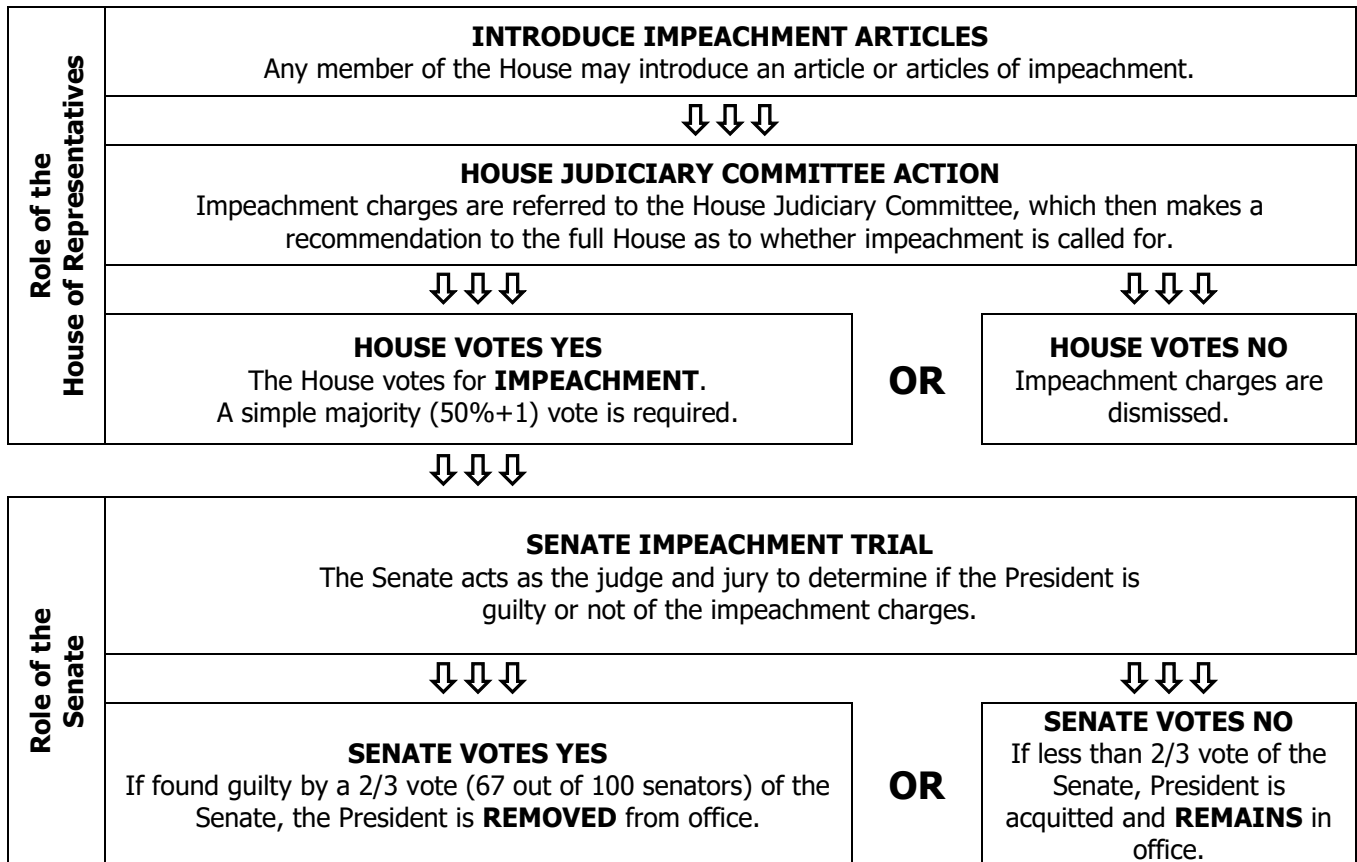


THE IMPEACHMENT PROCESS

The Constitution provides a way to remove federal officials, but it is not an easy process. The House of Representatives may, by majority vote, impeach a federal official (such as the president or federal judges) for "Treason, Bribery, or other high Crimes and Misdemeanors." Once the House impeaches a federal official, the case goes to the Senate, which tries the case. By a two-third vote, the Senate may convict and remove a federal official from office.

