

# The Impeachment Process in the House of Representatives

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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 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 a House resolution proposing impeachment or directing a committee to investigate a federal official.

A Member can submit a resolution concerning impeachment 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 directing an investigation of an officer will be referred to the Rules Committee.

A Member can also offer a resolution impeaching an officer as a “Question of the Privileges of the House.” One option for the House, when it considers a resolution called up this way, is to 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 usually relies on its committees to first conduct an investigation, hold hearings, and report recommendations to the full House.

Regardless of what might instigate an inquiry into whether impeachment is warranted, there are often three phases of congressional action. First, the House could choose to agree to a simple resolution directing a committee to investigate an official for the purposes of determining whether impeachment is warranted. Such a resolution, referred to as an impeachment authorizing resolution, might grant additional investigative authorities to a committee or committees. Second, there is usually a committee investigation, hearings, and markup of articles of impeachment. Finally, the full House considers the articles of impeachment.

In modern House impeachments, 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 any authorizing resolution, and perhaps supplementary 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 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, other motions could be offered, although amendments could be precluded if a majority voted to order the previous question. A motion to recommit 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. A resolution reported from the Rules Committee could also be used to structure floor debate and limit motions that could be made.

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 .....	4
Committee Action.....	7
Investigation and Hearings.....	7
Markup of Articles of Impeachment .....	9
Member Access to Committee Information Prior to Full House Consideration .....	11
Consideration of Articles of Impeachment on the House Floor .....	12
Reported by the Judiciary Committee .....	13
Considered Under the Hour Rule.....	13
Under the Terms of a Special Rule .....	13
Unanimous Consent .....	15
Offered on the Floor as a Question of the Privileges of the House .....	15
Appointment and Role of House Managers in the Senate Trial .....	16

## Contacts

Author Information.....	17
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## 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.<sup>1</sup> 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.<sup>2</sup> Two-thirds of Senators voting must agree to convict and remove an official from office.<sup>3</sup> 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 one Cabinet official (Secretary of War William Belknap in 1876) and three Presidents (Andrew Johnson in 1868, Bill Clinton in 1998, and Donald Trump in 2019 and 2021).<sup>4</sup> The Senate has voted to remove eight of these officials, and all of them were federal judges.<sup>5</sup>

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; and CRS Report R45983, *Congressional Access to Information in an Impeachment Investigation*, by 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

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<sup>1</sup> U.S. Const. art. 1, §2, cl. 5.

<sup>2</sup> U.S. Const. art. 1, §3, cl. 6.

<sup>3</sup> Specifically, the Constitution states that “no Person shall be convicted without the Concurrence of two thirds of the Members present.” If a Senator responds “present,” that Senator is included in the total number of those present, of which two-thirds is needed to convict. See U.S. Congress, Senate, *Riddick’s Senate Procedure: Precedents and Practices*, prepared by Floyd M. Riddick and Alan S. Frumin, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., 1992, 101-28 (Washington: GPO, 1992), p. 879: “[I]n effect a vote of ‘present’ is a vote against conviction.”

<sup>4</sup> A complete list of individuals impeached by the House of Representatives can be found on the House Office of the Historian’s web page at <https://history.house.gov/Institution/Impeachment/Impeachment-List/>.

<sup>5</sup> 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), p. 604.

committees under their general authority, or the introduction of articles of impeachment in the form of a House resolution.<sup>6</sup>

Regardless of what might instigate an inquiry into whether impeachment is warranted, there are often three subsequent formal stages of congressional action. First, the House could choose to agree to a simple resolution directing a committee (or committees) to investigate an official for the purposes of determining whether impeachment is warranted. Such a resolution, referred to as an impeachment authorizing resolution, might grant committees additional investigative authorities. Second, a committee could choose, after such an investigation, to prepare articles of impeachment and report them to the House. Third, the full House considers the articles of impeachment and, if they are adopted, appoints Members as managers to present the articles in the Senate. As discussed in detail below, the House relies upon many of its usual procedures to consider a resolution directing an impeachment investigation, to conduct the investigation, and to consider the articles of impeachment.<sup>7</sup>

## 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 one or more standing committees, 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.<sup>8</sup>

### 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 after or 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

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<sup>6</sup> For more information, see CRS congressional distribution memorandum, “Description of the Initiation of Impeachment Inquiries in the House of Representatives, 1813-2009,” by Elizabeth Rybicki, Michael Greene, and Jennifer E. Manning (available from the authors).

<sup>7</sup> 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.

