

## ■ Articles of Impeachment against President Andrew Johnson

**Date:** February 1868

**Author:** House of Representatives, Fortieth US Congress

**Genre:** constitution, legislation, political tractSummary Overview

The articles of impeachment of President Andrew Johnson consist of eleven indictments, which were intended to remove him from the office of the president. The most important charges were based on the President having violated the Tenure of Office Act, a constitutionality questionable law. This was the first time the House of Representatives voted to impeach a president. The United States Senate conducted an impeachment trial, ending in a vote of 35-19, one vote short of the two thirds necessary for conviction; the Senate had rejected the House of Representatives' charges. Johnson went on to serve out the end of his term, which ended on March 4, 1869. By defying the Republican majority that had impeached him, Johnson had in effect repudiated the result of the 1864 election.

### Defining Moment

The articles of impeachment's importance were greater than any individual words or thoughts contained within them. The impeachment process represented not only an effort to remove the president, but an attempt to effect a change in the results of the 1864 election.

Under normal circumstances Andrew Johnson would never have been on a national ticket with Abraham Lincoln, but 1864 was anything but an ordinary year. The Civil War was still in full swing at the time of the convention in June, and the end was still not in sight.

In June of 1864 Republicans and war Democrats met in convention as the "National Union" Party." The party easily nominated Abraham Lincoln for a second term as president, but the nomination for vice president was an open question. Johnson was an important leader among the war Democrats. The other major candidate was the incumbent vice president, Hannibal Hamlin. Johnson brought a couple of important advantages to the table. The fact that Johnson was a Democrat and from Tennessee created good balance both regionally and politi-

cally. At the time the election looked like it might be a close one, and the bipartisan nature of the ticket was a political bonus. Johnson was the biggest vote getter on the first ballot of the Convention, and with last-minute vote switching he ended up with 494 of the 521 votes cast. Still, there was little expectation that he would end up as president. Of the sixteen presidents up to that time, only two had acceded to the presidency on the death of their predecessor—and none through assassination. On Abraham Lincoln's assassination, however, Johnson rose to the presidency barely a month after becoming vice president.

Now President Johnson's relationship with Congress was rocky at best. Johnson was a Southerner and a Democrat, and while loyal to the Union he did not share the view of the Republicans in Congress on Reconstruction. He was seen as being too soft on the Southern states. His veto of the Civil rights Act of 1866, which was subsequently overridden, and his opposition to the Fourteenth Amendment, set him on course for a showdown with the Republicans in Congress. That contest came in the form of a debate over the Tenure of Office Act. Johnson intentionally violated the act and expected to test its constitutionality in the courts; instead, it became the centerpiece of an effort to have him removed from office.

### Author Biography

The author of the articles of impeachment in this case was a select committee of the House of Representatives of the 40<sup>th</sup> Congress. The Committee was made up of George Boutwell, Thaddeus Stevens, John Bingham, James Wilson, John Logan, George Julian and Hamilton Ward. The most famous member of the committee was Thaddeus Stevens who also served on a committee of two that informed the Senate of the impeachment of the president, and he served as the chairman of the

managers of the House's presentation of its case for conviction at the Senate trial.

The 40<sup>th</sup> Congress met from March 4, 1867, to March 4, 1869. At the time of the impeachment of

This Congress still excluded members from ten of the eleven states that seceded; only Tennessee had returned to full membership in the Union.

