

THE IMPEACHMENT AND EXPULSION PROCEDURES OF KANSAS

By: *James Hampton**

I. INTRODUCTION

In August 2017, Kansas resident Steven Davis filed a petition to summon a grand jury to investigate the conduct of Kansas Secretary of State, Kris Kobach, and his staff regarding the mismanagement of voter registration data.¹ Davis alleged in the petition that Kobach and his staff destroyed and altered voter registration applications, preventing “qualified electors from voting.”² Further, he believed Kobach and his staff “grossly neglect[ed] . . . their election duties.”³ The Kansas District Court dismissed Davis’s complaint because it did not contain sufficient findings of fact with regards to the allegations in the petition.⁴

The Kansas Court of Appeals, however, overruled the district court’s decision, holding that a grand jury can investigate Kobach and his staff’s conduct regarding voter registration fraud.⁵ The Court of Appeals stated that Davis’s allegations sufficiently “align with the language” of the statutes Kobach and his staff are alleged to have violated.⁶ The Court of Appeals went on to state that “an inquiry into [these] allegations could lead to information that, if true, would warrant a true bill of indictment.”⁷ On August 31, 2018, the Kansas Supreme Court denied Kobach’s petition to review the Kansas Court of Appeal’s decision.⁸

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¹ *In re Davis*, 423 P.3d 1044, 1047 (Kan. Ct. App. 2018).

² *Id.* (alleging that Kobach violated KAN. STAT. ANN. § 25-2421a (West 2001), KAN. STAT. ANN. § 25-2420 (West 1993), KAN. STAT. ANN. § 25-2419(e) (West 1974), and KAN. STAT. ANN. § 25-2419(a) (West 1974)).

³ *In re Davis*, 423 P.3d at 1048.

⁴ *Id.*

⁵ *Id.* at 1060–61.

⁶ *Id.* at 1057.

⁷ *Id.*

⁸ Peter Hancock, *Kansas Supreme Court Agrees Douglas County Must Summon Grand Jury to*

Davis' allegations against Kobach raise indictment concerns. However, if Kobach were still in office, these allegations would also raise impeachment concerns. Impeachment is a constitutional and statutory mechanism to remove elected officials from office for specific conduct.⁹ Each state may choose the grounds and procedure for removing executive, legislative, and judicial officers.¹⁰ In this article, Section II explains what grounds may be sufficient to remove a state-wide elected official and the subsequent impeachment procedure. Section III explains how one can amend the removal procedure. Section IV explores the history of impeachment in Kansas. Finally, Section V features case examples and removal procedures of other states, providing a comparison of other impeachment proceedings.

II. THE KANSAS CONSTITUTION AND REMOVAL PROCEDURES

A. *The Executive and Judicial Branch: Impeachment*

In an impeachment procedure, a member of the Executive and Judicial Branch may be removed from office during their term.¹¹ The Governor and other office holders under the Kansas Constitution may be removed from office by impeachment “for, and conviction of treason, bribery, or other high crimes and misdemeanors.”¹² No authority defines exactly what constitutes “other high crimes.” In addition, nothing in section twenty-eight of article two of the Kansas Constitution states whether the offense must be committed during an office holder’s term to warrant impeachment. However, during the impeachment of District Judge Theodosius Botkin in 1891—a topic that will be discussed at length¹³—an office holder could not be impeached for an offense he or she committed while not in office.¹⁴

B. *The Impeachment Procedure: Kansas Statutes Annotated Chapter 37 – Impeachment*

The Kansas Constitution authorizes the impeachment of an office holder, and chapter thirty-seven of the Kansas Statutes Annotated (K.S.A.) further specifies these provisions. Section 37-101 of the K.S.A. states that, “An impeachment is the prosecution by the house of representatives before the senate, of the governor or other officer, under the constitution, for

Investigate Kobach, LAWRENCE J. WORLD (Aug. 31, 2018), <http://www2.ljworld.com/news/2018/aug/31/kansas-supreme-court-agrees-douglas-county-must-summon-grand-jury-to-investigate-kobach/> [<https://perma.cc/PCG4-B4J8>].

⁹ See U.S. CONST. art. II, § 4.

¹⁰ See U.S. CONST. art. II, § 1.

¹¹ KAN. CONST. art. II, § 28.

¹² *Id.*

¹³ See *infra* text accompanying notes 146–57.

¹⁴ Cortez A. M. Ewing, *Notes on Two Kansas Impeachments*, 23 KAN. HIST. Q., 281, 290 (1957) [hereinafter Ewing, *Notes on Two Kansas Impeachments*].

misdemeanor in office.”¹⁵ If an office holder commits an impeachable offense and the House of Representatives intends to begin impeachment proceedings, the House must draft Articles of Impeachment,¹⁶ which include the accusations against the office holder.¹⁷ Each Article contains a different accusation the House believes the official has committed.¹⁸ In the Articles of Impeachment, the House must state, “with reasonable certainty the misdemeanor in office for which the officer is impeached.”¹⁹ If the House approves the Articles, an impeachment is ordered, and a board of managers is appointed by the House of its own members to prosecute the official before the Senate.²⁰

The office holder facing impeachment receives a summons from the Secretary of the Senate to appear on the day of the impeachment hearing.²¹ The summons will contain a copy of the Articles of Impeachment.²² Both must be delivered to the office holder in person at his or her residence.²³ If he or she is not present, the summons and Articles of Impeachment must be left with a family member over sixteen years old.²⁴

After the office holder facing impeachment receives the summons, the chairman of the board of managers will begin gathering evidence.²⁵ During this discovery phase, the chairman has the power to subpoena witnesses and require the disclosure of any relevant documents, papers, or books that pertain to the accusations in the Articles of Impeachment.²⁶ Failure of a witness to testify or turn over any documentation may result in the witness being arrested and the papers seized.²⁷

¹⁵ KAN. STAT. ANN. § 37-101 (West 1923).

¹⁶ KAN. STAT. ANN. § 37-102 (West 1923).

¹⁷ *Id.*

¹⁸ See Cortez A. M. Ewing, *Early Kansas Impeachments*, 1 KAN. HIST. Q. 307, 314–15 (1932) [hereinafter Ewing, *Early Kansas Impeachments*] (illustrating that there were five Articles of Impeachment against Governor Charles Robinson in 1862, which are summarized as: “1. That Governor Charles Robinson, contrary to the law which authorized the issuance of the \$20,000 worth of war bonds, signed and issued such bands to the extent of \$40,000; 2. That he, together with J.W. Robinson and Hillyer, conspired with Robert Stevens in the fraudulent sale of the seven per cent bonds; 3. That he, and the other two state officers, knew that the bonds could be sold for 85 per cent par value; 4. That he consented to the sale of 60 per cent par value, when he knew that such sale was contrary to the law of the state of Kansas; 5. That he officially approved the said sale, and thereby committed a high misdemeanor in office.”).

¹⁹ KAN. STAT. ANN. § 37-103 (West 1923) (stating that each accusation against the officer must be written “separately and distinctly” listing the basis for which the accusation is being brought).

²⁰ KAN. STAT. ANN. § 37-104 (West 1923) (stating that the Constitution and statute do not specify how many members of the House of Representatives is required to approve the Articles of Impeachment; when the language is silent as to what vote is required, a majority is assumed).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ See KAN. STAT. ANN. § 37-106 (West 1923).