Most important thing to remember: Impeach simply means formally accused by the House of Representatives.

What if the President of the United States is impeached? What does this mean? What is the process? Take a look below.



Only three presidents have been impeached:

- 1) Andrew Johnson was impeached by the House in 1868 in the wake of post-Civil War politics for violating the Tenure of Office Act, but the Senate failed to convict him (by a one vote margin) and he remained in office.
- 2) Bill Clinton was impeached by the House in 1998 on two counts: committing perjury and obstructing justice in the investigation of sex scandals surrounding the President's relationships with Paula Jones and Monica Lewinsky. The Senate failed to convict him and he remained in office.
- 3) Donald Trump was impeached by the House in 2019 for seeking to interfere with the 2020 election. The Senate did not convict him. He was impeached *again* in 2021 for "incitement of an insurrection", but was acquitted by the Senate once again.

Wait a minute! Wasn't Richard Nixon impeached? NO! Richard Nixon came close to impeachment when on July 31, 1974, the House Judiciary Committee voted to *recommend* his impeachment to the House as a result of the Watergate scandal. Nixon avoided impeachment by resigning from the presidency a few days later.

HIGH CRIMES AND MISDEMEANORS

The U.S. Constitution provides impeachment as the method for removing the president, vice president, federal judges, and other federal officials from office. The impeachment process begins in the House of Representatives and follows these steps:

1. The House Judiciary Committee holds hearings and, if necessary, prepares articles of impeachment. These are the charges against the official.
2. If a majority of the committee votes to approve the articles, the whole House debates and votes on them.
3. If a majority of the House votes to impeach the official on any article, then the official must then stand trial in the Senate.
4. For the official to be removed from office, two-thirds of the Senate must vote to convict the official. Upon conviction, the official is automatically removed from office and, if the Senate so decides, may be forbidden from holding governmental office again.

The impeachment process is *political* in nature, not criminal. Congress has no power to impose criminal penalties on impeached officials. But criminal courts may try and punish officials if they have committed crimes.

The Constitution sets specific grounds for impeachment. They are “treason, bribery, and other high crimes and misdemeanors.” To be impeached and removed from office, the House and Senate must find that the official committed one of these three acts.

The House has initiated impeachment proceedings more than 60 times but less than a third (19 total) have led to full impeachments. Outside of the 15 federal judges impeached by the House, two Presidents (Andrew Johnson in 1868 and William Jefferson (Bill) Clinton in 1998), a cabinet secretary (William Belknap in 1876), and a U.S. Senator (William Blount of North Carolina in 1797) have also been impeached. To date, the Senate has conducted formal impeachment proceedings 19 times, resulting in 7 acquittals, 8 convictions, 3 dismissals, and one resignation with no further action. Just eight—all federal judges—have been convicted and removed from office by the Senate.

In all the articles of impeachment that the House has drawn, no official has been charged with treason. (The closest to a charge of treason was one federal judge who was impeached and convicted for siding with the South and taking a position as a Confederate judge during the Civil War.) Two officials have been charged with bribery. The remaining charges against all the other officials fall under the category of “high crimes and misdemeanors.”

TREASON

The Constitution defines treason in Article 3, Section 3, Clause 1:

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

BRIBERY

The Constitution does not define bribery. It is a crime that has long existed in English and American common law. It takes place when a person gives an official money or gifts to influence the official’s behavior in office. For example, if defendant Smith pays federal Judge Jones \$10,000 to find Smith not guilty, the crime of bribery has occurred.

HIGH CRIMES AND MISDEMEANORS

What are “high crimes and misdemeanors”? On first hearing this phrase, many people probably think that it is just an 18th century way of saying “felonies and misdemeanors.” Felonies are major crimes and misdemeanors are lesser crimes. If this interpretation were correct, “high crimes and misdemeanors” would simply mean any crime. But this interpretation is mistaken.