<sup>8</sup> 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. (One resolution authorizing the Judiciary Committee to inquire whether a federal judge should be impeached was submitted in 2020.) Since 1789, Members have attempted to initiate impeachment proceedings against at least 12 Presidents. Archived CRS Report 98-763, *Congressional Resolutions on Presidential Impeachment: A Historical Overview*, by Stephen W. Stathis and David C. Huckabee (available to congressional clients 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.

of an impeachment resolution raised in this fashion in any number of ways, including by referring it to 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.<sup>9</sup>

Impeachment has been attempted using this method in recent years,<sup>10</sup> but none of the attempts has resulted in approval of the resolution. In cases in which an official has been impeached, the House has nearly always chosen to conduct an investigation first.<sup>11</sup> A resolution offered from the floor 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.<sup>12</sup>

## 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, or even prior the introduction, of resolutions proposing impeachment or an impeachment 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.

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.<sup>13</sup>

During the impeachment of President Bill Clinton, a communication from the independent counsel appointed to investigate the President was referred to the Committee on the Judiciary pursuant to an original resolution reported by the Rules Committee.<sup>14</sup> The resolution also directed

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<sup>9</sup> For more information on this process, see CRS Report R44005, *Questions of the Privileges of the House: An Analysis*, by Megan S. Lynch.

<sup>10</sup> See, for example, H.Res. 498 (President) in the 116<sup>th</sup> Cong.; H.Res. 705 and H.Res. 646 (both President) in the 115<sup>th</sup> Cong.; H.Res. 828 (IRS Commissioner) in the 114<sup>th</sup> Cong.; H.Res. 1345 (President) and H.Res. 799 (Vice President) in the 110<sup>th</sup> Cong.

<sup>11</sup> The House did not conduct a preliminary investigation prior to the second impeachment of President Trump. On January 11, 2021, a resolution was introduced impeaching President Trump for incitement of the January 6, 2021, attack on the Capitol. Two days later the House approved that resolution (H.Res. 24) after debating it under the terms of a rule reported by the Rules Committee (H.Res. 41).

<sup>12</sup> See Parliamentarian's Note, U.S. Congress, House, *Deschler's Precedents of the United States House of Representatives*, prepared by Lewis Deschler, 94<sup>th</sup> Cong., 2<sup>nd</sup> sess., 1977, 94-661 (Washington: GPO, 1977), vol. 3, ch. 14, §5.8, pp. 480-481.

<sup>13</sup> CRS Report R41110, *The Role of the House of Representatives in Judicial Impeachment Proceedings: Procedure, Practice, and Data*, by Betsy Palmer, pp. 4-5. The House has impeached judges five times since 1980. In three cases, the Judiciary Committee began impeachment investigations shortly after receipt of a Judicial Conference transmittal (Judge Hastings, 1987; Judge Nixon, 1988; Judge Porteous, 2008). The committee acted prior to receiving such a determination in two other instances (Judge Claiborne, 1986; Judge Kent, 2009). Nonetheless, all five successful judicial impeachments since 1980 also saw the Judicial Conference transmit to Congress that impeachment may be warranted.

<sup>14</sup> H.Res. 525, 105<sup>th</sup> Cong. 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 to congressional clients from the author).

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 directing an investigation by the committee and authorizing depositions by counsel and the furnishing of information by interrogatory.<sup>15</sup>

In the first impeachment of President Donald Trump, committees began investigations prior to the adoption of a resolution directing an impeachment investigation. The Judiciary Committee dated the start of its investigation into abuse of power by the President to early 2019, referencing document requests to multiple agencies, public hearings on the possibility of Russian interference in the 2016 election, a subpoena directing the Attorney General to provide an unredacted copy of a report on that subject, and oral and written testimony collected from White House aides.<sup>16</sup> Other committees, including the Select Committee on Intelligence and the Foreign Affairs Committee, were also conducting investigations of the President. In August 2019, the chair of the Judiciary Committee sent a letter to the chairs of four other committees requesting that they share any materials “relevant to the Judiciary Committee’s ongoing impeachment investigation.”<sup>17</sup> On September 24, the Speaker announced that the House was moving forward with an “official impeachment inquiry” and that she was directing six committees to “proceed with their investigations.”<sup>18</sup> The committees continued their investigations, and on October 31, 2019, the House approved a resolution, H.Res. 660, directing the committees “to continue their ongoing investigations” and authorizing the Intelligence Committee and the Judiciary Committee to follow specific proceedings in the resolution.

## Authorization of Committee Investigation

Committees can investigate federal officials without the full House adopting a resolution directing an impeachment inquiry, and the House has impeached officers without first approving an authorizing resolution. Since 1975, the Rules of the House have granted committees the power to subpoena witnesses and materials, administer oaths, and meet at any time within the United States. These powers were previously granted through resolutions providing blanket investigatory authorities that were agreed to at the start of a Congress or through authorizing resolutions for each impeachment investigation.<sup>19</sup> In the last 75 years, the House has agreed to articles of

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<sup>15</sup> H.Res. 581, 105<sup>th</sup> Cong. “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.