²⁶ *Id.*

²⁷ *Id.*; KAN. STAT. ANN. § 37-107 (West 1923) (giving the Senate the power to compel any witness to appear or turn over any documentation they have pertaining to the Articles of Impeachment). The Senate may impose imprisonment or a fine if a witness fails to appear or turn

After all the documents and witnesses are gathered, the Senate will begin the impeachment hearing on the day specified. Before the hearing begins, all of the senators in attendance must take the following oath: “I do solemnly swear (or affirm), that I will faithfully and impartially try the impeachment against A.B., and do justice according to the law and the evidence.”²⁸ If a senator is absent for any amount of time during the impeachment hearing, the Senate must determine what duration of absence would preclude this senator from the final vote.²⁹ Because an impeachment is tried by the senate, the accused and the chairman of the board of managers have the chance to present evidence, call witnesses, and cross-examine witnesses.³⁰

At the conclusion of the hearing, the Senate will vote to either convict the office holder of the accusations contained in the Articles of Impeachment or to acquit. The Kansas Constitution requires an affirmative two-thirds of the senators present to remove an office holder from office and to convict the individual of the accusations in the Articles of Impeachment.³¹

C. The Senate: Senate Rule 76 – Censure or Expulsion

The Kansas Constitution grants the Senate authority to remove a member during the office holder’s term.³² Article II, section 8 of the Kansas Constitution gives each house in the Legislative Branch the authority to determine how to expel or censure a member in appropriate cases.³³ Each house has a set of rules that prescribe various procedures such as voting, how to introduce bills, and committee functions. In addition, each house has a specific procedure regarding how to remove a member and how to amend the removal procedure.

Senate Rule 76 prescribes the procedure for removing a senator during term.³⁴ First, three or more senators must file a complaint against a senator.³⁵ Further, this group of senators must sign a written statement requesting the senator “be censured or expelled for misconduct” and file it with the Secretary of the Senate.³⁶ The President of the Senate then appoints a committee of five senators, “no more than three of whom shall be members of the same political

over any documentation related to the Articles of Impeachment. *Id.*

²⁸ KAN. STAT. ANN. § 37-109 (West 1923).

²⁹ KAN. STAT. ANN. § 37-110 (West 1923).

³⁰ KAN. CONST. art. II, § 27. There is no Kansas statute or provision in the Constitution that prescribes the procedure for a trial by the Senate. However, as you will see below, every time a member of the executive or judicial branch has faced impeachment the trial by the senate as functioned like any other trial.

³¹ KAN. CONST. art. II, § 27.

³² KAN. CONST. art. II, § 8.

³³ KAN. CONST. art. II, § 8.

³⁴ COMM. ON ORGANIZATION, CALENDAR AND RULES, RULES OF THE S., 1st Sess., at 27 (Kan. 2017).

³⁵ *Id.*

³⁶ *Id.*

party” to consider the complaint.³⁷ The committee has the power to either dismiss the complaint or schedule a hearing regarding the allegations against the senator.³⁸ The Rules of the Senate state that “reasonable notice and an opportunity to appear shall be afforded to the Senator against whom a complaint has been filed.”³⁹ The committee also has the authority under article 10, chapter 46 of the K.S.A. to exercise the compulsory process.⁴⁰ After deliberations and completion of the hearing, the committee may either dismiss the complaint or submit a recommendation to the full Senate to censure or expel the member.⁴¹

After receiving the recommendation from the committee, the full Senate may vote to either dismiss the complaint, censure the senator, or expel the senator.⁴² The Senate may vote without any further hearings or investigations.⁴³ A two-thirds majority vote of those senators elected and qualified is required to censure or expel.⁴⁴ No senator in Kansas history has ever been expelled.

D. The House of Representatives: Article 49 of the Rules of the House of Representatives – Reprimand, Censure, or Expulsion of a Member

Article II, Section 8 of the Kansas Constitution allows the House to determine how to expel or censure a member in appropriate cases.⁴⁵ In Article 49, the Rules of the Kansas House of Representatives provides the procedure to remove a representative. A representative may be reprimanded, censured, or expelled for any misconduct.⁴⁶ In addition to “any misconduct,” under House Rule 2508, a member may be reprimanded, censured, or expelled for a refusal to vote when not excused.⁴⁷ The standard “any misconduct” is not defined.⁴⁸ Therefore, it is up to the investigating committee to determine whether the alleged misconduct is grounds for expulsion.⁴⁹

Any member of the House of Representatives may file a complaint requesting that “[a] member be reprimanded, censured or expelled.”⁵⁰ After a complaint is filed bearing the complaining representative’s signature, the

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ COMM. ON ORGANIZATION, CALENDAR AND RULES, RULES OF THE S., 1st Sess., at 27 (Kan. 2017); KAN. STAT. ANN. §§ 46-1001–46-1017.

⁴¹ COMM. ON ORGANIZATION, CALENDAR AND RULES, RULES OF THE S., 1st Sess., at 27 (Kan. 2017).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ KAN. CONST. art. II, § 8.

⁴⁶ CHIEF CLERK OF H., RULES OF THE KAN. H. REP., 1st Sess., at 40 (2019).

⁴⁷ *Id.* at 30.

⁴⁸ *See id.* at 40.

⁴⁹ *Id.* at 41.

⁵⁰ *Id.* at 40.

Speaker of the House appoints a committee of six members, equally comprised of majority and minority party members, to consider the claims in the complaint.⁵¹ The committee has the power to either dismiss the complaint or set a hearing.⁵² Should a hearing be necessary, the member facing expulsion has the opportunity to appear.⁵³ After deliberations, investigation, and completion of the hearing, the committee may either dismiss the complaint or “make recommendations to the full House of Representatives for reprimand, censure or expulsion.”⁵⁴

After the full House receives any report made by the election committee, the House of Representatives may either dismiss the complaint or vote to reprimand, censure, or expel the member.⁵⁵ No further hearing or investigation is required before the House votes on whether to reprimand, censure, or expel the member.⁵⁶ A two-thirds majority vote of all members elected in the House is required to reprimand, censure, or expel a member.⁵⁷ No member of the Kansas House of Representatives has ever been expelled.

III. HOW TO AMEND REMOVAL PROCEDURES

A. *Amendment to the Kansas Constitution: Impeachment*

1. Article XIV, Section 1 of the Kansas Constitution – Proposed Amendment

To amend the impeachment procedures, the Kansas Legislature would also need to amend the Kansas Constitution.⁵⁸ There are two ways to amend the Kansas Constitution. The first is set forth in section one of article fourteen of the Kansas Constitution.⁵⁹ A proposed amendment may be introduced in either the House or the Senate.⁶⁰ Two-thirds of all House and Senate members must approve the amendment.⁶¹ At the next election, “such proposition to amend the constitution shall be submitted . . . to the electors for their approval or rejection.”⁶² The amendment only takes effect if a majority of the electors vote in favor.⁶³

2. Article XIV, Section 2 of the Kansas Constitution – Constitutional Convention

The second way the Kansas Legislature can amend the Kansas

⁵¹ *Id.* at 41.

⁵² *Id.*

⁵³ CHIEF CLERK OF H., RULES OF THE KAN. H. REP., 1st Sess., at 41 (2019).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See KAN. CONST. art. II, §§ 27–28.

