

The Rule of Law in American Govt: Impeachment

2. Role of the Senate in the Impeachment Process

"The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no Person shall be convicted without Concurrence of two-thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment according to Law."

Art. I, Sec. 3, Cl. 6 & 7, U.S. Constitution

A. Trial Preparation in the Senate.

Impeachment proceedings in the Senate are governed by the Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials.²² After presentation of the articles and organization of the Senate to consider the impeachment, the Senate will issue a writ of summons to the respondent, informing him or her of the date on which appearance and answer should be made.²³ On the date established by the Senate, the respondent may appear in person or by counsel.²⁴ The respondent may also choose not to appear.²⁵ In the latter event, the proceedings progress as though a "not guilty" plea were entered.²⁶ The respondent may demur, arguing that he or she is not a civil official subject to impeachment, or that the charges listed do not constitute sufficient grounds for impeachment.²⁷ The respondent may also choose to answer the articles brought against him or her. The House has traditionally filed a replication to the respondent's answer, and the pleadings may continue with a rejoinder, surrejoinder, and similer.²⁸

B. Trial Procedure in the Senate.

When pleadings have concluded, the Senate will set a date for trial.²⁹ Upon establishing this date, the Senate will order the House managers or their counsel to supply the Sergeant at Arms of the Senate with information regarding witnesses who are to be subpoenaed, and will further indicate that additional witnesses may be subpoenaed by application to the Presiding Officer.³⁰ Under Article I, Section 3, Clause 6 of the Constitution, the Chief Justice presides over the Senate impeachment trial if the President is being impeached.

In impeachment trials, the full Senate may receive evidence and take testimony, or may order the Presiding Officer to appoint a committee of Senators to serve this purpose. If the latter option is employed, the committee will present a certified transcript of the proceedings to the full Senate. The Senate will determine questions of competency, relevancy, and materiality. The Senate may also take further testimony in open Senate, or may order that the entire trial be before the full Senate.³¹

At the beginning of the trial, House managers and counsel for the respondent present opening arguments outlining the charges to be established and controverted, respectively. The managers for the House present the first argument.³² During the course of the trial evidence is presented, and witnesses may be examined and cross-examined.

The Senate has not adopted standard rules of evidence to be used during an impeachment trial. The Presiding Officer possesses authority to rule on all evidentiary questions. However, the Presiding Officer may choose to put any such issue to a vote before the Senate. Furthermore, any Senator may request that a formal vote be taken on a particular question.³³ Final arguments in the trial will be presented by each side, with the managers for the House of Representatives opening and closing.³⁴

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C. Judgment of the Senate.

When the presentation of evidence and argument by the managers and counsel for the respondent has concluded, the Senate as a whole meets in closed session to deliberate. Voting on whether to convict on the articles of impeachment commences upon return to open session, with yeas and nays being tallied as to each article separately.³⁵ A conviction on an article of impeachment requires a two-thirds vote of those Senators present. If the respondent is convicted on one or more of the articles against him or her, the Presiding Officer will pronounce the judgment of conviction and removal. No formal vote is required for removal, as it is a necessary effect of the conviction. The Senate need not vote on all of the articles before it. Where an individual has already been convicted on one or more of the articles, the Senate may decide that subsequent votes on the remaining articles are unnecessary. Conversely, when the Senate did not convict President Andrew Johnson in the votes on three of the articles of impeachment against him, the Senate did not vote on the remaining articles.

The Senate may subsequently vote on whether the impeached official shall be disqualified from again holding an office of public trust under the United States.³⁶ If this option is pursued, a simple majority vote is required.³⁷

SOURCE: Halsted (footnotes omitted). Available at <https://www.senate.gov/reference/resources/pdf/98-806.pdf>