

## Five Things You Need to Know About Impeachment.mp3

**Ad: American Beverage Association** [00:00:02] America's beverage companies are working together to support families as they reduce the sugar in their diets. Coke, Dr. Pepper, and Pepsi are providing more great tasting options with less sugar or no sugar at all. Smaller portion sizes, clear calorie labels, and reminders to think balance more choices smaller portions less sugar. Think more about how these three competitors are working together at [balance U.S. dot org](http://balance.usdot.org) that's [balanced U.S. dot org](http://balanced.usdot.org).

**Cold Open (Beth)** [00:00:38] Sometimes democracy seems like not a great idea. And I just have to tell myself it's worth it. We get things wrong and we just keep going. We just keep moving forward even when we get things wrong.

**Sarah** [00:00:55] This is Sarah from the left.

**Beth** [00:00:56] And Beth from the right.

**Sarah** [00:00:57] You're listening to Pantsuit politics.

**Beth** [00:00:59] No shouting, no insults. Plenty of nuance.

**Beth** [00:01:14] Thank you for being here on this Friday as we do a policy introduction for you. On Tuesday's episode, We're going to continue our conversation about the fallout from the Mueller Report and the hard decisions facing particularly Democrats. But I would argue that all of our representatives in Congress have some tough choices to make in light of the report. So today we're going to share with you five things you need to know about the impeachment process. And before we do we sincerely invite you to join us tomorrow at my home church Florence Christian Church in Florence Kentucky. That is Saturday April 27. We will be doing a public event to talk about our book. I think you're wrong but I'm listening a guide to grace filled political conversation. If you have not gotten yourself a copy of our book we hope that you will do that and we'd love for you to join us there. All the details will be in our show notes.

**Sarah** [00:02:05] All right. Who's excited impeachment. Let's do it. We got five things. Let's start at the beginning. Impeachment has always been a controversial topic including for the Founding Fathers. During the process, it was a heavily debated by the framers.

**Sarah** [00:02:20] They knew they wanted to impeach federal judges. That part wasn't controversial. Clearly they needed a way to remove people who had been appointed for a lifetime. In the first couple hundred years, lots of it was for drunkenness. But there were concerns about impeaching the President. There were framers who thought OK well if we need to remove a president it's not a lifetime appointment. So we have elections we have a mechanism to do that. But most of the framers still wanted the ability to keep the executive in check.

**Beth** [00:02:47] So much so that they made impeachment part of the Constitution before they really even defined the contours of the presidency. So it became a question of how do we do this if we want the ability to do it. There were concerns that Congress would lack the resolve to impeach because the president controls executive appointments and I've read that someone had written ambitious members of Congress might want those appointments and might not have the political will to go against the executive. They considered using the judicial branch for impeachment exercises but ultimately they followed the British model.

**Sarah** [00:03:23] I think ultimately what they were really concerned about is they wanted everyone accountable to the Constitution. I think it's so easy to forget, unless you listen to Hamilton regularly or have read the biography, that the monarchy really hung over everybody's head like they were so concerned about creating a powerful position that could launch into a monarchy. They were afraid of certain factions within the framers themselves who really just wanted a monarchy. And so I think impeachment was this everybody has to be accountable to the Constitution including the president because otherwise we're setting up somebody above the Constitution and then we're ending up in Monarch territory which is what we do not want. So the Constitution defines impeachment and Article 2 Section 4. 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, here's the kicker, or other high crimes and misdemeanors.

**Beth** [00:04:21] The second thing we want you to note is that impeachment itself is an indictment and the process from there mirrors criminal justice process and a lot of ways. The House of Representatives is the body to determine that impeachment is happening so it's like they issue the indictment and then they go to the Senate to prosecute the impeachment. The only remedy for impeachment is removal from office. And in some cases the Senate can also decide that a person will not be eligible to run for office again.

**Sarah** [00:04:53] I think that language is really messy. I think people say it like impeachment means removal from office, but in reality they're different things.

**Beth** [00:05:00] Right. It is a two step process. So the House introduces an impeachment resolution and then we go from there.

**Sarah** [00:05:06] I kind of went down a deep dark hole of impeachment resolutions and currently there are two impeachment resolutions because it all starts because an individual member has to introduce this resolution, right? So in January you have Representative Sherman and representative Talib, they both have resolutions calling for the impeachment of Donald Trump in the current Congress. Representative Greene and Representative Sherman also filed impeachment resolutions in 2017. So there are already resolutions in front of the house that individual members have filed. Also, so interesting, if you go back and look at all the resolutions filed over time. Here's a fun fact Beth did you know that Mark Meadows filed an impeachment resolution against Rod Rosenstein.

