

FOCUS: IMPEACHMENT IN
NEW YORK STATE



Thomas McKeivitt

Most people, and likely most attorneys, are familiar with the impeachment procedure under the federal constitution. This is not only because people are far more familiar with the US Constitution, but because there have been four impeachment trials of American Presidents, including two in less than two years.

However, for the second time in over a dozen years, the duly elected Governor of the State of New York has resigned from office due to scandal. Both Governors Eliot Spitzer and Andrew Cuomo left office under the threat and distinct possibility that they would be impeached and removed from office.¹ Although only one New York Governor has actually been removed from office through impeachment, in light of the recent events, it is an appropriate time to examine the procedure for impeachment

The New York State of Impeachment

in New York and whether the time is ripe for reform.

English Origins

The concept of impeachment comes from England, where the first impeachments were thought to have taken place during the reign of Edward II, who ruled from 1327-1377. The procedure was firmly established during the time of Henry IV from 1399-1413.² The concept was developed in order for Parliament to have some check on the power of the monarchy.

Due to the doctrine of sovereign immunity, Parliament could not control the King himself. But it could have some control over the ministers and friends he employed to carry out his duties.³ Under the English procedure, the House of Commons would initiate the impeachment process, and the trial would be held in the House of Lords where conviction would be by a simple majority vote.⁴

The number of impeachment trials through the centuries would increase and decrease depending on how powerful Parliament was at the time. Although there was no codified standard for impeachment, in more than seventy-five percent of the cases, the basis was either “treason” or “high crimes and misdemeanors.”⁵

Colonial Precedents

In the American colonies in the seventeenth and eighteenth centuries, colonial assemblies used impeachment procedures as a means of expressing grievance against the sovereign’s appointed rulers and ministers. Although they lacked the actual authority to remove officers, it was a method of political protest.⁶ As the American Revolution progressed, state constitutions adopted, and nearly all of them contained, provisions for the impeachment of officials. The grounds for impeachment varied from state to state, ranging from “mal-administration” to “mal and corrupt conduct” and “misdemeanor and default.”⁷

U.S. Constitution

The United States Constitution provides that the President, Vice-President, and all Civil Officers of the United States may be impeached and removed from office for conviction of “Treason, Bribery, or other high Crimes and Misdemeanors”⁸ and may be impeached by a majority vote of the House of Representatives.⁹ A trial is then held in the United States Senate, presided over by the Chief Justice of the United States. A conviction requires a two-thirds vote.¹⁰ Judgment of an impeachment trial shall “not extend

further than removal from office, and disqualification to hold and enjoy any Office of honor, Trust or Profit of the United States.”¹¹

New York Constitutions

The only court specifically provided for in the first New York State Constitution of 1777 was the Court for the Trial of Impeachments and Correction of Errors. This Court was composed of the President of the senate, the senators, the chancellor and three justices of the Supreme Court. As there was no Appellate Division or Court of Appeals at this time, one of the functions of this court was to correct errors made by lower courts. The grounds for impeachment were “mal or corrupt conduct.”¹² The Assembly was given the responsibility of impeaching officers, but at this time, a two-thirds vote was required, and this same fraction was required by the impeachment court

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for conviction.

The 1821 New York State Constitution changed the requirement for impeachment from two-thirds to a simple majority. However, it strengthened the standard for acts that constituted "high crimes and misdemeanors" seemingly reflecting the standard in the federal constitution. However, the 1846 Constitution deleted the "mal and corrupt" and "high crimes and misdemeanor" requirement, although this definition now appeared in statute.¹³

The Judiciary Committee of the New York State Assembly confronted issues related to impeachment in an 1853 report. It determined that a person could not be impeached who was not currently in office, and that a person could not be impeached for offenses conducted prior to taking office.¹⁴

Impeachment of Governor Sulzer

William Sulzer was an attorney active with Tammany Hall, the powerful Democratic Party Machine. Sulzer was elected to five terms in the New York State Assembly from 1890 to 1894, eventually serving as Speaker of the Assembly.¹⁵ He was then elected to the United States House of Representatives for nine terms from 1894 to 1912. With the support of Tammany Hall, he was elected Governor of New York in 1912.