<sup>16</sup> U.S. Congress, House Committee on the Judiciary, *Impeachment of Donald John Trump President of the United States*, 116<sup>th</sup> Cong., 1<sup>st</sup> sess., December 15, 2019, H.Rept. 116-346 (Washington: GPO, 2019), pp. 7-8; U.S. Congress, House Committee on the Judiciary, *Activity Report of the Committee on the Judiciary*, 116<sup>th</sup> Cong., 2<sup>nd</sup> sess., January 1, 2021 (Washington: GPO, 2021), pp. 47-48.

<sup>17</sup> Letter linked in Andrew Desiderio and Kyle Cheny, “Nadler Asks House Committees Probing Trump to Share Docs for Its Impeachment Investigation,” *Politico*, August 22, 2019.

<sup>18</sup> Office of House Speaker Nancy Pelosi, “Pelosi Remarks Announcing Impeachment Inquiry,” press release, September 24, 2019, <https://docs.house.gov/meetings/JU/JU00/20191211/110331/HMKP-116-JU00-20191211-SD382.pdf>.

<sup>19</sup> House Rule XI, clause 2(m). For more information on the history of resolutions authorizing or directing impeachment inquiries, see CRS congressional distribution memorandum, “Description of the Initiation of Impeachment Inquiries in the House of Representatives, 1813-2009,” by Elizabeth Rybicki, Michael Greene, and Jennifer E. Manning (available from the authors), p. 2.



impeachment eight times. In four of those impeachments, the House adopted a resolution explicitly authorizing or directing an impeachment investigation, and in four it did not.<sup>20</sup>

The House might choose to approve a resolution directing an impeachment inquiry for the purposes of, for example, granting authorities to the investigating committee beyond what is provided in the rules or structuring a multi-committee investigation. In past impeachment inquiries, reasons offered by Members in favor of approving an authorization resolution included to be consistent with past practice and to allow the full chamber an opportunity to vote to proceed with such a significant matter. In addition, the executive branch has argued that if the House did not vote to explicitly authorize or direct an impeachment inquiry, then the Administration did not have to participate in the investigation by responding to subpoenas.<sup>21</sup>

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, meaning a Member could call it up on the floor at the direction of the Rules Committee.<sup>22</sup> In addition, a committee can report an original, privileged resolution authorizing an impeachment investigation if matters related to impeachment—including, for example, impeachment resolutions—have been referred to the committee.<sup>23</sup>

In either case, the resolution would then be considered under the hour rule, a method of 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.<sup>24</sup> 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 could be offered after the previous question was ordered, but it would not be debatable. The House could also, however, choose to consider the resolution under any of its other regular

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<sup>20</sup> For three impeachment inquiries in the 1980s, no resolution specifically authorizing a committee to conduct an investigation was proposed. The House did not agree to a resolution specifically authorizing an impeachment investigation for the impeachments of Judge Harry E. Claiborne, Judge Alcee Hastings, and Judge Walter L. Nixon Jr. In two of these instances (Judge Hastings and Judge Nixon), the House agreed to a resolution allowing committee counsel to take affidavits and depositions—an additional investigatory power that was not otherwise provided in House Rules at that time (see H.Res. 329, 100<sup>th</sup> Cong. and H.Res. 562, 100<sup>th</sup> Cong.). In 2021, the House impeached President Trump without a committee investigation.

<sup>21</sup> For more information, see “The Executive Branch View” in CRS Legal Sidebar LSB11051, *Legal Issues in Impeachment Investigations, Part I: Authorization*, by Todd Garvey.

<sup>22</sup> The resolution is subject to the one legislative day availability requirement of Rule XIII, clause 6.

<sup>23</sup> 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 are 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.” See also in 1998, when the Judiciary Committee reported a privileged resolution (H.Res. 581, 105<sup>th</sup> Cong.) authorizing an investigation into whether sufficient grounds existed for the impeachment of the President. The House had earlier agreed to H.Res. 525, which referred material transmitted by the independent counsel to the Judiciary Committee. Note as well that because H.Res. 581 presented a question of the privileges of the House under Rule XI, the written report accompanying the resolution was not subject to the availability requirement of Rule XIII. See U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United States One Hundred Eighteenth Congress*, prepared by Jason A. Smith, 117<sup>th</sup> Cong., 2023, H.Doc. 117-161 (Washington: GPO, 2023) (hereinafter *House Manual*), §850, pp. 679, 681.

<sup>24</sup> For more information, see CRS Report 98-427, *Considering Measures in the House Under the One-Hour Rule*, by James V. Saturno.



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.

