

RESEARCH RESPONSE

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IMPEACHMENT IN ILLINOIS AND OTHER JURISDICTIONS

Overview

Impeachment is the legislative method for removing an executive or judicial officer. An impeachment proceeding resembles a criminal trial in several respects. The House of Representatives first votes on whether to impeach the officer, which is somewhat like a grand jury indictment. If it does so, the Senate votes on whether to convict. Conviction results in automatic removal from office. The Senate may also vote to disqualify the officer from future public office. Impeachment requires the favorable vote of a majority of members elected to the House; conviction requires two-thirds of senators elected.

All four Illinois Constitutions have authorized impeachment and conviction of state officers including judges. Until 1964 the Illinois Constitution also allowed the General Assembly to remove a judge by a supermajority vote in each house. Current remedies for judicial misconduct are discipline (which can include removal from office) by the Illinois Courts Commission, and legislative impeachment and conviction.

Only one Illinois judge has been impeached (Theophilus Smith in 1832-1833); the Senate did not convict him. The General Assembly considered removing another judge (Thomas C. Browne in 1842-1843) by supermajority vote, but neither house voted to do so. The Illinois Courts Commission has removed five judges from office since 1967, most recently in 1994.

Forty-seven states have constitutional provisions authorizing impeachment of judges; several also allow other removal methods. Only one state judge has gone through impeachment proceedings in the past 5 years—Justice Rolf Larsen of the Pennsylvania Supreme Court, who was removed in 1994. Some other state judges resigned to avoid impeachment.

A total of 13 federal judges have gone through impeachment proceedings. Seven were convicted and four acquitted; the other two resigned. Fourteen other federal judges have resigned after impeachment proceedings began in the House but before an impeachment vote could be taken.

Constitutional Provisions

The Illinois Constitutions of 1818, 1848, 1870, and 1970 have all authorized impeachment of executive and judicial officers. From 1818 to 1964 the Illinois Constitution also allowed a judge to be removed by a supermajority vote in both houses, a procedure called "legislative address."

Constitution of 1818

The state's first Constitution was the only one under which either impeachment or legislative address of an Illinois judge has been tried. Appendices A and B to this Research Response describe those proceedings of the 1830s and 1840s in detail.

Impeachment The Constitution of 1818 had these provisions on impeachment:

Article II

Section 22. The house of representatives shall have the sole power of impeaching, but a majority of all the members present must concur in an impeachment. All impeachments shall be tried by the senate, and, when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of all the senators present.

Section 23. The governor, and all other civil officers under this state, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, profit or trust under this state. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment, according to law.

Article III

Section 18. In case of an impeachment of the governor, his removal from office, refusal to qualify, resignation or absence from the state, the lieutenant governor shall exercise all the power and authority appertaining to the office of governor, until the time pointed out by this constitution for the election of governor shall arrive, unless the general assembly shall provide by law for the election of a governor to fill such vacancy.

Article IV

Section 5. The judges of the inferior courts shall hold their offices during good behavior, but for any reasonable cause, which shall not be sufficient ground for impeachment, both the judges of the supreme and inferior courts shall be removed from office on the address of two-thirds of each branch of the general assembly: *Provided, always*, that no member of either house of the general assembly, nor any person connected with a member by consanguinity, or affinity, shall be appointed to fill the vacancy occasioned by such removal. . . .

Article II, sections 22 and 23 were nearly identical to the U.S. Constitution's impeachment provisions.¹ The Constitution of 1818 required favorable votes of a majority of members of the House who were *present* (not of the total number elected); the U. S. Constitution is silent on this point. Both the U.S. and 1818 Illinois Constitutions required a two-thirds vote in the Senate to convict.²

Both Constitutions also limited penalties after impeachment to removal from office and disqualification from holding future offices, and allowed separate criminal prosecutions.³ While the U.S. Constitution limits the grounds for impeachment to "treason, bribery, or other high crimes and misdemeanors,"⁴ the 1818 Illinois Constitution limited them to "any misdemeanor in office."⁵

Legislative address

The Constitution of 1818 also allowed any judge to be removed for reasonable cause that was insufficient for impeachment. Two-thirds of each house had to vote for removal.⁶ The phrase “on the address” of two-thirds of legislator reportedly implied that removal by this method also required the Governor’s approval.⁷ This provision also had another difference from impeachment: the two houses would not have differentiated roles in the process. Instead, they would be equally responsible for accusing and deciding whether to remove the judge.⁸ As discussed later, the House attempted to use this “legislative address” procedure in 1833 after the Senate refused to convict Justice Theophilus Smith, and the procedure apparently was also used (unsuccessfully) against Justice Thomas C. Browne in 1842-1843.

Constitution
of 1848

The Constitution of 1848 kept the provisions of the 1818 Constitution on impeachment, with one major change and a few minor ones. The major change was raising the required vote in each house (a majority in the House, two-thirds in the Senate) to that portion of all members *elected*, rather than only that portion of all members present.⁹ The 1848 Constitution also deleted the phrase “on the address” and substituted “on the vote,” apparently dropping any requirement that the Governor approve such removal.¹⁰

The 1848 Constitution stated that no judge could be removed unless he had been served with a copy of the complaint against him and had an opportunity to be heard in his defense.¹¹ It also added a provision to the Executive article saying the Governor and all other civil officers could be impeached for misdemeanors in office while in office and for 2 years afterward.¹² Thus an officer could not preclude impeachment by resignation.

Constitution
of 1870*Impeachment*

The Illinois Constitution of 1870 restated the legislative impeachment power as follows:

Article IV

Section 24. Impeachment

The house of representatives shall have the sole power of impeachment; but a majority of all the members elected must concur therein. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be upon oath, or affirmation, to do justice according to law and evidence. When the governor of the state is tried, the chief justice shall preside. No person shall be convicted without the concurrence of two-thirds of the senators elected. But judgment, in such cases, shall not extend further than removal from office, and disqualification to hold any office of honor, profit or trust under the government of this state. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment and punishment according to law.

The 1870 Constitution also made the Governor and all civil officers liable to impeachment for any misdemeanor in office, but deleted the 1848 provision allowing them to be impeached for 2 years after leaving office.¹³

A law enacted in 1874 that remains in effect authorizes the Senate President, Secretary, or any senator to administer oaths to members, witnesses, or others required to be sworn in any impeachment trial or other trial before the Senate.¹⁴

Legislative address The Judicial article of the 1870 Constitution originally allowed removal of judges for cause as follows:

Article VI

Section 30. The General Assembly may, for cause entered on the journals, upon due notice and opportunity for defense, remove from office any judge, upon concurrence of three-fourths of all the members elected, of each house. All other officers in this article mentioned shall be removed from office on prosecution and final conviction for misdemeanor in office.

That section increased the portion of elected members who must vote for removal from two-thirds to three-fourths. But it deleted the provision that the cause must be insufficient for impeachment. Thus the General Assembly could have removed any judge, whether or not for an impeachable offense, by a three-fourths vote.