⁵⁹ KAN. CONST. art. XIV, § 1.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

Constitution is through a constitutional convention as prescribed by article XIV, section 2. An affirmative vote of two-thirds of all elected House and Senate members is required for the legislature to “submit the question, ‘Shall there be a convention limited to revision of article(s) of the constitution of the state of Kansas[?]'” to the electors during the next election for representatives.⁶⁴ An affirmative majority vote of the electors is required to approve a constitutional convention in this case.⁶⁵ If a majority of electors approve of a constitutional convention, delegates for the convention will be elected at the next election for representatives.⁶⁶ The convention will start on the first Tuesday in May, following the election, at the state capital.⁶⁷ The convention may only amend the parts of the Constitution that were proposed in the question presented to either both houses or to the electors.⁶⁸ The delegates will then present a final proposal for the amendment to the Constitution at the first general or special statewide election.⁶⁹ A majority vote of the final proposal of the electors is required for the amendment to take effect.⁷⁰

3. Amendment to Kansas Impeachment Procedure: Amendment 4 (1974)

The impeachment process in Kansas has only been amended once. On November 5, 1974, Amendment 4—Kansas Regarding the Power of the Legislature—was proposed to the electors of Kansas.⁷¹ The amendment proposed to change the number of senators required to be present during the impeachment hearing and the offenses for which an office holder could be impeached.⁷² Before the amendment, an office holder could be impeached for any misdemeanor in office. After the amendment, an officer could be impeached for treason, bribery, or other high crimes and misdemeanors.⁷³ However, the amendment did not specify if the impeachable offense had to be committed during the office holder’s term. In addition, the amendment did not define high crimes or misdemeanors. Before Amendment 4, article II, sections 27 and 28 of the Kansas Constitution read as follows:

SEC. 27. The House of Representatives shall have the sole power to impeach. All impeachments shall be tried in the Senate, and when sitting for that purpose, the Senators shall take an oath to do justice according to the law and the evidence. No person shall be convicted without the concurrence of two-thirds of the Senators elected.

SEC. 28. The Governor, and all other officers under this

⁶⁴ KAN. CONST. art. XIV, § 2.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ KAN. CONST. art. XIV, § 2.

⁷¹ *Kansas Regarding the Power of the Legislature, Amendment 4 (1974)*, BALLOTPEdia [hereinafter *Amendment 4*], [https://ballotpedia.org/Kansas_Regarding_the_Power_of_the_Legislature,_Amendment_4_\(1974\)](https://ballotpedia.org/Kansas_Regarding_the_Power_of_the_Legislature,_Amendment_4_(1974)) [<https://perma.cc/YQ8N-MGCF>].

⁷² *Id.*

⁷³ *Id.*

Constitution, shall be subject to impeachment for any misdemeanor in office; but judgment in all such cases shall not be extended further than to removal from office, or disqualification to hold any office of profit, honor or trust under this Constitution; but the party whether convicted or acquitted, shall be liable to indictment, trial judgment and punishment, according to law.⁷⁴

Amendment 4 was approved by a vote of 341,392 in favor (68.02 percent), and a vote of 160,420 against (31.97 percent).⁷⁵ After Amendment 4, article II, sections 27 and 28 of the Kansas Constitution now read as follows:

SEC. 27. The House of Representatives shall have the sole power to impeach. All impeachments shall be tried in the Senate, and when sitting for that purpose, the Senators shall take an oath to do justice according to the law and the evidence. No person shall be convicted without the concurrence of two-thirds of the *senators then elected (or appointed) and qualified*.

SEC. 28. The Governor and all other officers under this constitution, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.⁷⁶

4. Attempt to Amend Impeachment Procedure: Senate Bill Number 439 (2016)

The Senate, however, attempted to amend the impeachment procedure relatively recently. On February 10, 2016, Senate Bill 439 (S.B. 439)⁷⁷ was introduced into the Senate.⁷⁸ Originally, S.B. 439 was intended to only apply to the justices on the Kansas Supreme Court.⁷⁹ After being referred to the Senate Judiciary Committee, S.B. 439 was amended to also include executive officers.⁸⁰ S.B. 439 attempted to define exactly what “other high crimes and misdemeanors” meant in section twenty-eight of article two of the Kansas Constitution.⁸¹ Further, the Senate Judiciary Committee defined what “high crimes and misdemeanors” meant for both a Kansas Supreme Court justice and

⁷⁴ KAN. CONST. of 1859, art. II, §§ 27–28 (1859).

⁷⁵ *Amendment 4*, *supra* note 71.

⁷⁶ KAN. CONST. art. II, §§ 27–28 (emphasis added).

⁷⁷ An act concerning impeachment; relating to other high crimes and misdemeanors; justices of the supreme court and constitutional officers of the executive department.

⁷⁸ S.B. 439, 86th Leg., Reg. Sess. (Kan. 2016) (stating that the bill was introduced and sponsored by Senators Fitzgerald, Abrams, Arpke, Baumgardner, Donovan, Holmes, Knox, LaTurner, Lynn, Masterson, Melcher, O’Donnell, Olson, Petersen, Powell, Pyle, Smith, and Tyson).

⁷⁹ *Id.*

⁸⁰ *SB 439, Bills and Resolutions: Grounds for impeachment for justice of the supreme court and certain judges of the district court*, KAN. LEG., http://kslegislature.org/li_2016/b2015_16/measures/sb439/ [<https://perma.cc/VB6G-DURT>] (illustrating that Senator Jeff King was the Chair of the Senate Judiciary Committee, the Vice Chair was Senator Greg Smith, the Ranking Minority Member was Senator David Haley, and the other members were Senators Terry Bruce, Forrest Knox, Garrett Love, Julia Lynn, Carolyn McGinn, Mike Petersen, Patt Petty, and Mary Pilcher-Cook).

⁸¹ S.B. 439, 86th Leg., Reg. Sess. (Kan. 2016).

an executive constitutional officer.⁸² After the Senate Judiciary Committee amended the bill, other high crimes and misdemeanors for a member of the judicial branch included, but were not limited to:

- (a) Commission of offenses which bear on the justice's fitness for the duties such justice holds, which such justice is bound by oath or affirmation to perform;
- (b) commission of other indictable criminal offenses;
- (c) commission of a breach of the public trust;
- (d) commission of a breach of judicial ethics;
- (e) failure to perform adequately the duties of office;
- (f) attempting to subvert fundamental laws and introduce arbitrary power;
- (g) attempting to usurp the power of the legislative or executive branch of government;
- (h) exhibiting discourteous conduct toward litigants, jurors, witnesses, lawyers or others with whom the justice deals in an official capacity;
- (i) exhibiting wanton or reckless judicial conduct;
- (j) exhibiting personal misbehavior or misconduct;
- (k) failure to properly supervise, administer or discipline judicial personnel; or
- (l) such other actions which in accordance with section 28 of article 2 of the constitution of the state of Kansas may constitute grounds for impeachment.⁸³

For a constitutional officer of the executive branch, other high crimes and misdemeanors included, but were not limited to:

- (a) Commission of offenses which bear on the officer's fitness for the duties such officer holds, which such justice is bound by oath or affirmation to perform;
- (b) commission of other indictable criminal offenses;
- (c) commission of a breach of the public trust;
- (d) failure to perform adequately the duties of office;
- (e) attempting to subvert fundamental laws and introduce arbitrary power;
- (f) attempting to usurp the power of the legislative or judicial branch of government;
- (g) exhibiting discourteous conduct toward persons with whom the officer deals in an official capacity;
- (h) exhibiting wanton or reckless conduct;
- (i) exhibiting personal misbehavior or misconduct;

⁸² *Id.*

⁸³ *Id.*

- (j) failure to properly supervise, administer or discipline executive branch personnel; or
- (k) such other actions which in accordance with section 28 of article 2 of the constitution of the state of Kansas may constitute grounds for impeachment.⁸⁴

The Senate adopted the amendments, approving S.B. 439 by a vote of twenty-one Yeas and nineteen Nays on March 22, 2016.⁸⁵ The same day, S.B. 439 was introduced to the House of Representatives and referred to the Committee on Judiciary.⁸⁶ The bill, however, died in the House Committee on June 1, 2016.⁸⁷ No other attempts have been made to amend the impeachment procedure in Kansas.