In the case of the 2019 impeachment of President Trump, the Rules Committee reported a resolution, H.Res. 660, “Directing Certain Committees to Continue Ongoing Investigations into Whether Sufficient Grounds Exist for the Impeachment of Donald John Trump, President of the United States.” The resolution explicitly directed six committees to continue their inquiries and laid out certain procedures to be followed by the House Permanent Select Committee on Intelligence and the Committee on the Judiciary in conducting the inquiry.<sup>25</sup> It was called up as privileged by the chair of the Committee on Rules, who yielded 30 minutes of the time under the hour rule to the ranking member of the Rules Committee for purposes of debate only. After debate, the House voted to order the previous question and then adopted the resolution.

The two previous resolutions to authorize an impeachment investigation of a President were also called up as privileged and considered under the hour rule, although in both cases the resolutions were reported by the Judiciary Committee and the debate was structured differently. In 1998, the chair of the Judiciary Committee called up the resolution authorizing an investigation into whether sufficient grounds existed for the impeachment of President Clinton 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.<sup>26</sup> In 1974, the chairman of the Judiciary Committee called up the resolution authorizing and directing an investigation to determine whether the House should impeach President Nixon.<sup>27</sup> It was debated under the hour rule, with the chair 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 and then agreed to the resolution authorizing the investigation.<sup>28</sup>

The two most recent resolutions adopted by the House to authorize an impeachment investigation of a federal judge were taken up by unanimous consent at the request of the Rules Committee chair.<sup>29</sup> 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 concerning federal judges were agreed to without debate.

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<sup>25</sup> For a summary of the provisions of H.Res. 660, see CRS congressional distribution memorandum, “Authorizing Resolutions and Committee-Adopted Procedures for the Impeachment Investigations of Presidents Nixon, Clinton, and Trump,” by Christopher M. Davis and Michael Greene, December 3, 2019 (available from the authors).

<sup>26</sup> H.Res. 581, 105<sup>th</sup> Cong., “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*, vol. 144 (October 8, 1998), pp. H10015-H10032 and pp. H10083-H10119.

<sup>27</sup> H.Res. 803; H.Rept. 93-774. *Deschler’s Precedents*, vol. 3, ch. 14, §5.8, pp. 480-481 and §7.4, p. 513.

<sup>28</sup> “Investigatory Powers of Committee of the Judiciary with Respect to Its Impeachment Inquiry,” *Congressional Record*, vol. 120 (February 6, 1974), pp. 2350-2363.

<sup>29</sup> See H.Res. 424, 111<sup>th</sup> Cong., 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, 110<sup>th</sup> Cong., 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.

In the three previous instances of judicial impeachments, however, the House did not approve a resolution explicitly directing or authorizing an impeachment inquiry.<sup>30</sup> The House also did not approve an authorizing resolution before impeaching President Trump a second time in 2021.

## Committee Action

The standing rules of the House that affect committee investigations apply as well to impeachment investigations by the Judiciary Committee or other committees. A resolution directing 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.<sup>31</sup> 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.

## 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.<sup>32</sup> 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.<sup>33</sup> Since the 116<sup>th</sup> Congress, pursuant to separate orders agreed to at the start of the Congress, 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.<sup>34</sup> In modern practice, the federal official under investigation is generally allowed certain rights, including the right to be represented by counsel.

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<sup>30</sup> Harry E. Claiborne, Judge, U.S. District Court of Nevada (1985-1986); Alcee Hastings, Judge, U.S. District Court, Southern District of Florida (1987-1988); Walter L. Nixon, Judge, U.S. District Court, Southern District of Mississippi (1988-1989).

<sup>31</sup> 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 and 2019, the committee also approved procedures for presidential impeachment inquiries. For a detailed description and comparison, see CRS congressional distribution memorandum, "Authorizing Resolutions and Committee-Adopted Procedures for the Impeachment Investigations of Presidents Nixon, Clinton, and Trump," by Christopher M. Davis and Michael Greene, December 3, 2019 (available from the authors).

<sup>32</sup> For more information on subpoenas, see CRS Report R45653, *Congressional Subpoenas: Enforcing Executive Branch Compliance*, by Todd Garvey.

<sup>33</sup> *House Practice*, p. 616. See, for example, H.Res. 424 in the 111<sup>th</sup> Cong. 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.

<sup>34</sup> The authority is subject to regulations printed in the *Congressional Record*. See Section 103(a) of H.Res. 6, 116<sup>th</sup> Cong.; Section 3(b) of H.Res. 8, 117<sup>th</sup> Cong.; and Section 3(k) of H.Res. 5, 118<sup>th</sup> Cong. In the 115<sup>th</sup> Cong., the authority was granted to all committees except the Committee on Rules and the Committee on House Administration (Section 3(b) of H.Res. 5, 115<sup>th</sup> Cong.), and in the 114<sup>th</sup> Cong. it was granted to the Energy and Commerce Committee; Financial Services Committee; Science, Space, and Technology Committee; and Ways and Means Committee (Section 3(b) of H.Res. 5, and H.Res. 579, 114<sup>th</sup> Cong.).