The original Judicial Article was deleted when the voters adopted a new Judicial Article in 1962. It contained no provision on legislative address.

1962 Amendment The 1962 Judicial Article, amending the 1870 Constitution, provided that any judge could be removed for cause by a commission composed of one Supreme Court justice, two Appellate Court judges, and two circuit judges.¹⁵ The 1962 Judicial Article probably did not affect the General Assembly's impeachment power.¹⁶ But observers at the time thought the Courts Commission would be more effective than impeachment or legislative address.¹⁷

Cusack v. Howlett
(1969) In 1969, several members of the House offered the following resolution urging investigation of charges involving two members of the Illinois Supreme Court:

House Resolution No. 249

WHEREAS, There have been allegations of judicial impropriety by a member or members of the Illinois Supreme Court; therefore, be it

Resolved, By the House of Representatives of the Seventy-Sixth General Assembly of the State of Illinois, that a special committee of the House be appointed 4 [sic] by the Speaker and 3 by the Minority Leader to investigate these allegations; that the Speaker designate a chairman of the special committee; that the special committee have all the powers of other committees of the House; that the special committee shall close to the public any hearing or meeting upon the vote of any four of its members; that the special committee may hire an attorney for purposes of this investigation; that the expenses of the special

committee be paid from the appropriation for the ordinary and incidental expenses of the general staff and operation of the House; and that the special committee report and make its recommendations to the House prior to September 15, 1969.

The resolution was adopted 150-0¹⁸ but was immediately challenged by five lawyers who filed suit to stop the spending of public funds on the investigation. In this case, *Cusack v. Howlett* (1969),¹⁹ the Illinois Supreme Court held that the General Assembly's attempt to investigate the justices of the Illinois Supreme Court violated the separation of powers under the Illinois Constitution.²⁰ One of the arguments on the validity of the resolution centered on whether it could be sustained under the impeachment power. The challenging lawyers argued that the legislative power to impeach judges was eliminated by the 1870 Constitution, or at least by the 1962 Judicial Article. The Supreme Court sidestepped that claim, noting that lawyers for the committee conceded at oral argument that the resolution did not conform to the established pattern of investigating resolutions looking toward impeachment.²¹ This case, coming on the eve of the 1970 constitutional convention, raised the question whether the General Assembly could impeach and remove judges.

Constitution
of 1970
Impeachment

The Illinois Constitution of 1970 reorganized and restated the General Assembly's impeachment powers as follows:

Article IV. The Legislature

Section 14. Impeachment

The House of Representatives has the sole power to conduct legislative investigations to determine the existence of cause for impeachment and, by the vote of a majority of the members elected, to impeach Executive and Judicial officers. Impeachments shall be tried by the Senate. When sitting for that purpose, Senators shall be upon oath, or affirmation, to do justice according to law. If the Governor is tried, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of two-thirds of the Senators elected. Judgment shall not extend beyond removal from office and disqualification to hold any public office of this State. An impeached officer, whether convicted or acquitted, shall be liable to prosecution, trial, judgment and punishment according to law.

This section made several notable changes from earlier Constitutions. First, it explicitly authorized the House of Representatives to investigate allegations to determine whether grounds for impeachment exist. This effectively overruled the Supreme Court's decision in *Cusack v. Howlett*.²² Second, the 1970 impeachment section clarifies that the General Assembly's impeachment powers extend to both executive and judicial officers. This destroyed the argument that the creation of a judicial disciplinary procedure under the Judicial Article had eliminated the legislature's impeachment power regarding judges.

A third change made by the 1970 Constitution was to remove any list of grounds for impeachment. This effectively gives each legislator responsibility to determine whether conduct that has been charged warrants impeachment.

Judicial discipline provisions

The 1970 Constitution also revised the disciplinary provisions of the Judicial Article. A new section created a Judicial Inquiry Board to investigate complaints against judges and file complaints with the Illinois Courts Commission.²³ It also reconstituted the Courts Commission and gave it authority to impose any of the following penalties on judges: (1) removal from office; (2) suspension without pay; (3) censure; or (4) reprimand. The grounds for such action are:

- willful misconduct in office;
- persistent failure to perform his duties; or
- other conduct prejudicial to the administration of justice or that brings the judicial office into disrepute.

The Courts Commission could also suspend with or without pay or retire any judge who is physically or mentally unable to perform the duties of office.²⁴

History of Attempts to Remove Illinois Judges

Apparently only two Illinois judges have been the subjects of proceedings for impeachment or legislative address: Justice Theophilus Smith in 1832-33, and Justice Thomas Browne in 1842-43. Neither was removed from office. These proceedings are briefly described below; Appendices A and B give chronologies of them.

Theophilus Smith

Justice Theophilus Smith was appointed to the Illinois Supreme Court by both legislative houses in 1825. In 1832, impeachment proceedings began against him in the House of Representatives, which voted to impeach. The seven articles of impeachment alleged that he: (1) allowed his son to "bargain off" the office of circuit clerk in Madison County to a named person for a \$25 monthly payment; (2) sold that office; (3) appointed circuit clerks without requiring a bond; (4) instituted two baseless lawsuits against other men, presided over the court where they were filed, and held the men in jail under excessive bail; (5) suspended and sought disbarment of a lawyer who had told his client to tell the court that he would agree to a change of venue if it was to a county where Smith did not preside; (6) jailed for contempt a juror who refused to remove his hat although he was a Quaker and doing so was against his religion, as the judge knew; and (7) connived with the sheriff and treasurer of Madison County in rendering a judgment in a sham suit between the two officials that prejudiced the county, requiring it to appeal to the Supreme Court. After the Senate refused to convict, the House voted to remove him by legislative address, but the Senate again did not concur. He stayed on the Supreme Court until his death in 1842.²⁵

The House proceedings to impeach Smith apparently were the first time the House had pursued an impeachment since Illinois became a state in 1818. The Journal entries indicate considerable controversy on whether the accused should be allowed to present witnesses in his behalf and to question and cross-examine

witnesses. Another curious feature is that the House voted to impeach Justice Smith on a general charge of official misconduct, and named a group of managers to prepare specific articles stating grounds for impeachment. The House adopted them immediately before presenting them to the Senate.

Thomas Browne Justice Thomas Browne was one of the original justices appointed to the Illinois Supreme Court by both houses in 1818. Some lawyers petitioned the General Assembly to remove him on the ground of insufficient mental ability to serve on the court. Proceedings against him in the House of Representatives began in 1842 and apparently came to an inconclusive end in 1843. He stayed on the Illinois Supreme Court until adoption of the Constitution of 1848.²⁶

The nature of these proceedings suggests that this case was not an attempted impeachment, but rather an attempt to remove by "legislative address" as allowed by the Judicial Article of the 1818 Constitution.

Actions by Courts Commission Since its creation by the 1962 Judicial Article, the Illinois Courts Commission has decided 58 cases involving 56 judges. It removed 5 from office. Table 1 lists them, the years when they were removed, and the major grounds for removal.

