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**CPB:** [00:00:00] Civics 101 is supported in part by the Corporation for Public Broadcasting.

**CHIEF JUSTICE REHNQUIST:** [00:00:08] The Senate will convene as a court of impeachment.

**DAN CASSINO:** [00:00:15] Chief Justice Rehnquist, when he was presiding over Bill Clinton's impeachment trial famously decide he wanted fancier robes for it because was gonna be on TV. And so he saw a local production of a Gilbert and Sullivan play.

**NICK CAPODICE:** [00:00:27] This is the music from that operetta.

[00:00:29] by the way, it's Iolanthe.

**DAN CASSINO:** [00:00:30] And wanted the robes from that

[00:00:32] so he had special robes made with special stuff on the arms because we really liked to from Gilbert and Sullivan,.

**CHIEF JUSTICE REHNQUIST:** [00:00:37] Two thirds of those senators voting and a quorum being present, not having voted in the affirmative. The motion is not agreed to.

**DAN CASSINO:** [00:00:45] But the important thing, remember, is all of this is being made up as we go along. And so when they're impeaching Bill Clinton, they go, I don't know what are we supposed to do? Let's see what they did to Andrew Johnson. And they just follow that same playbook to try so they can go and claim, oh, there's precedent for all of this. This is just like Andrew Johnson. So we just keep on doing these things. They made up in the 1860s for no apparent reason. And we wind up with people dressed like they're in Gilbert and Sullivan.

**CHIEF JUSTICE REHNQUIST:** [00:01:07] On this vote, the yeas are 62, the nays are 38. Division 3 of the motion is agreed to.

**NICK CAPODICE:** [00:01:18] I'm Nick Capodice.

**HANNAH MCCARTHY:** [00:01:20] I'm Hannah McCarthy.

**NICK CAPODICE:** [00:01:20] And this is Civics 101, and we're interrupting our ongoing series on presidential elections to bring you this special episode on impeachment.

**HANNAH MCCARTHY:** [00:01:28] We try not to let current events dictate the content of our show, but it's not every day that the House begins an impeachment inquiry.

**NICK CAPODICE:** [00:01:36] Yeah.

**NANCY PELOSI:** [00:01:36] I'm announcing the House of Representatives moving forward with an official impeachment inquiry.

**NICK CAPODICE:** [00:01:42] That's House Speaker Nancy Pelosi doing just that. So today we investigate the history, the precedent and most importantly, the process of impeaching a president. First, here's Dan Cassino. He's a political science professor at Fairleigh Dickinson University. He's the one who was talking earlier about Rehnquist's robes.

**DAN CASSINO:** [00:01:59] So our most recent example of remove from office is G. Thomas Porteous Jr. of Louisiana.

**NICK CAPODICE:** [00:02:08] G. Thomas Porteous Junior. He was a Clinton-nominated federal judge, impeached and removed from office in 2010. And as to who can be impeached? The Constitution says the president, vice president and all civil officers of the United States. Those civil officers aren't defined, though. But so far, the House has impeached 15 federal judges. Secretary of war two presidents. Of those, only eight individuals were removed from office by Senate conviction, and they were all federal judges.

**HANNAH MCCARTHY:** [00:02:38] Can members of Congress be impeached?

**NICK CAPODICE:** [00:02:41] No, they can't. The Senate decided this amongst themselves in 1797 and the trial of William Blount. Senators and representatives can be expelled or censured. But they don't need to be impeached. So today we are going to focus on presidential impeachment.

**DAN CASSINO:** [00:02:56] We've had two presidential impeachments in history. A lot of people think Richard Nixon was impeached. He was not. He was about to be impeached and then he resigned.

**RICHARD NIXON:** [00:03:03] I have never been a quitter. To leave office before my term is completed is abhorrent to every instinct in my body. But as president, I must put the interests of America first.

