

tions were not submitted as privileged and were not considered by the House. Although censure of a Member by the House is a privileged matter,⁽⁷⁾ censure of an executive official has not been held privileged for consideration by the House and has on occasion been held improper.⁽⁸⁾

— tice Douglas could have been censured or officially rebuked for misconduct by the House (see §14.16, *infra*).

7. See 3 Hinds' Precedents §§2649–2651.

Members of the House are not subject to impeachment under the Constitution (see §2, *infra*) but are subject to punishment for disorderly behavior. See U.S. Const. art. I, §5, clause 2.

8. See 2 Hinds' Precedents §§1569–1572.

The issue whether a proposition to censure a federal civil officer would be germane to a proposition for his impeachment has not arisen, but it is not in order to amend a pending privileged resolution by adding or substituting a matter not privileged and not germane to the original proposition. 5 Hinds' Precedents §5810.

See 6 Cannon's Precedents §236 for the ruling that a proposition to censure a Member of the House is not germane to a proposition for his expulsion. Speaker Frederick H. Gillett (Mass.) ruled in that instance that although censure and expulsion of a Member were both privileged propositions, they were "intrinsically" different.

§ 2. Who May Be Impeached; Effect of Resignation

Article II, section 4 of the U.S. Constitution subjects the President, Vice President, and all civil officers of the United States to impeachment, conviction, and removal from office. It has been settled that a private citizen is not subject to the impeachment process except for offenses committed while a civil officer under the United States.⁽⁹⁾

In one case, it was determined by the Senate that a U.S. Senator (William Blount [Tenn.]) was not a civil officer under article II, section 4, and the Senate disclaimed jurisdiction to try him.⁽¹⁰⁾

In view of the fact that the Constitution provides not only for automatic removal of an officer upon impeachment and conviction, but also for the disqualification from holding further office under the United States (art. I, §3, clause 7), the House and Senate have affirmed their respective power to impeach and try an accused who has resigned.⁽¹¹⁾

9. 3 Hinds' Precedents §§2315, 2007.

A commissioner of the District of Columbia was held not to be a civil officer subject to impeachment under the Constitution. 6 Cannon's Precedents §548.

10. 3 Hinds' Precedents §§2310, 2316.

11. The question whether the House may impeach a civil officer who has

The latter question first arose in the Blount case, where the Senate expelled Senator Blount after his impeachment by the House but before articles had been drafted and before his trial in the Senate had begun. The House proceeded to adopt articles, and it was conceded in the Senate that a person impeached could not escape punishment by resignation; the Senate decided that it had no jurisdiction, however, to try the former Senator since he had not been a civil officer for purposes of impeachment.⁽¹²⁾

William W. Belknap, Secretary of War, resigned from office before his impeachment by the House and before his trial in the Senate. The House and Senate debated the power of impeachment at length and determined that the former Secretary was amenable to impeachment and trial; at the conclusion of trial the respondent was acquitted of all charges by the Senate.⁽¹³⁾

Cross References

Members of Congress not subject to impeachment but to punishment, censure, or expulsion, see Ch. 12, *supra*.

Powers of the House as related to the executive generally, see Ch. 13, *supra*.

resigned is a constitutional issue for the House and not the Chair to decide (see § 2.4, *infra*).

12. 3 Hinds' Precedents §§ 2317, 2318.

13. 3 Hinds' Precedents §§ 2007, 2467.

Impeachment Proceedings Following Resignation

§ 2.1 President Richard Nixon having resigned following the decision of the Committee on the Judiciary to report to the House recommending his impeachment, the report without an accompanying resolution of impeachment was submitted to the House, and further proceedings were discontinued.

On Aug. 20, 1974, Peter W. Rodino, Jr., of New Jersey, Chairman of the Committee on the Judiciary, submitted a privileged report (H. Rept. No. 93-1305) recommending the impeachment of President Nixon, following a full investigation by the committee, and after its consideration and adoption of articles of impeachment.

The committee had previously (in July 1974) decided to recommend articles of impeachment against President Nixon. The President resigned his office shortly thereafter—on Aug. 9, 1974—by submitting his written resignation to the office of the Secretary of State.⁽¹⁴⁾

14. 3 USC § 20 provides that the only evidence of the resignation of the office of the President of the United States shall be an instrument in

Upon submission of the report of the Committee on the Judiciary, Speaker Carl Albert, of Oklahoma, ordered it referred to the House Calendar. No separate accompanying resolution of impeachment was reported to the House.

The House adopted without debate a resolution (H. Res. 1333), offered by Mr. Thomas P. O'Neill, Jr., of Massachusetts, under suspension of the rules on Aug. 20, accepting the report. No further action was taken on the proposed impeachment of the President.⁽¹⁵⁾

§ 2.2 A federal judge having resigned from the bench pending his impeachment trial in the Senate, the House adopted a resolution instructing the managers to advise the Senate that the House declined to further prosecute

writing, signed, and delivered into the office of the Secretary of State.

15. 120 CONG. REC. 29361, 29362, 93d Cong. 2d Sess. For the text of H. Res. 1333 and the events surrounding its adoption, see §15.13, *infra*.

For a memorandum prepared for Senate Majority Leader Michael J. Mansfield (Mont.) and inserted in the Record, concluding that Congress could impeach and try the President after he had resigned, see 120 CONG. REC. 31346-48, 93d Cong. 2d Sess., Sept. 17, 1974.

charges of impeachment, and the Senate dismissed the impeachment proceedings.