Table 1: Judges Removed By Illinois Courts Commission

<i>Name</i>	<i>Year</i>	<i>Grounds</i>
Richard A. Napolitano	1970	Outside business
Randall S. Quindry	1974	Vote fraud, etc.
James L. Oakley Jr.	1975	Outside business
William D. Vanderwater	1976	Filing false charges
John R. Keith	1994	Temperament

Sources: *Official Illinois Courts Commission Reports*, vol. 1 (1980) and vol. 2 (1992); telephone conversation with Michael Vujovich, Administrative Office of the Illinois Courts, August 16, 1995.

Impeachments in Other States No compilation of information on the history or procedures for impeaching state officials could be found. Recent information consists mostly of news reports. The 1989 impeachment of West Virginia's treasurer, discussed later, gives an example of procedures.

Recent Events In the past 5 years, only one state court judge has been impeached and barred from future public office: Justice Rolf Larsen of the Pennsylvania Supreme Court in 1994. His impeachment was the first of a Pennsylvania judge since 1811. The grounds for his impeachment were his allowing a friend and political supporter to influence his handling of pending cases.²⁷

Both the majority and minority of the Pennsylvania House Judiciary Committee hired outside counsel. The Committee also authorized its subcommittee handling the investigation to subpoena witnesses and documents, and administer oaths to witnesses.²⁸ The House voted seven articles of impeachment but the

Senate convicted on only one charge: meeting privately with an attorney in two cases pending before the Pennsylvania Supreme Court. He was acquitted of using employees to obtain prescription drugs although he had been criminally convicted for it.²⁹ Larsen at one point brought suit challenging the legislature's right to impeach him, saying it lacked jurisdiction because he had already been removed from the bench due to conviction in the drug case. But his colleagues on the court rejected his plea.³⁰

News reports have listed these other state judges who resigned after impeachment proceedings began:

- The Rhode Island Supreme Court has had two chief justices resign when faced with impeachment proceedings: Joseph Bevilacqua in 1986, and Thomas F. Fay in 1993.
- James H. Kinsella, a Hartford, Connecticut probate judge, resigned in 1984 after the Connecticut House began the first impeachment proceedings in its history.

Justice Bevilacqua had been accused of ties to reputed mobsters, adulterous affairs, and suspicion of misusing state contractors.³¹ Justice Fay was accused of using court employees to conduct a private business.³² Judge Kinsella was accused of using his position to award legal business to former associates and political supporters—particularly the handling of a \$38 million estate.³³

Most states have other means of removing judges from office besides impeachment. Table 2 shows methods available in each state. "Judicial removal" means action by the state supreme court or a judicial disciplinary commission. "Recall" refers to a popular vote to remove an official. "Legislative removal" means removal by a supermajority (usually two-thirds) in each legislative house, usually at the recommendation of the Governor.

Table 2: State Methods for Removing Judges

<i>State</i>	<i>Impeachment</i>	<i>Judicial removal</i>	<i>Recall</i>	<i>Legislative removal</i>
Alabama	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Alaska	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Arizona	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	-
Arkansas	<input type="checkbox"/>	<input type="checkbox"/>	-	<input type="checkbox"/>
California	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	-
Colorado	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Connecticut	<input type="checkbox"/>	<input type="checkbox"/>	-	<input type="checkbox"/>
Delaware	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Florida	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Georgia	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Hawaii	-	<input type="checkbox"/>	-	-
Idaho	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Illinois	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Indiana	-	<input type="checkbox"/>	-	-
Iowa	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Kansas	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Kentucky	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Louisiana	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Maine	<input type="checkbox"/>	<input type="checkbox"/>	-	<input type="checkbox"/>
Maryland	<input type="checkbox"/>	<input type="checkbox"/>	-	<input type="checkbox"/>
Massachusetts	<input type="checkbox"/>	-	-	<input type="checkbox"/>
Michigan	<input type="checkbox"/>	<input type="checkbox"/>	-	<input type="checkbox"/>
Minnesota	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Mississippi	<input type="checkbox"/>	<input type="checkbox"/>	-	<input type="checkbox"/>
Missouri	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Montana	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Nebraska	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Nevada	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
New Hampshire	<input type="checkbox"/>	-	-	<input type="checkbox"/>
New Jersey	<input type="checkbox"/>	<input type="checkbox"/>	-	-
New Mexico	<input type="checkbox"/>	<input type="checkbox"/>	-	-
New York	<input type="checkbox"/>	<input type="checkbox"/>	-	<input type="checkbox"/>
North Carolina	<input type="checkbox"/>	<input type="checkbox"/>	-	-
North Dakota	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	-
Ohio	<input type="checkbox"/>	<input type="checkbox"/>	-	<input type="checkbox"/>
Oklahoma	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Oregon	-	<input type="checkbox"/>	-	-
Pennsylvania	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Rhode Island	<input type="checkbox"/>	<input type="checkbox"/>	-	-
South Carolina	<input type="checkbox"/>	<input type="checkbox"/>	-	<input type="checkbox"/>

Table 2: State Methods for Removing Judges (cont'd)

<i>State</i>	<i>Impeachment</i>	<i>Judicial removal</i>	<i>Recall</i>	<i>Legislative removal</i>
South Dakota	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Tennessee	<input type="checkbox"/>	-	-	<input type="checkbox"/>
Texas	<input type="checkbox"/>	<input type="checkbox"/>	-	<input type="checkbox"/>
Utah	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Vermont	<input type="checkbox"/>	-	-	-
Virginia	<input type="checkbox"/>	<input type="checkbox"/>	-	-
Washington	<input type="checkbox"/>	<input type="checkbox"/>	-	-
West Virginia	<input type="checkbox"/>	-	-	-
Wisconsin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wyoming	<input type="checkbox"/>	<input type="checkbox"/>	-	-

Source: Council of State Governments, *Book of the States, 1994-95*, Table 4.5, pp. 193-199; Ala. Const., art. VII, secs. 173 and 174; Mo. Const., art. VII, sec. 1; N.C. Const., art. IV, secs. 4 and 17.

Table 3 shows the number of judges removed from office in each state by a state judicial disciplinary commission in 1993 or 1994. It suggests that removal is rare in most states, though Michigan and New York appear to use it more often.

Table 3: State Judges Removed by Judicial Disciplinary Commissions, 1993-94

<i>State</i>	<i>Number removed</i>
Florida	1
Illinois	1
Louisiana	1
Michigan	5
New York	6
Texas	1
Utah	1
Washington	1

Source: American Judicature Society, *Judicial Conduct Reporter*, Fall 1994, pp. 2-3.

**West Virginia
Impeachment
Procedure**

The procedures used in the 1989 impeachment of West Virginia's treasurer were based on procedures in a 19th century impeachment in that state. The major steps match those used in federal impeachments.