As stated in the Constitution: “The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.”

The convention adopted “high crimes and misdemeanors.” Most of the framers knew the phrase well. Since 1386, the English parliament had used “high crimes and misdemeanors” as one of the grounds to impeach officials of the crown. Officials accused of “high crimes and misdemeanors” were accused of offenses as varied as misappropriating government funds, appointing unfit subordinates, not prosecuting cases, not spending money allocated by Parliament, promoting themselves ahead of more deserving candidates, threatening a grand jury, disobeying an order from Parliament, arresting a man to keep him from running for Parliament, losing a ship by neglecting to moor it, helping “suppress petitions to the King to call a Parliament,” granting warrants without cause, and bribery. Some of these charges were crimes. Others were not. The one common denominator in all these accusations was that the official had somehow abused the power of his office and was unfit to serve.

The “high crimes and misdemeanors” that the House charged against these judges included being habitually drunk, showing favoritism on the bench, using judicial power unlawfully, using the office for financial gain, unlawfully punishing people for contempt of court, submitting false expense accounts, getting special deals from parties appearing before the court, bullying people in open court, filing false income tax returns, making false statements while under oath, and disclosing confidential information.

Only three times in American history has the House initiated impeachment charges involving a president — Andrew Johnson in 1868, Richard Nixon in 1974, and Bill Clinton in 1998. It’s important to take a brief look at these three cases to understand how Congress has interpreted “high crimes and misdemeanors.”

ANDREW JOHNSON (1868) – IMPEACHED BY HOUSE, FOUND NOT GUILTY BY THE SENATE

Andrew Johnson was the only senator from a Southern state who stayed loyal to the union during the Civil War. President Abraham Lincoln, seeking to reconcile with the South, tapped Johnson, a Democrat, as his vice-presidential running mate in 1864. When Lincoln was assassinated at the war's end in 1865, Johnson assumed the presidency. He immediately ran into trouble with the Republican-dominated Congress over Reconstruction of the South. The Radical Republicans supported military rule in the South and voting rights and redistribution of land for blacks. Johnson disagreed and favored a quick return to civilian rule. The two sides grew increasingly farther apart as Congress repeatedly passed Reconstruction legislation, Johnson vetoed it, and Congress overrode his veto. Over Johnson's veto, Congress passed a Tenure of Office Act, which required Johnson to get permission from Congress before firing any member of the executive branch who had been approved by Congress. Johnson responded by firing the secretary of war, Edwin Stanton, a Radical Republican. His firing violated the Tenure of Office Act. But Johnson believed the act was unconstitutional. The House passed 11 articles of impeachment. Eight involved Johnson's violations of the Tenure of Office Act. One charged him with sending orders through improper channels. Another accused him of conspiring against Congress, citing a statement he made about Congress not representing all the states. The last summarized the other 10 charges and charged him with failing to enforce the Reconstruction Acts. At the end of the Senate trial, only three charges were brought to a vote. Johnson was saved from conviction on each by one vote.

History has not judged well those who brought the charges against Johnson. The charges are generally seen as politically motivated, based on the extreme disagreement over Reconstruction between Congress and the president. They are not viewed as "high crimes and misdemeanors" worthy of removing a president from office. Most commentators look on this impeachment as a severe threat to the separation of powers.