On Dec. 11, 1926, the House adopted the following resolution in relation to the impeachment proceedings against Judge George W. English:

Resolved, That the managers on the part of the House of Representatives in the impeachment proceedings now pending in the Senate against George W. English, late judge of the District Court of the United States for the Eastern District of Illinois, be instructed to appear before the Senate, sitting as a court of impeachment in said cause, and advise the Senate that in consideration of the fact that said George W. English is no longer a civil officer of the United States, having ceased to be a district judge of the United States for the eastern district of Illinois, the House of Representatives does not desire further to urge the articles of impeachment heretofore filed in the Senate against said George W. English.⁽¹⁶⁾

On Dec. 13, 1926, the Senate adjourned *sine die* as a court of impeachment after agreeing to the following order, which was messaged to the House:

Ordered, That the impeachment proceedings against George W. English, late judge of the District Court of the United States for the Eastern District of Illinois, be and the same are, duly dismissed.⁽¹⁷⁾

16. 68 CONG. REC. 297, 69th Cong. 2d Sess.

17. *Id.* at p. 344.

§ 2.3 The House discontinued further investigation and proceedings of impeachment against a cabinet official who had resigned his post, after his nomination and confirmation to hold another governmental position.

On Feb. 13, 1932, the House adopted House Resolution 143 offered by Hatton W. Sumners, of Texas, Chairman of the Committee on the Judiciary. The resolution, which discontinued certain impeachment proceedings due to resignation of the officer charged, read as follows:

Whereas Hon. Wright Patman, Member of the House of Representatives, filed certain impeachment charges against Hon. Andrew W. Mellon, Secretary of the Treasury, which were referred to this committee; and

Whereas pending the investigation of said charges by said committee, and before said investigation had been completed, the said Hon. Andrew W. Mellon was nominated by the President of the United States for the post of ambassador to the Court of St. James and the said nomination was duly confirmed by the United States Senate pursuant to law, and the said Andrew W. Mellon has resigned the position of Secretary of the Treasury: Be it

Resolved by this committee, That the further consideration of the said charges made against the said Andrew W. Mellon, as Secretary of the Treasury, be, and the same are hereby, discontinued.

MINORITY VIEWS

We cannot join in the majority views and findings. While we concur in the conclusions of the majority that section 243 of the Revised Statutes, upon which the proceedings herein were based, provides for action in the nature of an ouster proceeding, it is our view that the Hon. Andrew W. Mellon, the former Secretary of the Treasury, having removed himself from that office, no useful purpose would be served by continuing the investigation of the charges filed by the Hon. Wright Patman. We desire to stress that the action of the undersigned is based on that reason alone, particularly when the prohibition contained in said section 243 is not applicable to the office now held by Mr. Mellon.⁽¹⁸⁾

FIORIELLO H. LAGUARDIA.
GORDON BROWNING.
M. C. TARVER.
FRANCIS B. CONDON.

§ 2.4 Where a point of order was raised that a resolution of impeachment was not privileged because it called for the impeachment of persons no longer civil officers under the United States, the Speaker stated that the question was a constitutional issue for the House and not the Chair to decide.

On May 23, 1933, Mr. Louis T. McFadden, of Pennsylvania, rose to a question of constitutional

^{18.} 75 CONG. REC. 3850, 72d Cong. 1st Sess.

privilege and offered a resolution (H. Res. 158) impeaching numerous members and former members of the Federal Reserve Board. During the reading of the resolution, a point of order against it was raised by Mr. Carl E. Mapes, of Michigan:

I wish to submit the question to the Speaker as to whether or not a person who is not now in office is subject to impeachment? This resolution of the gentleman from Pennsylvania refers to several people who are no longer holding any public office. They are not now at least civil officers. The Constitution provides that the "President, Vice President, and all civil officers shall be removed from office on impeachment", and so forth. I have had no opportunity to examine the precedents since this matter came up, but it occurs to me that the resolution takes in too much territory to make it privileged.

Speaker Henry T. Rainey, of Illinois, ruled as follows:

That is a constitutional question which the Chair cannot pass upon, but should be passed upon by the House.

The resolution was referred on motion to the Committee on the Judiciary.⁽¹⁹⁾

§ 3. Grounds for Impeachment; Form of Articles

Article II, section 4 of the U.S. Constitution defines the grounds

19. 77 CONG. REC. 4055, 73d Cong. 1st Sess.

for impeachment and conviction as "treason, bribery, or other high crimes and misdemeanors." A further provision of the Constitution which has been construed to bear upon the impeachment of federal judges is article III, section 1, which provides that judges of the supreme and inferior courts "shall hold their offices during good behaviour."

When the House determines that grounds for impeachment exist, and they are adopted by the House, they are presented to the Senate in "articles" of impeachment.⁽²⁰⁾ Any one of the articles may provide a sufficient basis or ground for impeachment. The impeachment in 1936 of Halsted L. Ritter, a U.S. District Court Judge, was based on seven articles of impeachment as amended by the House. The first six articles charged him with several instances of judicial misconduct, including champerty, corrupt practices, violations of the Judicial Code, and violations of criminal law. Article VII charged actions and conduct, including a restatement of some of the charges con-

20. Jefferson's Manual states that: [B]y the usage of Parliament, in impeachment for writing or speaking, the particular words need not be specified in the accusation. *House Rules and Manual* (Jefferson's Manual) § 609 (1973).