**NICK CAPODICE:** [00:03:20] So the only two presidents who have been impeached were Andrew Johnson in 1868 and Bill Clinton in 1998. And here's where we come to our first linguistic distinction.

[00:03:31] Impeachment does not mean removal from office. It's the name of the process that can lead to removal from office.

**HANNAH MCCARTHY:** [00:03:38] To be fair, people have often used the word to mean removal from office.

**LINDA MONK:** [00:03:44] You know, this is part of my job as your friendly neighborhood constitutional scholar to make sure that we get the the nomenclature, and therefore the constitutional language, correct. Cause it matters.

**NICK CAPODICE:** [00:03:58] This is Linda Monk, constitutional scholar, author of "The Bill of Rights: A User's Guide," and one who often tells us that the words in the Constitution matter and we should not be careless with them.

**LINDA MONK:** [00:04:09] And the sloppier people get the sloppier they become about their responsibilities under the Constitution, I think. That's that's my little wet noodle reprimand for the day,.

**HANNAH MCCARTHY:** [00:04:22] Wet noodle reprimand taken.

[00:04:24] So where should we begin the process? The history.

**NICK CAPODICE:** [00:04:26] First I asked Linda to start with the process.

**LINDA MONK:** [00:04:28] We can't start with the Constitution, my favorite? I take it the answer is no. And I'm appalled.

**NICK CAPODICE:** [00:04:39] Of course, I acquiesced and asked her to start with the Constitution.

**LINDA MONK:** [00:04:41] Starting with the language in the Constitution itself, which is spread out in several places, but it says very specifically that the House of Representatives shall have the sole power of impeachment. The Senate shall have the sole power to try all impeachments.

**HANNAH MCCARTHY:** [00:05:02] The House levels charges. The Senate holds the trial.

**NICK CAPODICE:** [00:05:05] Right.

**LINDA MONK:** [00:05:06] And if the president's involved, the chief justice will preside in the Senate. And two thirds of the members present have to agree for a conviction and that if they are convicted, the only penalty is removal from office in disqualification to hold any other office. But the person can still be prosecuted under law for any criminal offenses.

**HANNAH MCCARTHY:** [00:05:32] Ok, so if you're convicted after impeachment, the punishment is just removal from office. If there are criminal charges, that comes later.

**NICK CAPODICE:** [00:05:39] Yeah.

**LINDA MONK:** [00:05:39] Remember that an impeachment is an accusation.

**NICK CAPODICE:** [00:05:41] And those accusations or charges are called articles.

**LINDA MONK:** [00:05:46] That's what it boils down to. And then only if the Senate agrees to that accusation is someone removed from office.

**HANNAH MCCARTHY:** [00:05:55] All right. So now I want to know what kind of accusation can be levied against a president. What justifies impeachment?

**NICK CAPODICE:** [00:06:04] Sure.

[00:06:05] Time to jump into that hot, oft revisited chamber in the Pennsylvania State House in the 1787 Constitutional Convention. The framers were debating about impeachment and Ben Franklin made a joke along the lines of, "anyone who wishes to be president should support an impeachment clause because the only alternative is assassination."

[00:06:24] So some argue that impeachment was necessary because you could just vote the president out at the next election. But impeachment becomes a tool for when you cannot wait. Charges must be addressed and the charges that justify impeachment are in Article 2 of the Constitution. Here's Dan again.

**DAN CASSINO:** [00:06:42] Article 2 was a part of the Constitution that sets the presidency,is really, really short. The reason it's short is number one, because everyone knew George Washington was going to be the first president. They also knew that no -- that we didn't know how to set up what the powers of the president should be. If we make the president too weak, what's the point of having a president? If we make him too strong? Well, now you've got a dictator. So the deal was we'll just make George Washington present and we'll let him figure it out. So Article 2 is super vague. It doesn't say how impeachment's supposed to work.

**NICK CAPODICE:** [00:07:12] And they had a little bit of trouble coming up with a list of actions that warrant it.

**FRANK BOWMAN:** [00:07:16] The first problem they had with respect to the reach of impeachable conduct was whether it even to define it.