B. *Amendment to the Rules of the Senate: Senate Rule 68 – Amendment to Rules*

The amendment procedure for the Rules of the Senate is similar to the procedure to amend the Rules for the House of Representatives. A Senate rule cannot be amended without an affirmative two-thirds vote of all elected members of the Senate.⁸⁸ Motions to amend any Senate rule cannot be accepted without the “unanimous consent of the Senate, unless one day’s previous notice thereof shall be given in open session.”⁸⁹ However, notice of an amendment to the Senate rules is not required, and only the affirmative vote of a majority of the Senators elected and qualified is necessary when:

- (1) The resolution is sponsored by the President or any three Senators, and
- (2) either
 - (a) a copy thereof is e-mailed to each Senator not later than 11:00 p.m. on the Thursday preceding the Monday on which the legislative session is to commence; or
 - (b) in lieu of e-mailing, copies of the resolution are made available to Senators on the first day of the legislative session and Final Action is taken on the second legislative day.⁹⁰

⁸⁴ *Id.*

⁸⁵ *Amendment 4, supra* note 71 (illustrating which State Senators voted yea (Senators Abrams, Arpke, Baumgardner, Bruce, Fitzgerald, Holmes, Knox, LaTurner, Love, Lynn, Masterson, Melcher, Olson, Ostmeyer, Petersen, Pilcher-Cook, Powell, Pyle, Smith Tyson, Wagle) and nay (Bowers, Denning, Donovan, Faust-Goudeau, Francisco, Haley, Hawk, Hensley, Holland, Kelly, Kerschen, King, Longbine, McGinn, O’Donnell, Petty, V. Schmidt, Wilborn, Wolf)).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ COMM. ON ORGANIZATION, CALENDAR AND RULES, RULES OF THE S., 1st Sess., at 24 (Kan. 2017).

⁸⁹ *Id.*

⁹⁰ *Id.* at 24–25.

C. *Amendment to the Rules of the House of Representatives: Article 37 – Amendment of Rules of the House*

The Rules of the House of Representatives also prescribe how to amend the removal procedure. Under article 37 of the Rules of the Kansas House of Representatives, a resolution may be passed to amend or revoke any of the House Rules.⁹¹ If a resolution is made to amend a House Rule, the Speaker of the House of Representatives must refer the resolution to the standing Committee on Rules and Journal before the whole House considers it.⁹² The vote required to pass the resolution is “an affirmative vote of a majority of the members then elected and qualified to the House.”⁹³ However, referral to the standing Committee on Rules and Journal is not required to change the House Rule of expulsion at the start of a legislative session when:

- (a) The resolution is sponsored by the Speaker or the standing Committee on Rules and Journal and
- (b) either
 1. a copy thereof is mailed to each member by deposit in the United States mails not later than 11:00 p.m. on the Thursday preceding the Monday on which the legislative session is to commence; or
 2. in lieu of mailing, copies of the resolution are made available to members on the first day of the legislative session and consideration under Rule 3704 occurs on the second legislative day.⁹⁴

IV. KANSAS IMPEACHMENTS

As mentioned above, no Senator or member of the House of Representatives has been subject to removal. However, several executive office holders and one judicial office holder have faced impeachment.⁹⁵ In total, seven office holders have been impeached for various reasons since 1861.⁹⁶ The commonality between all instances of impeachment is that the accusations that served as the basis for the Articles of Impeachment were all committed during the office holder’s term. The first time an officer was impeached was in 1862 and the last time was in 1933.⁹⁷ The following officials were all impeached by the House of Representatives but not all were convicted

⁹¹ See CHIEF CLERK OF H., RULES OF THE KAN. H. REP., 1st Sess., at 35 (2019).

⁹² *Id.*

⁹³ *Id.* (stating that under House Rule 2902, resolutions to adopt, amend, or revoke a rule of the House “shall take place on General Orders when favorably reported or when referred to the Committee of the Whole by the Speaker”).

⁹⁴ *Id.* at 35–36 (stating that House Rule 3704 requires resolutions to be subject to House Rule 2902).

⁹⁵ See generally Ewing, *Early Kansas Impeachments*, *supra* note 18.

⁹⁶ See *infra* text accompanying notes 98–177.

⁹⁷ See *infra* text accompanying notes 98, 173–74.

by the Senate.

A. Governor Charles L. Robinson, Secretary of State John Winter Robinson, and State Auditor George S. Hillyer (1862)

The first governor in Kansas, and in the United States, to ever be impeached was Charles L. Robinson in 1862.⁹⁸ Robinson, originally from Massachusetts, came to Kansas in 1854 under assignment to look after the interests of the Emigrant Aid Society.⁹⁹ Robinson was involved in politics and became part of the antislavery movement from the time he entered Kansas.¹⁰⁰ When the Wyandotte Constitution was adopted and it came time to choose state officers, Robinson was elected governor in December 1859 but did not officially take office until February 1861.¹⁰¹

The financial condition of the state was poor at the time Kansas officially entered the Union.¹⁰² In May 1861, the Kansas Legislature authorized the issuance of two bonds: war bonds and “seven per cent bonds” at a total value of \$20,000.¹⁰³ However, when the legislature approved the issuance of the bonds, no one knew whether the \$20,000 limit was for the par value or for the actual value of the bonds.¹⁰⁴ The Kansas Legislature believed,

[s]ince the bonds would sell for less than half of their par value, the administration interpreted the limit to be against the sum of money that was brought into the state treasury through the sale of the bonds. Under this presumption, bonds to the par value of forty thousand dollars were signed by the governor and countersigned by the other two necessary state administrative officers.¹⁰⁵

Robert S. Steven bought \$31,000 worth of the war bonds at forty percent par value.¹⁰⁶ The “seven per cent bonds” as enacted by a supplementary law, could be sold by the “governor, auditor, and secretary of state, or a majority of them” at a value not less than seventy percent of their par value.¹⁰⁷ The limit set by the Kansas Legislature for the “seven per cent bonds” was one hundred thousand dollars.¹⁰⁸ The money from the bonds would be used to pay the State’s outstanding obligations.¹⁰⁹

⁹⁸ Ewing, *Early Kansas Impeachments*, *supra* note 18, at 308.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 310.

¹⁰³ *Id.* at 311.

¹⁰⁴ Ewing, *Early Kansas Impeachments*, *supra* note 18, at 311.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

Governor Robinson had difficulties selling the “seven per cent bonds.”¹¹⁰ Eventually, Secretary of State John Winter Robinson and State Auditor George S. Hillyer went to Washington D.C. in an effort to sell the bonds but were unsuccessful.¹¹¹ Robert S. Stevens, however, was able to sell the bonds to the Department of Interior through the aid of Mr. Corwin, who was “a brother-in-law of the Secretary of Interior.”¹¹² At the time the bonds were sold, Stevens was a State Senator.¹¹³ Stevens made J.W. Robinson and Hillyer sign a contract that stated Stevens would receive “sixty cents on the dollar” for every bond he was able to sell.¹¹⁴ Stevens eventually sold \$87,000 in bonds to the Indian Office at “eighty-five cents on the dollar” in December 1861, receiving a twenty-five percent profit.¹¹⁵

The House of Representatives approved a resolution to investigate the sale of the bonds on January 30, 1862.¹¹⁶ On February 14, 1862, the House “passed a resolution formally impeaching” Robinson, J.W. Robinson, and Hillyer “for high misdemeanors in office.”¹¹⁷ The Articles of Impeachment accused all three officials of entering into a conspiracy with Stevens to illegally sell the bonds and leaving Kansas with only sixty percent of the par value.¹¹⁸ As a result, the state was “defrauded out of its just money with the full knowledge and consent . . . and the state . . . suffered great pecuniary damage.”¹¹⁹

J.W. Robinson’s impeachment hearing began on June 4, 1862.¹²⁰ Depositions from state senators, state representatives, and officials from the Office of Interior were taken to prove the allegations in the Articles of Impeachment.¹²¹ Of the eight counts against J.W. Robinson, the Senate convicted him for article one of the Articles of Impeachment by a vote of seventeen to four.¹²² The Senate, however, voted twenty to one not to disqualify J.W. Robinson from holding office in the future.¹²³ Immediately after the conviction of J.W. Robinson, Hillyer’s impeachment hearing began.¹²⁴ All the evidence used in J.W. Robinson’s trial was considered “legitimate evidence” in Hillyer’s trial.¹²⁵ Only three additional witnesses were

¹¹⁰ Ewing, *Early Kansas Impeachments*, *supra* note 18, at 311.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 312.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Ewing, *Early Kansas Impeachments*, *supra* note 18, at 313.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 313–15.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 315.