**Beth** [00:05:51] I did know that yes we can always count on Mark Meadows to do the people's work. Yeah.

**Sarah** [00:05:56] Mm hmm. And then there are tons of resolutions, individual member resolutions against Rumsfeld and Cheney and George W. Bush, a lot of them filed by Dennis Kucinich, everybody remember Dennis Kucinich? So it's really interesting to go back and look at these individual resolutions, especially when it was at a point in time where everyone knew they weren't going anywhere. I wish I could find some data on how common these individual resolutions were during the eighteen hundreds, but I I couldn't quite find that. I wonder if they've gotten more common over time. But that's how it starts, an individual member files an impeachment resolution. Then the speaker of the House must direct the U.S. House Committee on the judiciary or a special committee, if they want to set one up, to hold a hearing on the resolution to decide whether to put that individual members resolution to a vote by the full chamber and when to hold such a vote. So all you

need on the Judiciary Committee to approve the resolution and put it to a full vote of the house is a simple majority.

**Beth** [00:06:56] And then if the Judiciary Committee by a simple majority approves the resolution it goes to the full House and you only need a simple majority in the full House to move over to the Senate to prosecute the impeachment. So if the House were to vote to impeach then the Judiciary Committee would appoint managers of impeachment and that's usually people who are on the Judiciary Committee themselves. So Eric Swalwell for example has talked quite a bit about how he would be one of the prosecutors of impeachment. This is what he's talking about, that he anticipates that as a member of the Judiciary Committee he would go into the Senate as a manager of the impeachment process. The number of managers varies but historically it has been an odd number of people. The partisan composition of managers also varies but they do have to be people who support the action. We don't have some kind of rule that you must have representation of the other party such that you could have a manager of impeachment who thinks impeachment is a bad idea and is there to sort of sabotage the trial.

**Sarah** [00:08:02] So that's the indictment process. So let's pretend the house is like the grand jury, and they have to vote by a simple majority that there's enough here to charge and now that impeachment is the charge. OK. Number three thing you need to know, now that charge, quote unquote, "the impeachment" goes to the Senate and then it becomes much more like the actual trial. The Senate is like a juror and they have to have a two thirds majority in order to convict the impeached person. So that's where the trial unfolds, quote unquote, is in the Senate. Since the 1980s, The Senate has used impeachment trial committees to hear evidence, compile a record and present the evidence to the Senate.

**Beth** [00:08:43] And that practice has been a little bit controversial, there have been people who think that violates the spirit of the process. But the full Senate gets access to all of that evidence before they vote. Individual senators have to declare that they're going to uphold their responsibilities and exercise due diligence. This does unfold like a trial though, the officer being impeached has a right to present evidence through attorneys to call witnesses to cross-examine witnesses and then the Senate deliberates it takes its vote and it files its judgment with the secretary of state.

**Sarah** [00:09:15] So this was really interesting, when I was looking into the history of different presidential impeachments particularly Andrew Johnson and Bill Clinton, they talked about Andrew Johnson's functioned much more like an actual trial. There were witnesses. But Bill Clinton's, basically because the outcome was really never in doubt, it was, quote unquote, "a dreary proceeding". And it was just really the House managers, the House members of the Judiciary Committee, who were serving as the prosecutors and Clinton's defense lawyers basically just statements. There was no witnesses. There wasn't a lot of like what you would expect from an actual trial. My favorite quote I read about this was Judge William Rehnquist who the chief justice of the Supreme Court presides over this trial. So he presided over Bill Clinton's impeachment trial in the Senate. And he said I did nothing in particular. And I did it very well.

[00:10:08] Well the fourth thing for you to know and this is very relevant to what Sarah was just talking about with Bill Clinton's impeachment trial, it's really hard to know what is impeachable and what the standard for convicting is in the Senate. The founders were worried about treason and bribery specifically though seemed obvious to the founders and they still seem obvious today. But what else, was difficult.