If a committee were to conduct hearings, these proceedings would generally be governed by House and committee rules (and any specific procedures promulgated pursuant to an 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.”<sup>35</sup> Again, a 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.<sup>36</sup> 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 multiple experts on the history of impeachment at one hearing and from the independent counsel at another. Various witnesses 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.<sup>37</sup>

Unlike with the presidential impeachment inquiries into Presidents Nixon and Clinton, which were conducted solely by the Committee on the Judiciary, the 2019 inquiry into President Trump involved investigations conducted by six House committees. As discussed above, these committees indicated that they were engaged in an investigation of various charges against President Trump under the general investigatory authority granted by the standing rules of the House. The House later adopted H.Res. 660, which, in addition to directing the committees to continue their investigations, also established additional hearing procedures, creating, for example, a period for extended questioning of witnesses and a process for the minority to use to request witnesses in writing. The resolution further directed the House Permanent Select Committee on Intelligence (HPSCI) to issue a report, prepared in consultation with the chairs of the Committees on Foreign Affairs and on Oversight and Reform, setting forth its findings and any recommendations, along with any information and materials it may deem appropriate. The HPSCI chair was further directed to transmit the report—along with any appendices and any

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<sup>35</sup> See House Rule XI, clause 2(g)(2)(B)(i) and clause 2(k)(5).

<sup>36</sup> 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*, 111<sup>th</sup> Cong., 1<sup>st</sup> 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*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 4, 2010, H.Rept. 111-427 (Washington: GPO, 2010), pp. 11-12.

<sup>37</sup> U.S. Congress, House Committee on the Judiciary, *Impeachment of William Jefferson Clinton, President of the United States*, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., December 16, 1998, H.Rept. 105-830 (Washington: GPO, 1998), pp. 127-128.

supplemental, minority, additional, or dissenting views filed by Select Committee Members<sup>38</sup>—to the Committee on the Judiciary and to make such report publicly available in electronic form.

After the adoption of H.Res. 660, HPSCI held five days of public hearings. Current and former Trump Administration officials testified. Pursuant to H.Res. 660, the HPSCI, the Committee on Foreign Affairs, and the Committee on Oversight and Reform prepared a report on the investigation, together with minority views, which was transmitted to the Judiciary Committee along with supporting material.<sup>39</sup> The Judiciary Committee subsequently held two hearings, one concerning constitutional grounds for impeachment and one related to the investigation. Unlike in the 1998 presidential impeachment, White House counsel did not testify, although, according to the Judiciary Committee report, they were invited to do so.<sup>40</sup>

In recent decades, congressional committees have often 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.”<sup>41</sup> 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. \_\_\_\_).<sup>42</sup> The procedures for considering and reporting out an impeachment resolution are the same as those used for other legislation.<sup>43</sup> 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,

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<sup>38</sup> Clause 2(l) of House Rule XI permits all members of the committee to add these additional views to a committee report so long as the right to do so is requested by at least one Member in a timely fashion, as described in the rule.

<sup>39</sup> U.S. Congress, House Permanent Select Committee on Intelligence, *The Trump-Ukraine Impeachment Inquiry Report*, 116<sup>th</sup> Cong., 1<sup>st</sup> sess., December 11, 2019, H.Rept. 116-335 (Washington: GPO, 2019).

<sup>40</sup> U.S. Congress, House Committee on the Judiciary, *Impeachment of Donald John Trump President of the United States*, 116<sup>th</sup> Cong., 1<sup>st</sup> sess., December 15, 2019, H.Rept. 116-346 (Washington: GPO, 2019), pp. 11-13.

<sup>41</sup> 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.

<sup>42</sup> 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, 111<sup>th</sup> Cong.; H.Res. 87, 101<sup>st</sup> Cong.; and H.Res. 499, 100<sup>th</sup> Cong. All concerned the impeachment of judges. The fifth, to impeach the President, H.Res. 611, 105<sup>th</sup> Cong., was reported as an original measure from the committee.

<sup>43</sup> For details, CRS Report RL30244, *The Committee Markup Process in the House of Representatives*, by Christopher M. Davis and Elizabeth Rybicki.

the committee might also choose to report a recommendation that impeachment was not warranted.<sup>44</sup>

In the case of the Nixon, Clinton, and Trump impeachment investigations, 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.<sup>45</sup> The President resigned before the committee reported an impeachment resolution to the full House.

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.<sup>46</sup> 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 a resolution (H.Res. 611, 105<sup>th</sup> 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.