¹²¹ *Id.* at 318.

¹²² Ewing, *Early Kansas Impeachments*, *supra* note 18, at 319.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

called, and the trial ended in less than three days.¹²⁶ Hillyer was also convicted of article one of the Articles of Impeachment and removed from office by a vote of seventeen to four on June 16, 1862.¹²⁷ Governor Robinson's impeachment hearing began and ended on that day.¹²⁸ To this day, it is Kansas's shortest impeachment hearing ever recorded, and one of the shortest in the history of the United States.¹²⁹ Under all Articles of Impeachment, "only three votes were cast in favor of conviction."¹³⁰ Robinson eventually retired from the position of Governor in January 1863 and served in other capacities for the state until his death in 1894.¹³¹

B. *State Treasurer Josiah Hayes (1873)*

Josiah Hayes was elected in 1872 as State Treasurer, taking office in January 1873.¹³² At the time Hayes took office, banks were failing across the country and state officials were worried that too many bankers were demanding state loans to "postpone public admission of the insolvency of their institutions."¹³³ As state treasurer, Hayes was required to make "monthly examination[s] of the condition of the treasurer's office."¹³⁴ Hayes, however, never personally examined the funds in the state treasurer's office.¹³⁵ Hayes improperly retained tax money in the vaults and improperly accounted for money issued from the federal government to Kansas.¹³⁶ In the early fall of 1873, State Auditor D.W. Wilder noticed too many irregularities in Hayes's office and demanded the Governor take actions against him.¹³⁷ McFadden, "a groceryman auditor," attempted to make an inspection of Hayes's office, but Hayes's secretary told him he needed more time to bring the records "down to date."¹³⁸ Wilder's wishes to bring proceedings against Hayes became reality when a newspaper picked up from a different source that the state of the treasury was in trouble.¹³⁹

¹²⁶ *Id.*

¹²⁷ *Id.* at 323–24.

¹²⁸ Ewing, *Early Kansas Impeachments*, *supra* note 18, at 324.

¹²⁹ *Id.*

¹³⁰ *Id.* (stating that Robinson "did not directly participate in the bond sale, but remained in Kansas while J.W. Robinson and Hillyer were peddling the bonds in Washington").

¹³¹ *Id.* at 325.

¹³² Ewing, *Notes on Two Kansas Impeachments*, *supra* note 14, at 281.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at 282.

¹³⁶ *Id.* ("In 1872 Congress appropriated \$333,817.37 for the payment of state scrip issued to conduct the two campaigns of 1864, one against Gen. Sterling Price and the other against insurrectionary Indians. The scrip was issued to pay for services, supplies, and even damages resulting from these military episodes. In paying some 15,000 of these claims, many irregularities naturally occurred. Duplicates of scrip were retired; individual pieces of scrip were paid without indorsement [sic] either of the person to whom it had been originally issued or of the final payee; some payments were made without the signature of the treasurer.").

¹³⁷ *Id.* at 283.

¹³⁸ Ewing, *Notes on Two Kansas Impeachments*, *supra* note 14, at 283.

¹³⁹ *Id.*

On January 19, 1874, the House of Representatives approved of a legislative investigation into the state treasury and Hayes's conduct.¹⁴⁰ The Committee on State Affairs conducted the investigation, and the majority report recommended that Hayes be impeached.¹⁴¹ On March 2, 1874, the House voted seventy-four to twenty to adopt the majority report.¹⁴² On March 5, the Senate was notified, and the House adopted Articles of Impeachment against Hayes.¹⁴³ The Articles of Impeachment accused Hays of withholding the true "condition of the treasury," depositing and loaning "state moneys with certain companies, corporations, and individuals," and misusing state funds in various ways while "willfully neglect[ing] to perform his duties."¹⁴⁴ The trial was set for May so the board of managers had time to gather more evidence and witnesses.¹⁴⁵ Hayes, however, resigned on May 12, 1874, and the Senate did not move forward with the impeachment.¹⁴⁶

C. *Judge of the Thirty-Second Judicial District Theodosius Botkin (1891)*

In 1890, Theodosius Botkin was elected to a four-year term as the judge of the thirty-second Judicial District of Kansas.¹⁴⁷ At the time Botkin was elected, there was controversy over the location of a county seat, banks fought over state funding, and political groups fought to obtain power.¹⁴⁸ In addition, Botkin's personality may have played a role in the impeachment.¹⁴⁹ Witness testimony described Botkin as "domineering, vindictive . . . a temper that was unpredictable."¹⁵⁰ Botkin was also described as having "an appetite for strong liquor," which he had easy access to as the courthouse was connected to a liquor store.¹⁵¹ Since Botkin's election, political enemies of the Republicans gathered evidence against Botkin to remove him from office, which culminated in a petition to the House of Representatives on February 6, 1891.¹⁵² On February 27, 1891, the House impeached Botkin for "high misdemeanors in office," under ten Articles of Impeachment.¹⁵³ The Articles of Impeachment alleged that Botkin was intoxicated in public, intoxicated on the bench, and issued "fraudulent warrants, illegal arrests, and [failed] to permit filing of exceptions."¹⁵⁴

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Ewing, *Notes on Two Kansas Impeachments*, *supra* note 14, at 284.

¹⁴⁵ *Id.* at 285.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 286.

¹⁴⁸ *Id.* at 287.

¹⁴⁹ *Id.*

¹⁵⁰ Ewing, *Notes on Two Kansas Impeachments*, *supra* note 14, at 287.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.* at 288.

¹⁵⁴ *Id.* at 288–89.

Although there is no language indicating whether an impeachable offense must be committed during the office holder's term, Botkin's lawyer and the chairman agreed that Botkin could not be impeached "for acts committed prior to his election or re-election."¹⁵⁵ For Botkin, this meant that he could not be impeached for any offense he committed before he was elected in November 1890. At the time of Botkin's impeachment, there were forty senators, but only thirty-five voted on the final ballot.¹⁵⁶ A two-thirds majority meant that twenty-seven senators had to vote in favor to convict Botkin. Fifteen Senators, all Republican, voted unanimously on every count to acquit Botkin, which prevented Botkin from being convicted.¹⁵⁷ Transcripts from the impeachment hearing reveal a sentiment that "no one was on trial except the Republican party."¹⁵⁸

D. State Auditor Will J. French and Attorney General Roland Boynton (1933)

The impeachments of State Auditor Will J. French and Attorney General Roland Boynton involved a man named Ronald Finney. French was elected State Auditor in 1926 and assumed office in January of the following year.¹⁵⁹ Roland Boynton was elected to Attorney General in December 1930.¹⁶⁰ Ronald Finney was a prominent banker¹⁶¹ who came from a well-known Kansas family with political connections.¹⁶² In late June 1933, during a "routine examination of the National Bank of Topeka[,] "suspicious" Kansas municipal bonds were found in the bank totaling over \$100,000.¹⁶³ Upon further examination, examiners discovered identical bonds at the state treasury for the "State's School Fund Commission."¹⁶⁴ The bonds had been placed in the bank as collateral for a loan by Finney.¹⁶⁵ Governor Alfred M. Landon ordered State Treasurer Tom Boyd to allow federal agents to examine the rest of the state treasury.¹⁶⁶ Over the course of several days, federal and state agents discovered more than 1 million dollars' worth of forged municipal bonds and warrants.¹⁶⁷

Lieutenant Governor Charles W. Thompson created a committee to

¹⁵⁵ *Id.* at 290.