The proceedings were begun by a resolution from the House Rules Committee directing the Judiciary Committee to investigate allegations of impeachable offenses by the state treasurer. The resolution set out the allegations. It then directed the Judiciary Committee to investigate them; hold hearings and make

findings of fact on them; and report its findings to the whole House with a recommendation, possibly including a proposed impeachment resolution. It authorized the Judiciary Committee to examine witnesses and documents; issue and enforce subpoenas and summonses; administer oaths or affirmations; determine whether all or part of a hearing should be closed to the public; set the rules for its proceedings; employ personnel with the Speaker's approval; set up subcommittees; and set the date and time for its meetings or hearings. The resolution also authorized the Judiciary Committee to recommend whether the state treasurer should be impeached; to recommend delaying further consideration of the charges; and to recommend proposed changes in law.³⁴

The Judiciary Committee recommended impeachment of the treasurer.³⁵ It also recommended a public reprimand and censure of the state auditor.³⁶ On March 29, 1989 the House took up the impeachment resolution, containing 18 separate articles, under a special calendar.³⁷ A minority report recommended against impeachment, urging other remedial measures.³⁸ A motion to substitute the minority report for the committee report failed 39-60.³⁹ The House then proceeded to consider and vote separately on each article of impeachment. A majority of those present and voting were required to adopt. All but one were adopted, and were signed by the Speaker and Clerk of the House.⁴⁰

The House later adopted a resolution appointing a five-member committee to present the articles of impeachment to the Senate and present the impeachment case against the state treasurer in the trial there,⁴¹ and the Speaker appointed that committee.⁴² The impeachment resolution was sent to the Senate along with the resolution appointing the committee. The Committee appeared before the Senate to inform the Senate that the House has impeached the state treasurer. The Senate adopted a resolution setting a time to receive the articles of impeachment, and so informed the House. The committee appeared before the Senate, were recognized, and then read the articles to the Senate.⁴³

The state treasurer resigned before his Senate trial began.⁴⁴

Federal Judicial Impeachments

Congress has rarely used its impeachment power to remove federal judges, but three notable cases have occurred in recent years. The procedures for Congressional impeachments are not set out in either house's rules. Rather, they are derived from the precedents of earlier impeachment proceedings.

History Table 4 lists the impeachment trials of federal judges and their results.

Table 4: Federal Judicial Impeachments

<i>Name</i>	<i>Year</i>	<i>Result</i>
John Pickering	1803	Removed
Samuel P. Chase	1804	Acquitted
James H. Peck	1830	Acquitted
West H. Humphreys	1862	Removed
Mark H. Delahay	1873	Resigned

Table 4: Federal Judicial Impeachments (cont'd)

<i>Name</i>	<i>Year</i>	<i>Result</i>
Charles Swayne	1904	Acquitted
Robert W. Archbald	1912	Removed
George W. English	1925	Resigned
Harold Louderback	1932	Acquitted
Halsted L. Ritter	1936	Removed
Harry E. Claiborne	1986	Removed
Alcee L. Hastings	1989	Removed
Walter Nixon	1989	Removed

Source: Congressional Research Service, *The Constitution of the United State of America: Analysis and Interpretation* (1987), p. 604, n. 10; Federal Judicial Center, Federal Judicial History Office, "Impeached Federal Judges" (list prepared for LRU, August 1995).

As this table shows, after a 50-year lapse Congress used its impeachment power to remove three federal judges in the 1980s. Judges Claiborne and Nixon were impeached after they refused to resign after being convicted and imprisoned on criminal charges.⁴⁵ Judge Hastings had been acquitted of criminal charges, but the 11th Circuit Federal Judicial Conference urged his impeachment for allegedly committing perjury at his trial and disclosing confidential information on a federal wiretap he was supervising.⁴⁶

A number of federal judges have resigned after impeachment proceedings began or were threatened in the House of Representatives; they are listed in Table 5.

Table 5: Federal Judges Who Resigned to Avoid Impeachment

<i>Name</i>	<i>Year</i>
William Stephens	1818
Matthais Bennett Tallmadge	1819
Thomas Irwin	1859
Charles Taylor Sherman	1873
Richard Busteed	1874
Edward Henry Durrell	1874
William Stacy	1875
Cornelius H. Hanford	1912
Daniel Thaw Wright	1914
Kenesaw Mountain Landis	1922

Table 5: Federal Judges Who Resigned to Avoid Impeachment (cont'd)

<i>Name</i>	<i>Year</i>
Francis Asbury Winslow	1929
Albert Williams Johnson	1945
Otto Kerner Jr.	1974
Herbert Allen Fogel	1978

Source: Federal Judicial Center, Federal Judicial History Office, *Why Judges Resign: Influences on Federal Judicial Service, 1789 to 1992* (1993), pp. 53-122.

Although the House ended its impeachment proceedings in these cases, resignation does not necessarily preclude an impeachment. Resignation does not disqualify a judge from holding federal office in the future, which is the other chief penalty allowed by impeachment. If such disqualification is sought, impeachment proceedings will go forward even if the judge has resigned.

Procedure The precedents of federal impeachments have established several basic steps. Impeachment proceedings in the House of Representatives have been initiated by a variety of methods:

- Charges made by a member on the House floor.
- A resolution introduced in the House.
- A message from the President.
- Charges from a state legislature.
- Charges from a grand jury.
- Facts developed by a congressional investigating committee.

A resolution introduced in the House may call either for an investigation of charges, or directly for impeachment. A resolution calling for an investigation is usually assigned to a select committee. A resolution calling directly for impeachment is usually assigned to the House Judiciary Committee. One of the major issues a resolution calling for a select committee usually must address is the committee's subpoena authority and its funding—particularly hiring outside personnel such as lawyers and investigators.⁴⁷

The committee reports back to the House with recommendations, including any proposed articles of impeachment. The House then votes on any such articles. If it votes for impeachment, the articles are signed by the Speaker and attested by the clerk. They are then presented to the Senate by a group of “managers” selected by the House. These managers prepare and present the case in advance of the Senate trial. When the Senate receives articles of impeachment, it issues a summons to the accused to appear and answer the charges. The accused may appear personally or by an attorney.⁴⁸

The accused's answer is sent to the House where it is referred to the managers. This gives the House an opportunity to amend or modify the articles of impeachment it has presented to the Senate.⁴⁹ The trial in the Senate is public. In recent years, the Senate has appointed a committee to receive evidence and take testimony, and then report to the full Senate.⁵⁰ In 1993 Judge Walter Nixon challenged this practice, but the U.S. Supreme Court said the issue was a non-justiciable political question reserved to the Senate.⁵¹

Senators sitting in impeachment proceedings must be on oath or affirmation, apparently meaning they must be sworn somewhat like members of a jury. House members may attend the Senate trial and the impeachment vote, but generally do not attend the Senate's deliberations.⁵² The Senate votes on each article of impeachment separately. Two-thirds of members elected are traditionally required to convict. The Senate then votes on the penalty. Since conviction automatically brings removal from office, no separate vote to remove is required. But if the penalty is to include disqualification from future office, a separate vote on it may be demanded. Such a vote on disqualification requires only a majority.⁵³

Impeachment proceedings do not die with an outgoing Congress, but may be carried over to the next Congress.⁵⁴

Issues for Any Illinois Impeachment Proceedings

There are no laws or rules of either house establishing impeachment procedures. The Illinois Constitution specifies only a few points:

- The House may investigate whether grounds exist to impeach an officer.
- A majority of House members elected are required to impeach.
- The Senate tries any impeachment, with Senators on oath or affirmation.
- If the Governor is being tried, the Chief Justice of the Illinois Supreme Court presides.
- Two-thirds of Senators elected are required to convict.
- The Senate votes on punishment: removal from office, with or without disqualification from future office.⁵⁵

Within these boundaries, the Senate and House could provide for impeachment proceedings in any manner they chose. However, based on the history of impeachments in Illinois and other jurisdictions, the procedures for any impeachment probably would be somewhat like those described below.