In 2019, the Judiciary Committee met December 11, 12, and 13 to consider articles of impeachment. On the first day, all members were permitted to make five-minute opening statements. On December 12, the committee took up the resolution (H.Res. 755, 116<sup>th</sup> Congress) and the chair offered an amendment in the nature of a substitute proposing minor changes to the underlying resolution.<sup>47</sup> By unanimous consent, the substitute was considered as original text for purposes of further amendment. Several amendments to the substitute were offered and debated, but none was agreed to. The substitute was agreed to by voice vote. On December 13, the committee convened to vote to report the resolution. The chair stated that because the resolution consisted of two articles, the question on reporting would be divided between the two articles. Both articles were agreed to. A written report was filed with dissenting views.<sup>48</sup>

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<sup>44</sup> 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.

<sup>45</sup> U.S. Congress, House Committee on the Judiciary, *Impeachment of Richard M. Nixon, President of the United States*, 93<sup>rd</sup> Cong., 2<sup>nd</sup> sess., August 20, 1974, H.Rept. 93-1305 (Washington: GPO, 1974), pp. 9-11.

<sup>46</sup> 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*, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., December 16, 1998, H.Rept. 105-830 (Washington: GPO, 1998), p. 128.

<sup>47</sup> Offering an amendment in the nature of a substitute proposing to replace the entire text of the underlying vehicle allows the option, rarely exercised, of concluding the amendment process at a markup by ordering the previous question on the substitute by majority vote. For more information, see CRS Report RL30244, *The Committee Markup Process in the House of Representatives*, by Christopher M. Davis and Elizabeth Rybicki, pp. 12-13.

<sup>48</sup> U.S. Congress, House Committee on the Judiciary, *Markup of H.Res. 755, Articles of Impeachment Against President Donald J. Trump, Volume I*, 116<sup>th</sup> Cong., 1<sup>st</sup> sess., December 11, 2019, Serial No. 116-69 (Washington: GPO, 2020); U.S. Congress, House Committee on the Judiciary, *Impeachment of Donald John Trump President of the United States*, 116<sup>th</sup> Cong., 1<sup>st</sup> sess., December 15, 2019, H.Rept. 116-346 (Washington: GPO, 2019).



## Member Access to Committee 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 these 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.<sup>49</sup> 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.<sup>50</sup>

Even when access to information received in executive session is granted to non-committee 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.<sup>51</sup> Executive sessions were periodically used during the inquiries into Presidents Nixon and Clinton. Most recently, during the first inquiry into President Trump, all relevant investigatory information obtained by the Judiciary Committee was deemed as received in executive session unless otherwise determined by the chair in consultation with the ranking minority member.<sup>52</sup>

Further restrictions on access to information can be adopted by the House or the investigating committee. The Judiciary Committee adopted special procedures by unanimous consent in 1974 that, among other provisions, limited access to information to select individuals within the committee and laid out rules for staff.<sup>53</sup> As a precursor to the formal impeachment inquiry of

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<sup>49</sup> 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.”

<sup>50</sup> 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 Rep. 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.

<sup>51</sup> See *House Manual*, §796.

<sup>52</sup> Specifically, the Judiciary Committee adopted procedures automatically deeming all “information obtained pursuant to a letter request, subpoena, deposition, transcribed interview, or interrogatory pertaining to the Committee’s investigation” as received in executive session unless otherwise determined by the chair in consultation with the ranking minority member (House Committee on the Judiciary, *Resolution for Investigative Procedures*, 116<sup>th</sup> Cong., 1<sup>st</sup> sess., September 12, 2019, pp. 4-5, <https://docs.house.gov/meetings/JU/JU00/20190912/109921/BILLS-116pih-ResolutionforInvestigativeProcedures.pdf>).

<sup>53</sup> H.Res. 74 93<sup>rd</sup> Cong., “Authorizing Committee on the Judiciary to Conduct Studies and Investigations,” *Congressional Record*, vol. 119 (February 28, 1973), p. 5933. 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 (continued...)



President Clinton, the House adopted a resolution () limiting access to executive session material to the Judiciary Committee and employees designated by the chair and ranking minority member.<sup>54</sup> 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.<sup>55</sup>

Issues of Member access to committee records also arose during the first impeachment inquiry into President Trump in 2019. The Judiciary Committee authorized the chair, in consultation with the ranking minority member, to issue procedures “governing access by other Non-Committee Members to executive session material.”<sup>56</sup> Separately, concerns by Members were raised during investigative depositions jointly conducted by the committees on Intelligence, Oversight and Reforms, and Foreign Affairs. In one instance, Intelligence Committee Chair Adam Schiff removed a non-committee Member from a deposition on the grounds that House deposition regulations did not permit their attendance.<sup>57</sup>

## 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.<sup>58</sup> Members should still abstain from other language “personally offensive” to the President.<sup>59</sup>

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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.