¹⁵⁶ Ewing, *Notes on Two Kansas Impeachments*, *supra* note 14, at 294.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Kansas Auditors*, KAN. HIST. SOC'Y, <https://www.kshs.org/p/kansas-auditors/10994> [<https://perma.cc/DXU5-XGMX>].

¹⁶⁰ *Kansas Attorneys Generals*, KAN. HIST. SOC'Y, <https://www.kshs.org/kansapedia/kansas-attorneys-general/19924> [<https://perma.cc/D75L-5KQC>].

¹⁶¹ See ROBERT SMITH BADER, *THE GREAT KANSAS BOND SCANDAL* 99–120 (1982).

¹⁶² See *id.* at 121–40.

¹⁶³ *Id.* at 19.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 21.

¹⁶⁷ BADER, *supra* note 161, at 34.

investigate the conduct of office holders “with a view to recommending impeachment where warranted.”¹⁶⁸ There was evidence that Boynton and French were both involved in the scandal. Boynton had invested \$400 with Finney and was receiving generous returns.¹⁶⁹ Finney also made campaign contributions to Boynton.¹⁷⁰ However, the basis of charges against Boynton were that he had “indifference and unfaithfulness to his trust on the School Fund Commission,” that he had “direct evidence of [the] duplicate bonds” placed by Finney in the Spring of 1933, and that he was as “useless as the prosecutor in the civil and criminal suits that had been brought as a result of the scandal.”¹⁷¹ French was accused of helping Finney by using the auditor’s seal on the forged bonds and ignoring complaints that Finney was “misrepresenting the intentions of the Auditor’s Office[.]” the canceled warrants and, “the certificates of destruction.”¹⁷²

On October 26, 1933, based on the evidence, the committee recommended both French and Boynton be impeached for their involvement in the bond scandal.¹⁷³ The committee introduced Articles of Impeachment against both office holders on November 2, 1933.¹⁷⁴ The House eventually adopted four articles of impeachment against French and Boynton and formally impeached both.¹⁷⁵ Separate trials were set for both men, with Boynton’s set for January 8, 1934 and French’s set for January 25.¹⁷⁶ Both French and Boynton were acquitted of all charges.¹⁷⁷

V. THE IMPEACHMENT PROCEDURES OF OTHER STATES

A. *Missouri*

1. Missouri’s Impeachment Procedure (1875)

The impeachment procedure of Missouri has been subject to several changes since the state entered the Union.¹⁷⁸ Unlike Kansas, impeachments are tried by the Missouri Supreme Court instead of the Senate.¹⁷⁹ Missouri has had four different Constitutions, and, each time Missouri changed its Constitution, it adopted a new impeachment procedure for officials in the executive and

¹⁶⁸ *Id.* at 36.

¹⁶⁹ *Id.* at 30.

¹⁷⁰ *Id.* at 65.

¹⁷¹ *Id.* at 65, 71.

¹⁷² *Id.* at 65, 72.

¹⁷³ BADER, *supra* note 161, at 67.

¹⁷⁴ *Id.* at 70.

¹⁷⁵ *Id.* at 71–72.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 246, 271.

¹⁷⁸ See generally Joseph F. Benson, *A Brief Legal History of Impeachment in Missouri*, 75 UMKC L. REV. 333 (2006) (stating that Missouri has created a new Constitution four times: 1820, 1865, 1875, 1945).

¹⁷⁹ *Id.*

judicial branches.¹⁸⁰ The last time the Missouri Legislature adopted a new Constitution was in response to the impeachment trial of State Treasurer Larry Brunk in 1932.¹⁸¹

Before Missouri's current Constitution, the Legislature made several changes to the impeachment procedure when the 1875 Constitution was adopted. The Legislature added more officials who could be subject to impeachment and added new offenses like "high crimes, misconduct, habits of drunkenness, or oppression in office."¹⁸² Before the change, the House of Representatives had the sole power to impeach, and the Senate would try the impeachment.¹⁸³ In addition to these changes, on February 26, 1924, a special election was held to add twenty-one amendments to the Constitution.¹⁸⁴ Amendment 8 changed article XII, section 2 of the Missouri Constitution from requiring two-thirds of the senators present to the following: "[n]o person shall be convicted without the concurrence of two-thirds of the senators elected."¹⁸⁵ Before Missouri's current Constitution, the impeachment procedure read as follows:

The Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, Attorney General, Superintendent of Public Schools and Judges of the Supreme Court, Circuit and Criminal Courts, and of the St. Louis court of Appeals, shall be liable to impeachment for high crimes or misdemeanors, and for misconduct, habits of drunkenness, or oppression in office.¹⁸⁶

2. Impeachment of State Treasurer Larry Brunk (1930)

In 1930, Attorney General Shartel formally charged State Treasurer Larry Brunk with violating section 13337 of the 1919 Revised Statutes of Missouri.¹⁸⁷ Pursuant to the statute, Governor Henry S. Caulfield removed Brunk from office.¹⁸⁸ Brunk, however, argued that the only way he could be removed from office was through formal impeachment proceedings, pursuant

¹⁸⁰ *See id.* at 333–34, 340, 346.

¹⁸¹ *See id.* at 354, 366.

¹⁸² *Id.* at 346–47.

¹⁸³ *Id.* at 340, 351. As noted above, this procedure differs from the current procedure which provides that the Missouri Supreme Court tries the impeachment.

¹⁸⁴ Benson, *supra* note 178, at 349.

¹⁸⁵ *Id.* at 350 (passing by a vote of 163,642 to 162,440).

¹⁸⁶ MO. CONST. of 1875, art. VII, § 1.

¹⁸⁷ State *ex inf.* Shartel v. Brunk, 34 S.W.2d 94, 95 (Mo. 1930) ("Should either the treasurer or the auditor willfully fail to make the report required in the preceding section, or should it appear that any such report is false, or that the treasurer has failed to deposit the state's money as required by law, or drawn out of any depository of the state funds, except as provided by law, then in any such case the officer thus offending shall be immediately suspended by the governor and his office taken charge of as provided by law, and upon proof of any such offense, such officer shall forfeit his office, and the attorney-general shall take immediate steps, under the direction of the governor, to have said officer removed by a quo warranto proceeding in the supreme court.").

¹⁸⁸ Benson, *supra* note 178, at 351.

to the 1875 Constitution.¹⁸⁹ The case was brought to the Missouri Supreme Court, which concluded that because State Treasurer was a “constitutional office created by the delegates of the 1875 Missouri Constitutional Convention,” the sole remedy to remove that statewide official was impeachment by the House, and a trial by the Senate.¹⁹⁰ On March 17, 1931, the Missouri House of Representatives impeached Brunk.¹⁹¹ The Senate held a two-month trial which resulted in an acquittal of all charges against Brunk.¹⁹²

3. Amendment to Missouri Impeachment Procedure through the Constitutional Convention (1943)

In 1943, the Missouri Legislature held a Constitutional Convention and one of the main points of discussion was the impeachment procedure. The delegates of the Convention argued that impeachments should be tried by the Missouri Supreme Court, calling this change a “return to the historical origins of impeachment.”¹⁹³ Delegates believed that the Senate was “unwilling to convict and remove from office one of their own” during the Brunk impeachment.¹⁹⁴ After several proposals and months of debate, the Legislature finally passed and approved a proposal which is now included in the current 1945 Missouri Constitution.¹⁹⁵ Under article XII, section one of the 1945 Constitution:

All elective executive officials of the state, and judges of the supreme court, courts of appeals and circuit courts shall be liable to impeachment for crimes, misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency, or any offense involving moral turpitude or oppression in office.¹⁹⁶

Section two outlined the new procedure, explaining how to impeach an official:

The house of representatives shall have the sole power of impeachment. All impeachments shall be tried before the supreme court, except that the governor or a member of the supreme court shall be tried by a special commission of seven eminent jurists to be elected by the senate. The supreme court or special commission shall take an oath to try impartially the person impeached, and no person shall be convicted without the concurrence of five-sevenths of the

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 353.