## HISTORICAL DOCUMENT

### Article I

That said Andrew Johnson, President of the United States, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District Columbia, unmindful of the high duties of his office, of his oath of office, and of the requirement of the Constitution that he should take care that the laws be faithfully executed, did unlawfully, and in violation of the Constitution and laws of the United States, issue an order in writing for the removal of Edwin M. Stanton from the office of Secretary for the Department of War, said Edwin M. Stanton having been theretofore duly appointed and commissioned, by and with the advice and consent of the Senate of the United States, as such Secretary, and said Andrew Johnson, President of the United States, on the 12th day of August, in the year of our Lord 1867, and during the recess of said Senate, having suspended by his order Edwin M. Stanton from said office, and within twenty days after the first day of the next meeting of said Senate, that is to say, on the 12th day of December, in the year last aforesaid, having reported to said Senate such suspension with the evidence and reasons for his action in the case and the name of the person designated to perform the duties of such office temporarily until the next meeting of the Senate, and said Senate, there afterward, on the 13th day of January, in the year of our Lord 1868, having duly considered the evidence and reasons reported by said Andrew Johnson for said suspension, and having refused to concur in said suspension, whereby and by force of the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, said Edwin M. Stanton did forthwith resume the functions of his office, whereof the said Andrew Johnson had then and there due notice, and said Edwin M. Stanton, by reason of the premises, on said 21st day of February, being lawfully entitled to hold said

office of Secretary for the Department of War, which said order for the removal of said Edwin M. Stanton is, in substance, as follows, that is to say:

*EXECUTIVE MANSION,  
Washington, D.C., February 21, 1868.*

SIR:

By virtue of the power and authority vested in me as President by the Constitution and laws of the United States you are hereby removed from office as Secretary for the Department of War, and your functions as such will terminate upon receipt of this communication.

You will transfer to Brevet Major General Lorenzo Thomas, Adjutant General of the army, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in your custody and charge.

Respectfully yours,

ANDREW JOHNSON

*To the Hon. EDWIN M. STANTON,  
Washington, D.C.*

Which order was unlawfully issued with intent then and there to violate the act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and with the further intent, contrary to the provisions of said act, in violation thereof, and contrary to the provisions of the Constitution of the United States, and

without the advice and consent of the Senate of the United States, the said Senate then and there being in session, to remove said Edwin M. Stanton from the office of Secretary for the Department of War, the said Edwin M. Stanton, being then and there Secretary for the Department of War, and being then and there in the due and lawful execution and discharge of the duties of said office, whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high misdemeanor in office.

## Article II

That on said twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, said Andrew Johnson, President of the United States, unmindful of the high duties of his office, of his oath of office, and in violation of the Constitution of the United States, and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, without the advice and consent of the Senate of the United States, said Senate then and there being in session, and without authority of law, did, with intent to violate the Constitution of the United States, and the act aforesaid, issue and deliver to one Lorenzo Thomas a letter of authority in substance as follows, that is to say:

EXECUTIVE MANSION,  
Washington, D.C., February 21, 1868.

SIR:

The Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully yours,

ANDREW JOHNSON

*To Brevet Major General LORENZO THOMAS, Adjutant General U.S. Army, Washington, D.C.*

Then and there being no vacancy in said office of Secretary for the Department of War, whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high misdemeanor in office

## Article III

That said Andrew Johnson, President of the United States, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the district of Columbia, did commit and was guilty of a high misdemeanor in office in this, that, without authority of law, while the Senate of the United States was then and there in session, he did appoint one Lorenzo Thomas to be Secretary for the Department of War *ad interim*, without the advice and consent of the Senate, and with intent to violate the Constitution of the United States, no vacancy having happened in said office of Secretary for the Department of War during the recess of the Senate, and no vacancy existing in said office at the time, and which said appointment, so made by said Andrew Johnson, of said Lorenzo Thomas, is in substance as follows, that is to say:

EXECUTIVE MANSION,  
Washington D.C., February 21, 1868.

SIR:

The Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you

all the records, books, papers, and other public property now in his custody and charge.

Respectfully yours,

ANDREW JOHNSON.

*To Brevet Major General LORENZO THOMAS, Adjutant General U.S. Army, Washington, D.C*

#### Article IV

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, in violation of the Constitution and laws of the United States, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, with intent, by intimidation and threats, unlawfully to hinder and prevent Edwin M. Stanton, then and there Secretary for the Department of War, duly appointed under the laws of the United States, from holding said office of Secretary for the Department of War, contrary to and in violation of the Constitution of the United States, and of the provisions of an act entitled "An act to define and punish certain conspiracies," approved July thirty-first, eighteen hundred and sixty-one, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high crime in office.