Initiation in the House

Impeachment proceedings in the Illinois House probably could be initiated in either of two ways: petitions from outside the General Assembly, or a House resolution.

House rules do not address handling of any petitions from outside state government. They probably would be referred to the most appropriate committee and perhaps printed in the House Journal.⁵⁶

Under House rules, resolutions are referred to the House Rules Committee.⁵⁷ An impeachment resolution might either (1) call for a select committee to investigate whether grounds for impeachment exist or (2) directly call for impeachment of a particular officer.

A resolution calling for a select committee would need to address its investigating authority, such as to subpoena witnesses and documents and take testimony. Committee funding may also need to be addressed, including any authority to hire personnel such as investigators and lawyers. Other issues may be whether the accused can present evidence and witnesses, and whether counsel for the accused can examine or cross-examine witnesses.

A resolution directly calling for impeachment implies that no investigation is necessary because the facts supporting a impeachment are already established.

Committee
Consideration

The scope of the committee's work would be set by the House when it authorized an investigation. The committee's main purpose would be to decide whether sufficient grounds exist for impeachment, and to prepare any articles of impeachment for the House to consider.

House
Consideration

The House next would debate any committee's recommendations. When considering articles of impeachment, the House may want to convene as a committee of the whole to make it easier to proceed. Then if one or more articles were adopted, it would report its results to the House for final consideration.

If the House adopted any articles of impeachment, it would need a resolution authorizing the Speaker to name members to present the articles to the Senate and manage the trial before the Senate.

Presentation
to Senate

There is considerable ceremony and formality in the presentation of the articles of impeachment to the Senate. The managers appear in the Senate, orally impeach the accused officer, and "exhibit" the articles of impeachment to the Senate (apparently meaning to present and read them).

The Senate then orders the accused to answer the charges. It also sets the rules of procedure to govern the impeachment trial (usually modeled on basic steps in a judicial trial) and sets a time for the trial to begin. The House receives a copy of the accused's answer to the charges and has an opportunity to respond to them.

Senate Trial

Although an impeachment trial resembles a judicial trial, the Senate can set its own procedures and is not bound by the rules governing judicial trials such as the rules of evidence.

One of the first steps would be to swear the members of the Senate. To do so, the Senate must prepare an appropriate oath.

One issue that has arisen is whether the trial must be before the full Senate as opposed to a committee. The only judicial impeachment proceedings in Illinois occurred when the Illinois Constitution required a two-thirds vote of members *present*, so members who did not attend the trial arguably could not vote. The 1970 Constitution requires the vote of two-thirds of members *elected*. Thus

the Senate probably could appoint a committee to hear the trial and make recommendations to the full Senate. The recommendations and the transcript of trial would be debated before any vote. (The latter procedure has been used by the U.S. Senate in recent impeachments and, as noted earlier, the U.S. Supreme Court rejected a challenge to it.⁵⁸)

Similarly, questions of law and evidence, and objections to questions could be made to the presiding officer at the impeachment trial, with appeal to either the committee hearing the trial or the full Senate as the case might be. These questions also would be decided by the Senate.

The Senate would debate and vote separately on each article of impeachment. If two-thirds of senators elected approved at least one article, the accused officer would be "convicted" and automatically removed office. The Senate can also vote to disqualify the officer from future Illinois public office. As noted earlier, in federal impeachments a separate vote is taken on whether the official should be disqualified, and this procedure probably would also be used in Illinois.

Notes

1. See U.S. Const., art. I, sec. 3, cl. 6 and 7, and art. II, sec. 4.
2. See U.S. Const., art. I, sec. 3, cl. 6; Ill. Const. 1818, art. II, sec. 22.
3. See U.S. Const., art. I, sec. 3, cl. 7; Ill. Const. 1818, art. II, sec. 23.
4. U.S. Const., art. II, sec. 4 (capitalization modernized).
5. See Ill. Const. 1818, art. II, sec. 23.
6. Ill. Const. 1818, art. IV, sec. 5.
7. Sears, "A Court on the Judiciary," *Chicago Bar Record*, vol. 29, p. 197 at 200 (1948).
8. "A Court on the Judiciary," p. 200.
9. Ill. Const. 1848, art. III, sec. 27.
10. "A Court on the Judiciary," p. 200.
11. Ill. Const. 1848, art. V, sec. 12.
12. Ill. Const. 1848, art. IV, sec. 26.
13. Ill. Const. 1870, art. V, sec. 15.
14. Revised Statutes 1874, p. 555, sec. 5. See now 25 ILCS 5/5.
15. Ill. Const. 1870, art. VI, sec. 18 as amended in 1964.
16. See generally the discussion in George D. Braden and Rubin G. Cohn, *The Illinois Constitution: An Annotated and Comparative Analysis* (1969), pp. 373-375.
17. Braden and Cohn, p. 376.
18. House Journal, June 12, 1969, pp. 3544-3545.
19. *Cusack v. Howlett*, 44 Ill. 2d 233, 254 N.E.2d 506 (1969).
20. 254 N.E.2d at 507-509.
21. 254 N.E.2d at 509.
22. Record of Proceedings, Sixth Illinois Constitutional Convention, vol. II, pp. 703-704 (remarks of Delegate Fay); vol. IV, pp. 2709 (remarks of Delegate Knuppel) and 2897 (remarks of Delegate Knuppel).
23. Ill. Const. 1970, art. 6, subsecs. 15(b) and (c).
24. Ill. Const. 1970, art. 6, subsec. 15(e).
25. George Fiedler, *The Illinois Law Courts in Three Centuries 1673-1973* (1973), pp. 304-313.
26. *The Illinois Law Courts in Three Centuries*, pp. 313-314.
27. Hansen, "Justice Impeached," *ABA Journal*, Dec. 1994, p. 35.
28. "Special Counsel Brought Into Larsen Investigation; Prosecutor will work on impeachment proceedings," *Penn. Law J.*, Nov. 22, 1993, p. 11.