¹⁹¹ *Id.* (stating that a total of fifty-nine accusations were in the Articles of Impeachment alleging, in sum that Brunk mishandled State money and deposited state funds owned and operated by his friends).

¹⁹² *Id.* at 354.

¹⁹³ *Id.* at 355.

¹⁹⁴ Benson, *supra* note 178, at 373.

¹⁹⁵ *Id.* at 372.

¹⁹⁶ *Id.* at 333.

court or special commission.¹⁹⁷

B. Illinois

1. Illinois’s Impeachment Procedure

The last time the Governor of a state was impeached was Governor Rod Blagojevich of Illinois in 2009.¹⁹⁸ Under the Illinois Constitution, the House of Representatives has the sole power to impeach an office holder, and the Senate will try the impeachment.¹⁹⁹ Impeachable officers are members of the executive and judicial branches.²⁰⁰ An affirmative vote of a majority of the senators elected is required to impeach the official.²⁰¹

There are several differences between the Kansas and Illinois impeachment procedures. Unlike Kansas, a judgment to impeach only extends to removal from office and “disqualification to hold any public office” in Illinois.²⁰² The impeached officer may still be liable, whether or not they are convicted, to “prosecution, trial, judgment and punishment according to law.”²⁰³ Also conversely to Kansas, if the Illinois Governor is facing impeachment, the Chief Justice of the Illinois Supreme Court presides over the trial.²⁰⁴ In addition, there is no provision in the Illinois Constitution that addresses impeachment grounds for an executive or judicial officer. In *Palmer v. United States Civil Service Commission*, the Illinois Supreme Court addressed this question in 1961.²⁰⁵ The Supreme Court held that under Illinois law, the grounds for impeachment are generally “treason, bribery or other high crime or misdemeanor in office.”²⁰⁶ The Court further held that “the grounds must be causes attaching to the qualifications of a state officer, or his performance of his duties, showing that he is not a fit and proper person to hold office.”²⁰⁷

2. Case Example: Governor Rod Blagojevich (2009)

Since his impeachment in 2009, Rod Blagojevich is the last governor in the United States to be impeached.²⁰⁸ Blagojevich was accused of selling then President-elect Obama’s vacant senator seat for campaign contributions.²⁰⁹ Federal agents had transcripts from phone conversations detailing negotiations

¹⁹⁷ *Id.*

¹⁹⁸ *Rod Blagojevich*, BALLOTPEDIA, https://ballotpedia.org/Rod_Blagojevich [https://perma.cc/UQD2-6T8Y].

¹⁹⁹ ILL. CONST. art. IV, § 14.

²⁰⁰ *See id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Palmer v. U.S. Civil Serv. Comm’n*, 191 F. Supp. 495, 510 (S.D. Ill. 1961), *rev’d*, 297 F.2d 450 (7th Cir. 1962).

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Rod Blagojevich*, *supra* note 198.

²⁰⁹ *Id.*

between himself and prospective individuals who might buy the seat.²¹⁰ In addition, conversations revealed that Blagojevich threatened the Chicago Tribune with blocking its financial aid if it did not fire staff members who criticized him.²¹¹ The House drafted Articles of Impeachment, accusing Blagojevich of “corruption and misconduct in office.”²¹² On January 8, 2009, the House of Representatives voted to impeach Blagojevich 114 to one.²¹³ The Senate held a trial on January 29, 2009, unanimously voting, fifty-nine to zero, to convict and remove Blagojevich as Governor.²¹⁴

C. Oregon

1. Oregon Recall Vote Procedure

Oregon is the only state that does not have any sort of impeachment proceeding in its Constitution or statutes. Oregon’s removal procedure uses a different method to remove office holders than is used in Kansas. Under article II, section 18 of the Oregon Constitution, every publicly elected official in the state is subject to “recall by the electors of the state or of the electoral district from which the public officer is elected.”²¹⁵ To recall an office holder, a petition must be filed that describes the reasons for the recall vote.²¹⁶ If someone wants to recall the Governor, however, fifteen percent of the electors who voted the Governor into office in the most recent election “may be required to file their petition.”²¹⁷

After the petition is filed, two events may occur. If the office holder resigns, the resignation is accepted and takes immediate effect.²¹⁸ The vacant seat will then be filled as prescribed by the law.²¹⁹ If the office holder does not resign within five days of the petition’s filing, a special election will be held “within 35 days in the electoral district to determine whether the people will recall the officer.”²²⁰ The ballot will contain the reasons for the recall of the office holder and the officer’s “justification of the officer’s course in office.”²²¹ The office holder has to continue to perform his or her duties until the results of the election.²²² After electors file a petition and a special election is held, no one can file another recall petition against the same office holder during their elected term.²²³

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Rod Blagojevich, supra* note 198.

²¹⁵ OR. CONST. art. II, § 18, cl. 1.

²¹⁶ OR. CONST. art. II, § 18, cl. 3.

²¹⁷ OR. CONST. art. II, § 18, cl. 2.

²¹⁸ OR. CONST. art. II, § 18, cl. 4.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ OR. CONST. art. II, § 18, cl. 5.

²²² *Id.*

²²³ OR. CONST. art. II, § 18, cl. 7. (creating the exception that petitioners must pay into the public

2. Case Example: Governor Kate Brown (2017)

On July 10, 2017, a petition to recall Governor Brown was filed.²²⁴ The Chief Petitioner of the recall, Arin Marcus, cited several concerns over Governor Brown's actions on several bills.²²⁵ Marcus outlined the primary reasons for filing the recall petition as:

Placing the interests of non-citizens before Oregonians. Unconstitutional taxation. Unconstitutional overreach of authority. Failure to address human rights violations for foster children, parents. Misuse of campaign finances for travel. Mishandling of the investigation of the murder of Robert Lavoy Finicum. Peddling influence to serial child abuser Terrance Bean.²²⁶

Marcus and supporters of the recall had until “October 9, 2017, to turn in 220,458 signatures to move the recall forward.”²²⁷ However, Marcus never turned in the signed petition, so the recall did not move forward.²²⁸ If Marcus had collected and filed the paperwork on time, a vote to recall Governor Brown would have gone to the ballot.

3. Attempt to Amend Oregon Constitution to Add an Impeachment Procedure

In 2017, an attempt was made to add an impeachment procedure to the Oregon Constitution.²²⁹ During the 2017 Regular Session of the Oregon Legislative Assembly, House Joint Resolution 10 was introduced. The Joint Resolution would amend article IV of the Oregon Constitution to vest “the House of Representatives with the power of impeachment of statewide elected officials of the Executive Branch.”²³⁰ The impeachment would require a three-fifths majority vote in favor of impeachment in the House to move the impeachment forward to trial by the Senate.²³¹ To remove and disqualify the official from public office in the future, the affirmative vote of two-thirds of all senators would be required.²³² The Oregon House voted on May 24, 2017 to pass the bill.²³³ The bill was introduced to the Senate and referred to the Senate Committee on Rules on May 30, 2017²³⁴ and was still in committee upon

treasury the cost for holding a special election).

²²⁴ *Kate Brown Recall, Governor of Oregon (2017)*, BALLOTPEDIA, [https://ballotpedia.org/Kate_Brown_recall_Governor_of_Oregon_\(2017\)](https://ballotpedia.org/Kate_Brown_recall_Governor_of_Oregon_(2017)) [<https://perma.cc/7JDF-ZTWR>].