**Sarah** [00:10:35] "Rarara" (mumbles)

**Beth** [00:10:35] They considered the term mal administration and decided that was too vague. They really did not want Congress to have its hand around the throat of the executive at all times. They did not want impeachment to become, we just don't like the way you are discharging your duties in this office. They also thought a lot about what kinds of crimes are impeachable because they seem to want this connection between the office itself and the action in order to impeach. And so they settled on this language from Britain other high crimes and misdemeanors that had a really specific meaning at the time. In Britain that phrase denotes crimes by public officials against the government and that's where I think about that sort of connection between the way you're exercising your duties and the action that Congress finds unacceptable.

**Sarah** [00:11:31] It was really interesting, as I was falling down the deep dark hole of impeachment resolutions, what also came up in my impeachment search of congressional legislation, is there's been quite a few members who have introduced bills to try to like flush this out a little bit more and define it. They don't go anywhere, but there are people I think out there trying to put some firm legs around this particular phrasing. I think it's something we've always struggled with. Famously in 1970, the House Republican leader Gerald Ford defined an impeachable offenses, "Whatever a majority of the House of Representatives will vote for". But if we're looking back at the history, since we're using the British phrasing, this is from the Constitutional Rights Foundation: "Since 1386, the English Parliament has used high crimes and misdemeanors as one of the grounds to impeach officials of the Crown. Officials accused of high crimes and misdemeanors were accused of offenses as varied as misappropriating government funds, appointing unfit subordinates, not prosecuting cases, not spending money allocated by Parliament, promoting themselves over more deserving candidates, threatening a grand jury, disobeying an order from Parliament, arresting a man to keep him from running for parliament (That seems really strong), losing a ship by neglect to moor it, helping to suppress petitions to the King to call a parliament, granting warrants without cause, and bribery. Some of these charges were crimes others were not. The one common denominator is that all these accusation was that the official had somehow abused the power of his office and therefore was seen as unfit to serve."

**Beth** [00:13:04] This is also from the constitutional rights foundation: "For more than 200 years since the Constitution was adopted, Congress has seriously considered impeachment only 18 times. Thirteen of these cases involved federal judges. The high crimes and misdemeanors that the house charged against these judges included being habitually drunk, as Sarah said,

**Sarah** [00:13:25] So much drunkenness.

**Beth** [00:13:26] Showing favoritism on the bench, using judicial power unlawfully, using the office for financial gain, unlawfully punishing people for contempt of court, submitting false expense accounts, getting special deals from parties appearing before the court, bullying people in open court, filing false income tax returns, making false statements while under oath, and disclosing confidential information." So there is a spectrum of conduct that has been considered over the years, but important to note, we haven't done this a lot. Even in our 200 years, this is something that we haven't considered. It's clear from the history, that the founders wanted some flexibility around this process and they knew the kind of conduct that people might engage in will change over time. There are probably scenarios we cannot imagine as we write these words today and they were really focused

on maintaining this delicate balance of everyone being accountable and also the branches of government being coequal. And the coequal nature of this process, the coequal branch nature of this process, is especially interesting when you consider that the Supreme Court definitively have said that courts have no oversight role in impeachment. It is not justiciable. It is purely a political process. So some people have said the burden of proof in an impeachment trial should be proof beyond reasonable doubt. Who's going to enforce that? A court can not enter into this equation in any respect. It is purely left to Congress.

**Sarah** [00:15:07] Um, I hear you saying that. I also hear the President saying the Supreme Court will defend him.

**Beth** [00:15:12] He's wrong.

**Sarah** [00:15:12] Is there, is there any truth to that?

**Beth** [00:15:14] No he's just wrong. The court will not get involved in this process. And I don't know if that's a good thing or not, but it is a thing. It is a decided thing.

**Ad: Pact Apparel** [00:15:28] Have you ever thought about the power we have as everyday consumers? Every time we pull out our wallets we wield an amazing amount of influence over what products get made and how they get made. That's why packed apparel, an eco conscious clothing company is committed to empowering consumers by being completely transparent with what goes into their clothes. So what's in these super soft organic clothes? Pact uses only 100 percent organic cotton and other sustainable materials made in Fairtrade certified factories where workers are valued and respected. What they don't use, toxic dyes, synthetic fertilizers, chemicals, and other gross stuff you don't want touching your skin or in your water supply. Pact is on a mission to democratize organic so they can price their clothes fairly. Tees are just 15 dollars, leggings 30 dollars and undies only nine dollars. The quality of this clothing is phenomenal, which becomes more apparent to me every time I do my laundry. Pact is a regular part of my wardrobe, the clothes truly get better every time you wash them. And it's just wonderful to know that you can feel good about what you are carrying around on your body every day. I feel very passionate about this. The skin is the largest organ. Whatever is touching it, the majority of the day is important. So vote with your dollars. Shop women's men's and kids styles at [wearpact.com](http://wearpact.com). Enter the code pantsuit at checkout for 25 percent off your first order. That's W E A R P A C T dot com and the code pantsuit.