<sup>54</sup> 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. 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, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 17, 18, 25, 1998 (Washington: GPO, 1998).

<sup>55</sup> 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, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., December 16, 1998, H.Rept. 105-830 (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.

<sup>56</sup> House Committee on the Judiciary, *Resolution for Investigative Procedures*, 116<sup>th</sup> Cong., 1<sup>st</sup> sess., September 12, 2019, p. 5, <https://docs.house.gov/meetings/JU/JU00/20190912/109921/BILLS-116pih-ResolutionforInvestigativeProcedures.pdf>. The Judiciary Committee’s report accompanying the articles of impeachment does not mention any additional procedures regarding access to executive session material.

<sup>57</sup> According to the transcript of the deposition, majority general counsel for the Intelligence Committee is quoted as saying that the House Parliamentarian “made clear that the House deposition regulations and the language used therein has always been construed as meaning members of the committees undertaking the joint investigation and not members who may wish to attend for other reasons, and, therefore, they are not allowed to participate in the deposition itself or be present” (House Permanent Select Committee on Intelligence, *Deposition of: Fiona Hill*, 116<sup>th</sup> Cong., 2<sup>nd</sup> sess., October 14, 2019, pp. 6-10, [https://intelligence.house.gov/uploadedfiles/hill\\_final.pdf](https://intelligence.house.gov/uploadedfiles/hill_final.pdf)).

<sup>58</sup> *House Manual*, §370.

<sup>59</sup> For more information and precedents concerning language considered personally offensive toward the President, see *House Manual*, §370, and *House Practice*, pp. 412-413.

## Reported by the Judiciary Committee

### Considered Under the Hour Rule

Articles of impeachment reported by 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 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 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.

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.<sup>60</sup>

When the House considered a resolution (H.Res. 611, 105<sup>th</sup> Congress) to impeach President Clinton, the reported resolution was called up as privileged. 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.<sup>61</sup>

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.<sup>62</sup>

### Under the Terms of a Special Rule

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

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<sup>60</sup> See consideration of H.Res. 1031 (111<sup>th</sup> Cong.), “Impeaching Judge G. Thomas Porteous Jr.,” *Congressional Record*, daily edition, March 11, 2010, pp. H1327-1337 and of H.Res. 520 (111<sup>th</sup> Cong.), “Impeaching Judge Samuel B. Kent,” *Congressional Record*, daily edition (June 19, 2009), pp. H7053-H7067.

<sup>61</sup> “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.

<sup>62</sup> “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.

for major legislation in the House.<sup>63</sup> 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.

The last two times the House impeached an officer, the House considered the articles of impeachment under the terms of a special rule (Trump in 2019 and, again, in 2021). When the House impeached President Trump in 2019, it first agreed to H.Res. 767. The resolution provided for six hours of debate and precluded amendments and other motions, including a motion to recommit, from being offered.<sup>64</sup> It also divided the question of approving the resolution between the two articles. The resolution further addressed who could be present in the Hall of the House during consideration of the articles of impeachment, and it provided for consideration of a resolution appointing impeachment managers. H.Res. 767 also provided that any additional resolutions incidental to the impeachment would not be privileged during the rest of the Congress. The Rules Committee met on December 17, 2019, and heard testimony from Representatives from the Judiciary Committee before voting to report H.Res. 767.<sup>65</sup> The House agreed to the special rule on December 18, 2019.<sup>66</sup> The House took up the articles of impeachment, H.Res. 755, immediately after agreeing to the rule. After debate, the House took separate votes on each article of impeachment and agreed to both.<sup>67</sup>

When the House considered and adopted articles of impeachment in 2021, it did so without a preliminary investigation by committee, relying instead on a resolution from the Rules Committee to expedite consideration. H.Res. 24, impeaching President Trump on the charge of “incitement of insurrection,” was submitted to the House on January 11, 2021, and referred to the Judiciary Committee. The Rules Committee met on January 12 and reported out a rule, H.Res. 41, which provided for two hours of debate on the articles of impeachment and precluded any amendments or other motions. The resolution also provided that another resolution, appointing impeachment managers, be considered adopted; that other resolutions incidental to H.Res. 24 impeachment proceedings not be privileged; and that the chair was authorized to decline to recognize Members for any motion, resolution, question or notice until the conclusion of consideration of the impeachment resolution. On January 13, 2021, the House agreed to the rule and then proceeded to consider the resolution under the terms of the rule. After two hours of

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<sup>63</sup> For more information, see CRS Report R43424, *Considering Legislation on the House Floor: Common Practices in Brief*, by Elizabeth Rybicki, pp. 2-5.

<sup>64</sup> The Judiciary Committee had reported the resolution with an amendment in the nature of a substitute, which the resolution deemed to be adopted.