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ H.R. J. Res. 10, 79th Leg., Reg. Sess. (Or. 2017).

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *House Joint Resolution 10*, OREGONIAN (Oct. 10, 2018), <https://gov.oregonlive.com/bill/2017/HJR10/> [<https://perma.cc/UVC7-YDRU>].

²³⁴ *Id.*

adjournment on July 7, 2017.²³⁵ Opponents of the bill stated that an impeachment procedure is unnecessary because the governor and all elected officials can be removed from office “via a recall election.”²³⁶ Further, officials voiced concerns that an impeachment would result in a “partisan fistfight,” noting that a recall election is a true example of citizens expressing their concerns about their public officials.²³⁷

D. *West Virginia*

1. West Virginia’s Impeachment Procedure

West Virginia has experienced one of the most recent impeachments in the United States involving a member of the executive branch. Under the West Virginia Constitution, “[a]ny officer of the state may be impeached for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor.”²³⁸ The House of Delegates, similar to a House of Representatives, has the sole power to impeach an office holder.²³⁹ After the House approves the impeachment, the Senate will try the impeachment, and the president of the Supreme Court of Appeals will preside over the proceeding.²⁴⁰ A successful impeachment requires a favorable two-thirds majority vote.²⁴¹ Unlike Kansas, judgment will only remove the office holder from office, disqualifying the individual from holding any other public office in the future.²⁴² The office holder may be liable for “indictment, trial judgment, and punishment according to law.”²⁴³

2. Case Example: Justices on the Supreme Court of Appeals (2017)

West Virginia is currently in the process of impeaching and removing all justices from the West Virginia Supreme Court of Appeals. In late 2017, Legislative Auditors conducted an investigation into Supreme Court spending.²⁴⁴ The Auditors alleged the Justices spent lavish amounts of taxpayer money redecorating their offices.²⁴⁵ In addition, there were allegations of overpayment to senior status justices, a high travel budget, and fraudulent travel reimbursements.²⁴⁶ On June 26, 2018, the House adopted House Resolution 201 which empowered the “House Committee on the Judiciary to investigate impeachable offenses” committed by all five Justices of the high

²³⁵ *Id.*

²³⁶ Gordon R. Friedman, *Oregon is the Only State Where a Governor can't be Impeached. This Lawmaker Wants to Change That.*, OREGONIAN (Feb. 20, 2017), https://www.oregonlive.com/politics/index.ssf/2017/02/oregon_is_the_only_state_where.html [<https://perma.cc/MSD9-TESD>].

²³⁷ *Id.*

²³⁸ W. VA. CONST. art. IV, § 9.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *State ex rel. Workman v. Carmichael*, 819 S.E.2d 251, 261 (W. Va. 2018).

²⁴⁵ H.R. 202, 83d Leg., 2d Spec. Sess. (W. Va. 2018).

²⁴⁶ *Id.*

court in West Virginia.²⁴⁷ As a result of the Committee’s investigation, the Committee adopted fourteen Articles of Impeachment, but the House only approved eleven Articles.²⁴⁸ Some Justices were named in all eleven articles while others were only named in a few.²⁴⁹

The trial of Chief Justice Margaret Workman was set to begin on October 15, 2018.²⁵⁰ However, the West Virginia Supreme Court of Appeals has ruled that the impeachment trial would be unconstitutional because it violates the Separation of Powers doctrine.²⁵¹ The Court ruled that only the Supreme Court of Appeals has the authority to sanction a judge for violations of the Code of Judicial Conduct.²⁵² Additionally, the Court noted that impeachment procedures were not completely followed because the House did not “set out findings of fact” in the Articles of Impeachment based on the investigations and hearings done by the Judiciary Committee.²⁵³ The Court pointed out that the impeachment proceeding was a “rush to judgment to get a certain point without following all the necessary rules.”²⁵⁴

The problem we have today is that people do not bother to read the rules, or if they read them, they decide the rules do not apply to them. There is no question that a governor, if duly qualified and serving, can call a special session of the Legislature. There is no question that the House of Delegates has the right to adopt a Resolution and Articles of a Bill of Impeachment. There is no question that the Senate is the body which conducts the trial of impeachment and can establish its own rules for that trial and that it must be presided over by a member of this Court. This Court should not intervene with any of those proceedings because of the separation of powers doctrine, and no one branch may usurp the power of any other coequal branch of government. However, when our constitutional process is violated, this Court must act when called upon. Fundamental fairness requires this Court to review what has happened in this state over the last several months when all of the procedural safeguards that are built into this system have not been

²⁴⁷ *State ex rel. Workman*, 819 S.E.2d at 262.

²⁴⁸ *Id.*

²⁴⁹ *See id.*

²⁵⁰ Meagan Flynn, *West Virginia Botches Impeachment of Chief Justice. Faces Constitutional Crisis. Stay Tuned.*, WASH. POST (Oct. 15, 2018, 6:52 AM), https://www.washingtonpost.com/news/morning-mix/wp/2018/10/15/west-virginia-botches-impeachment-of-chief-justice-faces-constitutional-crisis-stay-tuned/?utm_term=.5b10cdba8069 [https://perma.cc/7TAG-GVWG].

²⁵¹ *State ex rel. Workman*, 819 S.E.2d at 283–84 (explaining that two of the Articles of Impeachment accused Justice Workman of overpaying retired judges, and the statute that prescribes the method for how judges are appointed and paid, W. VA. CODE § 51-9-10 (1991), violates the Separation of Powers Clause because the statute “seeks to regulate judicial appointment matters that are regulated exclusively by the Supreme Court of Appeals of West Virginia” pursuant to Article VIII, § 3 and § 8 of the West Virginia Constitution).

²⁵² *Id.* at 286.

²⁵³ *Id.* at 288–89.

²⁵⁴ *Id.* at 261.

followed . . . This case is not about whether or not a Justice of the Supreme Court of Appeals of West Virginia can or should be impeached; but rather it is about the fact that to do so, it must be done correctly and constitutionally with due process. We are a nation of laws and not of men, and the rule of law must be followed.²⁵⁵

As a result, the impeachment trial for Chief Justice Workman has come to a pause.²⁵⁶ The only Justice who has been tried is Justice Beth Walker, who was acquitted.²⁵⁷ She was allowed to keep her office but was formally censured on October 2, 2018.²⁵⁸ Justice Allen Loughry was found guilty in federal court on eleven counts of fraud for his “fraudulent use of a government vehicle and state fuel card and his lies about taking an antique desk out of the courthouse and to his own ‘home office.’”²⁵⁹ Justice Menis E. Ketchum II plead guilty to “wire fraud,” stemming from his “fraudulent use of a government vehicle and state fuel credit card to fund 400-mile road-trips from his home to a private golf club, costing \$220 per trip various times from 2011 to 2014.”²⁶⁰ Menis, however, resigned after the Articles of Impeachment were drafted and approved, so no impeachment trial was necessary.²⁶¹

VI. CONCLUSION

If Kris Kobach was still in office, Steven Davis’s petition could have subjected him to impeachment as prescribed by the Kansas Constitution. However, ultimately, the Kansas House of Representatives and Senate would have determined whether Kobach would be impeached and convicted. As previously discussed, a state government considers many factors when deciding whether a state government will impeach an elected official, including its citizens’ opinions, political party alliances, and the severity of the officer’s conduct. Each State has the discretion to determine the grounds and procedure for removing elected officials. The methods described above all have benefits and downfalls, but the goal of impeachment and removal should be the same: to protect the integrity of government and protect citizens from corruption.

²⁵⁵ *Id.* at 260–61.

²⁵⁶ Flynn, *supra* note 250.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*