**Sarah** [00:17:04] So number five, only three presidents have been threatened or let's say caught up by impeachment. The House overall has initiated impeachment proceedings more than 60 times, according to its historian's office, and voted to impeach 15 times. Judges, one senator, one Cabinet secretary, and two presidents: Andrew Johnson in 1868 and Bill Clinton 1998. The third president we're talking about of course is Richard Nixon, who resigned as impeachment proceedings were increasingly likely. Now federal judges have been impeached convicted and removed for a variety of offenses (again drunkenness). But you still have only eight federal judges total that have been removed. Now here is something fun I learned. Beth did you know that one of the former federal judges who was convicted by the Senate of extorting a bribe and then removed from his office as a judge, is now a member of Congress.

**Beth** [00:18:02] Sometimes democracy seems like not a great idea. And I just have to tell myself it's worth it. We get things wrong and we just keep going. We just keep moving forward even when we get things wrong.

**Sarah** [00:18:16] OK so let's talk about the president's. You went down a deep dark tunnel about Andrew Johnson. Tell us about his impeachment.

**Beth** [00:18:23] President Johnson was the only senator from a southern state who stayed loyal to the union during the Civil War and that is a big deal. And President Lincoln, wanting to try to put the country back together again, chose Andrew Johnson to be his vice president in 1864. Lincoln was then assassinated in 1865, so Andrew Johnson is now the President, and people are not pleased. Kind of universally people are not pleased about this. Republicans, and you have to kind of reorient yourself, because Republicans were mostly in the north at this time and very angry about the Civil War, very angry with the South. And they wanted to put military rule in place in the South during Reconstruction. They wanted to redistribute land to black Americans following the Civil War. And Andrew Johnson wanted to quickly restore the power to the citizenry of the states and move on.

**Sarah** [00:19:19] Were they wrong. No they were not. They were not wrong. Andrew Johnson was wrong. Sorry, that's just my side note.

**Beth** [00:19:24] So over Andrew Johnson's veto, Congress passed a Reconstruction Act. And they also decided we don't like this Andrew Johnson fellow. And we want him to have to come to Congress to get permission to fire any members of the executive branch that we've confirmed.

**Sarah** [00:19:43] That's a little crazy. Although does that sound like a bad idea right now? No it doesn't look. (Laughs)

**Beth** [00:19:49] So Andrew Johnson, in very mature fashion, responds by promptly firing the Secretary of War. He says I see your act, and I defy it. So the House passed 11 articles of impeachment. Andrew Johnson was not convicted.

**Sarah** [00:20:05] Wait, wait stop. I want to share my favorite article of impeachment. He was accused of "scandalous harangues" about legislators. That's a quote by the way. "Scandalous harangues", end quote, about legislators made, again with quotes, "with a loud voice". That's amazing. I would like to add that to the list of bribery, treason, scandalous harangues, and other high crimes and misdemeanors.

**Beth** [00:20:30] I wonder if that would count if you made the scandalous harangue by Twitter (Sarah laughs). OK. So this to me is fascinating. Johnson was saved from conviction on every article of impeachment, all 11, by only one vote.

**Sarah** [00:20:44] That's crazy.

**Beth** [00:20:45] Most historians do not look kindly on this impeachment process. They think it did not involve high crimes and misdemeanors. It was purely about political disagreement. And there is thought that if Johnson had been convicted it would have set us down a road that severely threatened the really delicate separation of powers tension and balance The founders were looking for.

**Sarah** [00:21:09] I do not understand this critique. If it's a political process why is it threatening to have it be a political disagreement?

**Beth** [00:21:16] Well I think that's the whole high crimes and misdemeanors dilemma. Right? Because you don't want Congress to just be able to overturn an election and that's different with Andrew Johnson right? Because the people elected Lincoln, but arguably they elected Johnson too, they knew he was on the ticket. So you don't want Congress to just be able to say we don't like this result, we're going to change it. We think you're a crappy president. What the Constitution permits us to make bad choices is voters and live with the consequence of those choices. Right? And so we don't want Congress to just step in anytime it thinks things are going off the tracks, we want it to be a great big deal and we want someone to have objectively done something wrong. But we have built a process where the body charged with deciding if there's been an objective wrong, is necessarily political. And our court is staying out of it. So I mean, this is one where the framers kind of said, "we don't know folks, good luck America. Figure it out." And I think that's right. You know? I think ultimately that's right. But it's it's hard.