<sup>65</sup> U.S. Congress, House Committee on Rules, H.Res. 755, *Impeaching Donald John Trump*, 116<sup>th</sup> Cong., 1<sup>st</sup> sess., December 17, 2019 (Washington: GPO, 2019).

<sup>66</sup> After the chair of the Rules Committee called up H.Res. 767 for floor consideration, the minority whip attempted to make a point of order against H.Res. 767 because the report accompanying the rule did not identify all points of order waived. The presiding officer stated this was not a proper point of order, because Rule XIII, clause 6(g), is “merely informational” rather than requiring that waived points of order be specified. The minority whip had argued when making the point of order that the rule was waiving the minority witness rule and that this should have been disclosed. The minority leader had, before the rule was taken up, also raised a question of the privileges of the House regarding HPSCI and Judiciary Committee proceedings, including violations of the minority witness rule, and the question of the privileges of the House was tabled, 226-191. *Congressional Record*, daily edition (December 18, 2019), vol. 165, pp. H12114-H12130.

<sup>67</sup> *Congressional Record*, daily edition (December 18, 2019), vol. 165, pp. H12130-H12206.

debate, H.Res. 24 was agreed to.<sup>68</sup> This case illustrates how quickly a majority in the House can move to impeach a federal official if such action is deemed warranted.

## **Unanimous Consent**

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 resolution containing articles of impeachment.<sup>69</sup>
- 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.<sup>70</sup>
- 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 resolution will be assigned a number and will be pending before the House for consideration.<sup>71</sup>

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<sup>68</sup> *Congressional Record*, daily edition (January 13, 2021), vol. 167, pp. H151-H191.

<sup>69</sup> A Member could draft a new, unnumbered resolution and effectively introduce it at the time the question of privilege is raised. Alternatively, a Member could introduce an impeachment resolution through the hopper and then, at a later date, discharge the committee from its consideration by raising it as a question of the privileges of the House (see *House Practice*, p. 472).

<sup>70</sup> 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.

<sup>71</sup> For additional information, including floor scripts, see CRS Report R44005, *Questions of the Privileges of the House: An Analysis*, by Megan S. Lynch.

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 only impeached an officer without a committee investigation once.<sup>72</sup>

## 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.<sup>73</sup> 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.

A full description of Senate procedures in an impeachment trial is beyond the scope of this report.<sup>74</sup> The Senate has a special set of rules—agreed to in the 19<sup>th</sup> century—that provide some guidance for impeachment trial proceedings.<sup>75</sup> However, in modern practice the Senate has agreed

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<sup>72</sup> The House of Representatives has impeached 20 individuals since 1789, one of them twice, for a total of 21 impeachments. The last time the House considered and adopted articles of impeachment, it did so without a preliminary investigation by committee. H.Res. 24, impeaching President Trump on the charge of “incitement of insurrection,” was submitted to the House on January 11, 2021, and referred to the Judiciary Committee. Two days later, on January 13, 2021, the House proceeded to consider the resolution under the terms of a special rule from the Rules Committee (H.Res. 41). Of the remaining 20 impeachments, 16 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 committee). In the case of the first Trump impeachment, as explained above, additional committees conducted investigations as well and submitted reports to 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 web page at <https://history.house.gov/Institution/Impeachment/Impeachment-List/>.

<sup>73</sup> See, for example, H.Res. 565, 111<sup>th</sup> Cong., 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, 111<sup>th</sup> Cong., 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, 106<sup>th</sup> Cong., Appointing the authorizing managers for the impeachment trial of William Jefferson Clinton, President of the United States.

<sup>74</sup> See CRS Report R46185, *The Impeachment Process in the Senate*, by Elizabeth Rybicki and Michael Greene.

<sup>75</sup> 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, 99<sup>th</sup> Cong., 2<sup>nd</sup> sess., August 15, 1986, 99-33 (Washington: GPO, 1986).

to alternative or supplemental procedures both for judicial impeachment trials and the impeachment trials of President Trump and President Clinton.<sup>76</sup>

The 19<sup>th</sup>-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. Once the Senate has convened as a Court of Impeachment, however, the impeachment trial rules, not the regular rules of the Senate, will apply. The Senate impeachment trial rules and related precedents restrict debate on many resolutions and motions.<sup>77</sup> The debate restrictions could allow a simple majority to determine some procedures for responding to articles of impeachment sent from the House.

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<sup>76</sup> In the case of the impeachment of President Clinton, the Senate agreed to two resolutions that governed impeachment proceedings: S.Res. 16, 106<sup>th</sup> Cong., 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, 106<sup>th</sup> Cong., A resolution relative to the procedures concerning the articles of impeachment against William Jefferson Clinton.

<sup>77</sup> 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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