#### Article V

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, and on divers other days and times in said year, before the second day of March, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other

persons to the House of Representatives unknown, to prevent and hinder the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, and in pursuance of said conspiracy, did unlawfully attempt to prevent Edwin M. Stanton, then and there being Secretary for the Department of War, duly appointed and commissioned under the laws of the United States, from holding said office, whereby the said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

#### Article VI

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, by force to seize, take, and possess the property of the United States in the Department of War, and then and there in the custody and charge of Edwin M. Stanton, Secretary for said Department, contrary to the provisions of an act entitled "An act to define and punish certain conspiracies," approved July thirty-one, eighteen hundred and sixty-one, and with intent to violate and disregard an Act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, whereby said Andrew Johnson, President of the United States, did then and there commit a high crime in office.

#### Article VII

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas with intent unlawfully to seize, take, and possess the property of the United States in the Department of War, in the custody and charge of Edwin M. Stanton, Secretary for said Department, with intent to violate and disregard the

act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, whereby said Andrew Johnson, President of the United States, did then and there commit a high misdemeanor in office

### Article VIII

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, with intent unlawfully to control the disbursements of the moneys appropriated for the military service and for the Department of War, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, and in violation of the Constitution of the United States, and without the advice and consent of the Senate of the United States, and while the Senate was then and there in session, there being no vacancy in the office of Secretary for the Department of War, with intent to violate and disregard the act aforesaid, then and there issue and deliver to one Lorenzo Thomas a letter of authority in writing, in substance as follows, that is to say:

*'EXECUTIVE MANSION.*

*Washington, D.C., February 21, 1868.*

SIR:

Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will immediately enter upon the discharge of the duties pertaining to that office.

'Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully, yours,

ANDREW JOHNSON.

*To Brevet Maj. Gen. LORENZO THOMAS, Adjutant-*

*General United States Army, Washington, D.C.*

whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

### Article IX

That said Andrew Johnson, President of the United States, on the twenty-second day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at Washington, in the District of Columbia, in disregard of the Constitution and the laws of the United States duly enacted, as commander-in-chief of the army of the United States, did bring before himself then and there William H. Emory, a major general by brevet in the army of the United States, actually in command of the Department of Washington and the military forces thereof, and did then and there, as such commander-in-chief, declare to and instruct said Emory that part of a law of the United States, passed March second, eighteen hundred and sixty-seven, entitled "An act making appropriations for the support of the army for the year ending June thirtieth, eighteen hundred and sixty-eight, and for other purposes," especially the second section thereof, which provides, among other things, that "all orders and instructions relating to the military operations issued by the President or Secretary of War shall be issued through the General of the army, and, in case of his inability through the next in rank" was unconstitutional, and in contravention of the commission of said Emory, and which said provision of law had been theretofore duly and legally promulgated by General Order for the government and direction of the army of the United States, as the said Andrew Johnson then and there well knew, with intent thereby to induce said Emory in his official capacity as commander of the Department of Washington, to violate the provisions of said act, and to take and receive, act upon, and obey such orders as he, the said Andrew Johnson, might make and give, and which should not be issued through the General of the Army of the United States, according to the provisions of said act, and with the further intent thereby to enable him, the said Andrew Johnson, to prevent the execution of the act entitled "An act regulating the tenure of certain civil offices," passed

March second, eighteen hundred and sixty-seven, and to unlawfully prevent Edwin M. Stanton, then being Secretary for the Department of War, from holding said office and discharging the duties thereof, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles or other accusation, or impeachment against the said Andrew Johnson, President of the United States, and also of replying to his answers which he shall make unto the articles herein preferred against him, and of offering proof to the same, and every part shall be exhibited by them, as the case shall require, DO DEMAND that the said Andrew Johnson may be put to answer the high crimes and misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