29. Brennan and Grezlak, "Judicial Reform is Urged In Wake of Larsen Conviction; More is Needed, Bar Leaders Say," *Legal Intelligencer* (Philadelphia), October 6, 1994, p. 1.
30. Reeves, Justices Reject Larsen's Appeal: Former Justice Faces Impeachment Trial in Senate Tomorrow," *Pittsburgh Post-Gazette*, August 7, 1994, p. E1.
31. "Top R.I. Judge Resigns; Faced Impeachment" (Associated Press story), *Los Angeles Times*, May 29, 1986, part 1, p. 22.
32. "Rhode Island's Chief Justice to Face Impeachment," *New York Times*, September 22, 1993, sec. A, p. 20.
33. Williams, "Jurist Out, But Probes Don't Stop," *Nat'l Law J.*, May 21, 1984, p. 8.
34. W. Va. House Journal, Feb. 23, 1989, pp. 284-287; Feb. 24, 1989, at p. 312.
35. W. Va. House Journal, March 27, 1989, at p. 793.
36. W. Va. House Journal, March 27, 1989, at pp. 807-809.
37. W. Va. House Journal, March 29, 1989, at pp. 860-873.
38. W. Va. House Journal, March 29, 1989, at pp. 873-876.
39. W. Va. House Journal, March 29, 1989, at pp. 876-877.
40. W. Va. House Journal, March 29, 1989, at pp. 877-897.
41. W. Va. House Journal, April 7, 1989, at pp. 1698-1699.
42. W. Va. House Journal, April 8, 1989, at pp. 1975-1976.
43. Memorandum from Gregory M. Gray, Parliamentarian, West Virginia House of Delegates (undated).
44. Telephone conversation with Gregory M. Gray, Parliamentarian, West Virginia House of Delegates, August 8, 1995.
45. Federal Judicial Center, Federal Judicial History Office, *Why Judges Resign: Influences on Federal Judicial Service, 1789 to 1992* (1993), pp. 64 and 101.
46. Rotunda and Nowak, *Treatise on Constitutional Law: Substance and Procedure* (1992), vol. 1, sec. 2.9 at p. 119.
47. See Brown, *Constitution, Jefferson's Manual and Rules of the House of Representatives*, 96th Cong. (1979), secs. 603-605 at pp. 277-278.
48. Brown, secs. 607-611 at pp. 279-282.
49. Brown, secs. 611-613 at pp. 281-282.
50. Brown, sec. 614 at p. 283.
51. *[Walter] Nixon v. United States*, ___ U.S. ___, 113 S. Ct. 732 at 734 (1993).
52. Brown, sec. 617 at p. 285.
53. Brown, secs. 618-619 at pp. 285-287.
54. Brown, sec. 620 at p. 287.
55. Ill. Const. 1970, art. IV, sec. 14.
56. *Mason's Manual of Legislative Procedure*, sec. 148 at p. 105 (1989).
57. House Rule 3-6, 89th General Assembly.
58. *[Walter] Nixon v. United States*, ___ U.S. ___, 113 S. Ct. 732 at 734 (1993).

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Appendix A: Chronology of Theophilus Smith Impeachment Proceedings, 1832-33

The House and Senate Journals for 1832-1833 show the following events in the impeachment proceedings, starting in December 1832:

December 11

The Speaker informed the House of a letter from Justice Theophilus W. Smith of the Illinois Supreme Court, asking that a select committee be named to investigate charges of official misconduct made against him in the newspapers. A select committee of seven members was named to investigate the charges and allow Justice Smith to appear and be represented by counsel during the investigation.¹

December 20

Representative Blackburn presented a petition from citizens of Montgomery County asking that the county be moved to another circuit or that Justice Smith be removed from office. The motion and proposed amendments as to the committee to which it should be referred (Judiciary, Petitions, or Propositions and Grievances) were laid on the table.²

December 21

A letter from John S. Greathouse regarding charges of official misconduct against Justice Smith was read and laid on the table. The part of the earlier motion that would have allowed Justice Smith to appear before the select committee was withdrawn.³

December 26

Representative Blockburger presented a petition from citizens of Montgomery County calling for the removal of Justice Smith. It was referred to the committee on Petitions. The Speaker informed the House of a letter from Justice Smith regarding the House's decision to withdraw his right to appear before the investigating committee. A motion to allow Justice Smith or his counsel to appear for the purpose of examining and cross-examining witnesses was rejected. The House later decided to reconsider this vote. The House then adopted a resolution giving the select committee authority to hire a lawyer or call on the services of a state's attorney to aid in the investigation, and giving Justice Smith and his counsel the right to examine and cross-examine witnesses.⁴

December 29

Another petition from Montgomery County citizens asking for the removal of Justice Smith was referred to the Committee on Petitions.⁵

January 1, 1833

Petitions from Marion and St. Clair counties asking for removal of Justice Smith were referred to the Committee on Petitions. The House directed the select committee investigating the charges against Justice Smith to speed up its proceedings and discharge all witnesses not material to support or rebut the charges.⁶

January 2

Representative Cartwright moved to require the select committee to hire a lawyer to examine the witnesses in Justice Smith's case. The House rejected an amendment to this motion to limit the lawyer's fee to \$100. It also rejected an attempt to

amend the resolution to require the committee to call on the services of a state's attorney or circuit attorney. It then rejected Representative Cartwright's original motion. Later the House tabled Representative Cartwright's motion to direct the committee to proceed with its investigation without cross-examination by Justice Smith or his lawyer.⁷

January 3

The House voted to discharge the select committee from further proceedings against Justice Smith, and to require all witnesses and documents to be turned over the House, which would continue the investigation under these rules:

- Three members (called examiners) would be appointed to question witnesses, both for and against the accused.
- After the examiners finished their questions, any member could ask them to pose additional questions.
- The examiners would decide any objection to a question.
- The House would convene as a committee of the whole to hear testimony.
- Each witness would be brought in, questioned, and then immediately sent out.
- After the testimony was finished, the committee of the whole would rise and the House would adopt whatever measures regarding the charges it deemed best.

The House also directed the Speaker to have the Clerk issue subpoenas for the witnesses already present for the investigation. The House discharged the Committee on Petitions from further consideration of the citizens' petitions, and then tabled them. The House voted to convene the next day as a committee of the whole to consider the charges against Justice Smith. Three members were appointed to conduct the questioning of witnesses.⁸

January 4

The Speaker informed the House of a letter from Justice Smith asking that he be allowed to appear before the House to defend himself or that the House impeach him without questioning any witnesses. The letter was tabled. The House rejected a motion to permit Justice Smith or his lawyer to submit written questions to the witnesses for and against him. It later rejected another motion to appoint two members to question and cross-examine witnesses in his behalf. The House voted to require witnesses called to testify to be present until discharged. It also voted to refer the citizens' petitions to the committee of the whole. The House then convened as the committee of the whole to consider the charges.⁹

January 5

After continuing to consider the charges, the committee of the whole reported back to the House and recommended adoption of a resolution impeaching Justice Smith for official misconduct. The House adopted this resolution 52-1. The House then decided to appoint three managers to draft and prepare articles of impeachment and conduct a trial before the Senate. The resolution also directed the managers to inform the Senate of the impeachment and to present the charges with specifications whenever the Senate asked to hear them. The House then elected the three managers.¹⁰