**Sarah** [00:22:22] So Andrew Johnson made it out. Just barely. Richard Nixon peaced out when it looks super likely that he'd be the first one to be removed from office. The House Judiciary Committee voted on three articles of impeachment: Obstruction of justice, abuse of power and defying the committee's requests for document production.

**Beth** [00:22:39] Put a pin on that last one.

**Sarah** [00:22:41] Yeah, put a pin there friends. That sounds familiar. He resigned before the entire House voted however.

**Beth** [00:22:47] The committee considered an article of impeachment against Richard Nixon for tax evasion and that committee decided tax evasion was not a high crime or misdemeanor. So I think that's an interesting historic footnote as well. And then along comes one William Jefferson Clinton. (Sarah Sighs) Would you like to do the honors Sarah?

**Sarah** [00:23:07] Sure. So there are four articles of impeachment: perjury before a grand jury, perjury in a civil case, obstructing justice, deceiving the public and hindering the investigation, refusing to respond to committee requests. Again, passed through the house. He was quote unquote indicted and went to trial in the Senate. And who heard no live witnesses. There wasn't much of a trial and he was not convicted in the Senate. It's really interesting. Speaking to the fact that impeachment is a political process, you know I think all the historical analysis when you look back at the Clinton impeachment is that, whatever they listed as the article of impeachment and whatever sort of legalistic arguments they were trying to make about perjury and obstruction of justice, America decided it was about whether they cared or not that he had had sexual interactions...

**Beth** [00:24:01] Sexual relations with that woman. Is that what you are looking for?

**Sarah** [00:24:03] Sexual interactions with an intern. And they decided they didn't care. And it was so interesting like you just hear that you see the polling it was like people just thought, "Well that's what this is about and I don't care." I think they tried very hard to make it, "No, but it's what he did after that." And it just never sunk in I don't think.

**Beth** [00:24:20] Which is another interesting table setting note, I think for where we are today; because the complexity of the Mueller investigation, the complexity of the way the White House is conducting itself post Mueller Report, is hard for the public to digest. And

so that's where we'll pick up on Tuesday as we discuss what should be done and whether impeachment should be invoked here. And we hope that you will join us then.

**Sarah** [00:24:48] We have lots of resources in the show notes, if before now and then you'd like to read more about impeachment and learn more about the haranguing by Andrew Johnson. But until then, till Tuesday we'll be back. Ya'll have a good weekend and keep it nuanced ya'll.

**Sarah** [00:25:16] Dylan Garven produces pantsuit politics every week. Thanks for making a sound better Dylan.

**Beth** [00:25:20] Alise Napp is our managing director which means we could not make it without her scheduling, organization, feedback, and creativity. Thank you Alise.

**Sarah** [00:25:28] We couldn't make pantsuit politics without support from our listeners. Go to [patreon.com/pantsuitpolitics](https://patreon.com/pantsuitpolitics) to learn how you can receive more nuance and help us make the show.

**Beth** [00:25:36] Special thanks to our executive producers who have committed to supporting us in a major life giving way. Tracy Putoff, Tim Miller, Cherry Hauss, Sarah's husband Nicholas Holland, and my husband Chad Silvers. Our theme music is composed and performed by Dante Lima. The music under our ads is composed and performed by Dylan Garven.

**Sarah** [00:25:56] Learn more about our lives, live events that we're involved in, and what we're reading each week by signing up for our weekly newsletter at [pantsuit politics show dot com](https://pantsuitpolitics.showdot.com).

**Beth** [00:26:03] And connect with members of the Pantsuit Politics community by following us on Instagram Facebook and Twitter.

**Ad: Nightly Nuance** [00:26:13] The news is 24/7 and we know we can't get to everything in two shows a week. So we now provide expanded content every weekday. Every morning I provide news briefs in our Instagram and Facebook stories where I give a quick rundown of the day's top headlines. And every evening I do a deep dive into one of those headlines over on our Patreon page. Supporters of the show receive the nightly nuance on everything from global conflicts to Twitter outrages. So when you're thinking I can't wait to hear what Sarah and Beth think about this. Check out our stories or page around because we might have already shared our thoughts.