**NICK CAPODICE:** [00:07:23] That is Frank Bowman. He's a law professor at University of Missouri and author of the new book, "High Crimes and Misdemeanors: A History of Impeachment for the Age of Trump."

**FRANK BOWMAN:** [00:07:33] I mean, after all, Great Britain'd gotten along for, at that point, four centuries without an actual definition. The framers were at an age with a kind of a rage for written constitutions and actually writing things down. And so they decided now we need to actually have a definition of what we think impeachable conduct should be. And over the summer, the definitions changed and I won't go through all of them. But by the end of the summer and in September, the various committees involved that had come down to just treason and bribery.

[00:08:04] At that point, a guy named George Mason from Virginia stands up and says, don't like this treason and bribery, far too narrow. It doesn't cover a lot of things that we would certainly want to be impeachable. Certainly doesn't cover a lot of things that people in Great Britain impeached people for. It's not -- it's not broad enough. So he said, well, it should be treason, bribery or maladministration. And which, by the way, was a word had often been used in British and early American practice.

**NICK CAPODICE:** [00:08:35] Then James Madison stands up and he says, "I don't much care for maladministration. It's a vague, broad term and Congress can just use it to impeach anyone they fancy."

**FRANK BOWMAN:** [00:08:45] Whereupon George Mason comes back and says, all right, you don't like maladministration. How about high crimes and misdemeanors? Everybody looks around the room. Okay, great. High crimes and misdemeanors. And there really isn't much more debate about it than that. At that point, though, of course, I suspect there probably was. We just don't know. But what they were plainly doing when they accepted without too much conversation high crimes and misdemeanors, is they were accepting what lawyers would call a term of art which had been in use in both British and frankly, American practice, for hundreds of years.

[00:09:16] And so what we can infer from that probably is that at least from the point of view of the framers, they were saying, well, in addition to treason and bribery, you can impeach people for the kinds of stuff that Parliament has been impeaching people for for the last 400 years.

**DAN CASSINO:** [00:09:31] People think high crimes and misdemeanors a weird term, right? Because high crime think okay, murder, that's a high crime or misdemeanors, like, jay-walking and so it doesn't seem to work that you've got high crimes and misdemeanors, but that's because we're passing the phrase incorrectly. Right, the Constitution has treason, bribery or other high crimes and misdemeanors. It's high crimes, but high is an adjective that's modifying crimes and misdemeanors. So it's high crimes and high misdemeanors. So high misdemeanor is a minor abuse of power. So under British law, this was something like if you were the captain of a ship and you didn't put down your anchor properly, that could be a high misdemeanor because you abused the trust that the Crown has given to you. So that's what I mean by high crimes and misdemeanors. It's all about abuse of power in some way. And they throw this in the Constitution and they never bothered to explain exactly what they meant by it.

**HANNAH MCCARTHY:** [00:10:19] All right. So high crimes and misdemeanors sounds a bit nebulous, but can we define the other two, treason and bribery?

**NICK CAPODICE:** [00:10:28] Yeah.

**FRANK BOWMAN:** [00:10:28] Treason is actually the only crime that is defined in the constitution itself. And it is defined very narrowly. Essentially it is getting -- giving aid and comfort to the enemy in time of war.

[00:10:47] Next thing is bribery, which means pretty much exactly what you think it means. There's technical issues about what bribery means, but it means pretty much what you think.

[00:10:57] And of course, what it really is about is the core concept of corruption in office.

**HANNAH MCCARTHY:** [00:11:05] So now we've got the why. I'm still muddy on the how. Being that the process isn't defined in the Constitution, how does it happen? Who defines the rules?

