

# Rules of the Impeachment Trial

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*Access the PDF here: <http://files.vuu.org/uujaz/2019/alert-121119.pdf>*

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Later this week, the U. S. House of Representatives will be voting on two possible articles of impeachment of the President of the United States. Even as interesting as these are, I find my attention now is focused on the trial itself, and how it will be conducted.

(Skip down to the “[rules of impeachment](#)” and how to use [Resist.bot](#)).

But first, the impeachment charges:

- **Abuse of Power** – These charges pertain to DJT’s request (and pressure) of a foreign power (Ukraine) to open an investigation alleging corruption and conflict of interest by Hunter Biden, son of Joe Biden, DJT’s leading opponent for President in 2020. The evidence for this charge is overwhelming by almost everyone’s account as the transcript of a July 25 telephone conversation shows DJT telling the newly-elected President of the Ukraine that a favor is needed; and if that favor is granted, there will be a meeting with the Ukrainian President at the White House and the \$400 million in military aid that currently is being held will be released. Subsequent testimony by members of the Trump administration have confirmed that the telephone transcript is accurate and that there were other instances when DJT made clear that the opening of an investigation connected with Hunter Biden and with Ukrainian interference in the 2016 election (instead of Russian interference) on behalf of Hillary Clinton rather than DJT himself was necessary if the military aid was to be released and the meeting held. The Republican defense ranges from saying there was no pressure, it was just a “suggestion,” to arguments that this incident does not rise to the level of an impeachable offense.
- **Obstruction of Congress** – The House decided to charge Obstruction of Congress, rather than Obstruction of Justice, because these accusations also are easily supported by the evidence: DJT forbade senior members of his administration from testifying and has not provided documents requested by Congress under subpoena. Congress says that under the constitution they have the right to this testimony and documents, otherwise the

constitutional provisions regarding impeachment are not enforceable. One key defense offered by the Republicans is that the impeachment charges are baseless and politically motivated, therefore the President has no obligation to obey the subpoenas.

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## **Rules of the Impeachment Trial**

**There are three sets of rules of the impeachment trial in the Senate:**

- U.S. Constitution: [S. Constitution](#): Article I, Sections 2 and 3 and Article II, Section 4
- [Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials](#)
- The [Standing Rules of the Senate](#), which are applicable when the Senate Impeachment Rules are silent. There's dozens of these, so not summarized here.

## **The Constitution:**

**Here are a couple of things to notice:**

- The Constitution does NOT require that the Senate hold a trial if impeachment charges are brought by the House. They may, but do not have to, hold a trial.
- The President's pardon power does not extend to impeachment.
- Conviction requires a 2/3 vote and results in automatic removal from office. The 2/3 vote, however, does not automatically disqualify the President from running for a subsequent office. (Yes, this is correct. The Senate could convict DJT which would remove him from office, but unless they held a second vote and by majority voted to disqualify him from further office, he could run again in 2020). See, for example: <https://fas.org/sgp/crs/misc/R44260.pdf>

## **Article I, Section 2:**

The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.

## **Section 3:**

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

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

Article II. Section 2:

1: The President shall ...have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

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, or other high Crimes and Misdemeanors.

### Senate Rules for the Impeachment Trial

The Senate already has a set of rules for an impeachment trial.

[https://www.senate.gov/artandhistory/history/resources/pdf/3\\_1986SenatesImpeachmentRules.pdf](https://www.senate.gov/artandhistory/history/resources/pdf/3_1986SenatesImpeachmentRules.pdf) These were originally developed in the late 1800s and were modified in 1986 for the impeachment trial of a federal judge (Claiborne). Some specifications were added in 1996 for the Clinton trial, but these are the rules that, unless changed, will govern the trial. To change them requires a majority vote in the Senate, but since the filibuster can still be used, it would require 67% of the Senate (67 members) to agree, and the Republicans only have 53.

