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"Applying Impeachment Clause to Supreme Court Justices"

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National conversations surrounding the remote possibility of impeaching Justice Clarence Thomas for accepting—and failing to report—lavish gifts from a GOP billionaire with interests before the Supreme Court have prompted important questions from readers about the application of the Impeachment Clause to Supreme Court Justices.

In a nutshell, curious readers wonder whether Justices and federal judges are subject to impeachment? If so, what are the criteria? Have we impeached a Supreme Court Justice?

The "impeachment process" involves two steps. First, the House of Representatives determines by majority vote whether a judge, like a president, is guilty of an impeachable offense, as defined by Article III of the Constitution. If indicted by the House, the judge is then subject to an impeachment trial conducted by the U.S. Senate. The threshold for removal from the bench, upon conviction, is a two-thirds majority. The Senate may impose an additional penalty: disqualification from holding public office in the future.

The framers of the Constitution, in Article II, section 4, provided that "The President, Vice President and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and

misdemeanors." Judges were understood to be "civil officers."

The heinous crimes of treason and bribery were familiar to the framers, who were steeped in English history and drew upon impeachment trials of ministers and judges to shape the Impeachment Clause. Those offenses required little discussion in the Constitutional Convention. The acts of selling out the nation and destroying the integrity of the judicial process were intolerable and thus disqualifying.

The category of "high crimes and misdemeanors" fell into recognizable categories under English common law, which they scrutinized as they carved out the conduct that would justify removal of U.S. officers from elected and appointed positions. Offenses included abuse of power, usurpation, subversion of the Constitution, corruption, and maladministration, each of which had a direct bearing on the conduct of judges.

Delegates to the Constitutional Convention, we should recall, were deeply committed to "judicial independence." Without it, the goal of fair and impartial trials would be unattainable, not to mention maintenance of the rule of law, the pillar of American Constitutionalism. Accordingly, the framers provided in Article III, that judges would serve during "good behavior." Critically, their salaries could not be diminished during their tenure on the bench. These invaluable protections reflected the founders' understanding of the threats posed to English judges who dared to challenge the King's preferences. Indeed, until Parliament passed the 1701 Act of Settlement, judges were subject to removal by the monarch, without reason, merit, or cause. Few judges were willing to risk their careers and livelihood, which meant that the King was the ultimate interpreter of the laws of the realm and dispenser of justice.

The framers' commitment to judicial independence, however, did not mean that judges were beyond accountability. As James Madison explained in Federalist No. 51, governmental accountability was the sheet anchor of the republic. Judges were not immune from scrutiny of their conduct. "Good behavior"—the Article III standard for judges—was folded into the categories of impeachment, which meant that a Supreme Court Justice could face the rigors of an impeachment hearing and a Senate trial for removal from the High Bench for the commission of high crimes and misdemeanors. That category was brought center stage in 1805 in the impeachment of Justice Samuel Chase, the only Justice in our nation's history brought before the bar of impeachment.

Justice Chase was impeached by the House and saved by the thinnest of margins—one vote shy of the two-thirds requirement—from being removed by the Senate in a trial that featured another pitched battle between the Federalists and the Jeffersonians. The Federalists—the party of Washington, Hamilton, and Adams—dominated the American political landscape in the first decade following the adoption of the Constitution, until Thomas Jefferson defeated John Adams in the election of 1800, which constituted a peaceful revolution of sorts as voters swept the Federalists from power and handed the baton to the Jeffersonians.

One of the principal explanations for the Federalists' demise was the passage of the infamous Alien and Seditions Act of 1798, which provided the basis for convicting dissidents, including newspaper editors, who criticized certain governmental officials, including President Adams, in a way that caused their reputations to plummet.

One of those dissidents who was arrested and indicted by a grand jury was James Callender, who published various pamphlets critical of the

administrations of Washington and Adams. After the election of Jefferson, Callendar expected a political appointment in Jefferson's administration. When he did not receive an appointment, Callendar turned on Jefferson, a former ally, and accused him of fathering the children of his slave, Sally Hemmings.

Even before Jefferson's election, though, Callendar had been the subject of a sensational trial. Justice Chase, riding circuit, convicted Callendar of libel and slander against Adams. Chase's conduct of the trial led to his impeachment.

Scholars have debated whether Chase's acquittal in the Senate trial represented a victory for justice over partisanship or a failure to hold a Supreme Court Justice accountable for gross misbehavior. We turn to the essential question next week and its implications for potential impeachment efforts against federal judges.