

Testimony Before the Committee on Impeachment
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Mr. Chairman, Madame Ranking Member, and other members of this committee: Thank you for inviting me here today to testify. My name is Paul Salamanca. I teach Constitutional Law, among other things, at the University of Kentucky. Although I have a license to practice law in Kentucky, I am not appearing today in that capacity. I have also, from time to time, represented members of the General Assembly, in their official capacity. This includes the Speaker. At this point in time, however, I am on a leave of absence from that representation, and I have not discussed the contents of my testimony with anyone in the Speaker's office.

You asked me if a member of the General Assembly is susceptible to impeachment under the Constitution of Kentucky. My answer to that question is a simple "no." Section 68 of the Kentucky Constitution provides that "[t]he Governor and all civil officers shall be liable to impeachment for any misdemeanors in office" Ky. Const. § 68 (emphasis added). By its plain language, impeachment is limited to "civil officers," which as I hope to explain does not include members of the General Assembly. The sole means by which a member of the General Assembly may be removed from office is expulsion under Section 39.

As you know, on January 12, 2021, the House received a petition to impeach one of its members, Representative Robert Goforth, for alleged "misdemeanors in office." The question for review is whether impeachment can proceed against a member of the General Assembly under any circumstances, completely apart from whether a petition is otherwise meritorious. For the following three reasons, I think the answer to this question is "no."

First, the text appears to be dispositive. Section 68 of the Kentucky Constitution provides that "[t]he Governor and all civil officers shall be liable to impeachment for any misdemeanors in office" Impeachment is thus limited to "civil officers." Ky. Const. § 68 (emphasis added). Although Section 68 does not define "civil officer," another section of our Constitution, Section 44, provides in pertinent part that:

No Senator or Representative shall, during the term for which he was elected, nor for one year thereafter, be appointed or elected to any civil office of profit in this Commonwealth, which shall have been created, or the emoluments of which shall have been increased, during the said term

Ky. Const. § 44 (emphasis added). This provision draws a clear contrast between membership in the General Assembly, on the one hand, and appointment or election to a "civil office," on the other. If it did not intend to draw such a contrast, it would instead have provided that "[n]o Senator or Representative shall . . . be appointed or elected to any other civil office . . . which shall have been created," etc. Because it uses the phrase "civil office" in contrast to membership in the General Assembly, Section 44 necessarily assumes that the two forms of service do not overlap.

Second, the same phrase – “all civil officers” — has been consistently interpreted in the analogous context at the federal level not to apply to members of Congress. Article II, § 4, of the federal Constitution provides that “[t]he 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.” U.S. Const. art. II, § 4 (emphasis added). Authorities at the federal level have long construed this phrase not to extend to members of Congress. This began in the 1790s, when the Senate dismissed an impeachment against Senator William Blount on the ground that Senators are not subject to that process. And this is noted in an exhaustive review of the impeachment process that was put together by the Department of Justice in 1974. See *Legal Aspects of Impeachment: An Overview*, DOJ, Office of Legal Counsel 55 n. 31 (1974). As the Office of Legal Counsel concluded, “[t]he Senator William Blount precedent of 1798 does seem to have determined that the Senate will not try its members on an impeachment.”

Third and finally, our Constitution gives us a clear alternate procedure for removing members of the General Assembly from their seats. Section 39 of the Kentucky Constitution provides that “[e]ach House of the General Assembly may determine the rules of its proceedings, punish a member for disorderly behavior, and, with the concurrence of two-thirds, expel a member” Ky. Const. § 39. Although impeachment and expulsion of a member could literally coexist, in the sense that Sections 39 and 68 are not mathematically irreconcilable, allowing them both to apply to a legislator would be dramatically inconsistent with the historic autonomy that each chamber possesses under Section 39 and similar provisions of the Constitution (such as Section 38). For example, allowing impeachment of a member would enable the House to compel the Senate to take up the impeachment of a Senator, yet would give the Senate no comparable leverage against the House. In addition, allowing the House to impeach one its own members would put the House in the bizarre position of seeing if the Senate would, in essence, expel one of its members, where the House could have done so itself under Section 39.

For the foregoing reasons, I do not think the Constitution of Kentucky allows for impeachment of a member of the General Assembly under any circumstances.