermont Constitution
- ▶ Articles usually specify conduct forming basis for charges
- ▶ Most recent impeachment was Washington County Sheriff Malcom Mayo in 1976
  - ▶ House resolution impeached sheriff for “maladministration in office” in violation of his oath and duty
  - ▶ 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
  - ▶ House adopted articles, but Mayo was acquitted in the Senate

# From House Journal: Tuesday, March 9, 1976

## ARTICLE I FALSIFICATION OF REPORTS AND DOCUMENTS

In his conduct of the office of sheriff, Malcolm M. Mayo, in violation of his oath and duty to faithfully execute the office of sheriff and do equal right and justice to all persons, did falsify documents and reports, and did cause others under his authority to falsify documents and reports including:

(1) on May 20, 1975, falsifying the date of the appointment of a Special Deputy following the use of that person as a deputy on a drug raid at Montpelier Junction on May 17, 1975;

(2) ordering a person acting as a deputy to falsify an incident report of a drug raid at Montpelier Junction on May 17, 1975;

(3) falsifying a statement signed by the sheriff and submitted to the Montpelier Police Department regarding an assault by the sheriff on a citizen at the Thrush Tavern in Montpelier on March 25, 1975;

(4) submission of a state police laboratory examination request by the sheriff falsely alleging that marijuana was found on a raid at Montpelier Junction on May 17, 1975

## ARTICLE II FAILURE TO PERFORM FUNCTIONS OF OFFICE

In the conduct of the office of sheriff, Malcolm M. Mayo, in violation of his oath to faithfully execute the office of sheriff did order those under his authority not to perform functions of the office by ordering, on May 28, 1975, to be effective until rescinded, all members of his department not to cooperate with any other law enforcement agency, not to make patrols not to initiate criminal cases, and not to issue traffic citations.

## ARTICLE III BREACH OF DUTY AS A PEACE OFFICER

In his conduct of the office of sheriff, Malcolm M. Mayo, in violation of his oath and duty to faithfully execute the office of sheriff, and in violation of his statutory duty as a peace officer, did breach his duty to preserve the peace and suppress unlawful disorder by:

(1) unjustly and without provocation assaulting a citizen at the Thrush Tavern in Montpelier on March 25, 1975;

(2) under color of the authority of his office, abusing and threatening citizens and a peace officer and hindering efforts to restore peace at the Baggy Knees in Stowe, on February 7 and 8, 1975;

(3) ordering a deputy serving as a legally required security officer at the Village Annex in Waterbury, to abandon his post in retaliation for complaints made of the sheriff's personal conduct on May 30, 1975; *and be it further*

# Historical Vermont Impeachments

- ▶ Few detailed records of earlier impeachments in Vermont history
  - ▶ Only three impeachments resulted in convictions; most recent in 1785
- ▶ In 1800, High Sheriff of Addison County was ordered by 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.”
  - ▶ Upon investigation, House committee found SCOV had approved Sheriff’s accounts, and House voted to take no further action
- ▶ Similar charges and same result in 1799, when Council of Censors ordered High Sheriff of Bennington County 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.”
  - ▶ House appointed committee to investigate; determined charges were “wholly unsupported” and House dismissed Council’s order of impeachment
- ▶ Prior to establishment of Vermont Senate in 1836, impeachments ordered by House were decided by Governor and Executive Council



# Grounds for Impeachment: Arizona

- ▶ Arizona Constitution says “the governor and other state and judicial officers ... shall be liable to impeachment for high crimes, misdemeanors, or malfeasance in office.”
  - Ariz. Const. Art. 8 Pt. 2, § 2.
- ▶ Issues of impeachment and impeachable conduct are generally nonjusticiable political questions
- ▶ In 1989 case involving gubernatorial impeachment, Arizona Supreme Court held that “there is almost unanimous agreement that offenses are impeachable when they ‘involve serious abuse of official power,’” including “‘misapplication of funds, abuse of official power, neglect of duty, encroachment on or contempt of legislative prerogatives, and corruption.’”
  - Meacham v. Arizona House of Representatives, 162 Ariz. 267, 268 (1989) (citing L. Tribe, *American Constitutional Law* § 4-17, at 291 (2d ed. 1988)).<sup>9</sup>