However, upon taking office, Sulzer immediately styled himself as a reformer, promoting ideas such as open party primaries and refusing to appoint individuals favored by Tammany to office. He quickly fell into disfavor with Charles Murphy, the "boss" of Tammany Hall. Murphy used his influence to have the New York State Assembly investigate Sulzer with an eye towards impeachment.¹⁶

A joint legislative committee known as the Frawley Commission was formed to investigate Sulzer's actions regarding the use of patronage and vetoes. The Frawley Commission eventually expanded its investigation into Sulzer's campaign finances when he was running for Governor.¹⁷ Articles of impeachment were adopted for filing false campaign receipts and expenditures, using campaign funds for personal use, bribing witnesses testifying before a

legislative commission, and bribing an assemblyman to vote on a bill.¹⁸

After the trial in the impeachment court, Sulzer was convicted in October for filing false reports on campaign expenditures and one count of suppressing evidence, but exonerated on the rest of the counts.¹⁹ On October 18, 2013, the court voted to remove Sulzer as Governor by a vote of 43 to 12, but chose not to bar him from future office.²⁰ Sulzer then ran for his old Assembly seat and was elected just three weeks after being removed from office. Sulzer then ran for Governor in 1914 on both the Prohibition Party and American Party lines and lost, thus ending his political career.²¹

Current New York Impeachment Standard

Under the current New York State Constitution, impeachment is included under Article VI, which is titled "Judiciary." The section is titled "Court for trial of impeachments; judgment" and is treated much like other courts, such as the Court of Claims, County Court, and Family Court.²² The Constitution provides that the Assembly by a majority of its members has the power of impeachment.

The actual "Court" is composed of the New York State Senate, and also the judges of the Court of Appeals. However, when a Governor is on trial, neither the Lieutenant-Governor nor the temporary president of the Senate (usually the Majority Leader) shall be members of the court, presumably since it would be a conflict of interest as they are in the line of succession.²³ During the time that a Governor is impeached, the Lieutenant-Governor acts as the Governor.²⁴

However, the Constitution is not the sole authority on impeachment. Article 240 of the Judiciary Law also contains clarifications and procedures. The most notable is section 240, which states that the jurisdiction of the Court for the Trial of Impeachments is "for all civil officers of the state" for "willful and corrupt misconduct in office."²⁵

However, it is not further defined as to what misconduct qualifies, leaving it in the hands of the Court to make that determination. This article also requires that the trial be held no sooner than thirty and not more than forty days upon the delivery of the impeachment

articles from the Assembly.²⁶ It also provides that members of the Senate who serve on the impeachment court shall be paid the same salary as an associate judge of the Court of Appeals for the same time of service.²⁷

The question recently was debated as to whether it was possible to impeach an official who has already resigned from office, which the Assembly speaker answered in the negative. Although it was not publicly elaborated as to the reasoning, a close look at the New York State Constitution's language demonstrates how that determination was arrived at. The language states:

Judgment in cases of impeachment shall not extend further than removal from office, **or** removal from office **and** disqualification to hold and enjoy any public office of honor, trust, or profit under this state.²⁸

This language appears to give the Court of Impeachment only two distinct options: removal from office **or** removal from office and disqualification from holding future office. Although some argue that the Assembly should continue to impeach Andrew Cuomo in order to prevent him from holding future office, the Constitution only allows that option if in the same proceeding the official could be removed from office. Once the individual is no longer an office holder, it appears that future disqualification is no longer an option.

A criticism of New York's impeachment process is that it is broad

and vague. There is no definition that precisely constitutes impeachable conduct, and leaves a great deal of discretion to the Legislature as to what is a violation.²⁹ Due to recent events, now is the proper time to reevaluate whether the current standard should remain. Hopefully another situation will not arise in the near future which forces the impeachment procedure to be contemplated.

1. Peter Elkind, *Rough Justice: The Rise and Fall of Eliot Spitzer* 260 (2010).
2. John D. Feerick, *Impeaching Federal Judges: A Study of the Constitutional Provisions*, 39 *Fordham L. Rev.* 1 (1970).
3. John Dunne and Michael Balboni, *New York's Impeachment Law and the Trial of Governor Sulzer: A Case for Reform*, 15 *Fordham Urban L.J.* 567 (1987).
4. Feerick, *supra* note 2, at 5.
5. *Id.* at 7.
6. Dunne and Balboni, *supra* note 3, at 572.
7. Feerick, *supra* note 2, at 14.
8. U.S. Const. art. II, § 4.
9. U.S. Const. art. I, § 2, cl. 5.
10. U.S. Const. art. I, § 3, cl. 7.
11. U.S. Const. art. I, § 3, cl. 7.
12. N.Y. Const. of 1777 ¶ 33.
13. Dunne and Balboni, *supra* note 3, at 577.
14. *Id.* at 579.
15. *Id.* at 569.
16. Peter J. Gaille, *Ordered Liberty: A Constitutional History of New York* 190 (1996).
17. Dunne and Balboni, *supra* note 3, at 581.
18. Gaille, *supra* note 16, at 190.
19. *Id.* at 190.
20. Matthew L. Liffander, *The Impeachment of Governor Sulzer* 308 (2012).
21. *Id.* at 314.
22. N.Y. Const. art. VI, § 24.
23. *Id.*
24. N.Y. Const. art. IV, § 5.
25. *Jud. Law* § 240.
26. *Jud. Law* § 245.
27. *Jud. Law* § 248.
28. N.Y. Const. art. VI, § 24.
29. Dunne and Balboni, *supra* note 3, at 589.



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