**NICK CAPODICE:** [00:11:17] The rules for the steps of impeachment, the process, everything that's not in the Constitution is created by the House and the Senate. And the most recent rules summary from the Congressional Research Service says here's the current three steps. Step one, the process is initiated. Step two, Judiciary Committee investigation and writing up of the articles of impeachment. And step three, the House considers the articles of impeachment. So step one, initiation of the process. The speaker of the House can announce an inquiry, as Nancy Pelosi has. But more often any member of the House can initiate impeachment by submitting a resolution through our old friend, the Hopper.

**HANNAH MCCARTHY:** [00:11:53] The wooden box that called all our bills and resolutions to be.

**NICK CAPODICE:** [00:11:57] Right. It's just like a regular resolution or piece of legislation. And it's worth noting that first step has happened a lot. Truman, Reagan, both Bushes and Barack Obama have all had impeachment resolution submitted against them.

**ARCHIVAL:** [00:12:11] One Texas congressman calling for Obama's possible impeachment.

[00:12:15] George W. Bush in violation of his constitutional oath to faithfully execute the office of president.

**NICK CAPODICE:** [00:12:22] None of those got to the second step.

**HANNAH MCCARTHY:** [00:12:25] Which is where we are now.

**NICK CAPODICE:** [00:12:25] Which is where we are now. At the moment of this taping, Speaker Pelosi did both steps, one and two, at the same time, she announced an impeachment inquiry and assigned the House Intelligence Committee, along with five other committees, to begin an investigation. And they'll report their findings to the House Judiciary Committee.

**LINDA MONK:** [00:12:41] The Judiciary Committee is one of the standing committees of Congress that considers anything regarding constitutional amendments, constitutional process, judicial nominations. And it is the place where a formal impeachment, meaning something that's ultimately voted by the full House begins.

**NICK CAPODICE:** [00:13:09] They can then draft and markup, which is the term for making edits on legislation these articles of impeachment. Just like committees do for any legislation. And if they report it out, which means they bring these articles for consideration to the House floor, it jumps ahead of all other proposed legislation and it gets a floor vote.

**HANNAH MCCARTHY:** [00:13:26] Really?

**NICK CAPODICE:** [00:13:27] Yeah. It gets priority seating.

**HANNAH MCCARTHY:** [00:13:29] So what percentage of the vote do they need to go forward with it?

**NICK CAPODICE:** [00:13:32] It just takes a basic majority, it has to be over 50 percent. If more than 50 percent of the House votes to approve these articles of impeachment, that person, that official, is impeached.

[00:13:44] And then we go to the fun part, the Senate.

**ARCHIVAL:** [00:13:48] Hear ye, hear ye, hear ye.

[00:13:51] All persons are commanded to keep silent on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibi -- exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

**NICK CAPODICE:** [00:14:10] The Senate holds a trial, but it's not really like a criminal trial that we're familiar with.

**DAN CASSINO:** [00:14:16] Senators are acting essentially as the jury. They're going to side with a two thirds vote, two thirds of those present, not of all senators. They're gonna decide with a two thirds vote whether to remove the individual from office. The not gonna do anything else. They can't put him in jail or anything. All they can do is remove him from office. So two thirds vote removes from office and you're then going to prosecutors. Well, the prosecutors are gonna be appointed by the House Representatives. These are called, in modern era, impeachment managers. The House of Representatives appoints a few people, and those people are gonna present the case to the Senate for impeachment.

**HANNAH MCCARTHY:** [00:14:45] Who are these impeachment managers?

**NICK CAPODICE:** [00:14:47] They are members of Congress. They are appointed under the discretion of the Speaker of the House.

**DAN CASSINO:** [00:14:51] The president is also allowed to have his own lawyers there. His own lawyers basically arguing as defense counsel, presiding over all of this is the Chief Justice of the Supreme Court. Now, the problem is that the Chief Justice of the Supreme Court doesn't actually have any power. Not like a judge in actual trial, because the rules for the impeachment trial are set by the Senate. So whenever the judge makes a decision about what the rules should be or rules of evidence or whatever, he can be overruled by a majority of the Senate.