# Grounds for Impeachment: Connecticut

- ▶ No standards or grounds for impeachment in Connecticut Constitution
- ▶ In 1983–1984, Connecticut General Assembly considered impeaching probate judge for mishandling large estate
- ▶ Investigatory committee appointed to investigate, recommend to House whether judge should be impeached
- ▶ Committee’s Final Statement of Information included findings 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.”
- ▶ Committee recommended two articles of impeachment, charging that judge abused the power of, undermined the integrity of, and brought disdain upon the office and trust he held by his actions in his role as a probate judge in the estate, by his failure to supervise employees, and by refusal to cooperate with investigations into his actions
- ▶ Judge resigned before House could vote on articles of impeachment
  - ▶ He was censured by Council on Probate Judicial Conduct for his actions

# Grounds for Impeachment: Nebraska

- ▶ Nebraska Constitution specifies that “[t]he Legislature shall have the sole power of impeachment”; impeachment ordered by unicameral legislature is tried by Nebraska Supreme Court
  - Neb. St. Const. Article III-17.
- ▶ Nebraska Constitution says that officials “shall be liable to impeachment for any misdemeanor in office or for any misdemeanor in pursuit of such office” – Neb. St. Const. Article IV-5.
- ▶ Nebraska Supreme Court identified 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.”
  - Nebraska Legislature ex re. State v. Hergert, 271 Neb. 976, 995–96 (2006) (citing State v. Douglas, 217 Neb. 199, 201 (1984) and State v. Hastings, 55 N.W. 774, 780–781 (1893)).

# Grounds for Impeachment: Texas (general)

- ▶ Texas Constitution does not specify standards or grounds for impeachment
- ▶ Texas Supreme Court held in 1924:

“[T]he 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. 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.”

– Ferguson v. Maddox, 114 Tex. 85, 96-97 (1924).

# Grounds for Impeachment: Texas AG Paxton

- ▶ On May 27, 2023, Texas House adopted [Texas H.R. No. 2377](#), comprising 20 articles of impeachment against Attorney General Ken Paxton:
  1. 7 charges of disregard of official duty;
  2. 1 charge of misapplication of public resources;
  3. 2 charges of constitutional bribery;
  4. 2 charges of obstruction of justice;
  5. 3 charges of making false statements in official records;
  6. 1 charge of conspiracy and attempted conspiracy;
  7. 2 charge of misappropriation of public resources;
  8. 1 charge of dereliction of duty by violating Texas Constitution, his oaths of office, statutes, and public policy against public officials acting contrary to public interest;
  9. 1 charge of unfitness for office; and
  10. 1 charge of abuse of public trust by using, misusing, or failing to use his official powers in manner calculated to subvert lawful operation of Texas government and obstruct 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.

# Grounds for Impeachment: U.S. Officials

- ▶ Article II, Section 4 of U.S. Constitution says federal officials may be “removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”
  - ▶ No specific definition of “other high Crimes and Misdemeanors”
- ▶ According to [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.

# Examples of Federal Impeachment

- ▶ Judge John Pickering impeached by U.S. 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 impeached in 1804 for permitting partisan views to influence his conduct during trials, alleged to be a serious breach of duty to judge impartially and reflected (poorly) on competence to continue to exercise power of his office
- ▶ In 2009, Judge Samuel Kent 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”

# Recent examples of Federal Impeachment

- ▶ U.S. House adopted articles of impeachment against President Trump in 2019 and 2021
- ▶ 2019 resolution had two articles: abuse of power and obstruction of Congress
  - ▶ Abuse of power charge alleged President, “[u]sing the powers of his high office,” solicited Ukrainian interference in 2020 U.S. presidential election, which “compromised the national security of the United States and undermined the integrity of the United States democratic process.”
  - ▶ Obstruction of Congress charge said by directing Executive Branch officials not to comply with subpoenas from congressional committees investigating his interference in 2020 presidential election, he “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.”
- ▶ House agreed to articles on Dec. 18, 2019; Senate adjudged not guilty on Feb. 5, 2020
- ▶ 2021 resolution contained one article of impeachment, incitement of insurrection, alleging that Trump 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
- ▶ House adopted resolution on Jan. 13, 2021; Senate adjudged not guilty on Feb. 13, 2021



# Impeachment is Solely Legislative Power

- ▶ Many ways to frame bases for articles of impeachment, including:
  - ▶ abuse of power
  - ▶ violation of oath of office
  - ▶ violation of public trust
  - ▶ behaving in manner (grossly) incompatible with office
- ▶ Recurring theme is that subject of impeachment has behaved in manner incompatible with position of trust to which official was elected and, for the good of the state (or nation), official should be removed from office
- ▶ Courts recognize impeachment is solely a legislative power
- ▶ Determination of the grounds for impeachment and what constitutes an impeachable offense or impeachable conduct is solely within purview of Legislative Branch