January 7

The House rejected a motion to add two more managers to conduct the impeachment trial before the Senate, but later reconsidered the vote and decided to add them. Later that day it elected the two additional members. The managers appeared before the Senate and impeached Justice Smith. The Senate then directed the justice to answer the impeachment, and informed the House that it would tell it when the impeachment articles should be presented (“exhibited”).¹¹

The House managers informed the Senate that the House had impeached Justice Smith and would present the articles “in due time,” and asked the Senate to order the justice to answer the charges. The Senate voted to ask the House for the use of its hall for the impeachment trial. The Senate voted to allow its secretary a leave from his office during the impeachment trial against Justice Smith. The Senate also voted to inform the House when to present the articles of impeachment.¹²

January 8

The Senate voted to hold the impeachment trial at a nearby church. The House informed the Senate of the two additional managers to conduct the trial on behalf of the House. The Senate then adopted a resolution that members of the Senate take the following oath for the impeachment trial:

You do solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the articles of impeachment of Theophilus W. Smith, one of the justices of the supreme court, and presiding judge of the second judicial circuit of this state, you will do impartial justice according to law and evidence.

The resolution also said that once a “court of impeachment” was formed, the House managers would be invited to “exhibit” the articles of impeachment.¹³ Two days later the Senate struck the references to Justice Smith’s offices from the oath.¹⁴

January 9

The Senate adopted a resolution saying that after introduction of the House managers, the “Speaker of the Senate” should direct its sergeant at arms to order silence while the articles were “exhibited.” (The Senate had earlier constituted itself a “High Court of Impeachment,”¹⁵ apparently explaining the unusual term for the Senate President). The Senate also named an assistant sergeant at arms for the impeachment trial. The Senate voted for a Fayette County justice of the peace to swear in the Speaker of the Senate before the Speaker administered the oath to other members.¹⁶

The Senate informed the House that the impeachment trial of Justice Smith would begin at 2 p.m. that day with the President of the Senate administering the oath or affirmation to senators. After the oath, the Senate would receive the House manager to “exhibit” the articles of impeachment. The managers then presented seven articles to the House, which adopted them; the Speaker signed them.¹⁷

January 10

The Senate informed the House that it had summoned Justice Smith to answer the seven articles of impeachment by the next day.¹⁸ The Senate adopted a set of 19 rules to govern the impeachment trial.¹⁹

January 11

The Senate informed the House it would begin the impeachment trial at 11 a.m.²⁰ The Senate adopted an oath for the sergeant at arms to verify that he had served the summons on Justice Smith. The Senate then voted to inform the House that the "high court of impeachment" would convene at 11 a.m. It also voted to issue subpoenas, and appointed an assistant secretary for the trial.²¹

January 12

The Senate informed the House that the impeachment trial would convene at 11 a.m.²² The Senate adopted a 20th rule for the impeachment trial, and ordered copies of the rules printed. The "high court of impeachment" convened at 11 a.m.²³

January 17

The Senate decided, at the House's invitation, to hold the impeachment trial in the House's hall. The House informed the Senate that its hall was ready for the trial. The Senate ordered 100 copies of the articles printed for the use of the Senate, the House managers, and the accused. It also adopted another rule for the trial. The Senate then went to the hall and began the trial.²⁴

January 18

The Senate said it would allow members of the House, district and Supreme Court judges, and others to attend the trial.²⁵

January 19 through February 6

The trial proceeded in the Senate.²⁶ On January 19 the House approved its response to Justice Smith's answer to the articles of impeachment and the Speaker signed the response.²⁷ On January 28 the House rejected a motion to convene as a committee of the whole to attend the Senate trial.²⁸ On February 6 the Senate discharged its witnesses.²⁹ It decided to vote separately the next day on each article of impeachment.³⁰

February 7

The Senate rejected a motion to allow Senator Larkin Craig of Montgomery County, who was absent during the trial on all but two articles, to vote on the two articles for which he was present. Three other senators were also absent during all or part of the trial and did not vote on the articles.³¹ The Senate then voted on each of the seven articles, but none received the votes of two-thirds of the members present.³² Thus the Senate failed to convict the judge.

February 14

Representative Hunter presented a petition from citizens of Bond County asking for removal by legislative address of Justice Smith. The petition was referred to a select committee of five who were then named.³³

February 15

The Bond County citizens' petition was adopted by two-thirds of the members of the House as required by the Constitution, and signed by the Speaker. The Clerk was ordered to carry the address to the Senate and ask for its concurrence.³⁴

February 16

The House informed the Senate that it had adopted a legislative address for the removal of Justice Smith and urged the Senate to agree.³⁵ The Senate rejected an attempt to amend the address.³⁶

February 18

The Senate rejected the address to remove Justice Smith³⁷ and so informed the House.³⁸

Notes

1. House Journal, Dec. 11, 1832, p. 104.
2. House Journal, Dec. 20, 1832, pp. 136-137.
3. House Journal, Dec. 21, 1832, pp. 150-151.
4. House Journal, Dec. 26, 1832, pp. 204-209.
5. House Journal, Dec. 29, 1832, p. 231.
6. House Journal, Jan. 1, 1833, pp. 243 and 246.
7. House Journal, Jan. 2, 1833, pp. 248-250 and 252.
8. House Journal, Jan. 3, 1833, pp. 255, 256, 258-259, and 260.
9. House Journal, Jan. 4, 1833, pp. 264-266.
10. House Journal, Jan. 5, 1833, pp. 266-268.
11. House Journal, Jan. 7, 1833, pp. 270, 277, and 279-280.
12. Senate Journal, Jan. 7, 1833, pp. 216, 227, and 230.
13. Senate Journal, Jan. 8, 1833, pp. 236, 237, 238-239.
14. Senate Journal, Jan. 10, 1833, p. 252.
15. Senate Journal, Jan. 8, 1833, pp. 238-239; 1832-1833 Senate Journal, Appendix, p. 7.
16. Senate Journal, Jan. 9, 1833, pp. 241-242, and 245.
17. House Journal, Jan. 9, 1833, pp. 288-298.
18. House Journal, Jan. 10, 1833, p. 310.
19. Senate Journal, Jan. 10, 1833, pp. 246-250.
20. House Journal, Jan. 11, 1833, p. 317.
21. Senate Journal, Jan. 11, 1833, pp. 257-259.
22. House Journal, Jan. 12, 1833, p. 324.
23. Senate Journal, Jan. 12, 1833, pp. 265-266.
24. Senate Journal, Jan. 17, 1833, pp. 302-304.
25. Senate Journal, Jan. 18, 1833, pp. 307-308.
26. Senate Journal, Jan. 19, 1833, p. 313; Jan. 21, 1833, p. 317; Jan. 22, 1833, pp. 320-321; Jan. 23, 1833, p. 327; Jan. 24, 1833, pp. 327-328, 331; Jan. 25, 1833, p. 332; Jan. 26, 1833, p. 333; Jan. 28, 1833, pp. 333 and 339; Jan. 29, 1833, pp. 339 and 341; Jan. 30, 1833, pp. 344-345; Jan. 31, 1833, pp. 345, 350-351; Feb. 1, 1833, p. 354; Feb. 2, 1833, pp. 357-358; Feb. 4, 1833, pp. 359 and 364; Feb. 5, 1833, pp. 368-369; Feb. 6, 1833, p. 373.
27. House Journal, Jan. 19, 1833, pp. 367-368.
28. House Journal, Jan. 28, 1833, p. 422.
29. Senate Journal, Feb. 6, 1833, p. 373.
30. Senate Journal, 1832-1833, Appendix at p. 87.