[00:15:19] So it's as if the jury was able to overrule the judge in the middle of the trial.

**NICK CAPODICE:** [00:15:22] To understand the trial in the Senate, it's easy to equate it to a criminal trial. Right. The House managers are prosecutors. The president has lawyers for the defense. The chief justice is in charge. But that's not really an entirely fair analogy, because it's not a criminal proceeding. This is a very particular type of trial. And it's not like anything else we see. The senators can call witnesses. They do cross-examinations. They question the House managers and finally they vote. And as Dan said, it requires a two thirds majority in the Senate voting for any of the articles of impeachment. If that two thirds majority is achieved on even just one article, that official is removed from office.

**HANNAH MCCARTHY:** [00:16:09] I think I struggle with impeachment a little bit because it's like this nebulous thing, it has the echoes of a criminal trial, but it's a political process that feels, like Dan said at the beginning, like it's being made up as we go along.

**NICK CAPODICE:** [00:16:26] Yeah, and that's understandable also because it's so rare. An impeachment trial in the Senate has only happened 19 times in U.S. history.

**HANNAH MCCARTHY:** [00:16:37] Right.

**NICK CAPODICE:** [00:16:39] As usual, Dan Cassino gave me some sort of cold comfort of this process, a way we can look at it where we feel we might actually have some power.

**DAN CASSINO:** [00:16:49] So in terms of the politics of impeachment, impeachment is a fundamentally political process. And because of that, it is driven by public opinion. If the process is popular, if people want it, it will happen. If the people don't want it, it will not happen. It may seem like things in the world are spiraling out of control. But historically and in the present day, this is driven entirely by the public. The public is really running everything. And public opinion in these cases can shift amazingly quickly. We saw this in the case of Richard Nixon, where it was certain he was not going to impeached and then he resigned. We saw this in the case of Bill Clinton, where there was pressure for impeachment until people actually read the Starr report and then it evaporated. Public opinion can shift very, very quickly. But public opinion is what is driving all of this. Your voice matters in this. So however you feel about it.

[00:17:42] You call your representative, you talk to pollsters. That's going to be decisive in what actually happens in this or any other impeachment trial.

**ARCHIVAL:** [00:17:48] Two thirds of the senators present not having pronounced him guilty, the Senate.

[00:17:53] adjudges that the respondent, William Jefferson Clinton, President of the United States, is not guilty as charged in the second article of impeachment.

**NICK CAPODICE:** [00:18:06] Well, that's impeachment. Two thirds the Senate has voted to remove us from the studio.

[00:18:11] Today's episode was produced by Nick Capodice with Hannah McCarthy, who's currently doing an interview on the census next door. So here's Erika Janik, executive producer and the one who tried to get me to cut the part about maladministration.

**ERIKA JANIK:** [00:18:22] I told you to cut it, Nick, but I have to say, you did make it work.

**NICK CAPODICE:** [00:18:26] No maladministration in this office? No, sir.

**ERIKA JANIK:** [00:18:29] Civics 101 staff includes Ben Henry and Jacqui Fulton. Maureen MccMurray sings Modern Major General at staff holiday parties.

**NICK CAPODICE:** [00:18:35] Music in this episode comes from the unparalleled Blue Dot Sessions, who I once said we use like a barbarian uses healing potions. Also Mirobelle, Jesse Gallagher, Pictures of a Floating World, Lobo Loco, Florian Del Cros, Emily Sprague and Iolanthe under the direction of Sir Malcolm Sargent.

**ERIKA JANIK:** [00:18:50] We now return to our presidential election series. Never miss an episode. Subscribe to us on Apple podcast or wherever you do that sort of thing, or visit us online at civics101podcast.org to download transcripts, sign up for our trivia-laden newsletter or any number of a host of other things.

**NICK CAPODICE:** [00:19:09] Civics 101 is made possible in part by the Corporation for Public Broadcasting and is a production of NHPR, New Hampshire Public Radio.