*SCHULYER COLFAX, Speaker of the House of Representatives.*

*IN THE HOUSE OF REPRESENTATIVES UNITED STATES, March 3, 1868*

### Article X

The following additional articles of impeachment were agreed to, viz:

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and the dignity and proprieties thereof, and of the harmony and courtesies which ought to exist and be maintained between the executive and legislative branches of the government of the United States, designing and intending to set aside the rightful authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt and reproach the Congress of the United States, and the several branches thereof, to impair and destroy the regard and respect of all the good people of

the United States for the Congress and legislative power thereof, (which all officers of the government ought inviolably to preserve and maintain,) and to excite the odium and resentment of all the good people of the United States against Congress and the laws by it duly and constitutionally enacted; and in pursuance of his said design and intent, openly and publicly, and before divers assemblages of the citizens of the United States convened in divers parts thereof to meet and receive said Andrew Johnson as the Chief Magistrate of the United States, did, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and sixty-six, and on divers other days and times, as well before as afterward, make and deliver with a loud voice certain intemperate, inflammatory and scandalous harangues, and did therein utter loud threats and bitter menaces as well against Congress as the laws of the United States duly enacted thereby, amid the cries jeers and laughter of the multitudes then assembled and in hearing, which are set forth in the several specifications hereinafter written, in substance and effect, that is to say:

SPECIFICATION FIRST. In this, that at Washington, in the District of Columbia, in the Executive Mansion, to a committee of citizens who called upon the President of the United States, speaking of and concerning the Congress of the United States, said Andrew Johnson, President of the United States, heretofore, to wit, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and sixty-six, did in a loud voice, declare in substance and effect, among other things, that is to say:

So far as the Executive Department of the government is concerned, the effort has been made to restore the Union, to heal the breach, to pour oil into the wounds which were consequent upon the struggle, and (to speak in common phrase) to prepare as the learned and wise physician would, a plaster healing in character and coextensive with the wound. We thought, and we think, that we had partially succeeded; but as the work progresses, as

reconstruction seemed to be taking place, and the country was becoming reunited, we found a disturbing and marring element opposing us. In alluding to that element, I shall go no further than your convention and the distinguished gentleman who has delivered to me the report of its proceedings. I shall make no reference to it that I do not believe the time and the occasion justify.

We have witnessed in one department of the government every endeavor to prevent the restoration of peace, harmony, and Union. We have seen hanging upon the verge of the government, as it were, a body, called, or which assumes to be, the Congress of the United States, while in fact it is a Congress of only a part of the States. We have seen this Congress pretend to be for the Union, when its every step and act tended to perpetuate disunion and make a disruption of the States inevitable. . . . We have seen Congress in a minority assume to exercise power which, allowed to be consummated, would result in despotism or monarchy itself."

**SPECIFICATION SECOND.** In this, that at Cleveland, in the State of Ohio, heretofore, to wit, on the third day of September, in the year of our Lord one thousand eight hundred and sixty-six, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States did, in a loud voice, declare in substance and effect among other things, that is to say:

I will tell you what I did do. I called upon your Congress that is trying to break up the government."

In conclusion, beside that, Congress had taken much pains to poison their constituents against him. But what had Congress

done? Have they done anything to restore the union of these States? No: on the contrary, they had done everything to prevent it; and because he stood now where he did when the rebellion commenced, he had been denounced as a traitor. Who had run greater risks or made greater sacrifices than himself? But Congress, factious and domineering, had undertaken to poison the minds of the American people."