31. Senate Journal, 1832-1833, Appendix at pp. 88 and 91.
32. Senate Journal, 1832-1833, Appendix at pp. 89-91.
33. House Journal, Feb. 14, 1833, p. 538.
34. House Journal, Feb. 15, 1833, pp. 548-551.
35. Senate Journal, Feb. 16, 1833, pp. 454-455.
36. Senate Journal, Feb. 16, 1833, pp. 456-457.
37. Senate Journal, Feb. 18, 1833, p. 459.
38. House Journal, Feb. 18, 1833, p. 565.

Appendix B: Chronology of Thomas Browne Legislative Removal Proceedings, 1842-43

The House and Senate Journals for 1842-1843 show the following events in the proceedings, starting in December 1842:

December 24

Representative McDonald of Jo Daviess County presented a petition from Charles S. Hempstead and others of the Galena bar asking for removal of Justice Thomas C. Browne "for want of capacity to discharge the duties of his office." The petition was read and referred to a select committee of five representatives.¹

December 28

The chairman of the select committee sought to obtain power to subpoena persons and papers and to appoint a clerk to record committee proceedings. Representative Browning then moved to amend the resolution to discharge the committee from further consideration of the petition and have the House investigate the charges instead. The amended resolution also called on the clerk to give the judge a copy of the petition and inform him of the time for investigating the charges. It also authorized the judge and the petitioners to appear in the House by themselves and by counsel. The amended resolution was adopted. The House then approved a resolution to have the Speaker appoint three managers to lead the House's investigation of the charges against Justice Browne. The House also authorized the Speaker to subpoena witnesses at the request of either the petitioners or Justice Browne.²

December 29

The Speaker appointed three managers to conduct an investigation of the charges against Justice Browne.³

December 31

The House approved a resolution by Representative Browning requiring the petitioners to file a list of specifications against Justice Brown.⁴

January 2, 1843

The petitioners filed the specification of charges against Justice Browne. It said:

The only charge which we call upon the House to notice, involves nothing derogatory to his character, as a man of integrity, but is founded on the natural infirmity and febleness of his intellect, over which he has no control.

The petitioners said that the judge lacked "natural strength of intellect" for a justice of the Supreme Court; did not have the necessary legal and literary training for the post; seldom consulted with other judges in important cases; signed opinions he did not write; and merely echoed the views of some favorite lawyer.⁵

January 3

Representative Jackson presented a memorial of the Lee and Whiteside bar and a petition from citizens in those counties arguing against any proceedings against Judge Browne. They were read and laid on the table. The House then invited the Senate to attend the proceedings, set for 2 p.m. that day.

The clerk of the House informed the Senate that the Galena bar had filed a petition asking for removal of Justice Browne; that the House had arranged for testimony on the charges; and that the House requested the Senate to attend. Senator Cavarly moved that the Senate meet with the House to hear testimony on the charges against Justice Browne, but his motion was laid on the table until 2 p.m.⁶

The House adjourned its normal business to reconvene for the proceeding to investigate the charges against Judge Browne. The House asked the Senate to appoint three managers to attend the testimony.

The House approved rules for investigating the charges against Justice Browne:

- The Speaker would appoint three members to examine all witnesses, both for and against the accused.
- After the managers finished questioning a witness, any member could have the managers ask the witness additional questions.
- Counsel for the petitioners and the accused could ask any question, subject to legal objections.
- The chair would decide objections to any question; the chair's decision would be appealable to the committee.
- The witnesses would be brought in one at a time, sworn, examined, and then immediately led out.
- Before starting the proceedings, the House would constitute itself into a committee of the whole.

The Senate received the message from the clerk of the House asking the Senate to appoint three managers to assist in questioning witnesses. Senator Baker moved that the Senate do so. Before this motion was acted on, the clerk of the House informed the Senate of another House resolution, informing the Senate that the House was ready to proceed with the investigation of the charges against Justice Browne and asking the Senate to answer whether it would participate. The Senate then rejected Senator Baker's motion 17-20.⁷

The Secretary of the Senate informed the House that the Senate declined to attend and participate in the proceedings against Judge Browne.

The House convened as a committee of the whole, heard testimony, and granted leave to reconvene later.⁸

January 4

The House decided that no one other than Justice Browne and members of the House should be allowed to participate in the debate in his case. The House convened at 2 p.m. as a committee of the whole to continue hearing the case. After some time the committee rose and asked to be discharged from further consideration of the charges. But for some reason the House in its regular capacity then rejected that request 40-72. Representative Koerner then moved that the charges be made the special order for the next day and that the rules be revised to provide that all questions on competency of testimony be decided without debate.

Representative Browning demanded a division of the question on this resolution. The House agreed to make the proceedings the special order for the next day, but rejected the proposed rule. Representative Spicer then moved that the House reconsider its a previous approval of the resolution prohibiting all persons except Justice Browne and members of the House from participating in debate on the case, but the House instead adjourned.⁹

January 5

Representative Kuykendall moved that the House hear all evidence for and against Justice Browne without regard to technical rules, unless the House ordered otherwise. Representative McClernand moved to amend the resolution to provide that the opinions of witnesses should not be substituted for facts. The House then rejected a motion by Representative Pickering to lay the resolution and amendment on the table. The amendment to the resolution passed 76-33, and the resolution was then approved. The House later reconvened as a committee of the whole to hear Judge Browne's case. After spending some time on the case, the committee's request to be discharged from further consideration of the complaint against Judge Browne was granted.¹⁰

The indexes to the House Journal contain no later references to proceedings against Justice Browne. Thus it appears that the House as a committee of the whole did not reach a conclusion to remove Justice Browne.

Notes

1. House Journal, Dec. 24, 1842, p. 111.
2. House Journal, Dec. 28, 1842, pp. 123-124.
3. House Journal, Dec. 29, 1842, p. 125.
4. House Journal, Dec. 31, 1842, pp. 132-133.
5. House Journal, Jan. 2, 1843, pp. 135-136.
6. Senate Journal, Jan. 3, 1843, pp. 144-147.
7. Senate Journal, Jan. 3, 1843, pp. 144-147.
8. House Journal, Jan. 3, 1843, pp. 140-143.
9. House Journal, Jan. 4, 1843, pp. 143, 147-148.
10. House Journal, Jan. 4, 1843, pp. 148-150.