RICHARD NIXON (1974) – RESIGNED FROM OFFICE BEFORE HE COULD BE IMPEACHED

The next presidential impeachment case did not arise for more than 100 years. Before taking a look at the Nixon impeachment case, it's worth examining a famous comment made a few years before (in 1970) by then-Congressman Gerald Ford, who would later succeed Richard Nixon as president. For years, Ford had urged the House to impeach a liberal justice on the Supreme Court. Although Ford's attempts failed, he uttered memorable words about "high crimes and misdemeanors." He stated that "an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history." Ford argued that "there are few fixed principles among the handful of precedents." In one sense, Ford is right. If the House votes articles of impeachment, the vote cannot be challenged in court. The Constitution gives the House sole authority over impeachment. So if the House votes articles of impeachment *for any reason*, the official is impeached and must stand trial in the Senate. But in another sense, Ford is clearly wrong. The framers of the Constitution did not give Congress absolute power to remove judges and executive officials. It wanted Congress to use its impeachment power only in extreme circumstances, when an official had committed "treason, bribery, or other high crimes and misdemeanors." The separation of powers depends on Congress limiting impeachments to these cases.

In 1972, Richard Nixon won a landslide reelection to a second term as president. During the election, burglars, with links to the White House, had been caught breaking into Democratic headquarters at the Watergate Hotel in Washington. The burglary drew little press attention at the time. But it would lead to events that ultimately brought down the president. Nixon may or may not have had advance knowledge of the burglary. He probably feared, however, that its investigation might uncover evidence of political spying and the illegal use of campaign funds on the part of his administration. So he took an active role in obstructing the investigation. He discussed raising hush money for the burglars and enlisted the FBI and CIA in squelching the investigation. In 1974, the House Judiciary committee voted three articles of impeachment. One accused Nixon of obstruction of justice. Another accused him of abuse of power. The third charged him with contempt of Congress for defying the committee's requests to produce documents. Nixon resigned the presidency before the whole House voted on the articles.

The committee had declined to vote an article of impeachment against Nixon for tax evasion. The committee did not believe this was an impeachable offense. It based its conclusion on a staff report, "Constitutional Grounds for Presidential Impeachment," which the committee had ordered prepared before beginning its investigation. This report traced the history, precedents, and grounds for impeachment. The report concluded:

Not all presidential misconduct is sufficient to constitute grounds for impeachment. . . . Because impeachment of a President is a grave step for the nation, it is predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office.

The same year Yale Law School professor Charles L. Black published a highly influential book, *Impeachment: A Handbook*. Black agreed that impeachment is a grave step that should be taken most cautiously. Impeaching a president overturns an election. Black's research led him to the conclusion that a president should be impeached only for "serious assaults on the integrity of the processes of government," or for "such crimes as would so stain a president as to make his continuance in office dangerous to public order."

Black's book cited two examples of presidential misconduct that would not merit impeachment: (1) a president brings a female minor across a state line for "immoral purposes" in violation of federal law and (2) a president obstructs justice by helping hide marijuana for a White House intern. Black considered it "preposterous" to impeach a president for these acts. These examples would prove relevant to President Clinton's impeachment case more than 20 years later.

BILL CLINTON (1998) – IMPEACHED BY HOUSE, FOUND NOT GUILTY BY THE SENATE

Bill Clinton was elected president in 1992 and reelected in 1996. During his first term, an independent counsel was appointed to investigate Whitewater, an Arkansas land deal involving Clinton that had taken place about 20 years previously. The counsel's investigation later expanded to include scandals surrounding the firing of White House staff in its travel office, the misuse of FBI files, and an illicit affair that the president had with a White House intern (Monica Lewinsky). In 1998, Independent Counsel Kenneth Starr issued a report to the House Judiciary Committee. It found 11 possible impeachable offenses, all related to the intern scandal. Based on the independent counsel's investigation, the House Judiciary Committee voted four articles of impeachment. The first article accused the president of committing perjury before a grand jury convened by the independent counsel (passed by the full House). The second charged him with providing "perjurious, false and misleading testimony" in a civil case related to the scandal (failed in the House). The third accused him of obstructing justice to "delay, impede, cover up and conceal the existence" of evidence related to the scandal (pass by the House). The fourth charged that he misused and abused his office by deceiving the American public, misleading his cabinet and other employees so that they would mislead the public, asserting executive privilege to hinder the investigation, and refusing to respond to the committee and misleading the committee about the scandal (failed in the House).