**SPECIFICATION THIRD** - In this, that at St. Louis, in the State of Missouri, heretofore, to wit, on the eighth day of September, in the year of our Lord one thousand eight hundred and sixty-six, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did, in a loud voice, declare, in substance and effect, among other things, that is to say:

"Go on. Perhaps if you had a word or two on the subject of New Orleans you might understand more about it than you do. And if you will go back - if you will go back and ascertain the cause of the riot at New Orleans perhaps you will not be so prompt in calling out 'New Orleans.' If you will take up the riot at New Orleans, and trace it back to its source or its immediate cause, you will find out who was responsible for the blood that was shed there. If you will take up the riot of New Orleans and trace it back to the radical Congress, you will find that the riot at New Orleans was substantially planned. If you will take up the proceedings in their caucuses you will understand that they there knew that a convention was to be called which was extinct by its power having expired; that it was said that the intention was that a new government was to be organized, and on the organization of that government the intention was to enfranchise one portion of the population, called the colored population,



who had just been emancipated, and at the same time disfranchise white men. When you design to talk about New Orleans you ought to understand what you are talking about. When you read the speeches that were made, and take up the facts on the Friday and Saturday before that convention sat, you will there find that speeches were made incendiary in their character, exciting that portion of the population, the black population, to arm themselves and prepare for the shedding of blood. You will also find that that convention did assemble in violation of law, and the intention of that convention was to supersede the reorganized authorities in the State government of Louisiana, which had been recognized by the government of the United States; and every man engaged in that rebellion in that convention, with the intention of superseding and upturning the civil government which had been recognized by the government of the United States I say that he was a traitor to the Constitution of the United States, and hence you find that another rebellion was commenced, *having its origin in the radical Congress.*

“So much for the New Orleans riot. And there was the cause and the origin of the blood that was shed; and every drop of blood that was shed is upon their skins, and they are responsible for it. I could test this thing a little closer, but will not do it here to-night. But when you talk about the causes and consequences that resulted from proceedings of that kind perhaps, as I have been introduced here, and you have provoked questions of this kind, though it does not provoke me, I will tell you a few wholesome things that have been done by this radical Congress in connection with New Orleans and the extension of the elective franchise.

“I know that I have been traduced and abused. I know it has come in advance of me here as elsewhere - that I have attempted to exercise an arbitrary power in resisting laws that were intended to be forced upon the government; that I had exercised that power; that I had abandoned the party that elected me, and that I was a traitor, because I exercised the veto power in attempting, and did arrest for a time, a bill that was called a ‘Freedman’s Bureau’ bill; yes, that I was a traitor. And I have been traduced, I have been slandered, I have been maligned, I have been called a Judas Iscariot and all that. Now, my countrymen, here to-night, it is very easy to indulge in epithets; it is easy to call a man Judas and cry out traitor, but when he is called upon to give arguments and facts he is very often found wanting. Judas Iscariot - Judas. There was a Judas, and he was one of the twelve apostles. Oh! yes, the twelve apostles had a Christ. The twelve apostles had a Christ, and he never could have had a Judas unless he had had twelve apostles. If I have played the Judas, who has been my Christ that I have played the Judas with? Was it Thad. Stevens? Was it Wendell Phillips? Was it Charles Sumner? These are the men that stop and compare themselves with the Saviour; and everybody that differs with them in opinion, and to try to stay and arrest their diabolical and nefarious policy, is to be denounced as a Judas.”

Well, let me say to you, if you will stand by me in their action, if you will stand by me in trying to give the people a fair chance - soldiers and citizens - to participate in these offices, God being willing, I will kick them out. I will kick them out just as fast as I can.

“Let me say to you, in concluding, that what I have said I intended to say. I was



not provoked into this, and I care not for their menaces, the taunts, and the jeers. I care not for threats. I do not intend to be bullied by my enemies nor jeers. I care not for threats. I do not intend to be bullied by my enemies nor overawed by my friends. But, God willing, with your help, I will veto their measures whenever any of them come to me."