- **Does the Senate have to hold a trial?** Yes. Not because the Constitution requires it, but because the 1986 rules require a trial, upon receiving the articles of impeachment from the House “managers.”
- **Who does the “prosecution”?** The managers from the House of Representatives present their case. In the Clinton impeachment, this was limited to 4 days.
- **Who is the “defense”?** The Senate are the jurors, not the defense. The President’s team would put on the defense. In the Clinton case, this too was limited to 4 days.
- **After these first presentations (4 days each), then the prosecution and defense can question one another, or call witnesses if allowed.** In the Clinton impeachment trial, the rules only allowed taped depositions – no actual witnesses.
- **Who presides?** The Constitution provides that the Chief Justice, John Roberts (a George W Bush appointee) would preside.
- **What power does the “judge” (the Chief Justice, in an impeachment case) have?** By the 1986 rules, the presiding judge has authority to issue all orders allowed by the Senate including deciding on questions of relevancy, materiality, redundancy, and other issues that may arise. The President officer, then can uphold or overrule objections, decide on

whether a witness is allowed or not, whether certain evidence can be presented or not, and so on.

- **Can the Senate Overrule the Judge?** YES. Even though the Chief Justice can rule on these issues, the senate can overrule by a majority vote (which, apparently, is subject to the filibuster so would actually be 2/3 to shut off debate).
- **The Senators Can't Talk? They are Jurors?** Yes, however, the 1986 rules allow any member of the senate to ask for a formal vote on any ruling by the Judge. This provision allows the Senators to bypass Senator Majority Leader Mitch McConnell and submit requests for votes directly to the Senate as a whole.
- **Does DJT have to appear?** No. He is invited, but his lawyers and his "team" can appear instead of him in person.
- **Can the Senate call witnesses?** Yes. They have the power to compel the attendance, according to the 1986 rules. However, in the Clinton case, the Senate modified its rules to only allow taped depositions.
- **Can a motion be made for dismissal?** Yes. In the Clinton case, the rule was that a motion to dismiss was out of order until after the initial presentations by both sides, but that was a supplemental rule. The 1986 rules do not cover this.
- **Isn't this disruptive?** How can the Senate get anything done if an impeachment proceeding ties them up for days or weeks? The Senate can appoint a committee to hear the evidence, conduct the trial, and then report back to the Senate. The 1986 rules provide, however, that the Senate can call witnesses and consider the evidence presented by the committee. These rules say nothing about the appointment, partisan representation, size, etc. of such a committee.
- **Can witnesses be called?** Yes, by each side. And each side is able to cross examine. A senator may propose a question for a witness, raise objections, and so on that will be ruled on by the presiding judge.
- **Is the trial public?** Yes. The doors are to be kept open unless a motion to close is voted on and passed.
- **Arguments about motions are limited to one hour on each side.**
- **Can the Senate change the Articles of Impeachment?** No. The Senate Rule, 23, is that no articles can be divisible for purpose of voting.
- **Two thirds vote is required to convict.** Without it, the person has been acquitted.
- **If convicted, the President is removed from office, but is NOT disqualified to run again.**
- **If convicted, the Senate shall proceed to other matters** – which may include disqualification from running for subsequent public office (majority vote required).
- **Are there limits on time to speak on the final vote?** Yes. The 1986 rules, section 24, says that a member shall only speak once on a preliminary question for not more than 10 minutes and only once on the final question for not more than 15 minutes.
- **Votes to convict or not cannot be reconsidered.**

If something is not covered by these rules, then the Senate “usual” rules of procedure would govern the process. These are similar to Roberts Rules, but have a variety of modifications.

### **Resistbot.io - How to use it.**

Click on the “messages” icon on your I-phone, then click on the pencil in the top right-hand corner. You will get a “To: “ screen. Put in 504-09 and then in the message type “resist.” They will respond and ask for your zip code or address and what you want to do. This is a free service, reportedly developed by volunteers. It will ask for your zip code or address, and then you can send a fax, letter, make a phone call, send an e-mail to Sen. Sinema and McSally and the House member as well or even to Governor Ducey.

After you have sent several, it will ask you which of the various people you want it sent to. At first, it just sends to all three, later it will add state-level elected officials, too. You get more services after you’ve used it awhile!

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