During the Judiciary Committee's hearings, experts testified on what constituted "high crimes and misdemeanors." The experts called by the Democrats argued that none of the allegations against the president rose to the level of "high crimes and misdemeanors." These experts echoed the reasoning found in the 1974 staff report and Professor Charles Black's book on impeachment.

The experts called by the Republicans disagreed. They pointed out that federal judges had been removed from office for perjury. They further argued that the president had taken an oath to uphold all the laws and he had violated his duties as the nation's chief law enforcement officer.

With the necessary two-thirds majority not having been achieved, the President was thus acquitted on both charges and would serve out the remainder of his term of office lasting through January 20, 2001.

DONALD TRUMP (2019-20) – IMPEACHED BY HOUSE, FOUND NOT GUILTY BY THE SENATE

After weeks of discussions among legislators, the House of Representatives voted to impeach the 45th President, Donald Trump, for abuse of power and obstruction of Congress on December 18, 2019. The vote fell largely along party lines: 230 Democrats in favor, 197 Republicans against and 1 present. Trump became only the third president ever to be impeached, joining Andrew Johnson and Bill Clinton, after Democrats raised concerns about his alleged attempts to seek foreign interference in the 2020 election and to hamper their investigation.

Some Democrats had advocated impeaching Trump, a historically unpopular president who was elected despite losing the popular vote, since the moment of his election. After they regained control of the House of Representatives, Democrats launched multiple investigations into his business dealings and his campaign's ties to Russian hackers who targeted his 2016 opponent, Hillary Clinton. After an exhaustive effort failed to convince Speaker Nancy Pelosi and others that they had reason to impeach, a new scandal emerged that succeeded in doing so.

In September 2019, the public learned of a whistleblower complaint regarding a July phone call between Trump and Ukrainian President Volodymyr Zelensky. The complaint, which was corroborated by the acting Ambassador to Ukraine, stated that Trump had threatened to withhold U.S. foreign aid money until Zelensky promised to investigate Hunter Biden, son of leading Democratic 2020 candidate Joe Biden, for suspicious dealings in Ukraine.

The White House denied any "quid pro quo," but the administration's response was muddled. Rudy Giuliani, who was accused of helping Trump put pressure on Ukrainian officials to investigate Biden, made several media appearances in his capacity as Trump's personal attorney that only created more confusion and suspicion. By late November, it was clear that the Democrats felt confident enough in their case for wrongdoing and obstruction of Congress that they would go through with impeachment.

After both articles were approved in the House, the case then moved to a Senate trial, which began on January 16, 2020. U.S. Supreme Court chief justice John Roberts presided over the trial. On February 5, 2020, in a vote that again fell largely along party lines, the Senate voted to acquit President Trump on both charges.

DONALD TRUMP (2021) – IMPEACHED BY HOUSE, FOUND NOT GUILTY BY THE SENATE

The House of Representatives of the 117th U.S. Congress adopted one article of impeachment against Trump of "incitement of insurrection", alleging that Trump incited the January 6 storming of the U.S. Capitol. These events were preceded by numerous unsuccessful attempts by Trump to overturn the 2020 presidential election, as well as his pushing of voter fraud conspiracy theories on his social media channels before, during, and after the election. A single article of impeachment charging Trump with "incitement of insurrection" against the U.S. government and "lawless action at the Capitol" was introduced to the House of Representatives on January 11, 2021.

It was the fourth impeachment of a United States president, and the second for Trump after his first impeachment in December 2019. Ten Republican representatives voted for the second impeachment, the most pro-impeachment votes ever from a president's party. This was also the first presidential impeachment in which all members of the majority party voted unanimously for impeachment.

At the trial, the first of its kind for a departed U.S. president (with Andrew Johnson, Bill Clinton, and Trump having each been the incumbent in prior impeachment trials), 67 votes or a two thirds majority was needed to convict Trump. Ultimately, 57 senators voted "guilty" and 43 senators voted "not guilty", resulting in Trump being acquitted of the charge on February 13, 2021.