Which said utterances, declarations, threats, and harangues, highly censurable in any, are peculiarly indecent and unbecoming in the Chief Magistrate of the United States, by means whereof said Andrew Johnson has brought to high office of the President of the United States into contempt, ridicule, and disgrace, to the great scandal of all good citizens, whereby said Andrew Johnson, President of the United States, did commit, and was then and there guilty of a high misdemeanor in office

### Article XI

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and of his oath of office, and in disregard of the Constitution and laws of the United States, did, heretofore, to wit, on the eighteenth day of August, A.D. eighteen hundred and sixty-six, at the city of Washington, and the District of Columbia, by public speech, declare and affirm, in substance, that the thirty-ninth Congress of the United States was a Congress of the United States authorized by the Constitution to exercise a legislative power under the same, but, on the contrary, was a Congress of only part of the States, thereby denying, and intending to deny, that the legislation of said Congress was valid or obligatory upon him, the said Andrew Johnson, except in so far as he saw fit to approve the same, and also thereby denying, and intending to deny, the power of the said

thirty-ninth Congress to propose amendments to the Constitution of the United States; and, in pursuance of said declaration, the said Andrew Johnson, President of the United States, afterwards, to wit, on the twenty-first day of February, A.D. eighteen hundred and sixty-eight, at the city of Washington, in the District of Columbia, did, unlawfully, and in disregard of the requirement of the Constitution, that he should take care that the laws be faithfully executed, attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March second, eighteen hundred and sixty-seven, by unlawfully devising and contriving, and attempting to devise and contrive means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concur in the suspension theretofore made by said Andrew Johnson of said Edwin M. Stanton from said office of Secretary for the Department of War; and, also, by further unlawfully devising and contriving, and attempting to devise and contrive means, then and there, to prevent the execution of an act entitled "An act making appropriations for the support of the army for the fiscal year ending June thirtieth, eighteen hundred and sixty-eight, and for other purposes," approved March second, eighteen hundred and sixty-seven; and, also, to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-eight, at the city of Washington, commit, and was guilty of, a high misdemeanor in office.

*SCHULYER COLFAX, Speaker of the House of Representatives.*

*Attest: EDWARD McPHERSON, Clerk of the House of Representatives*

## GLOSSARY

**40th Congress:** U.S. Congress which meet from March 4, 1867, to March 3, 1869

**Andrew Johnson:** 17th President of the United States from 1865 to 1869

**articles of impeachment:** House of Representative resolution wherein wrongdoing by an executive or judicial branch official is described

**high crimes and misdemeanors:** Constitutional description of the types of wrongdoing for which executive or judicial branch official can removed from office; the exact meaning is up to Congress to decide

**impeach:** to accuse (via the House of Representatives) an executive or judicial branch official with misconduct important enough to require removal from office; the term is also used to describe the whole process by which an executive or judicial branch official is removed from office

**pocket veto:** a veto put into effect by a president not signing a bill for 10 days (Sundays not included) and Congress adjourning; this veto cannot be overridden

**regular veto:** a veto caused by the president sending back a bill to the originating house of Congress with a list of reasons for having rejected it; this type of veto can be overridden by a two-thirds vote in each house of Congress

**Tenure of Office Act:** an act passed by Congress over the president's veto that required Senate permission to fire any official who had been confirmed by the U.S. Senate

## Document Analysis

The true significance of these articles of impeachment is not in the words themselves, but rather in why they were written and what happened to them.

Johnson was a Democrat elected vice president under a Republican president who many in the Republican Party thought was too soft on the South; yet Lincoln was, particularly after the successful conclusion of the war, the undisputed leader of his party. Lincoln's violent and sudden death at the hands of a Southern sympathizer not only thrust Johnson into the presidency but also dealt him a hard hand to play as he tried to carry out Reconstruction.

Andrew Johnson's relationship with Congress was anything but good. Congress considered the conditions of "Presidential Reconstruction" too soft and they moved to impose what became known as "Congressional Reconstruction." Johnson's strained relationship with Congress can be seen in his problems with having his vetoes upheld. Throughout his presidency 15 of his 29 vetoes were overridden (counting eight pocket vetoes which cannot be overridden). Thus, 15 of the 21 times Congress could defeat the president

they did. As a point of comparison, both Presidents Harry Truman and Gerald Ford had 12 vetoes overridden, but that was out of 250 (70 pocket) and 66 (18 pocket) vetoes respectively.

During the period prior to his impeachment Congress overrode nine of Johnson's fourteen regular vetoes, including what is known as the Tenure of Office Act. The act required that any officer of the government requiring Senate approval for his appointment also required Senate approval for his removal, including the Cabinet. The act included fines and jail time for violating the law, which were important provisions when the efforts to impeach the president were brought forward.

The Tenure of Office Act left two important questions open. The first was, Was the act constitutional? This debate had been held in 1789, when the founders decided in favor of presidential discretion in this matter, a fact well known to the political leaders of the day. The other was, What constituted a presidential term? Cabinet members got to keep their office for 30 days after a president's term ended, but was that counted from the point when the president ceased to be president or from the end of the specific four-year cycle?

The Tenure of Office Act became law over the president's veto on March 2, 1867, by votes of 35-11 in the Senate and 138-40 in the House. It is worth noting that the final bill approved by the House differed markedly from the one initially passed by the Senate. The Senate bill specifically excluded the department heads, the cabinet, from its provisions. It was amended in the House of Representatives to include cabinet officers, and this amendment was central to the impeachment of the president.

This was not the first effort to impeach President Johnson. There had been an effort at impeachment that ended in December 1867. It failed primarily because it appeared to be based on policy disagreements between the Radical Republicans and the president. This failure was part of the development of an important aspect of the presidential impeachment philosophy. The president had to be guilty of an indictable offense; in other words, he had to commit a crime for which he could go to jail. This is where the provisions in the Tenure of Office Act that made its violation a crime punishable by jail time became important in the impeachment process.

The defining moment came when Johnson finally decided to fire Secretary of War Edwin Stanton. Johnson had suspended Stanton while the Congress was in recess, but this was not agreed to by the Senate. Finally on February 21, 1868, Johnson ordered General Lorenzo Thomas to take over the duties of the Secretary of War. Johnson's actions were meant as a test of the Tenure of Office Act but they gave his opponents an opportunity to move against him.

For a second time the idea of impeaching the president came to the fore, and the firing of Edwin Stanton played a central role. A formal resolution of impeachment was presented from the Committee on Reconstruction. During the debate on the resolution those in favor focused on the violation of the Tenure of Office Act. The president's defenders argued that the act itself was unconstitutional. In the end the resolution was passed by a vote of 128-47. The president had been impeached and a committee of seven was selected to write the formal articles of impeachment.

The first nine articles passed by the House on March 2, 1868, revolved around the idea that President Johnson had violated the Tenure of Office Act of 1867. Through a tortured use of language the House of Representatives found nine different ways to say the same thing: Johnson had fired Secretary Stanton and

then moved to prevent him from carrying out the duties of his former office. The vote on each of the first nine articles was passed overwhelming by a Congress, dominated by Republicans. The smallest margin of victory was on article 9, which passed with a margin of 67 votes. On March 3<sup>rd</sup> the House added two further articles, article 10, charging the president with speaking against the Congress and bringing Congress into disrepute, and article 11 which was more of a summary of all of the charges against the president.

The debate on the articles led to a final solution of an important and not unrelated issue. Was Andrew Johnson the president of the United States, or was he the vice president acting as president? It was an important technicality. Did the House need to impeach the president or the vice president? Which office holder was being impeached? Using the precedents of both John Tyler in 1841 and Millard Fillmore in 1850 it was agreed in both houses of Congress that the vice president had become president on the death of his successor. Thus, the House had to impeach the president, not the vice president, as the latter position was now vacant.

The Senate prepared itself for the impeachment trial to be conducted by the House by adopting rules for the conduct of the trial on March 2 (rules, incidentally, that would lay the groundwork for the trial of Bill Clinton 130 years later). The Senate began the trial process on March 5, 1868, when the Chief Justice and senators took an oath to provide impartial justice in regards to the trial. The Senate of the 40<sup>th</sup> Congress in spring 1868 was made up of 54 Senators, 45 Republicans (including two Unconditional Unionists), nine more than the number required to convict and remove the president.

On March 13 the president's counsel asked for 40 days in which to prepare his defense, the request was denied and the Senate set March 23 as the day on which the president needed to be prepared to respond to the charges. When the Senate reconvened, the question was raised whether it could act as a constitutional body while still excluding the members from ten of the eleven Southern states. The Senate determined it could by a vote of 40 to 2. The president's counsel then answered the House's charges.

The president's counsel gave Johnson's response to the charges to the Senate on March 23. He responded to article 1 by charging that the law itself was unconstitutional, thus Johnson could not have violated the law or the Constitution. To article 2 he responded that

Johnson's actions were lawful as there was a vacancy at the war department as he had fired the Secretary of War. For article 3 the defense was that the reasons expressed in his argument for articles 1 and 2 applied to this article as well. His argument for article 4 was that there was no effort to intimidate anyone; the president simply authorized General Thomas to take over as interim Secretary of War using the normal executive power. His defense for articles 5 through 8 can be summed up by saying that Johnson was simply trying to carry out his duties as president of the United States. He argued in response to article 9 that the president had been expressing to others the same sentiments he had expressed to the House of Representatives about the constitutionality of limits that had been placed on his role as commander in chief. For article 10 the president denied that the events accurately depicted not only what was said, but the tone and tenor of what was said, and that it was his duty as president to warn Congress when he saw them headed on the wrong course regarding Reconstruction. The response to article 11 contained the blanket denial that Johnson had done anything that constituted a high crime or a misdemeanor.

The trial itself began on March 30 and lasted until May 16, 1868. The Senate chose to vote on article 11 first. By this point, though, the outcome could little be in doubt. Earlier procedural votes had shown that nineteen members, including seven Republicans, would vote not guilty. The final vote on article 11 took place on May 16, 35 voted guilty and 19 voted not guilty, one short of the required number for conviction. The Senate reconvened on May 26 to try again to convict the president. The votes on articles 2 and 3 were identical to article 9, 35 to 19. After this additional failure the Senate agreed to go into "adjournment without day," meaning that they would not meet again as an impeachment trial court, effectively ending the efforts to impeach President Johnson without voting on eight of the articles. Of the nineteen votes, ten came from elected Republicans but three came from those often considered Democrats for practical purposes. The Republicans who voted against their party were Senators William Fessenden, James Grimes, John Brooks Henderson, Edmund Ross, Joseph Fowler, Lyman Trumbull, and Peter Van Winkle.

The Senate result kept Johnson in office for the remainder of his term and set the precedent that the Congress does not remove presidents for policy differences but only for actual crimes. After the trial Johnson remained in office for only ten more months, but his

presidency was indeed weakened by the trial and he was left with little opportunity to accomplish his goals.

The Tenure of Office Act would be kept on the books until 1887 when it was finally repealed. The idea of a congressional veto over the presidential firing of executive branch officers was ended by the Supreme Court in 1926 when they decided *Myers v. United States*.

### Essential Themes

The short-term impact of this process may be less than is often ascribed. When the process began in earnest there was slightly over one year left in the Johnson presidency, and when the trial ended there were only ten months left. Of that time Congress would be out of session for four months. So although Johnson was a weakened president, the same would have been true after he failed to get the Democratic nomination for president in 1868. The impeachment process did usher in a period of weakness in the presidency, but there is no way of knowing whether this might have occurred, or to what extent, under a Lincoln presidency in light of the diminishment of war powers.

The most important theme to come out of this document does not issue from the document itself but rather from events surrounding it and from its consequences. It is not uncommon in American history to hear the language of impeachment used against presidents who face a hostile majority in Congress. Johnson was not the first president to hear that impeachment was being discussed, but he was the first president to see the House of Representatives actually draft and pass articles of impeachment.

Two historical precedents were set by this action of the 40<sup>th</sup> Congress. The first is that the House of Representatives would impeach only for indictable offenses. The second is that the Senate would not convict on the grounds, merely, that they do not like a president or disagree with his policies.

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